



# IPCB

Illinois Pollution Control Board

**CITIZENS' GUIDE  
TO THE  
ILLINOIS POLLUTION CONTROL BOARD**

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## Introduction

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This is the *Citizens' Guide to the Illinois Pollution Control Board (Citizens' Guide)*. The Illinois Pollution Control Board (Board) is an independent agency created in 1970 by the Environmental Protection Act (Act), Illinois' core law for controlling pollution. Under the Act, the Board decides cases and establishes rules to restore and protect the environment. In doing so, the Board provides a public forum where interested citizens can actively participate in our State's environmental decision-making.

This *Citizens' Guide* describes the Board and its most common types of proceedings, including enforcement actions, permit appeals, variances, adjusted standards, underground storage tank appeals, "pollution control facility" siting appeals, and rulemakings. The *Citizens' Guide* is an introduction intended for general informational purposes only; it is not legal advice or a substitute for the provisions of any statute or rule.

On this website, you can review the Board's procedural and substantive rules, as well as the Act. You will also find docketing information and many important documents from Board proceedings in the [Clerk's Office On-Line \(COOL\)](#), such as decisions of the Board, hearing transcripts, and public comments. If you require further information, please contact the Clerk's Office at 312-814-3461, [PCB.Clerks@illinois.gov](mailto:PCB.Clerks@illinois.gov), or:

Illinois Pollution Control Board, Clerk's Office  
James R. Thompson Center, Suite 11-500  
100 West Randolph Street  
Chicago, Illinois 60601

The Board also issues a quarterly newsletter, the *Environmental Register*, which is available [here](#). And, the Board holds a "[Brown Bag Lunch](#)" series for the public and environmental professionals to hear from speakers on a wide array of topics.

## The Board and the Act

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The Illinois Pollution Control Board (Board) was created in 1970 by the [Environmental Protection Act](#) (Act) (415 ILCS 5). The Act is Illinois' primary law for safeguarding the environment from pollution. Under the Act, the Board has two main functions: (1) adopting environmental rules for Illinois through rulemaking; and (2) deciding environmental cases through adjudicating, much like a "science court." The Board consists of five [Members](#) with verifiable experience in the field of pollution control. Board Members are appointed by the Governor and subject to Illinois Senate confirmation.

Rulemakings are quasi-legislative in nature; adjudicatory cases are quasi-judicial in nature. Board decisions in each rulemaking and adjudicatory case are based on

information that is gathered during the proceeding—usually at one or more public hearings—and placed in the public record maintained by the Clerk of the Board. The Board takes formal action in rulemakings and adjudicatory cases through its written orders. The Board adopts its orders by a majority vote of at least three Board Members at meetings open to the public under the Open Meetings Act (5 ILCS 120). Generally, final decisions of the Board may be appealed directly to the State Appellate Court. 415 ILCS 5/29, 38.5(j), 41.

Following its open meetings, the Board issues formal, written orders, which detail the Board's reasons for its decisions. Board orders, meeting agendas, and minutes (along with the Act, the Board's environmental and procedural rules, and much more) can be found on this website.

Through rulemakings, the Board has adopted environmental rules in the following areas: air pollution; water pollution; land pollution; public water supplies; mine-related pollution; agriculture-related pollution; hazardous and non-hazardous waste; underground storage tanks; risk-based cleanups; used and waste tires; noise pollution; atomic radiation; potentially infectious medical waste; clean construction or demolition debris; and right-to-know. These rules are codified in [Title 35](#) of the Illinois Administrative Code (35 Ill. Adm. Code 201-1600). Also, the Board has adopted [administrative rules](#) that explain how to obtain information from the Board (2 Ill. Adm. Code 2175) and [procedural rules](#) that explain how to initiate and participate in Board proceedings (35 Ill. Adm. Code 101-130).

In addition to rulemakings, the Board hears many types of adjudicatory cases, including enforcement actions alleging violations of the Act and Board rules. An enforcement action may be brought by anyone, including the Illinois Attorney General, a State's Attorney, one or more individuals, an environmental organization, an association, a local government, or a business. The Board also hears appeals of decisions made by other governmental units, including permit decisions of the Illinois Environmental Protection Agency (IEPA), the agency that enforces environmental rules; Underground Storage Tank Fund decisions of the Office of the State Fire Marshal; landfill siting decisions of counties and municipalities; and administrative citations issued by IEPA or local governments.

The Board hears other types of cases, including requests for variances, adjusted standards, time-limited water quality standards, and other forms of relief from Board environmental rules, as well as trade secret claims and applications for "pollution control facility" tax certifications. The Board also has authority to conduct inquiry hearings on any issue of environmental concern. 35 Ill. Adm. Code 102.112.

## Relief from Board Rules

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### How can a person obtain relief or a “waiver” from a Board rule?

The Environmental Protection Act (Act) authorizes the Illinois Pollution Control Board (Board) to provide different forms of long-term or permanent relief from environmental rules. 415 ILCS 5/28.1, 35-38.5. The Board can grant relief from its generally-applicable rules in two ways. First, the Board can grant relief through rulemaking, by either amending generally-applicable rules or adopting new, site-specific rules. The “[Rulemakings](#)” section of this *Citizens’ Guide* further describes that procedure. Second, the Board can grant relief through adjudicatory cases, which include variances, adjusted standards, and time-limited water quality standards.

The Act allows the Illinois Environmental Protection Agency (IEPA) to provide very short-term, emergency-type relief through provisional variances.

