

ILLINOIS POLLUTION CONTROL BOARD

November 7, 2002

IN THE MATTER OF:)
)
REVISION OF THE BOARD'S) R03-10
PROCEDURAL RULES: 35 ILL. ADM.) (Rulemaking - Procedural)
CODE 101-130)

Proposed Rule. First Notice.

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

The Board today proposes new procedural rules for first notice publication in the *Illinois Register*. Upon final adoption, the proposed rules will accomplish two primary objectives. First, the rules will allow electronic filing in all Board proceedings through the Board's new Clerk's Office On-Line or "COOL." With COOL and other technological advances, no paper filing will be required for a document filed electronically, and a paper filing will necessitate only the original and one copy, without the multiple copies currently required. Second, the rules will reflect recent amendments to the Environmental Protection Act (415 ILCS 5 (2000), *amended by* P.A. 92-0574, effective June 26, 2002) and the Administrative Procedure Act (5 ILCS 100 (2000), *amended by* P.A. 92-0330, effective August 9, 2001).

The Board sets the following schedule for public hearings and public comments on this proposal:

PUBLIC HEARINGS

DECEMBER 12, 2002

1:00 p.m.

Pollution Control Board Hearing Room
600 S. Second Street, Suite 403
Springfield, Illinois 62704

DECEMBER 19, 2002

1:00 p.m.

James R. Thompson Center
100 W. Randolph Street, Suite 9-040
Chicago, Illinois 60601

WRITTEN PUBLIC COMMENTS

Filing Deadline: January 21, 2003
Where to file: Office of the Clerk
Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500

Chicago, Illinois 60601

The Board intends the hearings to be as effortless as possible for the participants. No pre-filing will be necessary. The purpose of the hearings is to demonstrate the operation of the Board's new Web-based electronic file management system, called COOL, and to accept any oral comments into the record. The Board will make the transcript of each hearing, as well as all public comments, available on the Board's Web site (www.ipcb.state.il.us).

In this opinion, the Board first sets forth background information on COOL, followed by an overview of the technology used for electronic filing. The Board then explains the proposed procedural rule changes to allow documents to be filed and served electronically. Lastly, the Board summarizes other proposed changes to the rules necessitated by statutory amendments.

BACKGROUND ON COOL

Based on a 2001 national survey conducted by The Progress & Freedom Foundation and the Center for Digital Government, Illinois now ranks first among the 50 states for using digital technology to make government more accessible and to improve government services. The Board has been a state leader in advancing the use of technology (a) to increase the public's knowledge of Illinois environmental laws and regulations, and (b) to encourage and simplify public participation in Board proceedings. For some time now, the public has been able to access various Board-created documents on our Web site: environmental regulations, proposed regulations, public comments in regulatory proceedings, meeting agenda and minutes, hearing transcripts, and opinions and orders. The new COOL electronic file case management system takes the concept of public participation a major step forward, breathing renewed life into the concept of public participation in state environmental decision-making -- a concept which has been at the foundation of the Environmental Protection Act since its inception in 1970. Located on the Board's Web site, COOL will allow 24-hour electronic access to the entire public case file -- not just Board-created documents, but documents filed with the Board as well. Further, COOL will permit public access to case docket information, thereby allowing interested persons to follow the progress of all pending proceedings. Additionally, and perhaps most importantly, COOL will allow parties and participants to file documents electronically with the Clerk. COOL will be easy to use.

There will be numerous benefits from electronic filing. An electronic record of the documents filed in a pending Board case or rulemaking will be created. This electronic "file cabinet" for a proceeding can then be searched and reviewed on-line and also downloaded. Another benefit will be avoiding the expense and inconvenience of copying and delivering paper filings. The Board expects the amount of paper generated during its adjudicatory and regulatory processes to decrease dramatically. For these reasons, the Board will encourage electronic filing and expects that many will avail themselves of the option.

Of course, anyone will still be able to file paper documents with the Clerk's Office. Plans call for the Clerk's Office to electronically scan paper documents not filed on-line, and to place them on COOL.

OVERVIEW OF COOL TECHNOLOGY

Persons who wish to file documents with the Board electronically must first obtain a State of Illinois digital signature certificate, issued under the Electronic Commerce Security Act (5 ILCS 175/1-101 *et seq.* (2000)). There is no fee to obtain the certificate. The purpose of digital signatures is to verify the identities of document senders, thereby promoting the integrity and security of the electronic transactions.

The digital signature certificate provides the document sender with a unique identification number and password. When a person with a certificate seeks to submit an electronic document to COOL, the document sender will have to provide the information from their certificate. A document cannot be electronically filed unless the person seeking to submit the document to COOL has been issued a digital signature certificate that has not expired or been revoked.

The subscriber agreement application for a digital signature certificate is at the following Web site:

<https://autora01.cmf.state.il.us/>

The Board's Web site will include a link to this site. Generally, the digital signature certificate becomes effective on the date the person submits the application at the above Web site, and is effective for two years.

PROPOSED PROCEDURAL RULES ON ELECTRONIC FILING AND SERVICE

New Subpart J of Part 101

The Board's procedural rules are in Parts 101 through 130 of Title 35 of the Illinois Administrative Code. Part 101 contains the general rules that apply to all Board proceedings, adjudicatory and regulatory. The balance of the procedural rules (Parts 102, 103, 104, 105, 106, 107, 108, 125, and 130) govern specific types of Board proceedings.

The procedural rules that the Board is proposing today for electronic filing and service will appear primarily in a new Subpart J of Part 101. Section 101.1000 of Subpart J provides an overview of electronic filing and service. It states that the Electronic Commerce Security Act specifically authorizes State agencies to receive and send electronic documents (*see* 5 ILCS 175/25-101 (2000)). The section further states that the Board has taken steps to promote efficient, reliable, and secure electronic filing, consistent with the Electronic Commerce Security Act (*see* 5 ILCS 175/1-105(3) (2000)).

Section 101.1000 states that any document to be filed with the Board may be filed electronically. The section explains that electronic filing is not done through e-mail to the Clerk's Office or a hearing officer, but rather through COOL on the Board's Web site. Section 101.1000 also states that though electronic filing is encouraged, it is not required. Rather, COOL is provided as a public service. To that end, no malfunctioning of COOL or anyone's computer

system excuses an obligation to timely file or serve a document. *See* Section 101.1000(f).

Under Section 101.1002, a person wishing to file electronically must have a State of Illinois digital signature certificate, discussed above. Section 101.1004 sets forth the requirements of electronically filing through COOL, including how electronic receipts work and when an electronic document is considered filed. To file an electronic document, it must be submitted to COOL in Word, Word Perfect, Excel, Lotus, ASCII, or Adobe Acrobat PDF, though Adobe Acrobat PDF is the preferred format. *See* Section 101.1006. Under Section 101.1008, electronic payment of any filing fee by credit card through COOL is an option. There is no special or additional fee for filing electronically.

In addition to filing documents electronically, parties and participants may consent, at any time during a proceeding, to receive electronic service instead of being served with paper documents. An electronic service consent form has been added as Appendix F to Part 101. No digital signature certificate is required to serve or be served electronically. If a person consents to electronic service, service by the Board, a hearing officer, or other parties and participants can be made by e-mail. A person may revoke consent at any time by notifying the Clerk in writing. However, complaints and administrative citations still must be served on a respondent personally, by certified or registered mail, or by messenger service. *See* Sections 101.1010 and 101.1012.

Section 101.1014 sets forth the parameters for submitting to COOL a document claimed to contain trade secrets or other non-disclosable information. Documents claimed or determined to contain protected information will be publicly accessible on COOL only in redacted form.

Other Proposed Changes Relating to Electronic Filing and Service

The Board has added several definitions to Section 101.202 to assist users of COOL, including definitions of “COOL,” “digital signature,” “electronic,” and “electronic document.” The Board has deleted requirements to file multiple copies. To file a document with the Board, a person must either file the document electronically or file the paper original and one copy. *See* Sections 101.302(h), 102.200, 102.208, 102.810. However, to ensure flexibility that may be needed for a given filing, Section 101.302(h) allows the Board or hearing officer to order a party or participant to deliver a particular filing in paper with multiple copies. The Board expects that, at least during an interim initiation phase, paper copies of records and exhibits in various proceedings (e.g., permit appeals, pollution control siting appeals and certain rulemakings) will continue to be required by Board or hearing officer order.

The new rules for electronic filing and service will apply both to regulatory and adjudicatory proceedings. In regulatory proceedings, for example, when signing up to be on a notice or service list, a person may choose to receive electronic service of Board and hearing officer orders and public comments, in lieu of paper service. Of course, notices, comments, hearing transcripts, and orders in pending rulemakings are currently posted on the Board’s Web site.

The electronic filing and service rules proposed for Part 101 also require related changes to the Board’s rules on specific types of proceedings: rulemaking (Part 102); enforcement (Part

103); variances (Part 104.Subpart B); adjusted standards (Part 104.Subpart D); appeals of State agency decisions (Part 105); proceedings pursuant to specific rules or statutory provisions (Part 106); pollution control facility siting appeals (Part 107); and tax certifications (Part 125). Part 130 on trade secrets and other non-disclosable information is amended to better accommodate electronic documents.

Finally, for well over a decade, the Board has required that all documents filed with the Board be filed on recycled paper. While the Board expects a drastic reduction in paper consumption as a result of COOL, the Board retains the requirement that when filings are made on paper, they be made on recycled paper. *See* Section 101.302(g). However, the Board deletes the *definition* of “recycled paper” for several reasons. The term “recycled paper” is widely recognized and its meaning is now commonly understood. So, a definition is unnecessary. Moreover, the definition currently in Section 101.202 sets out detailed specifications for product content that are unduly restrictive, raising concerns over the costs of compliant paper and its ready availability in the market.

PROPOSED RULE CHANGES TO RELECT RECENT STATUTORY AMENDMENTS

Governor George H. Ryan created the Illinois Environmental Regulatory Review Commission (IERRC) to review and recommend improvements to the 30-year old Environmental Protection Act. The IERRC consists of members, appointed by the Governor, who represent the environmental community, industry, and State and local government. The IERRC proposed many non-substantive amendments to streamline and clarify the Environmental Protection Act. Those proposed changes were adopted in P.A. 92-0574, effective June 26, 2002. The Board now proposes corresponding changes to its procedural rules. For example, the word “duplicitous,” confusing when referring to citizen complaints, is changed to “duplicative.” *See* Section 101.202, Part 103.Subpart B.

