

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

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

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
101.202	Amendment
101.300	Amendment
101.302	Amendment
101.518	Amendment
101.600	Amendment
101.602	Amendment
101.906	Amendment
101.1000	Amendment
101.1050	Amendment
101.1060	Amendment
101.1070	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: Generally, the Board proposes amendments to help it more effectively and efficiently conduct its business, particularly in light of digital technology, including high quality video communications. These amendments are designed to increase the efficiency of Board operations and reduce the costs of conducting its rulemakings and contested cases. Specifically, the Board proposes expanding the number of orders and hearing officer orders that are served by e-mail in lieu of paper, amending the requirement that a person must file a written consent to receive e-mail service, and requiring parties with e-mail capability to serve filings upon Board hearing officers by e-mail. The Board further proposes that State agencies file records of their appealed decisions only through the Board's Clerk's Office Online (COOL), compact disk, or other portable electronic storage device, in lieu of paper filings. For documents filed in paper, the Board proposes amending the requirement that an original and three copies be filed, to requiring only an original and two copies. The Board also proposes amendments that will allow it to hold any Board hearing by videoconference. The Board further proposes amendments that will reduce a rulemaking proponent's expenses when proposing copyrighted documents for incorporation by reference. The definition of "pollution control facility" in the Board's regulations is replaced with a citation to the Illinois Environmental Protection Act's definition of the term. Finally, the Board proposes clarification amendments including amendments to its rules on appeal timeframes, hearing officer rulings, hearing notices,



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and hearing locations.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments must be filed with the Clerk of the Board. Public comments should reference Docket R16-17 and be addressed to:

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

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

Interested persons may request copies of the Board's opinion and order in R16-17 by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

For more information, contact hearing officer Daniel Robertson at 312-814-6931 or by e-mail at [Daniel.Robertson@illinois.gov](mailto:Daniel.Robertson@illinois.gov).

- 13) Initial Regulatory Flexibility Analysis:

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

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

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

PART 101  
GENERAL RULES

SUBPART A: GENERAL PROVISIONS

Section	
101.100	Applicability
101.102	Severability
101.104	Repeals
101.106	Board Authority
101.108	Board Proceedings
101.110	Public Participation
101.111	Informal Recordings of Board Meetings
101.112	Bias and Conflict of Interest
101.114	Ex Parte Communications

SUBPART B: DEFINITIONS

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

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

Section	
101.300	Computation of Time
101.302	Filing of Documents
101.304	Service of Documents
101.306	Incorporation of Documents from Another Proceeding
101.308	Statutory Decision Deadlines and Waiver of Deadlines

SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

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

SUBPART E: MOTIONS

Section

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

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

Section

- 101.600 Hearings
- 101.602 Notice of Board Hearings
- 101.604 Formal Board Transcript
- 101.606 Informal Recordings of the Proceedings
- 101.608 Default
- 101.610 Duties and Authority of the Hearing Officer
- 101.612 Schedule to Complete the Record
- 101.614 Production of Information
- 101.616 Discovery
- 101.618 Admissions
- 101.620 Interrogatories
- 101.622 Subpoenas and Depositions

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- 101.624 Examination of Adverse, Hostile or Unwilling Witnesses
- 101.626 Information Produced at Hearing
- 101.628 Statements from Participants
- 101.630 Official Notice
- 101.632 Viewing of Premises

SUBPART G: ORAL ARGUMENT

- Section
- 101.700 Oral Argument

SUBPART H: SANCTIONS

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

SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

- Section
- 101.902 Motions for Reconsideration
- 101.904 Relief from Final Opinions and Orders
- 101.906 Judicial Review of Board Orders
- 101.908 Interlocutory Appeal

SUBPART J: ELECTRONIC FILING AND E-MAIL SERVICE

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

- 101.APPENDIX A Captions

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101.ILLUSTRATION A	Enforcement Case
101.ILLUSTRATION B	Citizen's Enforcement Case
101.ILLUSTRATION C	Variance
101.ILLUSTRATION D	Adjusted Standard Petition
101.ILLUSTRATION E	Joint Petition for an Adjusted Standard
101.ILLUSTRATION F	Permit Appeal
101.ILLUSTRATION G	Underground Storage Tank Appeal
101.ILLUSTRATION H	Pollution Control Facility Siting Appeal
101.ILLUSTRATION I	Administrative Citation
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

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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

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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

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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.

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"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*

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*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.

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"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].*

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"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.)

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"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)].

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"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

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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;-~~

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~~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;~~

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~~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~~

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~~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:~~

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

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

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

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

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

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

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

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

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~~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~~

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~~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);~~

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~~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

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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.

"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

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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.)

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"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.

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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

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**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.

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- 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

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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~~ which the party receives the Board's ~~party's~~ certified ~~mailingmail receiptmailing~~ 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~~ which the party ~~receivesparty's~~ receives the Board's certified ~~mailingmail receiptmailing~~ of the Board order ruling upon the motion is the date of service of the ~~order by the Board~~ order 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~~ IAPA is presumed to be the date of service of the ~~decisionfinal opinion and order by the Board~~ decision upon the appealing ~~person~~ participant ~~person~~. 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, 102.700 and~~ 102.702), the date on ~~which of~~ which the participant receives ~~participant's~~

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~~receipt of~~ the Board order ruling upon the motion is the date of service of the ~~order by the Board~~ order 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)).

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- 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

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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~~~~two~~ copies of the document (~~three~~~~four~~~~three~~ 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~~ device:
    - A) ~~The original~~ The 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);

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- B) ~~The original~~[The](#) 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~~[The](#) 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, 104.106 and 106.106~~[104.106, 104.106 and 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~~[if any document](#) 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~~

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~~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)~~ 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;

~~ii)~~ 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

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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~~ by filing a 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) 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 be 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's Office or the hearing officer for information about the hearing. Parties, participants, and members of the public must conduct themselves with decorum at the hearing.

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~~b) 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.

~~ba 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~~ before the hearing. If the proceeding involves federal rules ~~that which that~~ the State has been given delegated authority to administer, notice must be published at least 30 days ~~before prior to~~ before the hearing.

~~eb 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**

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- 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  
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.
- beb) 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.

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(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~~must 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.

~~POLLUTION CONTROL BOARD~~

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- f) If any computer malfunction precludes the e-mail service of a document, the person authorizing the filing must promptly serve the document in paper pursuant to Section 101.304(c).
- g) Except for final adjudicatory orders of the Board, which the Clerk's Office serves in paper by certified mail, the Clerk's Office ~~will~~~~may~~~~will~~ 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~~~~consents~~ to e-mail service of documents in lieu of receiving paper documents by:
  - 1) ~~Filing~~~~filing~~~~Filing~~ a ~~"Consent to Receipt of E-Mail Service"~~~~with the Clerk's Office.~~ (see ~~A~~ sample form of ~~consent~~~~is available~~~~consent~~ 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~~~~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.

ILLINOIS REGISTER [JCAR350101-1600052r01](#)

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- 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~~[notify](#) 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 \_\_\_\_\_)

Document comparison by Workshare Compare on Wednesday, January 06, 2016 2:43:24 PM

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Document 1 ID	file:///I:\Input\Agency Rulemakings - Files Received\2015\12Dec2015\35-101-Agency Proposed Delta-(issue 1).docx
Description	35-101-Agency Proposed Delta-(issue 1)
Document 2 ID	file:///I:\Input\Agency Rulemakings - Files Received\2015\12Dec2015\35-101-JCARr01(issue1).docx
Description	35-101-JCARr01(issue1)
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Statistics:	
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Insertions	65
Deletions	158
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	223

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

5 PART 101  
6 GENERAL RULES  
7

8 SUBPART A: GENERAL PROVISIONS  
9

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

20  
21 SUBPART B: DEFINITIONS  
22

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

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

30	Section	
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32	101.302	Filing of Documents
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35	101.308	Statutory Decision Deadlines and Waiver of Deadlines

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37 SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION  
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41		
42	101.402	Intervention of Parties
43	101.403	Joinder of Parties

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

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SUBPART E: MOTIONS

49

50 Section

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

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SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

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66 Section

- 67 101.600 Hearings
- 68 101.602 Notice of Board Hearings
- 69 101.604 Formal Board Transcript
- 70 101.606 Informal Recordings of the Proceedings
- 71 101.608 Default
- 72 101.610 Duties and Authority of the Hearing Officer
- 73 101.612 Schedule to Complete the Record
- 74 101.614 Production of Information
- 75 101.616 Discovery
- 76 101.618 Admissions
- 77 101.620 Interrogatories
- 78 101.622 Subpoenas and Depositions
- 79 101.624 Examination of Adverse, Hostile or Unwilling Witnesses
- 80 101.626 Information Produced at Hearing
- 81 101.628 Statements from Participants
- 82 101.630 Official Notice
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84

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87 Section  
 88 101.700 Oral Argument

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90 SUBPART H: SANCTIONS

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92 Section  
 93 101.800 Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing  
 94 Officer Orders

95 101.802 Abuse of Discovery Procedures

96

97 SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

98

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

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105 SUBPART J: ELECTRONIC FILING AND E-MAIL SERVICE

106

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

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117 101.APPENDIX A Captions  
 118 101.ILLUSTRATION A Enforcement Case  
 119 101.ILLUSTRATION B Citizen's Enforcement Case  
 120 101.ILLUSTRATION C Variance  
 121 101.ILLUSTRATION D Adjusted Standard Petition  
 122 101.ILLUSTRATION E Joint Petition for an Adjusted Standard  
 123 101.ILLUSTRATION F Permit Appeal  
 124 101.ILLUSTRATION G Underground Storage Tank Appeal  
 125 101.ILLUSTRATION H Pollution Control Facility Siting Appeal  
 126 101.ILLUSTRATION I Administrative Citation  
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- 131 101.APPENDIX B Appearance Form
- 132 101.APPENDIX C Withdrawal of Appearance Form
- 133 101.APPENDIX D Notice of Filing
- 134 101.APPENDIX E Affidavit or Certificate of Service
- 135 101.ILLUSTRATION A Service by Non-Attorney
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- 137 101.APPENDIX F Notice of Withdrawal (Repealed)
- 138 101.APPENDIX G Comparison of Former and Current Rules (Repealed)
- 139 101.APPENDIX H Affidavit or Certificate of E-Mail Service
- 140 101.ILLUSTRATION A E-Mail Service by Non-Attorney
- 141 101.ILLUSTRATION B E-Mail Service by Attorney
- 142 101.APPENDIX I Consent to Receipt of E-Mail Service

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

149

150 SOURCE: Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; Part  
 151 repealed, new Part adopted in R88-5A at 13 Ill. Reg. 12055, effective July 10, 1989; amended in  
 152 R90-24 at 15 Ill. Reg. 18677, effective December 12, 1991; amended in R92-7 at 16 Ill. Reg.  
 153 18078, effective November 17, 1992; old Part repealed, new Part adopted in R00-20 at 25 Ill.  
 154 Reg. 446, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8743, effective June 8,  
 155 2005; amended in R06-9 at 29 Ill. Reg. 19666, effective November 21, 2005; amended in R07-  
 156 17 at 31 Ill. Reg. 16110, effective November 21, 2007; amended in R10-22 at 34 Ill. Reg. 19566,  
 157 effective December 3, 2010; amended in R12-22 at 36 Ill. Reg. 9211, effective June 7, 2012;  
 158 amended in R13-9 at 37 Ill. Reg. 1655, effective January 28, 2013; amended in R14-21 at 39 Ill.  
 159 Reg. 2276, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12848, effective  
 160 September 8, 2015; amended in R16-17 at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

161

162 **SUBPART B: DEFINITIONS**

163

164 **Section 101.202 Definitions for Board's Procedural Rules**

165

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

169

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

171

172 "Adjudicatory proceeding" means an action of a quasi-judicial nature brought

173 before the Board pursuant to authority granted to the Board under Section 5(d) of  
 174 the Act or as otherwise provided by law. Adjudicatory proceedings include  
 175 enforcement, variance, permit appeal, pollution control facility siting appeal,  
 176 Underground Storage Tank (UST) Fund determination, water well set back  
 177 exception, adjusted standard, and administrative citation proceedings.  
 178 Adjudicatory proceedings do not include regulatory, quasi-legislative, or  
 179 informational proceedings.

180  
 181 "Adjusted standard" or "AS" means an alternative standard granted by the Board  
 182 in an adjudicatory proceeding pursuant to Section 28.1 of the Act and 35 Ill. Adm.  
 183 Code 104.Subpart D. The adjusted standard applies instead of the rule or  
 184 regulation of general applicability.

185  
 186 "Administrative citation" or "AC" means a citation issued by the Agency or by a  
 187 unit of local government acting as the Agency's delegate. (See 35 Ill. Adm. Code  
 188 108.)

189  
 190 "Administrative citation review" or "administrative citation appeal" means a  
 191 petition for review of an administrative citation. (See 35 Ill. Adm. Code 108.)

192  
 193 "Affidavit" means a sworn, signed statement witnessed by a notary public.

194  
 195 "Agency" means the Illinois Environmental Protection Agency as established by  
 196 Section 4 of the Act.

197  
 198 "Agency recommendation" means the document filed by the Agency pursuant to  
 199 Sections 37(a) and 28.1(d)(3) of the Act in which the Agency provides its  
 200 recommended disposition of a petition for variance or an adjusted standard. This  
 201 includes a recommendation to deny, or a recommendation to grant with or without  
 202 conditions. (See 35 Ill. Adm. Code 104.218 and 104.416.)

203  
 204 "Amicus curiae brief" means a brief filed in a proceeding by any interested person  
 205 who is not a party. (See Sections 101.110 and 101.628 of this Part.)

206  
 207 "Applicant" means any person who submits, or has submitted, an application for a  
 208 permit or for local siting approval pursuant to any of the authorities to issue  
 209 permits or granting of siting approval identified in Sections 39, 39.1, and 39.5 of  
 210 the Act.

