

ILLINOIS POLLUTION CONTROL BOARD

January 18, 1996

IN THE MATTER OF: )  
)  
ILLINOIS POLLUTION CONTROL )  
BOARD ADMINISTRATIVE RULES: ) R96-15  
ORGANIZATION, PUBLIC ) (Rulemaking)  
INFORMATION AND PROCEEDINGS. )

Adopted Rule.      Final Order.

OPINION AND ORDER OF THE BOARD (by C.A. Manning):

Pursuant to Section 5-15 of the Illinois Administrative Procedure Act (APA) (5 ILCS 100/5-15) and Section 140/4 of the Freedom of Information Act (FOIA) (5 ILCS 140/4), the Board is required to maintain current administrative rules which describe how the Board is organized, how it operates, and how it provides the public access to information. These rules are intended to implement the mandates set forth in those statutes. Additionally, the Board also takes final action today in R96-14 to repeal the Board's former administrative rules found at 2 Ill. Adm. Code 2175 of the Administrative Code.

As the administrative rules were last adopted and amended over ten (10) years ago, in 1984, these rules reflect the various changes in the Board's operation which have occurred since that time and include a current organizational chart. Additionally, these rules reflect the most current innovations of the Board's public access and the electronic address of the Board's Home Page found at the World Wide Web of the Internet. The rules explain that the Board's Home Page can be accessed for timely information on the Board's meeting schedules and agendas, minutes of regular Board meetings, rulemakings, legislative updates, Appellate Court updates, biographical information on Board Members, staff information, pending environmental regulations and for copies of the Board's monthly newsletter, the *Environmental Register*.

These administrative rules are effective immediately upon filing with the Secretary of State. They will be published in the *Illinois Register* and will appear in the Illinois Administrative Code at 2 Ill. Adm. Code 2175. Additionally, the rules will be immediately placed on the Board's Home Page of the World Wide Web of the Internet and they will appear in the *Environmental Register*.

**ORDER**

The Board hereby adopts the following rules as 2 Ill. Adm. Code 2175.100 through 2175.600:

**TITLE 2: GOVERNMENTAL ORGANIZATION  
SUBTITLE E: MISCELLANEOUS STATE AGENCIES  
CHAPTER XXVII: POLLUTION CONTROL BOARD**

**PART 2175**

**ORGANIZATION, PUBLIC INFORMATION, AND TYPES OF PROCEEDINGS**

**SUBPART A: INTRODUCTION AND ORGANIZATION**

<b>Section</b>	
2175.100	Summary and Purpose
2175.105	Board Membership
2175.110	Organization and Supervisory Relationships
2175.115	Location of Offices
2175.120	Board Meetings
2175.125	Public Notice of Board Meetings
2175.130	Agenda of Board Meetings
2175.135	Minutes of Board Meetings
2175.140	Accessibility of Board Meetings and Hearings

**SUBPART B: FEES AND FORMS OF PAYMENT**

<b>Section</b>	
2175.200	Filing Fees
2175.205	Photocopying Fees
2175.210	Photocopying Procedures
2175.215	Forms of Payment
2175.220	Other Fees/Costs

**SUBPART C: PUBLIC INFORMATION**

<b>Section</b>	
2175.300	Files Open to Reasonable Public Inspection
2175.305	Publications
2175.310	Board's Home Page on World Wide Web Internet
2175.315	Documents Available from the Clerk's Office
2175.320	Requests For Information

**SUBPART D: ACCESS TO BOARD RULES**

<b>Section</b>	
2175.400	Access to Board Rules in the Illinois Administrative Code

## SUBPART E: RULEMAKING

Section	
2175.500	Proposals
2175.505	Initial Hearing
2175.510	First Notice
2175.515	Second Notice
2175.520	Adopted Rules
2175.525	Emergency Rules
2175.530	Peremptory Rules
2175.535	Adoption of Federal Regulations

## SUBPART F: ADJUDICATORY PROCEEDINGS

Section	
2175.600	Adjudicatory Proceedings

## APPENDIX A: ORGANIZATIONAL CHART

**AUTHORITY:** Implementing Section 5-15 of the Illinois Administrative Procedure Act (5 ILCS 100/5-15) and authorized by Section 5 of the Illinois Environmental Protection Act (415 ILCS 5/5).

**SOURCE:** Administrative rules adopted at 3 Ill. Reg. 23, p. 96, effective May 29, 1983; repealed by operation of law effective October 1, 1984; new rules adopted at 9 Ill. Reg. 107, effective December 21, 1984; old rules repealed and new rules adopted at @ Ill. Reg. \_\_, effective \_\_\_\_\_, 1996.

