

**Rulemaking Addendum  
to August 22, 2019 Final-Notice Opinion and Order  
in Docket R19-19**

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 <del>Contained</del> in the Act
101.202	Definitions for Board's Procedural Rules

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

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

SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

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

101.403	Joinder of Parties
101.404	Agency as a Party in Interest
101.406	Consolidation of Claims
101.408	Severance of Claims

#### SUBPART E: MOTIONS

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

#### SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

Section	
101.600	Hearings
101.602	Notice of Board Hearings
101.604	Formal Board Transcript
101.606	Informal Recordings of the Proceedings
101.608	Default
101.610	Duties and Authority of the Hearing Officer
101.612	Schedule to Complete the Record
101.614	Production of Information
101.616	Discovery
101.618	Admissions
101.620	Interrogatories
101.622	Subpoenas and Depositions
101.624	Examination of Adverse, Hostile, or Unwilling Witnesses
101.626	Information Produced at Hearing
<u>101.627</u>	<u>Electronic Filing of Hearing Exhibits After Adjudicatory or TLWQS Hearing</u>
101.628	Statements from Participants
101.630	Official Notice <u>and Evidence Evaluation</u>
101.632	Viewing of Premises

#### SUBPART G: ORAL ARGUMENT

Section  
101.700 Oral Argument

#### SUBPART H: SANCTIONS

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

#### SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

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

#### SUBPART J: ELECTRONIC FILING AND E-MAIL SERVICE

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

101.APPENDIX A Captions  
101.ILLUSTRATION A Enforcement Case  
101.ILLUSTRATION B Citizen's Enforcement Case  
101.ILLUSTRATION C Variance  
101.ILLUSTRATION D Adjusted Standard Petition  
101.ILLUSTRATION E Joint Petition for an Adjusted Standard  
101.ILLUSTRATION F Permit Appeal  
101.ILLUSTRATION G Underground Storage Tank Appeal  
101.ILLUSTRATION H Pollution Control Facility Siting Appeal  
101.ILLUSTRATION I Administrative Citation  
101.ILLUSTRATION J Administrative Citation Under Section 23.1 of the Public Water Supply Operations Act  
101.ILLUSTRATION K General Rulemaking

101.ILLUSTRATION L	Site-specific Rulemaking
101.APPENDIX B	Appearance Form
101.APPENDIX C	Withdrawal of Appearance Form
101.APPENDIX D	Notice of Filing
101.APPENDIX E	Affidavit or Certificate of Service
101.ILLUSTRATION A	Service by Non-Attorney
101.ILLUSTRATION B	Service by Attorney
101.APPENDIX F	Notice of Withdrawal (Repealed)
101.APPENDIX G	Comparison of Former and Current Rules (Repealed)
101.APPENDIX H	Affidavit or Certificate of E-Mail Service
101.ILLUSTRATION A	E-Mail Service by Non-Attorney
101.ILLUSTRATION B	E-Mail Service by Attorney
101.APPENDIX I	Consent to Receipt of E-Mail Service

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

SOURCE: Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; Part repealed, new Part adopted in R88-5A at 13 Ill. Reg. 12055, effective July 10, 1989; amended in R90-24 at 15 Ill. Reg. 18677, effective December 12, 1991; amended in R92-7 at 16 Ill. Reg. 18078, effective November 17, 1992; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 446, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8743, effective June 8, 2005; amended in R06-9 at 29 Ill. Reg. 19666, effective November 21, 2005; amended in R07-17 at 31 Ill. Reg. 16110, effective November 21, 2007; amended in R10-22 at 34 Ill. Reg. 19566, effective December 3, 2010; amended in R12-22 at 36 Ill. Reg. 9211, effective June 7, 2012; amended in R13-9 at 37 Ill. Reg. 1655, effective January 28, 2013; amended in R14-21 at 39 Ill. Reg. 2276, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12848, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. 7912, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. 9930, effective July 5, 2017; amended in R19-19 at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

### Section 101.100 Applicability

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

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

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.106 Board Authority**

- a) The Board has the authority to *determine, define and implement the environmental control standards applicable in the State of Illinois and may adopt rules and regulations in accordance with Title VII of the Act.* [415 ILCS 5/5(b)]
- b) The Board has the *authority to conduct proceedings upon complaints charging violations of the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order; upon administrative citations; upon petitions for variances, ~~or~~ adjusted standards, or time-limited water quality standards; upon petitions for review of the Agency's final determinations on permit applications in accordance with Title X of the Act; upon petitions to remove seals under Section 34 of the Act; and upon other petitions for review of final determination which are made pursuant to the Act or Board rules and which involve a subject which the Board is authorized to regulate. The Board may also conduct other proceedings as may be provided by the Act or any other statute or rule.* [415 ILCS 5/5(d)]
- c) In addition to subsections (a) and (b), the Board has the authority to act as otherwise provided by law.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.108 Board Proceedings**

- a) Board proceedings can generally be divided into two categories: rulemakings ~~rulemaking proceedings~~ and adjudicatory proceedings. However, a time-limited water quality standard proceeding (35 Ill. Adm. Code 104.Subtitle E) is a non-adjudicatory proceeding that is not subject to the procedural requirements for rulemakings. (See 415 ILCS 5/38.5(a), (l)).
- b) The following are examples of Board rulemakings ~~rulemaking proceedings~~: Identical-in-Substance, Clean Air Act/Fast Track, Federally Required Rulemaking, General Rulemaking, and Site-Specific Rulemaking. Procedural rules for these types of proceedings can be found at 35 Ill. Adm. Code 102.

- c) The following are examples of Board adjudicatory proceedings: Enforcement Proceedings (35 Ill. Adm. Code 103), Variance Petitions (35 Ill. Adm. Code 104), Adjusted Standard Petitions (35 Ill. Adm. Code 104), Permit Appeals (35 Ill. Adm. Code 105), Leaking Underground Storage Tank Appeals (35 Ill. Adm. Code 105), Pollution Control Facility Siting Appeals (35 Ill. Adm. Code 107), and Administrative Citations (35 Ill. Adm. Code 108).
- d) Board decisions will be made at meetings open to the public. Except as provided in subsection (e), ~~three~~ members of the Board ~~form~~ constitute a quorum, and ~~three~~ affirmative votes are required to adopt a Board decision.
- e) At a hearing under Section 34(d) of the Act to determine whether a seal should be removed, *at least one Board member* ~~Member~~ *shall be present, and those Board members* ~~Members~~ *present may render a final decision without regard to the requirements of Section 5(a) of the Act.* [415 ILCS 5/34(d)]

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.110 Public Participation**

- a) General. The Board encourages public participation in all of its proceedings. The extent to which the law allows for the participation varies, depending on the type of Board proceeding involved, the party status of the person or persons seeking to participate, and the rules governing that type of proceeding. Public participation ~~in particular proceedings~~ may be more specifically delineated by Board or hearing officer order consistent with the provisions of applicable law and the Board's procedural rules. (See Sections 101.114 and 101.628.)
- b) Party/Non-Party Status. The issue of who is ~~constitutes~~ a proper party in each type of adjudicatory proceeding before the Board is addressed in the rules. A person who wishes to participate in a Board adjudicatory proceeding and who is not a party will be ~~considered~~ ~~deemed~~ a participant and will have only those rights specifically provided in these rules. A person who wishes to participate in a Board regulatory or time-limited water quality standard proceeding will be ~~considered~~ ~~deemed~~ a participant and will have only those rights specifically provided in this Part ~~these rules~~.
- c) Amicus Curiae Briefs. Amicus curiae briefs may be filed in any adjudicatory proceeding by any interested person, if the Board grants ~~provided~~ ~~permission is granted by the Board~~. Response briefs will ~~may~~ be allowed only with Board ~~by permission of the Board, but not as of right~~. The briefs must consist of argument only and must ~~may~~ not raise facts that are not in evidence in the relevant proceeding. Amicus curiae briefs, and any responses, will be considered by the Board only as time allows. The briefs will not delay the Board's decision-making

~~of the Board.~~ (See also Section 101.302(k).)

- d) Public Remarks at a Board Meeting. During the ~~time~~ period designated for public remarks, any person physically present, once recognized by the Chairman, may make public remarks to the Board concerning a proceeding listed on that meeting's agenda.
- 1) Sign-In Sheet. Beginning at least 15 minutes before the scheduled start of each Board meeting, a public remarks sign-in sheet will be available to the public at the meeting. Anyone who wishes to make public remarks at the meeting must provide the following information on the sign-in sheet:
    - A) Full name;
    - B) Any person he or she is representing; and
    - C) The docket number of the proceeding on which he or she would like to make public remarks.
  - 2) Time Limits. A ~~time~~ period of up to 30 minutes at the beginning of each Board meeting, as designated on the meeting agenda, is reserved for public remarks. The Chairman may extend ~~the duration of~~ the public remarks portion of the meeting as necessary to accommodate persons who signed in under subsection (d)(1). A person's public remarks on a ~~given~~ proceeding must not exceed five minutes in length, but this ~~time~~ period may be extended with the Chairman's permission.
  - 3) Nature of Public Remarks. Public remarks are not made under oath or affirmation and are not subject to cross-examination. Public remarks that are relevant to the proceeding for which they are made may be considered by the Board, but factual statements made during public remarks ~~are do~~ not constitute evidence in the proceeding. The public remarks portion of a Board meeting is not a hearing and cannot be used to offer documentary or other physical evidence to the Board. The Chairman may direct persons to stop ~~cease~~ public remarks that are irrelevant, repetitious, or disruptive. Persons engaging in disorderly conduct may be asked by the Chairman to leave the meeting.
  - 4) Transcription. The Board will arrange for public remarks to be transcribed. Transcripts of public remarks will be made a part of the record of the proceeding to which the remarks correspond. (See 5 ILCS 120/2.06(g).)

