

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: General Rules
- 2) Code Citation: 35 Ill. Adm. Code 101
- 3) Section Numbers:

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
101.100	Amendment
101.202	Amendment
101.300	Amendment
101.302	Amendment
101.304	Amendment
101.400	Amendment
101.1060	Amendment
101.Appendix A	
101.Illustration J	Renumbered/New Section
101.Illustration K	Renumbered
101.Illustration L	Renumbered/Amendment
101.Appendix E	
101.Illustration A	Amendment
101.Illustration B	Amendment
- 4) Statutory Authority: Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: The proposal will amend the Board's procedural rules for out-of-state attorneys, service of filings and administrative citations.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: Illinois Supreme Court Rule 707 (eff. July 1, 2014), PA 98-856 (eff. Aug. 4, 2014) and 415 ILCS 150/20
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or



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enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b)]

- 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 45 days after the date of publication in the *Illinois Register*. Public comments must be filed with the Clerk of the Board. Public comments should reference Docket R15-20 and be addressed to:

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

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R15-20 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 hearing officer Daniel Robertson at 312/814-6931 or by e-mail at Daniel.Robertson@illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality, or not-for-profit corporation that practices before the Board
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on a regulatory agenda.

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

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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
101.111	Informal Recordings of Board Meetings
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 from Another Proceeding
101.308	Statutory Decision Deadlines and Waiver of Deadlines

SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

Section

RECEIVED
CLERK'S OFFICE
JUN 05 2015
STATE OF ILLINOIS
Pollution Control Board

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- 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
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- 101.622 Subpoenas and Depositions

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- 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 Final Opinions and Orders
- 101.906 Judicial Review of Board Orders
- 101.908 Interlocutory Appeal

SUBPART J: ELECTRONIC FILING AND E-MAIL SERVICE

- Section
- 101.1000 Electronic Filing and E-Mail Service
- 101.1010 Electronic Filing Authorization and Signatures
- 101.1020 Filing Electronic Documents
- 101.1030 Form of Electronic Documents for Filing
- 101.1040 Filing Fees
- 101.1050 Documents Required in Paper or Excluded from Electronic Filing
- 101.1060 E-Mail Service
- 101.1070 Consenting to Receipt of E-Mail Service

- 101.APPENDIX A Captions

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	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	Pursuant to Section 31.1 of the Act
101.ILLUSTRATION J	Administrative Citation	Pursuant to <u>Under</u> Section 23.1 of the Public Water Supply Operations Act
	101.ILLUSTRATION K	General Rulemaking
	101.ILLUSTRATION L	Site-specific Rulemaking
101.APPENDIX B	Appearance Form	
101.APPENDIX C	Withdrawal of Appearance Form	
101.APPENDIX D	Notice of Filing	
101.APPENDIX E	Affidavit or 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)	
101.APPENDIX H	Affidavit or Certificate of E-Mail Service	
	101.ILLUSTRATION A	E-Mail Service by Non-Attorney
	101.ILLUSTRATION B	E-Mail Service by Attorney
101.APPENDIX I	Consent to Receipt of E-Mail Service	

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] and Section 25-101 of the Electronic Commerce Security Act [5 ILCS 175/25-101].

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,

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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; amended in R10-22 at 34 Ill. Reg. 19566, effective December 3, 2010; amended in R12-22 at 36 Ill. Reg. 9211, effective June 7, 2012; amended in R13-9 at 37 Ill. Reg. 1655, effective January 28, 2013; amended in R14-21 at 39 Ill. Reg. 2276, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 101.100 Applicability

- a) This Part sets forth the rules generally applicable to proceedings before the Illinois Pollution Control Board (Board), and should be read in conjunction with procedural rules for the Board's specific proceedings, found at 35 Ill. Adm. Code 102 through 130, and the Board's Administrative Rules, found at 2 Ill. Adm. Code 2175. In the event of a conflict between the rules of this Part and those found in subsequent Parts, the more specific requirement applies.
- b) Except when the Board's procedural rules provide otherwise, the provisions of the Code of Civil Procedure [735 ILCS 5] and the Supreme Court Rules [Ill. S. Ct. Rules] do not apply to proceedings before the Board. However, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance when the Board's procedural rules are silent.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

SUBPART B: DEFINITIONS

Section 101.202 Definitions for Board's Procedural Rules

Unless otherwise provided in 35 Ill. Adm. Code 101-130, or unless a different meaning of a word or term is clear from the context, the following definitions also apply to the Board's procedural rules, found in 35 Ill. Adm. Code 101 through 130:

"Act" means the Environmental Protection Act [415 ILCS 5].

"Adjudicatory proceeding" means an action of a quasi-judicial nature brought before the Board pursuant to authority granted to the Board under Section 5(d) of

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the Act or as otherwise provided by law. Adjudicatory proceedings include enforcement, variance, permit appeal, pollution control facility siting appeal, Underground Storage Tank (UST) Fund determination, water well set back exception, adjusted standard, and administrative citation proceedings. Adjudicatory proceedings do not include regulatory, quasi-legislative, or informational proceedings.

"Adjusted standard" or "AS" means an alternative standard granted by the Board in an adjudicatory proceeding pursuant to Section 28.1 of the Act and 35 Ill. Adm. Code 104.Subpart D. The adjusted standard applies instead of the rule or regulation of general applicability.

"Administrative citation" or "AC" means a citation issued by the Agency or by a unit of local government acting as the Agency's delegate. (See 35 Ill. Adm. Code 108.)

"Administrative citation review" or "administrative citation appeal" means a petition for review of an administrative citation. (See 35 Ill. Adm. Code 108.)

"Affidavit" means a sworn, signed statement witnessed by a notary public.

"Agency" means the Illinois Environmental Protection Agency as established by Section 4 of the Act.

"Agency recommendation" means the document filed by the Agency pursuant to Sections 37(a) and 28.1(d)(3) of the Act in which the Agency provides its recommended disposition of a petition for variance or an adjusted standard. This includes a recommendation to deny, or a recommendation to grant with or without conditions. (See 35 Ill. Adm. Code 104.218 and 104.416.)

"Amicus curiae brief" means a brief filed in a proceeding by any interested person who is not a party. (See Sections 101.110 and 101.628 of this Part.)

"Applicant" means any person who submits, or has submitted, an application for a permit or for local siting approval pursuant to any of the authorities to issue permits or granting of siting approval identified in Sections 39, 39.1, and 39.5 of the Act.

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"Article" means *any object, material, device or substance, or whole or partial copy thereof, including any writing, record, document, recording, drawing, sample, specimen, prototype, model, photograph, culture, microorganism, blueprint or map* [415 ILCS 5/7.1].

"Attorney General" means the Attorney General of the State of Illinois or representatives thereof.

"Authorized representative" means any person who is authorized to act on behalf of another person.

"Board" means the Illinois Pollution Control Board as created in Section 5 of the Act or, if applicable, its designee.

"Board decision" means an opinion or an order voted in favor of by at least three members of the Board at an open Board meeting except in a proceeding to remove a seal under Section 34(d) of the Act.

"Board designee" means an employee of the Board who has been given authority by the Board to carry out a function for the Board (e.g., the Clerk, Assistant Clerk of the Board, or hearing officer).

"Board meeting" means an open meeting held by the Board pursuant to Section 5(a) of the Act in which the Board makes its decisions and determinations.

"Board's procedural rules" means the Board's regulations set forth at 35 Ill. Adm. Code 101 through 130.

"Brief" means a written statement that contains a summary of the facts of a proceeding, the pertinent laws, and an argument of how the law applies to the facts supporting a position.

"CAAPP" means the Clean Air Act Permit Program, as adopted in Section 39.5 of the Act.

"Certificate of acceptance" means a certification, executed by a successful petitioner in a variance proceeding, in which the petitioner agrees to be bound by

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all terms and conditions that the Board has affixed to the grant of variance.

"Chairman" means the Chairman of the Board designated by the Governor pursuant to Section 5(a) of the Act.

"Citizen's enforcement proceeding" means an enforcement action brought before the Board pursuant to Section 31(d) of the Act by any person who is not authorized to bring the action on behalf of the People of the State of Illinois.

"Clean Air Act" or "CAA" means the federal *Clean Air Act, as now and hereafter amended, 42 USC 7401 et seq.* [415 ILCS 5/39.5]

"Clean Water Act" means the federal Clean Water Act, 33 USC 1251 et seq.

"Clerk" means the Clerk of the Board.

"Clerk's Office On-Line" or "COOL" means the Board's web-based file management system that allows electronic filing of and access to electronic documents in the records of the Board's adjudicatory and regulatory proceedings. COOL is located on the Board's website at <http://www.ipcb.state.il.us/COOL/external/>.

"Complaint" means the initial filing that begins an enforcement proceeding pursuant to Section 31 of the Act and 35 Ill. Adm. Code 103.

"Compliance plan" means a detailed description of a program designed to achieve compliance with the Act and Board regulations.

"Copy" means *any facsimile, replica, photograph or other reproduction of an article, and any note, drawing or sketch made of or from an article* [415 ILCS 5/7.1].

"Counter-complaint" means a pleading that a respondent files setting forth a claim against a complainant. (See 35 Ill. Adm. Code 103.206.)

"Cross-complaint" means a pleading that a party files setting forth a claim against a co-party. (See 35 Ill. Adm. Code 103.206.)

"Cross-media impacts" means impacts that concern multiple environmental areas,

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such as air, land and/or water.

"Decision date" means the date of the Board meeting immediately preceding the decision deadline.

"Decision deadline" means the last day of any decision period, as established by law, within which the Board is required to render a decision in an adjudicatory proceeding. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions respectively.)

"Decision period" means the period of time established by the Act within which the Board is required to make a Board decision in certain adjudicatory proceedings. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions, respectively.)

"Deinked stock" *means paper that has been processed to remove inks, clays, coatings, binders and other contaminants* [415 ILCS 20/2.1].

"Delegated unit" means the unit of local government to which the Agency has delegated its administrative citation or other function pursuant to Section 4(r) of the Act.

"Digital signature" means *a type of electronic signature created by transforming an electronic document using a message digest function and encrypting the resulting transformation with an asymmetric cryptosystem using the signer's private key such that any person having the initial untransformed electronic document, the encrypted transformation, and the signer's corresponding public key can accurately determine whether the transformation was created using the private key that corresponds to the signer's public key and whether the initial electronic document has been altered since the transformation was made. A digital signature is a security device.* [5 ILCS 175/5-105]

"Discovery" means a pre-hearing process that can be used to obtain facts and information about the adjudicatory proceeding in order to prepare for hearing. The discovery tools include depositions upon oral and written questions, written interrogatories, production of documents or things, and requests for admission.

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"DNR" means the Illinois Department of Natural Resources.

"DOA" means the Illinois Department of Agriculture.

"Duplicative" means the matter is identical or substantially similar to one brought before the Board or another forum.

"Electronic" includes *electrical, digital, magnetic, optical, electromagnetic, or any other form of technology that entails capabilities similar to these technologies* [5 ILCS 175/5-105].

"Electronic document" means any notice, information, or filing generated, communicated, received or stored by electronic means to use in an information system or to transmit from one information system to another. (See 5 ILCS 175/5-105.)

"Electronic signature" means *a signature in electronic form attached to or logically associated with an electronic document* [5 ILCS 175/5-105].

"Environmental Management System Agreement" or "EMSA" means the agreement between the Agency and a sponsor, entered into under Section 52.3 of the Act and 35 Ill. Adm. Code 187, that describes the innovative environmental measures to be implemented, schedules to attain goals, and mechanisms for accountability.

"Enforcement proceeding" means an adjudicatory proceeding brought upon a complaint filed pursuant to Section 31 of the Act by the Attorney General, State's Attorney, or other persons, in which the complaint alleges violation of the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order.

"EPRR Act" means the Electronic Products Recycling and Reuse Act [415 ILCS 150].

"Ex parte communication" means *any written or oral communication by any person that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi-adjudicatory, investment, or licensing matters pending before or under consideration by the Board. "Ex parte communication" does not include the following:*

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statements by a person publicly made in a public forum, including pleadings, transcripts, public comments, and public remarks made part of the proceeding's record [5 ILCS 430/5-50(b)(i)];

statements regarding matters of procedure and practice, such as format , the number of copies required, the manner of filing, and the status of a matter [5 ILCS 430/5-50(b)(ii)]; and

statements made by a State employee of the Board to Board members or other employees of the Board [5 ILCS 430/5-50(b) (iii)]. For purposes of this definition, "Board employee" means a person the Board employs on a full-time, part-time, contract or intern basis. (See Section 101.114 of this Part.)

"Fast Track rulemaking" means a Clean Air Act rulemaking conducted pursuant to Section 28.5 of the Act.

"Federally required rule" means *a rule that is needed to meet the requirements of the federal Clean Water Act, Safe Drinking Water Act, Clean Air Act (including required submission of a State Implementation Plan), or Resource Conservation and Recovery Act, other than a rule required to be adopted under subsection (c) of Section 13, Section 13.3, Section 17.5, subsection (a) or (d) of Section 22.4, or subsection (a) of Section 22.40 [415 ILCS 5/28.2].*

"Filing" means the act of delivering a document or article into the custody of the Clerk with the intention of incorporating that document or article into the record of a proceeding before the Board. The Clerk's Office is located at 100 West Randolph Street, Suite 11-500, Chicago IL 60601. Electronic filing is done through COOL on the Board's website.

"Final order" means an order of the Board that terminates the proceeding leaving nothing further to litigate or decide and that is subject to judicial review. (See Subpart I of this Part.)

"Frivolous" means a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.

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"Hearing" means a public proceeding conducted by a hearing officer where the parties and other interested persons, as provided for by law and the Board's procedural rules, present evidence and argument regarding their positions.

"Hearing officer" means a person licensed to practice law in the State of Illinois who presides over hearings and otherwise carries out record development responsibilities as directed by the Board.

"IAPA" means the Illinois Administrative Procedure Act [5 ILCS 100].

"Identical-in-substance rules" or "identical-in-substance regulations" means *State regulations which require the same actions with respect to protection of the environment, by the same group of affected persons, as would federal regulations if USEPA administered the subject program in Illinois* [415 ILCS 5/7.2].

"Initial filing" means the filing that initiates a Board proceeding and opens a docket. For instance, the initial filing in an enforcement proceeding is the complaint; in a permit appeal it is a petition for review; and in a regulatory proceeding it is the proposal.

"Innovative environmental measures" means any procedures, practices, technologies or systems that pertain to environmental management and are expected to improve environmental performance when applied. (See 35 Ill. Adm. Code 106.Subpart G.)

"Inquiry hearing" means a hearing conducted by the Board for the purpose of seeking input and comment from the public regarding the need for a rulemaking proceeding in a specific area.

"Interlocutory appeal" means an appeal of a Board decision to the appellate court that is not dispositive of all the contested issues in the proceeding. (See Section 101.908 of this Part.) An interlocutory appeal may also be the appeal of a hearing officer ruling to the Board. (See Section 101.518 of this Part.)

"Intervenor" means a person, not originally a party to an adjudicatory proceeding, who voluntarily participates as a party in the proceeding with the leave of the Board. (See Section 101.402 of this Part.)

"Intervention" means the procedure by which a person, not originally a party to an

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adjudicatory proceeding, voluntarily comes into the proceeding as a party with the leave of the Board. (See Section 101.402 of this Part.)

"JCAR" means the Illinois General Assembly's Joint Committee on Administrative Rules established by the IAPA (see 5 ILCS 100/5-90).

"Joinder" means the procedure by which the Board adds a person, not originally a party to an adjudicatory proceeding, as a party to the proceeding. (See Section 101.403 of this Part and 35 Ill. Adm. Code 103.206.)

"Misnomer" means a mistake in name, giving an incorrect name in a complaint or other document with respect to any properly included party.

"Motion" means a request made to the Board or the hearing officer for the purposes of obtaining a ruling or order directing or allowing some act to be done in favor of the movant. (See definition of "movant" in this Section.)

"Movant" means the person who files a motion.

"New pollution control facility" means *a pollution control facility initially permitted for development or construction after July 1, 1981; or the area of expansion beyond the boundary of a currently permitted pollution control facility; or a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste* [415 ILCS 5/3.330(b)].

"Non-disclosable information" means *information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; information concerning secret manufacturing processes or confidential data submitted by any person under the Act* [415 ILCS 5/7(a)].

"Notice list" means the list of persons in a regulatory proceeding who will receive all Board opinions and orders and all hearing officer orders. Persons on a notice list generally do not receive copies of motions, public comments, or testimony. (See definition of "service list" in this Section.) (See also 35 Ill. Adm. Code 102.422.)

"Notice to reinstate" means a document filed that recommences the decision

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period after a decision deadline waiver has been filed. The notice will give the Board a full decision period in which to make a decision. (See Section 101.308 of this Part.)

"Oral argument" means a formal verbal statement of advocacy on a proceeding's legal questions made at a Board meeting with the Board's permission. (See Section 101.700 of this Part.)

"OSFM" means Office of the State Fire Marshal.

"OSFM appeal" means an appeal of an OSFM final decision concerning eligibility and deductibility made pursuant to Title XVI of the Act.

"Participant" means any person, not including the Board or its staff, who takes part in an adjudicatory proceeding who is not a party, or a person who takes part in a regulatory or other quasi-legislative proceeding before the Board. A person becomes a participant in any of several ways, including filing a comment, being added to the notice list of a particular proceeding, testifying at hearing, or making public remarks at a Board meeting.

"Participant in a CAAPP Comment Process" means a person who takes part in a Clean Air Act Permit Program (CAAPP) permit hearing before the Agency or comments on a draft CAAPP permit.

"Party" means the person by or against whom an adjudicatory proceeding is brought or who is granted party status by the Board through intervention or joinder.

"Party in interest" means the Agency when asked to conduct an investigation pursuant to Section 30 of the Act during an ongoing proceeding. (See Section 101.404 of this Part.)

"Peremptory rulemaking" means *any rulemaking that is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions that preclude compliance with the general rulemaking requirements of Section 5-40 of the IAPA and that preclude the exercise by the Board as to the content of the rule it is required to adopt.* [5 ILCS 100/5-50]

"Permit appeal" means an adjudicatory proceeding brought before the Board

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pursuant to Title X of the Act.

"Person" means *any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.* [415 ILCS 5/3.315]

"Petition" means the initial filing in an adjudicatory proceeding other than an enforcement proceeding, including permit appeals, OSFM appeals, UST appeals, appeals of pollution control facility siting decisions, variances and adjusted standards.

"Pilot project" means an innovative environmental project that covers one or more designated facilities, designed and implemented in the form of an EMSA. (See Section 52.3 of the Act.)

"Pollution control facility" means *any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act. The following are not pollution control facilities:*

waste storage sites regulated under 40 CFR 761.42;

sites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person;

sites or facilities at which the State is performing removal or remedial action pursuant to Section 22.2 or 55.3 of the Act;

abandoned quarries used solely for the disposal of concrete, earth materials, gravel, or aggregate debris resulting from road construction activities conducted by a unit of government or construction activities due to the construction and installation of underground pipes, lines, conduit or

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wires off of the premises of a public utility company which are conducted by a public utility;

sites or facilities used by any person to specifically conduct a landscape composting operation;

regional facilities as defined in the Central Midwest Interstate Low-Level Radioactive Waste Compact;

the portion of a site or facility where coal combustion wastes are stored or disposed of in accordance with subdivision (r)(2) or (r)(3) of Section 21 of the Act;

the portion of a site or facility used for the collection, storage or processing of waste tires as defined in Title XIV;

the portion of a site or facility used for treatment of petroleum contaminated materials by application onto or incorporation into the soil surface and any portion of that site or facility used for storage of petroleum contaminated materials before treatment. Only those categories of petroleum listed in Section 57.9(a)(3) of the Act are exempt under this definition;

the portion of a site or facility where used oil is collected or stored prior to shipment to a recycling or energy recovery facility, provided that the used oil is generated by households or commercial establishments, and the site or facility is a recycling center or a business where oil or gasoline is sold at retail;

processing sites or facilities that receive only on-specification used oil, as defined in 35 Ill. Adm. Code 739, originating from used oil collectors for processing that is managed under 35 Ill. Adm. Code 739 to produce products for sale to off-site petroleum facilities, if these processing sites or facilities are:

located within a home rule unit of local government with a population of at least 30,000 according to the 2000 federal census, that home rule unit of local government has been designated as an

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Urban Round II Empowerment Zone by the United States Department of Housing and Urban Development, and that home rule unit of local government has enacted an ordinance approving the location of the site or facility and provided funding for the site or facility; and

in compliance with all applicable zoning requirements;

the portion of a site or facility utilizing coal combustion waste for stabilization and treatment of only waste generated on that site or facility when used in connection with response actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the federal Resource Conservation and Recovery Act of 1976, or the Illinois Environmental Protection Act or as authorized by the Agency;

the portion of a site or facility that accepts exclusively general construction or demolition debris, is located in a county with a population over 3,000,000 as of January 1, 2000 or in a county that is contiguous to such a county, and is operated and located in accordance with Section 22.38 of the Act;

the portion of a site or facility, located within a unit of local government that has enacted local zoning requirements, used to accept, separate, and process uncontaminated broken concrete, with or without protruding metal bars, provided that the uncontaminated broken concrete and metal bars are not speculatively accumulated, are at the site or facility no longer than one year after their acceptance, and are returned to the economic mainstream in the form of raw materials or products;

the portion of a site or facility located in a county with a population over 3,000,000 that has obtained local siting approval under Section 39.2 of the Act for a municipal waste incinerator on or before July 1, 2005 and that is used for a non-hazardous waste transfer station;

effective January 1, 2008, a site or facility that temporarily holds in transit for 10 days or less, non-putrescible solid waste in original containers, no larger in capacity than 500 gallons, provided that such waste is further

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transferred to a recycling, disposal, treatment, or storage facility on a non-contiguous site and provided such site or facility complies with the applicable 10-day transfer requirements of the federal Resource Conservation and Recovery Act of 1976 and United States Department of Transportation hazardous material requirements. For purposes of this Section only, "non-putrescible solid waste" means waste other than municipal garbage that does not rot or become putrid, including, but not limited to, paints, solvent, filters, and absorbents;

the portion of a site or facility located in a county with a population greater than 3,000,000 that has obtained local siting approval, under Section 39.2 of the Act, for a municipal waste incinerator on or before July 1, 2005 and that is used for wood combustion facilities for energy recovery that accept and burn only wood material, as included in a fuel specification approved by the Agency;

a transfer station used exclusively for landscape waste, including a transfer station where landscape waste is ground to reduce its volume, where the landscape waste is held no longer than 24 hours from the time it was received;

the portion of a site or facility that is used for the composting of food scrap, livestock waste, crop residue, uncontaminated wood waste, or paper waste, including, but not limited to, corrugated paper or cardboard, and meets all of the following requirements:

there must not be more than a total of 30,000 cubic yards of livestock waste in raw form or in the process of being composted at the site or facility at any one time;

all food scrap, livestock waste, crop residue, uncontaminated wood waste, and paper waste must, by the end of each operating day, be processed and placed into an enclosed vessel in which air flow and temperature are controlled, or all of the following additional requirements must be met:

the portion of the site or facility used for the composting operation must include a setback of at least 200 feet from the nearest potable water supply well;

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the portion of the site or facility used for the composting operation must be located outside the boundary of the 10-year floodplain or floodproofed;

except in municipalities with more than 1,000,000 inhabitants, the portion of the site or facility used for the composting operation must be located at least one-eighth of a mile from the nearest residence, other than a residence located on the same property as the site or facility;

the portion of the site or facility used for the composting operation must be located at least one-eighth of a mile from the property line of all of the following areas:

facilities that primarily serve to house or treat people that are immunocompromised or immunosuppressed, such as cancer or AIDS patients; people with asthma, cystic fibrosis, or bioaerosol allergies; or children under the age of one year;

primary and secondary schools and adjacent areas that the schools use for recreation;

any facility for child care licensed under Section 3 of the Child Care Act of 1969; preschools; and adjacent areas that the facilities or preschools use for recreation;

by the end of each operating day, all food scrap, livestock waste, crop residue, uncontaminated wood waste, and paper waste must be processed into windrows or other piles and covered in a manner that prevents scavenging by birds and animals and that prevents other nuisances;

food scrap, livestock waste, crop residue, uncontaminated wood waste, paper waste, and compost must not be placed within 5 feet of the water table;

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the site or facility must meet all of the requirements of the Wild and Scenic Rivers Act (16 USC 1271 et seq.);

the site or facility must not restrict the flow of a 100-year flood, result in washout of food scrap, livestock waste, crop residue, uncontaminated wood waste, or paper waste from a 100-year flood, or reduce the temporary water storage capacity of the 100-year floodplain, unless measures are undertaken to provide alternative storage capacity, such as by providing lagoons, holding tanks, or drainage around structures at the facility;

the site or facility must not be located in any area where it may pose a threat of harm or destruction to the features for which:

an irreplaceable historic or archaeological site has been listed under the National Historic Preservation Act (16 USC 470 et seq.) or the Illinois Historic Preservation Act [20 ILCS 3410];

a natural landmark has been designated by the National Park Service or the Illinois State Historic Preservation Office; or

a natural area has been designated as a Dedicated Illinois Nature Preserve under the Illinois Natural Areas Preservation Act [525 ILCS 30];

the site or facility must not be located in an area where it may jeopardize the continued existence of any designated endangered species, result in the destruction or adverse modification of the critical habitat for such species, or cause or contribute to the taking of any endangered or threatened species of plant, fish, or wildlife listed under the Endangered Species Act (16 USC 1531 et seq.) or the Illinois Endangered Species Protection Act [520 ILCS 10];

the portion of a site or facility that is located entirely within a home rule unit having a population no less than 120,000 and no more than 135,000,

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according to the 2000 federal census, and that meets all of the following requirements:

the portion of the site or facility is used exclusively to perform testing of a thermochemical conversion technology using only woody biomass, collected as landscape waste within the boundaries of the home rule unit, as the hydrocarbon feedstock for the production of synthetic gas in accordance with Section 39.9 of the Act;

the portion of the site or facility is in compliance with all applicable zoning requirements; and

a complete application for a demonstration permit at the portion of the site or facility has been submitted to the Agency in accordance with Section 39.9 of the Act within one year after July 27, 2010 (the effective date of Public Act 96-1314);

the portion of a site or facility used to perform limited testing of a gasification conversion technology in accordance with Section 39.8 of the Act and for which a complete permit application has been submitted to the Agency prior to one year from April 9, 2010 (the effective date of Public Act 96-887);

the portion of a site or facility that it used to incinerate only pharmaceuticals from residential sources that are collected and transported by law enforcement agencies under Section 17.9A of the Act; and

until July 1, 2017, the portion of a site or facility:

that is used exclusively for the transfer of commingled landscape waste and food scrap held at the site or facility for no longer than 24 hours after their receipt;

that is located entirely within a home rule unit having a population of either not less than 100,000 and not more than 115,000 according to the 2010 federal census or not less than 5,000 and not more than 10,000 according to the 2010 federal census;

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that is permitted, by the Agency, prior to January 1, 2002, for the transfer of landscape waste; and

for which a permit application is submitted to the Agency by July 1, 2014 to modify an existing permit for the transfer of landscape waste to also include, on a demonstration basis not to exceed 18 months, the transfer of commingled landscape waste and food scrap. [415 ILCS 5/3.330]

"Pollution control facility siting appeal" means an appeal of a decision made by a unit of local government filed with the Board pursuant to Section 40.1 of the Act.

