

ILLINOIS POLLUTION CONTROL BOARD  
January 21, 2010

IN THE MATTER OF: )  
)  
PROPOSED AMENDMENT TO ) R10-18  
PROCEDURAL RULES ON HEARINGS IN ) (Rulemaking – Procedural)  
IDENTICAL IN SUBSTANCES )  
RULEMAKINGS )

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

Today the Board proposes for first notice rules that allow videoconference hearings in rulemaking proceedings pursuant to Section 7.2 of the Environmental Protection Act (Act) (415 ILCS 5/7.2 (2008)). The rulemakings adopted under Section 7.2 of the Act amend the Board's rules that are identical-in-substance to the federal regulations.

**DISCUSSION**

The Board has traditionally held public hearings at one location in rulemakings that amend the definition of volatile organic material (VOM) pursuant to Section 7.2 of the Act (415 ILCS 5/7.2 (2008)). The Board held those hearings as required by Section 110 of the Clean Air Act 42 U.S.C. § 7410 (2006), which requires the State to conduct a public hearing before submitting an amendment of the State Implementation Plan (SIP) to the United States Environmental Protection Agency (USEPA) for review and approval. Amendments to the Illinois definition of VOM, which update the State definition to correspond with the latest version of the corresponding federal definition codified by the USEPA at 40 CFR § 51.102 are amendments that may be submitted to amend the SIP. These hearings are generally brief with little to no testimony placed in the record. *See e.g. Definition of VOM Update, USEPA Amendments (January 1, 2009 through June 30, 2009), R10-7; Definition of VOM Update, USEPA Amendments (January 1, 2007 through June 30, 2007), R08-6 (Jan. 10, 2008); Definition of VOM Update, USEPA Amendments (July 1, 1997 through April 9, 1998), R98-17 (June 17, 1998).*

The Board has the ability to videoconference between the Chicago Offices of the Board and the Springfield Offices of the Board. The Board believes that holding these types of hearings via videoconference will allow more economical participation by the public and government officials without hampering the proceedings.

The Board is not required to hold hearings in the other types of rulemakings authorized by Section 7.2 of the Act (*e.g.*, underground injection control rules, underground storage tank rules) (415 ILCS 5/7.2 (2008)) and has not previously done so. However, there is the possibility that a hearing in a future rulemaking pursuant to Section 7.2 of the Act (415 ILCS 5/7.2 (2008)) may serve the public interest. Therefore, the Board proposes to amend

the procedural rules to allow the Board to hold these limited types of hearings in rulemakings pursuant to Section 7.2 of the Act (415 ILCS 5/7.2 (2008)) via videoconference. Public participation is welcomed at both sites as managed by the Board's hearing officer assigned to the specific rulemaking.

The Board is not required to hold a public hearing to amend these procedural rules pursuant to Section 26 and 27 of the Act (415 ILCS 5/26 and 27 (2008)). The Board invites public comment on this proposal and the Board will accept such comment until the close of the first notice period set forth in Section 5-40 of the Administrative Procedure Act (100 ILCS 5/5-40 (2008)).

### **ORDER**

The Board directs the Clerk to cause the publication of the following rule for first notice in the *Illinois Register*.

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD

PART 102  
REGULATORY AND INFORMATIONAL HEARINGS AND PROCEEDINGS

SUBPART A: GENERAL PROVISIONS

Section	
102.100	Applicability
102.102	Severability
102.104	Definitions
102.106	Types of Regulatory Proposals
102.108	Public Comments
102.110	Waiver of Requirements
102.112	Other Proceedings

SUBPART B: REGULATIONS OF GENERAL APPLICABILITY, RESOURCE  
CONSERVATION AND RECOVERY ACT (RCRA) AMENDMENTS, AND SITE-  
SPECIFIC REGULATIONS

Section	
102.200	Proposal for Regulations of General Applicability
102.202	Proposal Contents for Regulations of General Applicability
102.204	Proposal of RCRA Amendments
102.206	Notice of Site-Specific RCRA Proposals

102.208	Proposal for Site-Specific Regulations
102.210	Proposal Contents for Site-Specific Regulations
102.211	Proposal to Update Incorporations by Reference
102.212	Dismissal

