

ILLINOIS POLLUTION CONTROL BOARD
April 27, 1984

IN THE MATTER OF:

PUBLIC INFORMATION, RULEMAKING)
AND ORGANIZATION (2 Ill. Adm.) R83-27
Code 2175))

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by J. D. Dumelle):

Pursuant to Section 4.01(a) of the Administrative Procedure Act [Ill. Rev. Stat. c. 127, par. 1004.01(a)], the Board is required to maintain the following:

1. a current description of agency's organization with necessary charts depicting same;
2. the current procedures on how the public can obtain information or make submissions or requests on subjects, programs, and activities of the agency;
3. table of contents, indices, reference tables, and other materials to aid users in finding and using the agency's collection of rules currently in force; and
4. a current description of the agency's rulemaking procedures.

These rules become effective upon filing and need not be the subject of hearings, notice, or public comment. The intent of this requirement appears to be to have one place in the Ill. Adm. Code that contains overviews of the various rulemaking bodies which can be used by the uninitiated to gain an understanding of what those bodies do, how they do it, and how further information may be obtained.

The rules which the Board adopts today were written to fulfill that intent. They are, essentially, a simplified version of the mandates of the Environmental Protection Act (Ill. Rev. Stat. c. 111 $\frac{1}{2}$, par. 1001 et seq.; the Act) and the Board's procedural rules. Since they are simplified, they are not as precise as the Act or the procedural rules, and where there is a conflict between these rules and the Act or the procedural rules, the Act and the procedural rules are controlling.

ORDER

The Board hereby adopts the following rules as 35 Ill. Adm. Code 2175:

TITLE 2: GOVERNMENTAL ORGANIZATION
SUBTITLE E: MISCELLANEOUS STATE AGENCIES
CHAPTER XXVIII: POLLUTION CONTROL BOARD

PART 2175
PUBLIC INFORMATION, RULEMAKING AND ORGANIZATION

SUBPART A: ORGANIZATION

Section

2175.10 Board Membership
2175.20 Staff

SUBPART B: PUBLIC INFORMATION AND PARTICIPATION

Section

2175.110 Files Open to Reasonable Public Inspection
2175.120 Publications
2175.130 Proceedings Which May Be Initiated Before The Board
2175.140 Board Meetings and Hearings

SUBPART C: ACCESS TO BOARD RULES IN THE
ILLINOIS ADMINISTRATIVE CODE

Section

2175.210 Access to Board Rules in the Illinois Administrative Code

SUBPART D: RULEMAKING

Section

2175.310 Proposals
2157.320 Initial Hearing
2175.330 Hearings on Economic Impact Study
2175.340 First Notice
2175.350 Second Notice
2175.360 Adopted Rules
2175.370 Emergency Rules
2175.380 Peremptory Rules

APPENDIX A Organization Chart

AUTHORITY: Implementing Section 4.01 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004.01) and authorized by Section 5 of the Environmental Protection Act (Ill. Rev. Stat. 1981, ch. 111½, par. 1005).

SOURCE: Adopted at _____ Ill. Reg. _____, effective _____.

SUBPART A: ORGANIZATION

Section 2175.10 Board Membership

- a) The Board was created pursuant to Section 5 of the Environmental Protection Act (Ill. Rev. Stat. 1983, ch. 111½, para. 1000 et seq.; hereinafter the Act) and consists of seven technically qualified members. The members are appointed by the Governor with the advice and consent of the Senate. No more than four members may be of the same political party, and the term of office is three years.
- b) The Governor designates one member as Chairman, who serves at the pleasure of the Governor.