"Postconsumer material" means *paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after the waste has been passed through its end usage as a consumer item, including used corrugated boxes, old newspapers, mixed waste paper, tabulating cards, and used cordage. Additionally, it includes all paper, paperboard, and other fibrous wastes that are diverted or separated from the municipal solid waste stream [415 ILCS 20/3(f)(2)(i) and (ii)].* (See also definition of "recycled paper" in this Section.)

"Prehearing conference" means a meeting held in an adjudicatory case to determine the status of the proceedings. A prehearing conference may also be a meeting held in a regulatory proceeding prior to the hearing, the purposes of which *shall be to maximize understanding of the intent and application of the proposal, if possible, and to attempt to identify and limit the issues of disagreement among participants to promote efficient use of time at hearing [415 ILCS 5/27(d)].* (See 35 Ill. Adm. Code 102.404 and 102.406.)

"Proceeding" means an action conducted before the Board pursuant to authority granted under Section 5 of the Act or as otherwise provided by law. Board proceedings are of two types: quasi-legislative (rulemaking and inquiry proceedings) and quasi-judicial (adjudicatory proceedings).

"Proponent" means any person, not including the Board or its staff, who submits a regulatory proposal to the Board for the adoption, amendment, or repeal of a regulation.

"Provisional variance" means a short term variance sought by an applicant and

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issued by the Agency pursuant to Section 35(b) of the Act. (See 35 Ill. Adm. Code 104.Subpart C.)

"Public comment" means information submitted to the Board during a pending proceeding either by oral statement made at hearing or written statement filed with the Board.

"Public remarks" mean an oral statement that is publicly made at a Board meeting and directed to the Board concerning a proceeding listed on that meeting's agenda. (See Section 101.110(d) of this Subpart.)

"PWSO Act" means the Public Water Supply Operations Act [415 ILCS 45].

"Qualitative description" means a narrative description pertaining to attributes and characteristics.

"Quantitative description" means a numerically based description pertaining to attributes and characteristics.

"RCRA variance" means a variance from a RCRA rule or a RCRA permit required pursuant to Section 21(f) of the Act.

"Record" means the official collection, as kept by the Clerk, of all documents and exhibits including pleadings, transcripts, and orders filed during the course of a proceeding.

"Recycled paper" means paper which contains at least 50% recovered paper material. The recovered paper material must contain at least 45% deinked stock or postconsumer material. (See also "postconsumer material" in this Section.)

"Regulatory hearing" or "proceeding" means a hearing or proceeding held pursuant to Title VII of the Act or other applicable law with respect to regulations.

"Regulatory relief mechanisms" means variances, provisional variances and adjusted standards. (See 35 Ill. Adm. Code 104.)

"Representing" means, for purposes of Part 130, *describing, depicting, containing, constituting, reflecting or recording* [415 ILCS 5/7.1].

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"Requester" means, for purposes of Part 130, the person seeking from the agency the material claimed or determined to be a trade secret (see 415 ILCS 5/7.1).

"Resource Conservation and Recovery Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.).

"Responsible Operator in Charge" means an individual who is designated as a Responsible Operator in Charge of a community water supply under Section 1 of the PWSO Act.

"Rulemaking" or "rulemaking proceeding" means a proceeding brought under Title VII of the Act or other applicable law for the purpose of adoption, amendment, or repeal of a regulation.

"Sanction" means a penalty or other mechanism used by the Board to provide incentives for compliance with the Board's procedural rules, Board orders or hearing officer orders. (See also Subpart H of this Part.)

"SDWA" means the federal Safe Drinking Water Act (42 USC 300f et seq.).

"Service" means delivery of a document upon a person. (See Sections 101.300(c) and 101.304 of this Part.)

"Service list" means the list of persons designated by the hearing officer or Clerk in a regulatory or adjudicatory proceeding upon whom parties or participants must serve motions, prefiled questions and prefiled testimony and any other documents that the parties or participants file with the Clerk unless the hearing officer otherwise directs. (See definition of "notice list" in this Section.) (See also 35 Ill. Adm. Code 102.422.)

"Severance" means the separation of a proceeding into two or more independent proceedings, each of which terminates in a separate, final judgment.

"Site-specific rule or regulation" means a proposed or adopted regulation, not of general applicability, that applies only to a specific facility, geographic site, or activity. (See 35 Ill. Adm. Code 102.208.)

"Sponsor" means the proponent of a pilot project that enters into an EMSA with

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the Agency.

"State enforcement proceeding" means an enforcement proceeding, other than a citizen's enforcement proceeding, that is brought pursuant to Section 31 of the Act.

"Stay" means a temporary suspension of the regular progress of a proceeding pursuant to an order of the Board or by operation of law. (See Section 101.514 of this Part.)

"Subpoena" means a command to appear at a certain time and place to give testimony upon a certain matter.

"Subpoena duces tecum" means a document that compels the production of specific documents and other items at a specified time and place.

"Summary judgment" means the disposition of an adjudicatory proceeding without hearing when the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (See Section 101.516 of this Part.)

"Third party complaint" means a pleading that a respondent files setting forth a claim against a person who is not already a party to the proceeding. (See 35 Ill. Adm. Code 103.206.)

"Trade secret" means *the whole or any portion or phase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.* [415 ILCS 5/3.490]

"Transcript" means the official recorded testimony from a hearing or public remarks from a Board meeting.

"USEPA" means the United States Environmental Protection Agency.

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"Underground storage tank appeal" or "UST appeal" means an appeal of an Agency final decision made pursuant to Title XVI of the Act.

"UST" means underground storage tank.

"Variance" means a temporary exemption from any specified regulation, requirement or order of the Board granted to a petitioner by the Board pursuant to Title IX of the Act *upon presentation of adequate proof that compliance with the rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship* [415 ILCS 5/35(a)].

"Waiver" means the intentional relinquishing of a known right, usually with respect to a hearing before the Board or entry of a Board decision within the decision period. (See also Section 101.308 of this Part.)

"Website" means the Board's computer-based informational and filing service accessed on the Internet at <http://www.ipcb.state.il.us>.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

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

Section 101.300 Computation of Time

- a) Computation of Time. Computation of any period of time prescribed in the Act, other applicable law, or this Subpart will begin with the first calendar day following the day on which the act, event or development occurs and will run until the close of business on the last day, or the next business day if the last day is a Saturday, Sunday or national or State legal holiday.
- b) Date of Filing. Documents will be considered filed with the Clerk only if they are filed in compliance with Section 101.302 and any other filing requirements specified elsewhere in the Board's procedural rules (see 35 Ill. Adm. Code 101 through 130). Subpart J sets forth when electronic documents submitted to COOL will be considered filed.
 - 1) If a document is submitted to the Clerk for filing in person, by U.S. Mail,

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by e-mail or facsimile pursuant to Section 101.302(d), or by third-party commercial carrier, the document is considered filed on the date it is received by the Clerk. However, a document received by the Clerk after 4:30 p.m. is considered filed on the next business day. The Clerk will mark the filing date on each filed document.

- 2) Notwithstanding subsection (b)(1), if the Clerk receives a document by U.S. Mail or third-party commercial carrier after a filing deadline date, the document will be deemed filed on:
 - A) The date the document was provided to the U.S. Postal Service; or
 - B) The date the document was provided to the third-party commercial carrier for delivery to the Clerk within three business days.
 - 3) For purposes of subsection (b)(2), documentation of when the document being filed was provided to the U.S. Postal Service or the third-party commercial carrier consists of the affidavit or certificate required by Section 101.304(d)(2)(A) or (d)(4) and must accompany the document being filed. In addition, for delivery by a third-party commercial carrier, the affidavit or certificate must contain the filing party's representation that the charge for delivery to the Clerk within three business days was prepaid.
 - 4) For purposes of Board decision deadlines, the decision period does not begin until the date marked by the Clerk on the initial filing.
- c) Date of Service. Documents will be considered served upon another party only if they are served in compliance with Section 101.304 and any other service requirements specified elsewhere in the Board's procedural rules. The date of service is determined as follows:
- 1) Personal Service. Personal service of a document is complete on the date the document was delivered, as specified in either the affidavit or certificate of service signed by the person who made personal delivery or the declaration of service signed by the process server who made personal delivery.

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- 2) Service by U.S. Mail or Third-Party Commercial Carrier with Recipient Signature. If a recipient's signature is recorded by the U.S. Postal Service or a third-party commercial carrier upon delivery of a document, service by U.S. Mail or a third-party commercial carrier is complete on the date the document was delivered, as specified in the delivery confirmation signed by the recipient of service.
 - 3) Service by E-Mail or Facsimile. Service of a document by e-mail or facsimile is complete on the date the document was successfully transmitted, as specified in the affidavit or certificate of service, signed by the party to the proceeding who is serving the document. However, a document successfully e-mailed or faxed on a Saturday or Sunday, on a national or State legal holiday, or after 5:00 p.m. on a weekday is deemed served on the next business day.
 - 4) Service by U.S. Mail or Third-Party Commercial Carrier without Recipient Signature. If a recipient's signature is not recorded by the U.S. Postal Service or a third-party commercial carrier upon delivery of a document, service by U.S. Mail or a third-party commercial carrier is presumed complete four days after the date the document was provided to the U.S. Postal Service or the third-party commercial carrier.
 - A) The presumption applies only if an affidavit or certificate of service, signed by the party to the proceeding who is serving the document, states the following: the date, the time by when, and the place where, the document was provided to the U.S. Postal Service or the third-party commercial carrier; the address appearing on the envelope or package containing the document; and that proper postage or the delivery charge was prepaid.
 - B) The presumption can be rebutted by proper proof, which may include delivery tracking information from the website of the U.S. Postal Service or the website of the third-party commercial carrier.
- d) Date of Board Decision.
- 1) For purposes of statutory decision deadline proceedings, the date of the Board decision is the date of the Board meeting where a final opinion and order of the Board was adopted by the vote of at least three Board

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members.

- 2) For purposes of appealing a final adjudicatory decision of the Board, the date of the party's certified mail receipt of the Board decision is the date of service of the final opinion and order by the Board upon the appealing party. Or, in the event of a timely filed motion for reconsideration filed pursuant to Section 101.520, the date of the party's certified mail receipt of the Board order ruling upon the motion is the date of service by the Board upon the appealing party.
- 3) For purposes of appealing a final rulemaking decision of the Board, the date of the participant's receipt of the Board decision is the date of service of the final opinion and order by the Board upon the appealing participant. Or, in the event of a timely filed motion for reconsideration filed pursuant to ~~Section 102.700 of~~ the Board's procedural rules (35 Ill. Adm. Code 102.700), the date of the participant's receipt of the Board order ruling upon the motion is the date of service by the Board upon the appealing participant.

(Source: Amended at 39 Ill. Reg. —_____, effective _____)

Section 101.302 Filing of Documents

- a) This Section contains the Board's general filing requirements. Additional requirements may exist for specific proceedings elsewhere in the Board's procedural rules (see 35 Ill. Adm. Code 101 through 130). The Clerk will refuse for filing any document that does not comply with the minimum requirements of this Section.
- b) All documents to be filed with the Board must be filed with the Clerk.
 - 1) Documents may be filed at the following address:

Pollution Control Board, Attn: Clerk
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218

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- 2) All documents filed with the Clerk must provide the name and signature of the person seeking to file the document and identify the name of the person on whose behalf the document is being filed. If a paper document is submitted for filing, the original must bear the original pen-and-ink signature of the person seeking to file the document. Signatures for purposes of electronic filings through COOL are addressed in Section 101.1010.
 - 3) Each document being filed with the Clerk (e.g., enforcement complaint, petition for review) must be accompanied by a notice of filing (see Appendix D) and documentation of service (see Section 101.304(d)).
 - 4) The date on which a document is considered to have been filed is determined pursuant to Section 101.300(b).
 - 5) Service of a document upon a hearing officer does not constitute filing with the Clerk unless the document is submitted to the hearing officer during the course of a hearing.
- c) Documents may be filed with the Clerk by U.S. Mail, by electronic means in accordance with Subpart ~~J~~ ~~of this Part~~, in person, or by third-party commercial carrier.
 - d) A filing by e-mail or facsimile will only be allowed with the prior approval of the Clerk of the Board or the hearing officer assigned to the proceeding. Any prior approval by the Clerk or hearing officer applies only to the specified filing.
 - e) The initial filings listed in this subsection require filing fees and will only be considered filed when accompanied by the appropriate fee. The fee may be paid in the form of government voucher, money order, or check made payable to the Illinois Pollution Control Board, or electronically through COOL in accordance with Section 101.1040(b)(1), but cannot be paid in cash.
- ~~1) 1) Petition for Site-Specific Regulation, \$75;~~
- 2) Petition for Variance, \$75;
 - 3) Petition for Review of Agency Permit Decision, UST Decision, or any other appeal filed pursuant to Section 40 of the Act, \$75;

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- 4) Petition to Review Pollution Control Facility Siting Decisions, pursuant to Section 40.1 of the Act, §75; and
- 5) Petition for Adjusted Standard, pursuant to Section 28.1 of the Act, §75.
- f) For each document filed with the Clerk, the filing party must serve a copy of the document upon the other parties and, if a hearing officer has been assigned, upon the hearing officer in accordance with Section 101.304.
- g) All documents filed with the Board must contain the relevant proceeding caption and docket number. All documents must be submitted on or formatted to print on 8½ x 11 inch paper, except as provided in subsection (j). Paper documents must be submitted on recycled paper as defined in Subpart B of this Part, and, if feasible, double sided. All pages in a document must be sequentially numbered. All documents created by word processing programs must be formatted as follows:
 - 1) The margins must each be a minimum one inch on the top, bottom, and both sides of the page; and
 - 2) The size of the type in the body of the text must be no less than 12 point font, and in footnotes no less than 10 point font.
- h) Unless the Board or its procedural rules provide otherwise, all documents must be filed in paper or through COOL electronically pursuant to this subsection (h).
 - 1) Except as provided in subsection (h)(2), (h)(3), or (h)(4):–
 - A) Any type of document may be filed in paper or through COOL.
 - B) If a document is filed in paper, the original and three copies of the document (four total) are required.
 - C) If a document is filed through COOL in accordance with Subpart J, no paper original or copy of the document is required.
 - 2) The original documents listed in this subsection (h)(2) must be filed in paper. In lieu of filing three paper copies with the original pursuant to

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subsection (h)(1)(B), a compact disk of the document in text-searchable Adobe PDF may be filed with the original. The following documents must be filed in paper:

- A) The original Agency record required by 35 Ill. Adm. Code 105.212 (permit decision or other final decision), 105.302 (CAAPP permit application), 105.410 (leaking UST decision), or 125.208 (recommendation on tax certification) (see 35 Ill. Adm. Code 105.116);
 - B) The original OSFM record required by 35 Ill. Adm. Code 105.508 (UST Fund eligibility and deductibility) (see 35 Ill. Adm. Code 105.116);
 - C) The original local siting authority record required by 35 Ill. Adm. Code 107.302 (pollution control facility siting) (see 35 Ill. Adm. Code 107.304); and
 - D) An original oversized exhibit (see subsection (j)).
- 3) A document containing information claimed or determined to be a trade secret, or other non-disclosable information pursuant to 35 Ill. Adm. Code 130, is prohibited from being filed electronically and must instead be filed only in paper. The version of the document that is redacted pursuant to 35 Ill. Adm. Code 130 may be filed through COOL.
- 4) When filing a rulemaking proposal, the proponent must file three paper originals of any document that is protected by copyright law (17 USC 101 et seq.) and proposed pursuant to Section 5-75 of the IAPA [5 ILCS 100/5-75] to be incorporated by reference; provided, however:
- A) One or two paper copies may be substituted for the corresponding number of required paper originals if the rulemaking proposal includes the copyright owner's written authorization for the rulemaking proponent to create the paper copy or copies.
 - B) The proponent may file no more than two authorized copies in lieu of the corresponding number of required originals.

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- C) Any copyrighted document that is proposed for incorporation by reference is prohibited from being filed electronically and must instead be filed only in paper. The remainder of the rulemaking proposal may be filed through COOL.
- i) No written discovery, including interrogatories, requests to produce, and requests for admission, or any response to written discovery, may be filed with the Clerk of the Board except upon leave or direction of the Board or hearing officer. Any discovery request under these rules to any nonparty must be filed with the Clerk of the Board in accordance with subsection (h).
- j) Oversized Exhibits. When reasonably practicable, oversized exhibits must be reduced to conform to or be formatted to print on 8½ x 11 inch paper for filing with the Clerk's Office. However, even when an oversized exhibit is so reduced or formatted, the original oversized exhibit still must be filed with the Clerk's Office. In accordance with 2 Ill. Adm. Code 2175.300, the original oversized exhibit may be returned to the person who filed it.
- k) Page Limitation. No motion, brief in support of motion, or brief may exceed 50 pages, and no amicus curiae brief may exceed 20 pages, without prior approval of the Board or hearing officer. These limits do not include appendices containing relevant material.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

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 and When to Initiate Service. A party filing a document with the Clerk pursuant to Section 101.302 must also serve one copy of the document upon each of the other parties to the adjudicatory proceeding and, if a hearing officer has been assigned, upon the assigned hearing officer. Service of a document must be initiated concurrently with submitting the document to the Clerk for filing. **!**

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- 1) Service of a document upon a party must be made upon a person authorized by law to receive service on behalf of the party. If a party is represented by an attorney who has filed an appearance, service upon the party is made by serving the document upon the party's attorney. If more than one attorney appears for a party, service upon one of the party's attorneys is sufficient.
 - 2) Each document being served (e.g., enforcement complaint, petition for review) must be accompanied by a notice of filing (see Appendix D) and a copy of the documentation of service (see subsection (d)).
 - 3) The date on which service of a document is considered to have been completed is determined pursuant to Section 101.300(c).
 - 4) A proceeding is subject to dismissal, and the filing party is subject to sanctions, if service is not timely initiated or completed.
 - 5) Whether service of a document was proper may be challenged by the party allegedly served. To avoid waiving the right to contest personal jurisdiction, any challenge to service must be made pursuant to Section 101.400(a)(5).
- c) Methods of Service. A document must be served in one of the following ways:
- 1) Except as provided in subsection (c)(2), service of documents may be made by any of the following methods:
 - A) Personal service;
 - B) U.S. Mail;
 - C) Third-party commercial carrier;
 - D) E-mail in accordance with Subpart J; and
 - E) Facsimile, but only if the party being served has filed a notice consenting to receipt of facsimile service and not filed a notice revoking that consent.

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- 2) Service of enforcement complaints and EMSA statements of deficiency upon respondents must be made as follows:
 - A) By personal service;
 - B) By U.S. Mail with a recipient's signature recorded by the U.S. Postal Service upon delivery; or
 - C) By a third-party commercial carrier with a recipient's signature recorded by the third-party commercial carrier upon delivery.
- 3) Service of administrative citations must be made as required under Part 108.
- d) Documentation of Service and When to File Documentation of Service. A party serving a document upon another party must also file documentation of that service. A proceeding is subject to dismissal, and the filing party is subject to sanctions, if documentation of service is not timely filed with the Clerk. Documenting service and filing that documentation must be done in one of the following ways:
 - 1) For personal service of a document, either an affidavit or certificate of service signed by the person who made personal delivery or a declaration of service signed by the process server who made personal delivery must accompany the document being filed with the Clerk. However, if the signed affidavit, certificate or declaration is not available to the filing party when the document (e.g., enforcement complaint, petition for review) is submitted for filing:
 - A) An affidavit or certificate of service, signed by the filing party, must accompany the document being filed with the Clerk. The affidavit or certificate of service must state that service has been initiated, but not yet completed, and the following: the date, the time by when, and the place where, the document was provided to the person making personal delivery; the address appearing on the envelope or package containing the document; and that the delivery charge was prepaid; and

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- B) Within seven days after it becomes available to the filing party, the affidavit or certificate of service containing the signature of the person who made personal delivery or the declaration of service containing the signature of the process server must be filed with the Clerk, accompanied by a notice identifying the filed document (e.g., enforcement complaint, petition for review) to which the signed affidavit, certificate or declaration corresponds. A copy of the signed affidavit, certificate, or declaration and the notice must be served pursuant to subsection (a).
- 2) For service of a document by U.S. Mail or third-party commercial carrier with a recipient's signature recorded by the U.S. Postal Service or the third-party commercial carrier upon delivery, the delivery confirmation containing the recipient's signature must accompany the document being filed with the Clerk. However, if the delivery confirmation containing the recipient's signature is not available to the filing party when the document (e.g., enforcement complaint, petition for review) is submitted for filing:
 - A) An affidavit or certificate of service, signed by the filing party, must accompany the document being filed with the Clerk. The affidavit or certificate of service must state that service has been initiated, but not yet completed, and the following: the date, the time by when, and the place where, the document was provided to the U.S. Postal Service or the third-party commercial carrier; the address appearing on the envelope or package containing the document; and that proper postage or the delivery charge was prepaid; and
 - B) Within seven days after it becomes available to the filing party, the delivery confirmation containing the recipient's signature must be filed with the Clerk, accompanied by a notice identifying the filed document (e.g., enforcement complaint, petition for review) to which the signed delivery confirmation corresponds. A copy of the delivery confirmation and the notice must be served pursuant to subsection (a) ~~of this Section~~.
- 3) For service of a document by e-mail or facsimile, an affidavit or certificate of service must accompany the document being filed with the Clerk. An affidavit or certificate of e-mail service must comply with Section

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101.1060. An affidavit or certificate of facsimile service must include the date and time of the facsimile transmission, the telephone number to which the transmission was sent, the number of pages transmitted, and a statement that the document was served by facsimile.

- 4) For service of a document by U.S. Mail or a third-party commercial carrier without a recipient's signature recorded by the U.S. Postal Service or the third-party commercial carrier upon delivery, an affidavit or certificate of service must accompany the document being filed with the Clerk. The affidavit or certificate must state the following: the date, the time by when, and the place where, the document was provided to the U.S. Postal Service or the third-party commercial carrier; the address appearing on the envelope or package containing the document; and that proper postage or the delivery charge was prepaid.
- 5) An affidavit of service must be notarized and is for use by a non-attorney. A certificate of service is for use by an attorney. Sample forms of an affidavit of service and a certificate of service are available in Appendices E and H.
- 6) A certificate of service must bear an attorney's handwritten or typographical signature. Signatures in affidavits of service, declarations of service, and delivery confirmations must be written by hand. A handwritten signature in documentation of service filed with the Clerk may be a facsimile or digitized electronic signature.
- e) Service of Amicus Curiae Briefs. Any person who files an amicus curiae 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 Agencies. Service must be at the addresses listed below unless a specific person has an appearance on file with the Board or has, in accordance with Section 101.1070, consented to e-mail service.

