

Robertson, Daniel

From: Robertson, Daniel
Sent: Tuesday, February 11, 2014 9:50 AM
To: 'Connelly, Deborah'
Subject: RE: 106

PC#6, R13-20

Good morning. The Board is fine with changes 1 through 11. However, for changes 12 (delete "such") and 13 (delete "as may be") we would like to keep this language because it comes from section 28.1(a) of the Illinois Environmental Protection Act (415 ILCS 5/28.1(a)). Please let me know your thoughts. Thank you.

RECEIVED
CLERK'S OFFICE

FEB 18 2014

STATE OF ILLINOIS
Pollution Control Board

-----Original Message-----

From: Connelly, Deborah [mailto:connelly@ilga.gov]
Sent: Friday, February 07, 2014 2:41 PM
To: Robertson, Daniel
Subject: 106

Daniel:

Attached is what she wants to do to 106. Let me know.

SECOND NOTICE CHANGES



Agency: Pollution Control Board

Rulemaking: Proceedings Pursuant to Specific Rules or Statutory Provisions (35 Ill. Adm. Code 106; 37 Ill. Reg. 11843)

Changes:

1. In line 308, delete the comma.
2. In line 365, delete the comma.
3. In line 367, delete the redundant label "e)".
4. In line 374, after "biological" delete the comma.
5. In line 378, after "fish" delete the comma.
6. Delete line 380.
7. In line 437, change "where" to "when".
8. In line 452, delete "which".
9. In line 457, change "the United States Environmental Protection Agency" to "USEPA".
10. In line 479, after "106.1150", add a comma, delete the 1st "or" and change "the Board" to "if the Board".
11. In line 480, after "discretion" add a comma.
12. In line 561, delete "such".
13. In line 562, delete "as may be".

(2)

Later

*02
016
2/5*

JCAR350106-1311843r02

*Con
2/6*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

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

PART 106
PROCEEDINGS PURSUANT TO SPECIFIC RULES OR STATUTORY PROVISIONS

SUBPART A: GENERAL PROVISIONS

- Section
- 106.100 Applicability
- 106.102 Severability
- 106.104 Definitions

SUBPART B: HEATED EFFLUENT, ARTIFICIAL COOLING LAKE,
AND SULFUR DIOXIDE DEMONSTRATIONS

- Section
- 106.200 General
- 106.202 Petition Requirements
- 106.204 Additional Petition Requirements in Sulfur Dioxide Demonstrations
- 106.206 Notice
- 106.208 Recommendation and Response
- 106.210 Burden of Proof

SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES

- Section
- 106.300 General
- 106.302 Initiation of Proceeding
- 106.304 Petition Content Requirements
- 106.306 Response and Reply
- 106.308 Hearing
- 106.310 Burden of Proof

SUBPART D: REVOCATION AND REOPENING OF CLEAN AIR ACT
PERMIT PROGRAM (CAAPP) PERMITS

- Section
- 106.400 General
- 106.402 Definitions
- 106.404 Initiation of Proceedings
- 106.406 Petition Content Requirements

- 44 106.408 Response and Reply
- 45 106.410 Hearing
- 46 106.412 Burden of Proof
- 47 106.414 Opinion and Order
- 48 106.416 USEPA Review of Proposed Determination

49
50 SUBPART E: MAXIMUM ACHIEVABLE CONTROL
51 TECHNOLOGY DETERMINATIONS

- 52
53 Section
- 54 106.500 General
 - 55 106.502 Definitions
 - 56 106.504 Initiation of Proceedings
 - 57 106.506 Petition Content Requirements
 - 58 106.508 Response and Reply
 - 59 106.510 Hearing
 - 60 106.512 Burden of Proof
 - 61 106.514 Board Action

62
63 SUBPART F: CULPABILITY DETERMINATIONS FOR PARTICULATE MATTER
64 LESS THAN OR EQUAL TO 10 MICRONS (PM-10)