## SUBPART A: INTRODUCTION AND ORGANIZATION

### **Section 2175.100 Summary & Purpose**

As required by Section 5-15 of the Illinois Administrative Procedure Act (APA) (5 ILCS 100/5-15) and Section 140/4 of the Freedom of Information Act (FOIA) (5 ILCS 140/4), this Part sets forth the administrative rules which apply to the Illinois Pollution Control Board (Board). These rules are intended to generally explain what the Board is, how the Board is organized and operates, and how the public can get information from the Board. These rules do not explain, and are not intended to explain, the Board's procedural requirements for processing rules and cases. Those procedural rules are found at 35 Ill. Adm. Code 101-120.

### **Section 2175.105 Board Membership**

- a) The Board was created pursuant to Section 5 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/5). The Board is a quasi-legislative and

quasi-judicial administrative agency responsible for adopting environmental regulations and deciding certain environmental disputes and cases brought pursuant to the Illinois Environmental Protection Act. The Board determines, defines and implements environmental control standards in accordance with the Illinois Environmental Protection Act.

- b) The Board is comprised of seven technically qualified members. The members are appointed by the Governor with the advice and consent of the Senate, for a term of three years.
- c) The Governor designates one member to serve as Chairman. The Chairman serves at the pleasure of the Governor and is responsible for the administration of the Board.

**Section 2175.110                      Organization and Supervisory Relationships**

- a) Each member of the Board is aided by a confidential assistant who may be an attorney or who may have an advanced technical degree, and a personal secretary. The Chairman may have two confidential assistants and a personal secretary.
- b) In order to carry out its functions, the Board is comprised of the following offices and units: Clerk's Office, Legal Unit, Hearings Unit, Technical Unit, and Fiscal Unit. The function of each is as follows:
  - 1) Clerk's Office. This Office is responsible for the processing, maintenance and distribution of all case related materials of the Board. The Clerk's Office is located in Chicago.
  - 2) Legal Unit. This unit is responsible for general legal functions of the Board and case or rule-related legal responsibilities, as designated by the Chairman.
  - 3) Technical Unit. This unit is comprised of environmental specialists responsible for gathering such technical and scientific data as may be required by the Board in the performance of its duties and for advising the Board on technical issues related to pending cases and rulemakings, as assigned by the Chairman.
  - 4) Hearings Unit. Under the direction of a Chief Hearing Officer, this unit is comprised of attorneys responsible for conducting Board hearings throughout the state, making such rulings as may be necessary at hearing, and generally managing the Board's adjudicatory caseload.

- 5) Fiscal Office. Under the direction of a Fiscal Officer, this unit is responsible for budgeting, expenditures, procurement, computer operations, and related duties.
- c) The Board also employs other professional staff to carry out its functions and mandates, including but not limited to an Executive Coordinator, a Public Affairs Coordinator, a Human Services Coordinator, and a Legislative and Governmental Affairs Coordinator.
- d) Organizational relationships are shown in the organizational chart in Appendix A at the end of this Part. Detailed descriptions of the specific responsibilities and duties of each of the job titles are maintained in the Chicago office.

**Section 2175.115 Location of Offices**

- a) The Board maintains two central offices, one in Chicago and one in Springfield. The Board may also maintain satellite offices in various regions of the State.
- b) The Clerk's Office is located in the Chicago Office. The address and general telephone number of the Chicago office is:
- Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St.  
Suite 11-500  
Chicago, Illinois 60601  
(312)-814-3620  
(312) 814-3669 (Fax)
- c) The Office of the Chairman, the Fiscal Office, and the Legislative/Government Affairs Coordinator are located in the Springfield office. The address and general telephone number of the Springfield office is:
- Illinois Pollution Control Board  
600 South Second Street  
Suite 402  
Springfield, Illinois 62704  
(217)-524-8500  
(217) 524-8508 (Fax)
- d) The Board maintains satellite offices in the following locations:

Illinois Pollution Control Board  
 110 South State Street  
 Jerseyville, Illinois 62052  
 (618) 498-9802  
 (618) 498-5934 (Fax)

Illinois Pollution Control Board  
 148 North Third Street  
 P.O. Box 505  
 DeKalb, Illinois 60115  
 (815) 753-1904  
 (815) 753-1970 (Fax)

### **Section 2175.120 Board Meetings**

- a) The Board makes all decisions on adjudicatory cases and regulatory matters at open meetings of the Board noticed and held in accordance with the Open Meetings Act (5 ILCS 120/1 et seq). The Board may hold closed meetings pursuant to Section 120/2(a) of the Open Meetings Act (5 ILCS 120/2(a)).
- b) Meetings may be held when a quorum, constituted by four members of the Board, is present. Four affirmative votes are required for any final determinations of the Board, except in a proceeding to remove a seal under Section 34(d) of the Illinois Environmental Protection Act (415 ILCS 5/34(d)).
- c) Meetings may be held with Board members physically present or present telephonically.
- d) Section 5 of the Illinois Environmental Protection Act requires the Board to hold at least one meeting each month and allows the Board to hold special and emergency meetings (415 ILCS 5/5). The Chairman or two Board Members may call a special meeting of the Board.