Also amended since the Board completely revised its procedural rules is the Administrative Procedure Act. In P.A. 92-0330, effective Aug. 9, 2001, the Administrative Procedure Act now requires rulemaking proposals published in the *Illinois Register* to describe any published study or research report used in developing the rule and where the public may obtain a copy. This new requirement is reflected in proposed changes to Board rules at Sections 102.202, 102.210, and 102.820.

CONCLUSION

The proposed procedural rule amendments will implement the Board’s new Web-based file management system, known as the Clerk’s Office On-Line or “COOL.” The rules will codify how it is easier than ever for the citizens of Illinois to participate in and access Board proceedings.

Parties and participants will be allowed to file and serve documents electronically, in lieu of paper filing and service. Generally, those who file a document in paper will now only need to provide the original and one copy to the Clerk’s Office. Gone will be the days of ten paper copies. Interested members of the public will be able to use the Internet to access an electronic

“file cabinet” of all the Board’s pending cases and rulemakings. The Board’s proposed rule changes will allow these technological advances to be realized in all adjudicatory and regulatory proceedings pending before the Board. These amendments will greatly further public participation in Illinois’ environmental processes, a fundamental policy underpinning of the Environmental Protection Act.

The Board also proposes procedural rule changes to reflect recent statutory amendments to the Environmental Protection Act and the Administrative Procedure Act, as well as several other clarifying changes.

The Board encourages the public to participate at the scheduled December 12 and December 19, 2002 hearings and through written public comment.

ORDER

The Board directs the Clerk to cause publication of the following proposed rules in the *Illinois Register* for first notice. Proposed additions are underlined; proposed deletions appear stricken.

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
101.112	Bias and Conflict of Interest
101.114	Ex Parte Communications

SUBPART B: DEFINITIONS

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

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

Section	
101.300	Computation of Time
101.302	Filing of Documents
101.304	Service of Documents
101.306	Incorporation of Documents by Reference
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
101.628	Statements from Participants
101.630	Official Notice
101.632	Viewing of Premises

SUBPART G: ORAL ARGUMENT

Section	
101.700	Oral Argument

SUBPART H: SANCTIONS

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

SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

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

SUBPART J: ELECTRONIC FILING AND SERVICE

<u>Section</u>	
<u>101.1000</u>	<u>Overview of Electronic Filing and Service</u>
<u>101.1002</u>	<u>Electronic Filing Authorization</u>
<u>101.1004</u>	<u>Filing Electronic Documents</u>
<u>101.1006</u>	<u>Acceptable Formats</u>
<u>101.1008</u>	<u>Filing Fees</u>
<u>101.1010</u>	<u>Electronic Service</u>
<u>101.1012</u>	<u>Consenting to Electronic Service</u>
<u>101.1014</u>	<u>Trade Secrets and Other Non-Disclosable Information</u>

APPENDIX A	Captions
ILLUSTRATION A	Enforcement Case
ILLUSTRATION B	Citizen's Enforcement Case
ILLUSTRATION C	Variance

ILLUSTRATION D	Adjusted Standard Petition
ILLUSTRATION E	Joint Petition for an Adjusted Standard
ILLUSTRATION F	Permit Appeal
ILLUSTRATION G	Underground Storage Tank Appeal
ILLUSTRATION H	Pollution Control Facility Siting Appeal
ILLUSTRATION I	Administrative Citation
ILLUSTRATION J	General Rulemaking
ILLUSTRATION K	Site-specific Rulemaking
APPENDIX B	Appearance Form
APPENDIX C	Withdrawal of Appearance Form
APPENDIX D	Notice of Filing
APPENDIX E	Certificate of Service
ILLUSTRATION A	Service by Non-Attorney
ILLUSTRATION B	Service by Attorney
APPENDIX F	Consent to Electronic Service Form Notice of Withdrawal
APPENDIX G	Comparison of Former and Current Rules

AUTHORITY: Implementing Sections 5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7], as amended by P.A. 92-0574, effective June 26, 2002, 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 R03-10 at 27 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 ~~hearings~~ upon complaints charging violations of the Act, any rule or regulation under this Act, or any permit or term or condition of a permit; upon administrative citations or of regulations thereunder; upon petitions for variances or adjusted standards; upon petitions for review of the Agency's final determinations on denial of a permit applications in accordance with Title X of the Act; upon petitions ~~petition~~ to remove seals ~~a seal~~ under Section 34 of the Act; upon other petitions for review of final determination which are made pursuant to this the Act or Board rules and which involve a subject which the Board is authorized to regulate. The Board may also conduct; and such other proceedings ~~hearings~~ as may be provided by this Act or any other statute or rule* [415 ILCS 5/5(d)].

- c) In addition to subsections (a) and (b) of this Section, the Board has the authority to act as otherwise provided by law.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

SUBPART B: DEFINITIONS

Section 101.202 Definitions for Board's Procedural Rules

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

“Act” means the Environmental Protection Act. [415 ILCS 5/1 *et seq.*]

“Adjudicatory proceeding” means an action of a quasi-judicial nature brought before the Board pursuant to authority granted to the Board under Section 5(d) of the Act or as otherwise provided by law. Adjudicatory proceedings include enforcement, variance, permit appeal, pollution control facility siting appeal, Underground Storage Tank (UST) Fund determination, water well set back exception, adjusted standard, and administrative citation proceedings. Adjudicatory proceedings do not include regulatory, quasi-legislative, or informational proceedings.

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

“Administrative citation” or “AC” means a citation issued pursuant to Section 31.1 of the Act by the Agency, or by a unit of local government acting as the Agency's delegate pursuant to Section 4(r) of the Act.

“Administrative citation review (appeal)” means a petition for review of an administrative citation filed pursuant to Section 31.1(d) of the Act. (See 35 Ill. Adm. Code 108.)

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

“Affidavit of service” means an affidavit that states that service of a document upon specified persons was made, and the manner in which, and date upon which, service was made.

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

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

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

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

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

“Attorney General” means the Attorney General of the State of Illinois and/or representatives thereof.

“Authorized representative” means any person who is authorized to act on behalf of another person.

“Board” means the Illinois Pollution Control Board as created in Section 5 of the Act or, if applicable, its designee.

“Board decision” means an opinion or an order voted in favor of by at least four members of the Board at an open Board meeting except in a proceeding to remove a seal under Section 34(d) of the Act.

“Board designee” means an employee of the Board who has been given authority by the Board to carry out a function for the Board (e.g., the Clerk, Assistant Clerk of the Board, or hearing officer).

“Board meeting” means an open meeting held by the Board pursuant to Section 5(a) of the Act in which the Board makes its decisions and determinations.

“Board’s procedural rules” means the Board’s regulations set forth at 35 Ill. Adm. Code 101 through 130.

“Brief” means a written statement that contains a summary of the facts of a proceeding, the pertinent laws, and an argument of how the law applies to the facts supporting a position.

“CAAPP” means the Clean Air Act Permit Program, as adopted in Section 39.5 of the Act.

“Certificate of acceptance” means a certification, executed by a successful petitioner in a variance proceeding, in which the petitioner agrees to be bound by all terms and conditions that the Board has affixed to the grant of variance.

“Chairman” means the Chairman of the Board designated by the Governor pursuant to Section 5(a) of the Act.

“Citizen’s enforcement proceeding” means an enforcement action brought before the Board pursuant to Section 31(d) of the Act by any person who is not authorized to bring the action on behalf of the People of the State of Illinois.

“Clean Air Act” or “CAA” *means the federal Clean Air Act, as now and hereafter 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 Board’s adjudicatory and regulatory proceeding files. COOL is located on the Board’s Web site.

“Complaint” means the initial filing that begins an enforcement proceeding pursuant to Section 31 of the Act and 35 Ill. Adm. Code 103.

“Compliance plan” means a detailed description of a program designed to achieve compliance with the Act and Board regulations.

“Copy” means *any facsimile, replica, photograph or other reproduction of an article, and any note, drawing or sketch made of or from an article* [415 ILCS 5/7.1].

“Counter-complaint” means a pleading that a respondent files setting forth a claim against a complainant. (See 35 Ill. Adm. Code 103.206.)

“Cross-complaint” means a pleading that a party files setting forth a claim against a co-party. (See 35 Ill. Adm. Code 103.206.)

“Cross-media impacts” means impacts that concern multiple environmental areas, such as air, land and/or water.

“Decision date” means the Board meeting immediately preceding the decision deadline.

“Decision deadline” means the last day of any decision period, as established by law, within which the Board is required to render a decision in an adjudicatory proceeding. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions respectively.)

“Decision period” means the period of time established by the Act within which the Board is required to make a Board decision in certain adjudicatory proceedings. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions, respectively.)

“Deinked stock” means *paper that has been processed to remove inks, clays, coatings, binders and other contaminants* [415 ILCS 20/2.1].

“Delegated unit” means the unit of local government to which the Agency has delegated its administrative citation or other function pursuant to Section 4(r) of the Act.

“DNR” means the Illinois Department of Natural Resources.

“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 5/175/5-105].

“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.

“DNS” means the Illinois Department of Nuclear Safety.

“DOA” means the Illinois Department of Agriculture.

~~“Duplicious”~~ or “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 pursuant to Section 31 of the Act by the Attorney General, State’s Attorney, or other persons, in which the complaint alleges violation of the Act or any rule or regulation or Board order thereunder or any permit or term or condition thereof.

“Ex parte communication” means a communication between a person who is not a Board Member or Board employee and a Board Member or Board employee that reflects on the substance of a pending Board proceeding and that takes place outside the record of the proceeding. Communications regarding matters of procedure and practice, such as the format of pleadings, ~~number of copies required,~~ manner of filing and service, and status of proceedings, are not considered ex parte communications [5 ILCS 100/10-60(d)]. For purposes of this definition, “Board employee” means a person the Board employs on a full-time, part-time, contract or intern basis. (See Section 101.114 of this Part.)

“Fast Track rulemaking” means a Clean Air Act rulemaking conducted pursuant to Section 28.5 of the Act.

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

“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 ~~or record~~ before the Board. The Clerk’s Office is located at 100 West Randolph Street, Suite 11-500, Chicago, IL 60601. Electronic filing with the Clerk’s Office is done through COOL on the Board Web site.

“Final order” means an order of the Board that terminates the proceeding leaving nothing further to litigate or decide and that is appealable to an appellate court pursuant to Section 41 of the Act. (See Subpart I of this Part.)

“Frivolous” means a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.

“Hearing” means a public proceeding conducted by a hearing officer where the parties and other interested persons, as provided for by law and the Board’s procedural rules, present evidence and argument regarding their positions.

