

ILLINOIS POLLUTION CONTROL BOARD  
October 8, 1981

IN THE MATTER OF: )  
 ) R80-18  
AMENDMENT TO CHAPTER 1: )  
PROCEDURAL RULES 304 AND 308 )  
  
PROPOSED RULE, SECOND NOTICE

ORDER OF THE BOARD (by J. Anderson):

On October 17, 1980 the Board entered an Order (Proposed Rule, First Notice) on its own proposal for amendment of Procedural Rules 304 and 308. The proposal was published in the Environmental Register No. 226 on November 4, 1980 and in the Illinois Register on November 7, 1980, Vol. 4, p. 39. On January 8, 1981, the Board directed that second notice of these rules be initiated without change. However, by Order of January 14, 1981, the Board agreed to reconsider its action. Having considered the three public comments received, the Board directs that second notice of these proposed rules, as amended, be filed with the Joint Committee on Administrative Rules.

Chapter I: Procedural Rules

304 Notice, and Formal Complaint, and Answer

- (a)-(c) No change.
- (e) Respondent may file an answer within 30 days of receipt of the complaint. All material allegations of the complaint shall be taken as denied if not specifically admitted by the answer, or if no answer is filed. Any facts constituting an affirmative defense which would be likely to take the complainant by surprise must be plainly set forth prior to hearing in the answer or in a supplemental answer filed pursuant to Rule 326(b).

308 Motions and Answers Responses

- (a) ~~Unless-respondent-files-an-answer-within-30-days-of receipt-of-the-complaint, all material allegations shall-be-taken-as-denied.~~ All motions preliminary to a hearing shall be presented to the Board or to the Hearing Officer at least 14 days prior to the


date of the hearing, or on such other date as the Hearing Officer or the Board shall designate. All motions by respondent to dismiss or strike the complaint or challenging the jurisdiction of the Board shall be filed within 14 days after receipt of the complaint shall be directed to the Board and shall be disposed of prior to the hearing on the complaint, subject, however to the provisions of subsection (e) and (i) of this Rule. Motions by complainant to voluntarily dismiss an action against any or all parties as to any or all claims shall be directed to the Board and may be made orally upon the hearing record, or may be made in writing at any time prior to issuance of the Board's decision. All motions must be served on all parties, including the Agency and its representative and the Hearing Officer designated by the Board with proof of service. Oral argument on motions before the Board shall be permitted only by order of the Board.

- (b) Unless made orally on the record during a hearing or unless the Hearing Officer directs otherwise, a motion shall be in writing, shall state the reasons for and grounds upon which the motion is made, and may be accompanied by any affidavits or other evidence relied on, and, when appropriate, by a proposed order. All written motions by complainant to voluntarily dismiss an enforcement action shall be accompanied by affidavit attesting to the truth of the facts alleged.
- (c)-(d) No change.
- (e) The Hearing Officer shall rule upon all motions, except that he shall have no authority to dismiss, or rule upon a motion to dismiss or decide a proceeding on the merits, or for failure to state a claim, or for want of jurisdiction, or to strike any claim or defense for insufficiency or want of proof. The Hearing Officer shall refer any such motions to the Board pursuant to subparagraph (a) of this section. Notwithstanding the provisions of paragraph (a) above, the Board in its discretion, may direct that hearing on the proceeding be conducted and, in its discretion, may take all motions directed to it with the case. This conditional ruling by the Board shall not foreclose a party from advancing the same contentions as to jurisdiction or adequacy of the complaint upon the completion of the hearing. When ruling on a motion by complainant for voluntary dismissal of an action the Board shall, for reasons stated, dismiss the action without leave to reinstate if justice so demands.

(f)-(i) No change.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 8<sup>th</sup> day of October, 1981 by a vote of 5-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board