

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

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OCT 11 2012
STATE OF ILLINOIS
Pollution Control Board

- 1) Heading of the Part: General Rules
- 2) Code Citation: 35 Ill. Adm. Code 101
- 3) Section Number: 101.108 Proposed Action: Amend
- 4) Statutory Authority: Implementing Sections 5, 10, 13, 21, 22, 22.01, and 22.2 of the Environmental Protection Act (Act) and authorized by Section 27 of the Act [415 ILCS 5/5, 10, 13, 21, 22, 22.01, 22, and 27]
- 5) A Complete Description of the Subjects and Issues Involved: A more complete description of this proposal may be found in the Board's first-notice opinion and order of September 20, 2012 in docket R13-09. In brief, the proposal rule conforms the Board's procedural rules to a statutory change.

35 Ill. Adm. Code 101.108(d), effective January 1, 2000, currently provides that 4 affirmative votes are required to adopt a Board decision. This was consistent with Section 5 of the Act, which provided for a 7 member Board. See PA 83-770, eff. Sept. 24, 1983. The Board's membership was reduced to 5 in PA 93-509, eff. Aug. 11, 2003, amending Section 5(a) of the Act to read in pertinent part:

If there is no vacancy on the Board, 4 members of the Board shall constitute a quorum to transact business; otherwise, a majority of the Board shall constitute a quorum to transact business, and no vacancy shall impair the right of the remaining members to exercise all of the powers of the Board. Every action approved by a majority of the members of the Board shall be deemed to be the action of the Board. The Board shall keep a complete and accurate record of all its meetings. [415 ILCS 105/5(a)] (emphasis added)

The Board had not previously amended Section 101.108(d) of the procedural rules, as it has viewed the simple 3 member majority requirement of amended Section 5 of the Act as "trumping" the outdated 4 member majority requirement contained in the pre-existing, unamended rules. As a recent vacancy on the Board has created potential for public confusion, the Board believes it is now prudent to proceed with a proposal.

- 6) Published studies or reports and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemakings currently in effect? No

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- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed rulemaking pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3]
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal for a period of 45 days after the date of publication. Comments should refer to docket R13-09 and be addressed to:

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

Interested persons may request copies of the Board's opinion and order in R13-09 by calling the Clerk's office at 312/814-3620 or may download copies from the Board's Web site at www.ipcb.state.il.us. For more information, contact the Clerk's Office at 312/814-3629.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of Professional skills necessary for compliance: None
- 14) Regulatory Agenda in which this amendment was summarized: None

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 101
GENERAL RULES

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- 12 101.102 Severability
- 13 101.104 Repeals
- 14 101.106 Board Authority
- 15 101.108 Board Proceedings
- 16 101.110 Public Participation
- 17 101.112 Bias and Conflict of Interest
- 18 101.114 Ex Parte Communications

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- 22 Section
- 23 101.200 Definitions Contained in the Act
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- 29 Section
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- 31 101.302 Filing of Documents
- 32 101.304 Service of Documents
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- 34 101.308 Statutory Decision Deadlines and Waiver of Deadlines

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- 41 101.402 Intervention of Parties
- 42 101.403 Joinder of Parties
- 43 101.404 Agency as a Party in Interest

44 101.406 Consolidation of Claims
45 101.408 Severance of Claims

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47 SUBPART E: MOTIONS
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50 101.500 Filing of Motions and Responses
51 101.502 Motions Directed to the Hearing Officer
52 101.504 Contents of Motions and Responses
53 101.506 Motions Attacking the Sufficiency of the Petition, Complaint, or Other Pleading
54 101.508 Motions to Board Preliminary to Hearing
55 101.510 Motions to Cancel Hearing
56 101.512 Motions for Expedited Review
57 101.514 Motions to Stay Proceedings
58 101.516 Motions for Summary Judgment
59 101.518 Motions for Interlocutory Appeal from Hearing Officer Orders
60 101.520 Motions for Reconsideration
61 101.522 Motions for Extension of Time

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67 101.602 Notice of Board Hearings
68 101.604 Formal Board Transcript
69 101.606 Informal Recordings of the Proceedings
70 101.608 Default
71 101.610 Duties and Authority of the Hearing Officer
72 101.612 Schedule to Complete the Record
73 101.614 Production of Information
74 101.616 Discovery
75 101.618 Admissions
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77 101.622 Subpoenas and Depositions
78 101.624 Examination of Adverse, Hostile or Unwilling Witnesses
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96 SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

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99 101.902 Motions for Reconsideration

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104 101.APPENDIX A Captions

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107 101.ILLUSTRATION C Variance

108 101.ILLUSTRATION D Adjusted Standard Petition

109 101.ILLUSTRATION E Joint Petition for an Adjusted Standard

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116 101.APPENDIX B Appearance Form

117 101.APPENDIX C Withdrawal of Appearance Form

118 101.APPENDIX D Notice of Filing

119 101.APPENDIX E Certificate of Service

120 101.ILLUSTRATION A Service by Non-Attorney

121 101.ILLUSTRATION B Service by Attorney

122 101.APPENDIX F Notice of Withdrawal (Repealed)

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

124

125 AUTHORITY: Implementing Sections 5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40,
126 40.1, 40.2, 41, and 58.7 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.1, 7.2, 26,
127 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7] and authorized by Sections 26
128 and 27 of the Act [415 ILCS 5/26 and 27].

