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David Finnigan, Director
Index Department
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Re: Amendments To The Board's Administrative Rules 2 Ill. Adm. Code 2175 R25-19 (Sept. 5, 2024)

Dear Director Finnigan:

After a phone call between the two of us, on Thursday, September 26, 2024, you sent a letter to the Pollution Control Board (Board) reflecting your concerns expressed during our phone call. The letter states, in part, that:

the Staff requests an additional explanation as to how this amendment meets the definition of a Required Rule as discussed above or, in the alternative, a withdrawal of the PCB Rule and a later filing through regular rulemaking. Furthermore, we request the submission of the above on or before 4:00 pm CST October 2, 2024, in order to not to delay possible publication of the PCB Rule in the upcoming issue of the Illinois Register.

The Board generally addresses issue through its opinions and orders. The soonest the Board could consider the issue of withdrawing the rule would be at its next regularly-scheduled meeting on October 3, 2024. As the Board must post its agenda for that meeting today (Monday September 30), the Board cannot make a determination to withdraw the rule by your requested deadline of October 2. Therefore, I will provide an explanation of the history of 2 Ill. Adm. Code 2175.120, and the Board's use of the exception in Section 5-15 of the Administrative Procedure Act (APA) (100 ILCS 5/5-15 (2022)).

If after reviewing this information, staff still believes that the rule should be withdrawn or a legal analysis of how Section 5-15 is used by the Board and other agencies is necessary, the rulemaking will be placed on the Board's agenda of the Board's following regularly-scheduled meeting on October 17. At that time the Board would provide an explanation in its opinion and order.

As you are aware Section 5-15(a) of the APA provides:

Each agency shall maintain as rules the following:

- (1) A current description of the agency's organization with necessary charts depicting that organization.
- (2) The current procedures by which the public can obtain information or make submissions or requests on subjects, programs, and activities of the agency. Requests for copies of agency rules shall not be deemed Freedom of Information Act requests unless so labeled by the requestor.
- (3) Tables of contents, indices, reference tables, and other materials to aid users in finding and using the agency's collection of rules currently in force.
- (4) A current description of the agency's rulemaking procedures with necessary flow charts depicting those procedures.
- (5) Any rules adopted under this Section in accordance with Sections 5-75 and 10-20 of this Act. 100 ILCS 5/5-15(a) (2022).

In 1984, the Board initially adopted rules to address the provisions of the APA that are now located at Section 5-15. That rulemaking was R83-27. We attach the Board's opinion and order. In 2006, the Board adopted an amendment that included revisions to its procedures on holding meetings. Among other items amended, the Board addressed statutory changes to the Open Meetings Act. That rulemaking was R04-09, and was published on September 15, 2006, in the *Illinois Register* (30 Ill. Reg. 14990). We have attached that opinion as well.

Continuing in 2014 (R15-10), the Board adopted additional changes to the provisions of Section 2175.120, using the required rules provisions. *See* 38 Ill. Reg. 22834 (Nov. 24, 2014). And in 2020 (R21-70), the Board adopted changes to allow for video meetings under emergency declarations by the Governor. *See* 44 Ill. Reg. 14166 (Sept. 4, 2020).

Also, a quick review of the *Illinois Register* found that at least two other State Boards, the Procurement Policy Board and the Illinois Community College Board, have adopted rules implementing the Open Meetings Act using Section 5-15 of the APA. Those Boards specifically allowed for meeting attendance of their respective board members by "other means." *See* 32 Ill. Reg. 1153; 42 Ill. Reg. 7764.

As you can see, use of Section 5-15 of the APA to adopt the procedures of the Open Meetings Act as it relates to participation in Board meetings is not a new concept. Other State Boards and Commissions have also used the provisions of Section 5-15 of the APA to adopt rules on meeting procedures. The Board's rules have not been objected to by the public, or the Joint Committee on Administrative rules based on the Board's use of Section 5-15 of the APA to adopt rules on the Board members' participation at Board meetings under the Open Meetings Act.

If you have additional questions or would like the Board to further consider this issue on October 17, 2024, please feel free to contact me.

Marie E. Tipsord

Marie E. Tipsord
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From: [Tipsord, Marie](#)
To: [Brown, Don](#)
Subject: FW: PCB Rules Letter
Date: Monday, September 30, 2024 12:33:39 PM
Attachments: [9-30 SOS Resp.pdf](#)

In addition to the SOS letter from 9/27 please add the below email and letter to the R25-19 rulemaking

From: Tipsord, Marie <Marie.Tipsord@illinois.gov>
Sent: Monday, September 30, 2024 12:32 PM
To: Dfinnigan@ILSOS.GOV
Cc: Tipsord, Marie <Marie.Tipsord@illinois.gov>
Subject: PCB Rules Letter

Director Finnigan,

Attached is the a response to your letter of September 27, 2024. The Board has placed your letter, and will include this letter in the record for R25-19.

Marie E. Tipsord
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