

ILLINOIS POLLUTION CONTROL BOARD  
May 12, 1977

IN THE MATTER OF )  
 )  
PROCEDURAL RULE ) R75-1  
REVISIONS )

OPINION OF THE BOARD (by Mr. Dumelle):

This proceeding began on January 23, 1975 when the Board voted to seek public comment on its Procedural Rules (Rules) see Environmental Register #97; January 28, 1975. The Board especially sought any comments to help simplify or clarify operations under the Rules. The Board feels that a periodic review of its Rules is necessary to reflect the wisdom and insight gained by experience. The last prior revision of the Rules was R73-14, which was concluded on February 14, 1974. The Board feels that the revisions made in R75-1 will significantly improve and clarify operations. However, there will undoubtedly be some changes which, in the next revision, the Board will determine should have been made, but were not; and some which should not have been made, but were.

The Board proceeded at the start of the present revision, on both an "inhouse" review\* of the Rules and the acceptance and analysis of public comments. Comments were received from the Illinois Environmental Protection Agency, the Attorney General's Office, Board Hearing Officers, and from others who appear before the Board. Some of these comments will be mentioned below. No formal public hearings were held, although the Rules were discussed at many Board meetings.

On April 9, 1976 the Board voted to publish a proposed draft for Public Comment (Environmental Register #124, April 29, 1976). Numerous comments were once again received and considered. On October 28, 1976 the Board published a proposed final draft for Public Comment (Environmental Register #136, November 8, 1976). On December 16, 1976 the Board adopted

---

\*The Board acknowledges the consecutive efforts of Timothy J. Stock, Roy M. Harsch and Earon S. Davis in preparing drafts of these Rules.

the proposed final draft with published changes (Environmental Register #139, December 30, 1976). At the same time the Board published for Public Comment proposed rules to govern proceedings under Water Pollution Regulation 203(i)(5). On March 3, 1977 the Board issued its Order, from which Mr. Zeitlin dissented, on that final segment (Part VI) of the Rules. The Board issued a separate Opinion in that matter on March 17, 1977.

This Opinion will attempt to address all of the major revisions made in this new version of the Board's Procedural Rules. The reader would no doubt benefit from referring to the "Summary of Reasons Supporting Adoption" which accompanied the April 9, 1976 proposed draft in Environmental Register #124, April 29, 1976. The October 28, 1976 proposed final draft further included a "Statement of Significant Changes" from the previous draft (Environmental Register #136, November 8, 1976). The Board's Order of December 16, 1976 (Environmental Register #139, December 30, 1976) delineates the subsequent changes except for those in Part IV: Variances, which was substantially redrafted.

The Board's December 16, 1976 Order stated March 1, 1977 as the effective date of these revised Rules. On March 3, 1977 the Board extended the effective date to April 1, 1977. As of April 1, 1977 all of the revisions became effective for all cases already filed, or to be filed, before the Board. However, upon application and the showing of excessive prejudice the Board may waive the immediate application of any revised Rule. The Board intends such a waiver to be available, for a short interim period only, where an applicant demonstrates reasonable reliance on a pre-existing Rule and that application of the revised Rule would be manifestly unfair and will severely prejudice the applicant's substantive rights.

This Opinion is not intended to be an interpretive guide to the revised Procedural Rules. The Rules speak for themselves and need no Opinion as that word is usually employed. Rather, the purpose of this Opinion is to set out the major changes.

#### PART I - GENERAL RULES

- 102(f) Document - clarifies Rule 104.
- 102(g) Economic Impact Study - In accordance with P.A. 79-790.
- 104(c) Clarifies that exhibits need not meet "document" specifications and that document requirements may be waived for citizen complaints.

- 104(d) Addition of last sentence will make it easier to identify attorneys of record.
- 104(e) The addition of this Rule makes explicit the previous Board practice of not accepting microfiche for filing.
- 107(c)(3) Board denial of an application for non-disclosure does not permit inspection by the public until the time for appeal has run.
- 107(f) The cost of copies shall be determined by the Board.
- 109 Some notice requirements for special meetings and changes in the regular meeting schedule have been deleted. This conforms with the Illinois Open Meetings Act.
- 110 Deletes requirement that Clerk circulate a monthly list of informal complaints and Agency responses to each Board Member.

