

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
REVISION OF MAILING ADDRESS)	R10
FOR SERVICE OF DOCUMENTS:)	
PROPOSED AMENDMENT TO)	(Rulemaking – Procedural)
35 Ill. Adm. Code 101.304)	
)	

TABLE OF CONTENTS OF REGULATORY SUBMITTAL

Following is a Table of Contents of all pleadings and documents included with the proposed regulatory action:

1. Notice of Filing
2. Appearance of Andrew J. Nicholas, Assistant Attorney General, for the Illinois Attorney General's Office, Environmental Bureau
3. Attorney General's Proposal of Regulations
4. Statement of Reasons
5. Notice of Proposed Amendment
6. Proposed Amendment to 35 Ill. Adm. Code 101.304
7. Certificate of Service

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NOTICE

TO:

Clerk
 Illinois Pollution Control Board
 State of Illinois Center
 100 West Randolph, Suite 11-500
 Chicago, Illinois 60601

Chief Legal Counsel
 Illinois Environmental Protection Agency
 1021 North Grand Avenue East
 P.O. Box 19276
 Springfield, Illinois 62794-9276

Office of Legal Counsel
 Illinois Dept. of Natural Resources
 One Natural Resources Way
 Springfield, Illinois 62702

Division of Petroleum and Chemical Safety
 Office of the State Fire Marshal
 1035 Stevenson Dr.
 Springfield, IL 62703

Office of Chief Counsel
 DOT Administration Building
 2300 S. Dirksen Parkway, Room 300
 Springfield, IL 62764

USEPA, Region V
 77 West Jackson
 Chicago, IL 60604

PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board (“Board”) a NOTICE OF PROPOSED REGULATIONS for its proposal to amend the Board’s General Provisions, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ATTORNEY GENERAL’S
 OFFICE
 LISA MADIGAN, Attorney General of the
 State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

ROSEMARIE CAZEAU, Chief
Environmental Bureau, North

BY:



ANDREW J. NICHOLAS

Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
312/814-2069
Date: June 2, 2010

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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)	

APPEARANCE

The undersigned, as one of its attorneys, hereby enters his Appearance on behalf of the Illinois Attorney General's Office.

By: 

 ANDREW J. NICHOLAS

Illinois Attorney General's Office
 Environmental Bureau
 Assistant Attorney General
 Environmental Bureau
 69 W. Washington St., Suite 1800
 Chicago, Illinois 60601
 312/814-2069

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ILLINOIS ATTORNEY GENERAL'S
PROPOSAL OF REGULATIONS

The Illinois Attorney General's Office moves that the Illinois Pollution Control Board adopt the attached regulations.

Respectfully submitted,

ILLINOIS ATTORNEY GENERAL'S
OFFICE
LISA MADIGAN, Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

ROSEMARIE CAZEAU, Chief
Environmental Bureau, North

BY: 

ANDREW J. NICHOLAS

Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
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STATEMENT OF REASONS

The Illinois Attorney General’s Office (“AGO”) hereby submits this Statement of Reasons to the Illinois Pollution Control Board (“Board”) pursuant to Sections 10, 26 and 28 of the Environmental Protection Act (“Act”), 415 ILCS 5/10, 26, 28 (2008), Section 102.106 of the Board’s General Provisions, 35 Ill. Adm. Code 102.106, and Section 5-40 of the Illinois Administrative Procedure Act (“IAPA”), 5 ILCS 100/5-40 (2008), in support its proposed amendment to the Board’s procedural rules. This proposal amends the most recent version of 35 Ill. Adm. Code 101.304, as found on the Board’s website.

I. PROPOSAL

This is a proposal for amending Section 101.304(g)(3) of the Board’s General Provisions, 35 Ill. Adm. Code 101.304(g)(3). The mailing addresses listed in Section 101.304(g)(3) for the Office of the Illinois Attorney General and Illinois Department of Natural Resources are inaccurate. The Attorney General’s Office proposes amending Section 101.304(g)(3) so that the proper mailing addresses are listed in the Board’s General Provisions.