211  
 212 "Article" means *any object, material, device or substance, or whole or partial*  
 213 *copy thereof, including any writing, record, document, recording, drawing,*  
 214 *sample, specimen, prototype, model, photograph, culture, microorganism,*  
 215 *blueprint or map* [415 ILCS 5/7.1].

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"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

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*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

302 of the Act that establish 120-day decision deadlines for variances, permit appeals,  
303 and review of pollution control facility siting decisions, respectively.)

304  
305 "Deinked stock" means paper that has been processed to remove inks, clays,  
306 coatings, binders and other contaminants [415 ILCS 20/2.1].

307  
308 "Delegated unit" means the unit of local government to which the Agency has  
309 delegated its administrative citation or other function pursuant to Section 4(r) of  
310 the Act.

311  
312 "Digital signature" means a type of electronic signature created by transforming  
313 an electronic document using a message digest function and encrypting the  
314 resulting transformation with an asymmetric cryptosystem using the signer's  
315 private key such that any person having the initial untransformed electronic  
316 document, the encrypted transformation, and the signer's corresponding public  
317 key can accurately determine whether the transformation was created using the  
318 private key that corresponds to the signer's public key and whether the initial  
319 electronic document has been altered since the transformation was made. A  
320 digital signature is a security device. [5 ILCS 175/5-105]

321  
322 "Discovery" means a pre-hearing process that can be used to obtain facts and  
323 information about the adjudicatory proceeding in order to prepare for hearing.  
324 The discovery tools include depositions upon oral and written questions, written  
325 interrogatories, production of documents or things, and requests for admission.

326  
327 "DNR" means the Illinois Department of Natural Resources.

328  
329 "DOA" means the Illinois Department of Agriculture.

330  
331 "Duplicative" means the matter is identical or substantially similar to one brought  
332 before the Board or another forum.

333  
334 "Electronic" includes electrical, digital, magnetic, optical, electromagnetic, or  
335 any other form of technology that entails capabilities similar to these technologies  
336 [5 ILCS 175/5-105].

337  
338 "Electronic document" means any notice, information, or filing generated,  
339 communicated, received or stored by electronic means to use in an information  
340 system or to transmit from one information system to another. (See 5 ILCS  
341 175/5-105.)

342  
343 "Electronic signature" means a signature in electronic form attached to or  
344 logically associated with an electronic document [5 ILCS 175/5-105].

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"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)*

388 *of Section 13, Section 13.3, Section 17.5, subsection (a) or (d) of Section 22.4, or*  
389 *subsection (a) of Section 22.40 [415 ILCS 5/28.2].*

390  
391 "Filing" means the act of delivering a document or article into the custody of the  
392 Clerk with the intention of incorporating that document or article into the record  
393 of a proceeding before the Board. The Clerk's Office is located at 100 West  
394 Randolph Street, Suite 11-500, Chicago IL 60601. Electronic filing is done  
395 through COOL on the Board's website.

396  
397 "Final order" means an order of the Board that terminates the proceeding leaving  
398 nothing further to litigate or decide and that is subject to judicial review. (See  
399 Subpart I of this Part.)

400  
401 "Frivolous" means a request for relief that the Board does not have the authority  
402 to grant, or a complaint that fails to state a cause of action upon which the Board  
403 can grant relief.

404  
405 "Hearing" means a public proceeding conducted by a hearing officer where the  
406 parties and other interested persons, as provided for by law and the Board's  
407 procedural rules, present evidence and argument regarding their positions.

408  
409 "Hearing officer" means a person licensed to practice law in the State of Illinois  
410 who presides over hearings and otherwise carries out record development  
411 responsibilities as directed by the Board.

412  
413 "IAPA" means the Illinois Administrative Procedure Act [5 ILCS 100].

414  
415 "Identical-in-substance rules" or "identical-in-substance regulations" means *State*  
416 *regulations which require the same actions with respect to protection of the*  
417 *environment, by the same group of affected persons, as would federal regulations*  
418 *if USEPA administered the subject program in Illinois [415 ILCS 5/7.2].*

419  
420 "Initial filing" means the filing that initiates a Board proceeding and opens a  
421 docket. For instance, the initial filing in an enforcement proceeding is the  
422 complaint; in a permit appeal it is a petition for review; and in a regulatory  
423 proceeding it is the proposal.

424  
425 "Innovative environmental measures" means any procedures, practices,  
426 technologies or systems that pertain to environmental management and are  
427 expected to improve environmental performance when applied. (See 35 Ill. Adm.  
428 Code 106.Subpart G.)

429  
430 "Inquiry hearing" means a hearing conducted by the Board for the purpose of

431 seeking input and comment from the public regarding the need for a rulemaking  
432 proceeding in a specific area.

433  
434 "Interlocutory appeal" means an appeal of a Board decision to the appellate court  
435 that is not dispositive of all the contested issues in the proceeding. (See Section  
436 101.908 of this Part.) An interlocutory appeal may also be the appeal of a hearing  
437 officer ruling to the Board. (See Section 101.518 of this Part.)

438  
439 "Intervenor" means a person, not originally a party to an adjudicatory proceeding,  
440 who voluntarily participates as a party in the proceeding with the leave of the  
441 Board. (See Section 101.402 of this Part.)

442  
443 "Intervention" means the procedure by which a person, not originally a party to an  
444 adjudicatory proceeding, voluntarily comes into the proceeding as a party with the  
445 leave of the Board. (See Section 101.402 of this Part.)

446  
447 "JCAR" means the Illinois General Assembly's Joint Committee on  
448 Administrative Rules established by the IAPA (see 5 ILCS 100/5-90).

449  
450 "Joinder" means the procedure by which the Board adds a person, not originally a  
451 party to an adjudicatory proceeding, as a party to the proceeding. (See Section  
452 101.403 of this Part and 35 Ill. Adm. Code 103.206.)

453  
454 "Misnomer" means a mistake in name, giving an incorrect name in a complaint or  
455 other document with respect to any properly included party.

456  
457 "Motion" means a request made to the Board or the hearing officer for the  
458 purposes of obtaining a ruling or order directing or allowing some act to be done  
459 in favor of the movant. (See definition of "movant" in this Section.)

460  
461 "Movant" means the person who files a motion.

462  
463 "New pollution control facility" means *a pollution control facility initially*  
464 *permitted for development or construction after July 1, 1981; or the area of*  
465 *expansion beyond the boundary of a currently permitted pollution control facility;*  
466 *or a permitted pollution control facility requesting approval to store, dispose of,*  
467 *transfer or incinerate, for the first time, any special or hazardous waste [415*  
468 *ILCS 5/3.330(b)].*

469  
470 "Non-disclosable information" means *information which constitutes a trade*  
471 *secret; information privileged against introduction in judicial proceedings;*  
472 *internal communications of the several agencies; information concerning secret*  
473 *manufacturing processes or confidential data submitted by any person under the*

474 *Act* [415 ILCS 5/7(a)].

475

476 "Notice list" means the list of persons in a regulatory proceeding who will receive  
477 all Board opinions and orders and all hearing officer orders. Persons on a notice  
478 list generally do not receive copies of motions, public comments, or testimony.  
479 (See definition of "service list" in this Section.) (See also 35 Ill. Adm. Code  
480 102.422.)

481

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

486

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

490

491 "OSFM" means Office of the State Fire Marshal.

492

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

495

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

502

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

506

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

510

511 "Party in interest" means the Agency when asked to conduct an investigation  
512 pursuant to Section 30 of the Act during an ongoing proceeding. (See Section  
513 101.404 of this Part.)

514

515 "Peremptory rulemaking" means *any rulemaking that is required as a result of*  
516 *federal law, federal rules and regulations, or an order of a court, under*

517 *conditions that preclude compliance with the general rulemaking requirements of*  
518 *Section 5-40 of the IAPA and that preclude the exercise by the Board as to the*  
519 *content of the rule it is required to adopt. [5 ILCS 100/5-50]*

520  
521 "Permit appeal" means an adjudicatory proceeding brought before the Board  
522 pursuant to Title X of the Act.

523  
524 "Person" means *any individual, partnership, co-partnership, firm, company,*  
525 *limited liability company, corporation, association, joint stock company, trust,*  
526 *estate, political subdivision, state agency, or any other legal entity, or their legal*  
527 *representative, agent or assigns. [415 ILCS 5/3.315]*

528  
529 "Petition" means the initial filing in an adjudicatory proceeding other than an  
530 enforcement proceeding, including permit appeals, OSFM appeals, UST appeals,  
531 appeals of pollution control facility siting decisions, variances and adjusted  
532 standards.

533  
534 "Pilot project" means an innovative environmental project that covers one or more  
535 designated facilities, designed and implemented in the form of an EMSA. (See  
536 Section 52.3 of the Act.)

537  
538 "Pollution control facility" is defined at Section 3.330(a) of the Act for purposes  
539 of this Part and 35 Ill. Adm. Code 107. ~~means any waste storage site, sanitary~~  
540 ~~landfill, waste disposal site, waste transfer station, waste treatment facility, or~~  
541 ~~waste incinerator. This includes sewers, sewage treatment plants, and any other~~  
542 ~~facilities owned or operated by sanitary districts organized under the~~  
543 ~~Metropolitan Water Reclamation District Act. The following are not pollution~~  
544 ~~control facilities:~~

545  
546 ~~waste storage sites regulated under 40 CFR 761.42;~~

547  
548 ~~sites or facilities used by any person conducting a waste storage, waste~~  
549 ~~treatment, waste disposal, waste transfer or waste incineration operation,~~  
550 ~~or a combination thereof, for wastes generated by such person's own~~  
551 ~~activities, when such wastes are stored, treated, disposed of, transferred~~  
552 ~~or incinerated within the site or facility owned, controlled or operated by~~  
553 ~~such person, or when such wastes are transported within or between sites~~  
554 ~~or facilities owned, controlled or operated by such person;~~

555  
556 ~~sites or facilities at which the State is performing removal or remedial~~  
557 ~~action pursuant to Section 22.2 or 55.3 of the Act;~~

558  
559 ~~abandoned quarries used solely for the disposal of concrete, earth~~

560 ~~materials, gravel, or aggregate debris resulting from road construction~~  
561 ~~activities conducted by a unit of government or construction activities due~~  
562 ~~to the construction and installation of underground pipes, lines, conduit or~~  
563 ~~wires off of the premises of a public utility company which are conducted~~  
564 ~~by a public utility;~~

565  
566 ~~sites or facilities used by any person to specifically conduct a landscape~~  
567 ~~composting operation;~~

568  
569 ~~regional facilities as defined in the Central Midwest Interstate Low-Level~~  
570 ~~Radioactive Waste Compact;~~

571  
572 ~~the portion of a site or facility where coal combustion wastes are stored or~~  
573 ~~disposed of in accordance with subdivision (r)(2) or (r)(3) of Section 21 of~~  
574 ~~the Act;~~

575  
576 ~~the portion of a site or facility used for the collection, storage or~~  
577 ~~processing of waste tires as defined in Title XIV;~~

578  
579 ~~the portion of a site or facility used for treatment of petroleum~~  
580 ~~contaminated materials by application onto or incorporation into the soil~~  
581 ~~surface and any portion of that site or facility used for storage of~~  
582 ~~petroleum contaminated materials before treatment. Only those~~  
583 ~~categories of petroleum listed in Section 57.9(a)(3) of the Act are exempt~~  
584 ~~under this definition;~~

585  
586 ~~the portion of a site or facility where used oil is collected or stored prior~~  
587 ~~to shipment to a recycling or energy recovery facility, provided that the~~  
588 ~~used oil is generated by households or commercial establishments, and the~~  
589 ~~site or facility is a recycling center or a business where oil or gasoline is~~  
590 ~~sold at retail;~~

591  
592 ~~processing sites or facilities that receive only on-specification used oil, as~~  
593 ~~defined in 35 Ill. Adm. Code 739, originating from used oil collectors for~~  
594 ~~processing that is managed under 35 Ill. Adm. Code 739 to produce~~  
595 ~~products for sale to off-site petroleum facilities, if these processing sites or~~  
596 ~~facilities are:~~

597  
598 ~~located within a home rule unit of local government with a~~  
599 ~~population of at least 30,000 according to the 2000 federal census,~~  
600 ~~that home rule unit of local government has been designated as an~~  
601 ~~Urban Round II Empowerment Zone by the United States~~  
602 ~~Department of Housing and Urban Development, and that home~~

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~~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;~~

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~~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;~~

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*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:*

731 ~~an irreplaceable historic or archaeological site has been~~  
732 ~~listed under the National Historic Preservation Act (16~~  
733 ~~USC 470 et seq.) or the Illinois Historic Preservation Act~~  
734 ~~[20 ILCS 3410];~~

735  
736 ~~a natural landmark has been designated by the National~~  
737 ~~Park Service or the Illinois State Historic Preservation~~  
738 ~~Office; or~~

739  
740 ~~a natural area has been designated as a Dedicated Illinois~~  
741 ~~Nature Preserve under the Illinois Natural Areas~~  
742 ~~Preservation Act [525 ILCS 30];~~

743  
744 ~~the site or facility must not be located in an area where it may~~  
745 ~~jeopardize the continued existence of any designated endangered~~  
746 ~~species, result in the destruction or adverse modification of the~~  
747 ~~critical habitat for such species, or cause or contribute to the~~  
748 ~~taking of any endangered or threatened species of plant, fish, or~~  
749 ~~wildlife listed under the Endangered Species Act (16 USC 1531 et~~  
750 ~~seq.) or the Illinois Endangered Species Protection Act [520 ILCS~~  
751 ~~10];~~

752  
753 ~~the portion of a site or facility that is located entirely within a home rule~~  
754 ~~unit having a population no less than 120,000 and no more than 135,000,~~  
755 ~~according to the 2000 federal census, and that meets all of the following~~  
756 ~~requirements:~~

