



IPCB

Illinois Pollution Control Board

GOVERNOR

JB Pritzker



CHAIR

Barbara Flynn Currie



MEMBERS

Michelle Gibson

Anastasia Palivos

Cynthia Santos

Jennifer Van Wie



CHICAGO OFFICE

James R. Thompson Center
100 West Randolph
Suite 11-500
Chicago, IL
60601-3233

Main: 312-814-3620
FAX: 312-814-3669
TTY: 866-323-1677



SPRINGFIELD OFFICE

1021 N. Grand Ave. East
P.O. Box 19274
Springfield, IL
62794-9274

Main: 217-524-8500
FAX: 217-524-8508



WEB SITE

pcb.illinois.gov

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Honorable JB Pritzker, Governor of Illinois, and Members of the General Assembly:

The Illinois Pollution Control Board presents this report pursuant to the Business Assistance and Regulatory Reform Act (BARR) (20 ILCS 608). Five years ago Public Act 99-370, effective January 1, 2016, amended BARR to require State agencies such as the Board to “scrutinize its rules, administrative regulations, and permitting processes as they relate to small businesses to identify those rules, regulations, and processes that are unreasonable, unduly burdensome, duplicative, or onerous to small businesses.” The goal of this review was to recommend changes that simplify recordkeeping and permitting requirements “while still achieving the intent of the underlying statute.” 20 ILCS 608/20(b) (2020). Section 20(a) of BARR generally defines as “small” those businesses having fewer than 50 full-time employees or gross annual sales of less than \$4 million. 20 ILCS 608/20(a) (2020).

To effectuate the intent of BARR, the Board performed a section-by-section review of the Board’s Title 35 regulations:

Parts 101-130 (Procedural Rules)
Parts 201-245 (Air Pollution)
Parts 301-325 (Water Pollution)
Parts 401-407 (Mine-Related Water Pollution)
Parts 501-506 (Agriculture Related Pollution)
Parts 601-620 (Public Water Supplies)
Parts 700-750 (Waste Disposal)
Parts 807-849 (Waste Disposal)
Parts 900-910 (Noise)
Parts 1000-1010 (Atomic Radiation)
Part 1110 (Clean Construction and Demolition Debris)
Parts 1420-1422 (Biological Materials)
Part 1600 (Right-to-Know)

The review looked for any regulatory matter that was “unreasonable, unduly burdensome, duplicative, or onerous to small businesses.” This review considered the Board’s various statutory obligations under the Environmental Protection Act (415 ILCS 5/1 *et. seq.*). The Board’s review considered the requirements of the Environmental Protection Act, as well as BARR, identified no regulations “unreasonable, unduly burdensome, duplicative, or onerous to small businesses.”

Under the Environmental Protection Act, the Board must adopt rules that are “identical-in-substance” to rules adopted by the U.S. Environmental Protection Agency in specified programs: underground injection control, wastewater pretreatment, the Safe Drinking Water Act, RCRA hazardous waste, RCRA municipal solid waste landfills, underground storage tanks, national ambient air quality standards, and the definition of volatile organic material.

The Board generally adopts the rules to secure or maintain federal authorization for a program. When exercising this rulemaking authority, the Board is very limited in its authority to change USEPA language; the economic or other merits of a USEPA rule cannot be considered, by the Board. 415 ILCS 5/7.2 (2020).

In a general (i.e., non-identical-in-substance) rulemakings, other statutory obligations help ensure that the Board considers small business impacts before adopting rules. Under Section 27(b) of the Environmental Protection Act, the Board must request that the Department of Commerce and Economic Opportunity conduct an economic impact study of proposed rules. Studies performed by DCEO must address matters including “the effects of the proposed rules on employment levels, commercial productivity, the economic growth of small businesses with 100 or less employees, and the State’s overall economy.”

Also, under the Administrative Procedure Act, the Board’s first notice of any proposed rules must include “an initial regulatory flexibility analysis containing a description of the types of small businesses subject to the rule.” This initial analysis is published in the *Illinois Register*. At second notice, the Board must submit to the Joint Committee on Administrative Rules “a final regulatory flexibility analysis containing a summary of issues raised by small businesses during the first notice period and a description of actions taken on any alternatives to the proposed rule suggested by small businesses during the first notice period, including reasons for rejecting any alternatives not utilized.” 5 ILCS 100/5-40 (2020).

The Board continues to examine its rulemakings in light of both the requirements of BARR and the Environmental Protection Act. For example, the Board requests studies by DCEO as required by Section 27(b) of the Environmental Protection Act, though none have been performed. The Board specifically seeks comment on DCEO’s decision in every rulemaking at one of the Board’s public hearings on proposed rules. The Board also seeks comment on the impact of all its rules on the public, the environment, and the economic feasibility of all rules. The Board documents its decisions on these issues in written opinions and orders.

In addition to the ongoing consideration of small businesses in the State, since the enactment of BARR, the Board, with assistance from the Illinois Environmental Protection Agency, proposed a series of rulemaking specifically to simplify and modernize the Board’s rules.

The following dockets were opened:

18-21	<u>In the Matter of: Clean-Up Amendments to 35 Ill. Adm. Code Parts 201, 211, 212, 214, 215, 216, 217, 218, 219, 225, 228, 232, 237, Subtitle B</u>
18-22	<u>In the Matter of: Amendment to 35 Ill. Adm. Code 205, Emissions Reduction Market System</u>
18-23	<u>In the Matter of: Amendments to 35 Ill. Adm. Code Subtitle C</u>
18-24	<u>In the Matter of: Amendments to 35 Ill. Adm. Code Subtitle D</u>
18-25	<u>In the Matter of: Amendments to 35 Ill. Adm. Code Subtitle E</u>
18-26	<u>In the Matter of: Amendments to 35 Ill. Adm. Code Subtitle F</u>
18-27	<u>In the Matter of: Amendments to 35 Ill. Adm. Code Subtitle G</u>
18-28	<u>In the Matter of: Amendments to 35 Ill. Adm. Code Subtitle I</u>
18-29	<u>In the Matter of: Amendments to 35 Ill. Adm. Code Subtitle M</u>
18-30	<u>In the Matter of: Amendments to 35 Ill. Adm. Code Subtitle O</u>

Four dockets have been completed: R18-22, Amendment to 35 Ill. Adm. Code 205, Emissions Reduction Market System; R18-24, Amendments to 35 Ill. Adm. Code Subtitle D, R18-29, Amendments to 35 Ill. Adm. Code Subtitle M; R18-30, Amendments to 35 Ill. Adm. Code Subtitle O. In addition, the Board recently held hearings in four other dockets with a goal of completing those rules by the end of 2022.

At this time, the Board has not identified any rules which are “unreasonable, unduly burdensome, duplicative, or onerous to small businesses.” The Board is committed to continuing to review all rulemaking proposals and existing rules for impact on small businesses in the State of Illinois.

Respectfully submitted,



Barbara Flynn Currie
Chair, Pollution Control Board