II. DESCRIPTION OF SUBJECTS AND ISSUES INVOLVED

This proposal will amend the Illinois Attorney General’s mailing address and the Illinois Department of Natural Resources’ mailing address to be used for service of documents filed with the Illinois Pollution Control Board.

III. RESEARCH REPORTS

No research reports were conducted or used in developing the proposed amendment.

IV. PURPOSE AND EFFECT OF THE PROPOSAL

The purpose of the proposal is to amend the Board's procedural rules to accurately note the proper mailing address for the Division Chief of Environmental Enforcement at the Office of the Attorney General, and the Office of Legal Services at the Illinois Department of Natural Resources.

V. PETITION WAIVER

The Illinois Attorney General's Office requests the Board waive the requirement that a petition, signed by at least 200 persons, be submitted in conjunction with this proposal. As this proposal effects a nonsubstantive regulation, the requirement of a petition is unnecessary.

VI. CONCLUSION

For the reasons stated above, the Illinois Attorney General's Office submits the procedural proposal and respectfully requests that the Board expeditiously issue its First Notice for this proposal and adopt this rule for the State of Illinois.

Respectfully submitted,

ILLINOIS ATTORNEY GENERAL'S
OFFICE
LISA MADIGAN, Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

ROSEMARIE CAZEAU, Chief
Environmental Bureau, North

By:



ANDREW J. NICHOLAS

Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
312/814-2069
Date: June 2, 2010

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: General Provisions
- 2) Code Citation: 35 Ill. Adm. Code Part 101.304
- 3) Section Number: 101.304 Proposed Action: Amend
- 4) Statutory Authority: Implementing and authorized by Sections 10, 26 and 28 of the Illinois Environmental Protection Act [415 ILCS 5/10, 26, 28 (2008)].
- 5) A Complete Description of the Subjects and Issues Involved: This proposal will amend the Illinois Attorney General's mailing address and the Illinois Department of Natural Resources mailing address to be used for service of documents filed with the Illinois Pollution Control Board.
- 6) Published Studies or Reports: None.
- 7) Will this Proposed Amendment Replace an Emergency Rule Currently in Effect? No.
- 8) Does this Rulemaking Contain an Automatic Repeal Date? No.
- 9) Does this Proposed Amendment Contain Incorporation by Reference? No.
- 10) Are there any Other Proposed Amendments Pending on this Part? No.
- 11) Statement of Statewide Policy Objectives: This proposed amendment does not create or enlarge a state mandate as defined in Section 3(b) of the State Mandates Act, 30 ILCS 805/3(b) (2008).
- 12) Time, Place, and Manner in Which Interested Persons May Comment on this Proposed Rulemaking: The Board will accept written public comments on this proposal for a period of forty-five (45) days after the date of publication in the Illinois Register. Comments should reference Docket R10- and be addressed to:

Clerks' Office
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

and

Andrew J. Nicholas
Assistant Attorney General
Illinois Attorney General's Office
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, IL 60601

and

Mitchell L. Cohen
Chief Legal Counsel
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: Any small business, small municipalities, and not-for-profit will have to use the new address when serving documents on the Illinois Attorney General's Office and the Illinois Department of Natural Resources.
- B) Reporting, bookkeeping, or other procedures required for compliance: The proposed amendment may require some minor bookkeeping issues such as changing the address in their computer database and/or Microsoft Outlook mail folder.
- C) Types of professional skills necessary for compliance: None.

14) Does this Amendment Require the Review of the Procurement Policy Board as Specified in Section 5-25 of the Illinois Procurement Code, 30 ILCS 500/4-25? No.

