

ILLINOIS POLLUTION CONTROL BOARD
September 23, 1993

IN THE MATTER OF:)
)
AMENDMENTS TO THE RULES)
FOR CLEAN AIR ACT PERMIT) R93-24
APPEALS AND HEARINGS) (Rulemaking)
PURSUANT TO SPECIFIC RULES)
35 ILL. ADM. CODE PARTS)
105 AND 106.)

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by G. T. Girard):

On September 14, 1993, the Illinois Environmental Protection Agency (Agency) filed this proposal for rulemaking. The proposal is intended to address permit appeals under the Clean Air Act and procedures for review of emissions limitations for a proposed case-by-case MACT determination pursuant to Section 112 of the Clean Air Act. The proposal represents one part of Illinois' submittal of a complete state implementation plan (SIP). Pursuant to Section 502(d) of the Clean Air Act, as amended in 1990, Illinois is to adopt and submit its permit program by November 15, 1993.

This proposal was filed pursuant to Section 28.5 of the Act and is accepted for hearing. (P.A. 87-1213, effective September 26, 1992; 415 ILCS 5/28.5.) Pursuant to the provisions of that section the Board is required to proceed within set time-frames toward the adoption of this regulation. The Board has no discretion to adjust these time-frames under any circumstances. Therefore, the Board acts today to send this proposal to first notice under the Illinois Administrative Procedure Act without commenting on the merits of the proposal. The following schedule¹ indicates the deadlines by which the Board must act under the provisions of Section 28.5:

First Notice	on or before September 28, 1993
First Hearing	on or before November 8, 1993
Second Hearing	on or before December 8, 1993
Third Hearing	on or before December 22, 1993
Second Notice	on or before January 22 or February 11, 1994
Final Filing	21 days after receipt of JCAR certification of no objection

¹ This schedule includes a second and third hearing which may be cancelled if unnecessary. Hearings will be continued from day to day as necessary to complete the subject matter established by statute for each set of hearings.

The Agency has filed a motion asking that the Board waive several requirements which govern the filing of a regulatory proposal. Specifically, the Agency asks that it be allowed to submit the original and five complete copies of the proposal and four partial copies of the proposal, rather than the original and nine complete copies to the Board. Further, the Agency asks that it not be required to supply the Attorney General or the Department of Energy and Natural Resources with a complete copy of the proposal. Lastly, the Agency asks that it not be required to submit documents which are readily available to the Board on which the Agency will rely at hearing. The Board grants the Agency's motion.

In the interest of administrative economy, the Board directs the Hearing Officer to verify that the persons on the Notice List in this proceeding wish to continue to receive mailings in this proceeding.

ORDER

The Board directs the Clerk to cause the filing of the following proposal for First Notice in the Illinois Register:

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

PART 105
PERMITS

Section	
105.101	Setting Standards
105.102	Permit Appeals
105.103	Permit Review
105.104	Cost of Review

Appendix: Old Rule Numbers Referenced

AUTHORITY: Authorized by Section 26 of the Environmental Protection Act (Ill. Rev. Stat. ~~1979~~1991, ch. 111½, par. 1026) [415 ILCS 5/26] and implementing Sections 5, 39, 39.5, 40, and 40.1 and 40.2 of the Illinois Environmental Protection Act (Ill. Rev. Stat. ~~1979~~1991, ch. 111½, pars. 1005, 1039, 1040 and 1040.1, as amended by P.A. ~~82-682~~, P.A. 87-1213, effective September 26, 1992, and P.A. 88-464, effective August 20, 1993) [415 ILCS 5/5, 39, 39.5, 40, 40.1 and 40.2].

SOURCE: Filed with Secretary of State January 1, 1978; amended 4 Ill. Reg. 52, page 41, effective December 11, 1980; codified 6 Ill. Reg. 8357; amended in R93-24 at ___ Ill. Reg. _____, effective _____.

NOTE: Capitalization denotes statutory language.

Section 105.102 Permit Appeals

- a) Permit Appeals ~~Other~~ than NPDES (National Pollutant Discharge Elimination System) and CAAPP (Clean Air Act Permit Program) ~~Permit Appeals~~:
- 1) If the Agency denies the permit, it shall advise the permit applicant in writing in accordance with the requirements of Section 39(a) of the Environmental Protection Act (Act).
 - 2) In the case of a denial of a permit or issuance by the Agency of a permit with one or more conditions or limitations to which an applicant objects, an applicant who seeks to appeal the Agency decision shall file a petition for a hearing before the Board within 35 days of the date of mailing of the Agency's final decision. The petition shall include:
 - A) Citation of the particular standards under which a permit is sought;
 - B) A complete and precise description of the facility, equipment, vehicle, vessel, or aircraft for which a permit is sought, including its location;
 - C) A complete description of contaminant emissions and of proposed methods for their control; and
 - D) Such other materials as may be necessary to demonstrate that the activity for which the permit is sought will not cause a violation of the Act or the regulations.
 - 3) The method of filing service shall be in accordance with Sections 103.122 and 103.123.
 - 4) The Agency shall appear as respondent in the hearing and shall, within 14 days, upon notice of the petition, file with the Board the entire Agency record of the permit application, including:
 - A) The application;
 - B) Correspondence with the applicant, and
 - C) The denial.