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 101.112 Bias and Conflict of Interest

- a) No Board ~~member~~ ~~Member~~ or Board employee may represent any other person in any Board proceeding.
- b) No former Board ~~member~~ ~~Member~~ or Board employee may represent any other person in any Board proceeding in which he or she participated personally and substantially as a Board ~~member~~ ~~Member~~ or Board employee, unless the Board and, as applicable, all parties in the adjudicatory proceeding, all or proponents in the rulemaking, or all petitioners in the time-limited water quality standard proceeding consent in writing after disclosure of the participation. For ~~purposes of~~ subsections (a) and (b), representation includes consulting on legal or technical matters, and Board employee means a person the Board employs on a full-time, part-time, contract, or intern basis.
- c) The Board, on its own motion or the motion of any party, may disqualify a hearing officer for bias or conflict of interest as provided by Section 10-30(b) of the IAPA [5 ILCS 100/10-30(b)].
- d) In compliance accordance with Section 128 of the federal Clean Air Act, at least a majority of Board members must represent the public interest and must not derive any significant portion of their income from persons subject to permits or enforcement orders under the Clean Air Act or Illinois Environment Protection Act. Any potential conflicts of interests by Board members must be adequately disclosed.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 101.114 Ex Parte Communications

- a) For ~~the purposes of~~ this Section, "interested person or party" *means a person or entity whose rights, privileges, or interests are the subject of or are directly affected by a regulatory, quasi-adjudicatory, investment, or licensing matter.* [5 ILCS 430/5-50(d)] For this definition, a time-limited water quality standard proceeding is considered a regulatory matter.
- b) For ~~the purposes of~~ this Section, "Executive Ethics Commission" means the commission created by the State Officials and Employees Ethics Act [5 ILCS 430].
- c) Adjudicatory, and Regulatory, and Time-Limited Water Quality Standard Proceedings. Board ~~members~~ ~~Members~~ and Board employees must not engage in an ex parte communication designed to influence their action regarding with respect to an adjudicatory, a or regulatory, or a time-limited water quality standard proceeding pending before or under consideration by the Board. (See



definition of "ex parte communication" in Section 101.202.) Whenever practicable, an interested person or party or his or her official representative or attorney should make all communications regarding with respect to an adjudicatory, or regulatory, or time-limited water quality standard proceeding pending before or under consideration by the Board in writing and address them to the Clerk rather than to individual Board members-Members or Board employees. (See Sections 101.110 and 101.628.)

- d) Nothing in this Section precludes Board members-Members or Board employees from receiving informal complaints about individual pollution sources, or forbids the administrative contacts as would be appropriate for judges and other judicial officers. Information about a pollution source included in the record of a regulatory or time-limited water quality standard proceeding is not an ex parte communication regarding with respect to any adjudicatory proceeding concerning the pollution source.
- e) When the Clerk on behalf of the Board, a Board member, or a Board employee receives an ex parte communication from an interested person or party or his or her official representative or attorney, the recipient, in consultation with the Board's ethics officer or his or her designee, will~~must~~ promptly memorialize the communication and make it part of the record of the proceeding. To make an oral ex parte communication part of the record, the substance of the oral communication, along with the identity of each person involved in the communication, will be either stated~~set forth~~ in a memorandum and placed in the record or announced on the record at a public hearing.
- f) When the Clerk on behalf of the Board, a Board member, or a Board employee receives an ex parte communication, other than an ex parte communication received from an interested person or party or his or her official representative or attorney, that communication will~~must~~ be promptly reported to the Board's ethics officer or his or her designee *by the recipient of the communication and by any other employee of the Board who responds to the communication.*
- 1) *The ethics officer or his or her designee, in consultation with the recipient of the ex parte communication, will~~must~~ ensure that the ex parte communication is promptly made part of the record of the proceeding. [5 ILCS 430/5-50(c)]*
  - 2) *The ethics officer or his or her designee, in consultation with the recipient of the ex parte communication, will~~must~~ promptly file the ex parte communication with the Executive Ethics Commission, including:*
    - A) *All written communications;*

- B) *All written responses to the communications;*
  - C) *A memorandum prepared by the ethics officer stating the nature and substance of all oral communications;*
  - D) *The identity and job title of the person to whom each communication was made;*
  - E) *All responses made;*
  - F) *The identity and job title of the person making each response;*
  - G) *The identity of each person from whom the written or oral ex parte communication was received;*
  - H) *The individual or entity represented by that person;*
  - I) *Any action the person requested or recommended; and*
  - J) *Any other pertinent information.*
- 3) *The disclosure shall also contain the date of any ex parte communication.*  
[5 ILCS 430/5-50(c)]

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### SUBPART B: DEFINITIONS

##### **Section 101.200 Definitions ~~Contained~~ in the Act**

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

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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

Unless otherwise provided in 35 Ill. Adm. Code 101 through -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 under authority granted to the Board by 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, or time-limited water quality standard~~ proceedings.

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

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

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

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

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

"Agency recommendation" means the document filed by the Agency under Section 28.1(d)(3), Sections 37(a), or 38.5(g) 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, a variance, or a time-limited water quality standard,~~ respectively. 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, and 104.550.)

"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.)

"Applicant" means any person who submits, or has submitted, an application for a permit or for local siting approval under 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 his or her 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 under 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 summarizes ~~contains a summary~~ of the facts of a proceeding, states the pertinent laws, and argues an argument of how the laws apply ~~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 under Section 5(a) of the Act.

"Citizen's enforcement proceeding" means an enforcement action brought before the Board under 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, and time-limited water quality standard proceedings. COOL is located on the Board's website at [pcb.illinois.gov](http://pcb.illinois.gov) ~~http://www.ipcb.state.il.us/COOL/external/~~.

"Code of Civil Procedure" means 735 ILCS 5.

"Complaint" means the initial filing that begins an enforcement proceeding under 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 stating setting forth a claim against a complainant in an enforcement proceeding. (See 35 Ill. Adm. Code 103.206.)

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

"Cross-media impacts" means impacts that concern multiple environmental areas, such as air, land, and ~~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 must decide ~~is required to render a decision~~ in an adjudicatory proceeding. (See Subpart C. 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 ~~timeframe period of time~~ established by the Act within which the Board ~~must is required to~~ make a ~~final Board~~ decision in ~~specified~~ ~~certain~~ adjudicatory proceedings. (See Subpart C. See also Sections 38(a), 40, and 40.1 of the Act, ~~which 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 under Section 4(r) of the Act.

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

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

"DNR" means the Illinois Department of Natural Resources.

"DOA" means the Illinois Department of Agriculture.

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

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

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

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

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

"Enforcement proceeding" means an adjudicatory proceeding brought upon a complaint filed under 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. For this definition, a time-limited water quality standard proceeding is considered a regulatory matter. "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;*

*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; 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)] 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.)*

"Fast-Track rulemaking" means a Clean Air Act rulemaking conducted under Section 28.5 of the Act.

"Federally required rule" means *a rule that is needed to meet the requirements of*

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

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

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

"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 ~~when~~ where the parties and other interested persons, as provided for by law and the Board's procedural rules, present evidence and argument regarding their positions.

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

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

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

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

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



"Inquiry hearing" means a hearing conducted by the Board ~~to seek for the purpose of seeking~~ input and comment from the public regarding the need for a rulemaking ~~on proceeding~~ in a specific subject 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.) An interlocutory appeal may also be the appeal of a hearing officer ruling to the Board. (See Section 101.518.)

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

"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 permission of the Board. (See Section 101.402.)

"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 and 35 Ill. Adm. Code 103.206.)

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

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

"Movant" means the person who files a motion.

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

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

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

"Notice list" means the list of persons in a regulatory or time-limited water quality standard 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 and 104.520(b)(4).)

"Notice to reinstate" means a document filed that restarts 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.)

"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.)

"OSFM" means Office of the State Fire Marshal.

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

"Participant" means any person, not including the Board or its staff, who takes part in an adjudicatory proceeding but who is not a party, ~~or a person~~ who takes part in a regulatory or other quasi-legislative proceeding or a time-limited water quality standard proceeding before the Board. A person becomes a participant in any of several ways, including filing a comment, being added to the proceeding's notice list ~~of a particular proceeding~~, testifying at hearing, or making public remarks at a Board meeting. The participants in a time-limited water quality standard proceeding include the petitioner and the Agency and are further described at 35 Ill. Adm. Code 104.520(b).

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

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

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

"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 under 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) or a time-limited water quality standard 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 for ~~purposes of~~ this Part and 35 Ill. Adm. Code 107.

"Pollution control facility siting appeal" means an appeal of a decision made by a unit of local government filed with the Board under 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 or a time-limited water quality standard proceeding to determine the status of the proceedings. A prehearing conference may also be a meeting held in a regulatory proceeding prior to the hearing, the purposes of which *shall be to maximize understanding of the intent and application of the proposal, if possible, and to attempt to identify and limit the issues of disagreement among participants to promote efficient use of time at hearing.* [415 ILCS 5/27(d)] (See 35 Ill. Adm.

Code 102.404 and 102.406.)

"Proceeding" means an action conducted before the Board under authority granted ~~by~~under Section 5 of the Act or as otherwise provided by law. Board proceedings are generally of two types: quasi-legislative (rulemaking and inquiry proceedings) and quasi-judicial (adjudicatory proceedings). A time-limited water quality standard proceeding is neither adjudicatory nor subject to rulemaking procedural requirements. (See 415 ILCS 5/38.5(a), (1)).

"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 under 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).)

"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 under Section 21(f) of the Act.

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

"Recycled paper" means paper ~~that 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 under Title VII of the Act or other applicable law regarding with respect to regulations.

"Regulatory relief mechanisms" means variances, provisional variances, ~~and~~ adjusted standards, and time-limited water quality 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 to adopt, amend, or repeal ~~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.)

"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.)

"Service list" means the list of persons designated by the hearing officer or Clerk in a regulatory, ~~or~~ adjudicatory, or time-limited water quality standard 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 under Section 31 of the Act.

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

"Subpoena" means a command to appear at a specified ~~certain~~ time and place to testify on give testimony upon a specified ~~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.)

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

"Time-Limited Water Quality Standard" or "TLWQS" means a time-limited designated use and criterion for a specific pollutant or water quality parameter that reflects the highest attainable condition during the term of that relief. (See 35 Ill. Adm. Code 104.Subtitle E.)

"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 under 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 under 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 regarding with respect to a hearing before the Board or entry of a Board decision within the decision period. (See also Section 101.308.)