15) Has this Proposed Amendment Been Previously Summarized in any Regulatory Agenda?
No

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

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

PROPOSED AMENDMENT

TITLE 35: ENVIRONMENTAL PROTECTION

SUBTITLE A: GENERAL PROVISIONS

CHAPTER I: POLLUTION CONTROL BOARD

PART 101

GENERAL RULES

SUBPART A: GENERAL PROVISIONS

Section

101.100 Applicability

101.102 Severability

101.104 Repeals

101.106 Board Authority

101.108 Board Proceedings

101.110 Public Participation

101.112 Bias and Conflict of Interest

101.114 Ex Parte Communications

SUBPART B: DEFINITIONS

Section

101.200 Definitions Contained in the Act

101.202 Definitions for Board's Procedural Rules

SUBPART C: COMPUTATION OF TIME, FILING, SERVICE OF DOCUMENTS, AND
STATUTORY DECISION DEADLINES

Section

101.300 Computation of Time

101.302 Filing of Documents

101.304 Service of Documents

101.306 Incorporation of Documents by Reference

101.308 Statutory Decision Deadlines and Waiver of Deadlines

SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

Section

101.400 Appearances, Withdrawals, and Substitutions of Attorneys in Adjudicatory Proceedings

101.402 Intervention of Parties

101.403 Joinder of Parties

101.404 Agency as a Party in Interest

101.406 Consolidation of Claims

101.408 Severance of Claims

SUBPART E: MOTIONS

Section

- 101.500 Filing of Motions and Responses
- 101.502 Motions Directed to the Hearing Officer
- 101.504 Contents of Motions and Responses
- 101.506 Motions Attacking the Sufficiency of the Petition, Complaint, or Other Pleading
- 101.508 Motions to Board Preliminary to Hearing
- 101.510 Motions to Cancel Hearing
- 101.512 Motions for Expedited Review
- 101.514 Motions to Stay Proceedings
- 101.516 Motions for Summary Judgment
- 101.518 Motions for Interlocutory Appeal from Hearing Officer Orders
- 101.520 Motions for Reconsideration
- 101.522 Motions for Extension of Time

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

Section

- 101.600 Hearings
- 101.602 Notice of Board Hearings
- 101.604 Formal Board Transcript
- 101.606 Informal Recordings of the Proceedings
- 101.608 Default
- 101.610 Duties and Authority of the Hearing Officer
- 101.612 Schedule to Complete the Record
- 101.614 Production of Information
- 101.616 Discovery
- 101.618 Admissions
- 101.620 Interrogatories
- 101.622 Subpoenas and Depositions
- 101.624 Examination of Adverse, Hostile or Unwilling Witnesses
- 101.626 Information Produced at Hearing
- 101.628 Statements from Participants
- 101.630 Official Notice
- 101.632 Viewing of Premises

SUBPART G: ORAL ARGUMENT

Section

- 101.700 Oral Argument

SUBPART H: SANCTIONS

Section

101.800 Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing
Officer Orders

101.802 Abuse of Discovery Procedures

SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

Section

101.902 Motions for Reconsideration

101.904 Relief from and Review of Final Opinions and Orders

101.906 Judicial Review of Board Orders

101.908 Interlocutory Appeal

101.APPENDIX A Captions

101.ILLUSTRATION A Enforcement Case

101.ILLUSTRATION B Citizen's Enforcement Case

101.ILLUSTRATION C Variance

101.ILLUSTRATION D Adjusted Standard Petition

101.ILLUSTRATION E Joint Petition for an Adjusted Standard

101.ILLUSTRATION F Permit Appeal

101.ILLUSTRATION G Underground Storage Tank Appeal

101.ILLUSTRATION H Pollution Control Facility Siting Appeal

101.ILLUSTRATION I Administrative Citation

101.ILLUSTRATION J General Rulemaking

101.ILLUSTRATION K Site-specific Rulemaking

101.APPENDIX B Appearance Form

101.APPENDIX C Withdrawal of Appearance Form

101.APPENDIX D Notice of Filing

101.APPENDIX E Certificate of Service

101.ILLUSTRATION A Service by Non-Attorney

101.ILLUSTRATION B Service by Attorney

101.APPENDIX F Notice of Withdrawal (Repealed)

101.APPENDIX G Comparison of Former and Current Rules (Repealed)

AUTHORITY: Implementing Sections 5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; Part repealed, new Part adopted in R88-5A at 13 Ill. Reg. 12055, effective July 10, 1989; amended in R90-24 at 15 Ill. Reg. 18677, effective December 12, 1991; amended in R92-7 at 16 Ill. Reg. 18078, effective November 17, 1992; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg.446, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8743, effective June 8, 2005; amended in R06-9 at 29 Ill. Reg. 19666, effective November 21, 2005; amended in R07-17 at 31 Ill. Reg. 16110, effective November 21, 2007.