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- 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 Marshal (OSFM). The OSFM must be served at the following address:

Division of Petroleum and Chemical Safety
Office of the State Fire Marshal
1035 Stevenson Dr.
Springfield IL 62703
- 3) Service on the Illinois Attorney General. The Office of the Attorney General must be served at the following address:

Division Chief of Environmental Enforcement
Office of the Attorney General
100 West Randolph St., Suite 1200
Chicago IL 60601
- 4) Service on the Illinois Department of Natural Resources (DNR). DNR must be served at the following address:

Office of Legal Services
Illinois Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271
- 5) Service on the Illinois Department of Transportation (IDOT). IDOT must be served at the following address:

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

~~POLLUTION CONTROL BOARD~~

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Springfield IL 62764

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

USEPA, Region V
77 West Jackson
Chicago IL 60604

(Source: Amended at 39 Ill. Reg. ———, effective =—————)

SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

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

- a) Appearances. A person who is a party in a Board adjudicatory proceeding may appear as follows:
- 1) Individuals may appear on their own behalf or through an attorney-at-law licensed and registered to practice law. (See Section 1 of the Attorney Act [705 ILCS 205/1].)
 - 2) When appearing before the Board, any person other than individuals must appear through an attorney-at-law licensed and registered to practice law. (See Section 1 of the Corporation Practice of Law Prohibition Act [705 ILCS 220/1] and Section 1 of the Attorney Act [705 ILCS 205/1].)
 - 3) An out-of-state attorney may appear as counsel and provide legal services in a particular proceeding before the Board only if the attorney has permission to do so pursuant to Illinois Supreme Court Rule ~~707 (Ill. S. Ct. Rule 707)~~-707. No Board order is required for an out-of-state attorney to appear and no motions to appear pro hac vice need be filed with the Board. The out-of-state attorney's appearance must include the following:

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- A) A representation that the out-of-state attorney is in, and will maintain throughout the proceeding, compliance with ~~Illinois~~ Supreme Court Rule 707; and
 - B) Identification of the active status Illinois attorney associated with the out-of state attorney pursuant to Supreme Court Rule 707 and the date on which the active status Illinois attorney filed an appearance in the proceeding.
- 4) Any attorney appearing in a representative capacity must file a separate written appearance with the Clerk, together with documentation of service of the appearance pursuant to Section 101.304(d) and notice of filing of the appearance pursuant to Section 101.304(b)(2). Law firms, the Agency, and the Attorney General's Office when appearing before the Board must designate a lead attorney for purposes of phone and mail contact pertaining to the proceeding. Absent written notice, the Board will designate the attorney whose signature appears first on the party's first filing as the lead attorney.
- 5) Any person seeking to contest personal jurisdiction must do so by filing a motion with the Board in accordance with Section 2-301 of the Code of Civil Procedure [735 ILCS 5/2-301].
- b) Withdrawals. An attorney who has appeared in a representative capacity and who wishes to withdraw from that representation must file a notice of withdrawal with the Clerk, together with documentation of service and notice of filing on all parties or their representatives.
 - c) Substitution. Any attorney who substitutes for an attorney of record must file a written appearance pursuant to subsection (a). That appearance must identify the attorney for whom the substitution is made. However, no attorney will be considered withdrawn from a proceeding until a formal withdrawal is filed in accordance with subsection (b).
 - d) Any person may appear on behalf of himself or others in a rulemaking proceeding in accordance with 35 Ill. Adm. Code 102.100(b).

(Source: Amended at 39 Ill. Reg. ———, effective ———)

~~POLLUTION CONTROL BOARD~~

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SUBPART J: ELECTRONIC FILING AND E-MAIL SERVICE

Section 101.1060 E-Mail Service

- a) Except as provided in subsections (b) and (c), a person required to serve a document may serve the document by e-mail, in lieu of serving a paper document, if the recipient has consented to e-mail service in the proceeding and has not revoked the consent. (See Section ~~101.1070 of this Subpart~~ 101.1070.) To serve a document by e-mail, it is not necessary to electronically file the document or to obtain a State of Illinois digital signature certificate.
- b) Service of enforcement complaints and EMSA statements of deficiency on a respondent must be made personally, by U.S. Mail with a recipient's signature recorded, or by a third-party commercial carrier with a recipient's signature recorded. (See Section 101.304(c)(2) ~~of this Part~~.)
- c) Service of administrative citations must be made as required under ~~Part 35 Ill.~~ Adm. Code 108.
- d) A person required to serve a document on the hearing officer may serve the hearing officer by sending the document to the hearing officer's e-mail address in lieu of serving a paper document.
- e) When a document is served by e-mail, documentation of service must be filed with the Clerk and served on all persons entitled to service in that proceeding. A sample form of affidavit or certificate of e-mail service is available in Appendix H. An affidavit or certificate of e-mail service must include the following:
 - 1) The e-mail address of the recipient and the person authorizing the filing;
 - 2) The number of pages in the e-mail transmission;
 - 3) A statement that the document was served by e-mail; and
 - 4) The date of the e-mail transmission and the time by when it took place.

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- f) If any computer malfunction precludes the e-mail service of a document, the person authorizing the filing must promptly serve the document in paper pursuant to Section 101.304(c).

- g) Except for final adjudicatory orders of the Board, which the Clerk's Office serves in paper by certified mail, the Clerk's Office may serve Board orders and hearing officer orders by e-mail, in lieu of serving paper documents, if the recipient has consented to e-mail service in the proceeding and has not revoked the consent. (See Section 101.1070.) The Clerk will record the date and time of e-mail service, consistent with subsection (e) of this Section.

(Source: ~~Added~~Amended at 39 Ill. Reg. _____, effective _____)

~~POLLUTION CONTROL BOARD~~

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Section 101.APPENDIX A Captions

Section 101.ILLUSTRATION J Administrative Citation Under Section 23.1 of the Public Water Supply Operations Act

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC xx-xxx
)	IEPA Number
JOHN SMITH,)	(Administrative Citation)
)	
Respondent.)	

(Source: ~~Added~~Old Illustration J renumbered to Illustration K and new Illustration J added at 39 Ill. Reg. , effective)

~~ILLINOIS REGISTER~~ JCAR350101-1507791r01

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

Section 101.APPENDIX A Captions

Section 101.ILLUSTRATION K General Rulemaking

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
REVISION OF THE FLUORIDE) Rxx-xxx
DRINKING WATER STANDARD:) (Rulemaking-X)
PROPOSED AMENDMENTS TO)
35 Ill. Adm. Code XXX.XXX)

(Source: ~~Amended~~Illustration K renumbered from Illustration J at 39 Ill.
Reg. , effective)

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

Section 101.APPENDIX A Captions

Section 101.ILLUSTRATION L Site-specific Rulemaking

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED SITE SPECIFIC WATER)	Rxx-xxx
POLLUTION REGULATIONS)	(Site-Specific Rulemaking-X)
APPLICABLE TO XYZ)	
UTILITIES COMPANY OF ILLINOIS)	
DISCHARGE TO XYZ CREEK:)	
35 Ill. Adm. Code)	

BOARD NOTE: The Board notes that all docket numbers consist of letter(s) followed by two numbers. The first two digit number is the fiscal year the matter was filed. Then the second number is the sequential number for that type of filing the Board has received that year. Persons making filings are not responsible for the Board docket number on the original filing. The Clerk of the Board will assign the appropriate docket number when the matter is filed. All filings in a matter that has been assigned a docket number should contain a docket number located as indicated on the examples above. The Board will also be designating its opinion and orders with the type of case and media involved in the matter. Where the above examples have the type of case followed by "X", the Board will, for example if the case is dealing with a variance from certain water regulations, put the media, water, after variance to become "Variance-Water". Again, persons making filings need not place this on original filings. However, all filings in a matter that has been assigned the media should indicate that media in the location as in the above examples. Where there are specific procedural rules developed for specific types of cases, as in a "UST Appeal", persons making filings should follow those examples.

(Source: ~~Amended~~Illustration L renumbered from Illustration K and amended at 39 Ill. Reg. , effective)

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

Section 101.APPENDIX E Affidavit or Certificate of Service

Section 101.ILLUSTRATION A Service by Non-Attorney

AFFIDAVIT OF SERVICE

I, the undersigned, on oath [or affirmation] state that I have served on the date of _____, the attached [describe document served] upon the following persons by [describe method of service, e.g., depositing the document in a U.S. Postal Service mailbox or delivering the document to a third-party commercial carrier], by the time of _____, with proper postage or delivery charges prepaid:

[list persons served and the respective addresses at which they were served]

[signature]

Notary Seal

SUBSCRIBED AND SWORN TO BEFORE ME this _____ day of _____, 20__.

~~SUBSCRIBED AND SWORN TO BEFORE ME this _____ day of _____, 20__.~~

~~Notary Public~~

Notary Public

(Source: Amended at 39 Ill. Reg. _____, effective _____)

~~ILLINOIS REGISTER~~ JCAR350101-1507791r01

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

Section 101.APPENDIX E Affidavit or Certificate of Service

Section 101.ILLUSTRATION B Service by Attorney

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served on the date of _____ the attached [describe document served] upon the following persons by [describe method of service, e.g., depositing the document in a U.S. Postal Service mailbox or delivering the document to a third-party commercial carrier], by the time of _____, with proper postage or delivery charges prepaid:

[list persons served and the respective addresses at which they were served]

[signature]

[date]

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Document comparison by Workshare Compare on Tuesday, June 02, 2015
9:19:24 AM

Input:	
Document 1 ID	file:///I:\Input\Agency Rulemakings - Files Received\2015\05May2015\35-101-Agency-delta-(issue23).docx
Description	35-101-Agency-delta-(issue23)
Document 2 ID	file:///I:\Input\Agency Rulemakings - Files Received\2015\05May2015\35-101-JCARr01(issue23).docx
Description	35-101-JCARr01(issue23)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	61
Deletions	58
Moved from	0
Moved to	0
Style change	0
Format, changed	0
Total changes	119

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE A: GENERAL PROVISIONS
3 CHAPTER I: POLLUTION CONTROL BOARD
4

5 PART 101
6 GENERAL RULES
7

8 SUBPART A: GENERAL PROVISIONS
9

10	Section	
11	101.100	Applicability
12	101.102	Severability
13	101.104	Repeals
14	101.106	Board Authority
15	101.108	Board Proceedings
16	101.110	Public Participation
17	101.111	Informal Recordings of Board Meetings
18	101.112	Bias and Conflict of Interest
19	101.114	Ex Parte Communications

20
21 SUBPART B: DEFINITIONS
22

23	Section	
24	101.200	Definitions Contained in the Act
25	101.202	Definitions for Board's Procedural Rules

26
27 SUBPART C: COMPUTATION OF TIME, FILING, SERVICE
28 OF DOCUMENTS, AND STATUTORY DECISION DEADLINES
29

30	Section	
31	101.300	Computation of Time
32	101.302	Filing of Documents
33	101.304	Service of Documents
34	101.306	Incorporation of Documents from Another Proceeding
35	101.308	Statutory Decision Deadlines and Waiver of Deadlines

36
37 SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION
38

39	Section	
40	101.400	Appearances, Withdrawals, and Substitutions of Attorneys in Adjudicatory 41 Proceedings
42	101.402	Intervention of Parties
43	101.403	Joinder of Parties

RECEIVED
CLERK'S OFFICE
JUN 05 2015
STATE OF ILLINOIS
Pollution Control Board

44 101.404 Agency as a Party in Interest
45 101.406 Consolidation of Claims
46 101.408 Severance of Claims

47

48

SUBPART E: MOTIONS

49

50 Section

51 101.500 Filing of Motions and Responses
52 101.502 Motions Directed to the Hearing Officer
53 101.504 Contents of Motions and Responses
54 101.506 Motions Attacking the Sufficiency of the Petition, Complaint, or Other Pleading
55 101.508 Motions to Board Preliminary to Hearing
56 101.510 Motions to Cancel Hearing
57 101.512 Motions for Expedited Review
58 101.514 Motions to Stay Proceedings
59 101.516 Motions for Summary Judgment
60 101.518 Motions for Interlocutory Appeal from Hearing Officer Orders
61 101.520 Motions for Reconsideration
62 101.522 Motions for Extension of Time

63

64

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

65

66 Section

67 101.600 Hearings
68 101.602 Notice of Board Hearings
69 101.604 Formal Board Transcript
70 101.606 Informal Recordings of the Proceedings
71 101.608 Default
72 101.610 Duties and Authority of the Hearing Officer
73 101.612 Schedule to Complete the Record
74 101.614 Production of Information
75 101.616 Discovery
76 101.618 Admissions
77 101.620 Interrogatories
78 101.622 Subpoenas and Depositions
79 101.624 Examination of Adverse, Hostile or Unwilling Witnesses
80 101.626 Information Produced at Hearing
81 101.628 Statements from Participants
82 101.630 Official Notice
83 101.632 Viewing of Premises

84

85

SUBPART G: ORAL ARGUMENT

86

87 Section
88 101.700 Oral Argument

89
90 SUBPART H: SANCTIONS
91

92 Section
93 101.800 Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing
94 Officer Orders
95 101.802 Abuse of Discovery Procedures
96

97 SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS
98

99 Section
100 101.902 Motions for Reconsideration
101 101.904 Relief from Final Opinions and Orders
102 101.906 Judicial Review of Board Orders
103 101.908 Interlocutory Appeal
104

105 SUBPART J: ELECTRONIC FILING AND E-MAIL SERVICE
106

107 Section
108 101.1000 Electronic Filing and E-Mail Service
109 101.1010 Electronic Filing Authorization and Signatures
110 101.1020 Filing Electronic Documents
111 101.1030 Form of Electronic Documents for Filing
112 101.1040 Filing Fees
113 101.1050 Documents Required in Paper or Excluded from Electronic Filing
114 101.1060 E-Mail Service
115 101.1070 Consenting to Receipt of E-Mail Service
116

117 101.APPENDIX A Captions

118 101.ILLUSTRATION A Enforcement Case
119 101.ILLUSTRATION B Citizen's Enforcement Case
120 101.ILLUSTRATION C Variance
121 101.ILLUSTRATION D Adjusted Standard Petition
122 101.ILLUSTRATION E Joint Petition for an Adjusted Standard
123 101.ILLUSTRATION F Permit Appeal
124 101.ILLUSTRATION G Underground Storage Tank Appeal
125 101.ILLUSTRATION H Pollution Control Facility Siting Appeal
126 101.ILLUSTRATION I Administrative Citation
127 101.ILLUSTRATION J Administrative Citation Under Section 23.1 of the Public
128 Water Supply Operations Act
129 101.ILLUSTRATION KJ General Rulemaking

- 130 101.ILLUSTRATION ~~LK~~ Site-specific Rulemaking
- 131 101.APPENDIX B Appearance Form
- 132 101.APPENDIX C Withdrawal of Appearance Form
- 133 101.APPENDIX D Notice of Filing
- 134 101.APPENDIX E Affidavit or Certificate of Service
- 135 101.ILLUSTRATION A Service by Non-Attorney
- 136 101.ILLUSTRATION B Service by Attorney
- 137 101.APPENDIX F Notice of Withdrawal (Repealed)
- 138 101.APPENDIX G Comparison of Former and Current Rules (Repealed)
- 139 101.APPENDIX H Affidavit or Certificate of E-Mail Service
- 140 101.ILLUSTRATION A E-Mail Service by Non-Attorney
- 141 101.ILLUSTRATION B E-Mail Service by Attorney
- 142 101.APPENDIX I Consent to Receipt of E-Mail Service

143
 144 AUTHORITY: Implementing Sections 5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40,
 145 40.1, 40.2, 41, and 58.7 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.1, 7.2, 26,
 146 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7] and authorized by Sections 26
 147 and 27 of the Act [415 ILCS 5/26 and 27] and Section 25-101 of the Electronic Commerce
 148 Security Act [5 ILCS 175/25-101].

149
 150 SOURCE: Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; Part
 151 repealed, new Part adopted in R88-5A at 13 Ill. Reg. 12055, effective July 10, 1989; amended in
 152 R90-24 at 15 Ill. Reg. 18677, effective December 12, 1991; amended in R92-7 at 16 Ill. Reg.
 153 18078, effective November 17, 1992; old Part repealed, new Part adopted in R00-20 at 25 Ill.
 154 Reg. 446, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8743, effective June 8,
 155 2005; amended in R06-9 at 29 Ill. Reg. 19666, effective November 21, 2005; amended in R07-
 156 17 at 31 Ill. Reg. 16110, effective November 21, 2007; amended in R10-22 at 34 Ill. Reg. 19566,
 157 effective December 3, 2010; amended in R12-22 at 36 Ill. Reg. 9211, effective June 7, 2012;
 158 amended in R13-9 at 37 Ill. Reg. 1655, effective January 28, 2013; amended in R14-21 at 39 Ill.
 159 Reg. 2276, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. _____, effective
 160 _____.

161
 162 SUBPART A: GENERAL PROVISIONS

163
 164 **Section 101.100 Applicability**

- 165
- 166 a) This Part sets forth the rules generally applicable to proceedings before the
- 167 Illinois Pollution Control Board (Board), and should be read in conjunction with
- 168 procedural rules for the Board's specific proceedings~~proeesses~~, found at 35 Ill.
- 169 Adm. Code 102 through 130, and the Board's Administrative Rules, found at 2 Ill.
- 170 Adm. Code 2175. In the event of a conflict between the rules of this Part and
- 171 those found in subsequent Parts, the more specific requirement applies.
- 172

- 173 b) ~~Except when the Board's procedural rules provide otherwise, the~~The provisions of
174 the Code of Civil Procedure [735 ILCS 5] and the Supreme Court Rules [Ill. S.
175 Ct. Rules] do not expressly apply to proceedings before the Board. However, the
176 Board may look to the Code of Civil Procedure and the Supreme Court Rules for
177 guidance ~~when~~where the Board's procedural rules are silent.
178

179 (Source: Amended at 39 Ill. Reg. _____, effective _____)
180

181 SUBPART B: DEFINITIONS
182

183 **Section 101.202 Definitions for Board's Procedural Rules**
184

185 Unless otherwise provided in 35 Ill. Adm. Code 101-130, or unless a different meaning of a
186 word or term is clear from the context, the following definitions also apply to the Board's
187 procedural rules, found in 35 Ill. Adm. Code 101 through 130:
188

189 "Act" means the Environmental Protection Act [415 ILCS 5/].
190

191 "Adjudicatory proceeding" means an action of a quasi-judicial nature brought
192 before the Board pursuant to authority granted to the Board under Section 5(d) of
193 the Act or as otherwise provided by law. Adjudicatory proceedings include
194 enforcement, variance, permit appeal, pollution control facility siting appeal,
195 Underground Storage Tank (UST) Fund determination, water well set back
196 exception, adjusted standard, and administrative citation proceedings.
197 Adjudicatory proceedings do not include regulatory, quasi-legislative, or
198 informational proceedings.
199

200 "Adjusted standard" or "AS" means an alternative standard granted by the Board
201 in an adjudicatory proceeding pursuant to Section 28.1 of the Act and 35 Ill. Adm.
202 Code 104.Subpart D. The adjusted standard applies instead of the rule or
203 regulation of general applicability.
204

205 "Administrative citation" or "AC" means a citation issued pursuant to Section
206 31.1 of the Act by the Agency, or by a unit of local government acting as the
207 Agency's delegate. ~~(See 35 Ill. Adm. Code 108.)~~ pursuant to Section 4(r) of the
208 Act.
209

210 "Administrative citation review" or "administrative citation appeal" means a
211 petition for review of an administrative citation filed pursuant to Section 31.1(d)
212 of the Act. (See 35 Ill. Adm. Code 108.)
213

214 "Affidavit" means a sworn, signed statement witnessed by a notary public.
215

216 "Affidavit of service" means an affidavit that states that service of a document
217 upon specified persons was made, and the manner in which, and date upon which,
218 service was made.

219
220 "Agency" means the Illinois Environmental Protection Agency as established by
221 Section 4 of the Act.

222
223 "Agency recommendation" means the document filed by the Agency pursuant to
224 Sections 37(a) and 28.1(d)(3) of the Act in which the Agency provides its
225 recommended disposition of a petition for variance or an adjusted standard. This
226 includes a recommendation to deny, or a recommendation to grant with or without
227 conditions. (See 35 Ill. Adm. Code 104.218 and 104.416.)

228
229 "Amicus curiae brief" means a brief filed in a proceeding by any interested person
230 who is not a party. (See Sections 101.110 and 101.628 of this Part.)

231
232 "Applicant" means any person who submits, or has submitted, an application for a
233 permit or for local siting approval pursuant to any of the authorities to issue
234 permits or granting of siting approval identified in Sections 39, 39.1, and 39.5 of
235 the Act.

236
237 "Article" means *any object, material, device or substance, or whole or partial*
238 *copy thereof, including any writing, record, document, recording, drawing,*
239 *sample, specimen, prototype, model, photograph, culture, microorganism,*
240 *blueprint or map* [415 ILCS 5/7.1].

241
242 "Attorney General" means the Attorney General of the State of Illinois or
243 representatives thereof.

244
245 "Authorized representative" means any person who is authorized to act on behalf
246 of another person.

247
248 "Board" means the Illinois Pollution Control Board as created in Section 5 of the
249 Act or, if applicable, its designee.

250
251 "Board decision" means an opinion or an order voted in favor of by at least three
252 members of the Board at an open Board meeting except in a proceeding to remove
253 a seal under Section 34(d) of the Act.

254
255 "Board designee" means an employee of the Board who has been given authority
256 by the Board to carry out a function for the Board (e.g., the Clerk, Assistant Clerk
257 of the Board, or hearing officer).

258

259 "Board meeting" means an open meeting held by the Board pursuant to Section
260 5(a) of the Act in which the Board makes its decisions and determinations.
261
262 "Board's procedural rules" means the Board's regulations set forth at 35 Ill. Adm.
263 Code 101 through 130.
264
265 "Brief" means a written statement that contains a summary of the facts of a
266 proceeding, the pertinent laws, and an argument of how the law applies to the
267 facts supporting a position.
268
269 "CAAPP" means the Clean Air Act Permit Program, as adopted in Section 39.5 of
270 the Act.
271
272 "Certificate of acceptance" means a certification, executed by a successful
273 petitioner in a variance proceeding, in which the petitioner agrees to be bound by
274 all terms and conditions that the Board has affixed to the grant of variance.
275
276 "Chairman" means the Chairman of the Board designated by the Governor
277 pursuant to Section 5(a) of the Act.
278
279 "Citizen's enforcement proceeding" means an enforcement action brought before
280 the Board pursuant to Section 31(d) of the Act by any person who is not
281 authorized to bring the action on behalf of the People of the State of Illinois.
282
283 "Clean Air Act" or "CAA" means the federal *Clean Air Act, as now and hereafter*
284 *amended, 42 USC 7401 et seq. [415 ILCS 5/39.5]*
285
286 "Clean Water Act" means the federal Clean Water Act, 33 USC 1251 et seq.
287
288 "Clerk" means the Clerk of the Board.
289
290 "Clerk's Office On-Line" or "COOL" means the Board's web-based file
291 management system that allows electronic filing of and access to electronic
292 documents in the records of the Board's adjudicatory and regulatory proceedings.
293 COOL is located on the Board's website at [http://www.ipcb.state.il.us/COOL/](http://www.ipcb.state.il.us/COOL/external/)
294 [external/](http://www.ipcb.state.il.us/COOL/external/).
295
296 "Complaint" means the initial filing that begins an enforcement proceeding
297 pursuant to Section 31 of the Act and 35 Ill. Adm. Code 103.
298
299 "Compliance plan" means a detailed description of a program designed to achieve
300 compliance with the Act and Board regulations.
301

302 "Copy" means *any facsimile, replica, photograph or other reproduction of an*
303 *article, and any note, drawing or sketch made of or from an article* [415 ILCS
304 5/7.1].
305

306 "Counter-complaint" means a pleading that a respondent files setting forth a claim
307 against a complainant. (See 35 Ill. Adm. Code 103.206.)
308

309 "Cross-complaint" means a pleading that a party files setting forth a claim against
310 a co-party. (See 35 Ill. Adm. Code 103.206.)
311

312 "Cross-media impacts" means impacts that concern multiple environmental areas,
313 such as air, land and/or water.
314

315 "Decision date" means the date of the Board meeting immediately preceding the
316 decision deadline.
317

318 "Decision deadline" means the last day of any decision period, as established by
319 law, within which the Board is required to render a decision in an adjudicatory
320 proceeding. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1
321 of the Act that establish 120-day decision deadlines for variances, permit appeals,
322 and review of pollution control facility siting decisions respectively.)
323

324 "Decision period" means the period of time established by the Act within which
325 the Board is required to make a Board decision in certain adjudicatory
326 proceedings. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1
327 of the Act that establish 120-day decision deadlines for variances, permit appeals,
328 and review of pollution control facility siting decisions, respectively.)
329

330 "Deinked stock" means *paper that has been processed to remove inks, clays,*
331 *coatings, binders and other contaminants* [415 ILCS 20/2.1].
332

333 "Delegated unit" means the unit of local government to which the Agency has
334 delegated its administrative citation or other function pursuant to Section 4(r) of
335 the Act.
336

337 "Digital signature" means *a type of electronic signature created by transforming*
338 *an electronic document using a message digest function and encrypting the*
339 *resulting transformation with an asymmetric cryptosystem using the signer's*
340 *private key such that any person having the initial untransformed electronic*
341 *document, the encrypted transformation, and the signer's corresponding public*
342 *key can accurately determine whether the transformation was created using the*
343 *private key that corresponds to the signer's public key and whether the initial*
344 *electronic document has been altered since the transformation was made. A*

345 *digital signature is a security device. [5 ILCS 175/5-105]*
346

347 "Discovery" means a pre-hearing process that can be used to obtain facts and
348 information about the adjudicatory proceeding in order to prepare for hearing.
349 The discovery tools include depositions upon oral and written questions, written
350 interrogatories, production of documents or things, and requests for admission.
351

352 "DNR" means the Illinois Department of Natural Resources.
353

354 "DOA" means the Illinois Department of Agriculture.
355

356 "Duplicative" means the matter is identical or substantially similar to one brought
357 before the Board or another forum.
358

359 "Electronic" includes *electrical, digital, magnetic, optical, electromagnetic, or*
360 *any other form of technology that entails capabilities similar to these technologies*
361 *[5 ILCS 175/5-105].*
362

363 "Electronic document" means any notice, information, or filing generated,
364 communicated, received or stored by electronic means to use in an information
365 system or to transmit from one information system to another. (See 5 ILCS
366 175/5-105.)
367

368 "Electronic signature" means *a signature in electronic form attached to or*
369 *logically associated with an electronic document [5 ILCS 175/5-105].*
370

371 "Environmental Management System Agreement" or "EMSA" means the
372 agreement between the Agency and a sponsor, entered into under Section 52.3 of
373 the Act and 35 Ill. Adm. Code 187, that describes the innovative environmental
374 measures to be implemented, schedules to attain goals, and mechanisms for
375 accountability.
376

377 "Enforcement proceeding" means an adjudicatory proceeding brought upon a
378 complaint filed pursuant to Section 31 of the Act by the Attorney General, State's
379 Attorney, or other persons, in which the complaint alleges violation of the Act,
380 any rule or regulation adopted under the Act, any permit or term or condition of a
381 permit, or any Board order.
382

383 "EPRR Act" means the Electronic Products Recycling and Reuse Act [415 ILCS
384 150].
385

386 "Ex parte communication" means *any written or oral communication by any*
387 *person that imparts or requests material information or makes a material*

388 *argument regarding potential action concerning regulatory, quasi-adjudicatory,*
389 *investment, or licensing matters pending before or under consideration by the*
390 *Board. "Ex parte communication" does not include the following:*

391
392 *statements by a person publicly made in a public forum, including*
393 *pleadings, transcripts, public comments, and public remarks made part of*
394 *the proceeding's record [5 ILCS 430/5-50(b)(i)];*

395
396 *statements regarding matters of procedure and practice, such as format,*
397 *the number of copies required, the manner of filing, and the status of a*
398 *matter [5 ILCS 430/5-50(b)(ii)]; and*

399
400 *statements made by a State employee of the Board to Board members or*
401 *other employees of the Board [5 ILCS 430/5-50(b)(iii)]. For purposes of*
402 *this definition, "Board employee" means a person the Board employs on a*
403 *full-time, part-time, contract or intern basis. (See Section 101.114 of this*
404 *Part.)*

405
406 "Fast Track rulemaking" means a Clean Air Act rulemaking conducted pursuant
407 to Section 28.5 of the Act.

