

ILLINOIS POLLUTION CONTROL BOARD
December 17, 2015

IN THE MATTER OF:)
)
PROCEDURAL RULE AMENDMENTS:) R16-17
PROPOSED AMENDMENTS TO 35 ILL.) (Rulemaking - Procedural)
ADM. CODE 101 THROUGH 125)

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by J.A. Burke):

The Board proposes procedural rule amendments for first-notice publication in the *Illinois Register* pursuant to the Illinois Administrative Procedure Act (IAPA) (5 ILCS 100/5-40 (2014)). Prompted by the State’s current budget crisis, the Board began reviewing its rules and procedures to determine how it might more effectively and efficiently conduct its business, particularly in light of the ubiquity of digital technology, including high-quality video communications. Today’s proposal is designed to increase the efficiency of Board operations and reduce the costs of conducting Board rulemakings and contested cases. The Board will achieve these objectives primarily by further embracing digital technology, resulting in a reduction in printing, copying, and travel.

The Board adopted electronic filing early on when it implemented the Clerk’s Office On-Line (COOL), which makes all Board case files easily accessible to the public via the internet. This proposal is a natural extension of the steps the Board has taken over the years to use new technology and processes, when they benefit all of the Board’s stakeholders. The benefits from this proposal will accrue not only to the Board, but also to those who participate in Board proceedings, including regulated entities, individual citizens, environmental groups, and the Illinois Environmental Protection Agency (IEPA).

Amendments are proposed to nine of the ten Parts of the Board’s procedural rules, which are located in Title 35 of the Illinois Administrative Code: Part 101—General Rules; Part 102—Regulatory and Informational Hearings and Proceedings; Part 103—Enforcement; Part 104—Regulatory Relief Mechanisms; Part 105—Appeals of Final Decisions of State Agencies; Part 106—Proceedings Pursuant to Specific Rules or Statutory Provisions; Part 107—Petition to Review Pollution Control Facility Siting Decisions; Part 108—Administrative Citations; and Part 125—Tax Certifications.

In this opinion, the Board discusses the procedural rule changes in five groupings. The first four groupings relate directly to increased efficiency and cost savings: electronic documents; videoconference hearings; purchasing copyrighted documents; and the definition of “pollution control facility.” The last grouping consists of rule clarifications on subjects including appeal timeframes, hearing notices, and hearing locations. The rule amendments themselves appear in the order following this opinion.

DISCUSSION

Electronic Documents

E-Mail Service

The Board seeks to greatly expand the number of its orders and hearing officer orders that are served by e-mail in lieu of paper. The approach will save a considerable amount of money in postage and make service faster. For example, in each rulemaking, the Board will serve all of its orders and hearing officer orders by e-mail upon each participant who appears on the notice list or service list and has provided the Clerk's Office with an e-mail address. *See* proposed Section 101.1060(g). The Board will also require that each attorney—who files an appearance containing an e-mail address—accept e-mail service of all orders, except for final adjudicatory orders, which the IAPA requires to be served personally or by registered or certified mail (5 ILCS 100/10-50(a) (2014); 35 Ill. Adm. Code 101.1060(g)). *See* proposed Section 101.1060(g).

The Board also proposes to amend Section 101.1070(a), the procedural rule requiring that a person first *file a written consent* to receive e-mail service in lieu of paper service. Requiring the filing of a written consent may deter broader use of e-mail service. While the filing of a written consent will remain an option, the Board proposes adding three other ways to consent to e-mail service: (1) providing the hearing officer with an e-mail address during a hearing or conference; (2) filing an attorney's appearance containing an e-mail address; and (3) appearing on a notice list or service list and providing the Clerk's Office with an e-mail address. *See* proposed Section 101.1070(a). Corresponding changes are proposed for subsections (b) and (d) of Section 101.1070. Consent to e-mail service covers not only the e-mail receipt of Board and hearing officer orders but also the e-mail receipt of filings from other parties or participants in the proceeding.

Finally, if a party has e-mail capability, the Board proposes requiring that the party serve its filings upon the hearing officer by e-mail in lieu of serving a paper document. *See* proposed Section 101.1060(d); *see also* proposed Section 101.1000(e).

Digital Records and Technical Petitions

The Board proposes that State agencies must file the records of their appealed decisions only through COOL or on compact disk (CD) or other portable electronic storage device, *i.e.*, not in paper. This would apply to IEPA (*e.g.*, permit appeals; leaking underground storage tank (UST) appeals) and the Office of the State Fire Marshal (OSFM) (*i.e.*, UST Fund eligibility and deductibility appeals). The Board also proposes that local siting authorities (*i.e.*, municipalities and county boards) must file the records of their appealed "pollution control facility" siting decisions through COOL or on CD or other portable electronic storage device (*e.g.*, external hard drive), *i.e.*, not in paper. *See* proposed Sections 101.302(h)(2)(A)-(C), 105.116, 107.302, 107.304(b), 125.208; *see also* proposed Sections 101.1000(d), 101.1050. Currently, for all of these records, the procedural rules generally require the filing of the original paper record plus three paper copies (*i.e.*, four total). *See* 35 Ill. Adm. Code 101.302(h)(2).

These paper records are usually quite large. Because the Board lacks the staffing to scan them into Adobe PDF documents, the records are not available on COOL. A primary benefit of having the records filed electronically—in text-searchable Adobe PDF—is that the Clerk’s Office will be able to readily post them on COOL, making the records internet accessible for parties and the public. The paper records also take up significant amounts of Board office space that could be used more efficiently. And, when these large paper records need to be destroyed to make room for other records, the Board must expend substantial resources to ensure compliance with the State Records Act (5 ILCS 160 (2014)).

Electronic versions of these records, with already-required sequencing, indexing, and pagination (35 Ill. Adm. Code 105.116(b), 107.304(b), 107.308), will be more efficient to use than their paper counterparts. If requested, the Clerk’s Office, which is located in the Board’s Chicago office, can print a document from the electronic record for use by the public. Also in the Board’s Chicago office is a dedicated computer terminal which may be used by any interested member of the public to review an electronic record. Once these amendments are adopted as final rules, filing any one of these records in paper will be allowed only with the leave of the Board or the hearing officer. *See* proposed Section 101.302(h). But, there will remain “paper only” exceptions for trade secrets and other non-disclosable information, as well as oversized exhibits. *See* 35 Ill. Adm. Code 101.302(h)(3), (j). The Board emphasizes that papers larger than 8½ x 11 inches (*e.g.*, fold-out chart, site map) are considered “oversized,” and even when reduced or formatted to fit on 8½ x 11 inch paper, the “the original oversized exhibit still must be filed with the Clerk’s Office.” *See* 35 Ill. Adm. Code 101.302(j).

For many of the reasons articulated above, the Board also proposes to require that petitions filed under 35 Ill. Adm. Code 104 (regulatory relief mechanisms) and 106 (proceedings pursuant to specific rules or statutory provisions) be filed only electronically. *See* proposed Section 101.302(h)(2)(D). This would include petitions for adjusted standards, variances, and alternative thermal effluent limitations. These petitions are typically voluminous and highly technical. Receiving them electronically, with proposed sequencing, indexing, pagination, and text-searchable Adobe PDF, will allow them to be used more efficiently. *See* proposed Sections 104.106(a) and 106.106(a).

Reduced Paper Copies

If a document is filed in paper, the Board proposes to change the filing requirement from the original and *three* paper copies of the document (*i.e.*, four total) to the original and *two* paper copies of the document (*i.e.*, three total). *See* proposed Section 101.302(h)(1)(B). With its ever increasing use of filings in electronic format, the Board believes that four paper documents are no longer necessary to meet its administrative needs. The extra copies also take up valuable space in the Board’s Chicago office.

In line with this thinking, the Board proposes to eliminate the rulemaking requirement that participants bring paper copies of their pre-hearing filings to the hearing. The number of copies of “pre-filed” testimony, questions, responses, and any related exhibits is specified by the hearing officer. The current requirement applies whether the participant pre-files in paper or

through COOL. *See* 35 Ill. Adm. Code 102.424(e). The Board proposes instead that the requirement of bringing any copies to the hearing will be inapplicable to those who pre-file through COOL. Further, for those who pre-file in paper only, the requirement will be to bring to the hearing not paper copies, but rather a CD or other portable electronic storage device containing the pre-hearing documents in text-searchable Adobe PDF. *See* proposed Section 102.424(e).

Videoconference Hearings

Scope

The provisions of the IAPA on hearings for rulemakings (5 ILCS 100/5-40 (2014)) and contested cases (5 ILCS 100/10-25 (2014)) do not affirmatively authorize or prohibit holding hearings by videoconference. To decrease the expense and time of travelling to hearings, the Board proposes to amend its procedural rules to make videoconference hearings explicitly available for all types of Board proceedings, whether rulemaking or adjudicatory. Presently, only “identical-in-substance” (IIS) rulemakings are expressly made eligible for holding hearings by videoconference. *See* 35 Ill. Adm. Code 102.412(c). Using videoconference hearings also affords the opportunity to complete proceedings faster.

Accordingly, as proposed, any Board hearing may be held by videoconference. *See* proposed Section 101.600(b); *see also* proposed deletion of Section 102.412(c) (providing for videoconference hearings only for IIS rulemakings). The Board or its hearing officers can order videoconference hearings on their own motions or on the motions of parties. *See* proposed Section 101.600(b). In deciding whether to hold a hearing by videoconference, the Board or the hearing officer will consider various factors, including cost-effectiveness, efficiency, facility accommodations, witness availability, and public interest. *Id.* To make it unequivocally clear that videoconference hearings can be used in *all* types of Board proceedings, cross references to the rule on videoconference hearings are added at Sections 102.114, 103.108, 104.106(b), 105.110, 105.510, 106.106(b), 107.400, 108.300(d), and 125.210(b).

Participation

The proposed procedural rule amendments do not limit the ability of persons to participate (*e.g.*, testimony, direct- and cross-examination) at any of the videoconference hearing locations. Establishing the parameters for participating at different videoconference locations is left to the hearing officer. Absent unusual circumstances, however, the Board expects that each videoconference location will accommodate the testimony or examination of witnesses, regardless of where the witness, questioner, court reporter, or hearing officer is physically present. Holding a hearing by videoconference also provides citizen access to the hearing at one or more additional locations than would otherwise be possible.