Section 2175.20 Staff

- a) Under Section 5 of the Act, each Board member may employ one assistant and one secretary, except the Chairman who may employ one secretary and two assistants. In addition, the Board employs a legislative liaison who serves the entire Board.
- b) The Board also employs an Office Coordinator who directs and supervises the Clerk's office and the administrative and fiscal management of the office. In addition, the Coordinator is responsible for personnel management, office accounting and the general operations of the office.
- c) The Clerk's office consists of a Clerk and one or more Assistant Clerks who are responsible for maintaining the Board's files and arranging hearings. The Clerk also serves as public liaison for the Board. In addition to the duties mentioned above, the Clerk maintains a list of attorneys who serve on a contractual basis as the Board's hearing officers in all non-regulatory proceedings. Board assistants usually act as hearing officers in all regulatory proceedings.
- d) The Board may also employ such other personnel as may be necessary and to the extent that the budget allows.

SUBPART B: PUBLIC INFORMATION AND PARTICIPATION

Section 2175.110 Files Open to Reasonable Public Inspection

a) General access and non-disclosed material

- 1) Pursuant to Section 7 of the Act, all files, records and data of the Board are open to reasonable public inspection and copying, except information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the Board; and information concerning secret manufacturing processes or confidential data submitted by any person under the Act.
- 2) The Board has adopted procedural rules at 35 Ill. Adm. Code 120 and 35 Ill. Adm Code 101.107 to effectuate the intent of Section 7 of the Act.

b) Copying Facilities

Copying facilities are available at the Board's offices, and requests by mail are honored. A single opinion or order, regardless of length, will be furnished upon request as will multiple copies of opinions or orders totaling 10 pages or less. Requests for multiple opinions or orders totaling more than 10 pages will be furnished at a cost to be determined by the Board, including mailing costs. However, as stated at 35 Ill. Adm. Code 101.107(f), the Board reserves the right to contract with a professional reproduction service for any copying that would impose a substantial administrative burden upon the Board, and it reserves the right to charge the requesting party for reproductive and mailing costs incurred.

Section 2175.120 Publications

a) Environmental Register

- 1) The Board publishes a newsletter at least monthly called the Environmental Register which, in general, serves to inform the public of the Board's activities, including important actions taken at Board meetings, the progress of proposed regulatory changes, notice of the filing of new cases and final action taken on cases, the activities of Board members and staff and other matters of public interest.

- 2) Copies of the Register are available at the Board's office free of charge and are also sent free of charge to persons on the Board's mailing list. Persons interested in subscribing to the Register and being included on the mailing list may do so by sending their names and addresses to the Board and indicating their desire to have their names added to the list.

b) Opinions, Orders, Regulations

- 1) Copies of opinions and orders of the Board are available upon written request although reasonable copying charges may be imposed pursuant to Section 2175.110(b).
- 2) Copies of all Board opinions and orders are available on an annual subscription basis in looseleaf binders. To subscribe, contact the Board's Chicago office.
- 3) The Board's regulations concerning pollution control are published periodically by Subtitle and are available in reasonable quantities free of charge at the Board's office.

c) Annual Report

In addition, the Board makes available the Annual Report of the Chairman. This Report is first published in the Environmental Register, and when printing is completed, it is available in reasonable quantities at the Board's office, free of charge. The Report includes information regarding the Board's membership, regulatory and case activities for the fiscal year, administrative and financial expenditures for the fiscal year, penalties levied, activity for the coming year, and a summary of Board decisions reviewed by the courts during the fiscal year.

d) Illinois Register

- 1) When the Board adopts a proposal for a regulatory change, a first notice and a copy of the proposed change will be published in the Illinois Register (which is available through the Secretary of State's office) unless the rulemaking is exempted from this requirement by statute. The first notice will include information regarding when and how comments on the proposed rule can be filed with the Board for consideration. The public must be allowed at least 45 days to comment.

- 2) Whenever the Board adopts a final rule, a copy of that rule and information regarding its adoption will be published in the Illinois Register. Copies of the Illinois Register are available from the Secretary of State.