408
409 "Federally required rule" means *a rule that is needed to meet the requirements of*
410 *the federal Clean Water Act, Safe Drinking Water Act, Clean Air Act (including*
411 *required submission of a State Implementation Plan), or Resource Conservation*
412 *and Recovery Act, other than a rule required to be adopted under subsection (c)*
413 *of Section 13, Section 13.3, Section 17.5, subsection (a) or (d) of Section 22.4, or*
414 *subsection (a) of Section 22.40 [415 ILCS 5/28.2].*

415
416 "Filing" means the act of delivering a document or article into the custody of the
417 Clerk with the intention of incorporating that document or article into the record
418 of a proceeding before the Board. The Clerk's Office is located at 100 West
419 Randolph Street, Suite 11-500, Chicago IL 60601. Electronic filing is done
420 through COOL on the Board's website.

421
422 "Final order" means an order of the Board that terminates the proceeding leaving
423 nothing further to litigate or decide and that is subject to judicial review. (See
424 Subpart I of this Part.)

425
426 "Frivolous" means a request for relief that the Board does not have the authority
427 to grant, or a complaint that fails to state a cause of action upon which the Board
428 can grant relief.

429
430 "Hearing" means a public proceeding conducted by a hearing officer where the

431 parties and other interested persons, as provided for by law and the Board's
432 procedural rules, present evidence and argument regarding their positions.
433

434 "Hearing officer" means a person licensed to practice law in the State of Illinois
435 who presides over hearings and otherwise carries out record development
436 responsibilities as directed by the Board.
437

438 "IAPA" means the Illinois Administrative Procedure Act [5 ILCS 100].
439

440 "Identical-in-substance rules" or "identical-in-substance regulations" means *State*
441 *regulations which require the same actions with respect to protection of the*
442 *environment, by the same group of affected persons, as would federal regulations*
443 *if USEPA administered the subject program in Illinois* [415 ILCS 5/7.2].
444

445 "Initial filing" means the filing that initiates a Board proceeding and opens a
446 docket. For instance, the initial filing in an enforcement proceeding is the
447 complaint; in a permit appeal it is a petition for review; and in a regulatory
448 proceeding it is the proposal.
449

450 "Innovative environmental measures" means any procedures, practices,
451 technologies or systems that pertain to environmental management and are
452 expected to improve environmental performance when applied. (See 35 Ill. Adm.
453 Code 106.Subpart G.)
454

455 "Inquiry hearing" means a hearing conducted by the Board for the purpose of
456 seeking input and comment from the public regarding the need for a rulemaking
457 proceeding in a specific area.
458

459 "Interlocutory appeal" means an appeal of a Board decision to the appellate court
460 that is not dispositive of all the contested issues in the proceeding. (See Section
461 101.908 of this Part.) An interlocutory appeal may also be the appeal of a hearing
462 officer ruling to the Board. (See Section 101.518 of this Part.)
463

464 "Intervenor" means a person, not originally a party to an adjudicatory proceeding,
465 who voluntarily participates as a party in the proceeding with the leave of the
466 Board. (See Section 101.402 of this Part.)
467

468 "Intervention" means the procedure by which a person, not originally a party to an
469 adjudicatory proceeding, voluntarily comes into the proceeding as a party with the
470 leave of the Board. (See Section 101.402 of this Part.)
471

472 "JCAR" means the Illinois General Assembly's Joint Committee on
473 Administrative Rules established by the IAPA (see 5 ILCS 100/5-90).

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"Joinder" means the procedure by which the Board adds a person, not originally a party to an adjudicatory proceeding, as a party to the proceeding. (See Section 101.403 of this Part and 35 Ill. Adm. Code 103.206.)

"Misnomer" means a mistake in name, giving an incorrect name in a complaint or other document with respect to any properly included party.

"Motion" means a request made to the Board or the hearing officer for the purposes of obtaining a ruling or order directing or allowing some act to be done in favor of the movant. (See definition of "movant" in this Section.)

"Movant" means the person who files a motion.

"New pollution control facility" means *a pollution control facility initially permitted for development or construction after July 1, 1981; or the area of expansion beyond the boundary of a currently permitted pollution control facility; or a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste* [415 ILCS 5/3.330(b)].

"Non-disclosable information" means *information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; information concerning secret manufacturing processes or confidential data submitted by any person under the Act* [415 ILCS 5/7(a)].

"Notice list" means the list of persons in a regulatory proceeding who will receive all Board opinions and orders and all hearing officer orders. Persons on a notice list generally do not receive copies of motions, public comments, or testimony. (See definition of "service list" in this Section.) (See also 35 Ill. Adm. Code 102.422.)

"Notice to reinstate" means a document filed that recommences the decision period after a decision deadline waiver has been filed. The notice will give the Board a full decision period in which to make a decision. (See Section 101.308 of this Part.)

"Oral argument" means a formal verbal statement of advocacy on a proceeding's legal questions made at a Board meeting with the Board's permission. (See Section 101.700 of this Part.)

"OSFM" means Office of the State Fire Marshal.

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"OSFM appeal" means an appeal of an OSFM final decision concerning eligibility and deductibility made pursuant to Title XVI of the Act.

"Participant" means any person, not including the Board or its staff, who takes part in an adjudicatory proceeding who is not a party, or a person who takes part in a regulatory or other quasi-legislative proceeding before the Board. A person becomes a participant in any of several ways, including filing a comment, being added to the notice list of a particular proceeding, testifying at hearing, or making public remarks at a Board meeting.

"Participant in a CAAPP Comment Process" means a person who takes part in a Clean Air Act Permit Program (CAAPP) permit hearing before the Agency or comments on a draft CAAPP permit.

"Party" means the person by or against whom an adjudicatory proceeding is brought or who is granted party status by the Board through intervention or joinder.

"Party in interest" means the Agency when asked to conduct an investigation pursuant to Section 30 of the Act during an ongoing proceeding. (See Section 101.404 of this Part.)

"Peremptory rulemaking" means *any rulemaking that is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions that preclude compliance with the general rulemaking requirements of Section 5-40 of the IAPA and that preclude the exercise by the Board as to the content of the rule it is required to adopt.* [5 ILCS 100/5-50]

"Permit appeal" means an adjudicatory proceeding brought before the Board pursuant to Title X of the Act.

"Person" means *any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.* [415 ILCS 5/3.315]

"Petition" means the initial filing in an adjudicatory proceeding other than an enforcement proceeding, including permit appeals, OSFM appeals, UST appeals, appeals of pollution control facility siting decisions, variances and adjusted standards.

"Pilot project" means an innovative environmental project that covers one or more

560 designated facilities, designed and implemented in the form of an EMSA. (See
561 Section 52.3 of the Act.)

562
563 "Pollution control facility" means *any waste storage site, sanitary landfill, waste*
564 *disposal site, waste transfer station, waste treatment facility, or waste incinerator.*
565 *This includes sewers, sewage treatment plants, and any other facilities owned or*
566 *operated by sanitary districts organized under the Metropolitan Water*
567 *Reclamation District Act. The following are not pollution control facilities:*

568
569 *waste storage sites regulated under 40 CFR 761.42;*

570
571 *sites or facilities used by any person conducting a waste storage, waste*
572 *treatment, waste disposal, waste transfer or waste incineration operation,*
573 *or a combination thereof, for wastes generated by such person's own*
574 *activities, when such wastes are stored, treated, disposed of, transferred*
575 *or incinerated within the site or facility owned, controlled or operated by*
576 *such person, or when such wastes are transported within or between sites*
577 *or facilities owned, controlled or operated by such person;*

578
579 *sites or facilities at which the State is performing removal or remedial*
580 *action pursuant to Section 22.2 or 55.3 of the Act;*

581
582 *abandoned quarries used solely for the disposal of concrete, earth*
583 *materials, gravel, or aggregate debris resulting from road construction*
584 *activities conducted by a unit of government or construction activities due*
585 *to the construction and installation of underground pipes, lines, conduit or*
586 *wires off of the premises of a public utility company which are conducted*
587 *by a public utility;*

588
589 *sites or facilities used by any person to specifically conduct a landscape*
590 *composting operation;*

591
592 *regional facilities as defined in the Central Midwest Interstate Low-Level*
593 *Radioactive Waste Compact;*

594
595 *the portion of a site or facility where coal combustion wastes are stored or*
596 *disposed of in accordance with subdivision (r)(2) or (r)(3) of Section 21 of*
597 *the Act;*

598
599 *the portion of a site or facility used for the collection, storage or*
600 *processing of waste tires as defined in Title XIV;*

601
602 *the portion of a site or facility used for treatment of petroleum*

603 *contaminated materials by application onto or incorporation into the soil*
604 *surface and any portion of that site or facility used for storage of*
605 *petroleum contaminated materials before treatment. Only those*
606 *categories of petroleum listed in Section 57.9(a)(3) of the Act are exempt*
607 *under this definition;*

608
609 *the portion of a site or facility where used oil is collected or stored prior*
610 *to shipment to a recycling or energy recovery facility, provided that the*
611 *used oil is generated by households or commercial establishments, and the*
612 *site or facility is a recycling center or a business where oil or gasoline is*
613 *sold at retail;*

614
615 *processing sites or facilities that receive only on-specification used oil, as*
616 *defined in 35 Ill. Adm. Code 739, originating from used oil collectors for*
617 *processing that is managed under 35 Ill. Adm. Code 739 to produce*
618 *products for sale to off-site petroleum facilities, if these processing sites or*
619 *facilities are:*

620
621 *located within a home rule unit of local government with a*
622 *population of at least 30,000 according to the 2000 federal census,*
623 *that home rule unit of local government has been designated as an*
624 *Urban Round II Empowerment Zone by the United States*
625 *Department of Housing and Urban Development, and that home*
626 *rule unit of local government has enacted an ordinance approving*
627 *the location of the site or facility and provided funding for the site*
628 *or facility; and*

629
630 *in compliance with all applicable zoning requirements;*

631
632 *the portion of a site or facility utilizing coal combustion waste for*
633 *stabilization and treatment of only waste generated on that site or facility*
634 *when used in connection with response actions pursuant to the federal*
635 *Comprehensive Environmental Response, Compensation, and Liability Act*
636 *of 1980, the federal Resource Conservation and Recovery Act of 1976, or*
637 *the Illinois Environmental Protection Act or as authorized by the Agency;*

638
639 *the portion of a site or facility that accepts exclusively general*
640 *construction or demolition debris, is located in a county with a population*
641 *over 3,000,000 as of January 1, 2000 or in a county that is contiguous to*
642 *such a county, and is operated and located in accordance with Section*
643 *22.38 of the Act;*

644
645 *the portion of a site or facility, located within a unit of local government*

646 *that has enacted local zoning requirements, used to accept, separate, and*
647 *process uncontaminated broken concrete, with or without protruding*
648 *metal bars, provided that the uncontaminated broken concrete and metal*
649 *bars are not speculatively accumulated, are at the site or facility no longer*
650 *than one year after their acceptance, and are returned to the economic*
651 *mainstream in the form of raw materials or products;*

652
653 *the portion of a site or facility located in a county with a population over*
654 *3,000,000 that has obtained local siting approval under Section 39.2 of*
655 *the Act for a municipal waste incinerator on or before July 1, 2005 and*
656 *that is used for a non-hazardous waste transfer station;*

657
658 *effective January 1, 2008, a site or facility that temporarily holds in transit*
659 *for 10 days or less, non-putrescible solid waste in original containers, no*
660 *larger in capacity than 500 gallons, provided that such waste is further*
661 *transferred to a recycling, disposal, treatment, or storage facility on a*
662 *non-contiguous site and provided such site or facility complies with the*
663 *applicable 10-day transfer requirements of the federal Resource*
664 *Conservation and Recovery Act of 1976 and United States Department of*
665 *Transportation hazardous material requirements. For purposes of this*
666 *Section only, "non-putrescible solid waste" means waste other than*
667 *municipal garbage that does not rot or become putrid, including, but not*
668 *limited to, paints, solvent, filters, and absorbents;*

669
670 *the portion of a site or facility located in a county with a population*
671 *greater than 3,000,000 that has obtained local siting approval, under*
672 *Section 39.2 of the Act, for a municipal waste incinerator on or before*
673 *July 1, 2005 and that is used for wood combustion facilities for energy*
674 *recovery that accept and burn only wood material, as included in a fuel*
675 *specification approved by the Agency;*

676
677 *a transfer station used exclusively for landscape waste, including a*
678 *transfer station where landscape waste is ground to reduce its volume,*
679 *where the landscape waste is held no longer than 24 hours from the time it*
680 *was received;*

681
682 *the portion of a site or facility that is used for the composting of food*
683 *scrap, livestock waste, crop residue, uncontaminated wood waste, or*
684 *paper waste, including, but not limited to, corrugated paper or cardboard,*
685 *and meets all of the following requirements:*
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there must not be more than a total of 30,000 cubic yards of livestock waste in raw form or in the process of being composted at the site or facility at any one time;

all food scrap, livestock waste, crop residue, uncontaminated wood waste, and paper waste must, by the end of each operating day, be processed and placed into an enclosed vessel in which air flow and temperature are controlled, or all of the following additional requirements must be met:

the portion of the site or facility used for the composting operation must include a setback of at least 200 feet from the nearest potable water supply well;

the portion of the site or facility used for the composting operation must be located outside the boundary of the 10-year floodplain or floodproofed;

except in municipalities with more than 1,000,000 inhabitants, the portion of the site or facility used for the composting operation must be located at least one-eighth of a mile from the nearest residence, other than a residence located on the same property as the site or facility;

the portion of the site or facility used for the composting operation must be located at least one-eighth of a mile from the property line of all of the following areas:

facilities that primarily serve to house or treat people that are immunocompromised or immunosuppressed, such as cancer or AIDS patients; people with asthma, cystic fibrosis, or bioaerosol allergies; or children under the age of one year;

primary and secondary schools and adjacent areas that the schools use for recreation;

any facility for child care licensed under Section 3 of the Child Care Act of 1969; preschools; and adjacent areas that the facilities or preschools use for recreation;

730 *by the end of each operating day, all food scrap, livestock*
731 *waste, crop residue, uncontaminated wood waste, and*
732 *paper waste must be processed into windrows or other*
733 *piles and covered in a manner that prevents scavenging by*
734 *birds and animals and that prevents other nuisances;*

735
736 *food scrap, livestock waste, crop residue, uncontaminated wood*
737 *waste, paper waste, and compost must not be placed within 5 feet*
738 *of the water table;*

739
740 *the site or facility must meet all of the requirements of the Wild*
741 *and Scenic Rivers Act (16 USC 1271 et seq.);*

742
743 *the site or facility must not restrict the flow of a 100-year flood,*
744 *result in washout of food scrap, livestock waste, crop residue,*
745 *uncontaminated wood waste, or paper waste from a 100-year*
746 *flood, or reduce the temporary water storage capacity of the 100-*
747 *year floodplain, unless measures are undertaken to provide*
748 *alternative storage capacity, such as by providing lagoons, holding*
749 *tanks, or drainage around structures at the facility;*

750
751 *the site or facility must not be located in any area where it may*
752 *pose a threat of harm or destruction to the features for which:*

753
754 *an irreplaceable historic or archaeological site has been*
755 *listed under the National Historic Preservation Act (16*
756 *USC 470 et seq.) or the Illinois Historic Preservation Act*
757 *[20 ILCS 3410];*

758
759 *a natural landmark has been designated by the National*
760 *Park Service or the Illinois State Historic Preservation*
761 *Office; or*

762
763 *a natural area has been designated as a Dedicated Illinois*
764 *Nature Preserve under the Illinois Natural Areas*
765 *Preservation Act [525 ILCS 30];*

766
767 *the site or facility must not be located in an area where it may*
768 *jeopardize the continued existence of any designated endangered*
769 *species, result in the destruction or adverse modification of the*
770 *critical habitat for such species, or cause or contribute to the*
771 *taking of any endangered or threatened species of plant, fish, or*
772 *wildlife listed under the Endangered Species Act (16 USC 1531 et*

773 *seq.) or the Illinois Endangered Species Protection Act [520 ILCS*
774 *10];*

775
776 *the portion of a site or facility that is located entirely within a home rule*
777 *unit having a population no less than 120,000 and no more than 135,000,*
778 *according to the 2000 federal census, and that meets all of the following*
779 *requirements:*

780
781 *the portion of the site or facility is used exclusively to perform*
782 *testing of a thermochemical conversion technology using only*
783 *woody biomass, collected as landscape waste within the*
784 *boundaries of the home rule unit, as the hydrocarbon feedstock for*
785 *the production of synthetic gas in accordance with Section 39.9 of*
786 *the Act;*

787
788 *the portion of the site or facility is in compliance with all*
789 *applicable zoning requirements; and*

790
791 *a complete application for a demonstration permit at the portion of*
792 *the site or facility has been submitted to the Agency in accordance*
793 *with Section 39.9 of the Act within one year after July 27, 2010*
794 *(the effective date of Public Act 96-1314);*

795
796 *the portion of a site or facility used to perform limited testing of a*
797 *gasification conversion technology in accordance with Section 39.8 of the*
798 *Act and for which a complete permit application has been submitted to the*
799 *Agency prior to one year from April 9, 2010 (the effective date of Public*
800 *Act 96-887);*

801
802 *the portion of a site or facility that it used to incinerate only*
803 *pharmaceuticals from residential sources that are collected and*
804 *transported by law enforcement agencies under Section 17.9A of the Act;*
805 *and*

806
807 *until July 1, 2017, the portion of a site or facility:*

808
809 *that is used exclusively for the transfer of commingled landscape*
810 *waste and food scrap held at the site or facility for no longer than*
811 *24 hours after their receipt;*

812
813 *that is located entirely within a home rule unit having a population*
814 *of either not less than 100,000 and not more than 115,000*

815 *according to the 2010 federal census or not less than 5,000 and*
816 *not more than 10,000 according to the 2010 federal census;*

817
818 *that is permitted, by the Agency, prior to January 1, 2002, for the*
819 *transfer of landscape waste; and*

820
821 *for which a permit application is submitted to the Agency by July*
822 *1, 2014 to modify an existing permit for the transfer of landscape*
823 *waste to also include, on a demonstration basis not to exceed 18*
824 *months, the transfer of commingled landscape waste and food*
825 *scrap. [415 ILCS 5/3.330]*

826
827 "Pollution control facility siting appeal" means an appeal of a decision made by a
828 unit of local government filed with the Board pursuant to Section 40.1 of the Act.

829
830 "Postconsumer material" means *paper, paperboard, and fibrous wastes from*
831 *retail stores, office buildings, homes, and so forth, after the waste has been*
832 *passed through its end usage as a consumer item, including used corrugated*
833 *boxes, old newspapers, mixed waste paper, tabulating cards, and used cordage.*
834 *Additionally, it includes all paper, paperboard, and other fibrous wastes that are*
835 *diverted or separated from the municipal solid waste stream [415 ILCS*
836 *20/3(f)(2)(i) and (ii)]. (See also definition of "recycled paper" in this Section.)*

837
838 "Prehearing conference" means a meeting held in an adjudicatory case to
839 determine the status of the proceedings. A prehearing conference may also be a
840 meeting held in a regulatory proceeding prior to the hearing, the purposes of
841 which *shall be to maximize understanding of the intent and application of the*
842 *proposal, if possible, and to attempt to identify and limit the issues of*
843 *disagreement among participants to promote efficient use of time at hearing [415*
844 *ILCS 5/27(d)]. (See 35 Ill. Adm. Code 102.404 and 102.406.)*

845
846 "Proceeding" means an action conducted before the Board pursuant to authority
847 granted under Section 5 of the Act or as otherwise provided by law. Board
848 proceedings are of two types: quasi-legislative (rulemaking and inquiry
849 proceedings) and quasi-judicial (adjudicatory proceedings).

850
851 "Proponent" means any person, not including the Board or its staff, who submits a
852 regulatory proposal to the Board for the adoption, amendment, or repeal of a
853 regulation.

854
855 "Provisional variance" means a short term variance sought by an applicant and
856 issued by the Agency pursuant to Section 35(b) of the Act. (See 35 Ill. Adm.
857 Code 104.Subpart C.)