Pre-Hearing

Some hearings will undoubtedly be too complicated to conduct effectively by videoconference with the State’s current technology. Generally, at least at the outset, the Board

anticipates that videoconference hearings will be used more frequently in rulemakings than adjudicatory proceedings. The former are quasi-legislative in nature and therefore less formal. Using pre-hearing conferences should help to ensure that videoconference hearings run smoothly, regardless of the type of proceeding. For rulemakings, pre-hearing conferences are expressly provided for in the Environmental Protection Act (Act) (415 ILCS 27(d) (2014)) and the Board’s procedural rules (35 Ill. Adm. Code 102.404-102.408).

The Board proposes to amend the pre-hearing filing requirements for rulemakings in recognition of the fact that the hearing officer and some participants will usually be at different locations during a videoconference hearing. To ensure that everyone can have the same materials in front of them during the videoconference hearing, the Board proposes to require that all written testimony, questions, responses, and related exhibits, as well as any other documents to be offered as hearing exhibits, be received by the Clerk’s Office no less than 24 hours before the scheduled start of the hearing. Earlier deadlines set by the hearing officer for these filings would control, but this default deadline would ensure that the Clerk could post the pre-hearing materials to COOL, making them available to participants regardless of the hearing location at which they are physically present. *See* proposed Section 102.424(h). As proposed, a document that is not filed at least 24 hours before the scheduled start of the videoconference hearing *will not be allowed at hearing*. *Id.* However, a document that is not allowed at hearing because it was not timely filed before hearing—whether or not a videoconference hearing—is eligible for filing as a public comment after hearing. This is made explicit at proposed Section 102.424(g), (h).

Locations

The Board solicits public comment on how videoconference hearings can be used without running afoul of any requirements imposed for the location of hearings. The Board is referring here to geographic requirements, not the Americans with Disabilities Act (42 U.S. Code § 12101 *et seq.*), with which all Board hearings must comply (35 Ill. Adm. Code 101.600). Initially, the Board notes that while the Act often requires that hearing *notice* be published in a newspaper of general circulation in the county where the site is located (*see* 415 ILCS 5/31(c)(1), 40(a)(1), 40.1 (2014)), neither the Act nor the IAPA explicitly requires that an adjudicatory hearing be *held* in any particular location. For rulemakings, on the other hand, Section 28(a) of the Act provides:

No substantive regulation shall be adopted, amended, or repealed until after a public hearing *within the area of the State concerned*. In the case of state-wide regulations hearings shall be held *in at least two areas*. 415 ILCS 5/28(a) (2014) (emphasis added).

Section 28(a) of the Act does not apply to all Board rulemakings. For example, the Board holds a hearing in certain IIS rulemakings, but they are not subject to the Act’s Title VII (entitled “Regulations”), 415 ILCS 5/26-29 (2014). Section 28(a) does apply to most Board rulemakings, however. For instance, in a rulemaking of general applicability, the Board must hold hearings “in at least two areas,” and in a site-specific rulemaking, the Board must hold a hearing “within the area of the State concerned.” 415 ILCS 5/28(a) (2014).

The Board views a videoconference hearing as a single hearing taking place in multiple locations. As “*hearings shall be held in at least two areas*” for statewide rules, a single videoconference hearing alone, though taking place “in at least two areas,” would not satisfy Section 28(a). 415 ILCS 5/28(a) (2014) (emphasis added). However, if the Board holds two videoconference hearings between its Chicago and Springfield offices, for example, the Board considers the hearings to have been held “in at least two areas,” so long as persons were allowed to testify at and question witnesses from either videoconference location each time, despite the hearing officer and court reporter being physically present in Chicago both times. *Id.* Likewise, if, a site-specific rulemaking were proposed for a facility in Chicago, and the Board held one videoconference hearing between the Board’s Chicago and Springfield offices, the Board considers the hearing to have been held “within the area of the State concerned,” so long as persons were allowed to testify at and question witnesses from the Chicago location, despite the hearing officer and court reporter being physically present in Springfield. *Id.*

The Board wishes to encourage videoconference hearings in rulemakings and adjudicatory proceedings. To that end, the hearing officer must have sufficient flexibility in setting hearing locations. The Board therefore proposes to amend the procedural rules that require or establish a presumption for holding hearings in specific locations (Sections 101.600, 102.412(a), 104.236(a), 104.422(b), 106.410, 106.510, 106.710(d), 106.912(c), 106.1155(b), 125.210(b)), unless the procedural rule is based upon a law that imposes the geographic requirement. Generally, holding a hearing in the affected area is sound public policy for obvious reasons. Before scheduling a videoconference hearing, the hearing officer will consider things like the distances that the parties and witnesses would have to travel to reach the nearest videoconference facilities and whether videoconference locations could accommodate large crowds in cases of high public interest.

As proposed, all hearings, including videoconference hearings, will be held at locations ordered by the hearing officer, in accordance with any geographic requirements imposed by applicable law and consistent with the Board’s resources. *See* proposed Section 101.600(a). Again, factors that the hearing officer is to consider in determining whether to hold a hearing by videoconference include cost-effectiveness, efficiency, facility accommodations, witness availability, and public interest. *See* proposed Section 101.600(b).

Copyrighted Documents

The Board proposes an amendment that will reduce the rulemaking proponent’s expenses when it proposes copyrighted documents for incorporation by reference. Under the IAPA, a document is incorporated by reference to make the document a part of the rules “without publishing the incorporated material in full.” 5 ILCS 100/5-75(a) (2014). When filing a rulemaking proposal under the Board’s current procedural rules, the proponent, typically IEPA, generally must include three paper originals of any document that is both protected by the Copyright Act (17 U.S.C. § 101 *et seq.*) and proposed to be incorporated by reference pursuant to Section 5-75 of the IAPA (5 ILCS 100/5-75 (2014)). *See* 35 Ill. Adm. Code 101.302(h)(4). This copyrighted document in the proponent’s rulemaking proposal cannot be filed electronically. *Id.*

The Board adopted this approach in January of this year to balance several sometimes competing objectives:

- Avoid the risk of copyright infringement liability resulting from copying, printing, or posting a copyrighted document without the publisher's permission.
- Meet the Board's legal obligations to both (1) maintain a copy of the copyrighted document at the Board and (2) provide copies of the document to JCAR, the appellate court, and members of the public without the Board incurring undue expense. *See, e.g.*, 5 ILCS 100/5-75(b), (c) (2014); Ill. Sup. Ct. R. 335(d).
- Minimize rulemaking costs for proponents buying copyrighted documents while retaining the efficacy of incorporating recognized standards by reference into the Board's rules.

These objectives were elaborated upon by the Board in R14-21 and they remain valid. *See Procedural Rule Amendments to Implement Electronic Filing and Allow for Public Remarks at Board Meetings: Proposed Amendments to 35 Ill. Adm. Code 101-130, R14-21, slip op. at 3-9 (Nov. 6, 2014) (R14-21).*¹

However, the expense to IEPA of purchasing *three* originals of a copyrighted document each time that one is proposed for incorporation by reference can be substantial. *See R14-21, slip op. at 4.* This cost concern is heightened by the State's current budget crisis. And, it is conceivable that in many instances, the Board will not be required to provide a copy of the copyrighted document to anyone, *i.e.*, if no appeal is taken from the Board's final rulemaking order and if neither a member of the public nor JCAR ever requests a copy. The Board continues to believe, however, that the cost burden of providing copies when legally required should be borne—to a defined extent—by the rulemaking proponent who has availed itself of the incorporation-by-reference procedure in lieu of developing its own standards. The Board therefore proposes a modified approach that takes into account the Board's concerns over its own compliance and costs, while addressing the rulemaking proponent's certain and considerable expense of purchasing two extra originals on each occasion.

As proposed for first notice, the rulemaking proponent has two options, neither of which requires the filing of three paper originals of the copyrighted document proposed for incorporation by reference. Under the first option, the rulemaking proponent must file a single paper original of the copyrighted document. *See* proposed Section 101.302(h)(4)(A). However, the rulemaking proponent must also include either one of the following in its rulemaking proposal:

- The copyright owner's written authorization for the Board to make, without charge to the Board, up to no more than a total of two paper copies of the copyrighted document if the

¹ Before the January 2015 amendments, the Board's procedural rules generally required a paper original and nine paper copies (*i.e.*, ten total) of every type of document being filed in any proceeding.

Board is required by State law to furnish a copy of the copyrighted document to JCAR, a court, or a member of the public during or after the rulemaking (*id.*); or

- The proponent’s representation that it will, at its own expense, promptly acquire and deliver to the Clerk’s Office up to no more than a total of two paper originals of the copyrighted document if the Clerk’s Office notifies the proponent in writing that the Board is required by State law to furnish a copy of the copyrighted document to JCAR, a court, or a member of the public during or after the rulemaking (*id.*).

Under the second option, the rulemaking proponent must provide the Board with an “electronic seat license” or similar access, giving the Board specified rights to the copyrighted document during and after the rulemaking, at no charge to the Board. Specifically, the proponent must give the Board electronic access to the copyrighted document, as well as permission to print (1) a single copy of the copyrighted document to maintain at the Board’s Chicago office and (2) up to no more than a total of two copies of the copyrighted document if the Board is required by State law to furnish a copy of the copyrighted document to JCAR, a court, or a member of the public. *See* proposed Section 101.302(h)(2)(B). The Board envisions that rulemaking proponents—who have entered into licensing agreements or subscriptions with the publishers of copyrighted documents—may be able to economically arrange for the Board to have these limited rights.

These modified approaches are intended to avoid imposing extra costs upon the rulemaking proponent in every instance, without shifting those costs to the Board to meet reasonably foreseeable requests for standards that the proponent proposes for incorporation by reference. The Board solicits comment, especially from IEPA, on these modified approaches. No change is proposed to the ban on electronically filing the copyrighted document that is proposed for incorporation by reference. Of course, the remainder of the rulemaking proposal may be filed through COOL. *See* proposed Section 101.302(h)(4)(A).

Definition of “Pollution Control Facility” for Siting Appeals

Over the years, the General Assembly has frequently amended the Act’s definition of “pollution control facility” (415 ILCS 5/3.330 (2014)), a term used for the local siting process under Section 39.2 of the Act (415 ILCS 5/39.2 (2014)). Traditionally, the Board’s procedural rules have quoted the definition from the Act, but this practice has come to pose three problems. First, the frequency of the statutory amendments has required numerous rulemakings in an effort to keep the procedural rules current, straining the Board’s resources. Second, given the time that it takes to complete rulemakings, the definition of “pollution control facility” in the procedural rules has lagged behind the statutory definition, often for months. The resulting inconsistency between the two definitions during these time periods can create confusion. Third, with its many exceptions, the statutory definition has become quite lengthy, presently covering about seven pages of rule text. This makes the definitions section of the procedural rules cumbersome to use.