757  
758 ~~the portion of the site or facility is used exclusively to perform~~  
759 ~~testing of a thermochemical conversion technology using only~~  
760 ~~woody biomass, collected as landscape waste within the~~  
761 ~~boundaries of the home rule unit, as the hydrocarbon feedstock for~~  
762 ~~the production of synthetic gas in accordance with Section 39.9 of~~  
763 ~~the Act;~~

764  
765 ~~the portion of the site or facility is in compliance with all~~  
766 ~~applicable zoning requirements; and~~

767  
768 ~~a complete application for a demonstration permit at the portion of~~  
769 ~~the site or facility has been submitted to the Agency in accordance~~  
770 ~~with Section 39.9 of the Act within one year after July 27, 2010~~  
771 ~~(the effective date of Public Act 96-1314);~~

772

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

778  
779 ~~the portion of a site or facility that it used to incinerate only~~  
780 ~~pharmaceuticals from residential sources that are collected and~~  
781 ~~transported by law enforcement agencies under Section 17.9A of the Act;~~  
782 ~~and~~

783  
784 ~~until July 1, 2017, the portion of a site or facility:~~

785  
786 ~~that is used exclusively for the transfer of commingled landscape~~  
787 ~~waste and food scrap held at the site or facility for no longer than~~  
788 ~~24 hours after their receipt;~~

789  
790 ~~that is located entirely within a home rule unit having a population~~  
791 ~~of either not less than 100,000 and not more than 115,000~~  
792 ~~according to the 2010 federal census or not less than 5,000 and~~  
793 ~~not more than 10,000 according to the 2010 federal census;~~

794  
795 ~~that is permitted, by the Agency, prior to January 1, 2002, for the~~  
796 ~~transfer of landscape waste; and~~

797  
798 ~~for which a permit application is submitted to the Agency by July~~  
799 ~~1, 2014 to modify an existing permit for the transfer of landscape~~  
800 ~~waste to also include, on a demonstration basis not to exceed 18~~  
801 ~~months, the transfer of commingled landscape waste and food~~  
802 ~~scrap. [415 ILCS 5/3.330]~~

803  
804 "Pollution control facility siting appeal" means an appeal of a decision made by a  
805 unit of local government filed with the Board pursuant to Section 40.1 of the Act.

806  
807 "Postconsumer material" means *paper, paperboard, and fibrous wastes from*  
808 *retail stores, office buildings, homes, and so forth, after the waste has been*  
809 *passed through its end usage as a consumer item, including used corrugated*  
810 *boxes, old newspapers, mixed waste paper, tabulating cards, and used cordage.*  
811 *Additionally, it includes all paper, paperboard, and other fibrous wastes that are*  
812 *diverted or separated from the municipal solid waste stream [415 ILCS*  
813 *20/3(f)(2)(i) and (ii)]. (See also definition of "recycled paper" in this Section.)*

814  
815 "Prehearing conference" means a meeting held in an adjudicatory case to

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

822  
823 "Proceeding" means an action conducted before the Board pursuant to authority  
824 granted under Section 5 of the Act or as otherwise provided by law. Board  
825 proceedings are of two types: quasi-legislative (rulemaking and inquiry  
826 proceedings) and quasi-judicial (adjudicatory proceedings).

827  
828 "Proponent" means any person, not including the Board or its staff, who submits a  
829 regulatory proposal to the Board for the adoption, amendment, or repeal of a  
830 regulation.

831  
832 "Provisional variance" means a short term variance sought by an applicant and  
833 issued by the Agency pursuant to Section 35(b) of the Act. (See 35 Ill. Adm.  
834 Code 104.Subpart C.)

835  
836 "Public comment" means information submitted to the Board during a pending  
837 proceeding either by oral statement made at hearing or written statement filed  
838 with the Board.

839  
840 "Public remarks" mean an oral statement that is publicly made at a Board meeting  
841 and directed to the Board concerning a proceeding listed on that meeting's agenda.  
842 (See Section 101.110(d) of this Subpart.)

843  
844 "PWSO Act" means the Public Water Supply Operations Act [415 ILCS 45].

845  
846 "Qualitative description" means a narrative description pertaining to attributes and  
847 characteristics.

848  
849 "Quantitative description" means a numerically based description pertaining to  
850 attributes and characteristics.

851  
852 "RCRA variance" means a variance from a RCRA rule or a RCRA permit  
853 required pursuant to Section 21(f) of the Act.

854  
855 "Record" means the official collection, as kept by the Clerk, of all documents and  
856 exhibits including pleadings, transcripts, and orders filed during the course of a  
857 proceeding.

858

859 "Recycled paper" means paper which contains at least 50% recovered paper  
860 material. The recovered paper material must contain at least 45% deinked stock  
861 or postconsumer material. (See also "postconsumer material" in this Section.)  
862

863 "Regulatory hearing" or "proceeding" means a hearing or proceeding held  
864 pursuant to Title VII of the Act or other applicable law with respect to  
865 regulations.  
866

867 "Regulatory relief mechanisms" means variances, provisional variances and  
868 adjusted standards. (See 35 Ill. Adm. Code 104.)  
869

870 "Representing" means, for purposes of Part 130, *describing, depicting,*  
871 *containing, constituting, reflecting or recording* [415 ILCS 5/7.1].  
872

873 "Requester" means, for purposes of Part 130, the person seeking from the agency  
874 the material claimed or determined to be a trade secret (see 415 ILCS 5/7.1).  
875

876 "Resource Conservation and Recovery Act" or "RCRA" means the Solid Waste  
877 Disposal Act, as amended by the Resource Conservation and Recovery Act of  
878 1976 (42 USC 6901 et seq.).  
879

880 "Responsible Operator in Charge" means an individual who is designated as a  
881 Responsible Operator in Charge of a community water supply under Section 1 of  
882 the PWSO Act.  
883

884 "Rulemaking" or "rulemaking proceeding" means a proceeding brought under  
885 Title VII of the Act or other applicable law for the purpose of adoption,  
886 amendment, or repeal of a regulation.  
887

888 "Sanction" means a penalty or other mechanism used by the Board to provide  
889 incentives for compliance with the Board's procedural rules, Board orders or  
890 hearing officer orders. (See also Subpart H of this Part.)  
891

892 "SDWA" means the federal Safe Drinking Water Act (42 USC 300f et seq.).  
893

894 "Service" means delivery of a document upon a person. (See Sections 101.300(c)  
895 and 101.304 of this Part.)  
896

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

902 Adm. Code 102.422.)

903  
904 "Severance" means the separation of a proceeding into two or more independent  
905 proceedings, each of which terminates in a separate, final judgment.  
906

907 "Site-specific rule or regulation" means a proposed or adopted regulation, not of  
908 general applicability, that applies only to a specific facility, geographic site, or  
909 activity. (See 35 Ill. Adm. Code 102.208.)  
910

911 "Sponsor" means the proponent of a pilot project that enters into an EMSA with  
912 the Agency.  
913

914 "State enforcement proceeding" means an enforcement proceeding, other than a  
915 citizen's enforcement proceeding, that is brought pursuant to Section 31 of the  
916 Act.  
917

918 "Stay" means a temporary suspension of the regular progress of a proceeding  
919 pursuant to an order of the Board or by operation of law. (See Section 101.514 of  
920 this Part.)  
921

922 "Subpoena" means a command to appear at a certain time and place to give  
923 testimony upon a certain matter.  
924

925 "Subpoena duces tecum" means a document that compels the production of  
926 specific documents and other items at a specified time and place.  
927

928 "Summary judgment" means the disposition of an adjudicatory proceeding  
929 without hearing when the record, including pleadings, depositions and admissions  
930 on file, together with any affidavits, shows that there is no genuine issue of  
931 material fact, and that the moving party is entitled to judgment as a matter of law.  
932 (See Section 101.516 of this Part.)  
933

934 "Third party complaint" means a pleading that a respondent files setting forth a  
935 claim against a person who is not already a party to the proceeding. (See 35 Ill.  
936 Adm. Code 103.206.)  
937

938 "Trade secret" means *the whole or any portion or phase of any scientific or*  
939 *technical information, design, process (including a manufacturing process),*  
940 *procedure, formula or improvement, or business plan which is secret in that it has*  
941 *not been published or disseminated or otherwise become a matter of general*  
942 *public knowledge, and which has competitive value. A trade secret is presumed*  
943 *to be secret when the owner thereof takes reasonable measures to prevent it from*  
944 *becoming available to persons other than those selected by the owner to have*

945 *access thereto for limited purposes.* [415 ILCS 5/3.490]

946  
947 "Transcript" means the official recorded testimony from a hearing or public  
948 remarks from a Board meeting.

949  
950 "USEPA" means the United States Environmental Protection Agency.

951  
952 "Underground storage tank appeal" or "UST appeal" means an appeal of an  
953 Agency final decision made pursuant to Title XVI of the Act.

954  
955 "UST" means underground storage tank.

956  
957 "Variance" means a temporary exemption from any specified regulation,  
958 requirement or order of the Board granted to a petitioner by the Board pursuant to  
959 Title IX of the Act *upon presentation of adequate proof that compliance with the*  
960 *rule or regulation, requirement or order of the Board would impose an arbitrary*  
961 *or unreasonable hardship* [415 ILCS 5/35(a)].

962  
963 "Waiver" means the intentional relinquishing of a known right, usually with  
964 respect to a hearing before the Board or entry of a Board decision within the  
965 decision period. (See also Section 101.308 of this Part.)

966  
967 "Website" means the Board's computer-based informational and filing service  
968 accessed on the Internet at <http://www.ipcb.state.il.us>.

969  
970 (Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

971  
972 SUBPART C: COMPUTATION OF TIME, FILING, SERVICE  
973 OF DOCUMENTS, AND STATUTORY DECISION DEADLINES

974  
975 **Section 101.300 Computation of Time**

- 976  
977 a) Computation of Time. Computation of any period of time prescribed in the Act,  
978 other applicable law, or this Subpart will begin with the first calendar day  
979 following the day on which the act, event or development occurs and will run  
980 until the close of business on the last day, or the next business day if the last day  
981 is a Saturday, Sunday or national or State legal holiday.
- 982  
983 b) Date of Filing. Documents will be considered filed with the Clerk only if they are  
984 filed in compliance with Section 101.302 and any other filing requirements  
985 specified elsewhere in the Board's procedural rules (see 35 Ill. Adm. Code 101  
986 through 130). Subpart J sets forth when electronic documents submitted to  
987 COOL will be considered filed.

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- 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

- 1031 by U.S. Mail or a third-party commercial carrier is complete on the date  
1032 the document was delivered, as specified in the delivery confirmation  
1033 signed by the recipient of service.  
1034
- 1035 3) Service by E-Mail or Facsimile. Service of a document by e-mail or  
1036 facsimile is complete on the date the document was successfully  
1037 transmitted, as specified in the affidavit or certificate of service, signed by  
1038 the party to the proceeding who is serving the document. However, a  
1039 document successfully e-mailed or faxed on a Saturday or Sunday, on a  
1040 national or State legal holiday, or after 5:00 p.m. on a weekday is deemed  
1041 served on the next business day.  
1042
- 1043 4) Service by U.S. Mail or Third-Party Commercial Carrier without  
1044 Recipient Signature. If a recipient's signature is not recorded by the U.S.  
1045 Postal Service or a third-party commercial carrier upon delivery of a  
1046 document, service by U.S. Mail or a third-party commercial carrier is  
1047 presumed complete four days after the date the document was provided to  
1048 the U.S. Postal Service or the third-party commercial carrier.  
1049
- 1050 A) The presumption applies only if an affidavit or certificate of  
1051 service, signed by the party to the proceeding who is serving the  
1052 document, states the following: the date, the time by when, and  
1053 the place where the document was provided to the U.S. Postal  
1054 Service or the third-party commercial carrier; the address  
1055 appearing on the envelope or package containing the document;  
1056 and that proper postage or the delivery charge was prepaid.  
1057
- 1058 B) The presumption can be rebutted by proper proof, which may  
1059 include delivery tracking information from the website of the U.S.  
1060 Postal Service or the website of the third-party commercial carrier.  
1061
- 1062 d) Date of Board Decision and Date of Service of Final Board Decision.  
1063
- 1064 1) For purposes of statutory decision deadline proceedings, the date of the  
1065 Board decision is the date of the Board meeting at which~~where~~ a final  
1066 Board~~opinion and order of the Board~~ was adopted by the vote of at least  
1067 three Board members.  
1068
- 1069 2) For purposes of appealing a final adjudicatory decision of the Board, the  
1070 date on which~~of the party receives the Board's~~ party's certified mailing~~mail~~  
1071 receipt of the Board decision is the date of service of the decision~~final~~  
1072 opinion and order by the Board upon the appealing party. Or, in the event  
1073 of a timely filed motion for reconsideration filed pursuant to Section

1074 101.520, the date ~~on which~~ of the party receives the Board's ~~party's~~ certified  
 1075 ~~mailing~~ ~~mail receipt~~ of the Board order ruling upon the motion is the date  
 1076 of service of the order ~~by the Board~~ upon the appealing party.  
 1077

1078 3) For purposes of appealing a final rulemaking decision of the Board in  
 1079 which a rule is adopted, amended, or repealed, the effective date of the  
 1080 new rule, the amendment, or the repealer under the IAPA ~~participant's~~  
 1081 ~~receipt of the Board decision is presumed to be the date of service of the~~  
 1082 ~~decision~~ final opinion and order by the Board upon the appealing  
 1083 person ~~participant.~~ For purposes of appealing a final rulemaking decision  
 1084 in which no rule is adopted, amended, or repealed, the date on which the  
 1085 participant receives the decision from the Board is the date of service of  
 1086 the decision upon the appealing participant. Or, in the event of a timely  
 1087 filed motion for reconsideration filed pursuant to the Board's procedural  
 1088 rules (35 Ill. Adm. Code 102.700 and 102.702), the date ~~on which~~ of the  
 1089 ~~participant receives~~ ~~participant's receipt~~ of the Board order ruling upon the  
 1090 motion is the date of service of the order ~~by the Board~~ upon the appealing  
 1091 participant.  
 1092