858
859 "Public comment" means information submitted to the Board during a pending
860 proceeding either by oral statement made at hearing or written statement filed
861 with the Board.
862
863 "Public remarks" mean an oral statement that is publicly made at a Board meeting
864 and directed to the Board concerning a proceeding listed on that meeting's agenda.
865 (See Section 101.110(d) of this Subpart.)
866
867 "PWSO Act" means the Public Water Supply Operations Act [415 ILCS 45].
868
869 "Qualitative description" means a narrative description pertaining to attributes and
870 characteristics.
871
872 "Quantitative description" means a numerically based description pertaining to
873 attributes and characteristics.
874
875 "RCRA variance" means a variance from a RCRA rule or a RCRA permit
876 required pursuant to Section 21(f) of the Act.
877
878 "Record" means the official collection, as kept by the Clerk, of all documents and
879 exhibits including pleadings, transcripts, and orders filed during the course of a
880 proceeding.
881
882 "Recycled paper" means paper which contains at least 50% recovered paper
883 material. The recovered paper material must contain at least 45% deinked stock
884 or postconsumer material. (See also "postconsumer material" in this Section.)
885
886 ~~"Registered agent" means a person registered with the Secretary of State for the~~
887 ~~purpose of accepting service for any entity, or a person otherwise authorized in~~
888 ~~writing as an agent for the purpose of accepting service for that entity.~~
889
890 "Regulatory hearing" or "proceeding" means a hearing or proceeding held
891 pursuant to Title VII of the Act or other applicable law with respect to
892 regulations.
893
894 "Regulatory relief mechanisms" means variances, provisional variances and
895 adjusted standards. (See 35 Ill. Adm. Code 104.)
896
897 "Representing" means, for purposes of Part 130, *describing, depicting,*
898 *containing, constituting, reflecting or recording* [415 ILCS 5/7.1].
899
900 "Requester" means, for purposes of Part 130, the person seeking from the agency

901 the material claimed or determined to be a trade secret (see 415 ILCS 5/7.1).
902
903 "Resource Conservation and Recovery Act" or "RCRA" means the Solid Waste
904 Disposal Act, as amended by the Resource Conservation and Recovery Act of
905 1976 (42 USC 6901 et seq.).
906
907 "Responsible Operator in Charge" means an individual who is designated as a
908 Responsible Operator in Charge of a community water supply under Section 1 of
909 the PWSO Act.
910
911 "Rulemaking" or "rulemaking proceeding" means a proceeding brought under
912 Title VII of the Act or other applicable law for the purpose of adoption,
913 amendment, or repeal of a regulation.
914
915 "Sanction" means a penalty or other mechanism used by the Board to provide
916 incentives for compliance with the Board's procedural rules, Board orders or
917 hearing officer orders. (See also Subpart H of this Part.)
918
919 "SDWA" means the federal Safe Drinking Water Act (42 USC 300f et seq.).
920
921 "Service" means delivery of a ~~document~~ documents upon a person. (See Sections
922 101.300(c) and 101.304 of this Part.)
923
924 "Service list" means the list of persons designated by the hearing officer or Clerk
925 in a regulatory or adjudicatory proceeding upon whom parties or participants must
926 serve motions, prefiled questions and prefiled testimony and any other documents
927 that the parties or participants file with the Clerk unless the hearing officer
928 otherwise directs. (See definition of "notice list" in this Section.) (See also 35 Ill.
929 Adm. Code 102.422.)
930
931 "Severance" means the separation of a proceeding into two or more independent
932 proceedings, each of which terminates in a separate, final judgment.
933
934 "Site-specific rule or regulation" means a proposed or adopted regulation, not of
935 general applicability, that applies only to a specific facility, geographic site, or
936 activity. (See 35 Ill. Adm. Code 102.208.)
937
938 "Sponsor" means the proponent of a pilot project that enters into an EMSA with
939 the Agency.
940
941 "State enforcement proceeding" means an enforcement proceeding, other than a
942 citizen's enforcement proceeding, that is brought pursuant to Section 31 of the
943 Act.

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"Stay" means a temporary suspension of the regular progress of a proceeding pursuant to an order of the Board or by operation of law. (See Section 101.514 of this Part.)

"Subpoena" means a command to appear at a certain time and place to give testimony upon a certain matter.

"Subpoena duces tecum" means a document that compels the production of specific documents and other items at a specified time and place.

"Summary judgment" means the disposition of an adjudicatory proceeding without hearing when the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (See Section 101.516 of this Part.)

"Third party complaint" means a pleading that a respondent files setting forth a claim against a person who is not already a party to the proceeding. (See 35 Ill. Adm. Code 103.206.)

"Trade secret" means *the whole or any portion or phase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.* [415 ILCS 5/3.490]

"Transcript" means the official recorded testimony from a hearing or public remarks from a Board meeting.

"USEPA" means the United States Environmental Protection Agency.

"Underground storage tank appeal" or "UST appeal" means an appeal of an Agency final decision made pursuant to Title XVI of the Act.

"UST" means underground storage tank.

"Variance" means a temporary exemption from any specified regulation, requirement or order of the Board granted to a petitioner by the Board pursuant to Title IX of the Act *upon presentation of adequate proof that compliance with the*

987 *rule or regulation, requirement or order of the Board would impose an arbitrary*
988 *or unreasonable hardship [415 ILCS 5/35(a)].*

989
990 "Waiver" means the intentional relinquishing of a known right, usually with
991 respect to a hearing before the Board or entry of a Board decision within the
992 decision period. (See also Section 101.308 of this Part.)

993
994 "Website" means the Board's computer-based informational and filing service
995 accessed on the Internet at <http://www.ipcb.state.il.us>.

996
997 (Source: Amended at 39 Ill. Reg. _____, effective _____)
998

999 SUBPART C: COMPUTATION OF TIME, FILING, SERVICE
1000 OF DOCUMENTS, AND STATUTORY DECISION DEADLINES

1001
1002 **Section 101.300 Computation of Time**

- 1003
1004 a) Computation of Time. Computation of any period of time prescribed in the Act,
1005 other applicable law, or this Subpart will begin with the first calendar day
1006 following the day on which the act, event or development occurs and will run
1007 until the close of business on the last day, or the next business day if the last day
1008 is a Saturday, Sunday or national or State legal holiday.
- 1009
1010 b) DateTime of Filing. Documents will be considered filed with the Clerk only
1011 ifwhen they are filed in compliance withconformance with the requirements found
1012 in Section 101.302-of this Subpart and any other filing requirements specified
1013 elsewhere in the Board's procedural rules (see 35 Ill. Adm. Code 101
1014 through130). Subpart J-of this Part sets forth when electronic documents
1015 submitted to COOL will be considered filed.
- 1016
1017 1) If a document is submitted to the Clerk for filingdelivered in person, by
1018 messenger service, or by mail delivery service other than U.S. Mail, by e-
1019 mail or facsimile pursuant to Section 101.302(d), or by third-party
1020 commercial carrier, the document isdocuments are considered filed on the
1021 date it iswhen they are received byin the Office of the Clerk. However, a
1022 document received by the Clerk after 4:30 p.m. is considered filed on the
1023 next business day. The Clerk will mark the filing date on each filed
1024 document.
- 1025
1026 2) Notwithstanding subsection (b)(1), ifH the Clerk receives a document by
1027 U.S. Mail or third-party commercial carrier aftersubsequent to a filing
1028 deadline date, yet the postmark date precedes or is the same as the filing
1029 deadline date, the document will be deemed filed on;

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A) The the postmark date the document was provided to the U.S. Postal Service; or

B) The date the document was provided to the third-party commercial carrier for delivery to the Clerk within three business days; provided all filing requirements set forth in Section 101.302 of this Subpart are met.

3) For purposes of subsection (b)(2), documentation of when the document being filed was provided to the U.S. Postal Service or the third-party commercial carrier consists of the affidavit or certificate required by Section 101.304(d)(2)(A) or (d)(4) and must accompany the document being filed. In addition, for delivery by a third-party commercial carrier, the affidavit or certificate must contain the filing party's representation that the charge for delivery to the Clerk within three business days was prepaid. Documents received in the Office of the Clerk after 4:30 p.m. will be marked as filed the following business day, provided all filing requirements set forth in Section 101.302 of this Subpart are met. The Clerk will record the appropriate filing date on all filed documents.

4) For purposes of Board decision deadlines, the decision period does not begin until the date marked by the Clerk on which the initial filing is date-stamped by the Clerk.

c) Date/Time of Service. Documents will be considered served upon another party only if they are served in compliance with Section 101.304 and any other service requirements specified elsewhere in the Board's procedural rules. The date of service is determined as follows: In the case of personal service, service is deemed complete on the date personal delivery was effectuated. In the case of facsimile transmission, service is deemed complete on the date of a complete and proper transmittal. Facsimile filings are only allowed in accordance with Section 101.302(d) of this Subpart. In the case of service by e-mail, Section 101.1060(d) of this Part sets forth when service is deemed complete. E-mail filings are only allowed in accordance with Section 101.302(d) of this Subpart. In the case of service by registered or certified mail, or by messenger service, service is deemed complete on the date specified on the registered or certified mail receipt or the messenger service receipt. In the case of service by U.S. Mail, service is presumed complete four days after mailing. The presumption can be rebutted by proper proof.

1) Personal Service. Personal service of a document is complete on the date the document was delivered, as specified in either the affidavit or

1073 certificate of service signed by the person who made personal delivery or
1074 the declaration of service signed by the process server who made personal
1075 delivery.
1076

1077 2) Service by U.S. Mail or Third-Party Commercial Carrier with Recipient
1078 Signature. If a recipient's signature is recorded by the U.S. Postal Service
1079 or a third-party commercial carrier upon delivery of a document, service
1080 by U.S. Mail or a third-party commercial carrier is complete on the date
1081 the document was delivered, as specified in the delivery confirmation
1082 signed by the recipient of service.
1083

1084 3) Service by E-Mail or Facsimile. Service of a document by e-mail or
1085 facsimile is complete on the date the document was successfully
1086 transmitted, as specified in the affidavit or certificate of service, signed by
1087 the party to the proceeding who is serving the document. However, a
1088 document successfully e-mailed or faxed on a Saturday or Sunday, on a
1089 national or State legal holiday, or after 5:00 p.m. on a weekday is deemed
1090 served on the next business day.
1091

1092 4) Service by U.S. Mail or Third-Party Commercial Carrier without
1093 Recipient Signature. If a recipient's signature is not recorded by the U.S.
1094 Postal Service or a third-party commercial carrier upon delivery of a
1095 document, service by U.S. Mail or a third-party commercial carrier is
1096 presumed complete four days after the date the document was provided to
1097 the U.S. Postal Service or the third-party commercial carrier.
1098

1099 A) The presumption applies only if an affidavit or certificate of
1100 service, signed by the party to the proceeding who is serving the
1101 document, states the following: the date, the time by when, and
1102 the place where the document was provided to the U.S. Postal
1103 Service or the third-party commercial carrier; the address
1104 appearing on the envelope or package containing the document;
1105 and that proper postage or the delivery charge was prepaid.
1106

1107 B) The presumption can be rebutted by proper proof, which may
1108 include delivery tracking information from the website of the U.S.
1109 Postal Service or the website of the third-party commercial carrier.
1110

1111 d) Date of Board Decision.

1112
1113 1) For purposes of statutory decision deadline proceedings, the date of the
1114 Board decision is the date of the Board meeting where a final opinion and
1115 order of the Board was adopted by the vote of at least three Board

1116 members.

1117

1118 2) For purposes of appealing a final adjudicatory decision of the
1119 Board, the date of the party's certified mail receipt of the Board
1120 decision is the date of service of the final opinion and order by the Board
1121 upon the appealing party. Or, in the event of a timely filed motion for
1122 reconsideration filed pursuant to Section 101.520 of this Part, the date of
1123 the party's certified mail receipt of the Board order ruling upon the motion
1124 is the date of service by the Board upon the appealing party.

1125

1126 3) For purposes of appealing a final rulemaking decision of the Board, the
1127 date of the participant's receipt of the Board decision is the date of service
1128 of the final opinion and order by the Board upon the appealing
1129 participant. Or, in the event of a timely filed motion for reconsideration
1130 filed pursuant to the Board's procedural rules (35 Ill. Adm. Code 102.700),
1131 the date of the participant's receipt of the Board order ruling upon the
1132 motion is the date of service by the Board upon the appealing participant.

1133

1134 (Source: Amended at 39 Ill. Reg. _____, effective _____)

1135

1136 **Section 101.302 Filing of Documents**

1137

1138 a) This Section contains the Board's general filing requirements. Additional
1139 requirements may exist for specific proceedings elsewhere in the Board's
1140 procedural rules (see 35 Ill. Adm. Code 101 through 130). The Clerk will refuse
1141 for filing any document that does not comply with the minimum requirements of
1142 this Section.

1143

1144 b) All documents to be filed with the Board must be filed with the Clerk. ~~provide the~~
1145 ~~name and signature of the person seeking to file the document and identify the~~
1146 ~~name of the person on whose behalf the document is being filed. If a paper~~
1147 ~~document is submitted for filing, the original must bear the original pen and ink~~
1148 ~~signature of the person seeking to file the document. Signatures for purposes of~~
1149 ~~electronic filings through COOL are addressed in Section 101.1010 of this Part.~~
1150 All documents to be filed with the Board must be filed with the Clerk's Office.
1151 Service on a hearing officer does not constitute filing with the Board unless the
1152 document is submitted to the hearing officer during the course of a hearing.

1153

1154 1) Documents may be filed at the following address:

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1156 Pollution Control Board, Attn: Clerk
1157 100 West Randolph Street
1158 James R. Thompson Center, Suite 11-500

1159 Chicago, Illinois 60601-3218

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- 2) All documents filed with the Clerk must provide the name and signature of the person seeking to file the document and identify the name of the person on whose behalf the document is being filed. If a paper document is submitted for filing, the original must bear the original pen-and-ink signature of the person seeking to file the document. Signatures for purposes of electronic filings through COOL are addressed in Section 101.1010.
- 3) Each document being filed with the Clerk (e.g., enforcement complaint, petition for review) must be accompanied by a notice of filing (see Appendix D) and documentation of service (see Section 101.304(d)).
- 4) The date on which a document is considered to have been filed is determined pursuant to Section 101.300(b).
- 5) Service of a document upon a hearing officer does not constitute filing with the Clerk unless the document is submitted to the hearing officer during the course of a hearing.
- c) Documents may be filed with the Clerk by U.S. Mail ~~or other mail delivery service~~, by electronic means in accordance with Subpart J ~~of this Part~~, in person, or by third-party commercial carrier/messenger.
- d) A filing by e-mail or facsimile will only be allowed with the prior approval of the Clerk of the Board or the hearing officer assigned to the proceeding. Any prior approval by the Clerk or hearing officer applies only to the specified filing.
- e) The initial filings listed in this subsection require filing fees and will only be considered filed when accompanied by the appropriate fee. The fee may be paid in the form of government voucher, money order, or check made payable to the Illinois Pollution Control Board, or electronically through COOL in accordance with Section 101.1040(b)(1) ~~of this Part~~, but cannot be paid in cash.
 - 1) Petition for Site-Specific Regulation, \$75;
 - 2) Petition for Variance, \$75;
 - 3) Petition for Review of Agency Permit Decision, UST Decision, or any other appeal filed pursuant to Section 40 of the Act, \$75;
 - 4) Petition to Review Pollution Control Facility Siting Decisions, pursuant to

Section 40.1 of the Act, §75; and

5) Petition for Adjusted Standard, pursuant to Section 28.1 of the Act, §75.

f) For each document~~All documents~~ filed with the Clerk, the filing party must serve a copy of the document upon the other parties and, if a hearing officer has been assigned, upon the hearing officer~~be served~~ in accordance with Section 101.304~~Subpart C of this Part~~.

g) All documents filed with the Board must contain the relevant proceeding caption and docket number. All documents must be submitted on or formatted to print on 8½ x 11 inch paper, except as provided in subsection (j)~~of this Section~~. Paper documents must be submitted on recycled paper as defined in Subpart B of this Part, and, if feasible, double sided. All pages in a document must be sequentially numbered. All documents created by word processing programs must be formatted as follows:

1) The margins must each be a minimum one inch on the top, bottom, and both sides of the page; and

2) The size of the type in the body of the text must be no less than 12 point font, and in footnotes no less than 10 point font.

h) Unless the Board or its procedural rules provide otherwise, all documents must be filed in paper or through COOL electronically pursuant to this subsection (h).

1) Except as provided in subsection (h)(2), (h)(3), or (h)(4)~~of this Section~~:

A) Any type of document may be filed in paper or through COOL.

B) If a document is filed in paper, the original and three copies of the document (four total) are required.

C) If a document is filed through COOL in accordance with Subpart J ~~of this Part~~, no paper original or copy of the document is required.

2) The original documents listed in this subsection (h)(2) must be filed in paper. In lieu of filing three paper copies with the original pursuant to subsection (h)(1)(B)~~of this Section~~, a compact disk of the document in text-searchable Adobe PDF may be filed with the original. The following documents must be filed in paper:

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- A) The original Agency record required by 35 Ill. Adm. Code 105.212 (permit decision or other final decision), 105.302 (CAAPP permit application), 105.410 (leaking UST decision), or 125.208 (recommendation on tax certification) (see 35 Ill. Adm. Code 105.116);
 - B) The original OSFM record required by 35 Ill. Adm. Code 105.508 (UST Fund eligibility and deductibility) (see 35 Ill. Adm. Code 105.116);
 - C) The original local siting authority record required by 35 Ill. Adm. Code 107.302 (pollution control facility siting) (see 35 Ill. Adm. Code 107.304); and
 - D) An original oversized exhibit (see subsection (j) of this Section).
- 3) A document containing information claimed or determined to be a trade secret, or other non-disclosable information pursuant to 35 Ill. Adm. Code 130, is prohibited from being filed electronically and must instead be filed only in paper. The version of the document that is redacted pursuant to 35 Ill. Adm. Code 130 may be filed through COOL.
- 4) When filing a rulemaking proposal, the proponent must file three paper originals of any document that is protected by copyright law (17 USC 101 et seq.) and proposed pursuant to Section 5-75 of the IAPA [5 ILCS 100/5-75] to be incorporated by reference; provided, however:
- A) One or two paper copies may be substituted for the corresponding number of required paper originals if the rulemaking proposal includes the copyright owner's written authorization for the rulemaking proponent to create the paper copy or copies.
 - B) The proponent may file no more than two authorized copies in lieu of the corresponding number of required originals.
 - C) Any copyrighted document that is proposed for incorporation by reference is prohibited from being filed electronically and must instead be filed only in paper. The remainder of the rulemaking proposal may be filed through COOL.
- i) No written discovery, including interrogatories, requests to produce, and requests for admission, or any response to written discovery, may be filed with the Clerk of the Board except upon leave or direction of the Board or hearing officer. Any

discovery request under these rules to any nonparty must be filed with the Clerk of the Board in accordance with subsection (h) ~~of this Section.~~

- j) Oversized Exhibits. When reasonably practicable, oversized exhibits must be reduced to conform to or be formatted to print on 8½ x 11 inch paper for filing with the Clerk's Office. However, even when an oversized exhibit is so reduced or formatted, the original oversized exhibit still must be filed with the Clerk's Office. In accordance with 2 Ill. Adm. Code 2175.300, the original oversized exhibit may be returned to the person who filed it.
- k) Page Limitation. No motion, brief in support of motion, or brief may exceed 50 pages, and no amicus curiae brief may exceed 20 pages, without prior approval of the Board or hearing officer. These limits do not include appendices containing relevant material.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

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 and When to Initiate Service. A party filing a document with the Clerk pursuant to Section 101.302 must also serve one copy of the document upon each of the other parties to the adjudicatory proceeding and, if a hearing officer has been assigned, upon the assigned hearing officer. Service of a document must be initiated concurrently with submitting the document to the Clerk for filing. ~~Parties in Board adjudicatory proceedings are responsible for service of all documents they file with the Clerk's Office. Documentation of service of initial filings must be filed with the Board upon completion of service.~~
 - 1) Service of a document upon a party must be made upon a person authorized by law to receive service on behalf of the party. If a party is represented by an attorney who has filed an appearance, service upon the party is made by serving the document upon the party's attorney. If more than one attorney appears for a party, service upon one of the party's attorneys is sufficient.
 - 2) Each document being served (e.g., enforcement complaint, petition for review) must be accompanied by a notice of filing (see Appendix D) and a copy of the documentation of service (see subsection (d)).

- 1330 3) The date on which service of a document is considered to have been
1331 completed is determined pursuant to Section 101.300(c).
1332
- 1333 4) A proceeding is subject to dismissal, and the filing party is subject to
1334 sanctions, if service is not timely initiated or completed.
1335
- 1336 5) Whether service of a document was proper may be challenged by the party
1337 allegedly served. To avoid waiving the right to contest personal
1338 jurisdiction, any challenge to service must be made pursuant to Section
1339 101.400(a)(5).
1340
- 1341 c) Methods of Service. A document must be served in one of the following
1342 ways:Method of Service. Service may be effectuated by U.S. Mail or other mail
1343 delivery service, in person, by messenger, or by e-mail in accordance with
1344 Subpart J of this Part, except for service of enforcement complaints,
1345 administrative citations, and EMSA statements of deficiency, which must be
1346 made personally, by registered or certified mail, or by messenger service.
1347 Documentation of service of enforcement complaints, administrative citations,
1348 and EMSA statements of deficiency must be filed with the Board upon
1349 completion of service.
1350
- 1351 1) Except as provided in subsection (c)(2), service of documents may be
1352 made by any of the following methods:
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- 1354 A) Personal service;
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- 1356 B) U.S. Mail;
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- 1358 C) Third-party commercial carrier;
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- 1360 D) E-mail in accordance with Subpart J; and
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- 1362 E) Facsimile, but only if the party being served has filed a notice
1363 consenting to receipt of facsimile service and not filed a notice
1364 revoking that consent.
1365
- 1366 2) Service of enforcement complaints and EMSA statements of deficiency
1367 upon respondents must be made as follows:
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- 1369 A) By personal service;
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- 1371 B) By U.S. Mail with a recipient's signature recorded by the U.S.
1372 Postal Service upon delivery; or

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C) By a third-party commercial carrier with a recipient's signature recorded by the third-party commercial carrier upon delivery.

3) Service of administrative citations must be made as required under Part 108.

d) Documentation Affidavit or Certificate of Service and When to File Documentation of Service. A party serving a document upon another party must also file documentation of that service. A proceeding is subject to dismissal, and the filing party is persons are subject to sanctions, if documentation of service is not timely filed with the Clerk. Documenting service and filing that documentation must be done in one of the following ways: in accordance with Section 101.800 of this Part, if service is not timely made. Documentation of service is the responsibility of the person filing and serving the document. An affidavit of service or certificate of service must accompany all filings. A sample form of the affidavit of service and certificate of service is available in Appendix E of this Part.

1) For personal service of a document, either an affidavit or certificate of service signed by the person who made personal delivery or a declaration of service signed by the process server who made personal delivery must accompany the document being filed with the Clerk. However, if the signed affidavit, certificate or declaration is not available to the filing party when the document (e.g., enforcement complaint, petition for review) is submitted for filing:

A) An affidavit or certificate of service, signed by the filing party, must accompany the document being filed with the Clerk. The affidavit or certificate of service must state that service has been initiated, but not yet completed, and the following: the date, the time by when, and the place where, the document was provided to the person making personal delivery; the address appearing on the envelope or package containing the document; and that the delivery charge was prepaid; and

B) Within seven days after it becomes available to the filing party, the affidavit or certificate of service containing the signature of the person who made personal delivery or the declaration of service containing the signature of the process server must be filed with the Clerk, accompanied by a notice identifying the filed document (e.g., enforcement complaint, petition for review) to which the signed affidavit, certificate or declaration corresponds. A copy of

1416 the signed affidavit, certificate, or declaration and the notice must
 1417 be served pursuant to subsection (a).

1418
 1419 2) For service of a document by U.S. Mail or third-party commercial carrier
 1420 with a recipient's signature recorded by the U.S. Postal Service or the
 1421 third-party commercial carrier upon delivery, the delivery confirmation
 1422 containing the recipient's signature must accompany the document being
 1423 filed with the Clerk. However, if the delivery confirmation containing the
 1424 recipient's signature is not available to the filing party when the document
 1425 (e.g., enforcement complaint, petition for review) is submitted for filing:

1426
 1427 A) An affidavit or certificate of service, signed by the filing party,
 1428 must accompany the document being filed with the Clerk. The
 1429 affidavit or certificate of service must state that service has been
 1430 initiated, but not yet completed, and the following: the date, the
 1431 time by when, and the place where, the document was provided to
 1432 the U.S. Postal Service or the third-party commercial carrier; the
 1433 address appearing on the envelope or package containing the
 1434 document; and that proper postage or the delivery charge was
 1435 prepaid; and

1436
 1437 B) Within seven days after it becomes available to the filing party, the
 1438 delivery confirmation containing the recipient's signature must be
 1439 filed with the Clerk, accompanied by a notice identifying the filed
 1440 document (e.g., enforcement complaint, petition for review) to
 1441 which the signed delivery confirmation corresponds. A copy of
 1442 the delivery confirmation and the notice must be served pursuant to
 1443 subsection (a).

1444
 1445 3) For service of a document by e-mail or facsimile, an affidavit or certificate
 1446 of service must accompany the document being filed with the Clerk. An
 1447 affidavit or certificate of e-mail service must comply with Section
 1448 101.1060. An affidavit or certificate of facsimile service must include the
 1449 date and time of the facsimile transmission, the telephone number to
 1450 which the transmission was sent, the number of pages transmitted, and a
 1451 statement that the document was served by facsimile.

1452
 1453 4) For service of a document by U.S. Mail or a third-party commercial carrier
 1454 without a recipient's signature recorded by the U.S. Postal Service or the
 1455 third-party commercial carrier upon delivery, an affidavit or certificate of
 1456 service must accompany the document being filed with the Clerk. The
 1457 affidavit or certificate must state the following: the date, the time by
 1458 when, and the place where the document was provided to the U.S. Postal

- 1459 Service or the third-party commercial carrier; the address appearing on the
1460 envelope or package containing the document; and that proper postage or
1461 the delivery charge was prepaid.
- 1462
- 1463 5) An affidavit of service must be notarized and is for use by a non-attorney.
1464 A certificate of service is for use by an attorney. Sample forms of an
1465 affidavit of service and a certificate of service are available in Appendices
1466 E and H.
- 1467
- 1468 6) A certificate of service must bear an attorney's handwritten or
1469 typographical signature. Signatures in affidavits of service, declarations
1470 of service, and delivery confirmations must be written by hand. A
1471 handwritten signature in documentation of service filed with the Clerk
1472 may be a facsimile or digitized electronic signature.
- 1473
- 1474 e) Service of Amicus Curiae Briefs. Any person who files an amicus curiae brief
1475 with the Board in any proceeding must serve copies of that brief on all parties in
1476 accordance with this Section.
- 1477
- 1478 f) Service of Comments of Participants in an Adjudicatory Proceeding. Participants
1479 are required to serve their comments upon the parties to the proceeding. The
1480 Board will consider the comments as time and the Act or other applicable law
1481 allow.
- 1482
- 1483 g) Service on Agencies. Service must be at the addresses listed below unless a
1484 specific person has an appearance on file with the Board or has, in accordance
1485 with Section 101.1070 of this Part, consented to e-mail service.
- 1486
- 1487 1) Service on the Illinois Environmental Protection Agency-(Agency). The
1488 Agency must be served at the following address:
- 1489
- 1490 Division of Legal Counsel
1491 Illinois Environmental Protection Agency
1492 1021 North Grand Avenue East
1493 P.O. Box 19276
1494 Springfield IL 62794-9276
- 1495
- 1496 2) Service on Office of State Fire Marshal (OSFM). The OSFM must be
1497 served at the following address:
- 1498
- 1499 Division of Petroleum and Chemical Safety
1500 Office of the State Fire Marshal
1501 1035 Stevenson Dr.