The Board recognizes that the term “pollution control facility” is central to local siting appeals under Section 40.1 of the Act (415 ILCS 5/40.1 (2014)) and Part 107 of the Board procedural rules (35 Ill. Adm. Code 107). The term is also used in the definition of “new

pollution control facility,” another (much shorter) statutory definition quoted in the procedural rules. The Board also recognizes, however, that since the procedural rules started quoting the Act’s definition of “pollution control facility,” internet access to the statute has broadened greatly. Under these circumstances, the Board proposes leaving the term “pollution control facility” in the definition section of the procedural rules but replacing the *quoted* definition with a citation to the Act’s definition of the term. The new language is highlighted here: “‘Pollution control facility’ is defined at Section 3.330(a) of the Act [415 ILCS 5/3.330(a)] for purposes of this Part and 35 Ill. Adm. Code 107.” Proposed Section 101.202 (definition of “pollution control facility”); *see also* proposed Section 107.100(a) (cross-references the Act’s definition).

Clarifications

Appeal Timeframes

Final Board Orders. The Board proposes amending its procedural rules to clarify how to determine the 35-day period during which the Board’s final orders may be appealed to the appellate court. Judicial review of final Board orders is available through Sections 29(a) and 41(a) of the Act (415 ILCS 5/29(a), 41(a) (2014)). Section 29(a), which concerns appealing Board rules, allows for appeals by “[a]ny person adversely affected or threatened” by the rules. 415 ILCS 5/29(a) (2014). Section 29(a) cross-references Section 41(a), which provides for judicial review “by filing a petition for review within 35 days from the date that a copy of the order or other final action sought to be reviewed was *served upon* the party affected by the order or other final Board action complained of.” 415 ILCS 5/41(a) (2014) (emphasis added).

The Board’s procedural rules specify that a final Board order is served upon an adjudicatory party or a rulemaking participant when he *receives* a copy of the final order. *See* 35 Ill. Adm. Code 101.300(d)(2), (d)(3); *see also* 415 ILCS 5/26 (2014) (Board may “adopt such procedural rules as may be necessary to accomplish the purposes of this Act”). This ensures that persons have the full 35-day period to consider whether to appeal, as opposed to counting the 35 days from, for example, the Board’s placement of its final order in the U.S. Mail. *See* 735 ILCS 5/3-113(a) (2014).

The Board proposes clarifying how to calculate the 35-day appeal period by amending Section 101.300(d). Subsection (d)(2) addresses final decisions rendered in adjudicatory proceedings, and the amendments to it are straightforward. The amendments to subsections (d)(3) and (d)(4) require explanation. They address when appeals may be taken of final Board decisions made in regulatory proceedings:

- 3) For purposes of appealing a final rulemaking decision of the Board in which a rule is adopted, amended, or repealed, the effective date of the new rule, the amendment, or the repealer under the IAPA participant's receipt of the Board decision is presumed to be the date of service of the decision final opinion and order by the Board upon the appealing personparticipant. For purposes of appealing a final rulemaking decision in which no rule is adopted, amended, or repealed, the date on which the participant receives the decision

from the Board is the date of service of the decision upon the appealing participant. Or, in the event of a timely filed motion for reconsideration filed pursuant to the Board’s procedural rules (35 Ill. Adm. Code 102.700, 102.702), the date on which of the participant receives participant’s receipt of the Board order ruling upon the motion is the date of service of the order by the Board upon the appealing participant.

- 4) Any person who appears on a regulatory proceeding’s notice list or service list on the date of the final decision can rebut the presumption in subsection (d)(3) with proper proof of having received the decision from the Board after the effective date of the new rule, the amendment, or the repealer.

The above amendatory language specifies that when the Board adopts a final rule, the *effective date of the new rule* is presumed to be the date on which the person appealing was served with the Board’s final order. Typically, the new rule’s effective date, which is published in the *Illinois Register*, is the date on which the rule is received by the Secretary of State (5 ILCS 100/5-40(d) (2014)). The effective date of an adopted rule is often *after* the date on which participants receive a copy of the final order from the Board. Accordingly, the effective date approach would not only provide a uniform date to begin the 35-day appeal period, but it would also have the practical effect of lengthening that timeframe in many instances.

In addition, the courts may decide that a person has standing to appeal a final Board decision adopting a rule because he is “adversely affected or threatened” by the rule (415 ILCS 5/29(a) (2014)), regardless of whether the person participated in the Board rulemaking. This person, of course, would not actually be served with the final order because, not having participated in the rulemaking, the person would not be on the notice list or service list. By using the effective date of the rule as the presumed date of service, the Board proposes a procedural rule that is “standing neutral.” The presumption of service on the rule’s effective date could be rebutted—for those on the rulemaking’s notice list or service list—with proper proof, but the opportunity for rebuttal is limited to showing a *later* date of service (*i.e.*, a person on notice list or service list who happens to be served with the final order *after* the rule’s effective date).

The proposed language also recognizes that a final order in a regulatory proceeding may be issued in which the Board decides to adopt *no rule at all*. Accordingly, no rule would be adopted; no rule would be filed with the Secretary of State; and there would be no “effective date.” For those instances, the proposed amendments provide that the date on which the participant receives the decision from the Board is the date of service of the decision upon the appealing participant.

Hearing Officer Rulings. The current procedural rules do not specify a timeframe within which any motion for interlocutory appeal of a hearing officer’s ruling must be filed. *See* 35 Ill. Adm. Code 101.518. Raising an objection with the Board to a hearing officer order in an untimely manner can disrupt a case. Besides the potential for unfair surprise to the opposing party, the Board’s options for remedying any error by the hearing officer can be constrained at

the end of a proceeding. Failing to raise the objection with the Board at all can result in the party's forfeiture of the issue before the appellate court.

The proposed amendments address these concerns by requiring that any motion for interlocutory appeal be filed within 14 days after the party receives the hearing officer's written order or, if the hearing officer's ruling is rendered at hearing, within 14 days after the Board receives the hearing transcript. The proposed amendments make clear that filing a motion for interlocutory appeal will not postpone a scheduled hearing, stay the effect of the hearing officer's ruling, or otherwise stay the proceeding. Further, failing to timely file a motion for interlocutory appeal constitutes a waiver of any objection to the hearing officer's ruling. *See* proposed Section 101.518.

Hearing Notices

When final Board action is expected to trigger an IEPA submittal—to the United States Environmental Protection Agency (USEPA)—proposing to revise Illinois' State Implementation Plan (SIP), the hearing held by the Board may be used to meet the Clean Air Act's public hearing requirement for SIP revisions. The Board incurs considerable costs when it has the hearing's notice published in a newspaper within each of the State's 11 air regions. The Board now proposes to provide this hearing notice in the *Illinois Register* instead. *See* proposed Sections 101.602(b), 102.416(c); *see also* proposed Section 102.416(d).

USEPA's rule on public hearings requires that notice of the hearing be given by "prominent advertisement in the area affected" (40 C.F.R. § 51.102(d)(1)), which USEPA has interpreted to be "media neutral," *i.e.*, publication of *newspaper* notice is not necessarily required (April 6, 2011, Janet McCabe Memo to Regional Administrators entitled "Regional Consistency for the Administrative Requirements of State Implementation Plan Submittals and the Use of 'Letter Notices,'" (McCabe Memo), Attachment B at 1, available at <http://www3.epa.gov/airquality/urbanair/sipstatus/docs/mccabeLtrRAs.pdf>); *compare* 40 C.F.R. § 124.10(c)(2)(ii) (hearing requiring newspaper notice). The Board finds that the public has "routine and ready access" to the *Illinois Register*. McCabe Memo, Attachment B at 1. Moreover, the IAPA explicitly provides that that the Secretary of State will accept for publication in the *Illinois Register* "all Pollution Control Board . . . hearing notices . . ." *See* 5 ILCS 100/5-70(b) (2014).

Further support for using the *Illinois Register* in lieu of newspapers to provide SIP-related hearing notices can be found in USEPA's approval of a state rule amendment proposed by the Pennsylvania Department of Environmental Protection (PADEP). *See* 77 Fed. Reg. 60910 (Oct. 5, 2012). In the context of minor permitting actions, USEPA, over a commenter's objection, found that publication in the *Pennsylvania Bulletin* satisfied the "prominent advertisement" requirements of 40 C.F.R. § 51.161(b)(3). USEPA agreed to PADEP's elimination of the newspaper publication requirement notice in favor of publication in the *Pennsylvania Bulletin*:

EPA has repeatedly recognized that the prominent advertisement requirements of section 51.161(b)(3) are media neutral, and that state programs may meet the

requirement with alternative methods, provided that it is reasonable to conclude that the public would have “ready and routine access to any alternative publishing venues,” (See, April 17, 2012, Janet McCabe Memo to Regional Administrators entitled, “Minor New Source Review Public Notice Requirements under 40 CFR 51.161(b)(3)”, available at <http://www.epa.gov/region07/air/nsr/nsrmemos/pubnot.pdf>). 77 Fed. Reg. at 60911.

The *Pennsylvania Bulletin*, described as “the Commonwealth’s official gazette for information and rulemaking” (<http://www.pabulletin.com/index.asp>) appears to be analogous to the *Illinois Register*.

The Board anticipates using the *Illinois Register* in lieu of newspapers to provide notice of IIS rulemaking hearings on proposed amendments to the Board’s rules concerning the National Ambient Air Quality Standards and the definition of “volatile organic material” (415 ILCS 5/9.1(e), 10(H) (2014)). Additionally, if the Board is able to use the *Illinois Register* to provide hearing notice within the statutory time constraints of a Clean Air Act “fast-track” rulemaking (415 ILCS 5/28.5 (2014)), the Board intends to do so in lieu of using expensive newspaper notices. See proposed Section 102.304(a). The Board solicits comment, particularly from IEPA, on whether Board hearings in other types of proceedings are used to meet the public hearing requirement for SIP revisions.

The Board recognizes that the *Illinois Register* is a weekly publication. See 1 Ill. Adm. Code 100.110. Generally, the Index Department in the Secretary of State’s Administrative Code Division publishes the *Illinois Register* on Fridays. Compliant submittals received by the Index Department on a Monday will appear in the following week’s issue. See 1 Ill. Adm. Code 100.200(a), (b). The Board asks that IEPA’s comment describe IEPA’s experience with using the *Illinois Register* to publish notices of SIP-revision hearings (e.g., Index Department submittal deadlines; hearing notices not appearing in the expected issue). The Board requests that IEPA include in its comment a relevant example of one of its hearing-notice submittals to the Index Department.