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

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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

### Section 101.300 Computation of Time

- a) Computation of Time. Computation of any period ~~of time~~ prescribed in the Act, other applicable law, or this Subpart will begin with the first calendar day following the day on which the act, event, or development occurs and will run until the close of business on the last day, or the next business day if the last day is a Saturday, Sunday, or national or State legal holiday.
- b) Date of Filing. Documents will be considered filed with the Clerk only if they are filed in compliance with Section 101.302 and any other filing requirements specified elsewhere in the Board's procedural rules (see 35 Ill. Adm. Code 101 through 130). Subpart J ~~states 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 under Section 101.302(d), or by third-party commercial carrier, the document is considered filed on the date it is

received by the Clerk, except as provided in subsection (b)(2). 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) ~~If 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 considered ~~deemed~~ filed on:
    - A) The date on which the document was provided to the U.S. Postal Service; or
    - B) The date on which 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 on which 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 is complete on the date on which the document was delivered, as specified in the signed delivery confirmation.



- 3) Service by E-Mail or Facsimile. Service of a document by e-mail or facsimile is complete on the date on which 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 considered 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 is presumed complete four days after the date on which the document was provided to the U.S. Postal Service or the third-party commercial carrier.
  - A) The presumption applies only if an affidavit or certificate of service, signed by the party to the proceeding who is serving the document, states the following: the date, the time by when, and the place 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 ~~a purposes of~~ statutory decision deadline proceeding proceedings, the date of the Board decision is the date of the Board meeting at which a final Board order was adopted.
  - 2) For ~~purposes of~~ appealing a final adjudicatory decision of the Board, the date of service of the final decision is the date on which the party receives the Board's ~~certified~~ mailing of the decision. If a motion for reconsideration is timely filed under Section 101.520, the date of service of the final decision is the date on which the party receives the Board's ~~certified~~ mailing of the Board order ruling upon the motion.
  - 3) For ~~purposes of~~ appealing a final rulemaking decision of the Board in which a rule is adopted, amended, or repealed, a person is considered deemed to have been served with the final decision on the date on which

the new rule, the amendment, or the repealer becomes effective under the IAPA. ~~For purposes of~~ appealing a final rulemaking decision in which no rule is adopted, amended, or repealed, the date of service of the final decision is the date on which the participant receives the Board's mailing of the decision. If a motion for reconsideration is timely filed under the Board's procedural rules (35 Ill. Adm. Code 102.700 and 102.702), the date of service of the final decision is the date on which the participant receives the Board's mailing of the Board order ruling upon the motion.

- 4) For appealing a final decision of the Board in a TLWQS proceeding, a person is considered to have been served with the final decision on the date on which the decision is first published on the Board's website. (See 415 ILCS 5/38.5(j)).

(Source: Amended at 43 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) If allowed by the Board, the hearing officer, the Clerk, or the procedural rules to be filed in paper under subsection (h), documents must 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 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 under Section 101.300(b).
  - 5) ~~Serving Service~~ of a document upon a hearing officer does not qualify as constitute filing it with the Clerk unless the document is submitted to the hearing officer during ~~the course of~~ a hearing.
- c) Electronic documents may be filed through COOL under Subpart J. Paper documents may be filed with the Clerk by U.S. Mail, 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 with a valid credit card 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 under Section 40 of the Act, \$75;
    - 4) Petition to Review Pollution Control Facility Siting Decisions, under Section 40.1 of the Act, \$75; ~~and~~
    - 5) Petition for Adjusted Standard, under Section 28.1 of the Act, \$75; ~~and~~
    - 6) Petition for TLWQS, under Section 38.5, \$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 compliance ~~accordance~~ with Section 101.304.

- g) All documents filed with the Board must contain the relevant proceeding caption and docket number. All documents must be submitted on or formatted to print on 8½ x 11 inch paper, except as provided in subsection (j). Paper documents must be submitted on recycled paper as defined in Subpart B, and 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 at least no less than 12-point font, and in footnotes at least no less than 10-point font.
- h) Unless the Board, the hearing officer, the Clerk, or the procedural rules provide otherwise, all documents must be filed through COOL electronically.
- 1) If a document is filed in paper, the original and two copies of the document (three total) are required. If a document is filed through COOL in compliance accordance with Subpart J, no paper original or copy of the document is required.
  - 2) The following documents must be filed through COOL or on compact disk or other portable electronic data storage device, comply with meet the requirements of Section 101.1030(g), and, to the extent technically feasible, be in text-searchable Adobe PDF:
    - A) The Agency record required by 35 Ill. Adm. Code 105.212, 105.302, or 105.410, or 35 Ill. Adm. Code 125.208 (see 35 Ill. Adm. Code 105.116);
    - B) The OSFM record required by 35 Ill. Adm. Code 105.508 (see 35 Ill. Adm. Code 105.116);
    - C) The local siting authority record required by 35 Ill. Adm. Code 107.302 (see 35 Ill. Adm. Code 107.304); and
    - D) A petition filed under 35 Ill. Adm. Code 104 or 35 Ill. Adm. Code 106 (see 35 Ill. Adm. Code 104.106 and 35 Ill. Adm. Code 106.106).
  - 3) A document containing information claimed or determined to be a trade secret, or other non-disclosable information under 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 under 35 Ill. Adm. Code 130 must be filed through COOL.

- 4) When filing a rulemaking proposal, if any document protected by copyright law (17 USC 101 et seq.) is proposed under 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 must be filed through COOL. In addition, the rulemaking proponent must:
- A) File a paper original of the copyrighted document. The rulemaking proposal also must include:
    - i) The copyright owner's written authorization for the Board to make, at no charge to the Board, no more than a total of two paper copies of the copyrighted document if the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public during or after the rulemaking; or
    - ii) The proponent's representation that it will, at its own expense, promptly acquire and deliver to the Clerk's Office 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; or
  - B) File a 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 from the sole designated computer at the Board's Chicago office; print a single copy of the copyrighted document to maintain at the Board's Chicago office; and print 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 with permission 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 compliance ~~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 compliance 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 a 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; however, materials that may be readily available to the Board, such as prior Board opinions and orders, federal regulations, and statutes, need not be included in appendices.
- l) Documents filed that do not comply with meet the requirements of 35 Ill. Adm. Code.Subtitle A may be rejected by the Clerk or the hearing officer. Any rejection of a filing will include a description of the Board's rules that have not been met.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **Section 101.304 Service of Documents**

- a) Service Requirements. This Section contains the Board's general service requirements. However, the more specific Part for a proceeding type may contain additional requirements.
- b) Duty to Serve and When to Initiate Service. A party filing a document with the Clerk under Section 101.302 must also serve one copy of the document upon each of the other parties to the adjudicatory proceeding and, if a hearing officer has been assigned, upon the assigned hearing officer. Service of a document must be initiated concurrently with submitting the document to the Clerk for filing.
  - 1) Service of a document upon a party must be made upon a person authorized by law to receive service on behalf of the party. If a party is represented by an attorney who has filed an appearance, service upon the party is made by serving the document upon the party's attorney. If more than one attorney appears for a party, service upon one of the party's attorneys is sufficient.
  - 2) Each document being served (e.g., enforcement complaint, petition for review) must be accompanied by a notice of filing (see Appendix D) and a copy of the documentation of service (see subsection (d)).
  - 3) The date on which service of a document is considered to have been completed is determined under Section 101.300(c).

- 4) A proceeding is subject to dismissal, and the filing party is subject to sanctions, if service is not timely initiated or completed.
  - 5) Whether service of a document was proper may be challenged by the party allegedly served. To avoid waiving the right to contest personal jurisdiction, any challenge to service must be made under Section 101.400(a)(5).
- c) **Methods of Service.** A document must be served in one of the following ways:
- 1) Except as provided in subsection (c)(2), service of documents may be made by any of the following methods:
    - A) Personal service;
    - B) U.S. Mail;
    - C) Third-party commercial carrier;
    - D) E-mail in compliance ~~accordance~~ with Subpart J; and
    - E) Facsimile, but only if the party being served has filed a notice consenting to receipt of facsimile service and not filed a notice revoking that consent.
  - 2) Service of enforcement complaints and EMSA statements of deficiency upon respondents must be made by:
    - A) Personal service;
    - B) U.S. Mail with a recipient's signature recorded by the U.S. Postal Service upon delivery; or
    - C) A third-party commercial carrier with a recipient's signature recorded by the third-party commercial carrier upon delivery.
  - 3) Service of administrative citations must be made as required under 35 Ill. Adm. Code 108.
- d) **Documentation of Service and When to File Documentation of Service.** A party serving a document upon another party must also file documentation of that service. A proceeding is subject to dismissal, and the filing party is subject to sanctions, if documentation of service is not timely filed with the Clerk. Documenting service and filing that documentation must be done as follows:

- 1) For personal service of a document, either an affidavit or certificate of service signed by the person who made personal delivery or a declaration of service signed by the process server who made personal delivery must accompany the document being filed with the Clerk. However, if the signed affidavit, certificate, or declaration is not available to the filing party when the document is filed with the Clerk, the filing must include:
  - A) An affidavit or certificate of service, signed by the filing party, stating that service has been initiated, but not yet completed, and providing the following: the date, the time by when, and the place the document was provided to the person making personal delivery; the address appearing on the envelope or package containing the document; and a statement that the delivery charge was prepaid; and
  - B) Within seven days after it becomes available to the filing party, the affidavit or certificate of service containing the signature of the person who made personal delivery or the declaration of service containing the signature of the process server, accompanied by a notice identifying the filed document to which the signed affidavit, certificate, or declaration corresponds. A copy of the signed affidavit, certificate, or declaration and the notice must be served under subsection (a).
  
- 2) For service of a document by U.S. Mail or third-party commercial carrier with a recipient's signature recorded by the U.S. Postal Service or the third-party commercial carrier upon delivery, the delivery confirmation containing the recipient's signature must accompany the document being filed with the Clerk. However, if the delivery confirmation containing the recipient's signature is not available to the filing party when the document is filed with the Clerk, the filing must include:
  - A) An affidavit or certificate of service, signed by the filing party, stating that service has been initiated, but not yet completed, and providing the following: the date, the time by when, and the place 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 a statement that the proper postage or the delivery charge was prepaid; and
  - B) Within seven days after it becomes available to the filing party, the delivery confirmation containing the recipient's signature, accompanied by a notice identifying the filed document to which



the signed delivery confirmation corresponds. A copy of the delivery confirmation and the notice must be served under subsection (a).