- 1502 Springfield IL 62703
1503
1504 3) Service on the Illinois Attorney General. The Office of the Attorney
1505 General must be served at the following address:
1506
1507 Division Chief of Environmental Enforcement
1508 Office of the Attorney General
1509 100 West Randolph St., Suite 1200
1510 Chicago IL 60601
1511
1512 4) Service on the Illinois Department of Natural Resources (DNR). DNR
1513 must be served at the following address:
1514
1515 Office of Legal Services
1516 Illinois Department of Natural Resources
1517 One Natural Resources Way
1518 Springfield IL 62702-1271
1519
1520 5) Service on the Illinois Department of Transportation (IDOT). IDOT must
1521 be served at the following address:
1522
1523 Office of Chief Counsel
1524 DOT Administration Building
1525 2300 S. Dirksen Parkway, Room 300
1526 Springfield IL 62764
1527
1528 6) Service on Region V of the United States Environmental Protection
1529 Agency (USEPA). USEPA Region V must be served at the following
1530 address:
1531
1532 USEPA, Region V
1533 77 West Jackson
1534 Chicago IL 60604
1535

1536 (Source: Amended at 39 Ill. Reg. _____, effective _____)
1537

1538 SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION
1539

1540 **Section 101.400 Appearances, Withdrawals, and Substitutions of Attorneys in**
1541 **Adjudicatory Proceedings**
1542

- 1543 a) Appearances. A person who is a party in a Board adjudicatory proceeding may
1544 appear as follows:

- 1545
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 1587
- 1) Individuals may appear on their own behalf or through an attorney-at-law licensed and registered to practice law. (See Section 1 of the Attorney Act [705 ILCS 205/1].)

 - 2) When appearing before the Board, any person other than individuals must appear through an attorney-at-law licensed and registered to practice law. (See Section 1 of the Corporation Practice of Law Prohibition Act [705 ILCS 220/1] and Section 1 of the Attorney Act [705 ILCS 205/1].)

 - 3) An out-of-state attorney may appear as counsel and provide legal services in a particular proceeding before the Board only if the attorney has permission to do so pursuant to Illinois Supreme Court Rule 707. No Board order is required for an out-of-state attorney to appear and no motions to appear pro hac vice need be filed with the Board. The out-of-state attorney's appearance must include the following:
 - A) A representation that the out-of-state attorney is in, and will maintain throughout the proceeding, compliance with Supreme Court Rule 707; and

 - B) Identification of the active status Illinois attorney associated with the out-of state attorney pursuant to Supreme Court Rule 707 and the date on which the active status Illinois attorney filed an appearance in the proceeding. Attorneys who are licensed to practice in a state other than Illinois and who are not licensed and registered to practice in the State of Illinois may request to appear pro hac vice on a particular matter on a motion filed with the Board.

 - 4) Any attorney appearing in a representative capacity must file a separate written notice of appearance with the Clerk, together with documentation of service of the appearance pursuant to Section 101.304(d) and notice of filing of the appearance pursuant to Section 101.304(b)(2) on all parties in the proceeding. Law firms, the Agency, and the Attorney General's Office when appearing before the Board must designate a lead attorney for purposes of phone and mail contact pertaining to the proceeding. Absent a separate written notice, the Board will designate the attorney whose signature appears first on the party's first filing complaint as the lead attorney.

 - 5) Any person seeking appearing before the Board may appear in a special limited capacity to contest personal jurisdiction must do so by filing a

motion with the Board in accordance with Section 2-301 of the Code of Civil Procedure [735 ILCS 5/2-301].

- b) Withdrawals. An attorney who has appeared in a representative capacity and who wishes to withdraw from that representation must file a notice of withdrawal with the Clerk, together with documentation of service and notice of filing on all parties or their representatives.
- c) Substitution. Any attorney who substitutes for an attorney of record must file a written appearance pursuant to subsection (a) ~~of this Section~~. That appearance must identify the attorney for whom the substitution is made. However, no attorney will be considered withdrawn from a proceeding until a formal withdrawal is filed in accordance with subsection (b) ~~of this Section~~.
- d) Any person may appear on behalf of himself or others in a rulemaking proceeding in accordance with 35 Ill. Adm. Code 102.100(b).

(Source: Amended at 39 Ill. Reg. _____, effective _____)

SUBPART J: ELECTRONIC FILING AND E-MAIL SERVICE

Section 101.1060 E-Mail Service

- a) Except as provided in ~~subsection~~ subsection (b) and (c) of this Section, a person required to serve a document may serve the document by e-mail, in lieu of serving a paper document, if the recipient has consented to e-mail service in the proceeding and has not revoked the consent. (See Section 101.1070 ~~of this Subpart~~.) To serve a document by e-mail, it is not necessary to electronically file the document or to obtain a State of Illinois digital signature certificate.
- b) Service of enforcement complaints, ~~administrative citations,~~ and EMSA statements of deficiency on a respondent must be made personally, by U.S. Mail with a recipient's signature recorded ~~registered or certified mail,~~ or by a third-party commercial carrier with a recipient's signature recorded ~~messenger service~~. (See Section 101.304(c)(2) ~~of this Part~~.)
- c) Service of administrative citations must be made as required under 35 Ill. Adm. Code 108.
- de) A person required to serve a document on the hearing officer may serve the hearing officer by sending the document to the hearing officer's e-mail address in lieu of serving a paper document.

- 1631 d) ~~When a document is served by e-mail, service is considered complete on the date~~
1632 ~~of successful e-mail transmission, except that a document successfully e-mailed~~
1633 ~~on a Saturday or Sunday, on a national or State legal holiday, or after 5:00 p.m. on~~
1634 ~~a weekday is deemed served the next business day.~~
- 1635
- 1636 e) When a document is served by e-mail, documentation of service must be filed
1637 with the Clerk and served on all persons entitled to service in that proceeding. A
1638 sample form of affidavit or certificate of e-mail service is available in Appendix
1639 H ~~to this Part~~. An affidavit or certificate of e-mail service must be filed with the
1640 ~~document in question and~~ include the following:
- 1641
- 1642 1) The e-mail address of the recipient and the person authorizing the filing;
1643
- 1644 2) The number of pages in the e-mail transmission;
1645
- 1646 3) A statement that the document was served by e-mail; and
1647
- 1648 4) The date and time of the e-mail transmission and the time by when it took
1649 place.
- 1650
- 1651 f) If any computer malfunction precludes the e-mail service of a document, the
1652 person authorizing the filing must promptly serve the document in paper pursuant
1653 to Section 101.304(c) ~~of this Part~~.
- 1654
- 1655 g) Except for final adjudicatory orders of the Board, which the Clerk's Office serves
1656 in paper by certified mail, the Clerk's Office may serve Board orders and hearing
1657 officer orders by e-mail, in lieu of serving paper documents, if the recipient has
1658 consented to e-mail service in the proceeding and has not revoked the consent.
1659 (See Section 101.1070 ~~of this Subpart~~.) The Clerk will record the date and time
1660 of e-mail service, consistent with subsection (e) of this Section.
- 1661

1662 (Source: Amended at 39 Ill. Reg. _____, effective _____)
1663

1664 Section 101.APPENDIX A Captions

1665

1666 Section 101.ILLUSTRATION J Administrative Citation Under Section 23.1 of the Public

1667 Water Supply Operations Act

1668

1669

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

1670

1671

1672 ILLINOIS ENVIRONMENTAL)

1673 PROTECTION AGENCY,)

1674)

1675 Complainant,)

1676)

1677 v.) AC xx-xxx

1678) IEPA Number

1679 JOHN SMITH,) (Administrative Citation)

1680)

1681 Respondent.)

1682

1683 (Source: Old Illustration J renumbered to Illustration K and new Illustration J added at

1684 39 Ill. Reg. _____, effective _____)

1685

1686 **Section 101.APPENDIX A Captions**

1687

1688 **Section 101.ILLUSTRATION ~~KJ~~ General Rulemaking**

1689

1690 **BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

1691

1692

1693 **IN THE MATTER OF:**)

1694)

1695 **REVISION OF THE FLUORIDE**) **Rxx-xxx**

1696 **DRINKING WATER STANDARD:**) **(Rulemaking-X)**

1697 **PROPOSED AMENDMENTS TO**)

1698 **35 Ill. Adm. Code XXX.XXX**)

1699

1700 (Source: Illustration K renumbered from Illustration J at 39 Ill. Reg. _____, effective

1701 _____)

1702

1703 **Section 101.APPENDIX A Captions**

1704

1705 **Section 101.ILLUSTRATION ~~L~~K Site-specific Rulemaking**

1706

1707 **BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

1708

1709 IN THE MATTER OF:)

1710)

1711 PROPOSED SITE SPECIFIC WATER) Rxx-xxx

1712 POLLUTION REGULATIONS) (Site-Specific Rulemaking-X)

1713 APPLICABLE TO XYZ)

1714 UTILITIES COMPANY OF ILLINOIS)

1715 DISCHARGE TO XYZ CREEK:)

1716 35 Ill. Adm. Code)

1717

1718 BOARD NOTE: The Board notes that all docket numbers consist of letter(s) followed by two
1719 numbers. The first two digit number is the fiscal year the matter was filed. Then the second
1720 number is the sequential number for that type of filing the Board has received that year. Persons
1721 making filings are not responsible for the Board docket number on the original filing. The Clerk
1722 of the Board will assign the appropriate docket number when the matter is filed. All filings in a
1723 matter that has been assigned a docket number should contain a docket number located as
1724 indicated on the examples above. The Board will also be designating its opinion and orders with
1725 the type of case and media involved in the matter. Where the above examples have the type of
1726 case ~~preceeded~~ followed by "X", the Board will, for example if the case is dealing with a variance
1727 from certain water regulations, put the media, water, after variance to become "Variance-Water".
1728 Again, persons making filings need not place this on original filings. However, all filings in a
1729 matter that has been assigned the media should indicate that media in the location as in the above
1730 examples. Where there are specific procedural rules developed for specific types of cases, as in a
1731 "UST Appeal", persons making filings should follow those examples.

1732

1733 (Source: Illustration L renumbered from Illustration K and amended at 39 Ill. Reg.
1734 _____, effective _____)

1735

1736 **Section 101.APPENDIX E Affidavit or Certificate of Service**

1737

1738 **Section 101.ILLUSTRATION A Service by Non-Attorney**

1739

1740

AFFIDAVIT OF SERVICE

1741

1742 I, the undersigned, on oath [or affirmation] state that I have served on the date of _____,

1743 the attached [describe document served] upon the following persons, by [describe method of

1744 service, e.g., depositing the document in a U.S. Postal Service mailbox or delivering the

1745 document to a third-party commercial carrier], by the time of _____, with proper

1746 postage or delivery charges prepaid upon the following persons:

1747

[list persons served and the respective addresses at which they were served]

1749

[signature]

1751

1752

1753 Notary Seal

1754

1755

SUBSCRIBED AND SWORN TO BEFORE ME this _____ day of _____, 20 ____.

1756

1757

1758

1759

Notary Public

1760

(Source: Amended at 39 Ill. Reg. _____, effective _____)

1761

1762

1763 **Section 101.APPENDIX E Affidavit or Certificate of Service**

1764

1765 **Section 101.ILLUSTRATION B Service by Attorney**

1766

1767

CERTIFICATE OF SERVICE

1768

1769

I, the undersigned, certify that I have served on the date of _____ the attached [describe document served] upon the following persons; by [describe method of service, e.g., depositing the document in a U.S. Postal Service mailbox or delivering the document to a third-party commercial carrier], by the time of _____, with proper postage or delivery charges prepaid upon the following persons:

1770

1771

1772

1773

1774

[list persons served and the respective addresses at which they were served]

1775

1776

[signature]

1777

1778

[date]

1779

1780

1781

(Source: Amended at 39 Ill. Reg. _____, effective _____)

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Enforcement
- 2) Code Citation: 35 Ill. Adm. Code 103
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
103.204	Amendment
103.206	Amendment
103.404	Amendment
- 4) Statutory Authority: Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: The proposal will amend the Board's procedural rules for accepted methods of service in an enforcement proceeding.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: The amendments are consistent with amendments proposed to the Board's general rules (35 Ill. Adm. Code 101).
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings 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(b)].
- 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 45 days after the date of publication in the *Illinois Register*. Public comments must be filed with the Clerk of the Board. Public comments should reference Docket R15-20 and be addressed to:

Clerk's Office
Illinois Pollution Control Board

RECEIVED
CLERK'S OFFICE
JUN 05 2015
STATE OF ILLINOIS
Pollution Control Board

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

JRTC
100 W. Randolph St., Suite 11-500
Chicago IL 60601

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R15-20 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 hearing officer Daniel Robertson at 312/814-6931 or by e-mail at Daniel.Robertson@illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality, or not-for-profit corporation that practices before the Board in an enforcement proceeding.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on a regulatory agenda.

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

RECEIVED
CLERK'S OFFICE
JUN 05 2015
STATE OF ILLINOIS
Pollution Control Board

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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

PART 103
ENFORCEMENT

SUBPART A: GENERAL PROVISIONS

Section	
103.100	Applicability
103.102	Severability
103.104	Definitions
103.106	General

SUBPART B: COMPLAINT, REQUEST FOR INFORMAL AGENCY
INVESTIGATION, SERVICE, AND AUTHORIZATION OF HEARING

Section	
103.200	Who May File
103.202	Parties
103.204	Notice, Complaint, and Answer
103.206	Adding Parties; Filing Counter-, Cross-, or Third-Party Complaints; Filing New or Modified Claims
103.208	Request for Informal Agency Investigation
103.210	Notice of Complaint
103.212	Hearing on Complaint

SUBPART C: SETTLEMENT PROCEDURE

Section	
103.300 <u>103.300</u>	Request for Relief from Hearing Requirement in State Enforcement Proceeding
103.301	Request for Relief from Hearing Requirement in Citizen's Enforcement Proceeding
103.302	Contents of Proposed Stipulation and Settlement Agreement
103.304	Hearing on Proposed Stipulation and Settlement Agreement
103.306	Board Order on Proposed Stipulation and Settlement Agreement

SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

Section	
103.400	Purpose, Scope, and Applicability
103.402	Interim Order
103.404	Joinder of the Agency
103.406	Draft Permit or Statement
103.408	Stipulated Draft Remedy
103.410	Contents of Public Notice
103.412	Public Comment
103.414	Hearing
103.416	Contents of Board Order

SUBPART E: IMPOSITION OF PENALTIES

Section	
103.500	Default
103.502	Civil Penalties
103.504	Civil Penalties Method of Payment

SUBPART F: ENFORCING BOARD ORDERS

Section	
103.600	Civil Action

103.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, 29, 30, 31, 41, and 42 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, 29, 30, 31, 41, and 42] 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 III, Enforcement Proceedings, in R70-4, at 1 PCB 43, October 8, 1970; amended in R80-2, at 39 PCB 456, at 4 Ill. Reg. 39, p. 285, effective September 12, 1980; amended in R80-18, at 44 PCB 125, at 5 Ill. Reg. 14146, effective December 3, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1383, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 425, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8793, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2349, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. _____, effective _____.

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

SUBPART B: COMPLAINT, REQUEST FOR INFORMAL AGENCY INVESTIGATION, SERVICE, AND AUTHORIZATION OF HEARING

Section 103.204 Notice, Complaint, and Answer

- a) An enforcement proceeding will be commenced by the service of a notice and complaint by U.S. Mail with a recipient's signature recorded, a third-party commercial carrier with a recipient's signature recorded, or personal service upon all respondents and the filing of the notice and complaint with the Clerk. (See 35 Ill. Adm. Code 101.300(b) and (c), 101.302(h) and 101.304(c)(2).)
- b) The notice must be directed to the respondents notifying them of the filing of the accompanying complaint and that they may be required to attend a hearing at a date set by the Board.
- c) The complaint must be captioned in accordance with 35 Ill. Adm. Code 101.Appendix A, Illustration A and contain:
 - 1) A reference to the provision of the Act and regulations that the respondents are alleged to be violating;
 - 2) The dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations. The complaint must advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense; and
 - ~~3)~~ 3) A concise statement of the relief that the complainant seeks.
- d) Except as provided in subsection (e), the respondent may file an answer within 60 days after receipt of the complaint if respondent wants to deny any allegations in the complaint. All material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer, unless respondent asserts a lack of knowledge sufficient to form a belief. Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing.
- e) If the respondent timely files a motion under Section 103.212(b) or 35 Ill. Adm.

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

Code 101.506, the 60-day period to file an answer described in subsection (d) of this Section will be stayed. The stay will begin when the motion is filed and end when the Board disposes of the motion.

~~f) d)~~ Any party serving a complaint upon another party must include the following language in the notice: "Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.""

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 103.206 Adding Parties; Filing Counter-, Cross-, or Third-Party Complaints; Filing New or Modified Claims

- a) The Board, on its own motion or the motion of a respondent, may order a person to be added as a respondent if a complete determination of a controversy cannot be had without the presence of the person who is not already a party to the proceeding.
- b) If the Board orders a person to be added as a respondent pursuant to subsection (a), the Board will grant the complainant leave to file an amended complaint that sets forth a claim against the added respondent. The amended complaint must meet the requirements of Section 103.204.
- c) Misjoinder and nonjoinder of parties with respect to enforcement proceedings are governed by 35 Ill. Adm. Code 101.403(b).
- d) If a party wishes to file a counter-complaint, cross-complaint, or third-party complaint, the party must move the Board for leave to file the pleading. If a party wishes to file an amendment to a complaint, counter-complaint, cross-complaint, or third-party complaint that sets forth a new or modified claim against another person, the party who wishes to file the pleading must move the Board for leave to file the pleading.
- e) The pleading sought to be filed pursuant to subsection (d) must:
 - 1) Set forth a claim that arises out of the occurrence or occurrences

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

that are the subject of the proceeding; and

- 2) Meet the requirements of Section 103.204 of this Subpart, including the requirement to serve the pleading by U.S. Mail with a recipient's signature recorded, a third-party commercial carrier with a recipient's signature recorded, or personal service upon the respondent, counter-respondent, cross-respondent, or third-party respondent.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

Section 103.404 Joinder of the Agency

If the Board directs that the Agency be joined, the Clerk will send, by certified mail addressed to the Agency, a copy of the Board Order requiring joinder. The mailing will constitute service of process upon the Agency.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Document comparison by Workshare Compare on Tuesday, June 02, 2015
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Document 1 ID	file:///I:\Input\Agency Rulemakings - Files Received\2015\05May2015\35-103-Agency-delta-(issue23).docx
Description	35-103-Agency-delta-(issue23)
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Moved to	0
Style change	0
Format changed	0
Total changes	20

1ST NOTICE VERSION

JCAR350103-1507842r01

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

PART 103
ENFORCEMENT

SUBPART A: GENERAL PROVISIONS

10	Section	
11	103.100	Applicability
12	103.102	Severability
13	103.104	Definitions
14	103.106	General

SUBPART B: COMPLAINT, REQUEST FOR INFORMAL AGENCY
INVESTIGATION, SERVICE, AND AUTHORIZATION OF HEARING

19	Section	
20	103.200	Who May File
21	103.202	Parties
22	103.204	Notice, Complaint, and Answer
23	103.206	Adding Parties; Filing Counter-, Cross-, or Third-Party Complaints; Filing New or Modified Claims
25	103.208	Request for Informal Agency Investigation
26	103.210	Notice of Complaint
27	103.212	Hearing on Complaint

SUBPART C: SETTLEMENT PROCEDURE

31	Section	
32	103.300	Request for Relief from Hearing Requirement in State Enforcement Proceeding
33	103.301	Request for Relief from Hearing Requirement in Citizen's Enforcement Proceeding
35	103.302	Contents of Proposed Stipulation and Settlement Agreement
36	103.304	Hearing on Proposed Stipulation and Settlement Agreement
37	103.306	Board Order on Proposed Stipulation and Settlement Agreement

SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

41	Section	
42	103.400	Purpose, Scope, and Applicability
43	103.402	Interim Order

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- 44 103.404 Joinder of the Agency
- 45 103.406 Draft Permit or Statement
- 46 103.408 Stipulated Draft Remedy
- 47 103.410 Contents of Public Notice
- 48 103.412 Public Comment
- 49 103.414 Hearing
- 50 103.416 Contents of Board Order

51
52 SUBPART E: IMPOSITION OF PENALTIES

- 53
- 54 Section
- 55 103.500 Default
- 56 103.502 Civil Penalties
- 57 103.504 Civil Penalties Method of Payment

58
59 SUBPART F: ENFORCING BOARD ORDERS

- 60 Section
- 61 103.600 Civil Action

62
63 103.APPENDIX A Comparison of Former and Current Rules (Repealed)

64
65 AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28,
66 28.2, 29, 30, 31, 41, and 42 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c),
67 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, 30, 31, 41, and 42] and authorized by
68 Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

69
70 SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part III, Enforcement
71 Proceedings, in R70-4, at 1 PCB 43, October 8, 1970; amended in R80-2, at 39 PCB 456, at 4 Ill.
72 Reg. 39, p. 285, effective September 12, 1980; amended in R80-18, at 44 PCB 125, at 5 Ill. Reg.
73 14146, effective December 3, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill.
74 Reg. 1383, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill.
75 Reg. 425, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8793, effective June 8,
76 2005; amended in R14-21 at 39 Ill. Reg. 2349, effective January 27, 2015; amended in R15-20 at
77 39 Ill. Reg. _____, effective _____.

78
79 SUBPART B: COMPLAINT, REQUEST FOR INFORMAL AGENCY
80 INVESTIGATION, SERVICE, AND AUTHORIZATION OF HEARING

81
82 **Section 103.204 Notice, Complaint, and Answer**

- 83
- 84 a) An enforcement proceeding will be commenced by the service of a notice and
- 85 complaint by U.S. Mail with a recipient's signature recorded registered or certified
- 86 mail, a third-party commercial carrier with a recipient's signature

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 103.206 Adding Parties; Filing Counter-, Cross-, or Third-Party Complaints; Filing New or Modified Claims

- a) The Board, on its own motion or the motion of a respondent, may order a person to be added as a respondent if a complete determination of a controversy cannot be had without the presence of the person who is not already a party to the proceeding.
- b) If the Board orders a person to be added as a respondent pursuant to subsection (a) ~~of this Section~~, the Board will grant the complainant leave to file an amended complaint that sets forth a claim against the added respondent. The amended complaint must meet the requirements of Section 103.204 ~~of this Subpart~~.
- c) Misjoinder and nonjoinder of parties with respect to enforcement proceedings are governed by 35 Ill. Adm. Code 101.403(b).
- d) If a party wishes to file a counter-complaint, cross-complaint, or third-party complaint, the party must move the Board for leave to file the pleading. If a party wishes to file an amendment to a complaint, counter-complaint, cross-complaint, or third-party complaint that sets forth a new or modified claim against another person, the party who wishes to file the pleading must move the Board for leave to file the pleading.
- e) The pleading sought to be filed pursuant to subsection (d) ~~of this Section~~ must:
 - 1) Set forth a claim that arises out of the occurrence or occurrences that are the subject of the proceeding; and
 - 2) Meet the requirements of Section 103.204 of this Subpart, including the requirement to serve the pleading by U.S. Mail with a recipient's signature recorded ~~registered or certified mail, a third-party commercial carrier with a recipient's signature recorded~~ messenger service, or personal service upon the respondent, counter-respondent, cross-respondent, or third-party respondent.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

Section 103.404 Joinder of the Agency

173 If the Board directs that the Agency be joined, the Clerk will send, ~~by messenger or~~ by certified
174 mail addressed to the Agency, a copy of the Board Order requiring joinder. The mailing will
175 constitute service of process upon the Agency.