### **Section 2175.125 Public Notice of Open Board Meetings**

- a) Public Notice of Regular Meetings. Regular Board meetings are generally held every first and third Thursday of the month at the James R. Thompson Center (JTRC) in Chicago, but dates, times and locations are subject to change. Notification of these meetings is given in the Board's *Environmental Register* and on the Board's Home Page (see Section 2175.310). Notification of all Board meetings is also posted pursuant to the Open Meetings Act (5 ILCS 120/2.02 and 2.03). The schedule of meetings also appears at the end of every regular meeting agenda.

- b) Teleconferencing. The Board attempts to hold one meeting every quarter via teleconferencing equipment, with hook-ups in, at least, Chicago and Springfield. Both locations are open to the public.
- c) Public Notice of Special or Emergency Meetings. Notice of special or emergency meetings will generally be given to all Board members and the public 48 hours prior to the meeting. The notice will include a copy of the agenda and will comply with the Open Meetings Act. If, however, a majority of the Board certifies that an emergency exists and exigencies of time are such that the 48-notice must be dispensed with, a special meeting may be called by the Chairman or two Board Members merely by posting notice in the Board's offices and giving notice to the public as far in advance as is practicable, but prior to the holding of such meeting.
- d) Notice to Media. The Board gives notice of regular, special or emergency meetings to any news medium which has filed an annual request for such notice under Section 2.02(b) of the Open Meetings Act (5 ILCS 120/2.02(b)).

#### **Section 2175.130     Agenda of Board Meetings**

- a) The Board maintains an agenda of its open Board meetings in accordance with and Section 2.02 of the Open Meetings Act (5 ILCS 120/2.02). Board agendas contain the list of cases and motions that may be decided by the Board at that meeting and are posted at the Board's offices and on the Board's Home Page (see Section 2175.310).
- b) The Board does not generally place any item on the agenda that has been filed less than two full days before a scheduled Board meeting.
- c) The Board may also issue an addendum to the agenda and, as provided for in Section 2.02(a) of the Open Meetings Act (5 ILCS 120/2.02(a)), may consider items not specifically set forth on the agenda.

#### **Section 2175.135     Minutes of Board Meetings**

The Board will keep minutes of all meetings. Minutes of all meetings subject to the Open Meetings Act shall be available to the public at the Clerk's Office or on the Board's Home Page (see Section 2175.302) within seven days of approval of the minutes. The minutes will include the time, date, and place of the meeting, the items decided and the numeric decision vote.

**Section 2175.140 Accessibility of Board Meetings and Hearings**

In compliance with the Americans with Disabilities Act and other applicable federal and state laws, the Board will make every effort to hold public meetings and hearings in facilities which are accessible to people with disabilities. Persons requiring such services should contact Dorothy Gunn, Clerk of the Board, at 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601 or at 312/814-3620 within five (5) days prior to a Board meeting or hearing.

**SUBPART B: FEES AND FORMS OF PAYMENT****Section 2175.200 Filing Fees**

- a) A person filing an action for which a filing fee is prescribed by the Illinois Environmental Protection Act shall pay that fee at the time the petition is presented to the Clerk for filing.
- b) The following initial filings require filing fees and will only be considered filed when accompanied by the appropriate fee, which may be paid in the form of government voucher, money order or check made payable to the Illinois Pollution Control Board, but which may not 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 final appeal determination pursuant to Section 40 of the Illinois Environmental Protection Act (415 ILCS 5/40), \$75.
  - 4) Petition to Contest Local Government Pollution Control Facility Siting Decision, pursuant to Section 40.1 of the Illinois Environmental Protection Act (415 ILCS 5/40.1), \$75; and,
  - 5) Petition for Adjusted Standard, pursuant to Section 28.1 of the Illinois Environmental Protection Act (415 ILCS 5/28.1), \$75.
- c) The Clerk will refuse to file any petition which is not accompanied by the required fee. The fee must be paid in the form specified in Section 2175.215 of these rules.

