

ILLINOIS POLLUTION CONTROL BOARD
May 4, 2023

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL. ADM. CODE) R 18-28
SUBTITLE I: ATOMIC RADIATION) (Rulemaking – Atomic Radiation)

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by J. Van Wie):

The Board opened this docket to review its atomic radiation rules; determine which of them may be obsolete, repetitive, confusing, or unnecessary; and propose non-substantive clarifications. Today, the Board adopts amendments intended to update and clarify those rules.

In this opinion and order, the Board first provides background on the objectives of this rulemaking and its procedural history. Next, the Board addresses second-notice review by the Joint Committee on Administrative Rules (JCAR). The Board then discusses issues of technical feasibility and economic reasonableness. Finally, the Board concludes to adopt amended rules and issues its order. The adopted amendments, which take effect upon filing them with the Secretary of State (*see* 5 ILCS 5/40(d) (2020)), follow this opinion.

BACKGROUND

In 2016, the Board began reviewing its rules to identify obsolete, unclear, or otherwise unnecessary language. In 2018, the Illinois Environmental Protection Agency (IEPA) filed a proposal to amend numerous Board rules, including Part 1000 of the Board’s atomic radiation regulations. Clean-Up Amendments to 35 Ill. Adm. Code Parts 201, 211, 212, 214, 215, 216, 217, 218, 219, 225, 228, 232, 237, 301, 302, 303, 304, 306, 309, 401, 402, 403, 404, 405, 501, 611, 615, 616, 617, 722, 811, 813, 855, and 1000, R18-21 (Jan. 10, 2018). IEPA’s proposal cited Executive Order 2016-13, which required agencies to review existing regulations to identify provisions that are outdated, repetitive, confusing, or unnecessary and then revise or repeal them as appropriate.

The Board opened this rulemaking docket specifically to consider amendments to its Subtitle I atomic radiation regulations. 35 Ill. Adm. Code 1000, 1010. Amendment to 35 Ill. Adm. Code Subtitle I: Atomic Radiation, R18-23 (Mar. 22, 2018). The Board’s proposal included both amendments originally proposed by IEPA in R18-21, and those identified by the Board during its own review of Subtitle I. Both IEPA and the Board intend the proposed amendments to be non-substantive in nature.

ABBREVIATED PROCEDURAL HISTORY

On January 10, 2018, IEPA filed a proposal to make non-substantive revisions to Board rules, including provisions of Subtitle I. On March 22, 2018, the Board opened this docket to

address Subtitle I. On December 19, 2019, the Board adopted a proposal for public comment (Board Prop.). The proposal included both the amendment originally proposed by IEPA and amendments proposed by the Board. In its order, the Board requested comment generally and directed three questions to IEPA on specific matters.

In a letter dated September 17, 2021, the Board requested that the Department of Commerce and Economic Opportunity (DCEO) perform an economic impact study of the Board's proposal and respond to the request by November 1, 2021. *See* 415 ILCS 5/27(b) (2020). In a letter dated October 22, 2021, DCEO respectfully declined the Board's request.

The first hearing took place as scheduled on October 12, 2021, and the Board received the transcript (Tr.1) on October 18, 2021. No testimony was offered. At that hearing, the hearing officer set November 10, 2021 as the deadline to pre-file testimony for the second hearing. On November 10, 2021, the Illinois Emergency Management Agency (IEMA) pre-filed testimony (IEMA Test.).

Due to the unavailability of court reporters, the Board cancelled the second hearing originally scheduled for November 17, 2021. The Board re-scheduled the hearing to take place on January 6, 2022, and set a new deadline of December 20, 2021 to pre-file testimony for the re-scheduled hearing. The Board received no additional pre-filed testimony. The second hearing took place as re-scheduled on January 6, 2022, and the Board received the transcript (Tr.2) on January 14, 2022. IEMA Staff Attorney Louise Conway testified regarding IEMA's proposed amendments to Section 1000.502. At the second hearing, the hearing officer set a deadline of January 28, 2022 for post-hearing comments. The Board did not receive any post-hearing comments.

On April 21, 2022, the Board adopted a first-notice opinion and order (First Notice). *See*, R18-28 (Apr. 21, 2022). The proposed amendments were published in the *Illinois Register* on May 6, 2022. 46 Ill. Reg. 6867, 6896 (May 6, 2022).