Section 2175.130 Proceedings Which May Be Initiated Before
The Board

- a) Any person may submit a regulatory proposal for the adoption, amendment or repeal of a regulation pursuant to 35 Ill. Adm. Code 102.
- b) Any person may initiate an enforcement action by the filing of a complaint pursuant to 35 Ill. Adm. Code 103. Such complaints may be informal (in which case they are forwarded to the Illinois Environmental Protection Agency and the Attorney General) or they may be formal (in which case the complainant must handle the prosecution of the case).
- c) Any person who has been denied a permit or who has been issued a permit by the Environmental Protection Agency with one or more conditions to which that person objects may file a petition with the Board for a review of the Agency's action pursuant to 35 Ill. Adm. Code 105.
- d) Any person adversely affected by a Board rule or order may file a petition for a variance pursuant to 35 Ill. Adm. Code 104.
- e) An applicant for landfill siting approval who has been denied such approval by a county board or the governing body of a municipality may contest that decision by filing a petition for hearing pursuant to Section 40.1(a) of the Act.
- f) A third party who participated in the public hearing conducted by a county board or the governing body of a municipality may contest its decision to grant site location suitability approval pursuant to Section 40.1(b) of the Act.
- g) Any person who is adversely affected by a trade secret determination made by the Illinois Environmental Protection Agency or the Department of Energy and Natural Resources may contest that determination to the Board by following the procedures set forth in 35 Ill. Adm. Code 120.

- h) Any person whose effluent discharge is regulated by 35 Ill. Adm. Code 306.305 or 306.306 may file a petition for exception to those rules by following the procedures set forth in 35 Ill. Adm. Code 306.350-306.374.
- i) Owners or operators of certain facilities which discharge heated effluents are required to demonstrate a lack of ecological damage pursuant to 35 Ill. Adm. Code 302.211(f) and 35 Ill. Adm. Code 106, Subpart A.
- j) Owners or operators of facilities which contain artificial cooling lakes may demonstrate that the lake will be environmentally acceptable pursuant to 35 Ill. Adm. Code 302.211(j) and 35 Ill. Adm. Code 106, Subpart B.
- k) Owners or operators of certain fuel combustion sources may petition for alternative emission rates pursuant to 35 Ill. Adm. Code 214.185 and 35 Ill. Adm. Code 106, Subpart C.
- l) Any other proceedings which are authorized by the Act to be brought before the Board may be initiated pursuant to statutory authority and any Board regulations adopted thereunder.

Section 2175.140 Board Meetings and Hearings

- a) Board meetings are held at least once a month and are open to the public. The meetings are generally held every other Thursday, although the Board may direct otherwise pursuant to 35 Ill. Adm. Code 101.109. Copies of the agenda are made available to the public.
- b) The Board may, upon proper notice pursuant to Section 5(b) of the Act, hold special Board meetings in addition to the normally scheduled meetings.
- c) All hearings conducted by the Board are open to the public including regulatory hearings conducted pursuant to 35 Ill. Adm. Code 102 and adjudicatory hearings conducted pursuant to 35 Ill. Adm. Code 103, except that the public may be excluded when trade secret or confidential information is being presented. At regulatory hearings, the public may examine witnesses and in all hearings the public may examine the record, testify and submit evidence, subject to reasonable restrictions.

SUBPART C: ACCESS TO BOARD RULES

Section 2175.210 Access to Board Rules in the Illinois Administrative Code

- a) All Board rules have been codified under Title 35 of the Illinois Administrative Code since October, 1983. Each general area of regulation has been assigned a particular Subtitle as set out below:

| <u>SUBTITLE</u> | <u>SUBJECT MATTER</u> |
|-----------------|-----------------------|
| A | Procedural Rules |
| B | Air Rules |
| C | Water Rules |
| D | Mine Rules |
| E | Livestock Waste |
| F | Public Water Supplies |
| G | Waste Disposal |
| H | Noise Rules |
| I | Nuclear Radiation |

- b) The Subtitles listed in Subsection (a), above, also include rules of the Environmental Protection Agency and the Department of Energy and Natural Resources. The Board's rules appear at Chapter I of each of the Subtitles.