**Section 2175.205 Photocopying Fees**

All files, records, and data may be copied at Board offices in Chicago upon payment of reasonable reproduction fees (415 ILCS 5/7) as follows:



- a) A copy of a single opinion and order will be furnished on request without cost, irrespective of length, with the dissenting and/or concurring opinion(s). Copies of multiple opinions and orders cost 75 cents per page.
- b) Hearing Transcripts cost 75 cents per page.
- c) All other documents cost 75 cents per page.
- d) State agencies are, upon request, provided copies of opinions and orders and transcripts free of charge.

**Section 2175.210 Photocopying Procedures**

- a) All files, records, and data may be copied at Board offices in Chicago upon payment. (415 ILCS 5/7.)
- b) The Board will contract for any copying that would impose a substantial administrative burden on the Board. The person requesting such copies will be charged the reproduction charges incurred by the Board.
- c) Requests for copies will be honored in as timely a manner as possible. Requests for copies by mail will be honored. However, the Board reserves the right to charge the requesting party for the mailing costs incurred by the Board.

**Section 2175.215 Forms Of Payment**

- a) Any amount over \$10 must be paid by check or money order made payable to the Illinois Pollution Control Board. A state agency may use an Office of the Comptroller voucher to remit payment for filing fees and photocopy charges.
- b) In the event that a check for filing fees, paid pursuant to Section 7.5 of the Illinois Environmental Protection Act is not honored by petitioner's bank, the Fiscal Officer may require that payment be made within 48 hours by certified check or money order. Failure to make payment may subject the parties to sanctions, including penalties as provided for in the Board's procedural rules. (See 35 Ill. Adm. Code 101-120.)
- c) In the event that a check for photocopying charges is not honored by the remitter's bank, the Fiscal Officer may require that payment be made within 48 hours by certified check or money order. The Fiscal Officer may also require that photocopy fees be paid only by certified check or money orders prior to the conveyance of material for any firm or

individual who remits to the Board a check which subsequently is not honored by the remitter's bank.

**Section 2175.220 Other Fees/Costs**

The Board may, in its procedural rules (see 35 Ill. Adm. Code 101-120), provide for the payment of certain types of its costs where appropriate.

**SUBPART C: PUBLIC INFORMATION**

**Section 2175.300 Files Open to Reasonable Inspection**

- a) The Clerk will maintain files containing all information submitted to or produced by the Board or any of its members relating to matters within the Board's jurisdiction. Without limiting the foregoing, the files will include: pleadings, motions, notices, minutes, transcripts, exhibits, orders and opinions, proposed and adopted regulations, the *Environmental Register* and other Board releases, business records, and informal complaints.
- b) Pursuant to the Illinois State Records Act, the Clerk shall maintain for five (5) years, all documents submitted by the parties in rulemaking and adjudicatory cases (5 ILCS 160/1). After five (5) years, the documents shall be microfilmed and the microfilm shall be maintained by the Board. Documents microfilmed for the Board's record are subject to destruction unless the parties request that the documents be returned at the closure of the five-(5) year period. Over-sized exhibits which are not capable of being microfilmed will be returned to the parties at their request or destroyed.
- c) All files, records, and data, other than personnel files, are maintained by the Clerk's Office and are available from the Clerk of the Board, in the Board's Chicago office only. Such types of material include but are not limited to:
  - 1) Documents filed within a case including, but not limited to appearances, pleadings, exhibits, motions, transcripts of hearings, and public comments;
  - 2) Opinions & Orders of the Board;
  - 3) Copies of documents published by the Board for use by the general public, such as the *Environmental Register*.
- d) The files, records, and data of the Board are open to reasonable public inspection and copying in the Board's Chicago office, except for

information exempted pursuant to Section 7 of the Freedom of Information Act (5 ILCS 140/7), including but not limited to, information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communication between the Board and/or staff; draft orders and opinions and orders; and technical unit memoranda.

- e) The Board has adopted procedural rules at 35 Ill. Adm. Code 120 to establish the procedures to be taken by any person to obtain trade secret protection as described in Section 7 of the Illinois Environmental Protection Act (415 ILCS 5/7). (See 35 Ill. Adm. Code 101-120.)

### **Section 2175.305 Publications**

- a) *Environmental Register*
  - 1) The Board will publish an *Environmental Register* containing reports of the Board's activities and notices of meetings and hearings. Single copies are provided free of charge at the Board's Chicago and Springfield Offices.
  - 2) A yearly hard copy subscription may be purchased, at a cost of \$20 to defer reproduction and distribution charges, by contacting the Board's Chicago office. Government entities and not-for-profit organizations properly categorized as such under the Internal Revenue Code may request a free hard copy subscription to the *Environmental Register*. Proof of organizational status is required.
  - 3) The *Environmental Register* is provided free of charge on the Board's Home Page as described at Section 2175.310.
- b) **Opinions, Orders, Regulations**
  - 1) Copies of opinions and orders of the Board are available upon request as provided at Section 2175.205(a).
  - 2) The Board's opinions and orders are also available through various commercial services including LEXIS and Westlaw.
  - 3) The Board's regulations are published in the *Illinois Register* (see Section 2175.305(d)) and by various commercial services. They are also published periodically by the Agency by subtitle and are available as quantities permit free of charge from the Board's Chicago office.

