

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
REGULATORY RELIEF MECHANISMS) R18-18
PROPOSED NEW 35 ILL. ADM. CODE) (Rulemaking-Procedural)
PART 104, SUBPART E)

NOTICE OF FILING

To:

Don Brown, Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
don.brown@illinois.gov
(VIA ELECTRONIC MAIL)

Marie Tipsord, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
marie.tipsord@illinois.gov
(VIA ELECTRONIC MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Pollution Control Board, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S COMMENTS ON THE JOINT COMMITTEE ON ADMINISTRATIVE RULE'S SECOND NOTICE CHANGES, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

Dated: April 10, 2018

1021 N. Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794
217-782-5544

By: /s/ Sara G. Terranova
Sara G. Terranova
Assistant Counsel
Division of Legal Counsel
sara.terranova@illinois.gov

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
REGULATORY RELIEF MECHANISMS) R18-18
PROPOSED NEW 35 ILL. ADM. CODE) (Rulemaking-Procedural)
PART 104, SUBPART E)

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S COMMENTS ON THE JOINT COMMITTEE ON ADMINISTRATIVE RULE’S SECOND NOTICE CHANGES

The Illinois Environmental Protection Agency (Agency or Illinois EPA), by and through one of its attorneys, Sara G. Terranova, hereby submits its Comments on the Joint Committee on Administrative Rule’s (JCAR) Second Notice Changes in the above captioned matter. The Agency comments as follows:

1. On April 5, 2018, the Illinois Environmental Regulatory Group (IERG) submitted a comment on JCAR’s Second Notice Changes. *See* Illinois Environmental Regulatory Group’s Comment on the Joint Committee on Administrative Rule’s Second Notice Changes (April 5, 2018). IERG recommended against adding JCAR’s changes to Section 104.560(a)(6), which contains one of the 40 C.F.R. 131.10(g) factors (10(g) factors). *See Id* at 2. In support, IERG stated that JCAR’s proposed changes to the language in Section 104.560(a)(6) were inconsistent with the federal language for this factor and limited the factor’s scope when compared to the federal rule. *See Id*.

2. The Illinois EPA agrees with IERG’s recommendation against adding JCAR’s changes to Section 104.560(a)(6) which contains one of the federally required 10(g) factors. The Illinois EPA agrees that JCAR’s changes are inconsistent with the federal language in 40 C.F.R. 131.10(g)(6) and limit the factor’s scope when compared to federal rule.

3. In addition, the Illinois EPA recommends against adding JCAR’s changes to 35 Ill. Adm. Code 104.560(a)(2) and (3) and 104.560(c). *See* JCAR Second Notice Changes at 6

and 7, changes 122 – 130, 135, and 137 to lines 661-665, 667, 668, 696, 697, and 699 (revised April 3, 2018, filed April 4, 2018).

4. As with subsection 104.560(a)(6), subsections 104.560(a)(2) and (3) and 104.560(c) are taken directly from the 10(g) factors in 40 C.F.R 131.10(g)(2) and (3) and the federal rule in 40 C.F.R 131.14(b)(2)(i)(A) and (b)(2)(ii). JCAR's changes are inconsistent with this federal language. Any such inconsistency provides the possibility for a misinterpretation of the federal language from which these subsections were taken. The Agency is concerned that without precise consistency between the State and federal language, petitioners may fail to make the necessary demonstration required for a successful Time Limited Water Quality Standard petition and ultimately fail to obtain the United States Environmental Protection Agency's approval, which is the necessary last step for such a petition.

5. Finally, the Agency recommends that consistency be established with the use of the word "must" or "will" throughout the Subpart. With a differing use of the terms, the Agency is concerned a distinction is being made – or could be argued – between provisions containing "must" versus "will". It was the Agency's intent to propose each "must" be replaced with the word "will" as the Agency believed the two terms held the same meaning.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

Dated: April 10, 2018

1021 N. Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794
217-782-5544

By: /s/ Sara G. Terranova
Sara G. Terranova
Assistant Counsel
Division of Legal Counsel
sara.terranova@illinois.gov

CERTIFICATE OF SERVICE

I, Sara G. Terranova, Assistant Counsel for the Illinois EPA, herein certify that I have served a copy of the Notice of Filing and the Illinois Environmental Protection Agency's Comments on the Joint Committee on Administrative Rule's Second Notice Changes upon persons listed on the Service List by electronic filing with the Illinois Pollution Control Board on April 10, 2018.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

Dated: April 10, 2018

1021 N. Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794
217-782-5544

By: /s/ Sara G. Terranova
Sara G. Terranova
Assistant Counsel
Division of Legal Counsel
sara.terranova@illinois.gov

SERVICE LIST (R18-18)

Don Brown
Clerk of the Board
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601
Don.Brown@illinois.gov

Marie Tipsord
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601
Marie.Tipsord@illinois.gov

Gerald T. Karr
Kathryn A. Pamerter
Office of the Attorney General
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
GKarr@atg.state.il.us
KPamerter@atg.state.il.us

Katy Khayyat
Dept. of Commerce and Economic Opportunity
Small Business Office
500 E. Monroe Street
Springfield, Illinois 62701
Katy.Khayyat@illinois.gov

Ashley E. Parr
Fredric P. Andes
Paul M. Drucker
Barnes & Thornburg
1 North Wacker Drive, Suite 4400
Chicago, Illinois 60606
Ashley.parr@btlaw.com
Fandes@btlaw.com
pdrucker@btlaw.com

Eric Lohrenz
Virginia Yang
Illinois Department of Natural Resources
One Natural Resource Way
Springfield, Illinois 62702
Eric.Lohrenz@illinois.gov
Virginia.Yang@illinois.gov

Jared Policicchio
Mort P. Ames
Chicago Department of Law
30 North LaSalle Street, Suite 3600
Chicago, IL 60602
Jared.policicchio@cityofchicago.org
Mort.ames@cityofchicago.org

Eric Boyd
Thompson Coburn LLP
55 East Monroe Street
Chicago, IL 60603
eboyd@thompsoncoburn.com

Joshua J. Houser
Katherine D. Hodge
HeplerBroom, LLC
4340 Acer Grover Drive
Springfield, IL 62711
Joshua.houser@helperbroom.com
Katherine.hodge@heplerbroom.com

Susan M. Franzetti
Vincent R. Angermeir
Nijman Franzetti, LLP
10 South LaSalle Street, Suite 3600
Chicago, IL 60603
sf@nijmanfranzetti.com
va@nijmanfranzetti.com

Albert Ettinger
53 West Jackson, Suite 1664
Chicago, IL 60604
Ettinger.albert@gmail.com