

ILLINOIS POLLUTION CONTROL BOARD

August 23, 2018

IN THE MATTER OF:)
)
NOISE RULE UPDATE: AMENDMENTS) R18-19
TO 35 ILL. ADM. CODE PARTS 900, 901,) (Rulemaking - Noise)
902, AND 910)

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by K. Papadimitriu):

Today the Board proposes amendments to its noise rules at 35 Ill. Adm. Code 900, 901, 902, and 910 for second notice. The Board opened this docket under Part 102 of its procedural rules (35 Ill. Adm. Code 102.Subpart B) and Sections 27 and 28 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/27, 28 (2016)). The proposed amendments update definitions, references, and sound measurement procedures, as well as clarify language, reduce wordiness, and remove obsolete provisions. This review continues Board’s broader review of its rules started in the summer of 2016. The amendments will streamline, update, and overhaul rules that are no longer current due to changing technology and the passage of time. They are also consistent with Governor Rauner’s Executive Order 2016-13, which directs State agencies to review and update their rules as part of the “Cutting the Red Tape Initiative.”

In this opinion, the Board first discusses this rulemaking’s procedural history and the amendments being proposed. The Board then addresses public comments received during the first-notice period. The proposed amendments appear in an addendum to this order.

PROCEDURAL HISTORY

The Board adopted this proposal for public hearing and comment on October 5, 2017. The Board held two public hearings, on January 24 and February 21, 2018, by videoconference between Board’s Chicago and Springfield offices. No testimony or comments were pre-filed for the hearings and none were provided at the hearings. Transcripts of the hearings (Tr.) are posted on the Board’s website (pcb.illinois.gov). The hearings were dedicated to the merits of the proposed amendments and their economic impact, compliant with Section 27(b) of the Act (415 ILCS 5/27(b) (2016)). The Board sent a letter to the Department of Commerce and Economic Opportunity (DCEO) on October 25, 2017, requesting that DCEO conduct an economic impact study of the proposal, but the Board received no reply from DCEO.

The Board adopted a first-notice proposal on March 22, 2018. The first-notice amendments were published in the *Illinois Register* on April 6, 2018 (42 Ill. Reg. 5946, 5967, 5988, 6001), which continued the public comment period for at least another 45 days. The Board received public comments from the Department of Defense (DOD) and the Joint Committee on Administrative Rules (JCAR).

PROPOSED AMENDMENTS

The proposal amends Parts 900, 901, 902, and 910 of Title 35 of the Illinois Administrative Code (35 Ill. Adm. Code 900, 901, 902, 910). Specifically, the amendments update definitions, references, and sound measurement procedures based on changes to the respective standards of the American National Standards Institute and the Society of Automotive Engineers. In addition, the amendments clarify language, reduce wordiness, and remove provisions that are no longer applicable or necessary. Also, the Board repeals site-specific provisions in Part 901 for facilities that, based on the information available to the Board, no longer operate. The Board provided a detailed description of the proposed amendments in the first-notice opinion. *See* Noise Rule Update: Amendments to 35 Ill. Adm. Code Parts 900, 901, 902, and 910, R18-19, slip op. at 1-2 (Mar. 22, 2018).

During first-notice period, the Board further reviewed its proposal. Based on that review, the Board at second notice makes minor amendments to be consistent with the broader revision of Board rules being undertaken in other dockets. *See, e.g.,* Amendments to 35 Ill. Adm. Code Subtitle M: Biological Waste, R18-29 (May 10, 2018); Amendments to 35 Ill. Adm. Code Subtitle O: Right to Know, R18-30 (June 21, 2018). These amendments further reduce wordiness, remove legalese, and correct punctuation. In addition, the Board incorporates changes proposed in DOD's and JCAR's public comments, as discussed below.

PUBLIC COMMENTS

DOD's Comment

On May 21, 2018, DOD filed a public comment (PC 1) asking the Board to forego one of the changes proposed to Section 902.140(c). Specifically, DOD asks that the Board not remove "tactical military vehicles" from the exceptions to the applicability of Part 902's operational standards. PC 1 at 1-2. DOD quotes the amendments proposed by the Board at first notice:

- c) ~~The operational standards contained in this Part do Sections 902.120 through 902.123 inclusive shall not apply to warning devices, such as horns and sirens; or to emergency equipment and vehicles described in 40 CFR 202.12(e), incorporated by reference at 35 Ill. Adm. Code 900.106, such as fire engines, ambulances, police vans, and rescue vans, when respond to emergency calls; to snow plows when in operation; or to tactical military vehicles.~~ PC at 1 (emphasis added by DOD).

DOD maintains that eliminating this exception for tactical military vehicles appears to be unintentional because the definition of "tactical military vehicle" in Section 900.101 would remain even though the term is used only here in Section 902.140(c). *Id.* at 2. The Board agrees. The amendments to Section 902.140(c) are intended to make only non-substantive changes, by referring to the federal provision's examples instead of repeating them. The Board, thus, restores "tactical military vehicles" to Section 902.140(c). For the same reason, the Board also restores "snow plows when in operation." Section 902.140(c), thus, reads as follows at second notice:

- c) The operational standards contained in this Part do ~~Sections 902.120 through 902.123 inclusive~~ shall not apply to warning devices, ~~such as horns and sirens~~; or to emergency equipment and vehicles described in 40 CFR 202.12(e), incorporated by reference at 35 Ill. Adm. Code ~~900.106~~ ~~such as fire engines, ambulances, police vans, and rescue vans, when respond to emergency calls~~; to snow plows when in operation; or to tactical military vehicles.

JCAR's Comment

On April 4, 2018, JCAR filed its "1st Notice Version" of the rules (PC 2), which contains JCAR's proposed changes to the rule text. None of JCAR's proposed changes are substantive. The Board incorporates these changes in the second-notice proposal, except for a few. Those not incorporated include JCAR's proposal to delete "above" in Section 900.103(c)(2), delete "use" in Section 900.103(c)(3), replace "will" with "shall" in Section 900.105, and replace "emitted" with "omitted" in Section 902.125, as well as some of JCAR's punctuation changes.

CONCLUSION

The Board adopts the proposed amendments for second-notice review. The amendments appear in the addendum to this order. First-notice amendments retained at second notice appear with single-underlines and single-strikethroughs. For changes made at second notice, additions appear with double-underlines and deletions appear with double-strikethroughs.

ORDER

The Board directs the Clerk to submit these proposed amendments to JCAR for second-notice review.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 23, 2018, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board