Finally, it has long been the practice of the Board’s hearing officers to give *the parties* to a proceeding written notice of a hearing at least 21 days before the date on which the hearing commences. This practice had been codified in the Board’s procedural rules, but the provision was inadvertently removed. The Board proposes to restore the provision. See proposed Section 101.602(a).

Hearing Locations

The general rule proposed by the Board, as discussed above, provides that hearings will be held at locations ordered by the hearing officer, in accordance with any geographic requirements imposed by applicable law and consistent with the Board’s resources. See proposed Section 101.600(a). Presently, when the law allows, efficiencies for the Board and the parties sometimes dictate holding hearings at locations that are not proximate to the site at issue in the proceeding. For example, the Board’s UST appeal hearings are often held in Springfield

because that area is where IEPA's headquarters and many environmental consultants and private lawyers are located, even though the leaking UST sites frequently are not located in Sangamon County. Also, in appeals of OSFM's UST Fund eligibility and deductibility determinations, the current procedural rules establish a preference for holding hearings in either Springfield or Chicago. *See* 35 Ill. Adm. Code 105.510.

The Board asks for comment, especially from IEPA, on whether any federal laws, authorizations, or approvals or any agreements with USEPA require that Board hearings be held in particular geographic areas. USEPA's rules for public hearings on Resource Conservation and Recovery Act (RCRA) permits, for example, state that "whenever possible the Director shall schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility." 40 C.F.R. § 124.12(a)(3). This requirement applies to state programs. *See* 40 C.F.R. § 271.14(z). The Board proposes amendments that more closely track this RCRA geographic requirement at proposed Sections 103.414(b) and 104.236(b), which respectively involve enforcement actions and variances. The Board requests comment specifically on whether this RCRA requirement should be reflected elsewhere in the procedural rules.

Miscellaneous

The Board also proposes minor clarifications to the procedural rules, none of which requires further discussion. *See* proposed Sections 101.300(d), 101.302(h)(1), 101.518, 101.600(a), 101.602(b), 101.906(b), 101.1000(c), 101.1070(d), 102.304(a), 102.416(a), 102.422, 102.424(a)-(g), 103.410, 104.236(d), 104.422(b), 105.110, 106.912(c), 107.400, 125.210(b).

CONCLUSION

The Board proposes procedural rule amendments for first notice. First-notice publication of the proposed amendments in the *Illinois Register* will start a public comment period of 45 days. During that time period, anyone may file a public comment on the proposed amendments with the Clerk's Office. Public comments may be filed with the Clerk's Office either in paper or electronically through COOL (www.ipcb.state.il.us).

ORDER

The Board directs the Clerk to cause first-notice publication of the following proposed amendments in the *Illinois Register*. Proposed additions are underlined; proposed deletions appear stricken.

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 | |
| 101.400 | Appearances, Withdrawals, and Substitutions of Attorneys in Adjudicatory Proceedings |
| 101.402 | Intervention of Parties |
| 101.403 | Joinder of Parties |
| 101.404 | Agency as a Party in Interest |
| 101.406 | Consolidation of Claims |
| 101.408 | Severance of Claims |

SUBPART E: MOTIONS

| | |
|---------|---|
| Section | |
| 101.500 | Filing of Motions and Responses |
| 101.502 | Motions Directed to the Hearing Officer |
| 101.504 | Contents of Motions and Responses |
| 101.506 | Motions Attacking the Sufficiency of the Petition, Complaint, or Other Pleading |

| | |
|---------|--|
| 101.508 | Motions to Board Preliminary to Hearing |
| 101.510 | Motions to Cancel Hearing |
| 101.512 | Motions for Expedited Review |
| 101.514 | Motions to Stay Proceedings |
| 101.516 | Motions for Summary Judgment |
| 101.518 | Motions for Interlocutory Appeal from Hearing Officer Orders |
| 101.520 | Motions for Reconsideration |
| 101.522 | Motions for Extension of Time |

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

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

SUBPART G: ORAL ARGUMENT

| | |
|---------|---------------|
| Section | |
| 101.700 | Oral Argument |

SUBPART H: SANCTIONS

| | |
|---------|--|
| Section | |
| 101.800 | Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing Officer Orders |
| 101.802 | Abuse of Discovery Procedures |

SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

| | |
|---------|-----------------------------|
| Section | |
| 101.902 | Motions for Reconsideration |

- 101.904 Relief from 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

- 101.ILLUSTRATION A Enforcement Case
- 101.ILLUSTRATION B Citizen's Enforcement Case
- 101.ILLUSTRATION C Variance
- 101.ILLUSTRATION D Adjusted Standard Petition
- 101.ILLUSTRATION E Joint Petition for an Adjusted Standard
- 101.ILLUSTRATION F Permit Appeal
- 101.ILLUSTRATION G Underground Storage Tank Appeal
- 101.ILLUSTRATION H Pollution Control Facility Siting Appeal
- 101.ILLUSTRATION I Administrative Citation
- 101.ILLUSTRATION J Administrative Citation Under 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, 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. 12848, effective September 8, 2015; amended in R16-17 at 40 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 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.

"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 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, 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.

"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:*

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.

"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 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 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 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" is defined at Section 3.330(a) of the Act [415 ILCS 5/3.330(a)] for purposes of this Part and 35 Ill. Adm. Code 107. ~~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 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 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 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;~~

~~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;~~

~~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, 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;~~

~~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 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.

"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].

"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 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.

"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 40 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, 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.
 - 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 and Date of Service of Final Board Decision.**

- 1) For purposes of statutory decision deadline proceedings, the date of the Board decision is the date of the Board meeting at which ~~where~~ a final ~~opinion and Board order of the Board~~ was adopted by the vote of at least three Board members.
- 2) For purposes of appealing a final adjudicatory decision of the Board, the date on which ~~of~~ the party receives the Board's ~~party's~~ certified mailing ~~mail receipt~~ of the Board decision is the date of service of the decision ~~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 on which ~~of~~ the party receives ~~party's~~ the Board's certified mailing ~~mail receipt~~ of the Board order ruling upon the motion is the date of service of the order ~~by the Board~~ upon the appealing party.
- 3) For purposes of appealing a final rulemaking decision of the Board in which a rule is adopted, amended, or repealed, the effective date of the new rule, the amendment, or the repealer under the IAPA ~~participant's receipt of the Board decision~~ is presumed to be the date of service of the decision ~~final opinion and order by the Board~~ upon the appealing person ~~participant~~. For purposes of appealing a final rulemaking decision in which no rule is adopted, amended, or repealed, the date on which the participant receives the decision from the Board is the date of service of the decision upon the appealing participant. Or, in the event of a timely filed motion for reconsideration filed pursuant to the Board's procedural rules (35 Ill. Adm. Code 102.700, 102.702), the date on which ~~of~~ the participant receives ~~participant's receipt of the Board order ruling upon the motion~~ is the date of service of the order ~~by the Board~~ upon the appealing participant.
- 4) Any person who appears on a regulatory proceeding's notice list or service list on the date of the final decision can rebut the presumption in subsection (d)(3) with proper proof of having received the decision from the Board after the effective date of the new rule, the amendment, or the repealer.

(Source: Amended at 40 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
 - 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, 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) 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 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, the hearing officer, or the 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)~~, or (j):
 - A) Any type of document may be filed in paper or through COOL.
 - B) If a document is filed in paper, the original and two~~three~~ copies of the document (three~~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 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 text-searchable Adobe PDF through COOL or on compact disk or other portable electronic storage device~~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) A petition filed under 35 Ill. Adm. Code 104 (regulatory relief mechanisms) or 106 (proceedings pursuant to specific rules or statutory provisions) (see 35 Ill. Adm. Code 104.106, 106.106)~~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, ~~if the proponent must file three paper originals of any document that is protected by copyright law (17 USC 101 et seq.) and is proposed pursuant to Section 5-75 of the IAPA [5 ILCS 100/5-75] to be incorporated by reference, the copyrighted document is prohibited from being filed electronically, but the remainder of the rulemaking proposal may be filed through COOL. In addition, the rulemaking proponent must comply with subsection (h)(4)(A) or (h)(4)(B); 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.~~

- A) File a paper original of the copyrighted document. The rulemaking proposal also must include:
- i) The copyright owner's written authorization for the Board to make, at no charge to the Board, up to no more than a total of two paper copies of the copyrighted document if the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public during or after the rulemaking; or
 - ii) The proponent's representation that it will, at its own expense, promptly acquire and deliver to the Clerk's Office up to no more than a total of two paper originals of the copyrighted document if the Clerk's Office notifies the proponent in writing that the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public during or after the rulemaking.
- B) File an electronic seat license or similar documentation of access that, at no charge to the Board, gives the Board the rights, during and after the rulemaking, to do the following: electronically access the copyrighted document; print a single copy of the copyrighted document to maintain at the Board's Chicago office; and print up to no more than a total of two copies of the copyrighted document if the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public.
- 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 40 Ill. Reg. _____, effective _____)

SUBPART E: MOTIONS

Section 101.518 Motions for Interlocutory Appeal from Hearing Officer Orders

Interlocutory appeals from a ruling of the hearing officer may be taken to the Board. ~~The Board may consider an interlocutory appeal upon the~~ by filing of a written motion within 14 days after receipt of the hearing officer's written order. However, if the hearing officer's ruling is rendered on the record at hearing, any motion for interlocutory appeal must be filed within 14 days after the Board receives the hearing transcript setting forth the ruling. Filing a motion for interlocutory appeal will not postpone a scheduled hearing, stay the effect of the hearing officer's ruling, or otherwise stay the proceeding. Failure of a party to timely file a motion for interlocutory appeal constitutes a waiver of any objection to the hearing officer's ruling.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

Section 101.600 Hearings

- a) All hearings are open to the public and are held in compliance with the Americans with Disabilities Act of 1990 (42 USC 12101 et seq.). The hearings will be ~~generally~~ held at locations ~~in the county in which the source or facility is located unless otherwise ordered by the hearing officer,~~ in accordance with any geographic requirements imposed by applicable law and consistent with the Board's resources. All hearings are subject to cancellation without notice. Interested persons may contact the Clerk's ~~Office~~ office or the hearing officer for information about the hearing. Parties, participants, and members of the public must conduct themselves with decorum at hearing.
- b) Any Board hearing may be held by videoconference. Upon its own motion or the motion of any party, the Board or the hearing officer may order that a hearing be held by videoconference. In deciding whether a hearing should be held by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, and public interest.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 101.602 Notice of Board Hearings

- a) The hearing officer will give the parties at least 21 days written notice of a hearing.