129

130 SOURCE: Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; Part
 131 repealed, new Part adopted in R88-5A at 13 Ill. Reg. 12055, effective July 10, 1989; amended in
 132 R90-24 at 15 Ill. Reg. 18677, effective December 12, 1991; amended in R92-7 at 16 Ill. Reg.
 133 18078, effective November 17, 1992; old Part repealed, new Part adopted in R00-20 at 25 Ill.
 134 Reg. 446, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8743, effective June 8,
 135 2005; amended in R06-9 at 29 Ill. Reg. 19666, effective November 21, 2005; amended in R07-
 136 17 at 31 Ill. Reg. 16110, effective November 21, 2007; amended in R10-22 at 34 Ill. Reg. 19566,
 137 effective December 3, 2010; amended in R12-22 at 36 Ill. Reg. 9211, effective June 7, 2012;
 138 amended in R13-9 at 37 Ill. Reg. _____, effective _____.

139
 140 SUBPART A: GENERAL PROVISIONS

141
 142 **Section 101.108 Board Proceedings**

- 143
 144 a) Board proceedings can generally be divided into two categories: rulemaking
 145 proceedings and adjudicatory proceedings.
 146
 147 b) The following are examples of Board rulemaking proceedings: Identical-in-
 148 Substance, Clean Air Act/Fast Track, Federally Required Rulemaking, General
 149 Rulemaking, and Site-Specific Rulemaking. Procedural rules for these types of
 150 proceedings can be found at 35 Ill. Adm. Code 102.
 151
 152 c) The following are examples of Board adjudicatory proceedings: Enforcement
 153 Proceedings (35 Ill. Adm. Code 103), Variance Petitions (35 Ill. Adm. Code 104),
 154 Adjusted Standard Petitions (35 Ill. Adm. Code 104), Permit Appeals (35 Ill.
 155 Adm. Code 105), Leaking Underground Storage Tank Appeals (35 Ill. Adm.
 156 Code 105), Pollution Control Facility Siting Appeals (35 Ill. Adm. Code 107), and
 157 Administrative Citations (35 Ill. Adm. Code 108).
 158
 159 d) Board decisions will be made at meetings open to the public. Except as provided
 160 in subsection (e) of this Section, 4 members of the Board constitute a quorum, and
 161 34 affirmative votes are required to adopt a Board decision.
 162
 163 e) At a hearing pursuant to Section 34(d) of the Act to determine whether a seal
 164 should be removed, *at least one Board Member shall be present, and those Board*
 165 *Members present may render a final decision without regard to the requirements*
 166 *of Section 5(a) of the Act [415 ILCS 5/34(d)].*

167
 168 (Source: Amended at 37 Ill. Reg. _____, effective _____)

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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

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101.500	Filing of Motions and Responses
101.502	Motions Directed to the Hearing Officer
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- 101.626 Information Produced at Hearing
- 101.628 Statements from Participants
- 101.630 Official Notice
- 101.632 Viewing of Premises

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- 101.700 Oral Argument

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- 101.800 Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing Officer Orders
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SUBPART A: GENERAL PROVISIONS

Section 101.108 Board Proceedings

- a) Board proceedings can generally be divided into two categories: rulemaking proceedings and adjudicatory proceedings.
- b) The following are examples of Board rulemaking proceedings: Identical-in-Substance, Clean Air Act/Fast Track, Federally Required Rulemaking, General Rulemaking, and Site-Specific Rulemaking. Procedural rules for these types of proceedings can be found at 35 Ill. Adm. Code 102.
- c) The following are examples of Board adjudicatory proceedings: Enforcement

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- d) Board decisions will be made at meetings open to the public. Except as provided in subsection (e) of this Section, 4 members of the Board constitute a quorum, and ~~343~~ affirmative votes are required to adopt a Board decision.
- e) At a hearing pursuant to Section 34(d) of the Act to determine whether a seal should be removed, *at least one Board Member shall be present, and those Board Members present may render a final decision without regard to the requirements of Section 5(a) of the Act* [415 ILCS 5/34(d)].

(Source: Amended at ~~3637~~ Ill. Reg. _____, effective _____)

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Split/Merged cell	
Padding cell	

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Moved to	0
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Total changes	18