## c) Annual Report

- 1) The Board publishes an Annual Report of the Chairman. The report includes information regarding the Board's membership, regulatory and case activities for the fiscal year, a summary of legislative activity affecting the Board, a summary of Board decisions reviewed by the courts during the fiscal year, and information on administrative activities.
- 2) When completed and printed, the Annual Report is available free of charge in reasonable quantities from the Board's Chicago and Springfield Offices.

d) *Illinois Register*

- 1) Required Filings The *Illinois Register* is a publication containing all state regulations and is published by and available from the Office of the Secretary of State and various commercial services. The Board is required to publish the following information in the *Illinois Register*:
  - A. Notice of all proposed and adopted regulations as required by Section 5-40 of the APA. The notices describe the rules, contain contact names for questions and provide directions for participation at public hearings and submission of written comments.
  - B. Notice of all emergency and preemptory regulations as required by Sections 5-45 and 5-46 of the Illinois Administrative Procedure Act (5 ILCS 100/5-45 and 5/46). The notices describe the rules and contain contact names for questions.
  - C. Results of Board determinations in adjusted standards proceedings pursuant to Section 28.1 of the Illinois Environmental Protection Act (415 ILCS 5/28.1). The Board publishes this list at the close of each fiscal year, in July or August depending upon the *Illinois Register* publication schedule.
  - D. A regulatory agenda which sets forth rules which the Board may be considering during a six-month periods. This agenda is to list rules in advance of publication of the notice described in subsection (d)(i) of this section. The regulatory agenda appears in January/February or

July/August of each year, depending upon the *Illinois Register* publication schedule. The agenda describes the anticipated rules, contains contact names for questions, and provides directions for public participation.

- 2) Discretionary filings, Section 7.3 of the Illinois Environmental Protection Act (415 ILCS 5/7.3) and Section 5-70(b) of the Illinois Administrative Procedure Act (5 ILCS 100/5-15) allow the Board to publish other documents concerning its activities. These include, but are not limited to, notices of public hearings, and notices of proposed and adopted identical in substance rules as discussed in Section 7.2 of the Illinois Environmental Protection Act (415 ILCS 5/7.2).

**Section 2175.310 Board's Home Page on World Wide Web Internet**

- a) The Board maintains a Home Page on the World Wide Web of the Internet. The information on the Home Page is continuously updated. The Board's Home Page includes, but is not limited to, the following information:

- 1) Board Members' Profiles
- 2) *Environmental Register*
- 3) Board Meeting Dates and Agendas
- 4) Procedural Rules
- 5) Administrative Rules
- 6) Annual Reports
- 7) Summary of Pending Rulemakings
- 8) Summary of Recent Legislation Affecting the Board

- b) The information on the Board's Home Page can be downloaded free of Board charges. The Home Page can be accessed through the Internet using any commercially available on-line service. The Home Page can be accessed directly via the following electronic address:

<http://www.state.il.us/pcb/pcbhp.htm>

- c) The Board's Home Page can also be accessed through State of Illinois Home Page (under the "Agencies" option) at the following electronic address:

<http://www.state.il.us/>

**Section 2175.315 Documents Prepared by the Clerk's Office**

Various documents are routinely prepared by and for the Clerk's office for internal use by the Board and are also available for inspection and copying. These include, but are not limited to, docket sheets, listings of cases by type and tracking sheets. Copies will be available within five (5) working days of a request at a cost of \$5.00 per page.

**Section 2175.320 Requests for Information**

- a) Informal requests for information may be made to any Board office. Informal requests will be filled promptly upon receipt of the request. However where a request for information maintained by the Clerk's Office is made at other than the Chicago office, some delay may be necessary to allow for the Clerk's office to provide the material. Inspection of documents can only take place at the Clerk's Office.
- b) A Formal request for information pursuant to the Freedom of Information Act (FOIA) shall state that it is a formal request pursuant to FOIA. The formal request shall be addressed to the Clerk of the Board, who shall date stamp the request upon receipt. All formal requests will be processed pursuant to the time frame requirements set forth in FOIA. The FOIA requires an initial response to the request be made within seven (7) working days of receipt of the formal request, subject to extension.
  - 1) Any person whose formal request is denied by the Clerk may appeal such denial by filing a written notice of appeal addressed to the Chairman of the Board. The notice of appeal shall include a copy of the formal request, the Clerk's denial letter, and a statement of why the person believes the denial was improper. The Chairman will determine in writing whether the Clerk's denial was proper or improper, and will notify the person within seven (7) working days after receipt of the notice.
  - 2) If the Chairman affirms the denial or fails to take action within seven (7) working days, the person may file suit in circuit court for injunctive or declaratory relief pursuant to Section 140/11 of the FOIA (5 ILCS 140/11).