Section 101.304 Service of Documents

- a) **Service Requirements.** This Section contains the Board's general service requirements. However, the more specific Part for a proceeding type may contain additional requirements.
- b) **Duty to Serve.** Parties in Board adjudicatory proceedings are responsible for service of all documents they file with the Clerk's Office. Proof of service of initial filings must be file with the Board upon completion of service.
- c) **Method of Service.** Service may be effectuated by U.S. Mail or other mail delivery service, in person, by messenger, or as prescribed in Section 101.302(d), except for service of enforcement complaints and administrative citations which must be made personally, by registered or certified mail, or by messenger service. Proof of service of enforcement complaints and administrative citations must be filed with the Board upon completion of service.
- d) **Affidavit or Certificate of Service.** A proceeding is subject to dismissal, and parties are subject to sanctions in accordance with Section 101.800 of this Part, if service is not timely made. Proof of proper service is the responsibility of the party filing and serving the document. An affidavit of service or certificate of service must accompany all filings of all parties. A sample form of the affidavit of service and certificate of service is available at the Board's Offices (the locations of the Board's Offices are listed at 2 Ill. Adm. Code 2175.115) and may be obtained electronically at the Board's Web site.
- e) **Service of Amicus Curiae Briefs.** Any person who files an amicus brief with the Board in any proceeding must serve copies of that brief on all parties in accordance with this Section.
- f) **Service of Comments of Participants in an Adjudicatory Proceeding.** Participants are required to serve their comments upon the parties to the proceeding. The Board will consider the comments as time and the Act or other applicable law allow.
- g) **Service on State Agencies.** Service must be at the addresses listed below unless a specific person has an appearance on file with the Board.
 - 1) **Service on the Illinois Environmental Protection Agency (Agency).** The Agency must be served at the following address:

Division of Legal Counsel

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

- 2) Service on Office of State Fire Marshall (OSFM). The OSFM must be served at:

Division of Petroleum and Chemical Safety
Office of the State Fire Marshall
1035 Stevenson Dr.
Springfield, IL 62703

- 3) Service on the Illinois Attorney General. The Office of the Attorney General must be served at:

Division Chief of Environmental Enforcement
Office of the Attorney General
~~188 West Randolph St., 20th Floor~~
100 West Randolph St., Suite 1200
Chicago, IL 60601

- 4) Service on the Illinois Department of Natural Resources (DNR) must be served at:

Office of Legal Counsel
Illinois Department of Natural Resources
~~524 S. Second St.~~
One Natural Resources Way
Springfield, IL 62702

- 5) Service on the Illinois Department of Transportation (IDOT). IDOT must be served at:

Office of Chief Counsel
DOT Administration Building
2300 S. Dirksen Parkway, Room 300
Springfield, IL 62764

- 6) Service on Region V of the United States Environmental Protection Agency (USEPA). USEPA Region V must be served at:

USEPA, Region V
77 West Jackson
Chicago, IL 60604

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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served the attached NOTICE OF PROPOSED REGULATIONS of the Illinois Attorney General upon the following persons:

Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Chief Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Office of Legal Counsel
Illinois Dept. of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702

Division of Petroleum and Chemical Safety
Office of the State Fire Marshal
1035 Stevenson Dr.
Springfield, IL 62703

Office of Chief Counsel
DOT Administration Building
2300 S. Dirksen Parkway, Room 300
Springfield, IL 62764

USEPA, Region V
77 West Jackson
Chicago, IL 60604



ANDREW J. NICHOLAS

Illinois Attorney General's Office
Environmental Bureau
Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
312/814-2069