- 65
66 Section
- 67 106.600 General
 - 68 106.602 Initiation of Proceedings
 - 69 106.604 Petition Content Requirements
 - 70 106.606 Response and Reply
 - 71 106.608 Hearing
 - 72 106.610 Burden of Proof

73
74 SUBPART G: INVOLUNTARY TERMINATION OF ENVIRONMENTAL
75 MANAGEMENT SYSTEM AGREEMENTS (EMSAs)

- 76
77 Section
- 78 106.700 Purpose
 - 79 106.702 Applicability
 - 80 106.704 Termination Under Section 52.3-4(b) or (b-5) of the Act
 - 81 106.706 Who May Initiate, Parties
 - 82 106.707 Notice, Statement of Deficiency, Answer
 - 83 106.708 Service
 - 84 106.710 Notice of Hearing
 - 85 106.712 Deficient Performance
 - 86 106.714 Board Decision

87	106.716	Burden of Proof
88	106.718	Motions, Responses
89	106.720	Intervention
90	106.722	Continuances
91	106.724	Discovery, Admissions
92	106.726	Subpoenas
93	106.728	Settlement Procedure
94	106.730	Authority of Hearing Officer, Board Members, and Board Assistants
95	106.732	Order and Conduct of Hearing
96	106.734	Evidentiary Matters
97	106.736	Post-Hearing Procedures
98	106.738	Motion After Entry of Final Order
99	106.740	Relief from Final Orders

100
101 SUBPART H: AUTHORIZATIONS UNDER THE REGULATION
102 OF PHOSPHORUS IN DETERGENTS ACT

103	Section	
104	106.800	General
105	106.802	Definitions
106	106.804	Initiation of Proceeding
107	106.806	Petition Content Requirements
108	106.808	Response and Reply
109	106.810	Hearing
110	106.812	Burden of Proof

111
112 SUBPART I: AUTHORIZATIONS FOR CERTAIN LANDSCAPE WASTE AND
113 COMPOST APPLICATIONS AND ON-FARM COMPOSTING FACILITIES

114	Section	
115	106.900	General
116	106.902	Initiation of Proceeding
117	106.904	Petition Content Requirements
118	106.906	Petition Notice Requirements
119	106.908	Proof of Petition Notice Requirements
120	106.910	Response and Reply
121	106.912	Hearing
122	106.914	Burden of Proof

123
124
125 SUBPART J: TEMPORARY LANDFILL BAN WAIVERS UNDER
126 THE ELECTRONIC PRODUCTS RECYCLING AND REUSE ACT

127	Section	
128	106.1000	General

130 106.1002 Definitions
 131 106.1004 Initiation of Proceeding
 132 106.1006 Petition Content Requirements
 133 106.1008 Response and Reply
 134 106.1010 Burden of Proof
 135 106.1012 Board Decision

136
 137 SUBPART K: ALTERNATIVE THERMAL EFFLUENT LIMITATIONS PURSUANT TO
 138 SECTION 316(a) OF THE CLEAN WATER ACT AND 35 ILL. ADM. CODE 304.141(c)
 139

140 Section
 141 106.1100 Purpose
 142 106.1105 General
 143 106.1110 Definitions
 144 106.1115 Early Screening
 145 106.1120 Detailed Plan of Study
 146 106.1125 Initiation of Proceeding
 147 106.1130 Contents of Petition
 148 106.1135 Petition Notice Requirements
 149 106.1140 Proof of Petition Notice Requirements
 150 106.1145 Recommendation and Response
 151 106.1150 Request for Public Hearing
 152 106.1155 Notice and Conduct of Hearing
 153 106.1160 Burden of Proof
 154 106.1165 Evidentiary Matters
 155 106.1170 Opinion and Order
 156 106.1175 Post-Hearing Procedures
 157 106.1180 Renewal of Alternative Thermal Effluent Limitations

