

ILLINOIS POLLUTION CONTROL BOARD

January 19, 2017

IN THE MATTER OF:)
)
PROCEDURAL RULE AMENDMENTS:) R17-18
PROPOSED AMENDMENTS TO 35 ILL.) (Rulemaking - Procedural)
ADM. CODE 101 THROUGH 130.)

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by J.A. Burke):

The Board proposes procedural rule amendments for first-notice publication in the *Illinois Register* pursuant to the Illinois Administrative Procedure Act (IAPA) (5 ILCS 100/5-40 (2014)). Prompted by a recognition that some of its rules were no longer current due to changing technology and the passage of time, the Board began planning a broad review of all its rules last summer, with a view of streamlining, updating and overhauling its regulation. Governor Rauner's Executive Order 2016-13 has provided additional impetus to the Board's initiative. Today's proposal is the first step in the Board's review and streamlines the Board's procedural rules.

The Board recently amended certain procedural rules, but many others had not been examined in some time. The review reflected in this proceeding proposes changes to all 10 parts of the Board's procedural rules, which are located in Title 35 of the Illinois Administrative Code: Part 101—General Rules; Part 102—Regulatory and Informational Hearings and Proceedings; Part 103—Enforcement; Part 104—Regulatory Relief Mechanisms; Part 105—Appeals of Final Decisions of State Agencies; Part 106—Proceedings Pursuant to Specific Rules or Statutory Provisions; Part 107—Petition to Review Pollution Control Facility Siting Decisions; Part 108—Administrative Citations; Part 125—Tax Certifications; and Part 130—Identification and Protection of Trade Secrets and Other Non-Disclosable Information.

The Board begins this opinion with a general overview of the procedural rules changes, next discusses areas where the Board requests specific comment, and finally explains changes made in response to Illinois Supreme Court rules. The rule amendments themselves appear in the order following the opinion.

DISCUSSION

Overview

In undertaking this review of the Board's procedural rules, the Board is working to streamline, update, and overhaul the regulatory provisions of the Board. Although the Board's procedural rules were recently amended, many provisions were not addressed in the most recent rulemaking R16-17, Procedural Rule Amendments: Proposed Amendments to 35 Ill. Adm. Code 101 through 125. Also, in R16-17, the focus was slightly different as the Board attempted to

decrease costs while increasing opportunities for public participation through digital technology. In this proceeding, the Board specifically examined the procedural rules to determine if the rules were consistent with other agencies' rules and within the Board's statutory mandate. The Board also examined whether the procedural rules were unduly burdensome or would result in an undue delay or backlog. As a result of that review, the Board proposes updating language and adding cross-references. The Board's proposal eliminates redundancies and overly complicated provisions. The changes are indicated by strikeout and underline in the proposed rule.

The Board's proposal includes an update to the quorum requirements in Section 101.108(d). This amendment reflects the legislative change made in SB 2950. That bill passed both houses and was sent to the Governor on December 29, 2016. As of today's action, the Governor has not signed the bill into law, but is expected to do so before the Board proceeds to second notice.

Public Comment Specifically Requested

In the most recent amendments in R16-17, the Board adopted requirements for e-filing of documents but only required e-filing of documents with the Board, not other state agencies. While e-mail service is provided for, the initial filing of documents, other than with the Board, is still by paper filing. One area that the Board seeks comment on is whether e-filing with other state agencies is advisable, particularly the filing of tax certification applications under Section 125.202 and provisional variances under 35 Ill. Adm. Code 104.Subpart C. The Board seeks specific public comment on whether the Illinois Environmental Protection Agency (Agency) is prepared to accept those initial submittals in electronic format.

The Board also seeks comment on whether there is a way for the Agency, Illinois Department of Natural Resources, and the Attorney General's Office to provide an email address for the initial service of documents under Section 101.304(g)(1), even before an attorney files an appearance.

In Section 106.1180, the Board proposes corrections to a scrivener's error noted in an opinion and order passed today by the Board. See Sierra Club v. Illinois EPA, PCB 15-189 (Jan. 19, 2017). The Board also proposes to make changes to refine the rule in subsections (a), (c) and (d). The Board invites comment on these changes.

The Board generally seeks input on any areas that the public finds to be repetitive, unduly burdensome, or in need of updating.

Changes in Response to Illinois Supreme Court Rules

The Board's proposed changes on e-filing and submission of documents to the Board reflect the Illinois Supreme Court's requirements for e-filing. Perhaps most significantly is the intention that all filing in courts be done electronically. The Illinois Supreme Court will be implementing rules for e-filing in the appellate courts this year and in all circuit courts over the next two years. Therefore, the Board proposes that all filings be filed electronically, unless leave

is granted by the Board, the hearing officer, or the Clerk. This change is reflected in Section 101.302.

In addition, under Supreme Court Rule 131(d)(1), attorneys are required to include an e-mail address on all appearances filed with the Court. Ill. S. Ct. R. 131(d)(1). Attorneys must then accept service through e-mail. Ill. S. Ct. R. 11(d). The Board's rules at Section 101.1070 allow for consent to e-mail service. However, as the Illinois Supreme Court rules require attorneys who file an appearance to accept e-mail service, the Board proposes amendments to Section 101.1070(d) providing that an attorney cannot revoke consent for e-mail service.

The Supreme Court's Order M.R. 18368 requires e-filing of records on appeal. In response to that order the Administrative Office of Illinois Courts is developing draft standards for the preparation of e-filed records. The Board proposes in Section 101.1030(g) additional requirements for records filed with the Board. These amendments require inclusion of bookmarks and pagination in Adobe Acrobat filings. The amendments will better enable the Board to comply when filing records on appeal; therefore, the Board is requiring the original preparer of the record to add these items to the record.

Through this and recent procedural rulemakings, the Board has implemented specific filing requirements to increase public participation and modernize our filing system consistent with Illinois courts. Accordingly, the Board is also adding at Section 101.302(l) a new subsection to allow the Clerk or hearing officer to reject documents that do not comply with the procedural rules. The proposed rule also requires any rejection to include a description of how the document fails to meet the requirements.

CONCLUSION

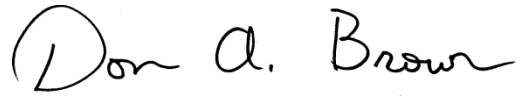
The Board proposes procedural rule amendments for first notice. First-notice publication of the proposed amendments in the *Illinois Register* will start a public comment period of 45 days. During that time period, anyone may file a public comment on the proposed amendments with the Clerk's Office. Public comments may be filed with the Clerk's Office electronically through COOL (www.ipcb.state.il.us).

ORDER

The Board directs the Clerk to cause first-notice publication in the *Illinois Register* of the rule amendments in the addendum to this order.

IT IS SO ORDERED.

I, Don A Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 19, 2017, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, circular initial "D" and a distinct "A" and "B".

Don A. Brown, Assistant Clerk
Illinois Pollution Control Board