

ILLINOIS POLLUTION CONTROL BOARD  
September 22, 1988

IN THE MATTER OF: )  
 )  
PROCEDURAL RULES REVISION, ) R88-5  
35 ILL. ADM. CODE 101, 102, )  
106 and 107 )

CONCURRING OPINION (by J. Anderson, J. Dumelle, J. Marlin):

The sole reason for this concurring opinion is to elaborate on the concept of including in the Board's procedural rules a provision for an "informal request for regulation"; the greater detail is intended to provide a better focus for public comment.

Subpart B of Part 102 of the R88-5 proposal, entitled "Proposal of Regulations of General Applicability", would require proponents in regulatory proceedings to collect data in support of a proposed change and to frame the language of that change before the proposal would be aired at hearing. This may well contribute to the efficiency of the hearing process. However, this may not be an unalloyed benefit; these procedural requirements may unnecessarily limit the access of the general (non-government, non-industry) public to the rulemaking process. The Board has, after all, in the past received proposals for rules which could be characterized as meritorious in concept, even though incapable of implementation as drafted; some of these have been successfully reworked and adopted as a result of the hearing process. Yet it is also the case that protracted rulemakings can be a serious drain on the resources of government, the regulated community and the public alike.

Therefore, rather than reduce procedural requirements in all rulemaking proceedings, comment is requested concerning the merits of establishing an "informal request for regulation" procedure whereby a person can have an idea for regulatory change considered without involving a substantial "upfront" commitment of time and resources by that person, but also without necessarily committing substantial governmental resources to consideration of the idea either.

The conceptual prototype for this procedure is the informal/formal complaint system which the Board has long had in the enforcement arena, wherein an informal complaint triggers an investigation of a problem, but a formal complaint triggers a formal proceeding at which the complainant bears the burden of litigating the problem.

In brief, the filing requirements for the "informal request" include identification of the regulation to be added or amended,

specification of the environmental problem and remedy sought, and, submission of data gathered by the requester concerning the problem. The informal request would be required to be accompanied by 200 signatures, to deter the filing of frivolous requests.

The informal request would be placed on the Board's agenda for consideration, and the Board would, by Order, make some appropriate disposition of the request. As the consideration of an informal request would be a discretionary practice on the part of the Board since it does not flow from a mandate contained in Title VII of the Act, the Board would not consider any Order responding to an informal request to be a "final Order" which could be appealed pursuant to Sections 29 and 41 of the Act.

In summary, participants are requested to address both the concept and the suggested regulatory language set forth below:

#### PART 102, SUBPART X: INFORMAL REQUEST FOR REGULATION

##### Section 102.XXX Informal Request For Regulation

Any person may submit an informal request for the adoption, amendment, or repeal of a regulation. The purpose of such an informal request is to ask the Board to initiate action on an area of concern to the person filing the request. The person submitting such a request shall be known as the proposer, but shall bear only the responsibilities set forth in this Subpart. An informal request for rulemaking will not in itself result in an adopted rule, but may lead to the opening of a formal rulemaking docket.

##### Section 102.XXX Contents And Filing Of Informal Request

- a) Each informal request shall be titled "Informal Request For Regulation." Each such request shall include:
  - 1) The identity of the person or persons making the request;
  - 2) An identification of the regulation to be adopted, amended, or repealed, including suggested language;
  - 3) The nature of the environmental problem to be addressed by the request;
  - 4) The suggested remedy for the environmental problem;
  - 5) Any data which petitioner has gathered in support of the request; and

- 6) Any other relevant information.
- b) The petitioner shall file 10 copies of the request with the Clerk, and one with the Agency and DENR. The request shall be accompanied by a petition in support of the request, signed by at least 200 persons.

Section 102.XXX Board Action

- a) All informal requests for regulation will be placed on the Board's agenda for consideration. The Board will issue a written order specifying its response to the informal request for regulation.
- b) The Board will respond to an informal request as the Board, in its discretion, deems appropriate, considering the nature of the request and supporting data presented. The Board's may include but not be limited to:
  - 1) A request for public comment concerning the request;
  - 2) A direction to the Board's Scientific/Technical Section to conduct a literature search;
  - 3) The scheduling an inquiry hearing concerning the request;
  - 4) A request that the Agency or another person propose a formal regulation;
  - 5) A request that DENR conduct research on the issues raised by the request;
  - 6) The dismissal of a frivolous or non-meritorious request;
  - 7) A statement that the Board declines to take action, for reasons including but not limited to lack of resources, lack of statutory authority to regulate, or pendency of federal regulatory proposals.

Section 102.XXX Appeal

Orders issued by the Board pursuant to this Subpart are not final Orders for the purpose of appeal pursuant to Sections 29 and 41 of the Act.

Joan G. Anderson  
Joan G. Anderson  
Board Member

Jacob D. Dumelle  
Jacob D. Dumelle  
Chairman

John C. Marlin  
John C. Marlin  
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was filed on the 22<sup>nd</sup> day of September, 1988.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board