- 3) For service of a document by e-mail or facsimile, an affidavit or certificate of service must accompany the document being filed with the Clerk. An affidavit or certificate of e-mail service must comply with Section 101.1060. An affidavit or certificate of facsimile service must include the date and time of the facsimile transmission, the telephone number to which the transmission was sent, the number of pages transmitted, and a statement that the document was served by facsimile.
  - 4) For service of a document by U.S. Mail or a third-party commercial carrier without a recipient's signature recorded by the U.S. Postal Service or the third-party commercial carrier upon delivery, an affidavit or certificate of service must accompany the document being filed with the Clerk. The affidavit or certificate must state the following: the date, the time by when, and the place the document was provided to the U.S. Postal Service or the third-party commercial carrier; the address appearing on the envelope or package containing the document; and that proper postage or the delivery charge was prepaid.
  - 5) An affidavit of service must be notarized and is for use by a non-attorney. A certificate of service is for use by an attorney. Sample forms of an affidavit of service and a certificate of service are available in Appendices E and H.
  - 6) A certificate of service must bear an attorney's signature. Signatures in affidavits of service, declarations of service, and delivery confirmations must be written by hand. A handwritten signature in documentation of service filed with the Clerk may be a facsimile or digitized electronic signature.
- e) Service of Amicus Curiae Briefs. Any person who files an amicus curiae brief with the Board in any proceeding must serve copies of that brief on all parties in compliance ~~accordance~~ with this Section.
  - f) Service of Comments of Participants in an Adjudicatory Proceeding. Participants must ~~are required to~~ serve comments upon the parties to the proceeding. The Board will consider the comments as time and the Act or other applicable law allow.

g) Service on Agencies. Service must be at the addresses listed below unless a specific person has an appearance on file with the Board or has, in compliance accordance with Section 101.1070, consented to e-mail service.

- 1) Service on the Illinois Environmental Protection Agency. The Agency must be served at:

Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield IL 62794-9276  
epa.dlc@illinois.gov

- 2) Service on Office of State Fire Marshal. The OSFM must be served at:

Division of Petroleum and Chemical Safety  
Office of the State Fire Marshal  
1035 Stevenson Dr.  
Springfield IL 62703

- 3) Service on the Illinois Attorney General. The Office of the Attorney General must be served at:

Division Chief of Environmental Enforcement  
Office of the Attorney General  
100 West Randolph St., Suite 1200  
Chicago IL 60601  
enviro@atg.state.il.us

- 4) Service on the Illinois Department of Natural Resources. DNR must be served at:

Office of Legal Services  
Illinois Department of Natural Resources  
One Natural Resources Way  
Springfield IL 62702-1271

- 5) Service on the Illinois Department of Transportation. IDOT must be served at:

Office of Chief Counsel  
DOT Administration Building  
2300 S. Dirksen Parkway, Room 300  
Springfield IL 62764

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

USEPA, Region V  
77 West Jackson  
Chicago IL 60604

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 101.306 Incorporation of Documents from Another Proceeding**

- a) Upon the separate written request of any person or on its own initiative, the Board or hearing officer may incorporate materials from the record of another Board docket into any proceeding. The person seeking incorporation must file the material to be incorporated with the Board in compliance ~~accordance~~ with Section 101.302(h). The person seeking incorporation must demonstrate to the Board or the hearing officer that the material to be incorporated is authentic, credible, and relevant to the proceeding. Notice of the request must be given to all identified participants or parties by the person seeking incorporation.
- b) The Board will give the incorporated matter the appropriate weight in light of the following factors: the standard of evidence under which the material was previously presented to the Board; the present purpose for incorporating the material; and the past and current opportunity for cross-examination of the matters asserted within the incorporated material.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 101.308 Statutory Decision Deadlines and Waiver of Deadlines**

- a) Petitions in the following proceedings each have a 120-day statutory decision deadline: Variances (Section 38 of the Act), Permit Appeals and UST appeals (Section 40 of the Act), and Pollution Control Facility Siting Review (Section 40.1 of the Act). Other adjudicatory proceedings may be subject to decision deadlines as provided by law.
- b) When ~~Where~~ the petitioner does not waive the decision deadline, the Board will proceed expeditiously to establish all hearing and filing requirements. Willful or unexcused failure to follow Board requirements on the deadlines will subject the party to sanctions under Subpart H. This Section will be strictly construed when ~~where~~ there is a decision deadline unless the Board receives a waiver under ~~as set out in~~ subsection (c).

- c) All waivers of a deadline for Board action must be filed as a separate document. Waivers must be titled and state which type of waiver it is, identify the proceeding by name and docket number, and be signed by the party or by an authorized representative or attorney. A waiver of a statutory deadline does not preclude the Board from issuing an opinion or order prior to any decision deadline, nor does it preclude the filing of a motion seeking a decision on the matter.
- 1) An open waiver waives the decision deadline completely and unequivocally until the petitioner elects to reinstate the 120-day decision period by filing a notice to reinstate. Upon proper filing of the notice, the decision period is reinstated. ~~Under In accordance with~~ Section 101.300(b)(4), the decision period restarts on ~~recommences as of~~ the date on which the notice to reinstate is filed with the Board.
  - 2) A time certain waiver must be expressed in length of days or to a specific calendar date. If expressed in length of days, day one will be the first day after the date upon which the current time clock expires. If the petitioner files a time certain waiver before the hearing date, the waiver must be for at least 40 days. If the extension is not renewed for at least 40 days prior to the decision deadline, the Board will set the matter for hearing.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

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

- a) Appearances. A person who is a party in a Board adjudicatory proceeding may appear as follows:
  - 1) Individuals may appear on their own behalf or through an attorney-at-law licensed and registered to practice law. (See Section 1 of the Attorney Act [705 ILCS 205/1].)
  - 2) When appearing before the Board, any person other than individuals must appear through an attorney-at-law licensed and registered to practice law. (See Section 1 of the Corporation Practice of Law Prohibition Act [705 ILCS 220/1] and Section 1 of the Attorney Act.)
  - 3) An out-of-state attorney may appear as counsel and provide legal services in a ~~particular~~ proceeding before the Board only if the attorney has permission to do so under Illinois Supreme Court Rule 707. No Board

order is required for an out-of-state attorney to appear and no motion to appear pro hac vice is necessary. The out-of-state attorney's appearance must include the following:

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

~~others in a rulemaking, consistent proceeding in accordance~~ with 35 Ill. Adm. Code 102.100(b), or in a TLWQS proceeding.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.402 Intervention of Parties**

- a) The Board may permit any person to intervene in any adjudicatory proceeding. If a person seeks to intervene in an adjudicatory proceeding, the person must file a motion to do so with the Clerk and serve a copy of the motion on all parties to the proceeding. The motion must state set forth the grounds for intervention.
- b) In determining whether to grant a motion to intervene, the Board will consider the timeliness of the motion and whether intervention will unduly delay, materially prejudice, or otherwise interfere with an orderly or efficient proceeding.
- c) Subject to subsection (b), the Board will permit any person to intervene in any adjudicatory proceeding if:
  - 1) The person has an unconditional statutory right to intervene in the proceeding; or
  - 2) It may be necessary for the Board to impose a condition on the person.
- d) Subject to subsection (b), the Board may permit any person to intervene in any adjudicatory proceeding if:
  - 1) The person has a conditional statutory right to intervene in the proceeding;
  - 2) The person may be materially prejudiced absent intervention; or
  - 3) The person is so situated that the person may be adversely affected by a final Board order.
- e) An intervenor will have all the rights of an original party to the adjudicatory proceeding, except that the Board may limit the rights of the intervenor as justice may require. The limits may include providing that: the intervenor is bound by Board and hearing officer orders already issued or by evidence already admitted; that the intervenor does not control any decision deadline; and that the intervenor cannot raise issues that were raised or might more properly have been raised at an earlier stage of the proceeding.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 101.404 Agency as a Party in Interest

- a) Under Section 30 of the Act, the Board may request that the Agency investigate:
- 1) Any ~~any~~ alleged violation of the Act, any ~~the~~ regulations adopted under the Act, any permit or term or condition of a permit granted by the Agency, or any Board order; ~~term or condition of any such permit~~ and
  - 2) Any ~~any such~~ other matters ~~investigations~~ as the Board finds ~~may deem~~ advisable.
- b) Upon a such request under subsection (a), the Board may designate the Agency as a party in interest in any ongoing proceeding concerning ~~in~~ that matter. The designation of the Agency as a party in interest does not require the Agency to take a position on the merits of the proceeding.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 101.406 Consolidation of Claims

The Board, upon the motion of any party or upon its own motion, may consolidate two or more proceedings ~~for the purpose of hearing or decision or both~~. The Board will consolidate the proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party. The Board will not consolidate proceedings in which ~~where~~ the burdens of proof vary.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART E: MOTIONS

### Section 101.500 Filing of Motions and Responses

- a) The Board may entertain any motion the parties wish to file that is permissible under the Act or other applicable law, this Part ~~these rules~~, or the Illinois Code of Civil Procedure.
- b) All motions must be in writing, unless made orally on the record during a hearing or during a status conference, and must state whether the motion is directed to the Board or to the hearing officer. A party's oral ~~Oral~~ motion made to the Board ~~made~~ at hearing is waived if the party fails to file the motion ~~must be filed in writing~~ within 14 days after the Board receives the hearing transcript ~~or the motion is deemed waived~~. Motions that should be directed to the hearing officer are specified ~~set out~~ in Section 101.502. All motions must be filed and served in compliance ~~conformance~~ with Subparts C and J.