### What are variances?

A variance is an order that the Board issues to provide a person temporary relief from an environmental rule. A variance lasts no longer than five years, requires the person to comply with the rule at the end of the variance period, and often includes conditions that the person must follow during the variance period. On a showing of satisfactory progress, the Board may extend a variance beyond the variance period from year to year. The Board grants a variance only if the person petitioning for relief (the “petitioner”) proves that compliance with the rule would impose an “arbitrary or unreasonable hardship.” The Board considers the petitioner’s situation and any environmental harm that may result if the Board were to grant the requested relief. Generally, the Board must issue its decision within 120 days after either the petition is filed or a hearing is requested, whichever is later. However, the petitioner may extend this statutory deadline. 415 ILCS 5/35-38; 35 Ill. Adm. Code 104.Subpart B.

The parties to a variance proceeding are the petitioner and IEPA. The petitioner begins the proceeding by filing with the Board a formal, written request for relief, which is called a “petition.” The Act requires the petitioner to pay a \$75 filing fee. 415 ILCS 5/7.5. The petitioner must serve a copy of its petition on IEPA. IEPA reviews the petition and files with the Board a recommendation that the Board grant the variance, grant the variance with conditions, or deny the variance.

At the petitioner’s request, the Board holds a hearing on the merits of the petition. The Board also holds a hearing if anyone else, including IEPA or any member of the public, asks for a hearing by filing a request within 21 days after the petitioner publishes notice of the petition in the newspaper. In addition, the Board holds a hearing if it determines one would be advisable. Hearings are open to the public.

At a variance hearing, which is a type of adjudicatory hearing, parties and members of the public do not have the same participation rights. For information about participating at adjudicatory hearings, please refer to the "[Hearings](#)" section of this *Citizens' Guide*. In addition, members of the public can file "public comments," which are described in the "[Public Participation](#)" section of this *Citizens' Guide*.

### **What are provisional variances?**

A provisional variance is a decision that IEPA issues to provide a person very short-term relief from an environmental rule, usually in emergency-type situations. A facility seeking a provisional variance applies to IEPA. If IEPA believes compliance with the rule would impose an "arbitrary or unreasonable hardship," it grants a provisional variance. A provisional variance lasts no longer than 45 days, but IEPA can extend it up to an additional 45 days. However, a provisional variance cannot exceed a total of 90 days during any calendar year. The facility must comply with the environmental rule by the time that the provisional variance expires. 415 ILCS 5/35-37. IEPA's decision on a provisional variance request is not subject to review before the Board, but if IEPA denies or fails to timely decide a request, the facility may petition the Board for a variance. For more information about provisional variances, please refer to 35 Ill. Adm. Code 180, IEPA's "Procedures and Criteria for Reviewing Applications for Provisional Variances."

### **What are adjusted standards?**

An adjusted standard is an order that the Board issues to provide a petitioner its own, individual alternative to a generally-applicable environmental rule. Some adjusted standards expire after a set number of years, but others are permanent. The person seeking the adjusted standard, called the "petitioner," must typically prove, among other things, that (1) factors relating to its facility are "substantially and significantly different" from the factors relied on by the Board in adopting the generally-applicable rule and (2) the adjusted standard will not result in environmental or health effects "substantially and significantly more adverse" than would occur under the generally-applicable rule. 415 ILCS 5/28.1; 35 Ill. Adm. Code 104.Subpart D.

The parties to an adjusted standard proceeding are the petitioner, who files a petition with the Board to start the case, and IEPA. The Act requires the petitioner to pay a \$75 filing fee. 415 ILCS 5/7.5. The petitioner must serve a copy of its petition on IEPA. IEPA reviews the petition and files a recommendation with the Board. At the petitioner's request, the Board holds a hearing on the petition's merits. The Board also holds a hearing if anyone else, including IEPA or any member of the public, requests a hearing by filing a request within 21 days after the petitioner publishes notice of the petition in the newspaper. In addition, the Board holds a hearing if it determines one would be advisable. Hearings are open to the public.

At an adjusted standard hearing, which is a type of adjudicatory hearing, parties and members of the public do not have the same participation rights. For information about participating at adjudicatory hearings, please refer to the “Hearings” section of this *Citizens’ Guide*. In addition, members of the public can file “public comments,” which are described in the “Public Participation” section of this *Citizens’ Guide*.

### **What are time-limited water quality standards?**

A time-limited water quality standard (TLWQS) is a form of temporary relief from water quality standards. The person seeking the relief, called the “petitioner,” generally must pay a \$75 filing fee. 415 ILCS 5/7.5. The Board may adopt a TLWQS for a watershed or one or more of the following: water bodies; waterbody segments; or dischargers. These Board proceedings are not subject to rulemaking requirements but also are not considered adjudicatory cases. The TLWQS must be consistent with the federal Clean Water Act and rules of the United States Environmental Protection Agency. 415 ILCS 5/38.5.

## **Appeals of State Agency Decisions**

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### **Appeals of Illinois Environmental Protection Agency Decisions**

The Illinois Pollution Control Board (Board) hears appeals of Illinois Environmental Protection Agency (IEPA) decisions to issue or deny permits in environmental programs. 415 ILCS 5/40, 40.2, 40.3. The Board also hears appeals of IEPA decisions under the Leaking Underground Storage Tank (UST) Program (415 ILCS 5/57-57.19), such as IEPA rejections of cleanup plans or requests to be reimbursed cleanup costs from the State UST Fund. 35 Ill. Adm. Code 105.Subpart D. Other appealable decisions are specified in the Environmental Protection Act (Act) or in Board rules like the Site Remediation Program (35 Ill. Adm. Code 740). As the Board generally handles appeals of all types of IEPA decisions similarly, only appeals of permit decisions (“permit appeals”) are discussed below. The Board procedural rules on appeals of IEPA decisions are at 35 Ill. Adm. Code 105.