**SUBPART C: CLEAN AIR ACT AMENDMENTS (CAAA) FAST TRACK  
RULEMAKING**

Section	
102.300	Applicability
102.302	Agency Proposal
102.304	Hearings
102.306	Prefiled Testimony

**SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS, PRODUCTION  
OF INFORMATION, SUBPOENAS, PREHEARING CONFERENCES, AND HEARINGS**

Section	
102.400	Service and Filing of Documents
102.402	Motions, Production of Information, and Subpoenas
102.404	Initiation and Scheduling of Prehearing Conferences
102.406	Purpose of Prehearing Conference
102.408	Prehearing Order
102.410	Authorization of Hearing
102.412	Scheduling of Hearings
102.414	Hearings on the Economic Impact of New Proposals
102.416	Notice of Hearing
102.418	Record
102.420	Authority of the Hearing Officer
102.422	Notice and Service Lists
102.424	Prehearing Submission of Testimony and Exhibits
102.426	Admissible Information
102.428	Presentation of Testimony and Order of Hearing
102.430	Questioning of Witnesses

**SUBPART E: CERTIFICATION OF REQUIRED RULES**

Section	
102.500	Agency Certification
102.502	Challenge to Agency Certification
102.504	Board Determination

**SUBPART F: BOARD ACTION**

Section	
102.600	Revision of Proposed Regulations
102.602	Adoption of Regulations

- 102.604 First Notice of Proposed Regulations
- 102.606 Second Notice of Proposed Regulations
- 102.608 Notice of Board Final Action
- 102.610 Adoption of Identical-in-Substance Regulation
- 102.612 Adoption of Emergency Regulations
- 102.614 Adoption of Peremptory Regulations

SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL

- Section
- 102.700 Filing of Motions for Reconsideration
- 102.702 Disposition of Motions for Reconsideration
- 102.704 Correction of Publication Errors
- 102.706 Appeal

SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION

- Section
- 102.800 Applicability
- 102.810 Petition
- 102.820 Petition Contents
- 102.830 Board Action

102.APPENDIX A Comparison of Former and Current Rules (Repealed)

AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 28.6, 29, and 41 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 28.6, 29, and 41] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part II: Regulatory and Other Nonadjudicative Hearings and Proceedings, in R70-4, 1 PCB 43, October 8, 1970; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1398, effective January 16, 1985; Part repealed, new Part adopted in R88-5(B) at 14 Ill. Reg. 9210, effective May 24, 1990; amended in R90-16 at 14 Ill. Reg. 20472, effective December 11, 1990; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg.587, effective January 1, 2001; amended in R01-13 at 26 Ill. Reg.3498, effective February 22, 2002; amended in R04-24 at 29 Ill. Reg. 8776, effective June 8, 2005; amended in R\_\_\_\_ at 33 Ill. Reg. \_\_\_\_\_, effective\_\_\_\_\_.)

Section 102.412 Scheduling of Hearings

- a) Except as otherwise provided by applicable law, *no substantive regulation shall be adopted, amended, or repealed until after a public hearing within the area of the State concerned.* In the case of site-specific rules, a public hearing

will be held in the affected county. Except as otherwise provided by applicable law, *in the case of state-wide regulations, hearings shall be held in at least two areas.* [415 ILCS 5/28(a)]

- b) If the proponent or any participant wishes to request a hearing beyond the number of hearings specified by the hearing officer, that person must demonstrate, in a motion to the hearing officer, that failing to hold an additional hearing would result in material prejudice to the movant. The motion may be oral, if made at hearing, or written. The movant must show that he exercised due diligence in his participation in the proceeding and why an additional hearing, as opposed to the submission of written comments pursuant to Section 102.108 of this Part, is necessary.
  
- c) If a hearing is scheduled in a rulemaking proposed pursuant to Section 7.2 of the Act (415 ILCS 5/7.2 (2008)), the hearing may be held by videoconference.

(Source: Amended at \_\_ Ill. Reg. \_\_\_\_\_, effective\_\_\_\_\_.)

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 21, 2010, by a vote of 4-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board