- 5) The Clerk shall give notice of the petition and hearing in accordance with Part 103.
 - 6) The proceedings shall be in accordance with the rules set forth in Part 103.
- b) NPDES Permit Appeals:
- 1) If the Agency denies an NPDES Permit, it shall advise the permit applicant in writing in accordance with the requirements of Section 39(a) of the Act.
 - 2) In the case of the denial of an NPDES Permit or the issuance by the Agency of an NPDES Permit with one or more conditions or limitations to which the applicant objects, the applicant may contest the decision of the Agency by filing with the Clerk of the Board a petition for review of the Agency's action in accordance with this Section.
 - 3) Any person other than the applicant who has been a party to or participant at an Agency hearing with respect to the issuance or denial of an NPDES Permit by the Agency, or any person who requested such a hearing in accordance with applicable rules, may contest the final decision of the Agency by filing with the Clerk a petition for review of the Agency's action.
 - 4) The petition shall be filed and notice issued within 30 days from the date the Agency's final decision has been mailed to the applicant and all other persons who have right of appeal. The method of filing and service shall be in accordance with Sections 103.122 and 103.123.
 - 5) The Agency shall appear as respondent and shall file an answer consisting of the hearing file of any hearing which may have been held before the Agency, including any exhibits, and the following documents: NPDES Permit application, NPDES Permit denial or issuance letter, and all correspondence with the applicant concerning the application
 - 6) All parties other than the petitioner who were parties to or participants at any Agency hearing shall be made respondents.
 - 7) The petition shall contain a statement of the decision or part thereof to be reviewed. The Board upon motion of any respondent shall, or upon its own motion may, require of the petitioner a specification of the errors upon which the petitioner relies in his petition.

- 8) The hearings before the Board shall extend to all questions of law and fact presented by the entire record. The Agency's findings and conclusions on questions of fact shall be prima facie true and correct. If the Agency's conclusions of fact are disputed by the party or if issues of fact are raised in the review proceeding, the Board may make its own determination of fact based on the record. If any party desires to introduce evidence before the Board with respect to any disputed issue of fact, the Board shall conduct a de novo hearing and receive evidence with respect to such issue of fact.
- 9) This proceeding shall be in accordance with Part 103.
- 10) The order of the Board entered pursuant to hearing may affirm or reverse the decision of the Agency, in whole or in part, may remand the proceeding to the Agency for the taking of further evidence, or may direct the issuance of the permit in such form as it deems just, based upon the law and the evidence.

c) CAAPP Permit Appeals:

- 1) The definitions of 35 Ill. Adm. Code 101.101 and Section 39.5 of the Environmental Protection Act (P.A. 87-1213, effective September 26, 1992) [415 ILCS 5/39.5] ("Act") shall apply to this subsection.
- 2) If the Agency denies a CAAPP permit, permit modification or permit renewal, it shall provide to USEPA, the permit applicant and, upon request, affected States, any person who participated in the public comment process and any other person who could obtain judicial review under Sections 40.2 and 41 of the Act a copy of each notification of denial pertaining to the permit applicant.
- 3) In the case of a denial of a CAAPP permit, including a permit revision or permit renewal, or a determination of incompleteness by the Agency regarding a submitted CAAPP application, or the issuance by the Agency of a CAAPP permit with one or more conditions or limitations, or the failure of the Agency to act on an application for a CAAPP permit, permit renewal, administrative permit amendment or significant permit modification within the time frames specified in Section 39.5(5)(j) or Section 39.5(13) of the Act, as applicable, or the failure of the Agency to take final action within 90 days of receipt of an application requesting minor permit modification procedures (or 180 days for modifications subject to group processing

requirements) pursuant to Section 39.5(14) of the Act, to which the applicant, any person who participated in the public comment process pursuant to Section 39.5(8) of the Act, or any other person who could obtain judicial review pursuant to Section 41(a) of the Act objects, such persons may contest the decision of the Agency by filing with the Clerk of the Board a petition for review of the Agency's action in accordance with this Section.