### **What are permits?**

The Act and Board rules require certain sources of pollution to obtain permits. Generally, a permit is a legal document issued by IEPA that grants authority to build or operate a facility or equipment under specified terms and conditions. A permit may allow for the release of controlled amounts of pollutants into the environment, such as emissions into the air or discharges into a waterway. Or, a permit may allow for the disposal of wastes, such as deposits at a landfill. IEPA typically issues a permit with “standard conditions,” but it often also crafts “special conditions” that it believes are needed to address site-specific concerns.



## **What are permit appeals?**

If IEPA denies a permit, or issues a permit with conditions that the permit applicant believes are inappropriate, the permit applicant may appeal that decision to the Board. Some IEPA permit decisions may be appealed not only by permit applicants, but also by third parties. 415 ILCS 5/40(b), (c), (e), 40.2, 40.3. The Act also makes other IEPA decisions appealable as if they were permit decisions, like UST decisions. The person appealing the IEPA decision to the Board is called the “petitioner.” IEPA is called the “respondent.” When the petitioner is a third party, the permit applicant is also a respondent. To bring the appeal, the Act requires that the petitioner pay a \$75 filing fee. 415 ILCS 5/7.5.

The Board decides a permit appeal based on the record that IEPA had before it when it issued its decision. Typically, the Board holds a public hearing and the parties file legal briefs. The petitioner has the burden of proving that IEPA erred. For example, when the permit applicant is the petitioner, it must demonstrate to the Board that applicable environmental laws and rules would not be violated if the requested permit had been issued rather than denied, or that the contested conditions in an issued permit are not necessary to accomplish the purposes of the Act. The Board must decide a permit appeal within 120 days after the appeal is filed, unless the permit applicant extends this statutory deadline. Only the permit applicant may extend the decision deadline, even in a third-party appeal of an IEPA permit decision.

## **How do permit appeals work?**

A permit appeal begins when the petitioner (either the permit applicant or, if allowed by the Act, a third party) files a formal, written petition with the Board and serves a copy on IEPA and, as applicable, the permit applicant. The petitioner must file the petition within 35 days after the date on which IEPA served the permit decision (for the permit applicant) or issued the permit decision (for a third-party petitioner). 35 Ill. Adm. Code 105.206. In specified situations, the Board can grant an extension of the appeal period, for up to an extra 90 days, if jointly requested by the applicant and IEPA and, as applicable, the third party. Extension procedures are in the Act (415 ILCS 5/40(a)(1), 40(c), 40.2) and the Board’s procedural rules (35 Ill. Adm. Code 105.208). IEPA must electronically file the documents upon which it based its permit decision, called the “Agency record.”

## **How do permit appeal hearings work?**

Hearings are usually held in permit appeals. A Board hearing officer conducts the hearing, and representatives of IEPA, the permit applicant, and any third-party petitioner can present evidence. Typically, a permit appeal hearing, which is a type of adjudicatory hearing, is based exclusively on the Agency record. Permit appeal hearings are open to the public, who may participate as the hearing officer allows. More information about participating in adjudicatory hearings is provided in the

[“Hearings”](#) section of this *Citizens’ Guide*. In addition, members of the public can file “public comments,” which are described in the [“Public Participation”](#) section of this *Citizens’ Guide*.

### **Can a person appeal the Board’s final permit appeal decision?**

Yes. If a party to the Board proceeding wishes to appeal the Board’s final decision in the permit appeal, the party must file an appeal directly with the State Appellate Court. Any appeal must be filed within 35 days after the party receives the final order from the Board. For additional information about appealing Board adjudicatory decisions, please refer to the Act (415 ILCS 5/41), the Board’s procedural rules (35 Ill. Adm. Code 101.300(d)(2), 101.906), and the Rules of the Illinois Supreme Court (Ill. S. Ct. Rule 335).

### **Appeals of Office of the State Fire Marshal Decisions under the Leaking UST Program**

The Office of the State Fire Marshal (OSFM) decides whether owners and operators of leaking USTs are eligible to have their cleanup costs reimbursed from the State’s UST Fund and, if so, which deductible applies. 415 ILCS 5/57.9. The Board hears appeals of these OSFM decisions. The Board does not hear appeals of OSFM decisions on UST registrations or fee payments. Generally, the Board handles appeals of OSFM eligibility/deductibility decisions much like it handles appeals of IEPA permit decisions, outlined above. However, there are differences. For example, the 35-day appeal period runs from the date of the OSFM’s decision, not from its receipt, and cannot be extended. For more information about OSFM appeals, please refer to the Board’s procedural rules at 35 Ill. Adm. Code 105.Subpart E.

## **Pollution Control Facility Siting Appeals**

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### **What is the pollution control facility siting process?**

The Environmental Protection Act (Act) (415 ILCS 5) provides a unique process for a municipality or a county to play a significant role in deciding whether a “pollution control facility” (PCF) can locate or expand within its borders. PCFs include waste storage sites, sanitary landfills, waste transfer stations, waste treatment operations, and incinerators.

The Act and the rules of the Illinois Pollution Control Board (Board) require PCFs to obtain development permits. The Illinois Environmental Protection Agency cannot issue a permit until it has proof that the appropriate municipality or county (the “local siting authority”) granted siting approval to build or expand the PCF. If the proposed new or expanding PCF would be in an incorporated area, the

municipality is the local siting authority; if it would be in an unincorporated area, the county is the local siting authority. 415 ILCS 5/39(c).

The person seeking siting approval must apply with the local siting authority, give timely notice of the siting request to affected persons, and prove that its proposed new facility or expansion meets the nine siting criteria in Section 39.2 of the Act (415 ILCS 5/39.2). The local siting authority must hold a public hearing and receive public comment on the application within specified time periods. Based on the record of the local proceeding and the nine statutory criteria, the local siting authority may approve siting, approve siting with conditions, or deny siting for the proposed new or expanding PCF. Generally, the local siting authority must issue a written decision within 180 days after receiving the siting application. For additional information about the local siting process, please refer to Section 39.2 of the Act (415 ILCS 5/39.2).