1093 4) Any person who appears on a regulatory proceeding's notice list or service  
 1094 list on the date of the final decision can rebut the presumption in  
 1095 subsection (d)(3) with proper proof of having received the decision from  
 1096 the Board after the effective date of the new rule, the amendment, or the  
 1097 repealer.  
 1098

1099 (Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
 1100

1101 **Section 101.302 Filing of Documents**  
 1102

1103 a) This Section contains the Board's general filing requirements. Additional  
 1104 requirements may exist for specific proceedings elsewhere in the Board's  
 1105 procedural rules (see 35 Ill. Adm. Code 101 through 130). The Clerk will refuse  
 1106 for filing any document that does not comply with the minimum requirements of  
 1107 this Section.  
 1108

1109 b) All documents to be filed with the Board must be filed with the Clerk.  
 1110

1111 1) Documents may be filed at the following address:  
 1112

1113 Pollution Control Board, Attn: Clerk  
 1114 100 West Randolph Street  
 1115 James R. Thompson Center, Suite 11-500  
 1116 Chicago, Illinois 60601-3218

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1118  
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- 2) All documents filed with the Clerk must provide the name and signature of the person seeking to file the document and identify the name of the person on whose behalf the document is being filed. If a paper document is submitted for filing, the original must bear the original pen-and-ink signature of the person seeking to file the document. Signatures for purposes of electronic filings through COOL are addressed in Section 101.1010.
  - 3) Each document being filed with the Clerk (e.g., enforcement complaint, petition for review) must be accompanied by a notice of filing (see Appendix D) and documentation of service (see Section 101.304(d)).
  - 4) The date on which a document is considered to have been filed is determined pursuant to Section 101.300(b).
  - 5) Service of a document upon a hearing officer does not constitute filing with the Clerk unless the document is submitted to the hearing officer during the course of a hearing.
- c) Documents may be filed with the Clerk by U.S. Mail, by electronic means in accordance with Subpart J, 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

- 1160 5) Petition for Adjusted Standard, pursuant to Section 28.1 of the Act, \$75.  
 1161
- 1162 f) For each document filed with the Clerk, the filing party must serve a copy of the  
 1163 document upon the other parties and, if a hearing officer has been assigned, upon  
 1164 the hearing officer in accordance with Section 101.304.  
 1165
- 1166 g) All documents filed with the Board must contain the relevant proceeding caption  
 1167 and docket number. All documents must be submitted on or formatted to print on  
 1168 8½ x 11 inch paper, except as provided in subsection (j). Paper documents must  
 1169 be submitted on recycled paper as defined in Subpart B of this Part, and, if  
 1170 feasible, double sided. All pages in a document must be sequentially numbered.  
 1171 All documents created by word processing programs must be formatted as  
 1172 follows:  
 1173
- 1174 1) The margins must each be a minimum one inch on the top, bottom, and  
 1175 both sides of the page; and  
 1176
- 1177 2) The size of the type in the body of the text must be no less than 12 point  
 1178 font, and in footnotes no less than 10 point font.  
 1179
- 1180 h) Unless the Board, the hearing officer, or the its procedural rules provide otherwise,  
 1181 all documents must be filed in paper or through COOL electronically pursuant to  
 1182 this subsection (h).  
 1183
- 1184 1) Except as provided in subsection (h)(2), (h)(3), ~~or (h)(4)~~, or (j):  
 1185
- 1186 A) Any type of document may be filed in paper or through COOL.  
 1187
- 1188 B) If a document is filed in paper, the original and ~~two~~three copies of  
 1189 the document (~~three~~~~four~~ total) are required.  
 1190
- 1191 C) If a document is filed through COOL in accordance with Subpart J,  
 1192 no paper original or copy of the document is required.  
 1193
- 1194 2) ~~The original documents listed in this subsection (h)(2) must be filed in~~  
 1195 ~~paper. In lieu of filing three paper copies with the original pursuant to~~  
 1196 ~~subsection (h)(1)(B), a compact disk of the document in text-searchable~~  
 1197 ~~Adobe PDF may be filed with the original. The following documents~~  
 1198 ~~must be filed in text-searchable Adobe PDF through COOL or on compact~~  
 1199 ~~disk or other portable electronic storage device in paper:~~  
 1200
- 1201 A) ~~The original~~ Agency record required by 35 Ill. Adm. Code 105.212  
 1202 (permit decision or other final decision), 105.302 (CAAPP permit

- 1203 application), 105.410 (leaking UST decision), or 125.208  
 1204 (recommendation on tax certification) (see 35 Ill. Adm. Code  
 1205 105.116);  
 1206  
 1207 B) The ~~original~~-OSFM record required by 35 Ill. Adm. Code 105.508  
 1208 (UST Fund eligibility and deductibility) (see 35 Ill. Adm. Code  
 1209 105.116);  
 1210  
 1211 C) The ~~original~~-local siting authority record required by 35 Ill. Adm.  
 1212 Code 107.302 (pollution control facility siting) (see 35 Ill. Adm.  
 1213 Code 107.304); and  
 1214  
 1215 D) A petition filed under 35 Ill. Adm. Code 104 (regulatory relief  
 1216 mechanisms) or 106 (proceedings pursuant to specific rules or  
 1217 statutory provisions) (see 35 Ill. Adm. Code 104.106 and  
 1218 106.106).~~An original oversized exhibit (see subsection (j)).~~  
 1219  
 1220 3) A document containing information claimed or determined to be a trade  
 1221 secret, or other non-disclosable information pursuant to 35 Ill. Adm. Code  
 1222 130, is prohibited from being filed electronically and must instead be filed  
 1223 only in paper. The version of the document that is redacted pursuant to 35  
 1224 Ill. Adm. Code 130 may be filed through COOL.  
 1225  
 1226 4) When filing a rulemaking proposal, ~~if the proponent must file three paper~~  
 1227 ~~originals of any document that is protected by copyright law (17 USC 101~~  
 1228 ~~et seq.) is and proposed pursuant to Section 5-75 of the IAPA [5 ILCS~~  
 1229 ~~100/5-75] to be incorporated by reference, the copyrighted document is~~  
 1230 ~~prohibited from being filed electronically, but the remainder of the~~  
 1231 ~~rulemaking proposal may be filed through COOL. In addition, the~~  
 1232 ~~rulemaking proponent must comply with subsection (h)(4)(A) or~~  
 1233 ~~(h)(4)(B); provided, however:~~  
 1234  
 1235 A) File a paper original of the copyrighted document. The rulemaking  
 1236 proposal also must include:  
 1237  
 1238 i) The copyright owner's written authorization for the Board  
 1239 to make, at no charge to the Board, up to no more than a  
 1240 total of two paper copies of the copyrighted document if the  
 1241 Board is required by State law to furnish a copy to JCAR, a  
 1242 court, or a member of the public during or after the  
 1243 rulemaking;  
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- 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.
  
  - ~~A) One or two paper copies may be substituted for the corresponding number of required paper originals if the rulemaking proposal includes the copyright owner's written authorization for the rulemaking proponent to create the paper copy or copies.~~
  
  - ~~B) The proponent may file no more than two authorized copies in lieu of the corresponding number of required originals.~~
  
  - ~~C) Any copyrighted document that is proposed for incorporation by reference is prohibited from being filed electronically and must instead be filed only in paper. The remainder of the rulemaking proposal may be filed through COOL.~~
  
  - i) No written discovery, including interrogatories, requests to produce, and requests for admission, or any response to written discovery, may be filed with the Clerk of the Board except upon leave or direction of the Board or hearing officer. Any discovery request under these rules to any nonparty must be filed with the Clerk of the Board in accordance with subsection (h).
  
  - 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.

1288 k) Page Limitation. No motion, brief in support of motion, or brief may exceed 50  
 1289 pages, and no amicus curiae brief may exceed 20 pages, without prior approval of  
 1290 the Board or hearing officer. These limits do not include appendices containing  
 1291 relevant material.  
 1292

1293 (Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
 1294

1295 SUBPART E: MOTIONS  
 1296

1297 **Section 101.518 Motions for Interlocutory Appeal from Hearing Officer Orders**  
 1298

1299 Interlocutory appeals from a ruling of the hearing officer may be taken to the Board by. ~~The~~  
 1300 ~~Board may consider an interlocutory appeal upon the filing of a written motion within 14 days~~  
 1301 after receipt of the hearing officer's written order. However, if the hearing officer's ruling is  
 1302 rendered on the record at hearing, any motion for interlocutory appeal must be filed within 14  
 1303 days after the Board receives the hearing transcript setting forth the ruling. Filing a motion for  
 1304 interlocutory appeal will not postpone a scheduled hearing, stay the effect of the hearing officer's  
 1305 ruling, or otherwise stay the proceeding. Failure of a party to timely file a motion for  
 1306 interlocutory appeal constitutes a waiver of any objection to the hearing officer's ruling.  
 1307

1308 (Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
 1309

1310 SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY  
 1311

1312 **Section 101.600 Hearings**  
 1313

1314 a) All hearings are open to the public and are held in compliance with the Americans  
 1315 with Disabilities Act of 1990 (42 USC 12101 et seq.). The hearings will be  
 1316 generally held at locations in the county in which the source or facility is located  
 1317 unless otherwise ordered by the hearing officer, in accordance with any  
 1318 geographic requirements imposed by applicable law and consistent with the  
 1319 Board's resources. All hearings are subject to cancellation without notice.  
 1320 Interested persons may contact the Clerk's ~~Office~~ or the hearing officer for  
 1321 information about the hearing. Parties, participants, and members of the public  
 1322 must conduct themselves with decorum at the hearing.  
 1323

1324 b) Any Board hearing may be held by videoconference. Upon its own motion or the  
 1325 motion of any party, the Board or the hearing officer may order that a hearing be  
 1326 held by videoconference. In deciding whether a hearing should be held by  
 1327 videoconference, factors that the Board or the hearing officer will consider  
 1328 include cost-effectiveness, efficiency, facility accommodations, witness  
 1329 availability, and public interest.  
 1330

(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.
- ba) 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.
- cb) *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)) 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~~

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- 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 \_\_\_\_\_)

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Regulatory and Informational Hearings and Proceedings
- 2) Code Citation: 35 Ill. Adm. Code 102
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
102.114	New Section
102.304	Amendment
102.412	Amendment
102.416	Amendment
102.422	Amendment
102.424	Amendment
102.706	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: Generally, the Board proposes amendments to help it more effectively and efficiently conduct its business, particularly in light of digital technology, including high quality video communications. These amendments are designed to increase the efficiency of Board operations and reduce the costs of conducting its rulemakings and contested cases. Specifically, the Board proposes amendments to account for its hearings to be conducted by videoconference, and, where applicable, for hearing notices to be published in the *Illinois Register* in lieu of newspaper notice. The Board also proposes amendments consistent with proposed amendments in 35 Ill. Adm. Code 101.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b)].

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CLERK'S OFFICE

JAN 13 2016

STATE OF ILLINOIS  
Pollution Control Board

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments should reference Docket R16-17 and be addressed to:

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

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

Interested persons may request copies of the Board's opinion and order in R16-17 by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

For more information, contact hearing officer Daniel Robertson at 312/814-6931 or e-mail at [Daniel.Robertson@illinois.gov](mailto:Daniel.Robertson@illinois.gov).

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

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

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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

PART 102  
REGULATORY AND INFORMATIONAL HEARINGS AND PROCEEDINGS

SUBPART A: GENERAL PROVISIONS

Section	
102.100	Applicability
102.102	Severability
102.104	Definitions
102.106	Types of Regulatory Proposals
102.108	Public Comments
102.110	Waiver of Requirements
102.112	Other Proceedings
102.114	Hearings

SUBPART B: REGULATIONS OF GENERAL APPLICABILITY,  
RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)  
AMENDMENTS, AND SITE-SPECIFIC REGULATIONS

Section	
102.200	Proposal for Regulations of General Applicability
102.202	Proposal Contents for Regulations of General Applicability
102.204	Proposal of RCRA Amendments
102.206	Notice of Site-Specific RCRA Proposals
102.208	Proposal for Site-Specific Regulations
<del>102.210</del> <a href="#">102.210</a>	Proposal Contents for Site-Specific Regulations
102.211	Proposal to Update Incorporations by Reference
102.212	Dismissal

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

Section	
102.300	Applicability
102.302	Agency Proposal

**POLLUTION CONTROL BOARD**

**NOTICE OF PROPOSED AMENDMENTS**

- 102.304 Hearings
- 102.306 Prefiled Testimony

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

Section

- 102.400 Service and Filing of Documents
- 102.402 Motions, Production of Information, and Subpoenas
- 102.404 Initiation and Scheduling of Prehearing Conferences
- 102.406 Purpose of Prehearing Conference
- 102.408 Prehearing Order
- 102.410 Authorization of Hearing
- 102.412 Scheduling of Hearings
- 102.414 Hearings on the Economic Impact of New Proposals
- 102.416 Notice of Hearing
- 102.418 Record
- 102.420 Authority of the Hearing Officer
- 102.422 Notice and Service Lists
- 102.424 Prehearing ~~Filings~~[Submission](#)[Filings](#) of Testimony, Questions, Responses, and Exhibits
- 102.426 Admissible Information
- 102.428 Presentation of Testimony and Order of Hearing
- 102.430 Questioning of Witnesses

**SUBPART E: CERTIFICATION OF REQUIRED RULES**

Section

- 102.500 Agency Certification
- 102.502 Challenge to Agency Certification
- 102.504 Board Determination

**SUBPART F: BOARD ACTION**

Section

- 102.600 Revision of Proposed Regulations
- 102.602 Adoption of Regulations
- 102.604 First Notice of Proposed Regulations

**POLLUTION CONTROL BOARD**

**NOTICE OF PROPOSED AMENDMENTS**

- 102.606 Second Notice of Proposed Regulations
- 102.608 Notice of Board Final Action
- 102.610 Adoption of Identical-in-Substance Regulation
- 102.612 Adoption of Emergency Regulations
- 102.614 Adoption of Peremptory Regulations

**SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL**

- Section
- 102.700 Filing of Motions for Reconsideration
- 102.702 Disposition of Motions for Reconsideration
- 102.704 Correction of Publication Errors
- 102.706 Appeal

**SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION**

- Section
- 102.800 Applicability
- 102.810 Petition
- 102.820 Petition Contents
- 102.830 Board Action

**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, ~~197-1970~~; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1398, effective January 16, ~~1984~~1985; 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~~20472, 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~~12193, 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 \_\_\_\_\_.