- b**) The Clerk will provide notice of all hearings, except for administrative citation hearings, in a newspaper of general circulation in the county in which the facility or pollution source is located, or where the activity in question occurred. Unless otherwise required by applicable law, when a hearing is to be held to satisfy the public hearing requirement of the Clean Air Act (42 USC 7401 et seq.) for State Implementation Plan revisions, the Clerk will give notice of the hearing by publication in the Illinois Register in lieu of newspaper notice. Notice must be published at least 21 days ~~before~~^{prior to} the hearing. If the proceeding involves federal rules ~~that~~^{which} the State has been given delegated authority to administer, notice must be published at least 30 days ~~before~~^{prior to} the hearing.
- c**) *Whenever a proceeding before the Board may affect the right of the public individually or collectively to the use of community sewer or water facilities provided by a municipally owned or publicly regulated company, the Board shall at least 30 days prior to the scheduled date for the first hearing in the proceeding, give notice of the date, time, place, and purpose of the hearing by public advertisement in a newspaper of general circulation in the area of the State concerned [415 ILCS 5/33(c)].*

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

Section 101.906 Judicial Review of Board Orders

- a) Pursuant to Sections 29 and 41 of the Act [415 ILCS 5/29 and 41] and Supreme Court Rule 335, judicial review of final Board orders is available from the appellate court. However, pursuant to Section 11-60 of the Property Tax Code [35 ILCS 200/11-60], judicial review of final Board orders in tax certification proceedings is available from the circuit court.
- b) For purposes of judicial review, a final Board order is~~orders are~~ appealable as of the date of service of the final order by the Board upon the appealing person (see Section 101.300(d) of this Part)~~party~~.
- c) The procedure for stay of any final Board order during appeal will be as provided in Rule 335 of the Rules of the Supreme Court of Illinois (Ill. S. Ct. Rule 335).

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART J: ELECTRONIC FILING AND E-MAIL SERVICE

Section 101.1000 Electronic Filing and E-Mail Service

- a) The Board provides the opportunity to file and access documents electronically through its Clerk's Office On-Line (COOL). COOL is located on the Board's

website (www.ipcb.state.il.us). The Board has taken steps designed to ensure the integrity and security of COOL in accordance with State policies developed under the Electronic Commerce Security Act [5 ILCS 175].

- b) To file an electronic document with the Board, a person must upload the document on COOL. Electronic filing is not accomplished by sending a document to the e-mail address of the Clerk or hearing officer.
- c) Except as provided in Section 101.302(h)(2), (h)(3), ~~and (h)(4), and (j)~~ of this Part and Section 101.1050 of this Subpart, all documents may be filed through COOL. If a person files an electronic document in accordance with this Subpart, the person is not required to file a paper original or copy of that document.
- d) ~~Nothing in this Subpart requires a person to file a document electronically.~~ Generally, the Clerk's Office will convert paper-filed documents into electronic documents and place them on COOL.
- e) All documents filed with the Board may be served by e-mail except for enforcement complaints, administrative citations, and EMSA statements of deficiency. (See Section 101.304(c) of this Part and Section 101.1060 of this Subpart.) ~~Nothing in this Subpart requires a person to serve a document by e-mail or to accept service of a document by e-mail.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 101.1050 Documents Required in Paper or Excluded from Electronic Filing

- a) ~~The following documents must be filed in paper pursuant to Section 101.302(h)(2) of this Part:~~
 - 1) ~~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);~~
 - 2) ~~The original OSFM record required by 35 Ill. Adm. Code 105.508 (UST Fund eligibility and deductibility);~~
 - 3) ~~The original local siting authority record required by 35 Ill. Adm. Code 107.302 (pollution control facility siting); and~~
 - 4) ~~An original oversized exhibit (see Section 101.302(j) of this Part).~~
- ab) 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

pursuant to Section 101.302(h)(3) of this Part. The version of the document that is redacted pursuant to 35 Ill. Adm. Code 130 may be filed through COOL.

- be) If a rulemaking proposal contains a 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, that copyrighted document is prohibited from being filed electronically and must instead be filed only in paper pursuant to Section 101.302(h)(4) of this Part. The remainder of the rulemaking proposal may be filed through COOL.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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.) 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).)
- c) Service of administrative citations must be made as required under 35 Ill. Adm. Code 108.
- d) A person required to serve a document on the hearing officer ~~must~~ may serve the hearing officer by sending the document to the hearing officer's e-mail address in lieu of serving a paper document upon the hearing officer if the person has the capability of serving the document by e-mail.
- 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.

- 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 ~~will~~ 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: Amended at 40 Ill. Reg. _____, effective _____)

Section 101.1070 Consenting to Receipt of E-Mail Service

- a) In any proceeding, a person ~~consents~~ may consent to e-mail service of documents in lieu of receiving paper documents by:
- 1) Filing ~~filing~~ a "Consent to Receipt of E-Mail Service" ~~with the Clerk's Office. (see A sample form of consent is available in Appendix I of this Part);-~~
 - 2) Providing the hearing officer with an e-mail address during a hearing or conference;
 - 3) Filing an attorney's appearance containing an e-mail address; or
 - 4) Appearing on a notice list or service list and providing the Clerk's Office with an e-mail address.
- b) At any time during a proceeding, consent ~~Consent~~ to e-mail service may be provided as set forth in subsection (a) ~~filed with the Clerk's Office at any time during the proceeding.~~ To accept e-mail service, it is not necessary to obtain a State of Illinois digital signature certificate.
- c) A person's consent to receiving e-mail service may be revoked by that person at any time during the proceeding upon the person's filing of a notice of the revocation with the Clerk's Office.
- d) Upon a change in the e-mail address of a recipient of e-mail service, the recipient must notify ~~file a notice of the e-mail address change with~~ the Clerk's Office of the e-mail address change for each pending proceeding in which the person has consented to e-mail service.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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

PART 102
 REGULATORY AND INFORMATIONAL HEARINGS AND PROCEEDINGS

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

AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 28.6, 29, and 41 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 28.6, 29, and 41] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part II: Regulatory and Other Nonadjudicative Hearings and Proceedings, in R70-4, 1 PCB 43, October 8, 197-; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1398, effective January 16, 1984; Part repealed, new Part adopted in R88-5(B) at 14 Ill. Reg. 9210, effective May 24, 1990; amended in R90-16 at 14 Ill. Reg. 20471, effective December 11, 1990; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 587, effective January 1, 2001; amended in R01-13 at 26 Ill. Reg. 3498, effective February 22, 2002; amended in R04-24 at 29 Ill. Reg. 8776, effective June 8, 2005; amended in R10-18 at 34 Ill. Reg. 34, effective August 9, 2010; amended in R14-21 at 39 Ill. Reg. 2333, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 102.114 Hearings

Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Added at 40 Ill. Reg. _____, effective _____)

SUBPART C: CLEAN AIR ACT AMENDMENTS (CAAA) FAST TRACK RULEMAKING

Section 102.304 Hearings

- a) Within 14 days after the receipt of a rule, the Board will file the proposed rule for first notice and schedule all hearings. Additionally, the Board will send notice to ~~the appropriate newspaper~~ of the scheduled hearing to the appropriate publication. The hearing notice will be published ~~by the newspaper~~ at least 30 days ~~before~~prior to the date of the hearing. When the Board can cause timely publication of the hearing notice in the Illinois Register, the Board will do so in lieu of newspaper notice.
- b) The first hearing will be held within 55 days after receipt of the rule and is reserved for the Agency's testimony and questions of the Agency's witnesses.

- c) Within 7 days after the first hearing, any person may request a second hearing. The request may be made on the record at the first hearing or in writing. If done in writing it must be filed with the Board and served upon the service list.
- d) A second hearing will be held to hear comments on Department of Commerce and Economic Opportunity's economic impact study of the proposed rules. *At least 20 days before the hearing, the Board shall notify the public of the hearing and make the economic impact study, or the Department of Commerce and Economic Opportunity's explanation for not producing an economic impact study, available to the public. Such public hearing may be held simultaneously or as part of any Board hearing considering such new rules [415 ILCS 5/27(b)]. See also Section 102.414 of this Part. The second hearing must also permit the presentation of testimony, documents, and comments by affected entities and all other interested persons. [415 ILCS 5/28.5(g)]*
- e) *The third hearing shall be scheduled to commence within 14 days after the first day of the second hearing and shall be devoted solely to any Agency response to the material submitted at the second hearing and to any response by other parties [415 ILCS 5/28.5(g)]. In order to cancel the third hearing, the Agency must state on the record at hearing that it and the affected entities are in agreement or notify the Board and the service list in writing.*
- f) In order to meet statutory deadlines, hearing dates may be chosen by the assigned Board member and hearing officer without consultation with the participants. CAAA hearings need only be held in one affected area of the State.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS, PRODUCTION OF INFORMATION, SUBPOENAS, PREHEARING CONFERENCES, AND HEARINGS

Section 102.412 Scheduling of Hearings

- c) Except as otherwise provided by applicable law, *no substantive regulation shall be adopted, amended, or repealed until after a public hearing within the area of the State concerned. In the case of site-specific rules, a public hearing will be held in the affected area county. Except as otherwise provided by applicable law, in the case of state-wide regulations, hearings shall be held in at least two areas. [415 ILCS 5/28(a)]*
- d) If the proponent or any participant wishes to request a hearing beyond the number of hearings specified by the hearing officer, that person must demonstrate, in a motion to the hearing officer, that failing to hold an additional hearing would result in material prejudice to the movant. The motion may be oral, if made at hearing or written. The movant must show that he exercised due diligence in his

participation in the proceeding and why an addition hearing, as opposed to the submission of written comments pursuant to Section 102.108 of this Part, is necessary.