### **What are siting appeals?**

Under the conditions specified in Section 40.1 of the Act (415 ILCS 5/40.1), the PCF siting applicant or any person who participated in the local siting authority's hearing may appeal the siting decision to the Board. Among those persons who participated at the local siting hearing, only those who are so located as to be affected by the proposed new or expanding PCF may file a "third-party" appeal with the Board. 35 Ill. Adm. Code 107.202. A third party may appeal only the grant of siting approval; the siting applicant may appeal either the denial of siting approval or the grant of siting approval with conditions.

### **How do siting appeals work?**

PCF siting appeals begin when a person, called the "petitioner," files a petition for review with the Board and serves a copy on the local siting authority and, as applicable, the siting applicant. The Act requires the petitioner (either the siting applicant or a third party) to pay a \$75 filing fee. 415 ILCS 5/7.5. All petitions to review local siting decisions must meet the content requirements of the Board's procedural rules at 35 Ill. Adm. Code 107.208. Petitions must be filed within 35 days after the local siting authority's action to approve or disapprove PCF siting. The Act does not allow extensions of time to file these appeals.

The local siting authority must electronically file the documents on which it based its siting decision, called the "local record." 35 Ill. Adm. Code 107.Subpart C. The Board assigns a staff hearing officer to manage the case and to conduct a hearing. Generally, depending on the grounds for the appeal, the Board makes its final decision based on whether the local siting authority's procedures were fundamentally fair, whether the siting decision is correct based on the statutory criteria, or whether siting conditions imposed by the local government on its siting grant are necessary to accomplish the purposes of Section 39.2 of the Act. The Board must decide these appeals within 120 days after the appeal is filed, unless

the siting applicant extends this statutory deadline. Only the siting applicant may extend the decision deadline, even in third-party appeals. For additional information about siting appeals, please refer to Section 40.1 of the Act and Part 107 of the Board's procedural rules (35 Ill. Adm. Code 107).

### **How do siting appeal hearings work?**

The siting appeal hearing, which is a type of adjudicatory hearing, is conducted by a Board hearing officer. It is attended by representatives of the petitioner, the local siting authority, and the siting applicant (if it is not the petitioner), each of whom can present evidence. Citizens who are not parties can attend the hearing, but cannot question witnesses. Typically, citizens can offer oral public comment at an announced time. 35 Ill. Adm. Code 107.404. More information about participating in adjudicatory hearings is provided in the "[Hearings](#)" section of this *Citizens' Guide*. In addition, members of the public can file "public comments," which are described in the "[Public Participation](#)" section of this *Citizens' Guide*.

### **Can a person appeal the Board's final siting appeal decision?**

Yes. If a party to the Board proceeding wishes to appeal the Board's final decision in the siting appeal, the party must file an appeal directly with the State Appellate Court. Any appeal must be filed within 35 days after receiving the final order from the Board. For more information about appealing Board adjudicatory decisions, please refer to the Act (415 ILCS 5/41) and the Rules of the Illinois Supreme Court (Ill. S. Ct. Rule 335).

## **Hearings**

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### **The Board's Hearing Process**

Generally, the Illinois Pollution Control Board (Board) holds two types of hearings: adjudicatory hearings; and rulemaking hearings. Both types of hearings are open to the public. The purpose of hearings is to gather information, which the Board reviews when considering proposed environmental rules or deciding environmental cases. Hearings are conducted by Board staff hearing officers. Testimony is transcribed by a court reporter, exhibits are introduced, and objections to evidence may be made. Transcripts of all Board hearings are available on this website. The Board or hearing officer may decide that the hearing will be held by videoconference—in making that decision, the Board or hearing officer considers factors like cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. More information about hearings is available in the Board's general procedural rules at 35 Ill. Adm. Code 101.Subpart F, the Board's procedural rules for rulemakings (35 Ill. Adm. Code

102), and the Board's procedural rules for specific types of adjudicatory cases (35 Ill. Adm. Code 103-130).

## **Adjudicatory Hearings**

The purpose of an adjudicatory hearing is to provide the Board with all the evidence necessary to make an informed decision in the case before it, subject to statutory limits on the kind of information the Board can consider. Adjudicatory cases include enforcement actions, permit appeals, administrative citations, variances, adjusted standards, and appeals of local government "pollution control facility" siting decisions. Parties to an adjudicatory case are those whose legal rights and responsibilities are the subject of the complaint or petition that started the case. In some cases, the Board may allow other persons to be "intervenor," which generally gives them the same rights as parties. For additional information about intervening, please refer to the Board's procedural rules at 35 Ill. Adm. Code 101.402.

An adjudicatory hearing is the opportunity for the parties to present evidence (e.g., testimony of witnesses; documents; photos) to try to convince the Board that they should win the case. In these hearings, members of the public have limited participation rights. They can—as the hearing officer allows—make oral "statements" under oath and subject to cross-examination or make oral "public comments" without being under oath or subject to cross-examination. Unlike parties, members of the public cannot question witnesses. For more information about public participation, please refer to the Board's procedural rules at 35 Ill. Adm. Code 101.110, 101.628.