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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~~notice of the scheduled hearing to the appropriate publication. The hearing notice will be published ~~by the newspaper~~ at least 30 days ~~before prior to~~before 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.~~102.414. The second hearing must also permit the *presentation of testimony, documents, and comments by affected entities and all*

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

*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**

- ~~a) a)~~ 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~~area~~. 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)]
- ~~b) b)~~ 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~~additional hearing, as opposed to the submission of written comments pursuant to Section ~~102.108 of this Part, 102.108,~~ 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.—~~

POLLUTION CONTROL BOARD

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(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~~ notice 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~~ before 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.
- ~~ded~~) 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**

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- a) The Clerk's ~~Office~~ hearing officer's Office 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 to~~ the Clerk's ~~Office~~ office's Office concerning the proposal. The Clerk will serve a ~~copy~~ Notice ~~copy~~ of all Board orders ~~actions~~ and hearing officer ~~orders will be given to all~~ orders upon the persons ~~appearing~~ included appearing 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 ~~the~~ hearing officer, ~~may direct~~ participants ~~must to~~ must serve copies of all their respective ~~filings~~ documents filings upon the persons ~~appearing~~ listed appearing on the service list. In deciding whether to establish a service list, factors that the hearing officer will consider ~~include~~ factors including include 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 Filings of Testimony, Questions, Responses, and Exhibits**

- a) The proponent must ~~file~~ submit file all written testimony and any related exhibits 21 days ~~before~~ prior to before 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 filing of testimony, questions, responses, ~~answers~~, and any related exhibits by the proponent or participants other than the proponent if the hearing officer determines that ~~the~~ such a the 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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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(e) upon~~ DNR, 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~~ be labeled with the docket number of the proceeding, the name of the witness corresponding ~~to submitting to~~ the ~~material or exhibit~~ material, and the title of the ~~material or exhibit~~ material.
- 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~~ bring 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) f)~~ Testimony, questions, ~~answers,~~ and responses, ~~and exhibits~~ that are timely filed ~~before submitted prior to~~ before the 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~~ material read at the hearing. All persons testifying will be sworn and ~~will be~~ subject to cross-examination. Modifications to prehearing ~~documents previously submitted material and exhibits~~ documents may be allowed by the hearing officer at the hearing ~~if provided that~~ if the modifications are either ~~non-substantive~~ nonsubstantive in nature or would not materially prejudice another person's participation at the hearing. Objections to hearing officer rulings allowing or disallowing the modifications are waived unless raised at the hearing.
- ~~g) g)~~ When prehearing ~~filings submission~~ filing of testimony, questions, ~~answers,~~ responses, and any ~~related or~~ related exhibits, is required pursuant to subsection (a) or (b) ~~of this Section, any material or exhibit~~ material that is not timely ~~filed in a timely manner~~ filed will be allowed at the hearing only ~~if as if~~ if time permits, ~~and only when~~ and the hearing officer determines that allowing the ~~material is~~

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

~~submission~~material will not materially prejudice the proponent or any other participant. Any of these documents that is not allowed at the hearing because it was not timely filed before the hearing can be filed after the hearing as a public comment.

- h) For a videoconference hearing under Section ~~102.114 of this Part~~, [102.114](#), 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 the hearing, but can be filed after the 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 \_\_\_\_\_)

Document comparison by Workshare Compare on Wednesday, January 06, 2016 2:29:09 PM

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Split/Merged cell	
Padding cell	

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Deletions	92
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	166

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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

PART 108  
ADMINISTRATIVE CITATIONS

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108.100	Applicability
108.102	Severability
108.104	Definitions

SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST

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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

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

SUBPART E: ASSESSMENT OF PENALTIES AND COSTS

1 TITLE 35: ENVIRONMENTAL PROTECTION  
2 SUBTITLE A: GENERAL PROVISIONS  
3 CHAPTER I: POLLUTION CONTROL BOARD  
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5 PART 102  
6 REGULATORY AND INFORMATIONAL HEARINGS AND PROCEEDINGS  
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17	102.112	Other Proceedings
18	<u>102.114</u>	<u>Hearings</u>

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20 SUBPART B: REGULATIONS OF GENERAL APPLICABILITY,  
21 RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)  
22 AMENDMENTS, AND SITE-SPECIFIC REGULATIONS  
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24	Section	
25	102.200	Proposal for Regulations of General Applicability
26	102.202	Proposal Contents for Regulations of General Applicability
27	102.204	Proposal of RCRA Amendments
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29	102.208	Proposal for Site-Specific Regulations
30	102.210	Proposal Contents for Site-Specific Regulations
31	102.211	Proposal to Update Incorporations by Reference
32	102.212	Dismissal

33  
34 SUBPART C: CLEAN AIR ACT AMENDMENTS (CAAA)  
35 FAST TRACK RULEMAKING  
36

37	Section	
38	102.300	Applicability
39	102.302	Agency Proposal
40	102.304	Hearings
41	102.306	Prefiled Testimony

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43 SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS,

44 PRODUCTION OF INFORMATION, SUBPOENAS, PREHEARING  
45 CONFERENCES, AND HEARINGS

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47 Section  
48 102.400 Service and Filing of Documents  
49 102.402 Motions, Production of Information, and Subpoenas  
50 102.404 Initiation and Scheduling of Prehearing Conferences  
51 102.406 Purpose of Prehearing Conference  
52 102.408 Prehearing Order  
53 102.410 Authorization of Hearing  
54 102.412 Scheduling of Hearings  
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56 102.416 Notice of Hearing  
57 102.418 Record  
58 102.420 Authority of the Hearing Officer  
59 102.422 Notice and Service Lists  
60 102.424 Prehearing Filings ~~Submission~~ of Testimony, Questions, Responses, and Exhibits  
61 102.426 Admissible Information  
62 102.428 Presentation of Testimony and Order of Hearing  
63 102.430 Questioning of Witnesses

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69 102.502 Challenge to Agency Certification  
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72 SUBPART F: BOARD ACTION  
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75 102.600 Revision of Proposed Regulations  
76 102.602 Adoption of Regulations  
77 102.604 First Notice of Proposed Regulations  
78 102.606 Second Notice of Proposed Regulations  
79 102.608 Notice of Board Final Action  
80 102.610 Adoption of Identical-in-Substance Regulation  
81 102.612 Adoption of Emergency Regulations  
82 102.614 Adoption of Peremptory Regulations  
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84 SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL  
85

86 Section

- 87 102.700 Filing of Motions for Reconsideration
- 88 102.702 Disposition of Motions for Reconsideration
- 89 102.704 Correction of Publication Errors
- 90 102.706 Appeal

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92 SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION

93

- 94 Section
- 95 102.800 Applicability
- 96 102.810 Petition
- 97 102.820 Petition Contents
- 98 102.830 Board Action

99

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

101

102 AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 27, 28, 28.2,  
103 28.6, 29, and 41 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5,  
104 22.4(a), 22.4(d), 27, 28, 28.2, 28.6, 29, and 41] and authorized by Sections 26 and 27 of the Act  
105 [415 ILCS 5/26 and 27].

106

107 SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part II: Regulatory and Other  
108 Nonadjudicative Hearings and Proceedings, in R70-4, 1 PCB 43, October 8, 1970; codified at 6  
109 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1398, effective January 16, 1985; Part repealed,  
110 new Part adopted in R88-5(B) at 14 Ill. Reg. 9210, effective May 24, 1990; amended in R90-16  
111 at 14 Ill. Reg. 20472, effective December 11, 1990; old Part repealed, new Part adopted in R00-  
112 20 at 25 Ill. Reg. 587, effective January 1, 2001; amended in R01-13 at 26 Ill. Reg. 3498,  
113 effective February 22, 2002; amended in R04-24 at 29 Ill. Reg. 8776, effective June 8, 2005;  
114 amended in R10-18 at 34 Ill. Reg. 12193, effective August 9, 2010; amended in R14-21 at 39 Ill.  
115 Reg. 2333, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. \_\_\_\_\_, effective

116 \_\_\_\_\_.

117

118 SUBPART A: GENERAL PROVISIONS

119

120 **Section 102.114 Hearings**

121

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

124

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

127

128 **Section 102.304 Hearings**

129

- 130 a) Within 14 days after the receipt of a rule, the Board will file the proposed rule for  
131 first notice and schedule all hearings. Additionally, the Board will send notice to  
132 ~~the appropriate newspaper of the scheduled hearing to the appropriate publication.~~  
133 The hearing notice will be published by the newspaper at least 30 days  
134 before prior to the date of the hearing. When the Board can cause timely  
135 publication of the hearing notice in the Illinois Register, the Board will do so in  
136 lieu of newspaper notice.  
137  
138 b) The first hearing will be held within 55 days after receipt of the rule and is  
139 reserved for the Agency's testimony and questions of the Agency's witnesses.  
140  
141 c) Within 7 days after the first hearing, any person may request a second hearing.  
142 The request may be made on the record at the first hearing or in writing. If done  
143 in writing it must be filed with the Board and served upon the service list.  
144  
145 d) A second hearing will be held to hear comments on Department of Commerce and  
146 Economic Opportunity's economic impact study of the proposed rules. *At least 20*  
147 *days before the hearing, the Board shall notify the public of the hearing and make*  
148 *the economic impact study, or the Department of Commerce and Economic*  
149 *Opportunity's explanation for not producing an economic impact study, available*  
150 *to the public. Such public hearing may be held simultaneously or as part of any*  
151 *Board hearing considering such new rules [415 ILCS 5/27(b)]. See also Section*  
152 *102.414 of this Part. The second hearing must also permit the presentation of*  
153 *testimony, documents, and comments by affected entities and all other interested*  
154 *persons. [415 ILCS 5/28.5(g)]*  
155  
156 e) *The third hearing shall be scheduled to commence within 14 days after the first*  
157 *day of the second hearing and shall be devoted solely to any Agency response to*  
158 *the material submitted at the second hearing and to any response by other parties*  
159 *[415 ILCS 5/28.5(g)]. In order to cancel the third hearing, the Agency must state*  
160 *on the record at hearing that it and the affected entities are in agreement or notify*  
161 *the Board and the service list in writing.*  
162  
163 f) In order to meet statutory deadlines, hearing dates may be chosen by the assigned  
164 Board member and hearing officer without consultation with the participants.  
165 CAAA hearings need only be held in one affected area of the State.

166 (Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
167

168  
169 SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS,  
170 PRODUCTION OF INFORMATION, SUBPOENAS, PREHEARING  
171 CONFERENCES, AND HEARINGS  
172

173 **Section 102.412 Scheduling of Hearings**

- 174
- 175 a) Except as otherwise provided by applicable law, *no substantive regulation shall*
- 176 *be adopted, amended, or repealed until after a public hearing within the area of*
- 177 *the State concerned.* In the case of site-specific rules, a public hearing will be
- 178 held in the affected ~~area~~county. Except as otherwise provided by applicable law,
- 179 *in the case of state-wide regulations, hearings shall be held in at least two areas.*
- 180 [415 ILCS 5/28(a)]
- 181
- 182 b) If the proponent or any participant wishes to request a hearing beyond the number
- 183 of hearings specified by the hearing officer, that person must demonstrate, in a
- 184 motion to the hearing officer, that failing to hold an additional hearing would
- 185 result in material prejudice to the movant. The motion may be oral, if made at
- 186 hearing, or written. The movant must show that he exercised due diligence in his
- 187 participation in the proceeding and why an additional hearing, as opposed to the
- 188 submission of written comments pursuant to Section 102.108 ~~of this Part~~, is
- 189 necessary.
- 190
- 191 e) ~~If a hearing is scheduled in a rulemaking proposed pursuant to Section 7.2 of the~~
- 192 ~~Act [415 ILCS 5/7.2], the hearing may be held by videoconference.~~
- 193

194 (Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

196 **Section 102.416 Notice of Hearing**

- 197
- 198 a) The hearing officer will set a time and place for hearing. The Clerk will give
- 199 notice ~~of the date~~ of the hearing as follows or as otherwise required by applicable
- 200 law:
- 201
- 202 1) By notice in the Board's Environmental Register and on the Board's
- 203 website;
- 204
- 205 2) *At least 20 days prior to the scheduled date of the hearing the Board shall*
- 206 *give notice of such hearing by public advertisement in a newspaper of*
- 207 *general circulation in the area of the State concerned.* The notice will
- 208 include, *the date, time, place and purpose of such hearing* [415 ILCS
- 209 5/28(a)]; and
- 210
- 211 3) Where required by federal law, including air pollution and RCRA
- 212 proposals, newspaper notice will be published at least 30 days ~~before~~ prior
- 213 ~~to~~ the hearing date.
- 214
- 215 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.
- de) 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~~ the Clerk's Office concerning the proposal. The Clerk will serve a copy of all Board orders and hearing officer orders upon the ~~will be given to all 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 to ~~must~~ 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