- e) ~~If a hearing is scheduled in a rulemaking proposed pursuant to Section 7.2 of the Act [415 ILCS 5/7.2], the hearing may be held by videoconference.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 102.416 Notice of Hearing

- a) The hearing officer will set a time and place for hearing. The Clerk will give notice ~~of the date~~ of the hearing as follows or as otherwise required by applicable law:
- 1) By notice in the Board's Environmental Register and on the Board's website;
 - 2) *At least 20 days prior to the scheduled date of the hearing the Board shall give notice of such hearing by public advertisement in a newspaper of general circulation in the area of the State concerned. The notice will include, the date, time, place and purpose of such hearing [415 ILCS 5/28(a)]; and*
 - 3) Where required by federal law, including air pollution and RCRA proposals, newspaper notice will be published at least 30 days ~~before~~ prior to the hearing date.
- b) In accordance with Section 28(a) of the Act or as otherwise required by applicable law, the Clerk will give notice to the proponent and to all persons who are on the notice list in accordance with Section 102.422 of this Part.
- c) Unless otherwise required by applicable law, when a hearing is to be held to satisfy the public hearing requirement of the Clean Air Act (42 USC 7401 et seq.) for State Implementation Plan revisions, the Clerk will give notice of the hearing by publication in the Illinois Register in lieu of newspaper notice.
- ~~d~~e) Hearings that are continued on the hearing record for a period of 45 days or less do not require notice that complies with subsections (a), ~~and~~ (b), or (c) of this Section.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 102.422 Notice and Service Lists

- a) The Clerk's Office ~~hearing officer~~ will maintain a notice list for each regulatory proceeding. The notice list will consist of those persons who have furnished their

names and addresses to ~~the hearing officer or the Clerk's Office~~ office concerning the proposal. ~~The Clerk will serve a copy~~ Notice of all Board orders and hearing officer orders ~~will be given to all upon the persons appearing~~ included on the notice list.

- b) The hearing officer may establish a service list for any regulatory proceeding, in addition to the notice list. ~~Unless ordered otherwise by the~~ The hearing officer, ~~may direct participants must~~ to serve copies of all their respective filings ~~documents~~ upon the persons appearing ~~listed~~ on the service list. In deciding whether to establish a service list, factors that the hearing officer will consider ~~include factors including~~ the complexity of the proceeding and the number of participants. For purposes of fast-track rulemakings under Section 28.5 of the Act, participants of record will be the individuals on the service list.
- c) The Board will not accept general requests to appear on all notice lists. Interested persons must submit their names and addresses for each proceeding in accordance with subsection (a) of this Section.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 102.424 Prehearing Filings ~~Submission~~ of Testimony, Questions, Responses, and Exhibits

- a) The proponent must file ~~submit~~ all written testimony and any related exhibits 21 days before ~~prior to~~ the hearing at which the witness testifies, unless the hearing officer directs otherwise to prevent material prejudice or undue delay.
- b) The hearing officer may require the prehearing filings ~~submission~~ of testimony, questions, responses, ~~answers~~, and any related exhibits by the proponent or participants other than the proponent if the hearing officer determines that these ~~such~~ a procedure will provide for a more efficient hearing.
- c) All prehearing testimony, questions, ~~answers~~, responses, and any related exhibits must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h). Persons filing these prehearing documents must serve them in accordance with 35 Ill. Adm. Code 101.304(c) upon the ~~The~~ hearing officer, the Agency, and, if a participant, the Attorney General's Office, General and DNR, must each be served with all prehearing testimony, questions, answers, responses, and exhibits in accordance with 35 Ill. Adm. Code 101.304(c). All prehearing testimony, questions, answers, responses, and exhibits must also be served in accordance with 35 Ill. Adm. Code 101.304(c) upon the proponent, and each participant appearing on any service list, unless otherwise specified by the hearing officer. The service must be initiated on or before the date that the prehearing documents are filed with the Clerk.

- d) All prehearing testimony, questions, ~~answers,~~ responses, and any related exhibits must ~~be served and submitted in the form required by 35 Ill. Adm. Code 101. Subpart C and~~ labeled with the docket number of the proceeding, the name of the witness corresponding to ~~submitting~~ the material ~~or exhibit,~~ and the title of the material ~~or exhibit.~~
- e) The proponent and each participant who has filed testimony, questions, ~~answers,~~ responses, or any related exhibits before hearing in paper only must bring ~~the number of copies designated by the hearing officer of that material and exhibits to~~ the hearing a compact disk or other portable electronic storage device containing their respective prehearing documents in text-searchable Adobe PDF for the record.
- f) Testimony, questions, ~~answers, and~~ responses, ~~and exhibits~~ that are timely filed before ~~submitted prior to~~ hearing will be entered into the record as if read, unless the hearing officer determines that it will aid public understanding to have the material ~~or exhibit~~ read at hearing. All persons testifying will be sworn and ~~will be~~ subject to cross-examination. Modifications to prehearing documents ~~previously submitted material and exhibits~~ may be allowed by the hearing officer at hearing if ~~provided that~~ the modifications are either non-substantive in nature or would not materially prejudice another person's participation at hearing. Objections to hearing officer rulings allowing or disallowing the modifications are waived unless raised at hearing.
- g) When prehearing filings ~~submission~~ of testimony, questions, ~~answers,~~ responses, and any related ~~or~~ exhibits; is required pursuant to subsection (a) or (b) ~~of this Section,~~ any material ~~or exhibit~~ that is not timely filed ~~in a timely manner~~ will be allowed at hearing only if as time permits; and ~~only when the hearing officer determines that allowing the material~~ ~~its submission~~ will not materially prejudice the proponent or any other participant. Any of these documents that is not allowed at hearing because it was not timely filed before hearing can be filed after hearing as a public comment.
- h) For a videoconference hearing under Section 102.114 of this Part, in addition to the other requirements of this Section, all written testimony, questions, responses, and any related exhibits, as well as any other document to be offered as a hearing exhibit, must be received by the Clerk's Office at least 24 hours before the scheduled start of the hearing. Any of these documents that is not filed at least 24 hours before the scheduled start of the videoconference hearing will not be allowed at hearing, but can be filed after hearing as a public comment.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL

Section 102.706 Appeal

Any final Board order may be appealed to the appellate court within 35 days after the service of that order (see 35 Ill. Adm. Code 101.300(d)), pursuant to Sections 29 and 41 of the Act [415 ILCS 5/29 and 41].

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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

PART 103
ENFORCEMENT

SUBPART A: GENERAL PROVISIONS

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| 103.301 | Request for Relief from Hearing Requirement in Citizen's Enforcement Proceeding |
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| 103.404 | Joinder of the Agency |
| 103.406 | Draft Permit or Statement |
| 103.408 | Stipulated Draft Remedy |
| 103.410 | Contents of Public Notice |
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SUBPART E: IMPOSITION OF PENALTIES

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SUBPART F: ENFORCING BOARD ORDERS

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| 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. 12898, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 103.108 Hearings

Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Added at 40 Ill. Reg. _____, effective _____)

SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

Section 103.410 Contents of Public Notice

- a) In addition to serving all parties, the Agency must serve a copy of any partial draft permit on USEPA in accordance with 35 Ill. Adm. Code 101.304(c).
- b) In addition to the requirements of the Act and Section 103.210 of this Part, the Agency must, at a minimum, give notice of the filing of a partial draft permit to the following persons:
 - 1) Federal agencies as designated by USEPA;
 - 2) Illinois Department of Transportation;
 - 3) Illinois Department of Natural Resources;
 - 4) Illinois Department of Public Health;
 - 5) The Governor of any other state adjacent to the county in which the facility is located; and
 - 6) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the ~~closest~~ population center that is closest to the facility.
- c) ~~In addition to the methods of notice by publication of Section 103.208 of this Part, the~~The Agency must give notice by broadcast over at least one radio station in the area of the facility containing the information required by subsections (d)(2), (d)(4) and (d)(6) through (d)(8).
- d) A notice of a partial draft permit must include the following information:
 - 1) The addresses of the Board offices and the Board website;
 - 2) Name and address of the respondent and, if different, of the facility subject to the enforcement proceeding;
 - 3) A brief description of the business conducted at the facility and the activity that is the subject of the enforcement proceeding;

- 4) A statement of the violations the Board has found or has proposed to find;
- 5) A statement that the Agency has filed a partial draft permit;
- 6) Name, address, e-mail address, and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the partial draft permit or stipulated remedy;
- 7) A notice of a hearing, the address of the Board, a statement that a hearing will be held and that the record will remain open for 45 days after the filing of the partial draft or stipulated remedy for written comments;
- 8) A statement that the record in the proceeding is available to be inspected at the Board office and may also be available through the Clerk's Office On-Line (COOL), located on the Board website, except those portions of the record that are claimed or determined to be trade secrets or other non-disclosable information, and that procedures are available whereby disclosure may be sought by the public in accordance with 35 Ill. Adm. Code 130;
- 9) A statement that enforcement proceedings are considered pursuant to 415 ILCS 5/30; and
- 10) Any additional information considered necessary or proper.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 103.414 Hearing

- a) The hearing officer, after appropriate consultation with the parties, will set a time and place for the hearing to be held not less than 30 days after the filing of the partial draft permit or stipulated remedy.
- b) The hearing will be held, whenever possible, at a location convenient to in the county in which the facility is located, in the population center that is in the county closest to the facility.
- c) The Clerk in consultation with the hearing officer will give notice of the hearing to the persons entitled to notice in Sections 103.210 and 103.410 of this Part, and to any other persons who have commented, requested to comment or requested notice, and to any persons on a mailing list provided by the Agency.
- d) Notice will be mailed not less than 30 days before the hearing.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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

PART 104
 REGULATORY RELIEF MECHANISMS

SUBPART A: GENERAL PROVISIONS

| | |
|----------------|-------------------------------|
| Section | |
| 104.100 | Applicability |
| 104.102 | Severability |
| 104.104 | Definitions |
| <u>104.106</u> | <u>Petitions and Hearings</u> |

SUBPART B: VARIANCES

| | |
|---------|--|
| Section | |
| 104.200 | General |
| 104.202 | Filing Requirements |
| 104.204 | Petition Content Requirements |
| 104.206 | Resource Conservation and Recovery Act (RCRA) Variance Petition Contents |
| 104.208 | Consistency with Federal Law |
| 104.210 | Petition for Extension of Variance |
| 104.212 | Motion for Modification of Internal Variance Compliance Dates |
| 104.214 | Notice of Petition |
| 104.216 | Agency Investigation and Recommendation |
| 104.218 | Agency Recommendation to RCRA Variance |
| 104.220 | Response to Agency Recommendation |
| 104.222 | Stipulations |
| 104.224 | Objections to Petition, Written Comments and Request for Hearing |
| 104.226 | Amended Petition and Amended Recommendation |
| 104.228 | Insufficient Petition |
| 104.230 | Dismissal of Petition |
| 104.232 | Calculation of Decision Deadline |
| 104.234 | Hearing |
| 104.236 | Hearing Procedures |
| 104.238 | Standard of Review |
| 104.240 | Certificate of Acceptance |
| 104.242 | Term of Variance |
| 104.244 | Variance Conditions |
| 104.246 | Performance Bonds |
| 104.248 | Objection to Conditions |