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

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

“Identical-in-substance rules (or 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 for the purpose of seeking input and comment from the public regarding the need for a rulemaking proceeding in a specific area.

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

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

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

“JCAR” means the Illinois General Assembly’s Joint Committee on Administrative Rules established by the IAPA (see 5 ILCS 100/5-90).

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

“Misnomer” means a mistake in name, giving an incorrect name in a complaint or other document with respect to any properly included party.

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

“Movant” means the person who files a motion.

“New pollution control facility” means *a pollution control facility initially permitted for development or construction after July 1, 1981; or the area of expansion beyond the boundary of a currently permitted pollution control facility; or a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste* [415 ILCS 5/3.32(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 proceeding who will receive all Board opinions and orders and all hearing officer orders. Persons on a notice list generally do not receive copies of motions, public comments, or testimony. (See definition of “service list” in this Section.) (See also 35 Ill. Adm. Code 102.422.)

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

“Oral argument” means a formal verbal statement of advocacy on a proceeding’s legal questions made at a Board meeting with the Board’s permission. (See Section 101.700 of this Part.)

“OSFM” means Office of the State Fire Marshal.

“OSFM appeal” means an appeal of an OSFM final decision concerning eligibility and deductibility made pursuant to Title XVI of the Act.

“Participant” means any person, not including the Board or its staff, who takes part in an adjudicatory proceeding who is not a party, or a person who takes part in a regulatory or other quasi-legislative proceeding before the Board. A person becomes a participant in

any of several ways, including filing a comment, being added to the notice list of a particular proceeding, or testifying at hearing.

“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 a proceeding is brought.

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

“Peremptory rulemaking” means *any rulemaking that is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions that preclude compliance with the general rulemaking requirements of Section 5-40 of the IAPA and that preclude the exercise by the Board as to the content of the rule it is required to adopt.* [5 ILCS 100/5-50]

“Permit appeal” means an adjudicatory proceeding brought before the Board pursuant to Title X of the Act.

“Person” means *any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns* [415 ILCS 5/3.3153-26].

“Petition” means the initial filing in an adjudicatory proceeding other than an enforcement proceeding, including permit appeals, OSFM appeals, UST appeals, appeals of pollution control facility siting decisions, variances and adjusted standards.

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

“Pollution control facility” means *any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act. The following are not pollution control facilities:*

waste storage sites regulated under 40 CFR 761.42;

sites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or

facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person;

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

abandoned quarries used solely for the disposal of concrete, earth materials, gravel, or aggregate debris resulting from road construction activities conducted by a unit of government or construction activities due to the construction and installation of underground pipes, lines, conduit or wires off of the premises of a public utility company which are conducted by a public utility;

sites or facilities used by any person to specifically conduct a landscape composting operation;

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

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

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

the portion of a site or facility used for treatment of petroleum contaminated materials by application onto or incorporation into the soil surface and any portion of that site or facility used for storage of petroleum contaminated materials before treatment. Only those categories of petroleum listed in ~~paragraph (5) of subsection (a) of Section 57.9(a)(3) 22.18(b)~~ of the Act are exempt under this definition;

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

the portion of a site or facility utilizing coal combustion waste for stabilization and treatment of only waste generated on that site or facility when used in connection with response actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the federal Resource Conservation and Recovery Act of 1976, or the Illinois Environmental Protection Act or as authorized by the Agency;

the portion of a site or facility accepting exclusively general construction or demolition debris, located in a county with a population over 700,000, and operated and located in accordance with Section 22.38 of the Act. [415 ILCS 5/3.330 ~~3-32(a)~~]

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

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

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

“Proceeding” means an action conducted before the Board pursuant to authority granted under Section 5 of the Act or as otherwise provided by law. Board proceedings are of two types: quasi-legislative (e.g., rulemaking and inquiry proceedings) and quasi-judicial (adjudicatory proceedings).

“Proponent” means any person, not including the Board or its staff, who submits a regulatory proposal to the Board for the adoption, amendment, or repeal of a regulation.

“Provisional variance” means a short term variance sought by a party and recommended by the Agency pursuant to Section 35(b) of the Act. (See 35 Ill. Adm. Code 104.308.)

“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.

“Qualitative description” means a narrative description pertaining to attributes and characteristics.

“Quantitative description” means a numerically based description pertaining to attributes and characteristics.

“RCRA variance” means a variance from a RCRA rule or a RCRA permit required pursuant to Section 21(f) of the Act.

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

~~“Recycled paper” means paper which contains at least 50% recovered paper material. The recovered paper material must contain at least 45% deinked stock or postconsumer material. (See also “postconsumer material” in this Section.)~~

“Registered agent” means a person registered with the Secretary of State for the purpose of accepting service for any entity, or a person otherwise authorized in writing as an agent for the purpose of accepting service for that entity.

“Regulatory hearing” or “proceeding” means a hearing or proceeding held pursuant to Title VII of the Act or other applicable law with respect to regulations.

“Regulatory relief mechanisms” means variances, provisional variances and adjusted standards. (See 35 Ill. Adm. Code 104.)

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

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

“Resource Conservation and Recovery Act” or “RCRA” means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.).

“Rulemaking” or “rulemaking proceeding” means a proceeding brought under Title VII of the Act or other applicable law for the purpose of adoption, amendment, or repeal of a regulation.

“Sanction” means a penalty or other mechanism used by the Board to provide incentives for compliance with the Board’s procedural rules, Board orders or hearing officer orders. (See also Subpart H of this Part.)

“SDWA” means the federal Safe Drinking Water Act (42 USC 300f et seq.).

“Service” means delivery of documents upon a person. (See Sections 101.300(c) and 101.304 of this Part.)

“Service list” means the list of persons designated by the hearing officer or Clerk in a regulatory or adjudicatory proceeding upon whom participants must serve motions, prefiled questions and prefiled testimony and any other documents that the participants

file with the Clerk unless the hearing officer otherwise directs. (See definition of “notice list” in this Section.) (See also 35 Ill. Adm. Code 102.422.)

“Severance” means the separation of a proceeding into two or more independent proceedings, each of which terminates in a separate, final judgment.

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

“Sponsor” means the proponent of a pilot project that enters into an EMSA with the Agency.

“State enforcement proceeding” means an enforcement proceeding, other than a citizen’s enforcement proceeding, that is brought pursuant to Section 31(a) of the Act.

“Stay” means a temporary suspension of the regular progress of a proceeding pursuant to an order of the Board or by operation of law. (See Section 101.514 of this Part.)

“Subpoena” means a command to appear at a certain time and place to give testimony upon a certain matter.

“Subpoena duces tecum” means a document that compels the production of specific documents and other items at a specified time and place.

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

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

“Trade secret” means *the whole or any portion or phase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes* [415 ILCS 5/3.490 3.48].

“Transcript” means the official recorded testimony from a hearing.

“USEPA” means the United States Environmental Protection Agency.

“Underground storage tank appeal” or “UST appeal” means an appeal of an Agency final decision made pursuant to Title XVI of the Act.

“UST” means underground storage tank.

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

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

“Web site” means the Board’s computer-based informational and filing service accessed on the Internet at <http://www.ipcb.state.il.us>.

(Source: Amended at 27 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 these rules 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) Time of Filing. Documents will be considered filed when they are filed in conformance with the requirements found in Section 101.302 of this Part and any other filing requirements specifically set out elsewhere in the other Parts of these rules. Subpart J of this Part sets forth when electronic documents will be considered filed.
 - 1) If filed in person, ~~electronically~~, by messenger service or mail delivery service other than U.S. Mail, documents are considered filed when they are received in the Office of the Clerk.
 - 2) If the Clerk receives a document is filed by U.S. Mail subsequent to a filing deadline, yet the postmark date precedes or is the same as the filing deadline, the document will be deemed filed on the postmark date,

provided all filing requirements are met as set forth in Section 101.302 of this Part.

- 3) Documents filed and received in the Office of the Clerk after 4:30 p.m. will be marked as filed the following business day. The Clerk will record the appropriate filing date on all filed documents.
 - 4) For purposes of Board decision deadlines, time does not begin until the date on which the initial filing is date-stamped by the Clerk.
- c) **Time of Service.** In the case of personal service, service is deemed complete on the date personal delivery was effectuated. In the case of facsimile transmission, service is deemed complete on the date of a complete and proper transmittal (facsimile filings are only allowed in accordance with Section 101.302(d) of this Part.) In the case of electronic service, Section 101.1010(d) of this Part sets forth when service is deemed complete. In the case of service by registered or certified mail, or by messenger service, service is deemed complete on the date specified on the registered or certified mail receipt or the messenger service receipt. In the case of service by U.S. Mail, service is presumed complete four days after mailing. The presumption can be rebutted by proper proof.
- d) **Date of Board Decision.**
- 1) For purposes of statutory decision deadline proceedings, the date of the Board decision is the date of the Board meeting where a final opinion and order of the Board was adopted by the vote of at least four Board members.
 - 2) For purposes of appeal, the date of the party's certified mail receipt of the Board decision is the date of service of the final opinion and order by the Board upon the appealing party. Or, in the event of a timely filed motion for reconsideration filed pursuant to Section 101.520 of this Part, the date of the party's certified mail receipt of the Board order ruling upon the motion is the date of service by the Board upon the appealing party.

(Source: Amended at 27 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 these rules. 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 signed by or on behalf of the party or participant seeking to file the document and must be filed with the

Clerk's Office. Service on a hearing officer does not constitute filing with the Board unless the document is submitted to the hearing officer during the course of a hearing. Documents may be filed at:

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

- c) Documents may be filed by U.S. Mail or other mail delivery service, by electronic means in accordance with Subpart J of this Part, in person, or by messenger.
- d) Filing by ~~electronic transmission or~~ facsimile will only be allowed with the prior approval of the Clerk of the Board or hearing officer assigned to the proceeding. The Agency may file a provisional variance recommendation with the Board ~~through electronic transmission or~~ by facsimile within 2 days prior to a regularly scheduled meeting date followed by a hard copy submission.
- e) 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, or electronically in accordance with Section 101.1008 of this Part, 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 appeal filed pursuant to Section 40 of the Act, \$75;
 - 4) Petition to Review Pollution Control Facility Siting Decisions, pursuant to Section 40.1 of the Act, \$75; and
 - 5) Petition for Adjusted Standard, pursuant to Section 28.1 of the Act, \$75.
- f) All documents filed must be served in accordance with Subpart C of this Part.
- g) All documents filed with the Board should contain the relevant proceeding caption and number and have all pages logically numbered, and Paper documents must be submitted on 8 1/2 x 11 inch recycled paper as defined in Subpart B of this Part, page numbered, and, double sided if practicable, feasible double sided. Electronic documents must be formatted in accordance with Section 101.1006 of this Part.