- 259 officer directs otherwise to prevent material prejudice or undue delay.  
 260
- 261 b) The hearing officer may require the prehearing filingsubmission of testimony,  
 262 questions, responses, ~~answers,~~ and any related exhibits by the proponent or  
 263 participants other than the proponent if the hearing officer determines that ~~thesuch~~  
 264 a procedure will provide for a more efficient hearing.  
 265
- 266 c) All prehearing testimony, questions, ~~answers,~~ responses, and any related exhibits  
 267 must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h).  
 268 Persons filing these prehearing documents must serve them in accordance with 35  
 269 Ill. Adm. Code 101.304(c) upon theThe hearing officer, the Agency, ~~and, if a~~  
 270 ~~participant,~~ the Attorney General's Office, General and DNR, ~~must each be served~~  
 271 ~~with all prehearing testimony, questions, answers, responses, and exhibits in~~  
 272 ~~accordance with 35 Ill. Adm. Code 101.304(e).~~ All prehearing testimony,  
 273 ~~questions, answers, responses, and exhibits must also be served in accordance~~  
 274 ~~with 35 Ill. Adm. Code 101.304(e) upon the proponent, and each participant~~  
 275 appearing on any service list, unless otherwise specified by the hearing officer.  
 276 The service must be initiated on or before the date that the prehearing documents  
 277 are filed with the Clerk.  
 278
- 279 d) All prehearing testimony, questions, ~~answers,~~ responses, and any related exhibits  
 280 ~~must be served and submitted in the form required by 35 Ill. Adm. Code~~  
 281 ~~101. Subpart C and labeled with the docket number of the proceeding, the name of~~  
 282 ~~the witness~~ corresponding to ~~submitting the material or exhibit, and the title of the~~  
 283 ~~material or exhibit.~~  
 284
- 285 e) The proponent and each participant who has filed testimony, questions, ~~answers,~~  
 286 responses, or any related exhibits before hearing in paper only must bring the  
 287 ~~number of copies designated by the hearing officer of that material and exhibits to~~  
 288 ~~the hearing a compact disk or other portable electronic storage device containing~~  
 289 their respective prehearing documents in text-searchable Adobe PDF for the  
 290 record.  
 291
- 292 f) Testimony, questions, ~~and answers,~~ responses that are timely filed before the, ~~and~~  
 293 ~~exhibits submitted prior to hearing will be entered into the record as if read,~~  
 294 unless the hearing officer determines that it will aid public understanding to have  
 295 the material ~~or exhibit read at the hearing.~~ All persons testifying will be sworn  
 296 and ~~will be subject to cross-examination.~~ Modifications to prehearing  
 297 ~~documents previously submitted material and exhibits may be allowed by the~~  
 298 hearing officer at the hearing if ~~provided that the modifications are either~~  
 299 nonsubstantive ~~non-substantive~~ in nature or would not materially prejudice another  
 300 person's participation at the hearing. Objections to hearing officer rulings  
 301 allowing or disallowing the modifications are waived unless raised at the hearing.

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- g) When prehearing filingsubmission of testimony, questions, answers, responses, and any related 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 the hearing only ifas time permits; and the hearing officer determines that allowing the materialonly when its submission will not materially prejudice the proponent or any other participant. Any of these documents that is not allowed at the hearing because it was not timely filed before the hearing can be filed after the hearing as a public comment.
  
- h) For a videoconference hearing under Section 102.114, 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 the hearing, but can be filed after the 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 \_\_\_\_\_)

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

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

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
103.108	New Section
103.410	Amendment
103.414	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: Generally, the Board proposes amendments to help it more effectively and efficiently conduct its business, particularly in light of digital technology, including high quality video communications. These amendments are designed to increase the efficiency of Board operations and reduce the costs of conducting its rulemakings and contested cases. Specifically, the Board proposes amendments to allow it to conduct hearings by videoconference, consistent with proposed amendments to 35 Ill. Adm. Code 101.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of 45 days after the date of publication in the *Illinois Register*. Public comments should reference Docket R16-17 and be addressed to:



## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

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

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

Interested persons may request copies of the Board's opinion and order in R16-17 by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

For more information, contact hearing officer Daniel Robertson at 312/814-6931 or e-mail at [Daniel.Robertson@illinois.gov](mailto:Daniel.Robertson@illinois.gov).

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

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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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

PART 103  
ENFORCEMENT

SUBPART A: GENERAL PROVISIONS

Section	
103.100	Applicability
103.102	Severability
103.104	Definitions
103.106	General
103.108	Hearings

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

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

SUBPART C: SETTLEMENT PROCEDURE

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

**POLLUTION CONTROL BOARD**

**NOTICE OF PROPOSED AMENDMENTS**

SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

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

SUBPART E: IMPOSITION OF PENALTIES

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

SUBPART F: ENFORCING BOARD ORDERS

Section	
103.600	Civil Action

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

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

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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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~~closestthe population center that is closest to the facility.

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- c) ~~In addition to the methods of notice by publication of Section 103.208 of this Part,~~ ~~the~~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.

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

(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,~~ into 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 \_\_\_\_\_)

Document comparison by Workshare Compare on Wednesday, January 06, 2016 2:38:50 PM

Input:	
Document 1 ID	file:///I:/Input/Agency Rulemakings - Files Received/2015/12/Dec2015/35-103-Agency Proposed Delta-(issue 1).docx
Description	35-103-Agency Proposed Delta-(issue 1)
Document 2 ID	file:///I:/Input/Agency Rulemakings - Files Received/2015/12/Dec2015/35-103-JCARr01(issue1).docx
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Legend:	
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Padding cell	

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Insertions	7
Deletions	15
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	22

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

5 PART 103  
6 ENFORCEMENT  
7

8 SUBPART A: GENERAL PROVISIONS  
9

10	Section	
11	103.100	Applicability
12	103.102	Severability
13	103.104	Definitions
14	103.106	General
15	<u>103.108</u>	<u>Hearings</u>

16  
17 SUBPART B: COMPLAINT, REQUEST FOR INFORMAL AGENCY  
18 INVESTIGATION, SERVICE, AND AUTHORIZATION OF HEARING  
19

20	Section	
21	103.200	Who May File
22	103.202	Parties
23	103.204	Notice, Complaint, and Answer
24	103.206	Adding Parties; Filing Counter-, Cross-, or Third-Party Complaints; Filing New 25 or Modified Claims
26	103.208	Request for Informal Agency Investigation
27	103.210	Notice of Complaint
28	103.212	Hearing on Complaint

29  
30 SUBPART C: SETTLEMENT PROCEDURE  
31

32	Section	
33	103.300	Request for Relief from Hearing Requirement in State Enforcement Proceeding
34	103.301	Request for Relief from Hearing Requirement in Citizen's Enforcement 35 Proceeding
36	103.302	Contents of Proposed Stipulation and Settlement Agreement
37	103.304	Hearing on Proposed Stipulation and Settlement Agreement
38	103.306	Board Order on Proposed Stipulation and Settlement Agreement

39  
40 SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS  
41

42	Section	
43	103.400	Purpose, Scope, and Applicability

- 44 103.402 Interim Order
- 45 103.404 Joinder of the Agency
- 46 103.406 Draft Permit or Statement
- 47 103.408 Stipulated Draft Remedy
- 48 103.410 Contents of Public Notice
- 49 103.412 Public Comment
- 50 103.414 Hearing
- 51 103.416 Contents of Board Order

52  
53 SUBPART E: IMPOSITION OF PENALTIES

- 54
- 55 Section
- 56 103.500 Default
- 57 103.502 Civil Penalties
- 58 103.504 Civil Penalties Method of Payment
- 59

60 SUBPART F: ENFORCING BOARD ORDERS

- 61 Section
- 62 103.600 Civil Action
- 63

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

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

70  
71 SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part III, Enforcement  
72 Proceedings, in R70-4, at 1 PCB 43, October 8, 1970; amended in R80-2, at 39 PCB 456, at 4 Ill.  
73 Reg. 39, p. 285, effective September 12, 1980; amended in R80-18, at 44 PCB 125, at 5 Ill. Reg.  
74 14146, effective December 3, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill.  
75 Reg. 1383, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill.  
76 Reg. 425, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8793, effective June 8,  
77 2005; amended in R14-21 at 39 Ill. Reg. 2349, effective January 27, 2015; amended in R15-20 at  
78 39 Ill. Reg. 12898, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. \_\_\_\_\_,  
79 effective \_\_\_\_\_.

80  
81 SUBPART A: GENERAL PROVISIONS

82  
83 Section 103.108 Hearings

84  
85 Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing  
86 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 servicing 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 ~~elosest~~ population center that is closest to the facility.
- c) ~~The~~In addition to the methods of notice by publication of Section 103.208 of this Part, 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

- 130 activity that is the subject of the enforcement proceeding;  
 131  
 132 4) A statement of the violations the Board has found or has proposed to find;  
 133  
 134 5) A statement that the Agency has filed a partial draft permit;  
 135  
 136 6) Name, address, e-mail address, and telephone number of the Clerk of the  
 137 Board, from whom interested persons may obtain further information,  
 138 including copies of the partial draft permit or stipulated remedy;  
 139  
 140 7) A notice of a hearing, the address of the Board, a statement that a hearing  
 141 will be held and that the record will remain open for 45 days after the  
 142 filing of the partial draft or stipulated remedy for written comments;  
 143  
 144 8) A statement that the record in the proceeding is available to be inspected  
 145 at the Board office and may also be available through the Clerk's Office  
 146 On-Line (COOL), located on the Board website, except those portions of  
 147 the record that are claimed or determined to be trade secrets or other non-  
 148 disclosable information, and that procedures are available whereby  
 149 disclosure may be sought by the public in accordance with 35 Ill. Adm.  
 150 Code 130;  
 151  
 152 9) A statement that enforcement proceedings are considered pursuant to 415  
 153 ILCS 5/30; and  
 154  
 155 10) Any additional information considered necessary or proper.  
 156

157 (Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
 158

159 **Section 103.414 Hearing**  
 160

- 161 a) The hearing officer, after appropriate consultation with the parties, will set a time  
 162 and place for the hearing to be held not less than 30 days after the filing of the  
 163 partial draft permit or stipulated remedy.  
 164  
 165 b) The hearing will be held, whenever possible, at a location convenient to~~in the~~  
 166 ~~county in which the facility is located,~~ in the population center that is~~in the county~~  
 167 closest to the facility.  
 168  
 169 c) The Clerk in consultation with the hearing officer will give notice of the hearing  
 170 to the persons entitled to notice in Sections 103.210 and 103.410 of this Part, and  
 171 to any other persons who have commented, requested to comment or requested  
 172 notice, and to any persons on a mailing list provided by the Agency.

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d) Notice will be mailed not less than 30 days before the hearing.

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

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

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

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
104.106	New Section
104.236	Amendment
104.422	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: Generally, the Board proposes amendments to help it more effectively and efficiently conduct its business, particularly in light of digital technology, including high quality video communications. These amendments are designed to increase the efficiency of Board operations and reduce the costs of conducting its rulemakings and contested cases. Specifically, the Board proposes amendments to allow it to conduct hearings by videoconference, consistent with proposed amendments to 35 Ill. Adm. Code 101. The Board also proposes an amendment requiring petitioners to file an index listing all documents comprising a filed petition.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of 45 days after the date of publication in the *Illinois Register*. Public comments should

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JAN 13 2016

STATE OF ILLINOIS  
Pollution Control Board

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

reference Docket R16-17 and be addressed to:

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

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

Interested persons may request copies of the Board's opinion and order in R16-17 by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

For more information, contact hearing officer Daniel Robertson at 312/814-6931 or e-mail at [Daniel.Robertson@illinois.gov](mailto:Daniel.Robertson@illinois.gov).

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

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

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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

PART 104  
REGULATORY RELIEF MECHANISMS

SUBPART A: GENERAL PROVISIONS

Section	
104.100	Applicability
104.102	Severability
104.104	Definitions
104.106	Petitions and Hearings

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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 104.242 Term of Variance
- 104.244 Variance Conditions
- 104.246 Performance Bonds
- ~~104.248~~ [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,

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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);~~

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- ~~ab~~ a) 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~~
- ~~bb~~ b) 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 ~~aan~~ 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~~will 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~~ population center that is closest to the facility or pollution source; and

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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.~~ before scheduling a hearing.

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

Document comparison by Workshare Compare on Wednesday, January 06, 2016 2:35:48 PM

Input:	
Document 1 ID	file:///I:/Input/Agency Rulemakings - Files Received\2015\12Dec2015\35-104-Agency Proposed Delta-(issue 1).docx
Description	35-104-Agency Proposed Delta-(issue 1)
Document 2 ID	file:///I:/Input/Agency Rulemakings - Files Received\2015\12Dec2015\35-104-JCARr01(issue1).docx
Description	35-104-JCARr01(issue1)
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Legend:	
<u>Insertion</u>	
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Statistics:	
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Insertions	11
Deletions	19
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	30

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

5 PART 104  
6 REGULATORY RELIEF MECHANISMS  
7

8 SUBPART A: GENERAL PROVISIONS  
9

10	Section	
11	104.100	Applicability
12	104.102	Severability
13	104.104	Definitions
14	<u>104.106</u>	<u>Petitions and Hearings</u>

15  
16 SUBPART B: VARIANCES  
17

18	Section	
19	104.200	General
20	104.202	Filing Requirements
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35	104.232	Calculation of Decision Deadline
36	104.234	Hearing
37	104.236	Hearing Procedures
38	104.238	Standard of Review
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40	104.242	Term of Variance
41	104.244	Variance Conditions
42	104.246	Performance Bonds
43	104.248	Objection to Conditions

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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

87 January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 613, effective  
88 January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8803, effective June 8, 2005; amended in  
89 R14-21 at 39 Ill. Reg. 2357, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg.  
90 12905, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. \_\_\_\_\_, effective  
91 \_\_\_\_\_.