PART II - REGULATORY AND OTHER NONADJUDICATIVE HEARINGS AND PROCEEDINGS

- 202(b) Added in accordance with P.A. 79-790.
- 203(b) A new sentence requires that a proponent of a regulation discuss the relevant factors listed in Section 27 of the Act.
- 204(b) Amended to conform with Board practice.
- 205(c) This new rule was added to conform with the Board practice of continuing hearings on the record without requiring further notice.
- 208(b) The addition of this Rule reflects the requirement that all witnesses be sworn.
- 209 This is the former Rule 206(b).
- 210 This is the former Rule 209. The 10-day period was changed to 14 days.
- 211 This is the former Rule 210. It is clarified to state that failure to submit corrections to a transcript within 14 days constitutes a waiver of the same.
- 212(a) This is the former Rule 211. Comments on revisions must be submitted within 14 days of notice rather than the previously allowed 21 days.

- 212(b) This was added in accordance with P.A. 79-790.
- 213 This is former Rule 212
- 214, and  
215 These Rules were added in accordance with P.A. 79-790.
- 216 This is former Rule 213.

PART III - ENFORCEMENT PROCEEDINGS

- 303(c) The hearing officer may join certain parties.
- 305(b) Filing requirements are clarified.
- 305(c) Service by mail is presumed complete four days after mailing.
- 307(a) Hearing is to be held within 90 days of filing, rather than the former 60 day limit, unless the Board orders otherwise.
- Rule 307 has been substantially reordered.
- 307(d) (4) Former Rule 307(b) (3) was deleted.
- 308(a) Thirty (30) days to file answer rather than 20 days.  
Motions preliminary to hearing - 14 days rather than 5 days.  
Motion to strike or dismiss - 14 days rather than 15 days.
- 308(c) Response to motion - 7 days rather than 5 days.
- 308(d) Deletes reference to oral arguments on a motion before a hearing officer.
- 308(e) Upon the suggestion of one of the Board's Hearing Officers, the Board clarified that a hearing officer may not rule upon a motion to dismiss or decide a case on the merits, etc. The former Rule 308(e) was deleted. Subsequent Rules have been renumbered.
- 308(i) Former Rule 308(j) was clarified to show that a party may preserve a jurisdictional objection if it is raised in accordance with Rule 308(a).

- 310(c) The rights of an intervenor are expanded.
- 311 This Rule has been redrafted and reordered. Only the Board may grant a single continuance which exceeds 45 days, or any other continuance which would cause the total time of all continuances granted to exceed 90 days. Motions for such continuances before the Board must be written and supported by affidavit. Subsection (c) was added to avoid continuances where the petitioner in a variance or permit denial appeal case has not accordingly waived application of the deadline for final Board action.
- 313 This Rule has been redrafted for clarification and to insure that the scope of discovery is as broad as that allowed under Illinois law.
- 314(a) and (b) This Rule was amended to insure that a Respondent has adequate time to respond to a Request for Admission.
- 314(e) This Rule was changed so as not to be redundant to the new Part VII: Sanctions.
- 316 This Rule was redrafted to clarify the authority of hearing officers.
- 318 and 319 These Rules have been reversed in order. Rule 318(k) was added to reflect past Board practice.
- 319(a) A witness for a party must testify via direct examination. A written statement submitted by a person not a party or witness for a party may be stricken if the person is not available for cross-examination. The hearing officer must permit reasonable oral testimony by non-parties.
- 319(b) This Rule was added to reflect the Board practice of requiring all witnesses to be sworn. Subsequent Rules were renumbered.
- 320 This was formerly numbered Rule 312, of which subsection (b) was deleted as redundant.
- 321 This is a new Rule added to regulate the use of written narrative testimony, substantially as suggested by the Environmental Protection Agency.
- 324 This is the former Rule 326.
- 325 This Rule was redrafted to include former Rules 324 and 325.
- 326 This is former Rule 328 with a provision for motions for supplemental pleadings.