176

177 (Source: Amended at 39 Ill. Reg. _____, effective _____)

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Regulatory Relief Mechanisms
- 2) Code Citation: 35 Ill. Adm. Code 104
- 3)

<u>Section Numbers</u> :	<u>Proposed Actions</u> :
104.214	Amendment
104.232	Amendment
- 4) Statutory Authority: Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: The proposal will amend the Board's procedural rules for variance notice requirements and determining the 120-day deadline for the Board to take final action on a variance request.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: PA 98-822 (eff. Aug. 1, 2014) and 415 ILCS 5/38(a).
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings 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(b)].
- 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 45 days after the date of publication in the *Illinois Register*. Public comments must be filed with the Clerk of the Board. Public comments should reference Docket R15-20 and be addressed to:

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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

Chicago IL 60601

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R15-20 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 hearing officer Daniel Robertson at 312/814-6931 or by e-mail at Daniel.Robertson@illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality, or not-for-profit corporation that practices before the Board in an enforcement proceeding
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on a regulatory agenda.

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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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

PART 103
ENFORCEMENT

SUBPART A: GENERAL PROVISIONS

Section	
103.100	Applicability
103.102	Severability
103.104	Definitions
103.106	General

SUBPART B: COMPLAINT, REQUEST FOR INFORMAL AGENCY
INVESTIGATION, SERVICE, AND AUTHORIZATION OF HEARING

Section	
103.200	Who May File
103.202	Parties
103.204	Notice, Complaint, and Answer
103.206	Adding Parties; Filing Counter-, Cross-, or Third-Party Complaints; Filing New or Modified Claims
103.208	Request for Informal Agency Investigation
103.210	Notice of Complaint
103.212	Hearing on Complaint

SUBPART C: SETTLEMENT PROCEDURE

Section	
103.300 103.300	Request for Relief from Hearing Requirement in State Enforcement Proceeding
103.301	Request for Relief from Hearing Requirement in Citizen's Enforcement Proceeding
103.302	Contents of Proposed Stipulation and Settlement Agreement
103.304	Hearing on Proposed Stipulation and Settlement Agreement
103.306	Board Order on Proposed Stipulation and Settlement Agreement

SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

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STATE OF ILLINOIS
Pollution Control Board

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

Section	
103.400	Purpose, Scope, and Applicability
103.402	Interim Order
103.404	Joinder of the Agency
103.406	Draft Permit or Statement
103.408	Stipulated Draft Remedy
103.410	Contents of Public Notice
103.412	Public Comment
103.414	Hearing
103.416	Contents of Board Order

SUBPART E: IMPOSITION OF PENALTIES

Section	
103.500	Default
103.502	Civil Penalties
103.504	Civil Penalties Method of Payment

SUBPART F: ENFORCING BOARD ORDERS

Section	
103.600	Civil Action

103.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, 29, 30, 31, 41, and 42 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, 29, 30, 31, 41, and 42] 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 III, Enforcement Proceedings, in R70-4, at 1 PCB 43, October 8, 1970; amended in R80-2, at 39 PCB 456, at 4 Ill. Reg. 39, p. 285, effective September 12, 1980; amended in R80-18, at 44 PCB 125, at 5 Ill. Reg. 14146, effective December 3, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1383, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 425, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8793, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2349, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. _____, effective _____.

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

Code 101.506, the 60-day period to file an answer described in subsection (d) of this Section will be stayed. The stay will begin when the motion is filed and end when the Board disposes of the motion.

~~f)~~ Any party serving a complaint upon another party must include the following language in the notice: "Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.""

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 103.206 Adding Parties; Filing Counter-, Cross-, or Third-Party Complaints; Filing New or Modified Claims

- a) The Board, on its own motion or the motion of a respondent, may order a person to be added as a respondent if a complete determination of a controversy cannot be had without the presence of the person who is not already a party to the proceeding.
- b) If the Board orders a person to be added as a respondent pursuant to subsection (a), the Board will grant the complainant leave to file an amended complaint that sets forth a claim against the added respondent. The amended complaint must meet the requirements of Section 103.204.
- c) Misjoinder and nonjoinder of parties with respect to enforcement proceedings are governed by 35 Ill. Adm. Code 101.403(b).
- d) If a party wishes to file a counter-complaint, cross-complaint, or third-party complaint, the party must move the Board for leave to file the pleading. If a party wishes to file an amendment to a complaint, counter-complaint, cross-complaint, or third-party complaint that sets forth a new or modified claim against another person, the party who wishes to file the pleading must move the Board for leave to file the pleading.
- e) The pleading sought to be filed pursuant to subsection (d) must:
 - 1) Set forth a claim that arises out of the occurrence or occurrences

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

that are the subject of the proceeding; and

- 2) Meet the requirements of Section 103.204 of this Subpart, including the requirement to serve the pleading by U.S. Mail with a recipient's signature recorded, a third-party commercial carrier with a recipient's signature recorded, or personal service upon the respondent, counter-respondent, cross-respondent, or third-party respondent.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

Section 103.404 Joinder of the Agency

If the Board directs that the Agency be joined, the Clerk will send, by certified mail addressed to the Agency, a copy of the Board Order requiring joinder. The mailing will constitute service of process upon the Agency.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Document comparison by Workshare Compare on Tuesday, June 02, 2015
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Format changed	0
Total changes	20

1ST NOTICE VERSION

JCAR350104-1507849r01

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE A: GENERAL PROVISIONS
3 CHAPTER I: POLLUTION CONTROL BOARD
4

5 PART 104
6 REGULATORY RELIEF MECHANISMS
7

8 SUBPART A: GENERAL PROVISIONS
9

10	Section	
11	104.100	Applicability
12	104.102	Severability
13	104.104	Definitions

14
15 SUBPART B: VARIANCES
16

17	Section	
18	104.200	General
19	104.202	Filing Requirements
20	104.204	Petition Content Requirements
21	104.206	Resource Conservation and Recovery Act (RCRA) Variance Petition Contents
22	104.208	Consistency with Federal Law
23	104.210	Petition for Extension of Variance
24	104.212	Motion for Modification of Internal Variance Compliance Dates
25	104.214	Agency's Notice of Petition
26	104.216	Agency Investigation and Recommendation
27	104.218	Agency Recommendation to RCRA Variance
28	104.220	Response to Agency Recommendation
29	104.222	Stipulations
30	104.224	Objections to Petition, Written Comments and Request for Hearing
31	104.226	Amended Petition and Amended Recommendation
32	104.228	Insufficient Petition
33	104.230	Dismissal of Petition
34	104.232	Calculation of Decision Deadline
35	104.234	Hearing
36	104.236	Hearing Procedures
37	104.238	Standard of Review
38	104.240	Certificate of Acceptance
39	104.242	Term of Variance
40	104.244	Variance Conditions
41	104.246	Performance Bonds
42	104.248	Objection to Conditions
43		

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SUBPART C: PROVISIONAL VARIANCES

- 44
- 45
- 46 Section
- 47 104.300 Applicability
- 48 104.302 Agency Action
- 49 104.304 Initiating a Request
- 50 104.306 Filing and Notice
- 51 104.308 Term
- 52 104.310 Simultaneous Variance Prohibition (Repealed)
- 53

SUBPART D: ADJUSTED STANDARDS

- 54
- 55
- 56 Section
- 57 104.400 General
- 58 104.402 Initiation of Proceeding
- 59 104.404 Request to Agency to Join as Co-Petitioner
- 60 104.406 Petition Content Requirements
- 61 104.408 Petition Notice Requirements
- 62 104.410 Proof of Petition Notice Requirements
- 63 104.412 Effect of Filing a Petition: Stay
- 64 104.414 Dismissal of Petition
- 65 104.416 Agency Recommendation and Petitioner Response
- 66 104.418 Amended Petition, Amended Recommendation, and Amended Response
- 67 104.420 Request for Public Hearing
- 68 104.422 Public Hearing
- 69 104.424 Hearing Notice
- 70 104.426 Burden of Proof
- 71 104.428 Board Action
- 72

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

73
74
75 AUTHORITY: Subparts B and C: Implementing Sections 5, 35, 36, 37 and 38 of the
76 Environmental Protection Act (Act) [415 ILCS 5/5, 35, 36, 37, and 38] and authorized by
77 Sections 26 and 27 of the Act [415 ILCS 5/26 and 27]. Subpart D: Implementing Sections 5,
78 14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5 of the Act [415 ILCS 5/5, 14.2(c), 22.4, 27, 28, 28.1,
79 28.5 and 39.5] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

80
81 SOURCE: Subpart B: Originally adopted as Chapter I: Procedural Rules, Part IV: Variances, in
82 R70-4, at 1 PCB 43, October 8, 1970; amended in R77-16, 29 PCB 503, at 2 Ill. Reg. 16, p. 3,
83 effective May 1974; amended in R79-9, 35 PCB 433, at 3 Ill. Reg. 51, p. 128, effective
84 December 7, 1979; amended in R80-12, 40 PCB 451, at 5 Ill. Reg. 2763, effective March 2,
85 1981; codified at 6 Ill. Reg. 8357; amended in R84-10, 62 PCB 87, at 9 Ill. Reg. 1409, effective
86 January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 613, effective

87 January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8803, effective June 8, 2005; amended in
88 R14-21 at 39 Ill. Reg. 2357, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg.
89 _____, effective _____.

90
91 SUBPART B: VARIANCES

92
93 **Section 104.214 Agency's Notice of Petition**

- 94
95 a) Within 14 days after the petition is filed, the ~~petitioner~~Agency must *publish a*
96 *single notice of such petition in a newspaper of general circulation in the county*
97 *where the facility or pollution source is located [415 ILCS 5/37(a)].*
98
99 b) Upon ~~filing~~receipt of a petition for variance, ~~the petitioner~~the Agency shall
100 *promptly give written notice of such petition to:*
101
102 1) *Any person in the county in which the installation or property for which*
103 *variance is sought is located who has filed with the Board a written*
104 *request for in writing requested notice of variance petitions;*
105
106 2) *The State's attorney of such county;*
107
108 3) *The Chairman of the County Board of such county; and*
109
110 4) *Each member of the General Assembly from the legislative district in*
111 *which that installation or property is located. [415 ILCS 5/37(a)]*
112
113 c) Upon receipt of a petition for RCRA variance, the Agency must promptly give
114 notice of the petition to:
115
116 1) Federal agencies as designated by USEPA;
117
118 2) Illinois Department of Transportation;
119
120 3) Department of Natural Resources;
121
122 4) Illinois Department of Public Health;
123
124 5) The Governor of any other state adjacent to the county in which the
125 facility or pollution source is located; and
126
127 6) Elected officials of any counties, in other states, adjacent to the county in
128 which the facility or pollution source is located, and elected officials in
129 any municipality, in another state, if it is the closest population center to

130 the facility or pollution source.

- 131
- 132 d) In addition to the methods of notice stated in subsection (c) of this Section, in a
- 133 RCRA variance the Agency must also give notice by broadcast over at least one
- 134 local radio station in the area of the facility or pollution source containing the
- 135 information required by subsections (e) and (f) of this Section.
- 136
- 137 e) All notices required by this Section must include the following:
- 138
- 139 1) *The street address of the facility or pollution source, and if there is no*
- 140 *street address, then the legal description or the location with reference to*
- 141 *any well known landmark, highway, road, thoroughfare or intersection*
- 142 [415 ILCS 5/37(a)];
- 143
- 144 2) A description of the requested relief;
- 145
- 146 3) An indication that any person may request a hearing by filing with the
- 147 Board a written objection to the grant of the variance within 21 days after
- 148 the publication of the petitioner'sAgency's notice, together with a written
- 149 request for hearing;
- 150
- 151 4) The Clerk of the Board's address and phone number, the Board's website
- 152 address, and a statement that a copy of the variance petition may be
- 153 obtained through the Clerk's Office or COOL, located on the Board's
- 154 website;
- 155
- 156 5) A statement that the Agency is preparing a recommendation, the date on
- 157 which the recommendation is to be filed, and the name, address, e-mail
- 158 address, and telephone number of the Agency employee responsible for
- 159 the recommendation;
- 160
- 161 6) A statement that a hearing may be held after the filing of the
- 162 recommendation and that the record will remain open for written
- 163 comments for 45 days after filing of the recommendation. The notice will
- 164 include the address of the Board to which the comments must be mailed;
- 165
- 166 7) A statement that the record in the variance proceeding is available at the
- 167 Board office for inspection, except those portions that are protected from
- 168 disclosure under 35 Ill. Adm. Code 130, and that procedures are available
- 169 whereby disclosure may be sought by the public;
- 170
- 171 8) A statement that variances may be granted pursuant to Section 35 of the
- 172 Act [415 ILCS 5/35] and 35 Ill. Adm. Code 104, and a reference to the

Board regulations or order from which a variance is sought; and

9) Any additional information considered necessary or proper.

f) Within 21 days after the publication of notice, the petitionerAgency must file with the Board a certification of publication that states the date on which the notice was published and must attach a copy of the published notice.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 104.232 Calculation of Decision Deadline

a) Pursuant to Section 38(a) of the Act, the Board will render its final decision on the petition within 120 days after the date of filing of the petition or the receipt of a request for hearing pursuant to Section 37(a) of the Act, whichever is later, except:

1) When the petitioner waives its right to a decision within the prescribed decision period in accordance with 35 Ill. Adm. Code 101.Subpart C;

2) When the petitioner files an amended petition for variance pursuant to this Subpart or files a request for hearing after filing the original petition, the decision period recommences from the date of filing of the amended petition or the request for hearing; or

3) When a hearing is canceled pursuant to 35 Ill. Adm. Code 101.510.

b) Time will be computed in accordance with 35 Ill. Adm. Code 101.Subpart C.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Proceedings Pursuant to Specific Rules or Statutory Provisions
- 2) Code Citation: 35 Ill. Adm. Code 106
- 3) Section Number: 106.708 Proposed Action: Amendment
- 4) Statutory Authority: Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: The proposal will amend the Board's procedural rules for accepted methods of service. Specifically, the proposal amends the accepted methods of service for the Illinois Environmental Protection Agency to serve a notice of filing and statement of deficiency when attempting to terminate an Environmental Management System Agreement.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: The amendments are consistent with amendments proposed to the Board's general rules (35 Ill. Adm. Code 101).
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings 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(b)].
- 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 45 days after the date of publication in the *Illinois Register*. Public comments must be filed with the Clerk of the Board. Public comments should reference Docket R15-20 and be addressed to:

Clerk's Office
Illinois Pollution Control Board

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CLERK'S OFFICE
JUN 05 2015
STATE OF ILLINOIS
Pollution Control Board

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

JRTC
100 W. Randolph St., Suite 11-500
Chicago IL 60601

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R15-20 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 hearing officer Daniel Robertson at 312/814-6931 or by e-mail at Daniel.Robertson@illinois.gov.

- 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 on which this rulemaking was summarized: This rulemaking was not included on a regulatory agenda.

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

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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

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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

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

106.400	General
106.402	Definitions
106.404	Initiation of Proceedings
106.406	Petition Content Requirements
106.408	Response and Reply
106.410	Hearing
106.412	Burden of Proof
106.414	Opinion and Order
106.416	USEPA Review of Proposed Determination

SUBPART E: MAXIMUM ACHIEVABLE CONTROL
TECHNOLOGY DETERMINATIONS

Section	
106.500	General
106.502	Definitions
106.504	Initiation of Proceedings
106.506	Petition Content Requirements
106.508	Response and Reply
106.510	Hearing
106.512	Burden of Proof
106.514	Board Action

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

Section	
106.600	General
106.602	Initiation of Proceedings
106.604	Petition Content Requirements
106.606	Response and Reply
106.608	Hearing
106.610	Burden of Proof

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

Section	
106.700	Purpose

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

106.702	Applicability
106.704	Termination Under Section 52.3-4(b) or (b-5) of the Act
106.706	Who May Initiate, Parties
106.707	Notice, Statement of Deficiency, Answer
106.708	Service
106.710	Notice of Hearing
106.712	Deficient Performance
106.714	Board Decision
106.716	Burden of Proof
106.718	Motions, Responses
106.720	Intervention
106.722	Continuances
106.724	Discovery, Admissions
106.726	Subpoenas
106.728	Settlement Procedure
106.730	Authority of Hearing Officer, Board Members, and Board Assistants
106.732	Order and Conduct of Hearing
106.734	Evidentiary Matters
106.736	Post-Hearing Procedures
106.738	Motion After Entry of Final Order
106.740	Relief from Final Orders

**SUBPART H: AUTHORIZATIONS UNDER THE REGULATION
OF PHOSPHORUS IN DETERGENTS ACT**

Section	
106.800	General
106.802	Definitions
106.804	Initiation of Proceeding
106.806	Petition Content Requirements
106.808	Response and Reply
106.810	Hearing
106.812	Burden of Proof

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

Section	
106.900	General
106.902	Initiation of Proceeding

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

106.904	Petition Content Requirements
106.906	Petition Notice Requirements
106.908	Proof of Petition Notice Requirements
106.910	Response and Reply
106.912	Hearing
106.914	Burden of Proof

SUBPART J: TEMPORARY LANDFILL BAN WAIVERS UNDER
THE ELECTRONIC PRODUCTS RECYCLING AND REUSE ACT

Section	
106.1000	General (Repealed)
106.1002	Definitions (Repealed)
106.1004	Initiation of Proceeding (Repealed)
106.1006	Petition Content Requirements (Repealed)
106.1008	Response and Reply (Repealed)
106.1010	Burden of Proof (Repealed)
106.1012	Board Decision (Repealed)

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

Section	
106.1100	Purpose
106.1105	General
106.1110	Definitions
106.1115	Early Screening
106.1120	Detailed Plan of Study
106.1125	Initiation of Proceeding
106.1130	Contents of Petition
106.1135	Petition Notice Requirements
106.1140	Proof of Petition Notice Requirements
106.1145	Recommendation and Response
106.1150	Request for Public Hearing
106.1155	Notice and Conduct of Hearing
106.1160	Burden of Proof
106.1165	Evidentiary Matters
106.1170	Opinion and Order
106.1175	Post-Hearing Procedures

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

106.1180 Renewal of Alternative Thermal Effluent Limitations

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

AUTHORITY: Implementing and authorized by Sections 5, 14.2(c), 21(q), 22.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3 of the Environmental Protection Act (the Act) [415 ILCS 5/5, 14.2(c), 21(q), 21.622.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3], and Section 5 of the Regulation of Phosphorus in Detergents Act [415 ILCS 92/5].

SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186, effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg. 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4, 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579, effective July 11, 1994; amended in R99-9 at 23 Ill. Reg. 2697, effective February 16, 1999; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 550, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8817, effective June 8, 2005; amended in R10-19 at 34 Ill. Reg. 11486, effective July 23, 2010; amended in R12-21 at 36 Ill. Reg. 9236, effective June 7, 2012; amended in R12-11 at 36 Ill. Reg. 16581, effective November 5, 2012; amended in R13-20 at 38 Ill. Reg. 6086, effective February 26, 2014; amended in R14-21 at 39 Ill. Reg. 2375, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. _____, effective _____.

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

Section 106.708 Service

The Agency must serve a copy of the notice of filing and statement of deficiency personally, by U.S. Mail with a recipient's signature recorded, or by a third-party commercial carrier with a recipient's signature recorded. (See 35 Ill. Adm. Code 101.300(c) and 101.304(c)(2).)

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Document comparison by Workshare Compare on Tuesday, June 02, 2015
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Moved to	0
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Format changed	0
Total changes	9

1ST NOTICE VERSION

JCAR350106-1507857r01

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE A: GENERAL PROVISIONS
3 CHAPTER I: POLLUTION CONTROL BOARD
4

5 PART 106
6 PROCEEDINGS PURSUANT TO SPECIFIC RULES OR STATUTORY PROVISIONS
7

8 SUBPART A: GENERAL PROVISIONS
9

10	Section	
11	106.100	Applicability
12	106.102	Severability
13	106.104	Definitions
14		

15 SUBPART B: HEATED EFFLUENT, ARTIFICIAL COOLING LAKE,
16 AND SULFUR DIOXIDE DEMONSTRATIONS
17

18	Section	
19	106.200	General
20	106.202	Petition Requirements
21	106.204	Additional Petition Requirements in Sulfur Dioxide Demonstrations
22	106.206	Notice
23	106.208	Recommendation and Response
24	106.210	Burden of Proof
25		

26 SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES
27

28	Section	
29	106.300	General
30	106.302	Initiation of Proceeding
31	106.304	Petition Content Requirements
32	106.306	Response and Reply
33	106.308	Hearing
34	106.310	Burden of Proof
35		

36 SUBPART D: REVOCATION AND REOPENING OF CLEAN AIR ACT
37 PERMIT PROGRAM (CAAPP) PERMITS
38

39	Section	
40	106.400	General
41	106.402	Definitions
42	106.404	Initiation of Proceedings
43	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

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SUBPART E: MAXIMUM ACHIEVABLE CONTROL
TECHNOLOGY DETERMINATIONS

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

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

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

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74
75
76

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

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

115 Section

116	106.900	General
117	106.902	Initiation of Proceeding
118	106.904	Petition Content Requirements
119	106.906	Petition Notice Requirements
120	106.908	Proof of Petition Notice Requirements
121	106.910	Response and Reply
122	106.912	Hearing
123	106.914	Burden of Proof

124

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

127

128 Section

129	106.1000	General (Repealed)
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- 130 106.1002 Definitions (Repealed)
- 131 106.1004 Initiation of Proceeding (Repealed)
- 132 106.1006 Petition Content Requirements (Repealed)
- 133 106.1008 Response and Reply (Repealed)
- 134 106.1010 Burden of Proof (Repealed)
- 135 106.1012 Board Decision (Repealed)

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), 21.622.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3], and
 164 Section 5 of the Regulation of Phosphorus in Detergents Act [415 ILCS 92/5].
 165

166 SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186,
 167 effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg.
 168 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4,
 169 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12
 170 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective
 171 July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in
 172 R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579,

173 effective July 11, 1994; amended in R99-9 at 23 Ill. Reg. 2697, effective February 16, 1999; old
174 Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 550, effective January 1, 2001;
175 amended in R04-24 at 29 Ill. Reg. 8817, effective June 8, 2005; amended in R10-19 at 34 Ill.
176 Reg. 11486, effective July 23, 2010; amended in R12-21 at 36 Ill. Reg. 9236, effective June 7,
177 2012; amended in R12-11 at 36 Ill. Reg. 16581, effective November 5, 2012; amended in R13-
178 20 at 38 Ill. Reg. 6086, effective February 26, 2014; amended in R14-21 at 39 Ill. Reg. 2375,
179 effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. _____, effective _____.

180
181 SUBPART G: INVOLUNTARY TERMINATION OF ENVIRONMENTAL
182 MANAGEMENT SYSTEM AGREEMENTS (EMSAs)

183
184 **Section 106.708 Service**

185
186 The Agency must serve a copy of the notice of filing and statement of deficiency personally, by
187 U.S. Mail with a recipient's signature recorded~~registered or certified mail~~, or by a third-party
188 commercial carrier with a recipient's signature recorded~~messenger service~~. (See 35 Ill. Adm.
189 Code 101.300(c) and 101.304(c)(2).)

190
191 (Source: Amended at 39 Ill. Reg. _____, effective _____)

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Administrative Citations
- 2) Code Citation: 35 Ill. Adm. Code 108
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
108.100	Amendment
108.200	Amendment
108.201	New Section
108.202	Amendment
108.204	Amendment
108.206	Amendment
108.300	Amendment
108.402	Amendment
108.406	Amendment
108.500	Amendment
- 4) Statutory Authority: Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: The proposal will amend the Board's procedural rules for administrative citations filed pursuant to Section 23.1 of the Public Water Supply Operations Act [415 ILCS 45/23.1] or Section 20 of the Electronic Products Recycling and Reuse Act [415 ILCS 150/20].
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: PA 98-856 (eff. Aug. 4, 2014) and 415 ILCS 150/20
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings 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(b)].
- 12) Time, Place and Manner in which interested persons may comment on this proposed

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Pollution Control Board

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

rulemaking: The Board will accept written public comments on this proposal for a period of 45 days after the date of publication in the *Illinois Register*. Public comments must be filed with the Clerk of the Board. Public comments should reference Docket R15-20 and be addressed to:

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

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R15-20 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 hearing officer Daniel Robertson at 312/814-6931 or by e-mail at Daniel.Robertson@illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: The rulemaking affects every community water supply in Illinois; and any manufacturer, retailer, recycler, refurbisher, or collector of electronic devices.
 - B) Reporting, bookkeeping or other procedures required for compliance: Each individual who is a responsible operator in charge of a community water supply is required to submit consumer confidence reports, monthly operating reports, and drinking water compliance monitoring results, such as corrosion control reports and monitoring results.
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on a regulatory agenda.

