

ILLINOIS POLLUTION CONTROL BOARD
December 4, 1980

IN THE MATTER OF:)
)
PROPOSED AMENDMENT TO RULES) R80-7
502(a) and 503(a) OF CHAPTER)
ONE, PROCEDURAL RULES)

ADOPTED RULE. FINAL ORDER.
ORDER OF THE BOARD (by D. Satchell):

On April 24, 1980 the Illinois Environmental Protection Agency (Agency) filed a proposal to amend Procedural Rules 502(a)(2) and 503(a) to reflect recent amendments to Section 40 of the Environmental Protection Act. These same rules are subject to modification in R80-15 which is pending before the Board. On July 24, 1980 the Board adopted the Agency proposal for comment (Proposed Rule, First Notice). It was published in Environmental Register No. 221 on August 5, 1980 and in Illinois Register on August 22, 1980, p. 85. The Board received no comment. On October 7, 1980 the Board ordered the second notice sent to the Joint Committee on Administrative Rules. The second notice period commenced October 28, 1980 and concluded November 19, 1980 with no objection.

In response to comments from the Joint Committee staff, the Board will modify the second sentence of Procedural Rule 503(a)(1), which concerns commencement of the appeal period, so that it is parallel to the similar provision of the first sentence of Procedural Rule 502(a)(2) and reads as follows: "The petition shall be filed within thirty-five days of the issuance date of mailing of the permit Agency's final decision to the applicant."

The Board hereby adopts the amendments to Procedural Rules 502 and 503 which appear below. The Clerk is directed to file the Rules with the Secretary of State.

502 Permit Appeals

(a) Permit Appeals Other Than NPDES Permit Appeals:

1. If the Agency denies the permit, it shall advise the permit applicant in writing in accordance

with the requirements of Section 39(a) of the Act.

2. In the case of a denial of a permit or issuance by the Agency of a permit with one or more conditions or limitations to which an applicant objects, an applicant who seeks to appeal the Agency decision shall file a petition for a hearing before the Board within 35 days of the date of mailing of the Agency's final decision. The petition shall include:
 - (i) Citation of the particular standards under which a permit is sought;
 - (ii) A complete and precise description of the facility, equipment, vehicle, vessel, or aircraft for which a permit is sought, including its location;
 - (iii) A complete description of contaminant emissions and of proposed methods for their control; and
 - (iv) Such other materials as may be necessary to demonstrate that the activity for which the permit is sought will not cause a violation of the Act or the regulations.
3. The method of filing service shall be in accordance with Rules 304 and 305 of these Procedural Rules.
4. The Agency shall appear as respondent in the hearing and shall, within 14 days, upon notice of the petition, file with the Board the entire Agency record of the permit application, including:
 - (i) The application;
 - (ii) Correspondence with the applicant; and
 - (iii) The denial.
5. The Clerk shall give notice of the petition and hearing in accordance with Part III.
6. The proceedings shall be in accordance with the Rules set forth in Part III of these Rules.

(b) NPDES Permit Appeals:

1. If the Agency denies an NPDES Permit, it shall advise the permit applicant in writing in accordance with the requirements of Section 39(a) of the Act.
2. In the case of the denial of an NPDES Permit or the issuance by the Agency of an NPDES Permit with one or more conditions or limitations to which the applicant objects, the applicant may contest the decision of the Agency by filing with the Clerk of the Board a petition for review of the Agency's action in accordance with this Rule.
3. Any person other than the applicant who has been a party to or participant at an Agency hearing with respect to the issuance or denial of an NPDES Permit by the Agency, or any person who requested such a hearing in accordance with applicable rules, may contest the final decision of the Agency by filing with the Clerk a petition for review of the Agency's action.
4. The petition shall be filed and notice issued within 30 days from the date the Agency's final decision has been mailed to the applicant and all other persons who have right of appeal. The method of filing and service shall be in accordance with Rules 304 and 305 of these Procedural Rules.
5. The Agency shall appear as respondent and shall file an Answer consisting of the hearing file of any hearing which may have been held before the Agency, including any exhibits, and the following documents: NPDES Permit application, NPDES Permit denial or issuance letter, and all correspondence with the applicant concerning the application.
6. All parties other than the petitioner who were parties to or participants at any Agency hearing shall be made respondents.
7. The petition shall contain a statement of the decision or part thereof to be reviewed. The Board upon motion of any respondent shall, or upon its own motion may, require of the petitioner a specification of the errors upon which the petitioner relies in his petition.

8. The hearings before the Board shall extend to all questions of law and fact presented by the entire record. The Agency's findings and conclusions on questions of fact shall be prima facie true and correct. If the Agency's conclusions of fact are disputed by the party or if issues of fact are raised in the review proceeding, the Board may make its own determination of fact based on the record. If any party desires to introduce evidence before the Board with respect to any disputed issue of fact, the Board shall conduct a de novo hearing and receive evidence with respect to such issue of fact.
9. This proceeding shall be in accordance with the rules set forth in Part III of these Procedural Rules.
10. The order of the Board entered pursuant to hearing may affirm or reverse the decision of the Agency, in whole or in part, may remand the proceeding to the Agency for the taking of further evidence, or may direct the issuance of the permit in such form as it deems just, based upon the law and the evidence.

503 Permit Review

(a) Permit Review for Hazardous Waste Disposal Sites:

1. Any person other than the applicant or the Agency may petition the Board for a hearing to contest the issuance of a permit for a hazardous waste disposal site. The petition shall be filed within 35 days of the date of mailing of the Agency's final decision to the applicant. The Agency and the applicant shall be named co-respondents. The Board shall conduct a public hearing, in accordance with Rule 502 and Part III hereof, unless it determines that:
 - (A) The petition is duplicitous or frivolous;
 - (B) The petitioner is so located as not to be affected by the permitted facility; or
 - (C) The permit was granted for the disposal or utilization of sludge from publicly owned sewage works.
2. The hearing shall be based exclusively on the record before the Agency at the time the permit was issued.

The burden of proving that the Agency's action was in violation of the Act or applicable Board regulations shall be upon the petitioner.


(b) NPDES Permit Review:

Any person may file a complaint, whether or not a party to or participant to any earlier proceeding before the Agency, or for modification, suspension, or revocation of an NPDES Permit in accordance with Rule 912 of Chapter 3, Subpart A. Such a complaint shall be commenced in accordance with Procedural Rule 304. Part III of these Rules shall govern the proceeding.

IT IS SO ORDERED.

Mr. Werner abstained.

I, Christan L. Moffet, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 4th day of December, 1980 by a vote of 3-0.



Christan L. Moffet, Clerk
Illinois Pollution Control Board