- h) Unless the Board or hearing officer orders its procedural rules provide otherwise, all documents must be filed as follows with a signed original and 9 duplicate copies (10 total), except that:
- 1) If a document is filed in paper, the original and one copy is required.
 - 2) If a document is filed electronically in accordance with Subpart J of this Part, no paper original or copy is required.
 - 1) ~~Documents and motions specifically directed to the assigned hearing officer must be filed with the Clerk with a signed original and 4 duplicate copies (5 total), or as the hearing officer orders;~~
 - 2) ~~The Agency may file a signed original and 4 duplicate copies (5 total) of the record required by Section 105.116, 105.302, and 105.410;~~
 - 3) ~~The OSFM may file a signed original and 4 duplicate copies (5 total) of the record required by Section 105.508; and~~
 - 4) ~~The siting authority may file a signed original and 4 duplicate copies (5 total) of the record required by Sections 107.300 and 302.~~
- i) No written discovery, including interrogatories, requests to produce, and requests for admission, or any response to written discovery, may be filed with the Clerk of the Board except upon leave or direction of the Board or hearing officer. Any discovery request under these rules to any nonparty must be filed with the Clerk of the Board in accordance with subsection (h) of this Section with a signed original and 4 duplicate copies (5 total), or as the hearing officer directs.
- j) Non-Conforming Exhibits. When practicable possible, non-conforming exhibits must be reduced to conform to 8 1/2 x 11 inch recycled paper, or formatted electronically in accordance with Section 101.1006 of this Part. However, one non-conforming original copy may be filed with the Clerk's Office. Upon closure of the proceeding, the non-conforming exhibit copy may be returned to the person filing it in accordance with 2 Ill. Adm. Code 2175.300.
- k) Page Limitation. No motion, brief in support of motion, or brief may exceed 50 pages, and no amicus curiae brief may exceed 20 pages, without prior approval of the Board or hearing officer. These limits do not include appendices containing relevant material.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

- 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. Parties in Board adjudicatory proceedings are responsible for service of all documents they file with the Clerk's Office. Proof of service of initial filings must be filed with the Board upon completion of service.
- c) Method of Service. Service may be effectuated by U.S. Mail or other mail delivery service, in person, by messenger, by electronic means in accordance with Subpart J of this Part, or as prescribed in Section 101.302(d), except for service of enforcement complaints, ~~and~~ administrative citations, and EMSA statements of deficiency on a respondent, which must be made personally, by registered or certified mail, or by messenger service. Proof of service of enforcement complaints, ~~and~~ administrative citations, and EMSA statements of deficiency must be filed with the Board upon completion of service.
- d) Affidavit or Certificate of Service. A proceeding is subject to dismissal, and parties are subject to sanctions in accordance with Section 101.800 of this Part, if service is not timely made. Proof of proper service is the responsibility of the party filing and serving the document. An affidavit of service or certificate of service must accompany all filings of all parties. A sample form of the affidavit of service and certificate of service is available in Appendix E to this Part, at the Board's Offices (the locations of the Board's Offices are listed at 2 Ill. Adm. Code 2175.115), ~~and on may be obtained electronically at the Board's Web site.~~
- 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 accordance with this Section.
- f) Service of Comments of Participants in an Adjudicatory Proceeding. Participants are required to serve their 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 State Agencies. Service must be at the addresses listed below unless a specific person has an appearance on file with the Board or electronic service is made in accordance with Subpart J of this Part.
 - 1) Service on the Illinois Environmental Protection Agency (Agency). The Agency must be served at the following address:

Division of Legal Counsel
Illinois Environmental Protection Agency

1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

- 2) Service on Office of State Fire Marshal (OSFM). 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
188 West Randolph St., 20th Floor
Chicago, IL 60601

- 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 524 S. Second St.
Springfield, IL 62702-1271 ~~1-1787~~

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

USEPA, Region V
77 West Jackson
Chicago, IL 60604

(Source: Amended at 27 Ill. Reg. _____, effective _____)

- 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 accordance with Section 101.302(h) of this Subpart ~~4 copies of the material to be incorporated. The Board or hearing officer may approve a reduced number of copies for documents incorporated in other Board dockets.~~ 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 27 Ill. Reg. _____, effective _____)

SUBPART J: ELECTRONIC FILING AND SERVICE

Section 101.1000 Overview of Electronic Filing and Service

- a) The purposes of the Electronic Commerce Security Act include facilitating the electronic filing of documents with State agencies and promoting the efficient delivery of government services by means of reliable electronic records. [5 ILCS 175/1-105(3)] The Electronic Commerce Security Act specifically authorizes State agencies to send and receive electronic documents. [5 ILCS 175/25-101]
- b) The Board provides the opportunity to file and access documents electronically through its Clerk's Office On-Line (COOL) system. The Board has taken steps designed to ensure the integrity and security of COOL in accordance with State policies developed under the Electronic Commerce Security Act.
- c) The Board encourages electronic filing. Any document to be filed with the Board, whether an initial or later filing, may be filed electronically. If a person files an electronic document in accordance with this Subpart, the person is not required to file a paper original or copy of that document with the Clerk, unless the Board or hearing officer orders otherwise.
- d) To file an electronic document with the Board, the party or participant must submit the document to COOL on the Board's Web site (www.ipcb.state.il.us). Electronic filing is not accomplished by sending a document to the e-mail address of the Clerk's Office or hearing officer.

- e) Nothing in this Subpart requires a person to file, serve, or accept service of a document electronically. Generally, the Clerk's Office will electronically scan paper-filed documents and place them in COOL.
- f) The Board provides COOL as a public service. Neither the malfunctioning of COOL or any person's computer system excuses any obligation to timely file or serve a document.

(Source: Added at 27 Ill. Reg. _____, effective _____)

Section 101.1002 Electronic Filing Authorization

- a) A person seeking to file an electronic document, as or on behalf of a party or participant, must have been issued a State of Illinois digital signature certificate pursuant to Section 15-310 of the Electronic Commerce Security Act [5 ILCS 175/15-310].
- b) The subscriber agreement and application for a State of Illinois digital signature certificate is available at the following Web site, the link for which is also provided on the Board's Web site:

<https://autora01.cmc.state.il.us/>
- c) For adjudicatory proceedings, to electronically file a document on behalf of a party who is not an individual, the digital signature of a licensed and registered attorney representing the party is required. If the party is an individual, the digital signature of the individual or its licensed and registered attorney is required. See Section 101.400(a) of this Part.

(Source: Added at 27 Ill. Reg. _____, effective _____)

Section 101.1004 Filing Electronic Documents

- a) A person seeking to file an electronic document, as or on behalf of a party or participant, must submit the document to COOL on the Board's Web site. To successfully submit a document to COOL, the person must have a valid State of Illinois digital signature certificate.
- b) Submitting an electronic document to COOL in accordance with this Subpart will automatically generate an electronic receipt for the person seeking to file. The receipt will verify the date and time when the document was submitted to COOL, but the receipt is in no way an indication of the document's legal sufficiency.
- c) If all or any part of an electronic document being submitted to COOL must be verified by oath, affidavit, or notarization, the person submitting the document must either:

- 1) Include the electronically-scanned oath, affidavit, receipt, or notarization in the submitted electronic document; or
 - 2) Submit to the Clerk a paper original and copy of the oath, affidavit, or notarization (indicating the electronic document to which it corresponds) and conspicuously state in the electronic document that the paper original and copy of the verification will be submitted to the Clerk.
- d) If an electronic document is submitted to COOL in accordance with this Subpart, the document is considered filed when it is submitted to COOL, except that:
- 1) An electronic document submitted to COOL without a required oath, affidavit, notarization, or fee will be considered filed:
 - A) On the date that the Clerk receives the required verification or fee; or
 - B) If received through the U.S. Mail after a filing deadline, but the postmark date precedes or is the same as the deadline, then the document is deemed filed on the postmark date.
 - 2) An electronic document submitted to COOL on a Saturday or Sunday, on a national or State legal holiday, or after 4:30 p.m. on a weekday is considered filed the next business day.
- e) For purposes of Board decision deadlines, time does not begin until the date on which the electronic document is considered filed under subsection (d) of this Section.

(Source: Added at 27 Ill. Reg. _____, effective _____)

Section 101.1006 Acceptable Formats

- a) To submit an electronic document to COOL, the document must be in one of the following electronic formats:
 - 1) Microsoft Word for Windows, version 6.0 or greater;
 - 2) Corel WordPerfect for Windows, version 6.0 or greater;
 - 3) Microsoft Excel for Windows, version 4.0 or greater;
 - 4) Lotus 1-2-3 for Windows, version 4.0 or greater;
 - 5) ASCII Text; or

- 6) Adobe Acrobat Portable Document Format (PDF) version 2.0 or greater.
- b) All electronic documents filed in accordance with this Subpart will be stored by the Clerk's Office in Adobe Acrobat PDF format. Properly-filed electronic documents not submitted to COOL in that electronic format will be converted to Adobe Acrobat PDF format by the Clerk's Office.
- c) The Board encourages persons to submit electronic documents to COOL in Adobe Acrobat PDF format.
- d) Electronic documents submitted to COOL must be formatted to print on 8 1/2 x 11 inch paper.

(Source: Added at 27 Ill. Reg. _____, effective _____)

101.1008 Filing Fees

- a) Filing fees are specified in Section 101.302(e) of this Part. There is no special or additional fee to file a document electronically. A person seeking to file an electronic document that requires a filing fee must either:
- 1) Deliver payment to the Clerk's Office in accordance with Section 101.302(e) of this Part; or
 - 2) Provide electronic payment in accordance with subsection (b).
- b) Electronic payment of a filing fee requires a valid credit card and can be executed on COOL when the electronic document is submitted.

(Source: Added at 27 Ill. Reg. _____, effective _____)

101.1010 Electronic Service

- a) Except as provided in subsection (b), a person required to serve a document may serve other parties or participants electronically by e-mail, in lieu of serving a paper document, if the recipient has consented to electronic service in that proceeding and has not revoked that consent. See Section 101.1012 of this Subpart. To serve a document electronically, it is not necessary to obtain a State of Illinois digital signature certificate.
- b) Service of enforcement complaints, administrative citations, and EMSA statements of deficiency on a respondent must be made personally, by registered or certified mail, or by messenger service. See Section 101.304(c) of this Part.