158
 159 106.APPENDIX A Comparison of Former and Current Rules (Repealed)
 160

161 AUTHORITY: Implementing and authorized by Sections 5, 14.2(c), 21(q), 22.4, 26, 27, 28,
 162 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3 of the Environmental Protection Act (the Act) [415
 163 ILCS 5/5, 14.2(c), 21(q), 22.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3], Section 5 of
 164 the Regulation of Phosphorus in Detergents Act [415 ILCS 92/5] and Section 95 of the
 165 Electronic Products Recycling and Reuse Act [415 ILCS 150/95].
 166

167 SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186,
 168 effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg.
 169 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4,
 170 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12
 171 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective
 172 July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in

173 R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579,
 174 effective July 11, 1994; amended in R99-9 at 23 Ill. Reg. 2697, effective February 16, 1999; old
 175 Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 550, effective January 1, 2001;
 176 amended in R04-24 at 29 Ill. Reg. 8817, effective June 8, 2005; amended in R10-19 at 34 Ill.
 177 Reg. 11486, effective July 23, 2010; amended in R12-21 at 36 Ill. Reg. 9236, effective June 7,
 178 2012; amended in R12-11 at 36 Ill. Reg. 16581, effective November 5, 2012; amended in R13-
 179 20 at 38 Ill. Reg. _____, effective _____.

180
 181 SUBPART K: ALTERNATIVE THERMAL EFFLUENT LIMITATIONS PURSUANT TO
 182 SECTION 316(a) OF THE CLEAN WATER ACT AND 35 ILL. ADM. CODE 304.141(c)
 183

184 **Section 106.1100 Purpose**
 185

186 This Subpart describes the factors, criteria, and standards for the establishment of alternative
 187 thermal effluent limitations under 35 Ill. Adm. Code 304.141(c) and section 316(a) of the Clean
 188 Water Act (33 USC 1251) in permits issued under 35 Ill. Adm. Code 309.

189 (Source: Added at 38 Ill. Reg. _____, effective _____)
 190
 191

192 **Section 106.1105 General**
 193

- 194 a) Description. This Subpart applies to any point source that discharges pollutants to
 195 waters of the United States who seeks to demonstrate, pursuant to 35 Ill. Adm.
 196 Code 304.141(c) and section 316(a) of the Clean Water Act, that any effluent
 197 limit proposed for the control of a thermal component of any discharge from such
 198 source will require effluent limitations more stringent than necessary to assure the
 199 protection and propagation of a balanced, indigenous population of shellfish, fish,
 200 and wildlife in and on the body of water into which the discharge is to be made.
- 201
- 202 b) Parties. The person making the demonstration must be named the petitioner. The
 203 Agency must be named as a respondent. Any interested person may become a
 204 participant in the alternative thermal effluent limitation demonstration proceeding
 205 in accordance with 35 Ill. Adm. Code 101.110 and 101.628.
- 206
- 207 c) Filing and Service. The filing and service requirements of 35 Ill. Adm. Code
 208 101.Subpart C apply to the proceedings of this Subpart.

209 (Source: Added at 38 Ill. Reg. _____, effective _____)
 210
 211

212 **Section 106.1110 Definitions**
 213

214 In addition to these definitions, all definitions of the Illinois Environmental Protection Act [415
 215 ILCS 5], and 35 Ill. Adm. Code 301, apply to this Subpart. For the purpose of this Subpart:

216
 217 "Alternative thermal effluent limitations" means all effluent limitations or
 218 standards of performance for the control of the thermal component of any
 219 discharge that are established under 35 Ill. Adm. Code 304.141(c), Section 316(a)
 220 of the CWA and this Subpart.

221
 222 "CWA" means the Federal Water Pollution Control Act, as amended (33 USC
 223 1251 et seq., Public Law 92-500 enacted by Congress October 18, 1972, as
 224 amended by the Clean Water Act, Public Law 95-217, enacted December 12,
 225 1977, as amended).