SUBPART D: RULEMAKING

Section 2175.310 Proposals

- a) Rulemaking procedures are set out in 35 Ill. Adm. Code 102.
- b) Proposals for the adoption, amendment or repeal of a substantive regulation may be made by the Environmental Protection Agency, the Department of Energy and Natural Resources (Department), the Board or any member of the public. Proposals made by the Agency, Department or Board are automatically scheduled for hearings.
- c) In the case of a proposal made by a member of the public, the proposal must be accompanied by a petition signed by 200 persons, specifying home addresses, unless that requirement is waived by the Board. When the proposal is accompanied by a petition, the matter is placed on the agenda for Board decision. Generally, the Board will authorize a hearing unless it determines that the proposal is plainly devoid of merit, or deals with a subject on which a hearing has been held within

the preceding six months, or is not accompanied by an adequate statement of supporting reasons. The proponent will be notified of an adverse decision and of the reasons for such a decision.

Section 2157.320 Initial Hearing

- a) All hearings on regulatory proposals are conducted according to 35 Ill. Adm. Code 102. These hearings are open to the public, and at such hearings, the public is permitted to examine the record, examine witnesses (except as limited by the Hearing Officer), testify and submit evidence.
- b) Unless otherwise directed by the Hearing Officer or the Board, the record remains open for public comment for a minimum of 14 days following the close of the hearing. Any person may make a written submission on the proposal within this period or during the first notice period pursuant to Section 5.01 of the Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1000 et seq.; hereinafter the APA).

Section 2175.330 Hearings on Economic Impact Study

Before the final adoption of any proposed regulation or amendment to existing regulations, the Board must conduct hearings on the Economic Impact Study of such proposals unless the rulemaking is exempted from that requirement pursuant to Ill. Rev. Stat., 1983, ch. 96½, para. 7404(d), or by special provision in the Act.

Section 2175.340 First Notice

- a) The Board may adopt a proposed rule for first notice pursuant to Section 5.01 of the APA at any time after a regulatory proceeding is initiated. Normally the Board will not proceed to first notice until merit and economic hearings have concluded and comments have been received unless there is a need to proceed quickly.
- b) The public has a right to comment on the proposed rules during the first notice period and retains all other rights set out in Section 5.01 of the APA.
- c) Pursuant to the Section 28 of the Act, the Board may, in general, revise the proposed regulation before adoption without conducting further hearings, except that if the proposed change significantly alters the intent and purpose of the proposal, an additional economic impact study must be prepared pursuant to Section 27(b) of the Act.

Section 2175.350 Second Notice

- a) Upon termination of the first notice period, the Board may adopt the proposal for second notice pursuant to Section 5.01(b) of the APA, for review by the Joint Committee on Administrative Rules (JCAR).
- b) After the second notice period has commenced, the proposed rules may only be amended in response to JCAR recommendations.

Section 2175.360 Adopted Rules

- a) At the conclusion of the second notice period the Board may adopt a final opinion and order adopting the new rules and setting forth the reasons for adoption.
- b) The adopted rules are then filed with the Secretary of State and are published in the Illinois Register along with supporting information.