- c) A person required to serve a document on the hearing officer may serve the hearing officer electronically by sending the document to the hearing officer's e-mail address in lieu of serving a paper document.
- d) When serving an electronic document, service is deemed complete on the day of successful electronic transmission, except that a document electronically transmitted on a Saturday or Sunday, on a national or State legal holiday, or after 4:30 p.m. on a weekday is considered served the next business day.
- e) Proof of proper service must be provided to the Clerk by the party or participant filing and serving the document. An affidavit of service or certificate of service must be provided for each filing. A sample form of an affidavit of service and certificate of service is available in Appendix E to this Part, from the Clerk's Office, and on the Board's Web site.
- f) A document served electronically must be in the same electronic format as the document submitted to COOL and formatted to print on 8 1/2 x 11 inch paper. The Board encourages persons to serve electronic documents in Adobe Acrobat PDF format. See Section 101.1006 of this Subpart.
- g) In lieu of serving paper documents, the Board and its hearing officers may electronically serve notices and orders to any party or participant who has consented to electronic service in that proceeding and not revoked that consent. The subject line of e-mail from the Board or hearing officer providing electronic service will state "Official Pollution Control Board Notice."

(Source: Added at 27 Ill. Reg. _____, effective _____)

101.1012 Consenting to Electronic Service

- a) A person may consent to electronic service of documents in lieu of receiving paper documents from other parties or participants, the Board, and hearing officers in a proceeding by either:
 - 1) Filing a Consent to Electronic Service form with the Clerk, which is available in Appendix F to this Part, from the Clerk's Office, and on the Board's Web site.; or
 - 2) By stating conspicuously in any other filing that the person consents to electronic service of documents and that service is to be made to an e-mail address identified in the filing.
- b) Consent to electronic service may be filed with the Clerk at any time in the proceeding. To accept electronic service, it is not necessary to obtain a State of Illinois digital signature certificate.

c) A party or participant may revoke its consent to electronic service at any time in the proceeding by filing a written notice of the revocation with the Clerk.

(Source: Added at 27 Ill. Reg. _____, effective _____)

101.1014 Trade Secrets and Other Non-Disclosable Information

a) If a person seeks to file an electronic document containing information that the person claims should be protected as a trade secret or other non-disclosable information, the person must submit to COOL both a complete version of the electronic document and a redacted version of the electronic document. The person must otherwise comply with 35 Ill. Adm. Code 130.

b) In accordance with 35 Ill. Adm. Code 130, if a document, whether filed electronically or in paper, is claimed or determined to contain a trade secret or other non-disclosable information, only the redacted version of the document will be publicly accessible on COOL.

(Source: Added at 27 Ill. Reg. _____, effective _____)

APPENDIX F
Consent to Electronic Service

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

I, the undersigned, authorize the Board, its hearing officers, and other parties or participants in this proceeding to serve documents on me electronically in lieu of receiving paper documents. My e-mail address to receive electronic service is: _____.

[signature]
[date]

Notice of Withdrawal

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

_____)
 NOTICE OF WITHDRAWAL

_____ NOW COMES [Petitioner's or Complainant's name], by one of its attorneys, [Attorney's name] pursuant to 35 Ill. Adm. Code 101.302(l) hereby gives notice of withdrawal of this case.

 Attorney's Name

Name of Attorney and Firm
 Address
Telephone Number

(Source: Amended at 27 Ill. Reg. _____, effective _____)

APPENDIX G Comparison of Former and Current Rules

The following table compares the former procedural rules (in effect on December 31, 2000) with the current procedural rules (effective January 1, 2000).

<u>FORMER PART 101</u>	<u>CURRENT SECTION</u>
101.100	101.100
101.101	101.200 101.202
101.102	101.302
101.103	101.302
101.104	101.302
101.105	101.308
101.106	101.306
101.107	101.400
101.108	101.400
101.109	101.300
101.120	101.302
101.121	2 Ill. Adm. Code 2175.210 (current)
101.122	2 Ill. Adm. Code 2175.215 (current)
101.140	101.304(a)
101.141	101.304
101.142	101.304(e)
101.143	101.304(d)
101.144	101.300
101.160	2 Ill. Adm. Code 2175.300 (current)
101.161	130.Subpart A 130.Subpart D

101.162	2 Ill. Adm. Code 2175.305 (current)
101.180	101.700 2 Ill. Adm. Code 2175.210 (current)
101.181	2 Ill. Adm. Code 2175.130 (current)
101.200	101.114 101.612
101.220	101.610
101.221	101.606
101.241	101.500
101.242	101.504
101.243	101.506
101.244	101.516
101.245	101.508 101.510
101.246	101.520 101.902
101.247	101.502 101.518 101.522
101.260	101.622
101.261	101.614
101.280	101.608 101.800
101.281	101.802
101.300	101.520
101.301	101.904
101.302	101.906
101.304	101.908
101.Appendix A Illustration A	101.Appendix A Illustration J
101.Appendix A Illustration B	101.Appendix A Illustration K
101.Appendix A Illustration C	101.Appendix A Illustration D
101.Appendix A Illustration D	101.Appendix A Illustration C 101.Appendix A Illustration F
101.Appendix A Illustration E	101.Appendix A Illustration A
101.Appendix A Illustration F	101.Appendix A Illustration I
101.Appendix B	101.Appendix B
101.Appendix C	101.Appendix C
101.Appendix D	101.Appendix D
101.Appendix E Illustration A	101.Appendix E Illustration A
101.Appendix E Illustration B	101.Appendix E Illustration B

(Source: Repealed at 27 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION

SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD

PART 102
REGULATORY AND INFORMATIONAL HEARINGS AND PROCEEDINGS

SUBPART A: GENERAL PROVISIONS

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

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

Section	
102.200	Proposal for Regulations of General Applicability
102.202	Proposal Contents for Regulations of General Applicability
102.204	Proposal of RCRA Amendments
102.206	Notice of Site-Specific RCRA Proposals
102.208	Proposal for Site-Specific Regulations
102.210	Proposal Contents for Site-Specific Regulations
102.212	Dismissal

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

Section	
102.300	Applicability
102.302	Agency Proposal
102.304	Hearings
102.306	Prefiled Testimony

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

Section	
102.400	Service and Filing of Documents
102.402	Motions, Production of Information, and Subpoenas
102.404	Initiation and Scheduling of Prehearing Conferences
102.406	Purpose of Prehearing Conference
102.408	Prehearing Order

102.410	Authorization of Hearing
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102.414	Hearings on the Economic Impact of New Proposals
102.416	Notice of Hearing
102.418	Record
102.420	Authority of the Hearing Officer
102.422	Notice and Service Lists
102.424	Prehearing Submission of Testimony and Exhibits
102.426	Admissible Information
102.428	Presentation of Testimony and Order of Hearing
102.430	Questioning of Witnesses

SUBPART E: CERTIFICATION OF REQUIRED RULES

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

SUBPART F: BOARD ACTION

Section	
102.600	Revision of Proposed Regulations
102.602	Adoption of Regulations
102.604	First Notice of Proposed Regulations
102.606	Second Notice of Proposed Regulations
102.608	Notice of Board Final Action
102.610	Adoption of Identical-in-Substance Regulation
102.612	Adoption of Emergency Regulations
102.614	Adoption of Peremptory Regulations

SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL

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

SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION

Section	
102.800	Applicability
102.810	Petition
102.820	Petition Contents
102.830	Board Action

APPENDIX A Comparison of Former and Current Rules

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

SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part II: Regulatory and Other Nonadjudicative Hearings and Proceedings, in R70-4, 1 PCB 43, October 8, 1970; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1398, effective January 16, 1985; Part repealed, new Part adopted in R88-5(B) at 14 Ill. Reg. 9210, effective May 24, 1990; amended in R90-16 at 14 Ill. Reg. 20472, effective December 11, 1990; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 587, effective January 1, 2001; amended in R01-13 at 26 Ill. Reg. 3498, effective February 22, 2002, amended in R03-10 at 27 Ill. Reg. _____, effective _____ .

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

Section 102.200 Proposal for Regulations of General Applicability

Any person may submit a regulatory proposal for the adoption, amendment, or repeal of a regulation. ~~The original and 9 copies of each proposal must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h) and served on one copy each with the Attorney General, the Agency, and DNR in accordance with 35 Ill. Adm. Code 101.304(c).~~

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 102.202 Proposal Contents for Regulations of General Applicability

Each proponent must set forth the following in its proposal:

- a) The language of the proposed rule, including any existing regulatory language proposed to be amended or repealed. Language being added must be indicated by underscoring, and language being deleted must be indicated by strike-outs. The proposed rule must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
- b) A statement of the reasons supporting the proposal, including a statement of the facts that support the proposal, and a statement of the purpose and effect of the proposal, including environmental, technical, and economic justification. The statement must discuss the applicable factors listed in Section 27(a) of the Act. The statement must include, to the extent reasonably practicable, all affected sources and facilities and the economic impact of the proposed rule;

- c) A synopsis of all testimony to be presented by the proponent at hearing;
- d) Copies of any material to be incorporated by reference within the proposed rule pursuant to Section 5-75 of the IAPA [5 ILCS 100/5-75];
- e) *A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act. 5 ILCS 100/5-40(3.5).*
- fe) Proof of service upon all persons required to be served pursuant to Section 102.422 of this Part;
- gf) Unless the proponent is the Agency or DNR, a petition signed by at least 200 persons, pursuant to Section 28 of the Act and Section 102.410(b) of this Part;
- hg) When the Agency proposes a rule it believes is federally required, a certification in accordance with Section 102.500 of this Part;
- ih) For a proposed rule that amends an existing Board rule, a written statement or certification that the proposal amends the most recent version of the rule as published on the Board's Web site or as obtained from the Clerk;
- ji) When the proponent is a State agency, an electronic version of the information required under subsection (a) of this Section; and
- kj) When any information required under this Section is inapplicable or unavailable, a complete justification for the inapplicability or unavailability.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 102.206 Notice of Site-Specific RCRA Proposals

- a) Public notice of hearings on site-specific RCRA proposals will be given at least 30 days before the date of the hearing.
- b) In addition to the requirements of Section 28 of the Act, the Board, at a minimum, will give notice of hearings on a site-specific RCRA proposal to the following persons:
 - 1) Federal agencies as designated by the USEPA;