226
 227 "Representative important species" means species that are representative, in terms
 228 of their biological needs, of a balanced, indigenous community of shellfish, fish,
 229 and wildlife in the body of water into which a discharge of heat is made.

230
 231 "Balanced, indigenous community" is synonymous with the term "balanced,
 232 indigenous population" in the CWA and means a biotic community typically
 233 characterized by diversity, the capacity to sustain itself through cyclic seasonal
 234 changes, presence of necessary food chain species, and a lack of domination by
 235 pollution tolerant species. Such a community may include historically non-native
 236 species introduced in connection with a program of wildlife management and
 237 species whose presence or abundance results from substantial, irreversible
 238 environmental modifications. Normally, however, such a community will not
 239 include species whose presence or abundance is attributable to the introduction of
 240 pollutants that will be eliminated by compliance by all sources with section
 241 301(b)(2) of the CWA; and may not include species whose presence or abundance
 242 is attributable to alternative thermal effluent limitations imposed pursuant to this
 243 Subpart or through regulatory relief from otherwise applicable thermal limitations
 244 or standards granted by the Board.

245
 246 (Source: Added at 38 Ill. Reg. _____, effective _____)

247
 248 **Section 106.1115 Early Screening**

- 249
 250 a) Prior to filing a petition for an alternative thermal effluent limitation, the
 251 petitioner must submit the following early screening information to the Agency:
 252
 253 1) A description of the alternative thermal effluent limitation requested;
 254
 255 2) A general description of the method by which the discharger proposes to
 256 demonstrate that the otherwise applicable thermal discharge effluent
 257 limitations are more stringent than necessary;
 258

- 259 3) A general description of the type of data, studies, experiments and other
260 information that the discharger intends to submit for the demonstration;
261 and
262
263 4) A proposed representative important species list and supporting data and
264 information.
265
266 b) Within 30 days after the early screening information is submitted under
267 subsection (a), the petitioner shall consult with the Agency to discuss the
268 petitioner's early screening information.
269

270 (Source: Added at 38 Ill. Reg. _____, effective _____)
271

272 **Section 106.1120 Detailed Plan of Study**
273

- 274 a) Within 60 days after the early screening information is submitted pursuant to
275 Section 106.1115, the petitioner shall submit to the Agency a detailed plan of
276 study that the petitioner will undertake to support its alternative thermal effluent
277 limitation demonstration.
278
279 b) The petitioner shall specify the nature and extent of the following types of
280 information to be included in the plan of study:
281
282 1) biological, hydrographical, and meteorological data;
283
284 2) physical monitoring data;
285
286 3) engineering or diffusion models;
287
288 4) laboratory studies;
289
290 5) representative important species; and
291
292 6) other relevant information.
293
294 c) In selecting representative important species, special consideration shall be given
295 to species mentioned in applicable water quality standards.
296
297 d) The petitioner shall provide any additional information or studies that the Agency
298 subsequently determines necessary to support the alternative thermal effluent
299 limitation demonstration, including such field or other studies as may be
300 necessary to select representative important species.
301

- 302 e) In making the alternative thermal effluent limitation demonstration, the petitioner
303 shall consider any information or guidance published by USEPA to assist in
304 making such demonstrations.
305
306 f) Within 90 days after petitioner's submittal of its detailed plan of study, the
307 Agency shall respond in writing, either approving the detailed plan of study and
308 representative important species or recommending necessary revisions.
309
310 g) After receiving the Agency's response pursuant to subsection (f), or after 90 days
311 have passed with no Agency response, the petitioner may proceed with the plan of
312 study with or without making the Agency's recommended revisions. The
313 petitioner shall complete the plan of study prior to filing the petition for an
314 alternative thermal effluent limitation with the Board.
315