- c) Motions may be filed at any time unless otherwise specifically provided.
- d) Within 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party ~~waives will be deemed to have waived~~ objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion. Unless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before ~~expiration of the 14-day response period expires,~~ except in decision deadline-driven proceedings in which where no decision deadline waiver has been filed. Parties may request that the Board grant more time to respond by filing a motion for extension of time before the response period expires.
- e) The moving person will not have the right to reply, except as ~~permitted by the~~ Board or the hearing officer permits to prevent material prejudice. A motion for permission to file a reply must be filed with the Board within 14 days after service of the response.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.502 Motions Directed to the Hearing Officer**

- a) The hearing officer has the authority to rule on all motions that are not dispositive of the proceeding. Dispositive motions include motions to dismiss, motions to decide a proceeding on the merits, motions to strike any claim or defense for insufficiency or want of proof, motions claiming lack of jurisdiction, motions for consolidation, motions for summary judgment, and motions for reconsideration. Oral motions directed to a hearing officer at a status conference will be summarized in a written hearing officer order. The duties and authorities of the hearing officer are further specified set-out in Section 101.610.
- b) At hearing, objections and hearing officer rulings must be made on the record. A party's An objection to a hearing officer ruling made at hearing is will be deemed waived if the party fails to file the objection not filed within 14 days after the Board receives the hearing transcript.
- c) Unless the Board orders otherwise ordered by the Board, neither the filing of a motion, nor any appeal to the Board of a hearing officer order will stay the proceeding or extend the time to perform for the performance of any act. Unless otherwise provided, all hearing officer orders will remain in effect during the pendency of any appeal to the Board.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)



### **Section 101.504 Contents of Motions and Responses**

All motions and responses must state the grounds upon which the motion is made and must concisely state ~~contain a concise statement of~~ the position or relief sought. Facts asserted that are not of record in the proceeding must be supported by oath, affidavit, or certification consistent in accordance with Section 1-109 of the Code of Civil Procedure [~~735 ILCS 5/1-109~~]. A brief or memorandum in support of the motion or response may be included.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.508 Motions to Board Preliminary to Hearing**

Motions that a party desires the Board to rule on before hearing should be filed at least 21 days prior to the regularly scheduled Board meeting before the noticed hearing date. Any motion filed after this ~~the above prescribed~~ time will be considered by the Board if time permits.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.510 Motions to Cancel Hearing**

- a) Time to File. Unless the Board or the hearing officer orders otherwise the hearing officer may grant motions to cancel hearings that are filed no fewer than ten~~10~~ days or, if all parties agree to the motion, five~~5~~ days before the scheduled hearing date. The hearing officer may grant a motion filed after the prescribed time only if the movant demonstrates that the movant will suffer material prejudice if the hearing is not canceled.
- b) Contents. All motions to cancel a hearing must state ~~set forth~~ a proposed date to reschedule the hearing and must be supported by an affidavit of the person or persons with knowledge of the facts that support the motion. The affidavit must include the factual basis for the request to cancel and a complete status report that describes the progress of the proceeding and sets forth the number of cancellation requests previously granted to the movant. The hearing officer will grant the motion only if the movant demonstrates that the request to cancel is not due to~~the result of~~ the movant's lack of diligence.
- c) In a proceeding with ~~for which there is~~ a decision deadline, the hearing officer will deny a motion to cancel a hearing if the decision deadline does not allow enough time for the Board to reschedule the hearing, provide the required notice of the rescheduled hearing, complete the hearing, and deliberate and decide the matter.
- d) If the hearing officer grants a motion to cancel a hearing, the hearing officer will revise the schedule to complete the record in compliance ~~accordance~~ with Section

101.612. The hearing officer also will file the revised schedule with the Clerk and serve a copy of the revised schedule on all parties in compliance ~~accordance~~ with Subpart C.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.512 Motions for Expedited Review**

- a) Motions for expedited review must be directed to the Board. All motions for expedited review must completely state ~~contain a complete statement~~ of the facts and reasons for the request and must be accompanied by an oath or affirmation attesting that the facts cited are true.
- b) In acting on a motion for expedited review, the Board will, at a minimum, consider all statutory requirements and whether material prejudice will result from the motion being granted or denied.
- c) The Board will grant a motion for expedited review consistent with available resources and decision deadlines.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.514 Motions to Stay Proceedings**

- a) Motions to stay a proceeding must be directed to the Board and must be accompanied by sufficient information detailing why a stay is needed, and in decision deadline proceedings, by a waiver of any decision deadline. A status report detailing the progress of the proceeding must be included in the motion. (See also Section 101.308.)
- b) If the motion to stay is granted, at the close of the stay, the parties must file a status report in compliance ~~accordance~~ with Subpart C. Additional requests for stay of the proceedings must be directed to the hearing officer.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.516 Motions for Summary Judgment**

- a) Any time after the opposing party has appeared (or after the expiration of time within which any party must ~~is required to~~ appear), but no fewer than 30 days prior to the regularly scheduled Board meeting before the noticed hearing date, a party may move the Board for summary judgment for all or any part of the relief sought. Any response to a motion for summary judgment must be filed within 14 days after service of the motion for summary judgment. The hearing officer may

extend the filing and response deadlines contained in this subsection upon written motion by a party, consistent with any statutory deadlines.

- b) If 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, the Board will enter summary judgment.
- c) Any party wishing to cancel a hearing pending decision on a motion for summary judgment must file a motion to cancel hearing under Section 101.510.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.518 Motions for Interlocutory Appeal from Hearing Officer Orders**

A party may take to the Board an interlocutory appeal ~~Interlocutory appeals from a hearing officer ruling of the hearing officer may be taken to the Board~~ by filing a motion within 14 days after the party receives receipt ~~of the hearing officer's written order~~. However, if the hearing officer makes the ~~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. 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 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.520 Motions for Reconsideration**

- a) Any motion for reconsideration or modification of a Board order must be filed within 35 days after the receipt of the order. (See Section 101.902.)
- b) Any response to a motion for reconsideration or modification must be filed within 14 days after the filing of the motion.
- c) A timely-filed motion for reconsideration or modification stays the effect of the order until final disposition of the motion ~~in accordance with Section 101.300(d)(2)~~.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.522 Motions for Extension of Time**

~~If a party's motion shows good cause, the~~ The Board or hearing officer, ~~for good cause shown on a party's motion after notice to the opposite party,~~ may extend any deadline ~~the time for filing any document or doing any act which is required by this Part these rules to be done within a limited period,~~ The motion may be filed either before or after the deadline expires ~~expiration of time.~~

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

### Section 101.602 Notice of Board Hearings

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

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 101.604 Formal Board Transcript

All Board hearings will be transcribed by a certified court reporter in compliance ~~accordance~~ with Section 32 of the Act or other applicable law. Any party or witness may file a motion with the hearing officer to correct the transcript within 21 days after the Board receives receipt of the transcript ~~in the Clerk's Office.~~ If a Failure of any party or witness fails to timely file a motion to correct the transcript, the party or witness waives ~~constitutes a waiver of~~ the right to correct, unless material prejudice would result ~~results.~~

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.606 Informal Recordings of the Proceedings**

Informal recording of Board proceedings is allowed as provided for in this Section. The hearing officer may prohibit audio or video recording at hearing if a witness refuses to testify on the grounds that the witness ~~must~~ may not be compelled to testify if any portion of the testimony is to be broadcast or televised. If the hearing officer determines that recording is disruptive or detrimental to proper development of the record, the hearing officer may limit or prohibit audio and ~~and/or~~ video recording.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.608 Default**

- a) ~~If Failure~~ of a party fails to appear at the hearing, or ~~fails failure~~ to proceed as ~~ordered by the Board or hearing officer~~ ordered, the party defaults will constitute default.
- b) If a respondent fails to appear at hearing, the complainant or petitioner must prove its prima facie case ~~in order~~ to prevail on the merits.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.610 Duties and Authority of the Hearing Officer**

The hearing officer has the duty to manage proceedings assigned, to set hearings, to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear, complete, and concise record for timely transmission to the Board. The hearing officer has all powers necessary to these ends, including the authority to:

- a) Require parties to proceed to hearing and establish a schedule for, and notice and service of, any prefiled submission of testimony and written exhibits;
- b) Administer oaths and affirmations;
- c) Allow for the examination of or examine witnesses to ensure a clear and complete record;
- d) Regulate the course of the hearing, including controlling the order of proceedings;
- e) Establish reasonable time limits on ~~the duration of~~ the testimony and questioning of any witness, and limit repetitive or cumulative testimony and questioning;

- f) Determine that a witness is adverse, hostile, or unwilling under Section 101.624;
- g) Issue an order compelling the answers to interrogatories or responses to other discovery requests;
- h) Order the production of evidence under Section 101.614;
- i) Order the filing of any required record or recommendation in a manner that ~~which~~ provides for a timely review and development of issues prior to the hearing and consistent with any statutory decision deadline;
- j) Initiate, schedule, and conduct a pre-hearing conference;
- k) Order a briefing and comment schedule and exclude late-filed briefs and comments from the record;
- l) Rule upon objections and evidentiary questions;
- m) Order discovery under Sections 101.614 and 101.616;
- n) Rule on any motion directed to the hearing officer or deferred to the hearing officer by the Board consistent ~~in accordance~~ with Section 101.502;
- o) Set status report schedules;
- p) Require all participants in a rulemaking or TLWQS proceeding to state their positions regarding with respect to the proposal or petition, as applicable; and
- q) Rule upon offers of proof and receive evidence and rule upon objections to the introduction of evidence.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.612 Schedule to Complete the Record**

- a) The hearing officer will ~~must~~ establish a schedule to complete the record by hearing officer order. The schedule may provide dates and deadlines for pre-hearing conferences, discovery completion, and hearing and post-hearing submissions (including public comments). The schedule must provide for a completed record at least 30 days before the decision date, unless the hearing officer orders otherwise to prevent material prejudice. The hearing officer will ~~must~~ file the schedule with the Clerk and serve a copy of the schedule on all parties in compliance ~~accordance~~ with Subpart C.

- b) The hearing officer may rule upon any motion to revise the schedule to complete the record. The hearing officer may grant the motion to the extent that the revised schedule provides for a completed record at least 30 days before the decision date or to prevent material prejudice. If the hearing officer grants a motion to revise the schedule, the hearing officer will ~~must~~ file the revised schedule with the Clerk and serve a copy of the revised schedule on all parties in compliance ~~accordance~~ with Subpart C. (See also Section 101.510(d).)

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.616 Discovery**

The assigned hearing officer will set all time deadlines for discovery not already provided for in this Subpart consistent with Board deadlines. For ~~purposes of~~ discovery, the Board may look to the Code of Civil Procedure and the Illinois Supreme Court Rules for guidance when ~~where~~ the Board's procedural rules are silent (see Section 101.100(b)). All discovery disputes will be handled by the assigned hearing officer.