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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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

**PART 108
ADMINISTRATIVE CITATIONS**

SUBPART A: GENERAL PROVISIONS

Section	
108.100	Applicability
108.102	Severability
108.104	Definitions

**SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO
CONTEST**

Section	
108.200	Administrative Citation under the Act
108.201	Administrative Citation under the PWSO Act
108.202	Administrative Citation under the EPRR Act
108.204	Filing Requirements for Petition to Contest
108.206	Petition Contents
108.208	AC Recipient's Voluntary Withdrawal

SUBPART C: HEARINGS

Section	
108.300	Authorization of Hearing

SUBPART D: BOARD DECISIONS

Section	
108.400	Burden of Proof
108.402	Dismissal
108.404	Default
108.406	Non-Contested Citations

SUBPART E: ASSESSMENT OF PENALTIES AND COSTS

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Section	
108.500	Penalties and Costs
108.502	Claimed Costs of Agency or Delegated Unit
108.504	Board Costs
108.506	Response to Claimed Costs and Reply

AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act ~~(Act)~~ [415 ILCS 5/26 and 27] and implementing Sections 21(o), 21(p), 22.51, 22.51a, 31.1, 42(b)(4), 42(b)(4-5), and 55(k) of the Act [415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1, 42(b)(4), 42(b)(4-5), and 55(k)] and Sections 1.1(b)(3) and 23.1 of the Public Water Supply Operations Act [415 ILCS 45/1.1(b)(3) and 23.1] and Sections 20 and 80 of the Electronic Products Recycling and Reuse Act [415 ILCS 150/~~20,20~~ and 80].

SOURCE: Adopted in R00-20 at 25 Ill. Reg. 397, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8833, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. ~~2397~~2397, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 108.100 Applicability

- a) This Part applies to proceedings before the Board concerning petitions to contest the issuance of an administrative citation.
- b) This Part must be read in conjunction with 35 Ill. Adm. Code 101 which contains procedures generally applicable to all of the Board's adjudicatory proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and this Part, the provisions of this Part will apply.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST

Section 108.200 Administrative Citation under the Act

- a) An administrative citation (AC) under the Act may be issued by either of the following:

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

- 1) Illinois Environmental Protection Agency ~~(Agency)~~. The Agency may issue an AC pursuant to Section 31.1 of the Act.
 - 2) Delegated Unit of Local Government ~~(Delegated Unit)~~. Pursuant to Section 4(r) of the Act, the Agency may by agreement delegate its AC authority to a unit of local government, which may then issue an AC. All Delegated Units must submit to the Clerk of the Board a copy of the delegation agreement on or before July 1 of every year.
- b) In accordance with Section 31.1 of the Act, the Agency or Delegated Unit may serve an AC upon any person believed, through direct observation, to have violated Section 21(o), 21(p), 22.51, 22.51a, or 55(k) of the Act.
- 1) The AC must be issued and served upon the AC Recipient not more than 60 days after the date of the observed violation and must contain the following information:
 - A) A statement specifying the provisions of Section 21(o), 21(p), 22.51, 22.51a, or 55(k) of the Act that the AC Recipient was observed to have violated;
 - B) A copy of the inspection report in which the Agency or Delegated Unit recorded the violation. The report must include the date and time of inspection and weather conditions prevailing during the inspection;
 - C) The penalty imposed by Section 42(b)(4) or (b)(4-5) of the Act for the violations;
 - D) An affidavit by the personnel observing the violation, attesting to their material actions and observations; and
 - E) Instructions for contesting the AC findings, including notification that the AC Recipient has 35 days within which to file a petition to contest the AC and, if an appeal is filed and the Board finds a violation, the AC Recipient may have to pay hearing costs pursuant to Section 108.500.-

~~POLLUTION CONTROL BOARD~~

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- 2) The Agency or Delegated Unit must serve the AC upon the AC Recipient as follows:
 - A) Personal service;
 - B) U.S. Mail with a recipient's signature recorded by the U.S. Postal Service upon delivery; or
 - C) Third-party commercial carrier with a recipient's signature recorded by the third-party commercial carrier upon delivery.
- 3) The Agency or Delegated Unit must file the AC with the Board no later than 10 days after the date of service upon the AC Recipient.

(Source: Amended at 39 Ill. Reg. —, effective _____)

Section 108.201 Administrative Citation under the PWSO Act

- a) An ~~administrative citation (AC)~~ AC under the ~~PWSO~~ Public Water Supply Operations Act [415 ILCS 45] may be issued by the Illinois Environmental Protection Agency ~~(Agency)~~. The Agency may issue an AC pursuant to Section 23.1(b) of the PWSO Act.
- b) In accordance with Section 23.1 of the PWSO Act, if Agency personnel discover that a Responsible Operator in Charge has violated Section 1.1(b)(3) of the PWSO Act, the Agency may serve an AC upon that individual.
 - 1) The AC must be issued and served upon the AC Recipient not more than 90 days after the date of the discovery of the violation and must contain the following information:
 - A) *A statement specifying the report or result that the Responsible Operator in Charge failed to submit in accordance with Board rules and a citation to the Board rules that were violated;*
 - B) *A copy of any report in which the Agency recorded the violation;*

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

- C) *The penalty imposed by Section 23.1(f) of the PWSO Act for the violation;*
 - D) *Instructions for contesting the AC findings pursuant to Section 23.1 of the PWSO Act, including notification that the individual has 35 days within which to file a petition for review before the Board to contest the AC and, if an appeal is filed and the Board finds a violation, a statement that the AC Recipient may have to pay hearing costs pursuant to Section 108.500; and*
 - E) *An affidavit by the personnel recording the violation. [415 ILCS 45/23.1(b)]*
- 2) The Agency must serve the AC upon the AC Recipient by personal service or certified mail.
 - 3) The Agency must file the AC with the Board no later than 15 days after the date of service upon the AC Recipient.

(Source: ~~Amended~~Added at 39 Ill. Reg. _____, effective _____)

Section 108.202 Administrative Citation under the EPRR Act

- a) An ~~administrative citation (AC)~~AC under the ~~EPRR Act~~Electronic Products Recycling and Reuse Act [415 ILCS 150] may be issued by either of the following:
 - 1) Illinois Environmental Protection Agency-~~(Agency)~~. The Agency may issue an AC pursuant to Section 20(k) of the EPRR Act.
 - 2) Delegated Unit-~~of Local Government (Delegated Unit)~~. Pursuant to Section 4(r) of the Act, the Agency may delegate its AC authority to a unit of local government, which may then issue an AC. Under Section 20(k) of the EPRR Act, a Delegated Unit must be a county. All Delegated Units must submit to the Clerk of the Board a copy of the delegation agreement on or before July 1 of every year.
- b) In accordance with Section 20(k) of the EPRR Act, the Agency or Delegated Unit may serve an AC upon any person believed, ~~through~~based on direct observation,

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

to have violated any provision of the EPRR Act or the entity employing that person.

- 1) The AC must be issued and served upon the AC Recipient not more than 60 days after the date of the observed violation and must contain the following information:
 - A) A statement specifying the provisions of the EPRR Act that the person or the entity employing the person has violated;
 - B) A copy of the inspection report in which the Agency or Delegated Unit recorded the violation, ~~which~~ the report must include the date and time of inspection;
 - C) The penalty imposed by Section 80 of the EPRR Act for the violations;
 - D) An affidavit by the personnel observing the violation, attesting to their material actions and observations; and-
 - E) Instructions for contesting the AC findings, including notification that the AC Recipient has 35 days within which to file a petition to contest the AC.
- 2) The Agency or Delegated Unit must serve the AC upon the AC Recipient as follows:
 - A) Personal service;
 - B) U.S. Mail with a recipient's signature recorded by the U.S. Postal Service upon delivery; or
 - C) Third-party commercial carrier with a recipient's signature recorded by the third-party commercial carrier upon delivery.

(Source: Amended at 39 Ill.

Reg. — _____, effective — _____)

Section 108.204 Filing Requirements for Petition to Contest

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

- a) Who May File. The AC Recipient may file with the Board a petition to contest the AC. The AC Recipient must be named as the respondent and the Agency or Delegated Unit must be named as the complainant.
- b) Time to File. The petition to contest must be filed with the Board within 35 days after the date of the service of the AC.
- c) Additional Requirements. Additional filing and service requirements are set forth at 35 Ill. Adm. Code 101.Subpart C.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 108.206 Petition Contents

A formal petition to contest must include any reasons why the AC Recipient believes the AC was improperly issued, including:

- a) The AC Recipient did not cause or allow the alleged violations;
- b) The AC was not timely filed or properly served; or
- c) The alleged violation was the result of uncontrollable circumstances.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

SUBPART C: HEARINGS

Section 108.300 Authorization of Hearing

- a) The hearing date will be set within 60 days after the filing of the petition to contest unless the hearing officer orders otherwise to prevent material prejudice.
- b) The hearing officer will give the parties at least 21 days written notice of the hearing.
- c) The hearing will be held in accordance with 35 Ill. Adm. Code 101.Subpart F.

POLLUTION CONTROL BOARD

~~NOTICE OF PROPOSED AMENDMENTS~~

- d) The hearing will be held at a time and location consistent with the Board's resources as designated by the hearing officer.

(Source: Amended at 39 Ill. Reg. —, effective _____)

SUBPART D: BOARD DECISIONS

Section 108.402 Dismissal

The Board may issue an order dismissing the AC and closing the docket upon its own motion or a motion by the AC Recipient, Agency or Delegated Unit if the AC was not timely and properly served pursuant to the relevant statute and Section 108.200 of this Part.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 108.406 Non-Contested ~~Conditions~~[Citations](#)

The Board will consider the AC non-contested if the AC Recipient does not file a petition to contest, fails to timely file a petition to contest, or withdraws its petition to contest pursuant to Section 108.208.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

SUBPART E: ASSESSMENT OF PENALTIES AND COSTS

Section 108.500 Penalties and Costs

- a) Unless the AC Recipient has shown that the violations resulted from uncontrollable circumstances, the Board will impose penalties as follows:
- 1) For violations of the Act, the Board will impose penalties as set forth in Sections 42(b)(4) and 42(b)(4-5) of the Act ~~[415 ILCS 5/42(b)(4), (b)(4-5)]~~.
 - 2) For violations of the PWSO Act, the Board will impose penalties as set forth in Section 23.1(f) of the PWSO Act ~~[415 ILCS 45/23.1(f)]~~.
 - 3) For violations of the EPRR Act, the Board will impose penalties as set forth in Section 80(j) of the EPRR Act ~~[415 ILCS 150/80(j)]~~.

~~ILLINOIS REGISTER~~ [JCAR350108-1507864r01](#)

~~POLLUTION CONTROL BOARD~~

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- b) When the Board imposes penalties pursuant to subsection (a) following a finding of violation of the Act or the PWSO Act, the Board will assess the AC Recipient associated hearing costs, if any, pursuant to Sections 108.502 and 108.504.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

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STATE OF ILLINOIS
Pollution Control Board

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2 SUBTITLE A: GENERAL PROVISIONS
3 CHAPTER I: POLLUTION CONTROL BOARD

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5 PART 108
6 ADMINISTRATIVE CITATIONS

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41 Section
42 108.500 Penalties and Costs
43 108.502 Claimed Costs of Agency or Delegated Unit

44 108.504 Board Costs
45 108.506 Response to Claimed Costs and Reply
46

47 AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act [415
48 ILCS 5/26 and 27] and implementing Sections 21(o), 21(p), 22.51, 22.51a, 31.1, 42(b)(4),
49 42(b)(4-5), and 55(k) of the Act [415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1, 42(b)(4), 42(b)(4-
50 5), and 55(k)] and Sections 1.1(b)(3) and 23.1 of the Public Water Supply Operations Act [415
51 ILCS 45/1.1(b)(3) and 23.1] and Sections 20 and 80 of the Electronic Products Recycling and
52 Reuse Act [415 ILCS 150/20 and 80].
53

54 SOURCE: Adopted in R00-20 at 25 Ill. Reg. 397, effective January 1, 2001; amended in R04-24
55 at 29 Ill. Reg. 8833, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2397, effective
56 January 27, 2015; amended in R15-20 at 39 Ill. Reg. _____, effective _____.
57

58 SUBPART A: GENERAL PROVISIONS
59

60 **Section 108.100 Applicability**
61

- 62 a) This Part applies to proceedings before the Board concerning petitions to contest
63 the issuance of an administrative citation ~~pursuant to Section 31.1 of the Act.~~
64
65 b) This Part must be read in conjunction with 35 Ill. Adm. Code 101 which contains
66 procedures generally applicable to all of the Board's adjudicatory proceedings. In
67 the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and this
68 Part, the provisions of this Part will apply.
69

70 (Source: Amended at 39 Ill. Reg. _____, effective _____)
71

72 SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST
73

74 **Section 108.200 Administrative Citation under the ActIssuance**
75

- 76 a) An administrative citation (AC) under the Act may be issued by either of the
77 following:
78
79 1) Illinois Environmental Protection Agency. The Agency may issue an AC
80 pursuant to Section 31.1 of the Act.
81
82 2) Delegated Unit of Local Government. Pursuant to Section 4(r) of the Act,
83 the Agency may by agreement delegate its AC authority to a unit of local
84 government, which may then issue an AC. All Delegated Units must
85 submit to the Clerk of the Board a copy of the delegation agreement on or
86 before July 1 of every year.

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- b) In accordance with Section 31.1 of the Act, the Agency or Delegated Unit may serve an AC upon any person believed, through direct observation, to have violated Section 21(o), 21(p), 22.51, 22.51a, or 55(k) of the Act.
 - 1) The AC must be issued and served upon the AC Recipient not more than 60 days after the date of the observed violation and must contain the following information:
 - A) A statement specifying the provisions of Section 21(o), 21(p), 22.51, 22.51a, or 55(k) of the Act that the AC Recipient was observed to have violated;
 - B) A copy of the inspection report in which the Agency or Delegated Unit recorded the violation. The report must include the date and time of inspection and weather conditions prevailing during the inspection;
 - C) The penalty imposed by Section 42(b)(4) or (b)(4-5) of the Act for the violations;
 - D) An affidavit by the personnel observing the violation, attesting to their material actions and observations; and
 - E) Instructions for contesting the AC findings, including notification that the AC Recipient has 35 days within which to file a petition to contest the AC and, if an appeal is filed and the Board finds a violation, the AC Recipient may have to pay hearing costs pursuant to Section 108.500.
 - 2) The Agency or Delegated Unit must serve the AC upon the AC Recipient as follows:
 - A) Personal service;
 - B) U.S. Mail with a recipient's signature recorded by the U.S. Postal Service upon delivery; or
 - C) Third-party commercial carrier with a recipient's signature recorded by the third-party commercial carrier upon delivery.
 - 3) The Agency or Delegated Unit must file the AC with the Board no later than 10 days after the date of service upon the AC Recipient.

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An administrative citation (AC) may be issued by either of the following:

- a) ~~Illinois Environmental Protection Agency (Agency). The Agency may issue an AC pursuant to Section 31.1 of the Act.~~
- b) ~~Delegated Unit of Local Government (Delegated Unit). Pursuant to Section 4(r) of the Act, the Agency may by agreement delegate its AC authority to a unit of local government which may then issue an AC. All Delegated Units must submit to the Clerk of the Board a copy of the delegation agreement on or before July 1 of every year.~~

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 108.201 Administrative Citation under the PWSO Act

- a) An AC under the Public Water Supply Operations Act [415 ILCS 45] may be issued by the Illinois Environmental Protection Agency. The Agency may issue an AC pursuant to Section 23.1(b) of the PWSO Act.
- b) In accordance with Section 23.1 of the PWSO Act, if Agency personnel discover that a Responsible Operator in Charge has violated Section 1.1(b)(3) of the PWSO Act, the Agency may serve an AC upon that individual.
 - 1) The AC must be issued and served upon the AC Recipient not more than 90 days after the date of the discovery of the violation and must contain the following information:
 - A) A statement specifying the report or result that the Responsible Operator in Charge failed to submit in accordance with Board rules and a citation to the Board rules that were violated;
 - B) A copy of any report in which the Agency recorded the violation;
 - C) The penalty imposed by Section 23.1(f) of the PWSO Act for the violation;
 - D) Instructions for contesting the AC findings pursuant to Section 23.1 of the PWSO Act, including notification that the individual has 35 days within which to file a petition for review before the Board to contest the AC and, if an appeal is filed and the Board finds a violation, a statement that the AC Recipient may have to pay hearing costs pursuant to Section 108.500; and

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E) An affidavit by the personnel recording the violation. [415 ILCS 45/23.1(b)]

2) The Agency must serve the AC upon the AC Recipient by personal service or certified mail.

3) The Agency must file the AC with the Board no later than 15 days after the date of service upon the AC Recipient.

(Source: Added at 39 Ill. Reg. _____, effective _____)

Section 108.202 Administrative Citation under the EPRR Act~~Service of Citation/Filing of Citation with the Board~~

a) An AC under the Electronic Products Recycling and Reuse Act [415 ILCS 150] may be issued by either of the following:

1) Illinois Environmental Protection Agency. The Agency may issue an AC pursuant to Section 20(k) of the EPRR Act.

2) Delegated Unit. Pursuant to Section 4(r) of the Act, the Agency may delegate its AC authority to a unit of local government, which may then issue an AC. Under Section 20(k) of the EPRR Act, a Delegated Unit must be a county. All Delegated Units must submit to the Clerk of the Board a copy of the delegation agreement on or before July 1 of every year.

b) In accordance with Section 20(k) of the EPRR Act, the Agency or Delegated Unit may serve an AC upon any person believed, based on direct observation, to have violated any provision of the EPRR Act or the entity employing that person.

1) The AC must be issued and served upon the AC Recipient not more than 60 days after the date of the observed violation and must contain the following information:

A) A statement specifying the provisions of the EPRR Act that the person or the entity employing the person has violated;

B) A copy of the inspection report in which the Agency or Delegated Unit recorded the violation; the report must include the date and time of inspection;

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- C) The penalty imposed by Section 80 of the EPRR Act for the violations;
 - D) An affidavit by the personnel observing the violation, attesting to their material actions and observations; and
 - E) Instructions for contesting the AC findings, including notification that the AC Recipient has 35 days within which to file a petition to contest the AC.
- 2) The Agency or Delegated Unit must serve the AC upon the AC Recipient as follows:
- A) Personal service;
 - B) U.S. Mail with a recipient's signature recorded by the U.S. Postal Service upon delivery; or
 - C) Third-party commercial carrier with a recipient's signature recorded by the third-party commercial carrier upon delivery.
- a) ~~In accordance with Section 31.1 of the Act, the Agency or Delegated Unit may serve an AC upon any person (AC Recipient) believed, through direct observation, to have violated Section 21(o) or (p) of the Act. Service of an AC upon the AC Recipient must be made personally, by registered or certified mail, or by messenger service. (See 35 Ill. Adm. Code 101.300(e) and 101.304(e).)~~
- b) ~~The AC must be issued and served upon the AC Recipient not more than 60 days after the date of the observed violation and must contain the following information:~~
- 1) ~~A statement specifying the provisions of Section 21(o) or (p) of the Act that the AC Recipient was observed to have violated;~~
 - 2) ~~A copy of the inspection report in which the Agency or Delegated Unit recorded the violation, which report must include the date and time of inspection, and weather conditions prevailing during the inspection;~~
 - 3) ~~The penalty imposed by Section 42(b)(4) or (b)(4-5) of the Act for the violations;~~
 - 4) ~~An affidavit by the personnel observing the violation, attesting to their material actions and observations; and~~

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5) ~~Instructions for contesting the AC findings, including notification that the AC Recipient has 35 days within which to file a petition to contest the AC, and if an appeal is filed and the Board finds a violation, the AC Recipient must pay hearing costs pursuant to Section 108.500 of this Part.~~

e) ~~As required by Section 31.1 of the Act, the Agency or Delegated Unit must file the AC with the Board no later than 10 days after the date of service upon the AC Recipient.~~

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 108.204 Filing Requirements for Petition to Contest

a) ~~Who May File. The AC Recipient may file with the Board a petition to contest the AC. The AC Recipient must be named as the respondent and the Agency or Delegated Unit must be named as the complainant in accordance with Section 31.1(d)(2) of the Act.~~

b) ~~Time to File. The petition to contest must be filed with the Board within 35 days after the date of the service of the AC as required by Section 31.1(d)(1) of the Act.~~

c) ~~Additional Requirements. Additional filing and service requirements are set forth at 35 Ill. Adm. Code 101.Subpart C.~~

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 108.206 Petition Contents

A formal petition to contest must include any reasons why the AC Recipient believes the AC was improperly issued, including:

- a) ~~The AC Recipient does not own the property;~~
- b) ~~The AC Recipient did not cause or allow the alleged violations;~~
- be) The AC was not timely filed or properly served; or
- cd) The alleged violation was the result of uncontrollable circumstances.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

SUBPART C: HEARINGS

Section 108.300 Authorization of Hearing

- a) The hearing date will be set within 60 days after the filing of the petition to contest unless the hearing officer orders otherwise to prevent material prejudice.
- b) The hearing officer will give the parties at least 21 days written notice of the hearing in accordance with Section 31.1(d) of the Act.
- c) The hearing will be held in accordance with 35 Ill. Adm. Code 101.Subpart F.
- d) The hearing will be held at a time and location consistent with the Board's resources as designated by the hearing officer.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

SUBPART D: BOARD DECISIONS

Section 108.402 Dismissal

The Board may issue an order dismissing the AC and closing the docket upon its own motion or a motion by the AC Recipient, Agency or Delegated Unit if the AC was not timely and properly served pursuant to the relevant statuteSection 31.1 of the Act and Section 108.200 of this Part.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

Section 108.406 Non-Contested Citations

The Board will consider the AC non-contested if the AC Recipient does not file a petition to contest, fails to timely file a petition to contest, or withdraws its petition to contest pursuant to Section 108.208. ~~If the AC is non-contested prior to hearing, the Board will adopt a final order in accordance with Section 108.500(a). If the AC Recipient withdraws its petition to contest after the hearing starts, the Board will adopt a final order in accordance with Section 108.500(c) of this Part.~~

(Source: Amended at 39 Ill. Reg. _____, effective _____)

SUBPART E: ASSESSMENT OF PENALTIES AND COSTS

Section 108.500 Penalties and Costs

- a) Unless the AC Recipient has shown that the violations resulted from

345 ~~uncontrollable circumstances, the~~The Board will impose penalties and assess
346 ~~costs~~ as follows:

- 347
- 348 1) For violations of the Act, the Board will impose penalties as set forth in
- 349 Sections 42(b)(4) and 42(b)(4-5) of the Act.
- 350
- 351 2) For violations of the PWSO Act, the Board will impose penalties as set
- 352 forth in Section 23.1(f) of the PWSO Act.
- 353
- 354 3) For violations of the EPRR Act, the Board will impose penalties as set
- 355 forth in Section 80(j) of the EPRR Act.
- 356

357 b) When the Board imposes penalties pursuant to subsection (a) following a finding
358 of violation of the Act or the PWSO Act, the Board will assess the AC Recipient
359 associated hearing costs, if any, pursuant to Sections 108.502 and 108.504.

360

361 a) ~~If the AC is defaulted or non-contested as set forth in Section 108.404 or 108.406~~
362 ~~of this Part, respectively, the Board will do the following:~~

- 363
- 364 1) ~~Impose on the AC Recipient found to have violated any provision of~~
- 365 ~~Section 21(e) of the Act a \$500 penalty for each violation of each such~~
- 366 ~~provision; and~~
- 367
- 368 2) ~~Impose on the AC Recipient found to have violated any provision of~~
- 369 ~~Section 21(p) of the Act a \$1,500 penalty for each violation of each such~~
- 370 ~~provision, except that the penalty amount imposed will be \$3,000 for each~~
- 371 ~~violation of any provision of Section 21(p) of the Act that is the AC~~
- 372 ~~recipient's second or subsequent adjudicated violation of that provision.~~
- 373

374 b) ~~If the AC Recipient contests the AC and the Board finds, based on the record, that~~
375 ~~the violation occurred and that the AC Recipient has not shown that the violation~~
376 ~~resulted from uncontrollable circumstances, the Board will do the following:~~

- 377
- 378 1) ~~Impose on the AC Recipient found to have violated any provision of~~
- 379 ~~Section 21(e) of the Act a \$500 penalty for each violation of each such~~
- 380 ~~provision;~~
- 381
- 382 2) ~~Impose on the AC Recipient found to have violated any provision of~~
- 383 ~~Section 21(p) of the Act a \$1,500 penalty for each violation of each such~~
- 384 ~~provision, except that the penalty amount imposed will be \$3,000 for each~~
- 385 ~~violation of any provision of Section 21(p) of the Act that is the AC~~
- 386 ~~recipient's second or subsequent adjudicated violation of that provision;~~
- 387 ~~and~~

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- 3) ~~Assess the AC Recipient found to have violated any provision of Section 21(o) or (p) of the Act associated hearing costs pursuant to Sections 108.502 and 108.504 of this Subpart.~~

- e) ~~If the AC Recipient contests the AC but voluntarily withdraws the petition for review pursuant to Section 108.208 of this Part after the hearing starts, the Board will do the following:~~
 - 1) ~~Impose on the AC Recipient found to have violated any provision of Section 21(o) of the Act a \$500 penalty for each violation of each such provision;~~

 - 2) ~~Impose on the AC Recipient found to have violated any provision of Section 21(p) of the Act a \$1,500 penalty for each violation of each such provision, except that the penalty amount imposed will be \$3,000 for each violation of any provision of Section 21(p) of the Act that is the AC recipient's second or subsequent adjudicated violation of that provision; and~~

 - 3) ~~Assess the AC Recipient found to have violated any provision of Section 21(o) or (p) of the Act associated hearing costs pursuant to Sections 108.502 and 108.504 of this Subpart.~~

(Source: Amended at 39 Ill. Reg. _____, effective _____)