- 2) Illinois Department of Transportation;
 - 3) Illinois Department of Natural Resources;
 - 4) Illinois Department of Public Health;
 - 5) The Governor of any other state adjacent to the county in which the facility is located; and
 - 6) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility.
- c) In addition to the methods of notice by publication of Section 28 of the Act and Section 102.416 of this Part, the Board will give notice by broadcast over at least one radio station in the area of the facility containing the information required by subsections (d)(2) and (d)(4) through (d)(8) of this Section.
- d) A hearing notice on a site-specific RCRA proposal will include the following information:
- 1) The address of the Board office;
 - 2) Name and address of the proponent and, if different, of the facility for which the site-specific rule is sought;
 - 3) A brief description of the business conducted at the facility and the activity described in the proposal;
 - 4) A description of the relief requested in the proposal;
 - 5) Name, address, e-mail address, and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the proposal;
 - 6) The name, address, e-mail address if available, and telephone number of the Agency's representative in the rulemaking;
 - 7) A description of any written comment period or a statement that a comment period will be established in the future;
 - 8) A statement that the record in the rulemaking is available at the Board office for inspection, except those portions that are claimed or determined to be trade secrets, and that procedures are available whereby disclosure may be sought by the public. Any such claim must be made in accordance with 35 Ill. Adm. Code 130;

- 9) A statement that site-specific rules may be adopted pursuant to 415 ILCS 5/27 and Section 102.202 of this Part, and a citation to the Board regulations sought to be modified; and
- 10) Any additional information considered necessary or proper.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 102.208 Proposal for Site-Specific Regulations

Any person may submit a written proposal for the adoption, amendment or repeal of a substantive site-specific regulation. ~~The original and 9 copies of each proposal must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h) of the Board one copy each and served upon the Agency, DNR, and the Attorney General in accordance with 35 Ill. Adm. Code 101.304(c).~~

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 102.210 Proposal Contents for Site-Specific Regulations

Proponents of site-specific regulations other than those relating to RCRA must comply with the requirements of Section 102.202 of this Part in addition to the following requirements:

- a) The proposal must set forth the language of the proposed site-specific rule, including any existing regulatory language proposed to be amended or repealed. Language being added must be indicated by underscoring and language being deleted must be indicated by strike-outs. If the proposed site-specific rule seeks an exemption from or modification of a rule of general applicability, the proposed site-specific rule may not be proposed as an amendment to the general rule. Instead, the site-specific rule must be proposed as its own Section;
- b) In the event that the proposed rule would replace the applicability of a general rule to the pollution source, the proposal must specify, with supporting documentation, the reasons why the general rule is not technically feasible or economically reasonable for the person or site. The documentation must include relevant information on other similar persons' or sites' ability to comply with the general rule. Where relevant to the Board's consideration, the proposal must also include information pertaining to *existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, and the nature of the existing air quality or receiving body of water* [415 ILCS 5/27(a)];
- c) *A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or*

research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act. 5 ILCS 100/5-40(3.5).

- de) The proposal must describe the person or site for which regulatory change is sought and the area affected by the proposed change. The proposal must also include a detailed assessment of the environmental impact of the proposed change, and include a description of available treatment or control options;
- ed) The proposal must demonstrate that the Board may grant the requested relief consistent with federal law governing the subject of the proposal (e.g., Underground Injection Control program, Resource Conservation and Recovery Act, etc.);
- fe) When the proponent is a State agency, the proponent also must provide an electronic version of the information required under subsection (a) of this Section; and
- gf) When any information required under this Section is inapplicable or unavailable, the proposal must provide a complete justification for the inapplicability or unavailability.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

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

Section 102.302 Agency Proposal

- a) When proposing a regulation required by the CAAA, the Agency must meet the following requirements:
 - 1) The proposal must set forth the proposed rule, which must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
 - 2) The proposal must have a cover sheet that prominently states that the Agency proposes the rule under Section 28.5 of the Act, *unless another provision of the Act specifies the method for adopting a specific rule* [415 ILCS 5/28.5(c)];
 - 3) The proposal must *clearly identify the provisions and portions of the federal statute, regulations, guidance, policy statement, or other documents upon which the rule is based* [415 ILCS 5/28.5(e)(3)];

- 4) The proposal must include *supporting documentation for the rule that summarizes the basis of the rule* [415 ILCS 5/28.5(e)(4)];
 - 5) The proposal must *describe in general the alternative selected and the basis for the alternative* [415 ILCS 5/28.5(e)(5)];
 - 6) The proposal must summarize the economic and technical data that the Agency relied upon in drafting the proposed rule;
 - 7) The proposal must include a list of any documents that the Agency directly relied upon in drafting the proposed rule or that the Agency intends to rely upon at hearing, and copies of the documents;
 - 8) The proposal must set forth *a description of the geographical area to which the rule is intended to apply, a description of the process or processes affected, and identification by classes of the entities expected to be affected, and a list of sources expected to be affected by the rule to the extent known to the Agency* [415 ILCS 5/28.5(e)(8)]; and
 - 9) The proposal must include ~~a diskette containing~~ the information required under subsection (a)(1) of this Section in an electronic format pursuant to 35 Ill. Adm. Code 101.1006.
- b) If the proposal fails to meet any of the requirements of subsection (a) of this Section, the Board may decide not to accept the proposal for filing.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

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

Section 102.416 Notice of Hearing

- a) The hearing officer will set a time and place for hearing. The Clerk will give notice of the date of the hearing as follows or as otherwise required by applicable law:
 - 1) By notice in the Board's Environmental Register and on the Board's Web site;
 - 2) *At least 20 days prior to the scheduled date of the hearing the Board shall give notice of such hearing by public advertisement in a newspaper of general circulation in the area of the State concerned. The notice will include, the date, time, place and purpose of such hearing* [415 ILCS 5/28(a)]; and

- 3) Where required by federal law, including air pollution and RCRA proposals, newspaper notice will be published at least 30 days prior to the hearing date.
- b) In accordance with Section 28(a) of the Act or as otherwise required by applicable law, the Clerk will give notice ~~by mail~~ to the proponent and to all persons who are on the notice list Section 102.422 of this Part.
- c) Hearings that are continued on the hearing record for a period of 45 days or less do not require notice that complies with subsections (a) and (b) of this Section.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 102.422 Notice and Service Lists

- a) ~~The hearing officer will maintain a~~ A notice list for each regulatory proceeding ~~will be maintained~~. The notice list will consist of those persons who have furnished their names and addresses to the hearing officer or the Clerk's office concerning the proposal. Notice of all Board actions and hearing officer orders will be given to all persons on the notice list.
- b) The hearing officer may establish a service list for any regulatory proceeding, in addition to the notice list. The hearing officer may direct participants to serve copies of all documents upon the persons on the service list in accordance with 35 Ill. Adm. Code 101.304(c). In deciding whether to establish a service list, the hearing officer will consider factors including the complexity of the proceeding and the number of participants. For purposes of fast-track rulemakings under Section 28.5 of the Act, participants of record will be the individuals on the service list.
- c) The Board will not accept general requests to appear on all notice lists. Information regarding the Board's pending rulemakings is available through the Clerk's Office On-Line (COOL), located on the Board's Web site (www.ipcb.state.il.us). ~~Interested p~~Persons interested in appearing on notice lists must submit their names for each proceeding in accordance with subsection (a) of this Section.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 102.424 Prehearing Submission of Testimony and Exhibits

- a) The proponent must submit all written testimony and any related exhibits 21 days prior to the hearing at which the witness testifies, unless the hearing officer directs otherwise to prevent material prejudice or undue delay.

- b) The hearing officer may require the prehearing submission of testimony, questions, responses, answers, and any related exhibits by the proponent or participants other than the proponent if the hearing officer determines that such a procedure will provide for a more efficient hearing.
- c) ~~The original and 9 copies of a~~Any prehearing testimony, questions, answers, responses, or exhibits must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h). The hearing officer, the Agency, and, if a participant, the Attorney General and DNR must each be served with one copy of any prehearing testimony, questions, answers, responses, or exhibits. One copy of any prehearing testimony, questions, answers, responses, or exhibits must also be served upon the proponent and each participant on any service list, unless otherwise specified ~~or limited~~ by the hearing officer. The service must be initiated on or before the date that the prehearing documents are filed with the Clerk.
- d) All prehearing testimony, questions, answers, responses, and exhibits must be served and submitted in the form required by 35 Ill. Adm. Code 101.Subpart C₂ and labeled with the docket number of the proceeding, the name of the witness submitting the material or exhibit, and the title of the material or exhibit.
- e) The proponent and each participant who has filed testimony, questions, answers, responses, or exhibits before hearing must bring the number of copies designated by the hearing officer of that material and exhibits to the hearing.
- f) Testimony, questions, answers, responses, and exhibits submitted prior to hearing will be entered into the record as if read, unless the hearing officer determines that it will aid public understanding to have the material or exhibit read. All persons testifying will be sworn and will be subject to examination. Modifications to previously submitted material and exhibits may be allowed by the hearing officer at hearing provided that the modifications are either non-substantive in nature or would not materially prejudice another person's participation at hearing. Objections to the modifications are waived unless raised at hearing.
- g) Where prehearing submission of testimony, questions, answers, responses, or exhibits is required pursuant to subsection (a) or (b) of this Section, any material or exhibit that is not filed in a timely manner will be allowed only as time permits, and only where its submission will not materially prejudice the proponent or any other participant.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION

Section 102.810 Petition

Any person may submit a petition for the adoption, amendment or repeal of an ORW designation. The ~~original and nine copies of each~~ petition must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h) and ~~one copy each~~ served upon the Agency, Illinois Department of Natural Resources, and the Attorney General in accordance with 35 Ill. Adm. Code 101.304(c).