- a) All relevant information and information calculated to lead to relevant information is discoverable, excluding those materials that would be protected from disclosure in the courts of this State under statute, Supreme Court Rules or common law, and materials protected from disclosure under 35 Ill. Adm. Code 130.
- b) If the parties cannot agree on the scope of discovery or the time or location of any deposition, the hearing officer has the authority to order discovery or to deny requests for discovery.
- c) All discovery must be completed at least ~~ten~~<sup>10</sup> days prior to the scheduled hearing in the proceeding unless the hearing officer orders otherwise.
- d) The hearing officer may, on his or her own motion or on the motion of any party or witness, issue protective orders that deny, limit, condition or regulate discovery to prevent unreasonable expense, or harassment, to expedite resolution of the proceeding, or to protect non-disclosable materials from disclosure consistent with Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 130.
- e) Unless a claim of privilege is asserted, it is not a ground for objection that the testimony of a deponent or person interrogated will be inadmissible at hearing, if the information sought is reasonably calculated to lead to relevant information. Any appeals of rulings by the hearing officer regarding discovery must be in writing and filed with the Board prior to hearing.

- f) Failure to comply with any order regarding discovery may subject the offending persons to sanctions under Subpart H.
- g) If any person serves any request for discovery or answers to discovery for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, or knowingly gives a false answer to discovery questions, the Board, on its own motion or the motion of a party, may impose sanctions under Subpart H.
- h) A party must amend any prior responses to interrogatories, requests for production, or requests for admission if the party learns that the response is in some material respect incomplete or incorrect, and the additional or corrected information has not otherwise been made known to the other parties during the discovery process or in writing.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.618 Admissions**

- a) General. All requests to admit must be served upon a party no later than 35 days before hearing. All answers or objections to requests to admit must be served upon the party requesting the admission within 28 days after the service of the request.
- b) Extension of Time. ~~Under In accordance with~~ Sections 101.522 and 101.610, the hearing officer may extend the time for filing any request, answer, or objection either before or after the expiration of time.
- c) Request to Admit. Any party serving a request to admit ~~under in accordance with~~ subsection (d) or (e) must include the following language in the first paragraph of the request:- "Failure to respond to the following requests to admit within 28 days may have severe consequences. If you fail Failure to respond to the following requests, you will be considered to have admitted that result in all the facts requested ~~are being deemed admitted~~ as true for this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding or an attorney."
- d) Request for Admission of Fact. A party may serve a written request for admission of the truth of specific statements of fact on any other party.
- e) Request for Admission of Genuineness of Document. A party may serve a written request for admission of the genuineness of documents on any other party. Copies of the document must be served unless the document has already been furnished in the present proceeding.



- f) Admitted If Not Denied Admission in the Absence of Denial. Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 28 days after service, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement denying specifically the matters of which admission is requested or stating setting forth in detail the reasons why the party cannot truthfully admit or deny those matters, or written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request are made, the remainder of the request must be answered within the period designated in the request. A denial must fairly address the substance of the requested admission.
- g) Partial Denial or Qualification. If good faith requires that a party deny a part of a matter for which an admission is requested, or if a part requires qualification, the party must specify the part that which is denied or qualified and admit only the remainder.
- h) Objection. Any objection to a request or to any answer must be stated with specificity, and will be heard by the hearing officer upon notice and motion of the party making the request.
- i) Effect of Admission. Any admission made by a party to under a request under this Section is for ~~the purpose of~~ the pending proceeding only. It is does not constitute an admission by the party for any other purpose and must may not be used against him or her in any other proceeding.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.620 Interrogatories**

- a) Unless ~~ordered otherwise by the hearing officer~~ orders otherwise, a party may serve a maximum of 30 written interrogatories, including subparts, on any other party, no later than 35 days before hearing.
- b) Within 28 days after service, the party to whom the interrogatory is directed must serve the answers and objections, if any, upon the party submitting the interrogatories. Each interrogatory must be answered separately and fully in writing under oath, unless it is objected to. Answers must be signed by the person making them and objections must be signed by the attorney making them or, if in the event of an individual represents representing himself or herself, the individual making them.
- c) Grounds for an objection to an interrogatory must be stated with specificity, and

be accompanied by a copy of the interrogatory. Any ground that is not stated in a timely objection is waived unless waiver would result ~~it results~~ in material prejudice or good cause for the delay is shown.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 101.622 Subpoenas and Depositions**

- a) Upon request by any party to a contested proceeding, the Clerk will issue subpoenas for the attendance of witnesses at a hearing or deposition. Subpoena forms are available at the Board's Chicago office. The person requesting the subpoena is responsible for completing the subpoena and serving it upon the witness.
- b) Service of the subpoena on the witness must be completed no later than ~~ten~~<sup>10</sup> days before the date of the required appearance. A copy of the subpoena must be filed with the Clerk and served upon the hearing officer within seven<sup>7</sup> days after service upon the witness. Failure to serve both the Clerk and the hearing officer ~~makes will render~~ the subpoena null and void. Service and filing must comply be ~~in accordance~~ with Subpart C.
- c) Subpoenas may include a command to produce books, papers, documents, or other tangible things designated in the subpoena ~~therein~~ and relevant to the matter under consideration.
- d) The hearing officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance, may quash or modify the subpoena if it is unreasonable or irrelevant. The hearing officer, under the standards of Section 101.614, will rule upon motions to quash or modify material requested in the subpoena under subsection (c) ~~in accordance with the standards articulated in Section 101.614~~.
- e) Each witness subpoenaed by a party under this Section is entitled to receive witness fees from that party as provided in Section 4.3 of the Circuit Courts Act [705 ILCS 35].
- f) Unless the hearing officer orders otherwise, any witness subpoenaed for a deposition may be required to attend only in the county in which he or she resides or maintains an office address. Consistent In accordance with Illinois Supreme Court Rule 206(d), Ill. Sup. Ct. Rule 206(d), all depositions must be limited to 3 hours in length unless the parties and the non-party deponent by stipulation agree to a longer time frame or unless the hearing officer orders otherwise after a showing of good cause. ~~(See Ill. S. Ct. Amended Rule 206(d).)~~
- g) Failure of any witness to comply with a subpoena will subject the witness to

sanctions under this Part, or the judicial enforcement of the subpoena. The Board may, upon proper motion by the party requesting the subpoena, request the Attorney General to pursue judicial enforcement of the subpoena on behalf of the Board.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.624 Examination of Adverse, Hostile, or Unwilling Witnesses**

- a) Adverse Witnesses. At hearing, upon motion granted by the hearing officer, any party, or any person for whose immediate benefit the proceeding is prosecuted or defended, or any officers, directors, managing agents, or foremen of any party may be called as an adverse witness consistent with Section 2-1102 of as allowed by the Code of Civil Procedure. (~~See Section 2-1102 of the Code of Civil Procedure.~~) Adverse witnesses may be examined as if under cross-examination. The party calling the adverse witness may rebut the testimony and may impeach the witness.
- b) Hostile or Unwilling Witnesses. If the hearing officer determines that any witness is hostile or unwilling, the witness may be examined by the party calling the witness as if under cross-examination.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.626 Information Produced at Hearing**

In compliance accordance with Section 10-40 of the IAPA, the hearing officer will admit evidence that is admissible under the rules of evidence as applied in the civil courts of Illinois, except as otherwise provided in this Part.

- a) Evidence. The hearing officer may admit evidence that is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged.
- b) Admissibility of Evidence. When the admissibility of evidence depends upon a good faith argument as to the interpretation of substantive law, the hearing officer will admit the evidence.
- c) Scientific Articles and Treatises. Relevant scientific or technical articles, treatises, or materials may be introduced into evidence by a party. The materials are subject to refutation or disputation through introduction of documentary evidence or expert testimony.
- d) Written Testimony. Written testimony may be introduced by a party in a hearing

only if provided to all other parties of record ~~before~~ ~~prior to~~ the date of the hearing and only after the opposing parties have had an opportunity to object to the written testimony and to obtain a ruling on the objections ~~before~~ ~~prior to~~ its introduction. Written testimony may be introduced by a party only if the persons whose written testimony is introduced are available for cross-examination at hearing.

- e) Admission of Business Records. A writing or record, whether in the form of any entry in a book or otherwise made as a memorandum or record of any act, transaction, occurrence, or event, may be admissible as evidence of the act, transaction, occurrence, or event. To be admissible, the writing or record must have been made in the regular course of business, ~~if provided~~ it was the regular course of business to make the memorandum or record at the time of the act, transaction, occurrence, or event, or within a reasonable time afterwards. All other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be admitted to affect the weight of the evidence, but will not affect admissibility. The term "business," as used in this subsection (e), includes businesses, professions, occupations, and callings of every kind.
- f) Prior Inconsistent Statements. Prior statements made under oath may be admitted to impeach a witness if the statement is inconsistent with the witness' testimony at hearing.
- g) Oral and Written Statements. Oral and written statements from participants may be taken at hearing under ~~in accordance with~~ Section 101.628.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 101.627 Electronic Filing of Hearing Exhibits After Adjudicatory or TLWQS Hearing**

- a) Scope. After an adjudicatory or TLWQS hearing, an accurate reproduction of each exhibit offered for admission at the hearing must be electronically filed through COOL under Subpart J by the party or participant who offered the exhibit, unless the hearing officer determines that it is not practicable for the offering party or participant to do so.
  - 1) This electronic filing requirement:
    - A) Applies regardless of whether the hearing exhibit was admitted by the hearing officer; and
    - B) Does not apply to a hearing exhibit that contains information claimed or determined to be a trade secret or other nondisclosable

information under 35 Ill. Adm. Code 130, but it does apply to the version of the exhibit that is redacted under 35 Ill. Adm. Code 130.

- 2) When practicable, the offering party or participant must:
  - A) Reduce an oversized hearing exhibit to conform to or be formatted to print on 8½ x 11-inch paper; and
  - B) Electronically file the version of the oversized exhibit reduced under subsection (a)(2)(A).
  
- b) Timing. The offering party or participant must comply with subsection (a) within five days after the last day of the hearing at which the exhibit was offered. Upon good cause shown, the hearing officer may extend this deadline.
  
- c) Certification. The electronic filing under subsection (a) must include a certification in which the offering party or participant certifies that each hearing exhibit being filed is an accurate reproduction of the corresponding exhibit offered at the hearing.
  
- d) Exhibit Number. The offering party or participant must mark each hearing exhibit electronically filed under subsection (a) with the number assigned to that exhibit by the hearing officer.
  