2nd

316 (Source: Added at 38 Ill. Reg. _____, effective _____)
317

318 **Section 106.1125 Initiation of Proceeding**
319

320 After completion of the plan of study pursuant to Section 106.1120, the petitioner may file a
321 petition for an alternative thermal effluent limitation with the Clerk of the Board and must serve
322 one copy on the Agency and one copy on the Illinois Department of Natural Resources.
323

324 (Source: Added at 38 Ill. Reg. _____, effective _____)
325

326 **Section 106.1130 Contents of Petition**
327

328 A petition for an alternative thermal effluent limitation must include the following:
329

- 330 a) Information providing a general plant description, including, as applicable:
331
332 1) Generating capacity;
333
334 2) Type of fuel used;
335
336 3) Operating characteristics of the condenser cooling system;
337
338 4) History of the load factor of the plant for the last 5 years;
339
340 5) Projected load factors of the plant for the next 5 years;
341
342 6) Estimated date of retirement for each unit at the plant and any plans for
343 additional units at the plant;
344

- 345 7) History of plant shutdowns for the last 5 years;
346
347 8) Planned and emergency shutdowns with frequency and duration for the
348 last 5 years; and
349
350 9) Planned and projected shutdowns with frequency and duration for the next
351 five years;
352
353 b) Description of Method for Heat Dissipation:
354
355 1) Type of system used (such as once-through, mechanical, and draft cooling
356 towers) in narrative form; and
357
358 2) Summary information on temperature of discharge to receiving waters in
359 narrative form;
360
361 c) A summary of compliance or non-compliance with thermal requirements at the
362 facility in the past five years;
363
364 d) The detailed plan of study submitted to the Agency pursuant to Section
365 106.112(a), and the Agency's written response pursuant to Section 106.1120(f);
366
367 e) The results of the studies conducted pursuant to the detailed plan of study
368 submitted under Section 106.1120, including, but not limited to:
369
370 1) background on the proposed thermal standards;
371
372 2) information on data collection program and methodologies;
373
374 3) summaries of physical, chemical, biological, and technical data supporting
375 the demonstration, along with a discussion of the data; and
376
377 4) criteria or methodology used to assess whether a balanced indigenous
378 community of shellfish, fish, and wildlife will be maintained in the
379 receiving waters and the protection of threatened and endangered species;
380 and
381
382 f) Any additional information or studies, including information or guidance
383 published by USEPA, that the petitioner judges to be appropriate to support the
384 alternative thermal effluent limitation demonstration; and
385
386 g) A statement of the requested relief, including:
387

and

and

and

and

and

- 388 1) the alternative thermal effluent limitation;
389
390 2) any relief from the mixing zone regulations in 35 Ill. Adm. Code 302.102,
391 if applicable; and
392
393 3) any other relief sought.

394
395 (Source: Added at 38 Ill. Reg. _____, effective _____)
396

397 **Section 106.1135 Petition Notice Requirements**
398

- 399 a) Within 14 days after the filing of the petition, the petitioner must publish notice of
400 the filing of the petition by advertisement in a newspaper of general circulation in
401 the county where the facility is located.
402
403 b) The notice must contain the name and address of the petitioner and it must state
404 that the petitioner has filed with the Board a petition for an alternative thermal
405 effluent limitation. The notice must also provide the date on which the petition
406 was filed, the Board docket number, the regulatory standard (with appropriate
407 Administrative Code citation) from which the alternative thermal effluent
408 limitation is sought, the proposed alternative thermal effluent limitation, a general
409 description of the petitioner's activity that is the subject of the alternative thermal
410 effluent limitation proceeding, and the location of the facility. The concluding
411 portion of the notice must read as follows:

412
413 "Any person may cause a public hearing to be held in the above-described
414 proceeding by filing a hearing request with the Illinois Pollution Control
415 Board within 21 days after the date of the publication of this notice. The
416 hearing request should clearly indicate the docket number for the
417 proceeding, as found in this notice, and must be filed with the Clerk of the
418 Board, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-
419 500, Chicago, Illinois 60601."