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 102.820 Petition Contents

Each proponent must set forth the following information in its proposal:

- a) The language of the proposed rule, amendment, or repealer identifying the surface water body or water body segment being proposed for designation, amendment, or repeal as an ORW. Language being added must be indicated by underscoring, and language being deleted must be indicated by strike-outs. The proposed rule must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
- b) A statement describing the specific surface water body or water body segment for which the ORW designation, amendment, or repeal is requested and the present designation of the surface water body or water body segment;
- c) A statement describing the area in which the specific surface water body or water body segment exists, including:
 - 1) The existence of wetlands or natural areas;
 - 2) The living organisms in that area, including endangered or threatened species of plants, aquatic life or wildlife listed pursuant to the Endangered Species Act 16 USC 1531 et seq. or the Illinois Endangered Species Protection Act [41 ILCS 10];
- d) A statement supporting the designation, the amendment, or the repeal, including the health, environmental, recreational, aesthetic or economic benefits of the designation, the amendment, or the repeal thereof;
- e) A statement identifying the anticipated impact on economic and social development of the ORW designation, amendment, or repeal. This statement should include:
 - 1) Impacts on the regional economy;
 - 2) Impacts on regional employment;
 - 3) Impacts on the community;

- 4) A comparison of the health and environmental impacts to the economic impact of an ORW designation;
- f) A statement describing the existing and anticipated uses of the specific surface water body or water body segment for which the ORW designation, amendment, or repeal is requested;
- g) A statement describing the existing water quality of the specific surface water body or water body segment warranting the ORW designation, amendment, or repeal;
- h) A synopsis of all testimony to be presented by the proponent at hearing;
- i) Copies of any material to be incorporated by reference within the proposed designation pursuant to Section 5-75 of the Administrative Procedure Act [5 ILCS 100/5-75];
- j) *A descriptive title or other description of any published study or research report used in developing the rule, the identify of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act. 5 ILCS 100/5-40(3.5).*
- kj) Proof of service upon all persons required to be served pursuant to Section 102.810 of this Part;
- lk) Unless the proponent is the Agency or Illinois Department of Natural Resources or receives a waiver by the Board, a petition signed by at least 200 persons, pursuant to Section 28 of the Act and Section 102.160(a); and
- mł) Where any information required by this Section is inapplicable or unavailable, a complete justification for such inapplicability or unavailability.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

APPENDIX A ~~Comparison of Former and Current Rules~~

The following table compares the former procedural rules (in effect on December 31, 2000) with the current procedural rules (effective January 1, 2001).

<u>FORMER PART 102</u>	<u>CURRENT SECTION</u>
102.100	102.100
102.101	102.104

102.102	102.106
102.103	102.110
102.104	102.112
102.120	102.200
102.121	102.202
102.122	102.212
102.123	102.204
102.124	102.206
102.140	102.208
102.141	102.210
102.142	102.212
102.160	102.410
102.161	102.412
102.162	102.416
102.163	102.206
102.164	102.418
102.180	102.414
102.200	102.500
102.201	102.502
102.202	102.504
102.220	102.420
102.221	102.422
102.240	102.404
102.241	102.406
102.242	102.408
102.260	102.402
102.261	102.402
102.262	102.402
102.280	102.424
102.281	102.418
102.282	102.426
102.283	102.428
102.284	102.430
102.285	102.418
102.320	102.108
102.341	102.602
102.342	102.604
102.343	102.606
102.344	102.608
102.345	102.610
102.346	102.612
102.347	102.614
102.360	102.700
102.361	102.702

102.362	102.704
102.363	102.706

(Source: Repealed 27 Ill. Reg. _____, effective _____)

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

PART 103
ENFORCEMENT

SUBPART A: GENERAL PROVISIONS

Section	
103.100	Applicability
103.102	Severability
103.104	Definitions
103.106	General

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

Section	
103.200	Who May File
103.202	Parties
103.204	Notice, Complaint, and Answer
103.206	Adding Parties
103.208	Request for Informal Agency Investigation
103.210	Notice of Complaint
103.212	Hearing on Complaint

SUBPART C: SETTLEMENT PROCEDURE

Section	
103.300	Request for Relief from Hearing Requirement in State Enforcement Proceeding
103.302	Contents of Proposed Stipulation and Settlement Agreement
103.304	Hearing on Proposed Stipulation and Settlement Agreement
103.306	Board Order on Proposed Stipulation and Settlement Agreement

SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

Section	
103.400	Purpose, Scope, and Applicability
103.402	Interim Order
103.404	Joinder of the Agency

103.406	Draft Permit or Statement
103.408	Stipulated Draft Remedy
103.410	Contents of Public Notice
103.412	Public Comment
103.414	Hearing
103.416	Contents of Board Order

SUBPART E: IMPOSITION OF PENALTIES

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

~~APPENDIX A Comparison of Former and Current Rules~~

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

SOURCE: Procedural 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 Part repealed, new Part adopted in R00-20 at 25 Ill. Reg.425, effective January 1, 2001; amended in R03-10 at 27 Ill. Reg. _____, effective _____.

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

Section 103.204 Notice, Complaint, and Answer

- a) An enforcement proceeding will be commenced by the service of a notice and complaint by registered or certified mail, messenger service, or personal service upon all respondents and the filing of ~~1 original and 9 copies~~ of the notice and complaint with the Clerk. The notice and complaint must be filed in accordance with 35 Ill. Adm. Code 101.302(h).
- b) The notice must be directed to the respondents notifying them of the filing of the accompanying complaint and that they may be required to attend a hearing at a date set by the Board.
- c) The complaint must be captioned in accordance with 35 Ill. Adm. Code 101.Appendix A, Illustration A and contain:
 - 1) A reference to the provision of the Act and regulations that the respondents are alleged to be violating;

- 2) The dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations. The complaint must advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense; and
 - 3) A concise statement of the relief that the complainant seeks.
- d) Except as provided in subsection (e) of this Section, the respondent may file an answer within 60 days after receipt of the complaint if respondent wants to deny any allegations in the complaint. All material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer, unless respondent asserts a lack of knowledge sufficient to form a belief. Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing.
 - e) If the respondent timely files a motion under Section 103.212(b) or 35 Ill. Adm. Code 101.506, the 60-day period to file an answer described in subsection (d) of this Section will be stayed. The stay will begin when the motion is filed and end when the Board disposes of the motion.
 - f) Any party serving a complaint upon another party must include the following language in the notice: “Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk’s Office or an attorney.”

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 103.212 Hearing on Complaint

- a) *Any person may file with the Board a complaint against any person allegedly violating the Act or any rule or regulation thereunder or any permit or term or condition thereof. When the Board receives a citizen’s complaint, unless the Board determines that such complaint is duplicative ~~duplicitous~~ or frivolous, it shall schedule a hearing. [415 ILCS 5/31(d)] The definition for duplicative ~~duplicitous~~ and frivolous can be found at 35 Ill. Adm. Code 101.Subpart B.*
- b) Motions made by respondents alleging that a citizen’s complaint is duplicative ~~duplicitous~~ or frivolous must be filed no later than 30 days following the date of service of the complaint upon the respondent. Motions under this subsection may be made only with respect to citizen’s enforcement proceedings. Timely filing

the motion will, pursuant to Section 103.204(e) of this Subpart, stay the 60 day period for filing an answer to the complaint.

- c) The Board will automatically set for hearing all complaints filed by the Attorney General or a State's Attorney on behalf of the People of the State of Illinois.
- d) The Board in its discretion may hold a hearing on the violation and a separate hearing on the remedy.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

Section 103.404 Joinder of the Agency

If the Board directs that the Agency be joined, the Clerk will send, by messenger or by certified mail addressed to the Agency, a copy of the Board Order requiring joinder. The mailing will constitute service of process upon the Agency. The Board may serve its order on the Agency by e-mail, in lieu of paper service, if the Agency consents to electronic service in accordance with 35 Ill. Adm. Code 101.Subpart J.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 103.410 Contents of Public Notice

- a) In addition to all parties, the Agency must serve a copy of any partial draft permit on USEPA ~~at the address listed in 35 Ill. Adm. Code 101.Subpart C.~~
- b) In addition to the requirements of the Act and Section 103.210 of this Part, the Agency must, at a minimum, give notice of the filing of a partial draft permit to the following persons:
 - 1) Federal agencies as designated by USEPA;
 - 2) Illinois Department of Transportation;
 - 3) Illinois Department of Natural Resources;
 - 4) Illinois Department of Public Health;
 - 5) The Governor of any other state adjacent to the county in which the facility is located; and
 - 6) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility.

- c) In addition to the methods of notice by publication of Section 103.208 of this Part, the Agency must give notice by broadcast over at least one radio station in the area of the facility containing the information required by subsections (d)(2), (d)(4) and (d)(6) through (d)(8).
- d) A notice of a partial draft permit must include the following information:
- 1) The addresses of the Board office and Web site;
 - 2) Name and address of the respondent and, if different, of the facility subject to the enforcement proceeding;
 - 3) A brief description of the business conducted at the facility and the activity that is the subject of the enforcement proceeding;
 - 4) A statement of the violations the Board has found or has proposed to find;
 - 5) A statement that the Agency has filed a partial draft permit;
 - 6) Name, address, and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the partial draft permit or stipulated remedy;
 - 7) A notice of a hearing, the address of the Board, a statement that a hearing will be held and that the record will remain open for 45 days after the filing of the partial draft or stipulated remedy for written comments;
 - 8) A statement that the record in the proceeding is available to be inspected at the Board office and may also be available through the Clerk's Office On-Line (COOL), located ~~for inspection on the Board's Web site~~, except those portions of the record that are claimed or determined to be trade secrets, and that procedures are available whereby disclosure may be sought by the public in accordance with 35 Ill. Adm. Code 130;
 - 9) A statement that enforcement proceedings are considered pursuant to 415 ILCS 5/30; and
 - 10) Any additional information considered necessary or proper.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 103.414 Hearing

- a) The hearing officer, after appropriate consultation with the parties, will set a time and place for the hearing to be held not less than 30 days after the filing of the partial draft permit or stipulated remedy.
- b) The hearing will be held in the county in which the facility is located, in the population center in the county closest to the facility.
- c) The Clerk in consultation with the hearing officer will give notice of the hearing to the persons entitled to notice in Sections 103.210 and 103.410 of this Part, and to any other persons who have commented, requested to comment or requested notice, and to any persons on a mailing list provided by the Agency.
- d) Notice will be given not less than 30 days before the hearing.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

APPENDIX A ~~Comparison of Former and Current Rules~~

The following appendix compares the former procedural rules (in effect on December 31, 2000) with the current procedural rules (effective January 1, 2001).