- e) Form. Each hearing exhibit electronically filed under subsection (a) must comply with Section 101.1030, except as follows:
  - 1) The exhibit must, to the extent technically feasible, be in a text-searchable format; and
  - 2) Multiple exhibits may be filed as a single electronic file, subject to the size limit of Section 101.1030(c).
  
- f) Service. The offering party or participant must serve the other parties or participants and the hearing officer with its notice of filing the hearing exhibits under subsection (a). (See Section 101.302(b)(3).) The offering party or participant is not required to serve the hearing exhibits, unless the hearing officer orders otherwise.
  
- g) Objection and Response
  - 1) No later than five days after the offering party or participant files a hearing exhibit under subsection (a), any other party or participant may file an objection but only to allege that the filed exhibit is not an accurate

reproduction of the exhibit offered at the hearing. Each hearing exhibit filed under this Section will be promptly posted to COOL by the Clerk's Office.

- 2) No later than five days after being served with an objection under subsection (g)(1), the offering party or participant may file a response to the objection.
- 3) Upon good cause shown or to avoid undue delay, the hearing officer may modify one or both deadlines under this subsection (g).

(Source: Added at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.628 Statements from Participants**

- a) Oral Statements. The hearing officer may permit a participant to make oral statements on the record when time, facilities, and concerns for a clear and concise hearing record so allow. The oral statements must be made under oath and are subject to cross-examination. (See Sections 101.110 and 101.114.)
- b) Written Statements. Any participant may submit written statements relevant to the subject matter at any time before ~~prior to~~ hearing or at hearing. The participant ~~Participants~~ submitting the such a statement will be subject to cross-examination by any party. Written statements submitted without the availability of cross-examination will be treated as public comment in compliance ~~accordance~~ with subsection (c) and will be afforded lesser weight than evidence subject to cross-examination.
- c) Public Comments or Amicus Curiae Briefs. Oral public comment may be made on the record at a hearing and is not subject to cross-examination. Additionally, participants may file written public comments subject to the requirements of this Section and the hearing officer's schedule for completing ~~completion of~~ the record. The Board also allows for the filing of amicus curiae briefs by non-party participants. Amicus curiae briefs will be allowed in compliance ~~accordance~~ with Section 101.110.
  - 1) Written public comments must be filed within 14 days after the close of the last hearing unless the hearing officer specifies a different date for submission of post-hearing comments. However, all public comments must be filed with the Board no later than 30 days before the decision date, unless the hearing officer orders otherwise to prevent material prejudice. Consistent with the burden of proof in an adjudicatory a proceeding or with the designation of the proponent in a rulemaking or the petitioner in a TLWQS proceeding, the hearing officer may provide for

differing filing deadlines ~~regarding with respect to~~ post-hearing comments by different persons. Under hearing officer order, rebuttal public comments may be submitted.

- 2) All public comments must present arguments or comments based on evidence ~~contained~~ in the record. The comments may also present legal argument citing legal authorities.
- 3) Comments must be filed with the Board. ~~Comments will be distributed to parties and the hearing officer by the Clerk's office.~~

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.630 Official Notice and Evidence Evaluation**

- a) Official notice may be taken of:
  - 1) Matters all facts of which the circuit courts of this State may take judicial notice; may be taken and of other
  - 2) Generally recognized technical or scientific facts within the Board's specialized knowledge and experience of the Board.
- b) Parties will be notified of the material noticed under subsection (a) and they will be given an opportunity to contest that material.
- c) The Board may use its experience, technical competence, and specialized knowledge in evaluating evidence.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### SUBPART G: ORAL ARGUMENT

#### **Section 101.700 Oral Argument**

- a) The Board may hear oral argument upon written motion of a party or the Board's own motion. The oral argument will be transcribed by a stenographer provided by the Board and become part of the record of the proceedings before the Board. The purpose of oral argument is to address legal questions. Oral argument is not intended to address new facts.
- b) Motions for oral argument must contain arguments supporting the grant of the motion for oral argument. In considering a motion for oral argument, the Board will consider, but is not limited to considering, the uniqueness of the issue or proceeding and whether the issue or proceeding involves a conflict of law.

- c) In any proceeding with a statutory decision deadline, the Board will deny the request for oral argument if there is insufficient time to schedule oral argument and allow time for the Board to issue its decision.
- d) If the Board grants the motion for oral argument, it will issue an order stating ~~setting forth~~ a schedule for oral argument that may include a briefing schedule. The brief will be limited to the issues for which oral argument was granted.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### SUBPART H: SANCTIONS

##### **Section 101.800 Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing Officer Orders**

- a) If any person unreasonably fails to comply with any provision of 35 Ill. Adm. Code 101 through 130 or any order entered by the Board or the hearing officer, including any subpoena issued by the Board, the Board may order sanctions. The Board may order sanctions on its own motion, or in response to a motion by a party.
- b) Sanctions include the following:
  - 1) Further proceedings may be stayed until the order or rules are complied with, except in proceedings with a statutory decision deadline. Proceedings with a statutory decision deadline may be dismissed before ~~prior to~~ the date on which decision is due;
  - 2) The offending person may be barred from filing any other pleading or other document relating to any issue to which the refusal or failure relates;
  - 3) The offending person may be barred from maintaining any ~~particular~~ claim, counterclaim, third-party complaint, or defense relating to that issue;
  - 4) As to claims or defenses asserted in any pleading or other document to which that issue is material, a judgment by default may be entered against the offending person or the proceeding may be dismissed with or without prejudice;
  - 5) Any portion of the offending person's pleadings or other documents relating to that issue may be stricken and, if appropriate, judgment may be entered as to that issue; and



- 6) The witness may be barred from testifying concerning that issue.
- c) In deciding what sanction to impose, the Board will consider factors including: the relative severity of the refusal or failure to comply; the ~~past~~ history of the proceeding; the degree to which the proceeding has been delayed or prejudiced; and the existence or absence of bad faith ~~by on the part of~~ the offending party or person.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

### Section 101.902 Motions for Reconsideration

In ruling upon a motion for reconsideration, the Board will consider factors including new evidence, or a change in the law, to conclude that the Board's decision was in error. (See also Section 101.520.) A motion for reconsideration of a final Board order is not a prerequisite to appealing for the appeal of the final Board order.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 101.904 Relief from Final Opinions and Orders

- a) Upon its own motion or motion of any party, the Board may correct clerical mistakes in orders or other parts of the record and errors in the record therein arising from oversight or omission before the appeal is docketed in the appellate court. While the appeal is pending, the mistakes may be corrected only with permission of the appellate court. Any corrected order will be delivered mailed to all parties and participants in that proceeding.
- b) On written motion, the Board may relieve a party from a final order entered in a contested proceeding, for the following:
- 1) Newly-discovered evidence that existed at the time of hearing and that by due diligence could not have been timely discovered;
  - 2) Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or
  - 3) Void order, such as an order based upon jurisdictional defects.
- c) A motion under this Section does not affect the finality of a Board order or suspend the operation of a Board order. The motion must be filed in the same proceeding in which the order was entered but is not a continuation of the

proceeding. The motion must be supported by oath or affidavit or other appropriate showing as to matters not of record. All parties or participants in the proceeding must be notified by the movant as provided by Section 101.304.

- d) A motion under subsection (b) must be filed with the Board within one year after entry of the order, except that a motion under subsection (b)(3) must be filed within a reasonable time after entry of the order.
- e) Any response to a motion under this Section must be filed within 14 days after the filing of the motion.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.906 Judicial Review of Board Orders**

- a) Under Sections 29(a), 38.5(j), and 41(a) of the Act and Illinois Supreme Court Rule 335, judicial review of final Board orders is available directly in from the appellate court. However, under 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 appealable as of the date of service of the final order upon the appealing person (see Section 101.300(d)).
- c) The procedure for stay of any final Board order during appeal will be as provided in Supreme Court Rule 335 ~~of the Rules of the Supreme Court of Illinois (Ill. S. Ct. Rule 335)~~.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.908 Interlocutory Appeal**

Upon motion of any party, the Board may consider an interlocutory appeal consistent in accordance with Illinois Supreme Court Rule 308. ~~[(Ill. S. Ct. Rule 308)]~~.

(Source: Amended at 43 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 ([pcb.illinois.gov](http://pcb.illinois.gov) ~~www.ipcb.state.il.us~~). The Board has taken steps

designed to ensure the integrity and security of COOL in ~~compliance accordance~~ with State policies developed under the Electronic Commerce Security Act [5 ILCS 175].

- b) To file an electronic document ~~in a with the~~ Board proceeding, 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)(3), (h)(4), and (j) and Section 101.1050, all documents must be filed through COOL. However, if filing through COOL is not ~~reasonably~~ practicable, the Board, the hearing officer, or the Clerk may grant permission to file in paper.
- d) Generally, the Clerk's Office will not accept paper documents for filing; however, the Clerk's Office will convert paper-filed documents into electronic documents and place them on COOL, when permission to file a paper document is granted under subsection (c).
- 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) and Section 101.1060.)

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.1010 Electronic Filing Authorization and Signatures**

- a) A person seeking to upload a document on COOL for filing must have been issued a State of Illinois digital signature certificate under Section 15-310 of the Electronic Commerce Security Act. (See 5 ILCS 175/15-310.) A link to the subscriber agreement and application for a State of Illinois digital signature certificate is available through COOL.
  - 1) Maintaining digital signature confidentiality is the responsibility of the holder of the digital signature certificate. The certificate holder is responsible for any document electronically filed by anyone using his or her digital signature certificate.
  - 2) The digital signature certificate holder is responsible for keeping his or her contact information current.
- b) Each electronic document uploaded on COOL for filing must bear a facsimile electronic signature (i.e., scanned image of original pen-and-ink signature) or typographical electronic signature (i.e., "/s/ typed name") of the person authorizing the filing (e.g., attorney, participant, pro se party). However, if this

electronic signature is absent, the document will be considered ~~deemed~~ to have been signed by the holder of the digital signature certificate used to upload the document and the certificate holder will be considered ~~deemed~~ to have authorized the filing. (See 5 ILCS 175/5-120.) To file an electronic document on behalf of another person in an adjudicatory proceeding, an electronic signature of a licensed and registered attorney is required. (See Section 101.400(a).)