SUBPART C: PROVISIONAL VARIANCES

| | |
|---------|--|
| Section | |
| 104.300 | Applicability |
| 104.302 | Agency Action |
| 104.304 | Initiating a Request |
| 104.306 | Filing and Notice |
| 104.308 | Term |
| 104.310 | Simultaneous Variance Prohibition (Repealed) |

SUBPART D: ADJUSTED STANDARDS

| | |
|---------|--|
| Section | |
| 104.400 | General |
| 104.402 | Initiation of Proceeding |
| 104.404 | Request to Agency to Join as Co-Petitioner |
| 104.406 | Petition Content Requirements |
| 104.408 | Petition Notice Requirements |
| 104.410 | Proof of Petition Notice Requirements |
| 104.412 | Effect of Filing a Petition: Stay |
| 104.414 | Dismissal of Petition |
| 104.416 | Agency Recommendation and Petitioner Response |
| 104.418 | Amended Petition, Amended Recommendation, and Amended Response |
| 104.420 | Request for Public Hearing |
| 104.422 | Public Hearing |
| 104.424 | Hearing Notice |
| 104.426 | Burden of Proof |
| 104.428 | Board Action |

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

AUTHORITY: Subparts B and C: Implementing Sections 5, 35, 36, 37 and 38 of the Environmental Protection Act (Act) [415 ILCS 5/5, 35, 36, 37, and 38] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27]. Subpart D: Implementing Sections 5, 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, 28.5 and 39.5] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Subpart B: Originally adopted as Chapter I: Procedural Rules, Part IV: Variances, in R70-4, at 1 PCB 43, October 8, 1970; amended in R77-16, 29 PCB 503, at 2 Ill. Reg. 16, p. 3, effective May 1974; amended in R79-9, 35 PCB 433, at 3 Ill. Reg. 51, p. 128, effective December 7, 1979; amended in R80-12, 40 PCB 451, at 5 Ill. Reg. 2763, effective March 2, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10, 62 PCB 87, at 9 Ill. Reg. 1409, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 613, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8803, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2357, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12905, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 104.106 Petitions and Hearings

- a) Each petition must contain an index that lists the documents comprising the petition, including any exhibits, attachments, and supporting documents. All pages of the petition must be sequentially numbered with the letter "P" placed before the number of each page. The index must show the page numbers upon which each document comprising the petition starts and ends.
- b) Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Added at 40 Ill. Reg. _____, effective _____)

SUBPART B: VARIANCES

Section 104.236 Hearing Procedures

Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, except that:

- a) ~~All hearings are to be held in the county where the petitioner's facility or pollution source is located unless otherwise ordered by the hearing officer (see 35 Ill. Adm. Code 101.600);~~
- a**b**) Hearings may be canceled pursuant to a motion filed in accordance with 35 Ill. Adm. Code 101.510 at the discretion of the hearing officer; ~~and~~
- b**e**) If all parties and participants who have requested a hearing pursuant to this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board in its discretion deems it advisable.
- c) The hearing on a RCRA variance petition will be held, whenever possible, at a location convenient to the population center that is closest to the facility.
- d) The hearing officer ~~will~~shall give notice of RCRA hearings to the following persons:
 - 1) Any person in the county in which the installation or property for which variance is sought is located who has in writing requested notice of variance petitions and the State's attorney of the county;
 - 2) The Chairman of the county board of the county;

- 3) Each member of the General Assembly from the legislative district in which that installation or property is located;
- 4) Federal agencies as designated by USEPA;
- 5) Illinois Department of Transportation;
- 6) Department of Natural Resources;
- 7) Illinois Department of Public Health;
- 8) The Governor of any other state adjacent to the county in which the facility or pollution source is located;
- 9) Elected officials of any counties, in other states, adjacent to the county in which the facility or pollution source is located, and elected officials in any municipality, in another state, if it is the ~~closest~~ closest population center that is closest to the facility or pollution source; and
- 10) USEPA's Region V Director of Waste, Pesticides and Toxics Division.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART D: ADJUSTED STANDARDS

Section 104.422 Public Hearing

- a) A public hearing will be held and the Board will assign a hearing officer to an adjusted standard proceeding when:
 - 1) The petitioner requests a hearing be held; or
 - 2) The Board receives a hearing request by any person pursuant to Section 104.420 of this Part, not later than 21 days after the date of the publication of the petition notice in accordance with Section 104.408 of this Part; or
 - 3) The Board *in its discretion determines that a hearing would be advisable* [415 ILCS 5/28.1]; or
 - 4) The adjusted standard is sought pursuant to 35 Ill. Adm. Code 212.126 (CAA).
- b) The hearing officer will set a time and place for the hearing. The hearing officer will ~~make an attempt to consult with the petitioner and the Agency before~~ prior to the scheduling of a hearing. Hearings are to be held in the county likely to be

~~affected by the petitioner's activity that is the subject of the proposed adjusted standard.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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

PART 105
APPEALS OF FINAL DECISIONS OF STATE AGENCIES

SUBPART A: GENERAL PROVISIONS

| | |
|---------|--|
| Section | |
| 105.100 | Applicability |
| 105.102 | Severability |
| 105.104 | Definitions |
| 105.106 | Computation of Time, Filing and Service Requirements |
| 105.108 | Dismissal of Petition |
| 105.110 | <u>Hearings</u> Hearing Process |
| 105.112 | Burden of Proof |
| 105.114 | Calculation of Decision Deadline |
| 105.116 | Record Filing |
| 105.118 | Sanctions for Untimely Filing of the Record |

SUBPART B: APPEAL OF AGENCY PERMIT DECISIONS AND OTHER FINAL
DECISIONS OF THE AGENCY

| | |
|---------|--|
| Section | |
| 105.200 | Applicability |
| 105.202 | Parties |
| 105.204 | Who May File a Petition for Review |
| 105.206 | Time to File the Petition or Request for Extension |
| 105.208 | Extension of Time to File a Petition for Review |
| 105.210 | Petition Content Requirements |
| 105.212 | Agency Record |
| 105.214 | Board Hearing |

SUBPART C: CAAPP PERMIT APPEALS

| | |
|---------|-------------------------------|
| Section | |
| 105.300 | Applicability |
| 105.302 | General Requirements |
| 105.304 | Petition Content Requirements |

SUBPART D: APPEAL OF AGENCY LEAKING UNDERGROUND

STORAGE TANK (LUST) DECISIONS

| | |
|---------|---|
| Section | |
| 105.400 | Parties |
| 105.402 | Who May File a Petition for Review |
| 105.404 | Time for Filing the Petition |
| 105.406 | Extension of Time to File a Petition for Review |
| 105.408 | Petition Content Requirements |
| 105.410 | Agency Record |
| 105.412 | Board Hearing |

SUBPART E: APPEAL OF OSFM LUST DECISIONS

| | |
|---------|-------------------------------|
| Section | |
| 105.500 | Applicability |
| 105.502 | General Overview |
| 105.504 | General Requirements |
| 105.506 | Petition Content Requirements |
| 105.508 | OSFM Record and Appearance |
| 105.510 | Location of Hearing |

| | |
|----------------|---|
| 105.APPENDIX A | Agency LUST Final Decisions that are Reviewable |
| 105.APPENDIX B | Comparison of Former and Current Rules (Repealed) |

AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 5, 39, 39.5, 40, 40.1, 40.2, and 57 of the Act [415 ILCS 5/5, 39, 39.5, 40, 40.1, 40.2 and 57].

SOURCE: Filed with Secretary of State January 1, 1978; amended 4 Ill. Reg. 52, page 41, effective December 11, 1980; codified 6 Ill. Reg. 8357; amended in R93-24 at 18 Ill. Reg. 4244, effective March 8, 1994; amended in R94-11 at 18 Ill. Reg. 16594, effective November 1, 1994; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 406, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8811, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2369, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 105.110 Hearings ~~Hearing Process~~

Hearings will be conducted~~Unless this Part provides otherwise, proceedings held pursuant to this Part will be in accordance with the rules set forth in~~ 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 105.116 Record Filing

- a) The State agency must file with the Board the entire record of its decision within 30 days after the filing of the petition for review, unless this Part provides otherwise, or the Board or hearing officer orders a different filing date. If the State agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. The State agency must file the ~~original~~ record in text-searchable Adobe PDF through COOL or on compact disk or other portable electronic storage device ~~in paper~~ pursuant to 35 Ill. Adm. Code 101.302(h)(2). ~~(See 35 Ill. Adm. Code 101.1050(a).)~~
- b) The record must ~~contain the originals of all documents~~, be arranged in chronological sequence, and be sequentially numbered with the letter "R" placed before the number of each page. The record must be certified by the State agency. The certification must be entitled "Certificate of Record on Appeal". The Certificate must contain an index that lists the documents comprising the record and shows the page numbers upon which each document starts and ends. The Certificate of Record must be served on all parties by the State agency.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART E: APPEAL OF OSFM LUST DECISIONS

Section 105.510 Location of Hearing

The hearing will be held in either Springfield or Chicago or in such other location as the hearing officer or the Board may designate to prevent material prejudice or undue delay. Upon the proceeding being set for hearing, the Clerk will cause notice of the hearing to be published. Public notice will be published at least 21 days before the hearing by public advertisement in a newspaper of general circulation in the county in which the LUST site in question is located. Nothing in this Section precludes holding the hearing by videoconference pursuant to 35 Ill. Adm. Code 101.600(b).

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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

PART 106 PROCEEDINGS PURSUANT TO SPECIFIC RULES OR STATUTORY PROVISIONS

SUBPART A: GENERAL PROVISIONS

| | |
|---------|---------------|
| Section | |
| 106.100 | Applicability |
| 106.102 | Severability |

| | |
|----------------|-------------------------------|
| 106.104 | Definitions |
| <u>106.106</u> | <u>Petitions and Hearings</u> |

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

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

SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES

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

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

| | |
|---------|--|
| Section | |
| 106.400 | General |
| 106.402 | Definitions |
| 106.404 | Initiation of Proceedings |
| 106.406 | Petition Content Requirements |
| 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 |
| 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 |
| 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 |
| 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. 12914, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 106.106 Petitions and Hearings

- a) Each petition must contain an index that lists the documents comprising the petition, including any exhibits, attachments, and supporting documents. All pages of the petition must be sequentially numbered with the letter "P" placed before the number of each page. The index must show the page numbers upon which each document comprising the petition starts and ends.