## **Rulemaking Hearings**

The purpose of a Board rulemaking hearing is to gather information about proposed rules, including information about the environmental concerns that the rules are designed to address, who would be subject to the rules, and whether complying with the rules would be technically feasible and economically reasonable. The person filing the proposal to adopt or amend rules (usually, the Illinois Environmental Protection Agency) is called the rulemaking "proponent." Typically, businesses and local governments that would be affected by the proposed rules, as well as environmental organizations, participate in Board rulemaking hearings. They do so by presenting information to support their respective positions on the proposal, including any positive or negative economic effects. After the proponent finishes its presentation at a hearing, all other participants, including members of the public, can present witness testimony and related exhibits, question witnesses, and provide oral public comments (not under oath or subject to cross-examination) or oral statements (under oath and subject to cross-examination), all as the hearing officer allows.

If you are interested in participating in a rulemaking hearing, you should contact the assigned hearing officer. Information about [pending rulemakings](#), including Board orders and hearing transcripts, is available on this website. For additional information about rulemaking hearings, please refer to the Board's procedural rules at 35 Ill. Adm. Code 102.Subpart D.

## **Enforcement Actions**

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Enforcement actions are cases filed with the Illinois Pollution Control Board (Board) under Section 31 of the Environmental Protection Act (Act) (415 ILCS 5/31) and Part 103 of the Board's procedural rules (35 Ill. Adm. Code 103). They are complaints alleging a violation or violations of the Act, a Board order, a Board environmental rule, or a permit issued by the Illinois Environmental Protection Agency (IEPA).

Any person can file an enforcement action. Complaints filed by the Illinois Attorney General or State's Attorneys for the People of the State of Illinois are known as "State enforcement proceedings." Complaints filed by anyone else (such as one or more individuals, an environmental organization, an association, a local government, or a business) are called "citizen's enforcement proceedings." The Board usually holds a hearing in an enforcement proceeding. An enforcement action hearing is a type of adjudicatory hearing. More information about adjudicatory hearings is provided in the "[Hearings](#)" section of this *Citizens' Guide*.

The parties to an enforcement proceeding are the "complainant" (the person who files the complaint) and the "respondent" (the alleged violator). The burden is on the complainant to show that the respondent committed the violations alleged in the complaint. If the Board finds that the respondent committed the alleged violations, the Board may order the respondent to do, among other things, one or more of the following: cease and desist from further violations (e.g., stop operating without a permit or stop polluting); take pollution abatement measures; clean up contamination; reimburse cleanup costs; and pay substantial fines. Additionally, the Board may award attorney fees to the State when it prevails (but not to a citizen complainant), and order the respondent to post a performance bond while the respondent corrects the violations. 415 ILCS 5/33, 42.

The Act treats citizen's enforcement proceedings differently than State enforcement proceedings. Some of those differences are highlighted below.

### **Citizen's Enforcement Proceedings**

A citizen's enforcement proceeding is one initiated by anyone other than the Illinois Attorney General's Office or a State's Attorney. Generally, the Board accepts a citizen complaint for hearing unless the complaint is "duplicative or frivolous" within the meaning of Section 31(d)(1) of the Act (415 ILCS 5/31(d)(1)). A complaint is

duplicative if it is already being heard by the Board or in another forum. A complaint is frivolous if it fails to state a cause of action or requests relief that the Board cannot grant. In an enforcement action, as with any adjudicatory case, an individual—even if he or she is not an attorney—may represent himself or herself as an individual or his or her unincorporated sole proprietorship. But, only an attorney can represent someone else (e.g., another individual or other individuals, an environmental organization, an association, a local government, or a corporation). As noted, the complainant has the burden to prove the alleged violations. Though the Board’s hearing officer can provide procedural information, the hearing officer cannot act as the attorney for the complainant or the respondent. The role of the hearing officer is to efficiently manage any pre-hearing discovery and to schedule and conduct a full, fair, and orderly hearing that provides a complete record for Board review and decision.

Citizen complainants must follow the Board’s procedural rules. 35 Ill. Adm. Code 101, 103. A sample complaint form and related information can be found [here](#) on the Board’s website. Under Section 31(d)(2) of the Act (415 ILCS 5/31(d)(2)), the parties to a citizen’s enforcement proceeding may be able to settle the case without a hearing.

## **State Enforcement Proceedings**

A State enforcement proceeding is one initiated by the Illinois Attorney General’s Office or a State’s Attorney. Often, these actions are based on information developed by IEPA. Sections 31(a) and (b) of the Act (415 ILCS 5/31(a), (b)) require IEPA to give a potential respondent notice of the alleged violations and an opportunity to correct them before IEPA asks that the Illinois Attorney General or a State’s attorney file a complaint with the Board. If the parties reach a settlement agreement, a State enforcement proceeding can be settled without the Board holding a hearing. In that situation, the Board publishes a newspaper notice of the parties’ stipulation, proposed settlement, and request that no hearing be held. If anyone timely files a request for hearing, the Board holds a hearing on the proposed settlement. For more information about State enforcement proceedings, please refer to Section 31 of the Act (415 ILCS 5/31) and the Board’s procedural rules at 35 Ill. Adm. Code 103.

## **Administrative Citations**

Generally, administrative citations are a type of enforcement action brought before the Board under Section 31.1 of the Act (415 ILCS 5/31.1) and Part 108 of the Board’s procedural rules (35 Ill. Adm. Code 108). Only IEPA (or a local government to which IEPA delegated the authority) can file an administrative citation. Administrative citations are designed to be relatively quick, “traffic-ticket” type proceedings. They are limited to specified types of violations observed by site inspectors at sanitary landfills and open dumps. Administrative citations also may address specified types of violations concerning used and waste tires, clean

construction or demolition debris fill operations, and uncontaminated soil fill operations. Fines are fixed by the Act at \$500, \$1,500, or \$3,000 per violation.

