

ILLINOIS POLLUTION CONTROL BOARD
August 22, 2019

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO GENERAL) R19-19
PROCEDURAL RULES (35 ILL. ADM.) (Rulemaking - Procedural)
CODE 101))

Adopted Rule. Final Order.

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

The Board today adopts final amendments to Part 101 of its procedural rules (35 Ill. Adm. Code 101). Part 101 contains the Board’s general rules of procedure, which apply to all types of Board proceedings. Procedures for specific types of Board proceedings are contained in the other nine Parts of the procedural rules—Parts 102 through 108, as well as Parts 125 and 130.

With only minor exceptions, the final amendments to Part 101 are unchanged from the amendments that the Board proposed earlier in this rulemaking. Accordingly, the Board does not repeat here its detailed discussions of the rule changes found in its first- and second-notice opinions. *See* Proposed Amendments to General Procedural Rules (35 Ill. Adm. Code 101), R19-19 (Apr. 11, 2019 ([First-Notice Op.](#)); July 25, 2019 ([Second-Notice Op.](#))).

In this opinion, the Board provides the procedural history of the rulemaking, followed by an overview of the final amendments. The Board then issues its order, directing the Clerk to file the amendments with the Secretary of State. The amendments themselves, which will take effect upon filing with the Secretary of State (*see* 5 ILCS 100/5-40(d) (2018)), appear in the addendum to this opinion and order.

PROCEDURAL HISTORY

On April 11, 2019, the Board proposed the amendments to Part 101 for first notice. These first-notice amendments were published in the *Illinois Register* on May 3, 2019 (43 Ill. Reg. 4883). The Board did not receive any public comments or hold a public hearing. As this is a procedural rulemaking, the Board is not required to hold a hearing absent a request to hold one. *See* 5 ILCS 100/5-40(b) (2018); 415 ILCS 5/26, 27 (2018). The Board did not receive any request to hold a hearing.

On July 25, 2019, the Board proposed the amendments for second-notice review by the Joint Committee on Administrative Rules (JCAR). At its August 13, 2019 meeting, JCAR issued a “Certification of No Objection” to the proposed amendments, subject to a handful of non-substantive changes which the Board includes in the final rules.

OVERVIEW OF THE AMENDMENTS

The final amendments to Part 101 cover four subjects.

Electronically Filing Exhibits Offered at Specified Types of Hearings

A person who offers an exhibit for admission at an adjudicatory hearing or a time-limited water quality standard (TLWQS) hearing will be required to e-file an accurate reproduction of that hearing exhibit after the hearing. This will enable the Clerk's Office, for the first time, to routinely post these hearing exhibits on the Board's website (pcb.illinois.gov). For a detailed discussion, please refer to First-Notice Op. at 2-3 and Second-Notice Op. at 2.

E-Mail Serving Final Adjudicatory Orders

For a party who consents to e-mail service, the Board will electronically serve, via e-mail, its final adjudicatory order on the party, as permitted by Public Act 100-880 (eff. Jan. 1, 2019). For a detailed discussion, please refer to First-Notice Op. at 3-5 and Second-Notice Op. at 2-4.

Explicitly Addressing TLWQS Proceedings in Part 101

The General Assembly recently authorized the Board to adopt TLWQS, and the Board has since adopted procedural rules for TLWQS proceedings. Generally, a TLWQS is a legal mechanism that provides dischargers with temporary relief from surface water quality standards. A TLWQS proceeding before the Board is neither an adjudicatory case nor a rulemaking. The final amendments will clarify Part 101's applicability to TLWQS proceedings, including the Part 101 provisions on ex parte communications and attorney representation. For a detailed discussion, please refer to First-Notice Op. at 5-7 and Second-Notice Op. at 4-5.

Rendering Part 101 Clear, Concise, and Current

The final amendments will clarify, update, and streamline the rule text of Part 101, consistent with the Board's on-going initiative to review all its rules for language that is unclear, obsolete, or redundant. For a detailed discussion, please refer to First-Notice Op. at 8-9 and Second-Notice Op. at 5-6.

ORDER

The Board directs the Clerk to submit the final amendments to the Secretary of State for publication in the *Illinois Register* and codification in the Illinois Administrative Code. The amendments appear in the addendum to this opinion and order. All additions are underlined; all deletions appear with strikethroughs.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2018); *see also* 35 Ill. Adm. Code 101.300(d), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 22, 2019, by a vote of 5-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above the printed name and title.

Don A. Brown, Clerk
Illinois Pollution Control Board