**SUBPART D: ACCESS TO BOARD RULES**

**Section 2175.400 Access to Board Rules in the Illinois Administrative Code**

- a) All Board rules have been codified under Title 35 of the Illinois Administrative Code since October, 1983. Each general area of regulation has been assigned a particular Subtitle as set out below:

<u>SUBTITLE</u>	<u>SUBJECT MATTER</u>
A	Procedural Rules
B	Air Rules
C	Water Rules
D	Mine Rules
E	Livestock Waste
F	Public Water Supplies
G	Waste Disposal
H	Noise Rules
I	Nuclear Radiation
M	Biological Materials

- b) The Subtitles listed in Subsection (a), above, also include some rules of the Environmental Protection Agency and the Department of Natural Resources. The Board's rules appear at Chapter I of each of the Subtitles.

**SUBPART E: RULEMAKING**

**Section 2175.500 Proposals**

- a) Rulemaking procedures are set out in 35 Ill. Adm. Code 102.
- b) Proposals for the adoption, amendment or repeal of a substantive regulation may be made by the Environmental Protection Agency (Agency), the Illinois Department of Natural Resources (Department), the Board or any member of the public. Proposals made by the Agency, Department or Board are automatically scheduled for hearings.
- c) In the case of a proposal made by a member of the public, the proposal must be accompanied by a petition signed by 200 persons, specifying home addresses, unless that requirement is waived by the Board. When the proposal is accompanied by a petition, the matter is placed on the agenda for Board decision. Generally, the Board will authorize a hearing unless it determines that the proposal is plainly devoid of merit, or deals with a subject on which a hearing has been held within the preceding six months, or is not accompanied by an adequate statement of supporting

reasons. The proponent will be notified of an adverse decision and of the reasons for such a decision.

**Section 2175.505 Initial Hearing**

- a) All hearings on regulatory proposals are conducted according to 35 Ill. Adm. Code 102. These hearings are open to the public, and at such hearings, the public is permitted to examine the record, examine witnesses (except as limited by the Hearing Officer), testify and submit evidence.
- b) Unless otherwise directed by the Hearing Officer or the Board, the record remains open for public comment for a minimum of 14 days following the close of the hearing. Any person may make a written submission on the proposal within this period or during the first notice period pursuant to the Administrative Procedure Act (APA) (5 ILCS 100/5-5 et seq.).

**Section 2175.510 First Notice**

- a) The Board may adopt a proposed rule for first notice pursuant to Section 40 of the APA at any time after a regulatory proceeding is initiated (5 ILCS 100/5-40). Generally the Board does not proceed to first notice until merit and economic hearings have concluded and comments have been received unless there is a need to proceed more expeditiously.
- b) The public has a right to comment on the proposed rules during the first notice period and retains all other rights set out in Section 40 of the APA (5 ILCS 100/5-40).
- c) Pursuant to the Section 28 of the Illinois Environmental Protection Act, the Board may, in general, revise the proposed regulation before adoption without conducting further hearings (415 ILCS 5/28).

**Section 2175.515 Second Notice**

- a) Upon termination of the first notice period, the Board may adopt the proposal for second notice pursuant to Section 40 of the APA (5 ILCS 100/5-40), for review by the Joint Committee on Administrative Rules (JCAR).
- b) After the second notice period has commenced, the proposed rules will only be amended in response to JCAR recommendations.



**Section 2175.520      Adopted Rules**

- a) At the conclusion of the second notice period the Board may adopt a final opinion and order adopting the new rules and setting forth the reasons for adoption.
- b) The adopted rules are then filed with the Secretary of State and are published in the *Illinois Register* along with supporting information.

**Section 2175.525      Emergency Rules**

Pursuant to the Illinois Emergency Services and Disaster Act of 1975 (65 ILCS 5/1), on proclamation by the Governor, that a disaster emergency exists, or when the Board finds that a severe public health emergency is involved in relation to any proposed regulation, then such regulation shall take effect without delay and the Board may proceed with the required economic impact hearings while the regulation continues in effect. When such an emergency exists the customary 45 day notice provision is waived; however, notice and text of the emergency rule must be published in the *Illinois Register*. An emergency rule is effective for a maximum period of 150 days pursuant to Section 45 of the APA (415 ILCS 5/45), but it may be adopted as a permanent rule by following usual rulemaking procedures.

