

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Regulatory and Informational Hearings and Proceedings
- 2) Code citation: 35 Ill. Adm. Code 102
- 3) Section Number: 102.412      Proposed Action: Amend
- 4) Statutory authority: Implementing Sections 21, 22, 22.01 and 22.9 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/21, 22, 22.01, 22.9, 27]
- 5) A complete description of the subjects and issues involved: For a more detailed description of this rulemaking, see the Board's January 21, 2010 opinion and order Proposed Amendment to Procedural Rules on Hearings in Identical in Substances Rulemakings: 35 Ill. Adm. Code 102 (R10-18).

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STATE OF ILLINOIS  
Pollution Control Board

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 to ensure consistency with the Clean Air Act 42 U.S.C. § 7401 *et. seq.* and the rules adopted by the United States Environmental Protection Agency (USEPA) that require hearings at 40 CFR § 51.102. 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. 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.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

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- C) Types of professional skills necessary for compliance: No professional skills will be required.
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on regulatory agendas in the last year as the necessity and advisability for the rule became clear only recently in the Board's proceedings in a Board rulemaking to amend the definition of VOM.

The full text of the Proposed Amendment begins on the next page:

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 R10-18 at 34 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS,  
PRODUCTION OF INFORMATION, SUBPOENAS, PREHEARING  
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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 34 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

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~~ILLINOIS REGISTER~~

~~POLLUTION CONTROL BOARD~~

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Format changed	0
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