- 4) For purposes of this subsection, a person who participated in the public comment process is someone who, during the public comment period, either commented on the draft permit, submitted written comments, or requested notice of the final action on a specific permit application.
- 5) The petition filed pursuant to subsection (c)(3) above shall be filed within 35 days of the Agency's final permit action. Notwithstanding the above, if the petition is based solely on grounds arising after the 35-day period expires, the petition may be filed within 35 days after the new grounds for review arise. If the applicant is challenging the Agency's failure to timely take final action pursuant to Section 39.5 of the Act, the petition shall be filed before the Agency takes such final action. Under no circumstances, however, may a petition challenging the final permit action on a Phase II acid rain permit be filed more than 90 days subsequent to such final permit action.
- 6) The petition shall include:
 - A) A concise description of the CAAPP source for which the permit is sought;
 - B) A statement of the Agency's decision or part thereof to be reviewed;
 - C) A justification as to why the Agency's decision or part thereof was in error; and
 - D) Such other materials upon which the petitioner relies in its petition.
- 7) The petition may include a request to stay the effectiveness of a denial of the CAAPP permit until final action is taken by the Board pursuant to Section 40.2 of the Act.
- 8) The Agency shall appear as respondent at the hearing and shall file, within 30 days after service of the

petition, an answer consisting of the entire Agency record of the CAAPP application including the CAAPP permit application, the hearing record, the CAAPP permit denial or issuance letter, and correspondence with the applicant concerning the CAAPP permit application.

- 9) The Clerk shall give notice of the petition and hearing in accordance with Part 103.
- 10) The proceeding shall be conducted in accordance with Part 103.
- 11) THE AGENCY SHALL NOTIFY USEPA, IN WRITING, OF ANY PETITION BROUGHT UNDER THIS SUBSECTION INVOLVING A PROVISION OR DENIAL OF A PHASE II ACID RAIN PERMIT WITHIN 30 DAYS OF THE FILING OF THE PETITION. USEPA MAY INTERVENE AS A MATTER OF RIGHT IN ANY SUCH HEARING. THE AGENCY SHALL NOTIFY USEPA, IN WRITING, OF ANY DETERMINATION OR ORDER IN A HEARING BROUGHT UNDER THIS SUBSECTION THAT INTERPRETS, VOIDS, OR OTHERWISE RELATES TO ANY PORTION OF A PHASE II ACID RAIN PERMIT. (Section 40.2(e) of the Act as amended by P.A. 88-464, effective August 20, 1993.)

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

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

PART 106
 HEARINGS PURSUANT TO SPECIFIC RULES

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 106.102 Requirements for Petition
 106.103 Parties
 106.104 Recommendation
 106.105 Notice and Hearing
 106.106 Transcripts
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SUBPART B: ARTIFICIAL COOLING LAKE
 DEMONSTRATIONS

Section
 106.201 Petition
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106.203 Transcripts
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SUBPART C: SULFUR DIOXIDE DEMONSTRATIONS

Section
 106.301 Petition
 106.302 Requirements for Petition
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 106.306 Transcripts

SUBPART D: RCRA ADJUSTED STANDARD
 PROCEDURES

Section
 106.401 Petition (Repealed)
 106.402 Notice of Petition (Repealed)
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 106.404 Response (Repealed)
 106.405 Public Comment (Repealed)
 106.406 Public Hearings (Repealed)
 106.407 Decision (Repealed)
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 106.410 Scope of Applicability
 106.411 Joint or Single Petition
 106.412 Request to Agency to Join as Co-Petitioner
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SUBPART E: AIR ADJUSTED STANDARD PROCEDURES

Section
 106.501 Scope and Applicability
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SUBPART G: ADJUSTED STANDARDS

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

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106.911 Definitions
106.912 Petition
106.913 Response and Reply
106.914 Notice and Hearing
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SUBPART I: MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY DETERMINATIONS

Section
106.920 Applicability

<u>106.921</u>	<u>Definitions</u>
<u>106.922</u>	<u>Petition</u>
<u>106.923</u>	<u>Response and Reply</u>
<u>106.924</u>	<u>Notice and Hearing</u>
<u>106.925</u>	<u>Opinion and Order</u>

Appendix A: Old Rule Numbers Referenced

AUTHORITY: Implementing Sections 5, 14.2(c), 22.4, 27, 28, and 28.1, 28.5 and 39.5 and authorized by Sections 26 and 39.5 of the Environmental Protection Act (Ill. Rev. Stat. ~~1987~~1991, ch. 111½, pars. 1005, 1014.2(c), 1022.4, 1027, 1028, 1028.1, and 1026), (P.A. 87-1213, effective September 26, 1992, and P.A. 88-464, effective August 28, 1993) [415 ILCS 5/5, 14.2(c), 22.4, 27, 28, 28.1, 28.5, 26 and 39.5].

SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, page 186, effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg. 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4, 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in R93-____ at ____ Ill. Reg. _____, effective _____.

NOTE: Capitalization denotes statutory language.

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

Section 106.910 Applicability

The provisions of this Subpart shall apply to:

- a) Any revocation proceeding initiated by the Agency when it determines that there are grounds to revoke and reissue a CAAPP permit for cause, pursuant to Section 39.5(15)(b) of the Environmental Protection Act (P.A. 87-1213, effective September 26, 1992) [415 ILCS 5/39.5(15)(b)] ("Act"); and
- b) Any reopening proceeding initiated by USEPA when USEPA determines that there are grounds to terminate or revoke and reissue a CAAPP permit for cause, pursuant to Section 39.5(16) of the Act.

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

Section 106.911 Definitions

The definitions of 35 Ill. Adm. Code 101.101 and Section 39.5 of the Act shall apply to this Subpart.

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

Section 106.912 Petition

a) Agency Revocation Proceeding

- 1) A revocation proceeding shall be commenced by the Agency by its serving a petition for revocation upon the respondent and filing 10 copies with the Clerk of the Board.
- 2) The petition shall include the permit record and the grounds for the revocation of the CAAPP permit.

b) USEPA Reopening Proceeding

- 1) If the Agency receives from USEPA a notice to terminate or revoke and reissue a CAAPP permit for cause, the Agency shall, within 30 days of receipt of USEPA's notice, serve a petition upon the respondent and file 10 copies with the Clerk of the Board.
- 2) The petition shall include USEPA's objection, the permit record, the Agency's proposed determination and the justification for the proposed determination.

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

Section 106.913 Response and Reply

- a) The respondent may file a response to the Agency's petition within 21 days after service of the petition.
- b) The Agency may file a reply within 21 days after filing of any response.

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

Section 106.914 Notice and Hearing

- a) The Clerk shall give notice of the petition and hearing in accordance with Part 103. The proceeding shall be conducted in accordance with Part 103.

- b) In a hearing, the burden of proof shall be on the Agency.

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

Section 106.915 Opinion and Order

a) Agency Revocation Proceeding

- 1) The Board shall issue a written opinion and order within 120 days after the filing of the petition that sets forth the Board's decision and supporting rationale.
- 2) If the Board determines that the permit should be revoked and reissued, its final order shall direct the Agency to revoke and reissue the CAAPP permit consistent with Section 39.5 of the Act.

b) USEPA Reopening Proceeding

- 1) AFTER DUE CONSIDERATION OF THE WRITTEN AND ORAL STATEMENTS, THE TESTIMONY AND ARGUMENTS THAT SHALL BE SUBMITTED AT HEARING, THE BOARD SHALL ISSUE AND ENTER AN INTERIM ORDER FOR THE PROPOSED DETERMINATION within 120 days after the filing of the petition, WHICH SHALL SET FORTH ALL CHANGES, IF ANY, REQUIRED IN THE AGENCY'S PROPOSED DETERMINATION. THE INTERIM ORDER SHALL COMPLY WITH THE REQUIREMENTS FOR FINAL ORDERS AS SET FORTH IN SECTION 33 OF THE ACT. ISSUANCE OF AN INTERIM ORDER BY THE BOARD UNDER THIS subsection (b), HOWEVER, SHALL NOT AFFECT THE PERMIT STATUS AND DOES NOT CONSTITUTE A FINAL ACTION FOR PURPOSES OF THE ACT OR THE ADMINISTRATIVE REVIEW LAW. (Section 39.5(16)(b)(ii) of the Act as amended by P.A. 88-464, effective August 20, 1993.)
- 2) THE BOARD SHALL CAUSE A COPY OF ITS INTERIM ORDER TO BE SERVED UPON ALL PARTIES TO THE PROCEEDING AS WELL AS UPON USEPA. THE AGENCY SHALL SUBMIT THE PROPOSED DETERMINATION TO USEPA IN ACCORDANCE WITH THE BOARD'S INTERIM ORDER WITHIN 180 DAYS AFTER RECEIPT OF THE NOTIFICATION FROM USEPA. (Section 39.5(16)(b)(iii) of the Act as amended by P.A. 88-464, effective August 20, 1993.)