420
421 (Source: Added at 38 Ill. Reg. _____, effective _____)
422

423 **Section 106.1140 Proof of Petition Notice Requirements**
424

425 Within 30 days after the filing of the petition, the petitioner must file a certificate of publication
426 with the Clerk of the Board, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-
427 500, Chicago, Illinois 60601. This certification must be issued by the newspaper that published
428 the notice and must certify when the notice was published and the information the notice
429 contained.
430

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 106.1145 Recommendation and Response

a) Unless otherwise ordered by the hearing officer or the Board, the Agency must file with the Board a recommendation within 45 days after the filing of a petition or amended petition for an alternative thermal effluent limitation, or where a hearing has been scheduled, at least 30 days before hearing, whichever is earlier.

when
2nd

b) The recommendation must state the following:

- 1) whether the Board should grant the petitioner's requested alternative thermal effluent limitation;
- 2) the rationale for the Agency's position;
- 3) whether the plan of study sufficiently addresses the Agency's response pursuant to Section 106.1120(f) of this Part;
- 4) whether the petition has met the requirements of this Part;
- 5) any information ~~which~~ the Agency believes is relevant to the Board's consideration of the proposed alternative thermal effluent limitation; and
- 6) whether the Agency communicated with or received comments from the Illinois Department of Natural Resources, the United States Fish and Wildlife Service, or ~~the United States Environmental Protection Agency~~ and the content of those communications.

2nd

USEPA

and

c) The petitioner, any party to the proceeding, or any interested person may file a response to the Agency recommendation within 21 days after the Agency files its recommendation.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 106.1150 Request for Public Hearing

Any person can request that a public hearing be held in a proceeding under this Subpart. The requests must be filed with the Clerk of the Board no later than 21 days after the date of the publication of the petition notice in accordance with Section 106.1135. Requests for hearing should make reference to the Board docket number assigned to the proceeding.

(Source: Added at 38 Ill. Reg. _____, effective _____)

474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516

Section 106.1155 Notice and Conduct of Hearing

- a) The Board shall hold a public hearing on the petition and alternative thermal effluent limitation demonstration when one is requested in accordance with Section 106.1150, or when requested by the petitioner, or the Board in its discretion determines that a hearing would be advisable. *IF*
- b) The hearing officer will schedule the hearing to be held in the county likely to be affected by the petitioner's activity.
- c) The Clerk will give notice of the hearing in accordance with 35 Ill. Adm. Code 101. The proceedings will be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F.

and

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 106.1160 Burden of Proof

- a) The burden of proof is on the petitioner.
- b) The petitioner must demonstrate to the satisfaction of the Board that the otherwise applicable effluent limitations under Chapter I of Subtitle C are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made.
- c) The demonstration must show that the alternative thermal effluent limitation desired by the petitioner, considering the cumulative impact of its thermal discharge, together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made.
- d) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies.
 - 1) When the petitioner bases the alternative thermal effluent limitation demonstration upon the absence of prior appreciable harm, the demonstration must show:
 - A) That no appreciable harm has resulted from the normal component of the discharge, taking into account the interaction of such

517 thermal component with other pollutants and the additive effect of
518 other thermal sources on a balanced, indigenous community of
519 shellfish, fish, and wildlife in and on the body of water into which
520 the discharge has been made; or

521
522 B) That despite the occurrence of such previous harm, the desired
523 alternative thermal effluent limitation (or appropriate modifications
524 thereof) will nevertheless assure the protection and propagation of
525 a balanced, indigenous community of shellfish, fish, and wildlife in
526 and on the body of water into which the discharge is made.

527
528 2) In determining whether prior appreciable harm has occurred, the Board
529 shall consider the length of time during which the petitioner has been
530 discharging and the nature of the discharge.