- b) Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Added at 40 Ill. Reg. _____, effective _____)

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

Section 106.410 Hearing

The Board will hold at least one public hearing ~~in the county where the CAAPP source is located.~~ The Clerk will give notice of the petition and hearing in accordance with 35 Ill. Adm. Code 101.602. The proceeding must be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART E: MAXIMUM ACHIEVABLE CONTROL
TECHNOLOGY DETERMINATIONS

Section 106.510 Hearing

The Board will hold at least one public hearing ~~in the county where the CAAPP source is located.~~ The Clerk of the Board will give notice of the petition and any hearing in accordance with 35 Ill. Adm. Code 101.602. The proceeding will be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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

Section 106.710 Notice of Hearing

- a) The Clerk will assign a docket number to each statement of deficiency filed. Any hearing will be held not later than 60 days after the respondent files the answer, subject to any extensions ordered under subsection (c) of this Section.
- b) The Chairman of the Board will designate a hearing officer and the Clerk will notify the parties of the designation. The hearing officer may be a Member of the Board if otherwise qualified.
- c) The hearing officer, after reasonable efforts to consult with the parties, will set a time and place for hearing. The Board or the hearing officer may extend the time for hearing if all parties agree or there are extreme and unanticipated or

uncontrollable circumstances that warrant a delay. The Board or the hearing officer may delay the hearing more than once. In each event, the Board or the hearing officer will not delay the hearing for more than 30 days.

- d) The hearing will be held pursuant to 35 Ill. Adm. Code 101.Subpart F~~in the county in which the pilot project is located, or in another county that the hearing officer designates for cause.~~
- e) The hearing officer or the Clerk will give notice of the hearing, at least 30 days before the hearing, to the parties under Section 106.708(b) of this Subpart, and to the public by public advertisement in a newspaper of general circulation in the county in which the pilot project is located.
- f) The Agency must give notice of each statement of deficiency and hearing under Section 106.708(b) of this Part at least 10 days before the hearing to:
 - 1) All stakeholders named or listed in the EMSA; and
 - 2) Any person who submitted written comments on the respondent's EMSA or participated in the public hearing on the respondent's EMSA by signing an attendance sheet or signature card under the procedures set forth in 35 Ill. Adm. Code 187.404, if less than 100 persons attended the public hearing on the respondent's EMSA as indicated by signatures on the attendance sheet or signature cards.
- g) Failure to comply with this Section is not a defense to an involuntary termination proceeding under this Subpart, but the hearing officer may postpone the hearing upon the motion of any person prejudiced by a failure to comply with this Section.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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

Section 106.912 Hearing

- a) Any person can request that a public hearing be held in an authorization proceeding. The requests must be filed not later than 21 days after the date of the publication of the petition notice in accordance with Section 106.906. Requests for hearing should make reference to the Board docket number assigned to the proceeding. A copy of each timely hearing request will be mailed to the petitioner and Agency by the Clerk of the Board. Participation by the public at the hearing must be in accordance with 35 Ill. Adm. Code 101.110 and 101.628.

The Board may also, in its discretion, hold a public hearing when it determines a public hearing is advisable.

- b) When all parties and participants who have requested a hearing pursuant to this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board, in its discretion, deems it advisable.
- c) The hearing officer will set a time and place for the hearing. The hearing officer will make an attempt to consult with the petitioner and the Agency before ~~prior to~~ the scheduling of a hearing. ~~Hearings are to be held in the county likely to be affected by the petitioner's activity that is the subject of the proposed authorization proceeding.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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 106.1155 Notice and Conduct of Hearing

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

(Source: Amended at 40 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE A: GENERAL PROVISIONS
 CHAPTER 1: POLLUTION CONTROL BOARD

PART 107
 PETITION TO REVIEW POLLUTION CONTROL FACILITY SITING DECISIONS

SUBPART A: GENERAL PROVISIONS

| | |
|---------|---------------|
| Section | |
| 107.100 | Applicability |
| 107.102 | Severability |

- 107.104 Definitions
- 107.106 Description

SUBPART B: PETITION FOR REVIEW

- Section
- 107.200 Who May File Petition
- 107.202 Parties
- 107.204 Time for Filing Petition
- 107.206 Filing and Service Requirements
- 107.208 Petition Content Requirements

SUBPART C: FILING OF LOCAL RECORD

- Section
- 107.300 Record
- 107.302 Filing of the Record
- 107.304 Record Contents
- 107.306 Preparing of the Record
- 107.308 Certification of Record

SUBPART D: HEARING

- Section
- 107.400 General
- 107.402 Authority and Duties of Hearing Officer
- 107.404 Public Participation

SUBPART E: BOARD REVIEW AND DECISION

- Section
- 107.500 Preliminary Board Determination/Set for Hearing
- 107.502 Dismissal of Petition
- 107.504 Decision Deadline
- 107.506 Burden of Proof

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

AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 39.2, and 40.1 of the Act [415 ILCS 5/39.2 and 40.1].

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; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 539, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8828, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2391, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 107.100 Applicability

- a) This Part applies to adjudicatory proceedings before the Board concerning petitions to review a pollution control facility siting decision made by local government pursuant to Sections 39.2 and 40.1 of the Act [415 ILCS 5/39.2, 40.1]. “Pollution control facility” is defined at Section 3.330 of the Act [415 ILCS 5/3.330] for purposes of this Part.
- 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 those of this Part, the provisions of this Part apply.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART C: FILING OF LOCAL RECORD

Section 107.302 Filing of the Record

The siting authority must file the record of its proceedings with the Board as directed by Board or hearing officer order. Failure to file the entire record on the date directed by the Board or hearing officer may subject the respondent to sanctions as may be ordered by the Board in accordance with 35 Ill. Adm. Code 101.Subpart H. The siting authority must file the ~~original~~ record in text-searchable Adobe PDF through COOL or on compact disk or other portable electronic storage device ~~in paper~~ pursuant to 35 Ill. Adm. Code 101.302(h)(2). ~~(See 35 Ill. Adm. Code 101.1050(a).)~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 107.304 Record Contents

- a) The record must contain all information or evidence presented to the local siting authority or relied upon by the local siting authority during its hearing process including:
 - 1) The siting application;

- 2) Any and all transcripts of local hearings;
 - 3) All briefs and other arguments and statements of parties and participants;
 - 4) All exhibits relied upon by the local siting authority in making its decision;
 - 5) All written public comments relevant to the local government proceeding;
 - 6) Minutes of all relevant open meetings of the siting authority;
 - 7) Notices of hearings or all relevant meetings of the siting authority;
 - 8) The written decision of the siting authority made pursuant to Section 39.2 of the Act;
 - 9) Certificate of Record as described in Section 107.308 of this Part; and
 - 10) *If, prior to making a final local siting decision, a county board or governing body of a municipality has negotiated and entered into a host agreement with the local siting applicant, the terms and conditions of the host agreement, whether written or oral, shall be disclosed and made a part of the hearing record for that local siting proceeding. In the case of an oral agreement, the disclosure shall be made in the form of a written summary jointly prepared and submitted by the county board or governing body of the municipality and the siting applicant and shall describe the terms and conditions of the oral agreement. [415 ILCS 5/39.2(e)]*
- b) The record must ~~contain the originals of all documents~~, be arranged in chronological sequence, and be sequentially numbered with the letter "C" placed before the number of each page.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART D: HEARING

Section 107.400 General

Hearings, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)), and discovery will be conducted pursuant to ~~in accordance with the provisions set forth in the Board's general procedural rules found at 35 Ill. Adm. Code 101.Subpart F.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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

| | |
|---------|---|
| 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 [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 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, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12921, effective September 8, 2015; amended in R16-17 at 40 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.
- d) Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)). ~~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 40 Ill. Reg. _____, effective _____)

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

PART 125 TAX CERTIFICATIONS

SUBPART A: GENERAL PROVISIONS

| | |
|---------|---------------|
| Section | |
| 125.100 | Applicability |
| 125.102 | Severability |
| 125.104 | Definitions |

SUBPART B: TAX CERTIFICATION OF POLLUTION CONTROL FACILITIES AND LOW SULFUR DIOXIDE EMISSION COAL FUELED DEVICES

| | |
|---------|-------------------------------|
| Section | |
| 125.200 | General |
| 125.202 | Tax Certification Application |
| 125.204 | Agency Recommendation |
| 125.206 | Petition to Contest |
| 125.208 | Agency Record |
| 125.210 | Public Hearing |
| 125.212 | Hearing Notice |
| 125.214 | Burden of Proof |
| 125.216 | Board Action |

AUTHORITY: Implementing and authorized by Sections 11-5, 11-10, 11-20, 11-25, 11-30, 11-35, 11-40, 11-50, and 11-55 of the Property Tax Code [35 ILCS 200/11-5, 11-10, 11-20, 11-25, 11-30, 11-35, 11-40, 11-50, and 11-55] and Sections 26 and 27 of the Environmental Protection Act (the Act) [415 ILCS 5/26 and 27].

SOURCE: Adopted in R00-20 at 25 Ill. Reg. 642, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8838, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2402, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. _____, effective _____.

SUBPART B: TAX CERTIFICATION OF POLLUTION CONTROL FACILITIES AND LOW SULFUR DIOXIDE EMISSION COAL FUELED DEVICES

Section 125.208 Agency Record

The Agency must file with the Board the entire record on which it based its recommendation within 30 days after the applicant files a petition to contest under Section 125.206 of this Subpart or as the Board or hearing officer orders. If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. The Agency must file the ~~original~~ record in text-searchable Adobe PDF through COOL or on compact disk or other portable electronic storage device ~~in paper~~ pursuant to 35 Ill. Adm. Code 101.302(h)(2). ~~(See 35 Ill. Adm. Code 101.1050(a).)~~ The record must comply with 35 Ill. Adm. Code 105.116(b).

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 125.210 Public Hearing

- a) The Board will hold a public hearing in a tax certification proceeding if:
 - 1) The applicant files a petition to contest in accordance with Section 125.206 of this Subpart, unless the Board disposes of the petition on a motion for summary judgment brought pursuant to 35 Ill. Adm. Code 101.516;

- 2) The applicant or holder timely requests a hearing after the Board provides notice pursuant to Section 125.216(c) of this Subpart; or
 - 3) The Board, in its discretion, determines that a hearing would be advisable.
- b) If a hearing is to be held, the hearing officer will set a time and place for the hearing. The hearing officer will ~~make an attempt to consult with the applicant and the Agency before scheduling a hearing.~~ Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)). ~~Hearings will be held in the county where the facility or portion thereof or the device for which the applicant seeks tax certification is located, unless the hearing officer orders otherwise.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

Board Member D. Glosser dissented.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 17, 2015, by a vote of 4-1.



John T. Therriault, Clerk
Illinois Pollution Control Board