- 327 This is the former Rule 320 with the clarification that the Board's Order be limited to the pleadings.
- 328, 329  
330 These were former Rules 329, 330, and 331, respectively.
- 331 This is former Rule 333 and has been clarified and somewhat expanded.
- 332 This rule has been rewritten for the sake of clarity.
- 333 This is former Rule 334. The time for responses was changed from 10 to 14 days. This Rule was redrafted to clarify that motions under the Rule must be filed within 35 days of the adoption of the final Board Order, and that after the Board rules upon the motion the 35 day appeal period runs anew.
- 334 This is a new Rule which clarifies the procedure for relief from Board Orders other than via Rule 333.

#### PART IV - VARIANCES

- 401 This Rule was rewritten for clarity and expanded. Subsection (b) requires that a Petitioner make an election regarding whether a hearing is desired. If the right to a trial-type hearing is waived, Petitioner has the burden of submitting affidavits or other proof in support of the material facts alleged. This proof must be sufficient to enable the Board to rule upon the petition or it will be dismissed as inadequate.
- 402 This new Rule clarifies that extensions of variances constitute new Petitions except that information already submitted may be incorporated into the new proceeding.
- 403 This is former Rule 402. The potential requirement of using special mailings of the Register to provide notice of variance petitions within 21 days of filing has been deleted.
- 40 This is former Rule 403.
- 406 This new Rule allows responses to Recommendations within 7 days of receipt.

- 407 This is former Rule 405 and has been rewritten for clarity.
- 408 This is former Rule 406 and has been rewritten. The 70 day time period has been changed to 60 days within which to hold a hearing.
- 409 This is former Rule 407 with an amendment clarifying the burden of proof.
- 410 This is former Rule 408 and clarifies the workings of the 90 day decisional period.
- 411 This is former Rule 409.
- 412 This is former Rule 410 and clarifies that a petition for the Board to assume the costs of hearing transcripts must be filed prior to the hearing.

PART V - PERMITS

- 502 This Rule has been rewritten to include provisions that Agency issuance of a Permit with conditions or limitations be subject to Permit Appeal and that any Permit Appeal must be filed within 45 days of the mailing of the Agency's final decision. The Rule further specifies that the Agency shall file its record within 14 days of notice of the petition. Rule 502(b) deals with NPDES Permit Appeals.
- 503 This Rule specifies that, aside from the standard requirements for enforcement actions, enforcement actions brought pursuant to this Rule must also meet the relevant requirements of Rule 502(a). Of course, the 45 day requirement of Rule 502(a)(2) is not relevant to a complainant who was not an applicant for a permit. The Rule 502(a) requirements which were intended to apply to Rule 503 enforcement actions are subsections (a)(3) through (a)(6). The three subsections incorporating Part III Rules were referenced via Rule 502(a) to avoid redundancy.
- 504 This is former Rule 505. Transcripts must be furnished to the Board within 14 days of the hearing rather than the previously required 15 days. Transcripts for a

proceeding under Rule 503 are governed by Rule 328 inasmuch as such cases are enforcement actions and not permit appeals. Old Rule 504, Nuclear Facilities Permits, was deleted due to Federal pre-emption.

PART VI - WATER REGULATION 203(i)(5) HEARINGS

This Part is discussed in the Board's March 17, 1977 Opinion.

PART VII - SANCTIONS

701 This Rule provides for various sanctions for failure to comply with Procedural Rules or Orders of the Board or hearing officers.

PART VIII - CANONS OF ETHICS

This is former Part VI. Rule 801 replaces former Rule 601.

PART IX - JUDICIAL REVIEW

This Part has been clarified. Subsection (c) was added to clarify that action on a Rule 333 Motion is a final action.

This Opinion constitutes the Board's findings of fact and conclusions of law.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion was adopted on the 12<sup>th</sup> day of May, 1977 by a vote of 5-0.



Christan L. Moffett, Clerk  
Illinois Pollution Control Board