92  
93 SUBPART A: GENERAL PROVISIONS

94  
95 **Section 104.106 Petitions and Hearings**

- 96
- 97 a) Each petition must contain an index that lists the documents comprising the
- 98 petition, including any exhibits, attachments, and supporting documents. All
- 99 pages of the petition must be sequentially numbered with the letter "P" placed
- 100 before the number of each page. The index must show the page numbers upon
- 101 which each document comprising the petition starts and ends.
- 102
- 103 b) Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F,
- 104 including any hearing held by videoconference (see 35 Ill. Adm. Code
- 105 101.600(b)).

106  
107 (Source: Added at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

108  
109 SUBPART B: VARIANCES

110  
111 **Section 104.236 Hearing Procedures**

112  
113 Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, except that:

- 114
- 115 a) ~~All hearings are to be held in the county where the petitioner's facility or pollution~~
- 116 ~~source is located unless otherwise ordered by the hearing officer (see 35 Ill. Adm.~~
- 117 ~~Code 101.600);~~
- 118
- 119 ~~a~~b) Hearings may be canceled pursuant to a motion filed in accordance with 35 Ill.
- 120 Adm. Code 101.510 at the discretion of the hearing officer; ~~and~~
- 121
- 122 ~~b~~e) If all parties and participants who have requested a hearing pursuant to this
- 123 Subpart have withdrawn their requests for a hearing, the hearing will not be held
- 124 unless the Board in its discretion deems it advisable.
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- 126 c) The hearing on an RCRA variance petition will be held, whenever possible, at a
- 127 location convenient to the population center that is closest to the facility.
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- 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 ~~elosest~~ 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

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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 \_\_\_\_\_)

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Proceedings Pursuant to Specific Rules or Statutory Provisions
- 2) Code Citation: 35 Ill. Adm. Code 106
- 3) 

<u>Section Numbers</u> :	<u>Proposed Actions</u> :
106.106	New Section
106.410	Amendment
106.510	Amendment
106.710	Amendment
106.912	Amendment
106.1155	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: Generally, the Board proposes amendments to help it more effectively and efficiently conduct its business, particularly in light of digital technology, including high quality video communications. These amendments are designed to increase the efficiency of Board operations and reduce the costs of conducting its rulemakings and contested cases. Specifically, the Board proposes amendments to allow it to conduct hearings by videoconference, consistent with proposed amendments to 35 Ill. Adm. Code 101. The Board further proposes amendments requiring a petitioner to file an index of all documents filed as part of a petition.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any proposed rulemakings amendments pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed

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JAN 13 2016

STATE OF ILLINOIS  
Pollution Control Board

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments should reference Docket R16-17 and be addressed to:

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

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

Interested persons may request copies of the Board's opinion and order in R16-17 by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

For more information, contact hearing officer Daniel Robertson at 312/814-6931 or e-mail at [Daniel.Robertson@illinois.gov](mailto:Daniel.Robertson@illinois.gov).

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

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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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)).

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

(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~~ hearing. 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~~ hearing. 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.

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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 ~~Fin the county in which the pilot project is located, or in another county that the hearing officer designates for cause~~F.
- 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**

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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.~~ a hearing.

(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~~ hearing.
- 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.

~~ILLINOIS REGISTER~~ [JCAR350106-1500127r01](#)

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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

Document comparison by Workshare Compare on Wednesday, January 06, 2016 2:41:39 PM

Input:	
Document 1 ID	file:///I:/Input/Agency Rulemakings - Files Received/2015/12Dec2015/35-106-Agency Proposed Delta-(issue 1).docx
Description	35-106-Agency Proposed Delta-(issue 1)
Document 2 ID	file:///I:/Input/Agency Rulemakings - Files Received/2015/12Dec2015/35-106-JCARr01(issue1).docx
Description	35-106-JCARr01(issue1)
Rendering set	Standard

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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
- 106.106 Petitions and Hearings

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

- 44 106.406 Petition Content Requirements
- 45 106.408 Response and Reply
- 46 106.410 Hearing
- 47 106.412 Burden of Proof
- 48 106.414 Opinion and Order
- 49 106.416 USEPA Review of Proposed Determination

50

51                   SUBPART E: MAXIMUM ACHIEVABLE CONTROL  
52                   TECHNOLOGY DETERMINATIONS

53

54 Section

- 55 106.500 General
- 56 106.502 Definitions
- 57 106.504 Initiation of Proceedings
- 58 106.506 Petition Content Requirements
- 59 106.508 Response and Reply
- 60 106.510 Hearing
- 61 106.512 Burden of Proof
- 62 106.514 Board Action

63

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

66

67 Section

- 68 106.600 General
- 69 106.602 Initiation of Proceedings
- 70 106.604 Petition Content Requirements
- 71 106.606 Response and Reply
- 72 106.608 Hearing
- 73 106.610 Burden of Proof

74

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

77

78 Section

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

87	106.714	Board Decision
88	106.716	Burden of Proof
89	106.718	Motions, Responses
90	106.720	Intervention
91	106.722	Continuances
92	106.724	Discovery, Admissions
93	106.726	Subpoenas
94	106.728	Settlement Procedure
95	106.730	Authority of Hearing Officer, Board Members, and Board Assistants
96	106.732	Order and Conduct of Hearing
97	106.734	Evidentiary Matters
98	106.736	Post-Hearing Procedures
99	106.738	Motion After Entry of Final Order
100	106.740	Relief from Final Orders

101

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

104   Section

105	106.800	General
106	106.802	Definitions
107	106.804	Initiation of Proceeding
108	106.806	Petition Content Requirements
109	106.808	Response and Reply
110	106.810	Hearing
111	106.812	Burden of Proof

112

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

115

116   Section

117	106.900	General
118	106.902	Initiation of Proceeding
119	106.904	Petition Content Requirements
120	106.906	Petition Notice Requirements
121	106.908	Proof of Petition Notice Requirements
122	106.910	Response and Reply
123	106.912	Hearing
124	106.914	Burden of Proof

125

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

128

129   Section

- 130 106.1000 General (Repealed)
- 131 106.1002 Definitions (Repealed)
- 132 106.1004 Initiation of Proceeding (Repealed)
- 133 106.1006 Petition Content Requirements (Repealed)
- 134 106.1008 Response and Reply (Repealed)
- 135 106.1010 Burden of Proof (Repealed)
- 136 106.1012 Board Decision (Repealed)

137

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

140

141 Section

- 142 106.1100 Purpose
- 143 106.1105 General
- 144 106.1110 Definitions
- 145 106.1115 Early Screening
- 146 106.1120 Detailed Plan of Study
- 147 106.1125 Initiation of Proceeding
- 148 106.1130 Contents of Petition
- 149 106.1135 Petition Notice Requirements
- 150 106.1140 Proof of Petition Notice Requirements
- 151 106.1145 Recommendation and Response
- 152 106.1150 Request for Public Hearing
- 153 106.1155 Notice and Conduct of Hearing
- 154 106.1160 Burden of Proof
- 155 106.1165 Evidentiary Matters
- 156 106.1170 Opinion and Order
- 157 106.1175 Post-Hearing Procedures
- 158 106.1180 Renewal of Alternative Thermal Effluent Limitations

159

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

161

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

166

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

173 R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579,  
174 effective July 11, 1994; amended in R99-9 at 23 Ill. Reg. 2697, effective February 16, 1999; old  
175 Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 550, effective January 1, 2001;  
176 amended in R04-24 at 29 Ill. Reg. 8817, effective June 8, 2005; amended in R10-19 at 34 Ill.  
177 Reg. 11486, effective July 23, 2010; amended in R12-21 at 36 Ill. Reg. 9236, effective June 7,  
178 2012; amended in R12-11 at 36 Ill. Reg. 16581, effective November 5, 2012; amended in R13-  
179 20 at 38 Ill. Reg. 6086, effective February 26, 2014; amended in R14-21 at 39 Ill. Reg. 2375,  
180 effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12914, effective September 8,  
181 2015; amended in R16-17 at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

182  
183 SUBPART A: GENERAL PROVISIONS

184  
185 **Section 106.106 Petitions and Hearings**

- 186  
187 a) Each petition must contain an index that lists the documents comprising the  
188 petition, including any exhibits, attachments, and supporting documents. All  
189 pages of the petition must be sequentially numbered with the letter "P" placed  
190 before the number of each page. The index must show the page numbers upon  
191 which each document comprising the petition starts and ends.  
192  
193 b) Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F,  
194 including any hearing held by videoconference (see 35 Ill. Adm. Code  
195 101.600(b)).

196  
197 (Source: Added at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

198  
199 SUBPART D: REVOCATION AND REOPENING OF  
200 CLEAN AIR ACT PERMIT PROGRAM (CAAPP) PERMITS

201  
202 **Section 106.410 Hearing**

203  
204 The Board will hold at least one public hearing ~~in the county where the CAAPP source is~~  
205 ~~located.~~ The Clerk will give notice of the petition and hearing in accordance with 35 Ill. Adm.  
206 Code 101.602. The proceeding must be conducted in accordance with 35 Ill. Adm. Code  
207 101.Subpart F.

208  
209 (Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

210  
211 SUBPART E: MAXIMUM ACHIEVABLE CONTROL  
212 TECHNOLOGY DETERMINATIONS

213  
214 **Section 106.510 Hearing**

215

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

220  
221 (Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
222

223 SUBPART G: INVOLUNTARY TERMINATION OF ENVIRONMENTAL  
224 MANAGEMENT SYSTEM AGREEMENTS (EMSAs)  
225

226 **Section 106.710 Notice of Hearing**  
227

- 228 a) The Clerk will assign a docket number to each statement of deficiency filed. Any  
229 hearing will be held not later than 60 days after the respondent files the answer,  
230 subject to any extensions ordered under subsection (c) of this Section.  
231
- 232 b) The Chairman of the Board will designate a hearing officer and the Clerk will  
233 notify the parties of the designation. The hearing officer may be a Member of the  
234 Board if otherwise qualified.  
235
- 236 c) The hearing officer, after reasonable efforts to consult with the parties, will set a  
237 time and place for hearing. The Board or the hearing officer may extend the time  
238 for hearing if all parties agree or there are extreme and unanticipated or  
239 uncontrollable circumstances that warrant a delay. The Board or the hearing  
240 officer may delay the hearing more than once. In each event, the Board or the  
241 hearing officer will not delay the hearing for more than 30 days.  
242
- 243 d) The hearing will be held pursuant to 35 Ill. Adm. Code 101.Subpart F in the  
244 county in which the pilot project is located, or in another county that the hearing  
245 officer designates for cause.  
246
- 247 e) The hearing officer or the Clerk will give notice of the hearing, at least 30 days  
248 before the hearing, to the parties under Section 106.708(b) of this Subpart, and to  
249 the public by public advertisement in a newspaper of general circulation in the  
250 county in which the pilot project is located.  
251
- 252 f) The Agency must give notice of each statement of deficiency and hearing under  
253 Section 106.708(b) of this Part at least 10 days before the hearing to:
  - 254 1) All stakeholders named or listed in the EMSA; and
  - 255 2) Any person who submitted written comments on the respondent's EMSA  
256 or participated in the public hearing on the respondent's EMSA by signing  
257  
258

259 an attendance sheet or signature card under the procedures set forth in 35  
260 Ill. Adm. Code 187.404, if less than 100 persons attended the public  
261 hearing on the respondent's EMSA as indicated by signatures on the  
262 attendance sheet or signature cards.

- 263  
264 g) Failure to comply with this Section is not a defense to an involuntary termination  
265 proceeding under this Subpart, but the hearing officer may postpone the hearing  
266 upon the motion of any person prejudiced by a failure to comply with this  
267 Section.

268  
269 (Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
270

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

273  
274 **Section 106.912 Hearing**

- 275  
276 a) Any person can request that a public hearing be held in an authorization  
277 proceeding. The requests must be filed not later than 21 days after the date of the  
278 publication of the petition notice in accordance with Section 106.906. Requests  
279 for hearing should make reference to the Board docket number assigned to the  
280 proceeding. A copy of each timely hearing request will be mailed to the  
281 petitioner and Agency by the Clerk of the Board. Participation by the public at  
282 the hearing must be in accordance with 35 Ill. Adm. Code 101.110 and 101.628.  
283 The Board may also, in its discretion, hold a public hearing when it determines a  
284 public hearing is advisable.  
285  
286 b) When all parties and participants who have requested a hearing pursuant to this  
287 Subpart have withdrawn their requests for a hearing, the hearing will not be held  
288 unless the Board, in its discretion, deems it advisable.  
289  
290 c) The hearing officer will set a time and place for the hearing. The hearing officer  
291 will make an attempt to consult with the petitioner and the Agency ~~before~~ prior to  
292 the scheduling of a hearing. ~~Hearings are to be held in the county likely to be~~  
293 ~~affected by the petitioner's activity that is the subject of the proposed~~  
294 ~~authorization proceeding.~~

295  
296 (Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
297

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

300  
301 **Section 106.1155 Notice and Conduct of Hearing**

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- 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 \_\_\_\_\_)

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Petition to Review Pollution Control Facility Siting Decisions
- 2) Code Citation: 35 Ill. Adm. Code 107
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
107.100	Amendment
107.302	Amendment
107.304	Amendment
107.400	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: Generally, the Board proposes amendments to help it more effectively and efficiently conduct its business, particularly in light of digital technology, including high quality video communications. These amendments are designed to increase the efficiency of Board operations and reduce the costs of conducting its rulemakings and contested cases. Specifically, the Board proposes amendments to allow the it to conduct hearings by videoconference, consistent with proposed amendments to 35 Ill. Adm. Code 101. The Board further proposes clarifying the definition of "pollution control facility" consistent with its definition in the Illinois Environmental Protection Act. The Board also proposes requiring a siting authority to file its record electronically.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed

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Pollution Control Board

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the Illinois Register. Public comments should reference Docket R16-17 and be addressed to:

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

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

Interested persons may request copies of the Board's opinion and order in R16-17 by calling the Clerk's office at 312/814-3620, or may download copies from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

For more information, contact hearing officer Daniel Robertson at 312/814-6931 or e-mail at [Daniel.Robertson@illinois.gov](mailto:Daniel.Robertson@illinois.gov).