531
532 (Source: Added at 38 Ill. Reg. _____, effective _____)

533
534 **Section 106.1165 Evidentiary Matters**

535
536 a) The provisions of 35 Ill. Adm. Code 101 regarding admissible evidence, written
537 narrative testimony, official notice, viewing premises, admitting business records,
538 examining adverse parties or agents and hostile witnesses and compelling them to
539 appear at hearing, and amendment and variance of pleadings and proof will apply
540 to proceedings under this Subpart.

541
542 b) In determining whether the protection and propagation of the affected species will
543 be assured, the Board may consider any information contained or referenced in
544 any applicable thermal water quality criteria and thermal water quality
545 information published by the USEPA under section 304(a) of the CWA, or any
546 other information the Board deems relevant.

547
548 (Source: Added at 38 Ill. Reg. _____, effective _____)

549
550 **Section 106.1170 Opinion and Order**

551
552 a) After an opportunity for a public hearing and upon a satisfactory alternative
553 thermal effluent limitation demonstration, the Board may order the Agency to
554 include thermal discharge effluent limitations or standards in the petitioner's
555 NPDES permit that are less stringent than those required by applicable standards
556 and limitations if the thermal component of the discharge, taking into account the
557 interaction of such thermal component with other pollutants, will assure the
558 protection and propagation of a balanced, indigenous population of shellfish, fish,
559 and wildlife in and on the body of water.

560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602

- b) In granting an alternative thermal effluent limitation, the Board may impose such conditions as may be necessary to accomplish the purposes of the Act.
- c) If the petitioner intends for the alternative thermal effluent limitation granted by the Board pursuant to this Subpart to continue beyond the expiration of the petitioner's NPDES permit, the petitioner must apply for renewal of the alternative thermal effluent limitation pursuant to Section 106.1180.

2nd

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 106.1175 Post-Hearing Procedures

- a) The provisions of 35 Ill. Adm. Code 101 regarding default, transcripts, the record, motions, briefs, and oral arguments apply to proceedings under this Subpart.
- b) In addition to the provisions of 35 Ill. Adm. Code 101.520 and 101.902, if USEPA objects pursuant to 40 CFR 123.44 to issuance in the petitioner's NPDES permit of the alternative thermal effluent limitation ordered by the Board, the Agency is given leave to file a motion for reconsideration of the Board's order granting the effluent limitation pursuant to 35 Ill. Adm. Code 101.520 within 35 days after the Agency's receipt of USEPA's objection.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 106.1180 Renewal of Alternative Thermal Effluent Limitations

- a) The permittee may request continuation of an alternative thermal effluent limitation granted by the Board, pursuant to this Subpart, as part of its NPDES permit renewal application.
- b) Any application for renewal should include sufficient information for the Agency to compare the nature of the permittee's thermal discharge and the balanced, indigenous population of shellfish, fish, and wildlife at the time the Board granted the alternative thermal effluent limitation and the current nature of the petitioner's thermal discharge and the balanced, indigenous population of shellfish, fish, and wildlife. The permittee should be prepared to support this comparison with documentation based upon the discharger's actual operation experience during the previous permit term.
- c) If the permittee demonstrates that the nature of the thermal discharge has not changed and the alternative thermal effluent limitation granted by the Board has not caused appreciable harm to a balanced, indigenous population of shellfish,

603 fish, and wildlife in and on the body of water into which the discharge is made,
604 the Agency may include the alternative thermal effluent limitation in the
605 permittee's renewed NPDES permit.

606
607 d) If the nature of the thermal discharge has changed materially or the alternative
608 thermal effluent limitation granted by the Board has caused appreciable harm to a
609 balanced, indigenous population of shellfish, fish, and wildlife in and on the body
610 of water into which the discharge is made, the Agency may not include the
611 thermal relief granted by the Board in the permittee's renewed NPDES permit.
612 The permittee must file a new petition and make the required demonstration
613 pursuant to this Subpart before the alternative thermal effluent limitation may be
614 included in the permittee's renewed NPDES permit.

615
616 (Source: Added at 38 Ill. Reg. _____, effective _____)