Under Section 31.1 of the Act, the complainant, either IEPA or the delegated local government, must serve the administrative citation on the alleged violator within 60 days after the site inspection during which the alleged violation was observed. The complainant must also file the administrative citation with the Board within 10 days after service. The administrative citation must include the site inspection report. 35 Ill. Adm. Code 108.200. The alleged violator, known as the “respondent,” may choose to pay the fixed statutory fine without contesting the administrative citation, or petition the Board asking that it review the citation and hold a hearing.

If the respondent wishes to contest the administrative citation, it must file a petition for review with the Board within 35 days after receiving the citation from the complainant. 35 Ill. Adm. Code 108.204. The petition must specify the reason or reasons why the respondent believes that the administrative citation was improperly issued (e.g., the alleged violation resulted from “uncontrollable circumstances”). 35 Ill. Adm. Code 108.206. If no petition is timely filed, the Board will find that the respondent violated the Act as alleged and impose the statutory fine. The Board will impose a \$500 fine per violation of Section 21(o) of the Act (415 ILCS 5/21(o)) at a sanitary landfill, such as for failing to provide daily cover of refuse. The Board will impose a \$1,500 fine per violation of Section 21(p) of the Act (415 ILCS 5/21(p)) at an open dump site, such as for causing or allowing the open dumping of waste in a manner resulting in litter or open burning. The Board also will impose a \$1,500 fine per violation of any of the following provisions of the Act: Section 22.51 (415 ILCS 5/22.51) at a clean construction or demolition debris fill operation; Section 22.51a (415 ILCS 5/22.51a) at an uncontaminated soil fill operation; and Section 55(k) (415 ILCS 5/55(k)) regarding used or waste tires. For a second or subsequent adjudicated violation of Section 21(p), 22.51, 22.51a, or 55(k), the Board will impose a \$3,000 fine per violation. 415 ILCS 5/42(b)(4), (4-5).

When an administrative citation is timely contested, the Board will typically hold a hearing. An administrative citation hearing is a type of adjudicatory hearing. More information about adjudicatory hearings is provided in the [“Hearings”](#) section of this *Citizens’ Guide*. If, after the hearing, the Board finds that the Act was violated as alleged, the Board will order the respondent to pay the statutory fine, plus the [hearing costs](#) of the Board and the complainant. 35 Ill. Adm. Code 108.Subpart E.

Administrative citations also may be issued under the Public Water Supply Operations Act (415 ILCS 45). Under that statute, IEPA may issue an administrative citation against the “Responsible Operator in Charge” of a community water supply for violating requirements to submit reports and monitoring results. 415 ILCS 45/23.1. IEPA must serve the administrative citation on the alleged violator within 90 days after IEPA’s discovers the violation. IEPA also must file the administrative citation with the Board within 15 days after service.



Within 35 days after receiving the citation from IEPA, the Responsible Operator in Charge may file a petition with the Board requesting a hearing to contest the citation. Fines to be imposed by the Board are fixed at \$500 per violation of Section 1.1(b)(3) of the Public Water Supply Operations Act (415 ILCS 45/1.1(b)(3)), increasing to \$1,500 for a second or subsequent adjudicated violation of that provision. Board and IEPA hearing costs also will be imposed on a Responsible Operator in Charge who is found in violation. For additional information about administrative citations under the Public Water Supply Operations Act, please refer to Section 23.1 of that statute (415 ILCS 45/23.1) and Part 108 of the Board's procedural rules (35 Ill. Adm. Code 108).

In addition, administrative citations may be issued under the Electronic Products Recycling and Reuse Act (415 ILCS 150). For any violation of that statute, IEPA (or a county to which IEPA delegated the authority) may issue an administrative citation. 415 ILCS 150/20(k). The citation must be served within 60 days after IEPA or the delegated county observed the violation. 35 Ill. Adm. Code 108.202. Within 35 days after receiving the citation from IEPA or the delegated county, the person named in the citation may file a petition with the Board requesting a hearing to contest the citation. 415 ILCS 150/20(l), (m). The fine to be imposed by the Board is limited to \$1,000, but landfill ban violations may result in different fines. 415 ILCS 150/80(j). For more information about administrative citations under the Electronic Products Recycling and Reuse Act, please refer to Sections 20(k)-(n) and 80(j) of that statute (415 ILCS 150/20(k)-(n), 80(j)) and Part 108 of the Board's procedural rules (35 Ill. Adm. Code 108).

## Rulemakings

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### What is a rulemaking?

A rulemaking is the procedure used to adopt rules. The Illinois Pollution Control Board (Board) adopts Illinois' environmental rules. When the Board adopts rules, it follows Title VII of the Environmental Protection Act (Act) (415 ILCS 5/26-29), the Board's procedural rules (35 Ill. Adm. Code 102), and the [Illinois Administrative Procedure Act](#) (IAPA) (5 ILCS 100/5-5 through 5-165). Rules may be of general applicability or site-specific applicability. 35 Ill. Adm. Code 102.Subpart B. The Act requires a site-specific rulemaking proponent to pay a \$75 filing fee. 415 ILCS 5/7.5.

### In what situations does the Board adopt rules?

In most situations, the Board adopts rules because State or federal laws require that the Board do so to implement or alter the State's environmental programs. The Illinois Environmental Protection Agency typically proposes rules. But, anyone can propose new environmental rules or changes to the current ones, including

one or more individuals, an environmental organization, an association, a local government, or a business. Before adopting any proposed rules, the Board considers their economic impact and technical feasibility, in addition to the nature of the pollution problem they seek to address. For example, if complying with proposed rules is economically unreasonable or technically infeasible, the Board might reject the rules even if they could improve the environment. On the other hand, if proposed rules are necessary to address a problem threatening human health or the environment, the Board might adopt the rules even though complying with them will impose significant costs or technical difficulty.