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

Section 106.916 USEPA Review of Proposed Determination

- a) If USEPA does not object to the proposed determination within 90 days of receipt, THE BOARD SHALL, WITHIN 7 DAYS OF RECEIPT OF USEPA'S FINAL APPROVAL or within 7 days after expiration of the 90-day period, whichever is earlier, ENTER THE INTERIM ORDER AS A FINAL ORDER. THE FINAL ORDER MAY BE APPEALED AS PROVIDED BY TITLE XI OF THE ACT. THE AGENCY SHALL TAKE FINAL ACTION IN ACCORDANCE WITH THE BOARD'S FINAL ORDER. (Section 39.5(16)(c)(i) of the Act as amended by P.A. 88-464, effective August 20, 1993.)
- b) 1) If USEPA objects to the proposed determination within 90 days of receipt, THE AGENCY SHALL SUBMIT USEPA'S OBJECTION AND THE AGENCY'S COMMENTS AND RECOMMENDATION ON THE OBJECTION TO THE BOARD AND PERMITTEE within 15 days of receipt of USEPA's objection. (Section 39.5(16)(c)(ii) of the Act as amended by P.A. 88-464, effective August 20, 1993.)
- 2) THE BOARD SHALL REVIEW ITS INTERIM ORDER IN RESPONSE TO USEPA'S OBJECTION AND THE AGENCY'S COMMENTS AND RECOMMENDATION AND ISSUE A FINAL ORDER IN ACCORDANCE WITH SECTIONS 32 AND 33 OF THE ACT within 60 days of receipt of USEPA's objection and the Agency's comments and recommendation. THE AGENCY SHALL, WITHIN 90 DAYS AFTER RECEIPT OF SUCH OBJECTION, RESPOND TO USEPA'S OBJECTION IN ACCORDANCE WITH THE BOARD'S FINAL ORDER. (Section 39.5(16)(c)(ii) of the Act as amended by P.A. 88-464, effective August 20, 1993.)

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

SUBPART I: MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY DETERMINATIONS

Section 106.920 Applicability

The provisions of this Subpart shall apply to any proceeding initiated by an owner or operator of a CAAPP source pursuant to Section 39.5(19)(a) or Section 39.5(19)(e) of the Environmental Protection Act (P.A. 87-1213, effective September 26, 1992) [415 ILCS 5/39.5(19)(a), 5/39.5(19)(e)] ("Act") when the Agency has refused to include the emission limitation for a case-by-case maximum achievable control technology ("MACT") determination

proposed by the owner or operator of the CAAPP source in the source's CAAPP application.

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

Section 106.921 Definitions

The definitions of 35 Ill. Adm. Code 101.101 and Section 39.5 of the Act shall apply to this Subpart.

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

Section 106.922 Petition

- a) A proceeding brought under this Subpart shall be commenced by the owner or operator of a CAAPP source by serving a petition upon the Agency and filing 10 copies with the Clerk of the Board.
- b) A petition filed pursuant to Sections 39.5(19)(a) and 39.5(19)(e) of the Act shall include a detailed description of and justification for the emission limitation that is being proposed for the source and an explanation of how such emission limitation provides for the level of control required under Section 112 of the Clean Air Act (42 U.S.C. 7412).
- c) A petition filed pursuant to Section 39.5(19)(a) of the Act shall also request that the Board establish whether the emission limitation proposed by the owner or operator of the CAAPP source provides for the emission limitation equivalent to the emission limitation that would apply to the source if USEPA had promulgated the applicable emission standard pursuant to Section 112(d) of the Clean Air Act (42 U.S.C. 7412(d)) in a timely manner.

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

Section 106.923 Response and Reply

- a) The Agency may file a response to the petition of the owner or operator within 21 days after service of the petition.
- b) The owner or operator may file a reply within 21 days after the filing of any response.

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

Section 106.924 Notice and Hearing

- a) The Clerk of the Board shall give notice of the petition and any hearing in accordance with Part 103. The proceeding shall be conducted in accordance with Part 103.
- b) The burden of proof in such proceedings shall be on the petitioner.

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


Section 106.925 Opinion and Order

- a) The Board shall issue a written opinion and order within 120 days after the filing of the petition that sets forth the Board's decision and supporting rationale.
- b) The Board shall determine whether the emission limitation proposed by the owner or operator of the CAAPP source or an alternative emission limitation proposed by the Agency provides for the level of control required under Section 112 of the Clean Air Act (42 U.S.C. 7412), or shall otherwise establish an appropriate emission limitation pursuant to Section 112 of the Clean Air Act (42 U.S.C. 7412).

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

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above opinion and order was adopted on the 23rd day of September, 1993, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board