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

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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER 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

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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~~, [39.2](#) and 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 \_\_\_\_\_)

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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~~ the record in text-searchable Adobe PDF through COOL or on compact disk or other portable electronic storage ~~device in paper~~ device 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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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, must~~ 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 \_\_\_\_\_)

Document comparison by Workshare Compare on Wednesday, January 06, 2016 2:34:20 PM

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

5 PART 107  
6 PETITION TO REVIEW POLLUTION CONTROL FACILITY SITING DECISIONS  
7

8 SUBPART A: GENERAL PROVISIONS

9 Section  
10 107.100 Applicability  
11 107.102 Severability  
12 107.104 Definitions  
13 107.106 Description  
14

15 SUBPART B: PETITION FOR REVIEW

16 Section  
17 107.200 Who May File Petition  
18 107.202 Parties  
19 107.204 Time for Filing Petition  
20 107.206 Filing and Service Requirements  
21 107.208 Petition Content Requirements  
22

23 SUBPART C: FILING OF LOCAL RECORD

24 Section  
25 107.300 Record  
26 107.302 Filing of the Record  
27 107.304 Record Contents  
28 107.306 Preparing of the Record  
29 107.308 Certification of Record  
30

31 SUBPART D: HEARING

32 Section  
33 107.400 General  
34 107.402 Authority and Duties of Hearing Officer  
35 107.404 Public Participation  
36

37 SUBPART E: BOARD REVIEW AND DECISION

38 Section  
39 107.500 Preliminary Board Determination/Set for Hearing  
40 107.502 Dismissal of Petition  
41 107.504 Decision Deadline  
42 107.506 Burden of Proof  
43

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

45

46 AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act)  
 47 [415 ILCS 5/26 and 27] and implementing Sections 39.2, and 40.1 of the Act [415 ILCS 5/39.2  
 48 and 40.1].

49

50 SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186,  
 51 effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg.  
 52 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4,  
 53 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12  
 54 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective  
 55 July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in  
 56 R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579,  
 57 effective July 11, 1994; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 539,  
 58 effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8828, effective June 8, 2005;  
 59 amended in R14-21 at 39 Ill. Reg. 2391, effective January 27, 2015; amended in R16-17 at 40 Ill.  
 60 Reg. \_\_\_\_\_, effective \_\_\_\_\_.

61

62 SUBPART A: GENERAL PROVISIONS

63

64 **Section 107.100 Applicability**

65

66 a) This Part applies to adjudicatory proceedings before the Board concerning  
 67 petitions to review a pollution control facility siting decision made by local  
 68 government pursuant to Sections 39.2 and 40.1 of the Act [415 ILCS 5/39.2 and  
 69 40.1]. "Pollution control facility" is defined at Section 3.330 of the Act [415  
 70 ILCS 5/3.330] for purposes of this Part.

71

72 b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains  
 73 procedures generally applicable to all of the Board's adjudicatory proceedings. In  
 74 the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and  
 75 those of this Part, the provisions of this Part apply.

76

77 (Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

78

79 SUBPART C: FILING OF LOCAL RECORD

80

81 **Section 107.302 Filing of the Record**

82

83 The siting authority must file the record of its proceedings with the Board as directed by Board  
 84 or hearing officer order. Failure to file the entire record on the date directed by the Board or  
 85 hearing officer may subject the respondent to sanctions as may be ordered by the Board in  
 86 accordance with 35 Ill. Adm. Code 101.Subpart H. The siting authority must file the ~~original~~

87 record in text-searchable Adobe PDF through COOL or on compact disk or other portable  
88 electronic storage device ~~paper~~ pursuant to 35 Ill. Adm. Code 101.302(h)(2). (~~See 35 Ill. Adm.~~  
89 ~~Code 101.1050(a).~~)

90  
91 (Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
92

93 **Section 107.304 Record Contents**  
94

- 95 a) The record must contain all information or evidence presented to the local siting  
96 authority or relied upon by the local siting authority during its hearing process  
97 including:  
98  
99 1) The siting application;  
100  
101 2) Any and all transcripts of local hearings;  
102  
103 3) All briefs and other arguments and statements of parties and participants;  
104  
105 4) All exhibits relied upon by the local siting authority in making its  
106 decision;  
107  
108 5) All written public comments relevant to the local government proceeding;  
109  
110 6) Minutes of all relevant open meetings of the siting authority;  
111  
112 7) Notices of hearings or all relevant meetings of the siting authority;  
113  
114 8) The written decision of the siting authority made pursuant to Section 39.2  
115 of the Act;  
116  
117 9) Certificate of Record as described in Section 107.308 of this Part; and  
118  
119 10) *If, prior to making a final local siting decision, a county board or*  
120 *governing body of a municipality has negotiated and entered into a host*  
121 *agreement with the local siting applicant, the terms and conditions of the*  
122 *host agreement, whether written or oral, shall be disclosed and made a*  
123 *part of the hearing record for that local siting proceeding. In the case of*  
124 *an oral agreement, the disclosure shall be made in the form of a written*  
125 *summary jointly prepared and submitted by the county board or governing*  
126 *body of the municipality and the siting applicant and shall describe the*  
127 *terms and conditions of the oral agreement. [415 ILCS 5/39.2(e)]*  
128  
129 b) The record must ~~contain the originals of all documents~~, be arranged in

130 chronological sequence, and be sequentially numbered with the letter "C" placed  
131 before the number of each page.

132  
133 (Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

134  
135 SUBPART D: HEARING

136  
137 **Section 107.400 General**

138  
139 Hearings, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)),  
140 and discovery will be conducted pursuant to in accordance with the provisions set forth in the  
141 Board's general procedural rules found at 35 Ill. Adm. Code 101.Subpart F.

142  
143 (Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Administrative Citations
- 2) Code Citation: 35 Ill. Adm. Code 108
- 3) Section Number: 108.300                      Proposed Action:  
Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: Generally, the Board proposes amendments to help it more effectively and efficiently conduct its business, particularly in light of digital technology, including high quality video communications. These amendments are designed to increase the efficiency of Board operations and reduce the costs of conducting its rulemakings and contested cases. Specifically, the Board proposes amendments to allow it to conduct hearings by videoconference, consistent with proposed amendments to 35 Ill. Adm. Code 101.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments should reference Docket R16-17 and be addressed to:

Clerk's Office  
Illinois Pollution Control Board



## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENT

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

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

Interested persons may request copies of the Board's opinion and order in R16-17 by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

For more information, contact hearing officer Daniel Robertson at 312/814-6931 or e-mail at [Daniel.Robertson@illinois.gov](mailto:Daniel.Robertson@illinois.gov).

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

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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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 \_\_\_\_\_)

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

5 PART 108  
6 ADMINISTRATIVE CITATIONS  
7

8 SUBPART A: GENERAL PROVISIONS  
9

10	Section	
11	108.100	Applicability
12	108.102	Severability
13	108.104	Definitions
14		

15 SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST  
16

17	Section	
18	108.200	Administrative Citation under the Act
19	108.201	Administrative Citation under the PWSO Act
20	108.202	Administrative Citation under the EPRR Act
21	108.204	Filing Requirements for Petition to Contest
22	108.206	Petition Contents
23	108.208	AC Recipient's Voluntary Withdrawal
24		

25 SUBPART C: HEARINGS  
26

27	Section	
28	108.300	Authorization of Hearing
29		

30 SUBPART D: BOARD DECISIONS  
31

32	Section	
33	108.400	Burden of Proof
34	108.402	Dismissal
35	108.404	Default
36	108.406	Non-Contested Citations
37		

38 SUBPART E: ASSESSMENT OF PENALTIES AND COSTS  
39

40	Section	
41	108.500	Penalties and Costs
42	108.502	Claimed Costs of Agency or Delegated Unit
43	108.504	Board Costs

44 108.506 Response to Claimed Costs and Reply

45

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

52

53 SOURCE: Adopted in R00-20 at 25 Ill. Reg. 397, effective January 1, 2001; amended in R04-24  
54 at 29 Ill. Reg. 8833, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2397, effective  
55 January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12921, effective September 8, 2015;  
56 amended in R16-17 at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

57

58

SUBPART C: HEARINGS

59

60 **Section 108.300 Authorization of Hearing**

61

62 a) The hearing date will be set within 60 days after the filing of the petition to  
63 contest unless the hearing officer orders otherwise to prevent material prejudice.

64

65 b) The hearing officer will give the parties at least 21 days written notice of the  
66 hearing.

67

68 c) The hearing will be held in accordance with 35 Ill. Adm. Code 101.Subpart F.

69

70 d) Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F,  
71 including any hearing held by videoconference (see 35 Ill. Adm. Code  
72 101.600(b))~~The hearing will be held at a time and location consistent with the~~  
73 ~~Board's resources as designated by the hearing officer.~~

74

75 (Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Tax Certifications
- 2) Code Citation: 35 Ill. Adm. Code 125
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
125.208	Amendment
125.210	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: Generally, the Board proposes amendments to help it more effectively and efficiently conduct its business, particularly in light of digital technology, including high quality video communications. These amendments are designed to increase the efficiency of Board operations and reduce the costs of conducting its rulemakings and contested cases. Specifically, the Board proposes amendments to allow it to conduct hearings by videoconference, consistent with proposed amendments to 35 Ill. Adm. Code 101. The Board also proposes amendments requiring the Illinois Environmental Protection Agency to electronically file tax certification records with the Board.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments should reference Docket R16-17 and be addressed to:

RECEIVED  
CLERK'S OFFICE

JAN 13 2016

STATE OF ILLINOIS  
Pollution Control Board

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

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

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

Interested persons may request copies of the Board's opinion and order in R16-17 by calling the Clerk's office at 312/814-3620, or may download copies from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

For more information, contact hearing officer Daniel Robertson at 312/814-6931 or e-mail at [Daniel.Robertson@illinois.gov](mailto:Daniel.Robertson@illinois.gov).

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

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

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

5 PART 125  
6 TAX CERTIFICATIONS  
7

8 SUBPART A: GENERAL PROVISIONS  
9

10 Section  
11 125.100 Applicability  
12 125.102 Severability  
13 125.104 Definitions  
14

15 SUBPART B: TAX CERTIFICATION OF POLLUTION CONTROL FACILITIES  
16 AND LOW SULFUR DIOXIDE EMISSION COAL FUELED DEVICES  
17

18 Section  
19 125.200 General  
20 125.202 Tax Certification Application  
21 125.204 Agency Recommendation  
22 125.206 Petition to Contest  
23 125.208 Agency Record  
24 125.210 Public Hearing  
25 125.212 Hearing Notice  
26 125.214 Burden of Proof  
27 125.216 Board Action  
28

29 AUTHORITY: Implementing and authorized by Sections 11-5, 11-10, 11-20, 11-25, 11-30, 11-  
30 35, 11-40, 11-50, and 11-55 of the Property Tax Code [35 ILCS 200/11-5, 11-10, 11-20, 11-25,  
31 11-30, 11-35, 11-40, 11-50, and 11-55] and Sections 26 and 27 of the Environmental Protection  
32 Act (the Act) [415 ILCS 5/26 and 27].  
33

34 SOURCE: Adopted in R00-20 at 25 Ill. Reg. 642, effective January 1, 2001; amended in R04-24  
35 at 29 Ill. Reg. 8838, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2402, effective  
36 January 27, 2015; amended in R16-17 at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.  
37

38 SUBPART B: TAX CERTIFICATION OF POLLUTION CONTROL FACILITIES  
39 AND LOW SULFUR DIOXIDE EMISSION COAL FUELED DEVICES  
40

41 **Section 125.208 Agency Record**  
42

43 The Agency must file with the Board the entire record on which it based its recommendation

44 within 30 days after the applicant files a petition to contest under Section 125.206 of this Subpart  
45 or as the Board or hearing officer orders. If the Agency wishes to seek additional time to file the  
46 record, it must file a request for extension before the date on which the record is due to be filed.  
47 The Agency must file the ~~original~~ record in text-searchable Adobe PDF through COOL or on  
48 compact disk or other portable electronic storage device ~~paper~~ pursuant to 35 Ill. Adm. Code  
49 101.302(h)(2). ~~(See 35 Ill. Adm. Code 101.1050(a).)~~ The record must comply with 35 Ill. Adm.  
50 Code 105.116(b).

51  
52 (Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
53

54 **Section 125.210 Public Hearing**  
55

- 56 a) The Board will hold a public hearing in a tax certification proceeding if:  
57  
58 1) The applicant files a petition to contest in accordance with Section  
59 125.206 of this Subpart, unless the Board disposes of the petition on a  
60 motion for summary judgment brought pursuant to 35 Ill. Adm. Code  
61 101.516;  
62  
63 2) The applicant or holder timely requests a hearing after the Board provides  
64 notice pursuant to Section 125.216(c) of this Subpart; or  
65  
66 3) The Board, in its discretion, determines that a hearing would be advisable.  
67  
68 b) If a hearing is to be held, the hearing officer will set a time and place for the  
69 hearing. The hearing officer will ~~make an attempt to consult with the applicant~~  
70 ~~and the Agency before scheduling a hearing.~~ Hearings will be conducted  
71 pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by  
72 videoconference (see 35 Ill. Adm. Code 101.600(b)). ~~Hearings will be held in the~~  
73 ~~county where the facility or portion thereof or the device for which the applicant~~  
74 ~~seeks tax certification is located, unless the hearing officer orders otherwise.~~

75  
76 (Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

**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~~ the record in text-searchable Adobe PDF through COOL or on compact disk or other portable electronic storage ~~device in paper device~~ 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~~ will 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 \_\_\_\_\_)

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Padding cell	

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Moved to	0
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