Section 2175.370 Emergency Rules

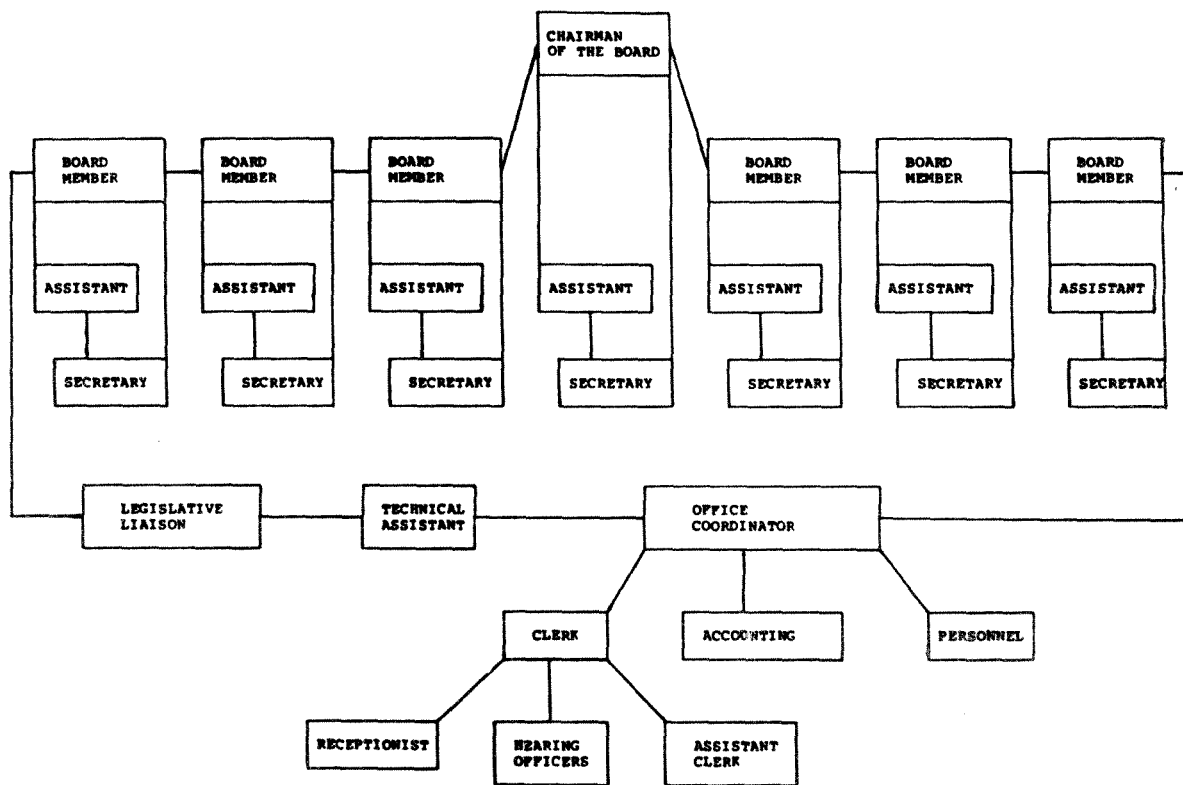
On proclamation by the Governor, pursuant to Section 8 of the Illinois Emergency Services and Disaster Act at 1975 (Ill. Rev. Stat. 1981, ch. 127, par. 1108), that a disaster emergency exists, or when the Board finds that a severe public health emergency is involved in relation to any proposed regulation, then such regulation shall take effect without delay and the Board may proceed with the required economic impact hearings while the regulation continues in effect. When such an emergency exists the customary 45 day notice provision is waived; however, notice and text of the emergency rule must be published in the Illinois Register. An emergency rule is effective for a maximum period of 150 days pursuant to Section 5.02 of the APA, but it may be adopted as a permanent rule by following usual rulemaking procedures.

Section 2175.380 Peremptory Rules

- a) When the Board is required by federal law, federal rules and regulations or by a court order to adopt a certain rule, that rule need not be published in the Illinois Register until it has been adopted pursuant to Section 5.03 of the APA. However, notice and text of the adopted rule must be published in the Illinois Register pursuant to Section 6.01 of the APA.


- b) An exception to the general rulemaking procedure exists in the case of federal regulations promulgated under Sections 111 and 112 of the Clean Air Act (42 U.S.C. 7401 et seq.) pursuant to Section 9.1(c) of the Act and Section 5.03 of the APA. Following the promulgation of a regulation by the Administrator of the United States Environmental Protection Agency relating to either standards of performance for new stationary sources (Section 111) or the establishment of national emissions standards for hazardous air pollutants (Section 112), the Board shall adopt State regulations in substance identical to the federal regulations at the next scheduled Board meeting. The 45 day notice provision and the customary hearings are waived in this instance, but the rule must be filed with the Secretary of State within 60 days of the Board's adoption.

Appendix A



IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order of the Board was adopted on the 15th day of April, 1984, by a vote of 6-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board