**Section 2175.530      Peremptory Rules**

When the Board is required by federal law, federal rules and regulations or by a court order to adopt a certain rule, that rule need not be published in the *Illinois Register* until it has been adopted pursuant to Section 40 of the APA (5 ILCS 100/5-70.) However, notice and text of the adopted rule must be published in the *Illinois Register* pursuant to Section 70 of the APA. (5 ILCS 100/5-70.)

**Section 2175.535      Adoption of Federal Regulations**

The Board adopts regulations in the following programs pursuant to Section 7.2 of the Illinois Environmental Protection Act (415 ILCS 5/7.2) that are identical in substance to federal regulations and which are exempt from Sections 5-35 and 5-40 of the Administrative Procedure Act (5 ILCS 100/5-35 and 5-40):

- a) Exemptions from the definition of volatile organic material: Section 9.1(e) of the Illinois Environmental Protection Act (415 ILCS 5/9.1(e),
- b) Underground injection control (UIC): Section 13(c) of the Illinois Environmental Protection Act (415 ILCS 5/13(c),

- c) Wastewater pretreatment: Section 13.3 of the Illinois Environmental Protection Act (415 ILCS 5/13.3),
- d) Safe Drinking Water Act (SDWA): Section 17.5 of the Illinois Environmental Protection Act (415 ILCS 5/17.5),
- e) Resource Conservation and Recovery Act Subtitle C hazardous waste (RCRA Subtitle C): Section 22.4(a) of the Illinois Environmental Protection Act (415 ILCS 5/22.4(a)),
- f) Resource Conservation and Recovery Illinois Environmental Protection Act Subtitle I underground storage tank (UST): Section 22.4(d) of the Illinois Environmental Protection Act (415 ILCS 22.4(d)),
- g) Resource Conservation and Recovery Act Subtitle D municipal solid waste landfills (RCRA Subtitle D): Section 22.40(a) of the Illinois Environmental Protection Act (415 ILCS 5/22.40(a)).

#### **SUBPART F: ADJUDICATORY PROCEEDINGS**

##### **Section 2175.600     Adjudicatory Proceedings**

- a) The Board is authorized to hear the following types of adjudicatory cases. See 35 Ill. Adm. Code 101-120 for procedural rules governing the processing of these cases.
  - 1) Enforcement Action. The Illinois Attorney General or any person may initiate an enforcement action by the filing of a complaint pursuant to Section 31 of the Illinois Environmental Protection Act (415 ILCS 5/31).
  - 2) Permit Appeal. Any person who has been denied a permit or who has been issued a permit by the Illinois Environmental Protection Agency pursuant to Section 39 of the Illinois Environmental Protection Act (415 ILCS 5/39) with one or more conditions to which that person objects may file a petition with the Board for a review of the Agency's action.
  - 3) Pollution Control Facility Siting Review. An applicant for local siting approval of a pollution control facility who has been denied such approval by a county board or the governing body of a municipality or third party who participated in the public hearing conducted by a county board or the governing body of a municipality may contest that decision by filing a petition for