On May 20, 2022, the Board docketed as a public comment an email between the staff of JCAR and the Board (PC 1) regarding changes suggested by JCAR to Part 1000. On June 9, 2022, IEMA filed its first-notice comments (PC 2). On June 21, 2022, the Board also docketed as a public comment an email between the staff of JCAR and the Board (PC 3) regarding changes suggested by JCAR to Part 1010. On July 22, 2022, the Board filed as public comments (PC 4, 5) its responses to JCAR's suggested changes for Part 1000 (PC 4) and Part 1010 (PC 5).

On March 2, 2023, the Board adopted a second-notice proposal for review by JCAR. At its meeting on April 18, 2023, JCAR issued its certificates of no objection to the proposed amendments, subject to a limited number of non-substantive changes.

SECOND-NOTICE AMENDMENTS

The Board's first-notice proposal included non-substantive amendments originally proposed both by the Board and IEPA. The first-notice opinion includes a Part-by-Part discussion of the proposed amendments. The Board does not in this order repeat that entire

opinion, which can be viewed on the Board's website (pcb.illinois.gov) under this docket number R18-28. See Amendments to 35 Ill. Adm. Code Subtitle I: Atomic Radiation, R18-28 (Apr. 21, 2022).

In its second-notice opinion, the Board proposed a number of additional non-substantive changes, many of which JCAR suggested, as well as certain others based on IEMA's responses to the Board's first-notice requests for comment. Amendments to 35 Ill. Adm. Code Subtitle I: Atomic Radiation, R18-28 (Mar. 2, 2023); see PCs 3-5. The Board also does not repeat that entire opinion today, and it also can be viewed from the Board's website.

During second-notice review, JCAR suggested a smaller number of additional changes, which are reflected in the adopted rules. Due to the limited number and non-substantive nature of those changes, the Board does not specifically address those changes in today's opinion.

TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

As noted above under "Procedural History," the Board on September 17, 2021, requested that DCEO perform an economic impact study of the Board's proposal. See 415 ILCS 5/27(b) (2020). In a letter dated October 22, 2021, DCEO responded that it had "conducted a preliminary review of the proposed rule changes and an initial economic analysis. The proposed rule changes are administrative in nature, with no meaningful economic impact on businesses or workers based on our initial review." DCEO respectfully declined the Board's request to perform a study. No participant at either hearing testified or commented on the Board's request or DCEO's response. Tr.1 at 3; Tr.2 at 12-13.

When it adopted its first-notice proposal, the Board considered the record, particularly IEPA's comments on the Board's proposal for public comment and IEMA's post-hearing comments. Based on the record then before it, the Board concluded that the first-notice proposal did not make substantive revisions that affect complying with existing rules. The Board found that its first-notice proposal was both technically feasible and economically reasonable. See 415 ILCS 5/27(a) (2020). The Board further found that its proposed non-substantive amendments would not have any adverse economic impact on the people of the State of Illinois. See 415 ILCS 5/27(b) (2020).

In its second-notice opinion, the Board stated that no addition to the record altered those conclusions. The Board again concluded that its proposal was both technically feasible and economically reasonable and that its proposed non-substantive amendments would not have any adverse economic impact on the people of the State of Illinois. See 415 ILCS 5/27(a), (b) (2020).

The Board again finds that no addition to the record alters those conclusions. Based on its review of the record now before it, the Board concludes that its proposed non-substantive amendments are both technically feasible and economically reasonable. The Board also again finds that these amendments would not have any adverse economic impact on the people of the State of Illinois. See 415 ILCS 5/27(a), (b) (2020).

CONCLUSION

The Board concludes to adopt non-substantive amendments to Parts 1000 and 1010 of its atomic radiation rules. These amended rules include a limited number of changes suggested by JCAR during its second-notice review. The Board has reviewed the record in this proceeding and finds that the adopted rules are technically feasible and economically reasonable and that they will not have an adverse impact on the citizens of Illinois. The adopted rules appear in the addendum to this opinion with addition appearing underlined and deletions appearing struck through.

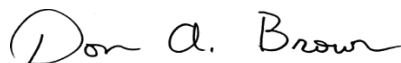
ORDER

The Board directs the Clerk to submit the adopted amendments to the Secretary of State for publication in the *Illinois Register*.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2020); *see also* 35 Ill. Adm. Code 101.300(d), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on May 4, 2023, by a vote of 3-0.



Don A. Brown, Clerk
Illinois Pollution Control Board