### **How does the Board consider economic impact in a rulemaking?**

Before the Board adopts environmental rules, the Act requires that the Board hold at least one hearing on their economic impact to determine whether they will have any “adverse economic impact on the People of the State of Illinois.” 415 ILCS 5/27(b). The rulemaking proponent, in addition to providing justification for the proposed rules, must describe the facilities that would be affected by the rules and the economic impact that the rules would have.

The Board must also ask the Illinois Department of Commerce and Economic Opportunity (DCEO) to prepare a study of the economic impact of the proposed rules. DCEO has 45 days to either finish a study or decide that it will not prepare one. The Board must make DCEO’s study, or reason for not preparing one, available to the public at least 20 days before an economic impact hearing. As the Board hearing officer allows, any participant at a rulemaking hearing may question witnesses or present evidence or comment about the economic impact of proposed rules.

### **What is the Board’s procedure for a general rulemaking to adopt environmental rules?**

Typically, a rulemaking begins when a proposal to adopt, amend, or repeal rules is filed with the Board. If the proposal meets statutory and procedural rule requirements, the Board accepts the proposal and schedules public hearings.

The IAPA provides for different types of rulemakings, including “emergency” rulemaking, but by far the most common type is “general” rulemaking. Under the IAPA, general rulemaking must proceed in three stages: “first notice”; “second notice”; and “final adoption.” The Board issues a formal, written order at each rulemaking stage, explaining its decision and providing the rule text. Initially, notice of proposed rules must be published in the [Illinois Register](#). This starts the first-notice period, which lasts at least 45 days. Either before or during the first-notice period, the Board holds one or more public hearings. In a rulemaking to adopt environmental rules that would apply Statewide, the Board holds hearings in at least two areas of the State. 415 ILCS 5/28(a). Public comments may be filed with the Board until the end of the first-notice period.

Once the first-notice period ends, the Board determines whether a rulemaking should be dismissed, or should progress to the second-notice stage. Between first and second notice, the Board may alter the proposed rule text based on hearing information and public comment. The Board will explain its reasons for doing so in its second-notice order. Once the Board issues this order, the rules are reviewed by the legislature's Joint Committee on Administrative Rules (JCAR) and can only be changed at JCAR's request.

If JCAR does not object to the rules, the Board may adopt them as final rules, file them with the Secretary of State, and publish them in the *Illinois Register*. This is the final-adoption stage. Typically, the effective date of the final rules is the date on which the Secretary of State receives the adopted final rules from the Board. Once the final rules become effective, they are posted [here](#) on the Board's website—along with the Board's other rules—and are available for the public to inspect in Chicago at the Board Clerk's Office. Generally, if JCAR objects to the rules, the Board may adopt the rules over the objection or change the rules to address the objection.

### **Can a person appeal the Board's final rulemaking decision?**

Yes. If a person adversely affected or threatened by the adopted rules wishes to appeal the Board's final decision, the person must file an appeal directly with the State Appellate Court. Any appeal must be filed within 35 days after the date on which the adopted rules become effective. If the Board declines to adopt rules and a participant wishes to appeal the Board's final decision, the participant must file an appeal directly with the State Appellate Court but must do so within 35 days after receiving the final order from the Board. For additional information about appealing Board rulemaking decisions, please refer to the Act (415 ILCS 5/29, 41), the Board's procedural rules (35 Ill. Adm. Code 101.300(d)(3), 101.906, 102.706), and the Rules of the Illinois Supreme Court (Ill. S. Ct. Rule 335).

### **How do rulemaking hearings work?**

The Board holds public hearings in most rulemakings and encourages a wide range of participation. Rulemakings do not have "parties," but rather only "participants." Rulemaking hearings are attended by a Board hearing officer and at least one Board Member. Participants at the hearing usually include the Illinois Environmental Protection Agency (IEPA) (generally, the rulemaking proponent), environmental organizations, and affected businesses and local governments. Participants at the hearing can—as the hearing officer allows—ask questions of witnesses and provide testimony and other evidence, as well as make oral statements or oral public comments. For more information about rulemaking hearings, please refer to the "[Hearings](#)" section of this *Citizens' Guide*. In addition, members of the public can file "public comments" during the first-notice period and at any other times that the Board or hearing officer specifies. 35 Ill. Adm. Code

102. Public comments are described in the "[Public Participation](#)" section of this *Citizens' Guide*.

### **How do I obtain information about a rulemaking proposal?**

Information about [pending rulemakings](#) is posted on this website, including rulemaking proposals, Board orders, hearing officer orders, hearing testimony, and public comments. You may also request that the Board hearing officer add you to the "notice" or "service" list for a rulemaking. Persons on the notice list receive all Board orders, hearing officer orders, and hearing notices for the rulemaking. Persons on the service list receive these documents plus filings made by other participants, such as public comments and pre-filed testimony. For the name and contact information of the hearing officer assigned to a rulemaking, you may view that rulemaking's [docket](#) and the [staff directory](#) on this website or contact the Clerk's Office (312-814-3461 or [PCB.Clerks@illinois.gov](mailto:PCB.Clerks@illinois.gov)). "E-Notify" is another way to learn whenever a filing has been made in a rulemaking docket—please refer to the "[Stay Informed](#)" section of this *Citizens' Guide* for additional information about E-Notify.

### **Are all Board rules adopted this way?**

No. For example, the Board follows different rulemaking procedures to adopt (1) "identical-in-substance" rules, (2) Clean Air Act Amendment (CAAA) "fast-track" rules, and (3) "federally required" rules. For information about "federally required" rules, please refer to Section 28.2 of the Act (415 ILCS 5/28.2) and Part 102.Subpart E of the Board's procedural rules (35 Ill. Adm. Code 102.Subpart E).