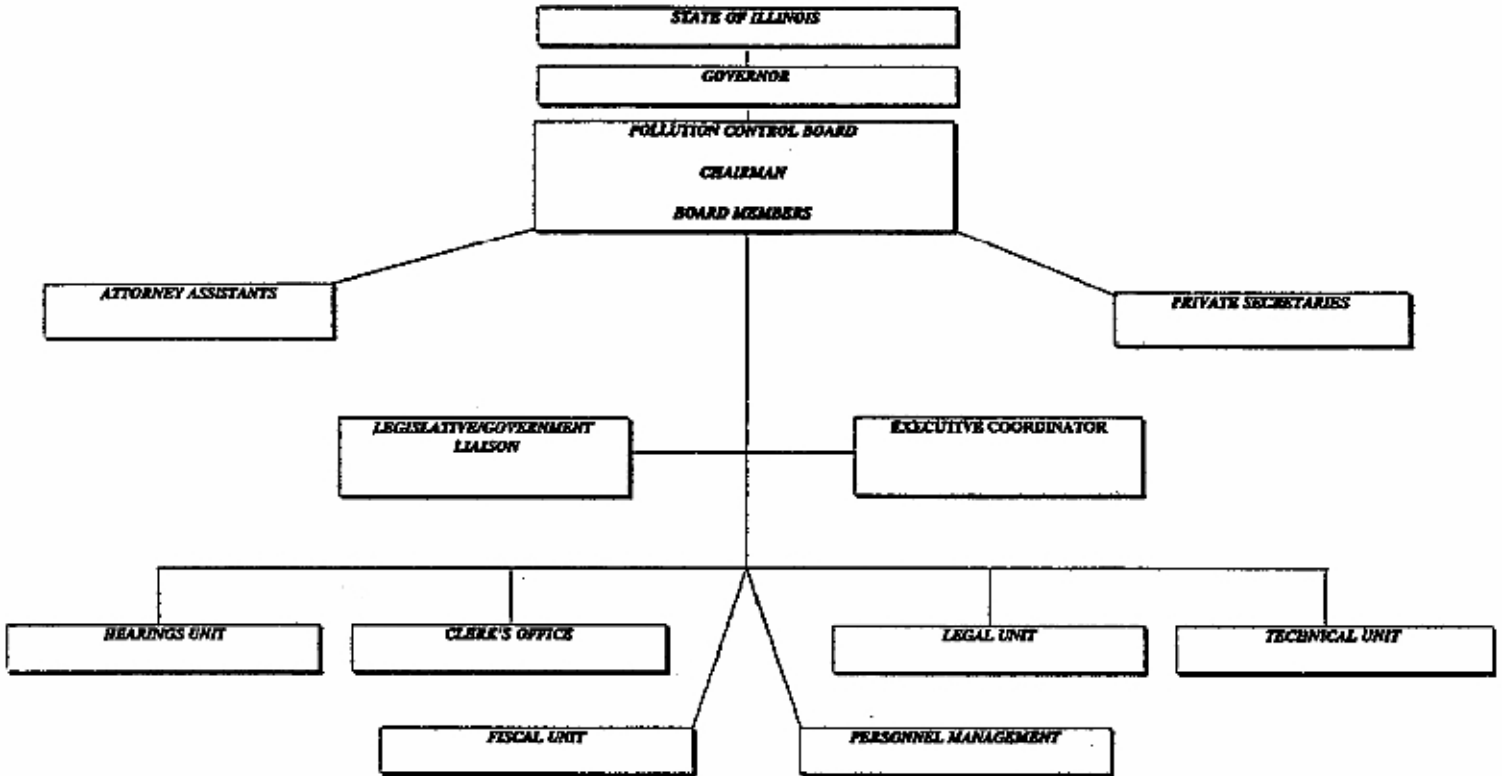
hearing pursuant to Section 40.1(a) of the Illinois Environmental Protection Act (415 ILCS 5/40.1(a)).

- 4) Variations/Adjusted Standards. Any person adversely affected by a Board rule or order may file a petition for a variance or adjusted standard pursuant to Section 37 of the Illinois Environmental Protection Act (415 ILCS 5/37).
- 5) Trade Secret Determination. Any person who is adversely affected by a trade secret determination made by the Illinois Environmental Protection Agency or the Illinois Department of Natural Resources may contest that determination to the Board.
- 6) Appeal of OSFM Denial of Eligibility to UST Program. Owners or operators of underground storage tanks who have been denied eligibility to access the underground storage tank reimbursement fund by the Office of State Fire Marshal may petition for review pursuant to Section 57.9(c) of the Illinois Environmental Protection Act (415 ILCS 5/57.9(c)).
- 7) Appeal of Agency Decisions Regarding UST Program. Owners or operators of underground storage tanks who have been denied reimbursement by the Agency may petition for review pursuant to Section 40 of the Illinois Environmental Protection Act (415 ILCS 5/40).
- 8) Pollution Control Facility Certifications. Application for a pollution control facility certificate demonstrating that a particular facility is entitled to tax treatment as a pollution control facility as defined in Section 11-10 of the Property Tax Code may be filed with the Board pursuant to Sections 11-25 and 11-30 of that Code (35 ILCS 200/11-25 and 11-30).
- 9) Administrative Citations. The Agency or a unit of local government delegated authority by the Agency, may issue administrative citations for violations of the Illinois Environmental Protection Act, Section 21, and these citations shall be enforceable by filing copies with the Board pursuant to Section 31.1 of the Illinois Environmental Protection Act. (415 ILCS 5/31.1) The respondent named in the administrative citation may file a petition for review with the Board.
- 10) Water Well Setback Exceptions. A water well owner may petition the Board for an exception from the water well setback requirements of the Illinois Environmental Protection Act by filing

a petition with the Board and the Agency pursuant to Section 14.2 of the Illinois Environmental Protection Act. (415 ILCS 5/14.2.)

- 11) Other. Any other proceedings which are authorized by the Illinois Environmental Protection Act or procedural rules may be brought before the Board pursuant to statutory authority and any Board regulations adopted thereunder.

**APPENDIX A**  
**ORGANIZATIONAL CHART**



IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 18<sup>th</sup> day of

January 1996, by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board