- c) If an electronic document or portion of one thereof requires the signatures of any persons in addition to those specified in subsection (b) (e.g., settlement agreement, witness' affidavit), the person authorizing the filing must:
- 1) Confirm that the additional persons have approved the document or corresponding portion of it thereof and obtain their original pen-and-ink signatures before the document is uploaded on COOL for filing;
  - 2) Ensure that the document or corresponding portion of it thereof bears the facsimile electronic signatures of, and indicates the identity of, the additional persons;
  - 3) Upload the document on COOL as a scanned image containing the necessary signatures; and
  - 4) ~~Keep~~ Retain the paper original of the document, including the original pen-and-ink signatures of the additional persons, for one year after the later of the following:
    - A) The date on which the ~~time~~ period expires for appealing the final order of the Board; or
    - B) If the final order of the Board is appealed, the date on which the ~~time~~ period expires for seeking any further review in the courts.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.1020 Filing Electronic Documents**

- a) COOL. To file an electronic document through COOL, the document must first be uploaded on COOL.
- b) Digital Signature Certificate. Uploading a document on COOL requires a valid State of Illinois digital signature certificate.
- c) Uploading Hours. Electronic documents may be uploaded on COOL 24 hours per day, every day.

- d) E-Mail Receipt. Uploading a document on COOL will generate an e-mail receipt for the digital signature certificate holder. The receipt will verify the date and time when the document was uploaded on COOL.
- e) Time of Filing. Subject to subsection (f), an electronic document uploaded on COOL will be considered filed as of the date and time specified on the e-mail receipt generated under subsection (d), except that:
- 1) A document uploaded on a Saturday or Sunday, on a national or State legal holiday, or after 4:30 p.m. on a weekday is ~~considered~~deemed filed the next business day.
  - 2) A document uploaded without one or more portions of the filing (e.g., oversized exhibit; trade secret or non-disclosable information; copyrighted document proposed for incorporation by reference in a rule) or without a required oath, affidavit, notarization, signature, or filing fee is considered filed on the date that the Clerk receives the document's last missing item, except as provided in subsection (e)(2)(A) or (e)(2)(B). If the Clerk receives the document's last missing item by U.S. Mail or third-party commercial carrier after the document's filing deadline date, the document will be considered filed on:
    - A) ~~On the date that the Clerk receives the document's last missing item; or~~
    - AB) The On the postmark date on which of the document's last missing item was provided to the U.S. Postal Service (see Section 101.300(b)(3)); or if that item was sent by U.S. Mail, was received after the date of a filing deadline, and has a postmark date that precedes or is the same as the deadline date.
    - B) The date on which the document's last missing item was provided to the third-party commercial carrier for delivery to the Clerk within three business days (see Section 101.300(b)(3)).
  - 3) A document consisting of multiple electronic files is considered filed as of the date and time specified on the e-mail receipt generated under subsection (d) for the last file uploaded to complete the document.
- f) Review by the Clerk. The Clerk will review electronically each document uploaded on COOL, validate the proceeding information provided, and accept or reject the document for filing.

- 1) If the Clerk accepts an uploaded document, the Clerk's Office will e-mail a notice of acceptance to the digital signature certificate holder, indicating that the filed document may be viewed on COOL.
  - 2) If the Clerk rejects an uploaded document, the Clerk's Office will e-mail a notice of rejection to the digital signature certificate holder. The Clerk may reject an uploaded document because the document is prohibited from being filed electronically under Section 101.302(h)(3) or (h)(4), the document fails to comply with file size or naming requirements of Section 101.1030(c), or the document is corrupted or otherwise cannot be readily opened. If an uploaded document is rejected by the Clerk, the Board may, upon good cause shown, enter an order ~~ruling deeming~~ the document filed as of the date and time specified when the document was uploaded on COOL, subject to subsections (e)(1) through (e)(3).
- g) **Technical Failure.** If an electronic document is not uploaded, or is materially delayed in uploading, on COOL due to a technical failure, the Board may, upon good cause shown, enter an order ~~ruling deeming~~ the document uploaded under subsection (d) as of the date and time of the first attempted uploading. "Technical failure" as used in this subsection is limited to a system outage of COOL or other malfunction of the hardware, software, or telecommunications facilities of the Board or the Board's electronic filing provider. "Technical failure", therefore, does not include any malfunction of the equipment used by the person authorizing the filing or the digital signature certificate holder.
- h) **Clerk's Electronic Stamp.** An electronic document uploaded on COOL and accepted by the Clerk for filing will be endorsed by the Clerk with a file stamp ~~stating setting forth~~ the date of filing. This file stamp will be merged with the electronic document and visible when the document is viewed on COOL. Electronically filed documents so endorsed have the same legal effect as paper documents file- stamped by the Clerk conventionally ~~under in accordance with~~ Section 101.300(b).
- i) **Decision Deadlines.** For ~~purposes of~~ Board decision deadlines, the decision period does not begin until the date on which the electronic document constituting the initial filing is considered filed under this Section.
- j) **Filing Deadlines.** The electronic filing of a document does not alter any applicable filing deadlines.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.1030 Form of Electronic Documents for Filing**

- a) In addition to complying with the formatting requirements of Section 101.302(g) and (j), electronic documents uploaded on COOL for filing must be in one of the following electronic formats:
- 1) Adobe Portable Document Format (PDF), version 2.0 or greater;
  - 2) Microsoft Word for Windows, version 6.0 or greater;
  - 3) Corel WordPerfect for Windows, version 6.0 or greater; or
  - 4) Microsoft Excel for Windows, version 4.0 or greater.
- b) Generally, electronic documents filed in compliance ~~accordance~~ with this Subpart will be posted to COOL by the Clerk's Office in text-searchable Adobe PDF. When practicable, persons should:
- 1) Upload their electronic documents on COOL in text-searchable Adobe PDF; and
  - 2) Convert their electronic documents to a text-searchable Adobe PDF directly from the program used to create the document, rather than from a scanned image of the paper document.
- c) No single electronic file uploaded on COOL, whether constituting all or part of an electronic document, may contain more than 10 megabytes (MB) of data. To comply with this requirement, an electronic document may be divided into parts and submitted as multiple electronic files, each file being 10 MB or less. The person authorizing the filing is responsible for dividing the document into appropriately-sized files and naming each file to reflect its place within the electronic document.
- d) Multiple electronic documents, whether for the same proceeding or different proceedings, must be uploaded separately on COOL and, therefore, must not be combined into a single electronic file for filing through COOL.
- e) Electronic documents may contain links to material external to the filed document. However, links to external material are for convenience purposes only. The external material behind the link is not considered part of the filing or the record of the proceeding in which the document was filed.
- f) All documents uploaded on COOL must be free of viruses or other harmful processes. If an electronic document containing a virus or other harmful process is uploaded on COOL, the Board may, consistent with Section 101.800(b) and (c), impose sanctions, including barring the document from being filed in any manner

and barring the person authorizing the filing or the digital signature certificate holder from any further electronic filing through COOL.

- g) Documents filed under Section 101.302(h)(2) must:
- 1) Include bookmarks, immediately viewable when the document is opened, to individual documents in the same order as they appear in the corresponding Table of Contents to facilitate navigation and location of specific contents within the document; and
  - 2) Have pagination displayed on each document in the top right corner of each page.

(Source: Amended at 43 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.)
  - 1) A person serving a document by e-mail must successfully transmit the document to the recipient's primary e-mail address or any of the recipient's secondary e-mail addresses. (See Section 101.1070(b).)
  - 2) 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 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 e-mail address of the person authorizing the filing;
  - 2) The number of pages in the e-mail transmission;
  - 3) A statement that the document was served by e-mail; and
  - 4) The date of the e-mail transmission and the time by when it took place.
- f) If any computer malfunction precludes the e-mail service of a document, the person authorizing the filing must promptly serve the document in paper under Section 101.304(c).
- g) Except for a final adjudicatory order orders of the Board in an enforcement proceeding under 35 Ill. Adm. Code 103, which the Clerk's Office serves on the respondent or respondents in paper by certified mail, the Clerk's Office 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.)
- 1) The Clerk will record the date and time of e-mail service, consistent with subsection (e).
  - 2) When serving a Board order or hearing officer order by e-mail, the Clerk will transmit the order to all the recipient's e-mail addresses designated under Section 101.1070(b), simultaneously requesting a delivery receipt. If the Clerk receives no delivery receipt within 24 hours after transmission, the Clerk will promptly serve the Board order or hearing officer order in paper under Section 101.304(c).

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.1070 Consenting to Receipt of E-Mail Service**

- a) In any proceeding, a person consents to e-mail service of documents in lieu of receiving paper documents by:
  - 1) Filing a "Consent to Receipt of E-Mail Service" (see sample form of consent in Appendix I);
  - 2) Providing the hearing officer, during a hearing or conference, with an e-mail address that is designated for receiving service;

- 3) Filing an attorney's appearance; or
- 4) Appearing on a notice list or service list and providing the Clerk's Office with an e-mail address that is designated for receiving service.

b) Any person who consents to email service under subsection (a) must designate a primary e-mail address for receiving service and may designate up to 2 secondary e-mail addresses for receiving service.

cb) At any time during a proceeding, consent to e-mail service may be provided under as set forth in subsection (a). To accept e-mail service, it is not necessary to obtain a State of Illinois digital signature certificate.

de) 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. However, an attorney who filed an appearance must not revoke consent unless the appearance is withdrawn.

ed) Upon a change in any primary or secondary ~~the~~ e-mail address of a recipient of e-mail service, the recipient must file a notice ~~notify the Clerk's Office~~ of the e-mail address change with the Clerk's Office for each pending proceeding in which the person has consented to e-mail service.

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 101.APPENDIX I Consent to Receipt of E-Mail Service**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Applicable Caption )  
 (see Appendix A) ) docket number  
 )  
 )

I, the undersigned, authorize the service of documents on me by e-mail in lieu of receiving paper documents in the above-captioned proceeding. My primary e-mail address to receive service is as follows: \_\_\_\_\_ [you must designate a primary e-mail address]. My secondary e-mail address or e-mail addresses, if any, to receive service are \_\_\_\_\_ [you are not required to designate a secondary e-mail address, but if you do, you may designate up to two secondary e-mail addresses].

[signature]  
 [date]

(Source: Amended at 43 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)