"Identical-in-substance" (IIS) rulemakings under Section 7.2 of the Act (415 ILCS 5/7.2) are used by the Board to adopt rules that "require the same actions with respect to protection of the environment, by the same group of affected persons, as would federal regulations if USEPA [the United States Environmental Protection Agency] administered the subject program in Illinois." 415 ILCS 5/7.2(a). Opportunity is given for written public comment on proposed IIS rules, but no hearings are held unless required by federal law—which is the case for IIS updates on the National Ambient Air Quality Standards (NAAQS) and the definition of "Volatile Organic Material" (VOM). The period for filing public comments is set by Board or hearing officer order. The Board may consolidate multiple IIS rulemakings into one proceeding. Generally, the Board must adopt final rules within one year after adoption of the federal rules. Typically, the Board opens IIS dockets twice per year in each federal program area.

CAAA fast-track rulemakings are proposed by IEPA under Section 28.5 of the Act (415 ILCS 5/28.5) to adopt USEPA CAAA rules in an expedited manner. The procedures require the Board to hold hearings and take specific actions by deadlines measured from the Board's receipt of the proposal. Generally, the Board must complete a CAAA fast-track rulemaking within approximately six months after receiving IEPA's proposal.

For more information about CAAA fast-track rulemaking, please refer to Section 28.5 of the Act and the Board’s procedural rules at 35 Ill. Adm. Code 102.Subpart C.

## **E-Filing and E-Service**

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The “filing” of a document and the “service” of a document are two different things. “Filing” is the act of delivering a document into the Illinois Pollution Control Board (Board) Clerk’s custody with the intent of making that document a part of the record of a pending Board proceeding. “Service” is the act of delivering a copy of that same document to the hearing officer and each person listed on the service list for that proceeding.

With only a few exceptions (e.g., trade secrets), to file a document with the Board, the person filing the document must submit it electronically through the [Clerk’s Office On-Line \(COOL\)](#) rather than in paper. 35 Ill. Adm. Code 101.302(h), (j). COOL is only for filing a document, not serving it. If a member of the public believes that it is not reasonably practicable for him or her to file through COOL, he or she should contact the Clerk or the hearing officer to explain the situation. 35 Ill. Adm. Code 101.1000(c).

The filer of a document must also serve a copy of that document on the hearing officer and each party or participant listed on the service list for that proceeding. With only a few exceptions (e.g., enforcement complaints), every type of document being filed is eligible to be served by e-mail in lieu of paper service. 35 Ill. Adm. Code 101.1000(e). If a filer has the capability, he or she *must* serve the hearing officer by e-mail; the filer *may* e-mail serve each party or participant who consented to receiving e-mail service. 35 Ill. Adm. Code 101.1060, 101.1070.

## **Public Participation**

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The Illinois Pollution Control Board (Board) encourages the public to participate in all its proceedings. Earlier parts of this *Citizens’ Guide* address public participation at hearings. This part of the *Citizens’ Guide* further describes “public comments” and introduces “public remarks.”

### **What is a public comment?**

A “public comment” is information conveyed to the Board—about a pending proceeding—by either oral statement at a hearing or written statement filed with the Clerk’s Office. Oral public comments given at a hearing are transcribed by a court reporter, but they are not given under oath or subject to cross-examination. Public comments can be provided in any rulemaking or adjudicatory case, as the hearing officer allows. Each public comment becomes a part of the proceeding’s record on which the Board bases its decision. Because public comments are not made

under oath or subject to cross-examination, the Board gives them less weight than evidence admitted at a hearing. 35 Ill. Adm. Code 101.628.

### **What is a public remark?**

A “public remark” is an oral statement that an individual makes publicly at a Board meeting and that is directed to the Board concerning a proceeding listed on the meeting’s agenda. Speakers are generally limited to five minutes each for their remarks and cannot use the opportunity to present evidence. 35 Ill. Adm. Code 101.110.

### **Prohibited Ex Parte Communications by the Public**

The Board’s staff would be pleased to answer general questions from members of the public about Board procedure, such as filing requirements or the status of a pending rulemaking or adjudicatory case. Please note, however, that Board Members and all Board staff are subject to ex parte restrictions under Illinois law. Therefore, please do not direct any off-the-record written or oral communication to any Board Member or Board staff person if that communication would (1) impart or request material information or make a material argument (2) about potential action concerning a rulemaking or adjudicatory case that is (3) pending before or under consideration by the Board.

### **Stay Informed**

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The public has many ways to stay informed of developments at the Illinois Pollution Control Board (Board). These include reviewing [meeting agendas](#) and [minutes](#), “[News](#)” and “[Pending Rulemakings](#),” and the [Environmental Register](#), all of which are available on the Board’s website. This part of the *Citizens’ Guide* highlights two other ways to keep up to date on Board proceedings.

### **What is E-Notify?**

“E-Notify” is the Board’s proceeding-specific, e-mail notice system. Anyone who signs up for E-Notify in a rulemaking or adjudicatory case will receive an e-mail message whenever a filing is added to the docket of that proceeding. The e-mail message includes a link to the proceeding’s docketing page on the Clerk’s Office On-Line (COOL), where the filing can be reviewed. Any person can sign up for E-Notify by clicking on “E-Notify me when this case is updated,” which is displayed on the COOL docketing page of every Board proceeding.

## What is RON?

The “Rulemaking Opening Notification” system or “RON” issues e-mail notices whenever the Board opens a new rulemaking docket. Each e-mail message from RON includes a link to the COOL docketing page of the new rulemaking, where you can sign up for E-Notify. You have the option of tailoring RON e-mail notices to specific types of new rulemakings (e.g., air, land, water, procedural), or choosing to receive RON e-mail notices of all new rulemakings. Sign up for [RON](#) here.