FORMER PART 103	CURRENT SECTION
103.101	102.100
103.120	103.200
103.121	103.202
103.122	103.204
103.123	101.204
103.124	103.212
103.125	101.600 101.602
103.140	101.Subpart E
103.141	101.406 101.408 103.206
103.142	101.502 101.510
103.161	101.616
103.162	101.618
103.163	101.622
103.180	103.Subpart C
103.200	101.610
103.204	101.626
103.206	101.630
103.207	101.632
103.208	101.626

103.209	101.624
103.220	103.500 101.608
103.221	101.604
103.224	103.416
103.Subpart H	101.Subpart I
103.Subpart I	103.Subpart D

(Source: Repealed at 27 Ill. Reg. _____, effective _____)

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

PART 104
REGULATORY RELIEF MECHANISMS

SUBPART A: GENERAL PROVISIONS

Section	
104.100	Applicability
104.102	Severability
104.104	Definitions

SUBPART B: VARIANCES

Section	
104.200	General
104.202	Filing Requirements
104.204	Petition Content Requirements
104.206	Resource Conservation and Recovery Act (RCRA) Variance Petition Contents
104.208	Consistency with Federal Law
104.210	Petition for Extension of Variance
104.212	Motion for Modification of Internal Variance Compliance Dates
104.214	Agency's Notice of Petition
104.216	Agency Investigation and Recommendation
104.218	Agency Recommendation to RCRA Variance
104.220	Response to Agency Recommendation
104.222	Stipulations
104.224	Objections to Petition, Written Comments and Request for Hearing
104.226	Amended Petition and Amended Recommendation
104.228	Insufficient Petition
104.230	Dismissal of Petition
104.232	Calculation of Decision Deadline
104.234	Hearing
104.236	Hearing Procedures

104.238	Standard of Review
104.240	Certificate of Acceptance
104.242	Term of Variance
104.244	Variance Conditions
104.246	Performance Bonds
104.248	Objection to Conditions

SUBPART C: PROVISIONAL VARIANCES

Section	
104.300	Applicability
104.302	Board Action
104.304	Initiating a Request
104.306	Notice
104.308	Term
104.310	Simultaneous Variance Prohibition

SUBPART D: ADJUSTED STANDARDS

Section	
104.400	General
104.402	Initiation of Proceeding
104.404	Request to Agency to Join as Co-Petitioner
104.406	Petition Content Requirements
104.408	Petition Notice Requirements
104.410	Proof of Petition Notice Requirements
104.412	Effect of Filing a Petition: Stay
104.414	Dismissal of Petition
104.416	Agency Recommendation and Petitioner Response
104.418	Amended Petition, Amended Recommendation, and Amended Response
104.420	Request for Public Hearing
104.422	Public Hearing
104.424	Hearing Notice
104.426	Burden of Proof
104.428	Board Action

~~APPENDIX A Comparison of Former and Current Rules~~

AUTHORITY: Subparts B and C: Implementing Sections 5, 35, 36, 37 and 38 of the Environmental Protection Act (Act) [415 ILCS 5/5, 35, 36, 37, and 38] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27]. Subpart D: Implementing Sections 5, 14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5 of the Act [415 ILCS 5/5, 14.2(c), 22.4, 27, 28, 28.1, 28.5, 26 and 39.5] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Subpart B: Originally adopted as Chapter I: Procedural Rules, Part IV: Variances, in R70-4, at 1 PCB 43, October 8, 1970; amended in R77-16, 29 PCB 503, at 2 Ill. Reg. 16, p. 3,

effective May, 1974, amended in R79-9, 35 PCB 433, at 3 Ill. Reg. 51, p. 128, effective December 7, 1979; amended in R80-12, 40 PCB 451, at 5 Ill. Reg. 2763, effective March 2, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10, 62 PCB 87, at 9 Ill. Reg. 1409, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 613, effective January 1, 2001; amended in R03-10 at 27 Ill. Reg. _____, effective _____.

SUBPART B: VARIANCES

Section 104.214 Agency's Notice of Petition

- a) Within 14 days after the petition is filed, the Agency must *publish a single notice of such petition in a newspaper of general circulation in the county where the facility or pollution source is located* [415 ILCS 5/37(a)].
- b) Upon receipt of a petition for variance, *the Agency shall promptly give written notice of such petition to:*
 - 1) *Any person in the county in which the installation or property for which variance is sought is located who has in writing requested notice of variance petitions;*
 - 2) *the State's attorney of such county;*
 - 3) *The Chairman of the County Board of such county; and*
 - 4) *Each member of the General Assembly from the legislative district in which that installation or property is located. [415 ILCS 5/37(a)]*
- c) Upon receipt of a petition for RCRA variance, the Agency must promptly give notice of the petition to:
 - 1) Federal agencies as designated by USEPA;
 - 2) Illinois Department of Transportation;
 - 3) Department of Natural Resources;
 - 4) Illinois Department of Public Health;
 - 5) The Governor of any other state adjacent to the county in which the facility or pollution source is located; and
 - 6) Elected officials of any counties, in other states, adjacent to the county in which the facility or pollution source is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility or pollution source.

- d) In addition to the methods of notice stated in subsection (c) of this Section, in a RCRA variance the Agency must also give notice by broadcast over at least one local radio station in the area of the facility or pollution source containing the information required by subsections (e) and (f) of this Section.
- e) All notices required by this Section must include the following:
- 1) The street address of the facility or pollution source, and if there is no street address, then the legal description or the location with reference to any well known landmark, highway, road, thoroughfare or intersection;
 - 2) A description of the requested relief;
 - 3) An indication that any person may request a hearing by filing with the Board a written objection to the grant of the variance within 21 days after the publication of the Agency's notice, together with a written request for hearing;
 - 4) The Clerk of the Board's address and phone number, the Board's Web site address, and a statement that a copy of the variance may be obtained through the Clerk's Office or the Board's Web site;
 - 5) A statement that the Agency is preparing a recommendation, the date on which the recommendation is to be filed, and the name, address and telephone number of the Agency employee responsible for the recommendation;
 - 6) A statement that a hearing may be held after the filing of the recommendation and that the record will remain open for written comments for 45 days after filing of the recommendation. The notice will include the address of the Board to which the comments must be mailed;
 - 7) A statement that the record in the variance proceeding is available at the Board office for inspection, except those portions that are protected from disclosure under 35 Ill. Adm. Code 130, and that procedures are available whereby disclosure may be sought by the public;
 - 8) A statement that variances may be granted pursuant to Section 35 of the Act [415 ILCS 5/35] and 35 Ill. Adm. Code 104, and a reference to the Board regulations or order from which a variance is sought; and
 - 9) Any additional information considered necessary or proper.

- f) Within 21 days after the publication of notice, the Agency must file with the Board a certification of publication that states the date on which the notice was published and must attach a copy of the published notice.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 104.216 Agency Investigation and Recommendation

- a) Upon receipt of a petition for variance, *the Agency shall promptly investigate such petition and consider the views of persons who might be adversely affected by the grant of a variance* [415 ILCS 5/37(a)].
- b) *The Agency shall make a recommendation to the Board as to the disposition of the petition* [415 ILCS 5/37(a)]. Unless otherwise ordered by the hearing officer or the Board, the recommendation must be filed with the Board within 45 days after the filing of the petition or amended petition, or where there has been a hearing scheduled, at least 30 days before hearing, whichever is earlier. The Agency must serve a copy of its recommendation ~~by First Class mail~~ on the petitioner, joined parties, and assigned hearing officer, if applicable. At a minimum, the recommendation must include:
- 1) A description of the efforts made by the Agency to investigate the facts as alleged and to ascertain the views of persons who might be affected, and a summary of the views so ascertained;
 - 2) The location of the nearest air monitoring station maintained by the Agency where applicable;
 - 3) A statement of the degree to which, if at all, the Agency disagrees with the facts as alleged in the petition, including facts refuting any allegations in the petition for variance;
 - 4) Allegations of any other facts the Agency believes relevant to the disposition of the petition, including any past or pending enforcement actions against petitioner;
 - 5) The Agency's estimate of the costs that compliance would impose on the petitioner and on others;
 - 6) The Agency's estimate of the injury that the grant of the variance would impose on the public, including the effect that continued discharge of contaminants will have upon the environment;
 - 7) The Agency's analysis of applicable federal laws and regulations and an opinion concerning the consistency of the petition with such federal laws and regulations;

- 8) The status of any permits or pending permit applications that are associated with or affected by the requested variance;
- 9) Allegation of any facts that the Agency believes are relevant to whether the Board should condition a grant of variance on the posting of a performance bond pursuant to Section 104.246 of this Part;
- 10) Citation to supporting documents or legal authorities whenever they are used as a basis for the Agency's recommendation. Relevant portions of the documents and legal authorities, other than Board decisions, reported state and federal court decisions, state and federal regulations and statutes, must be appended to the recommendation if not already in the record of the proceeding;
- 11) The Agency's recommendation of what disposition should be made of the petition, deny or grant, and suggested conditions. If the Agency recommends that variance be granted, a recommended beginning and end date of the requested variance, and any recommended conditions on the variance; and
- 12) An affidavit verifying any facts outside the record referenced in the recommendation.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 104.224 Objections to Petition, Written Comments and Request for Hearing

- a) A person who files an objection, request for hearing, or comment is a "participant" as defined in 35 Ill. Adm. Code 101.Subpart B.
- b) Except as provided in subsection (e) of this Section for RCRA variances, any person may file with the Clerk, within 21 days after the publication of the Agency's notice pursuant to Section 104.214 of this Part, a written objection to the grant of variance. The Clerk will provide ~~mail~~ a copy of the objection to the petitioner, the Agency, the hearing officer, and any joined parties ~~by First-Class mail~~.
- c) Any person may also file a written request for hearing. The written request must be filed within 21 days after the publication of the Agency's notice pursuant to Section 104.214 of this Part in order for a hearing to be held in accordance with Section 104.236 of this Part and 35 Ill. Adm. Code 101.Subpart F.
- d) Any person may file written comments in a variance proceeding. If a hearing is held, public comments must be filed within 14 days after the close of the hearing unless the hearing officer specifies a different date. If there is no hearing,

comments must be filed no later than 30 days before the decision date, unless the hearing officer orders otherwise to prevent material prejudice. (See 35 Ill. Adm. Code 101.628(c)(1).)

- e) In RCRA variances, subsections (b) and (c) of this Section do not apply. However, persons may file written comments within 45 days after the Agency files its recommendation.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

SUBPART D: ADJUSTED STANDARDS

Section 104.408 Petition Notice Requirements

- a) *The petitioner shall submit to the Board proof that, within 14 days after the filing of the petition, it has published notice of the filing of the petition by advertisement in a newspaper of general circulation in the area likely to be affected by the petitioner's activity that is the subject of the adjusted standard proceeding [415 ILCS 5/28.1].*
- b) The title of the notice must be in the form as follows: “Notice of Petition by [petitioner's name] for an Adjusted Standard before the Illinois Pollution Control Board.” The notice must contain the name and address of the petitioner, and the statement that the petitioner has filed with the Board a petition for an adjusted standard. The notice must also provide the date upon which the petition was filed, the Board docket number, the regulatory standard (with appropriate Administrative Code citation) from which an adjusted standard is sought, the proposed adjusted standard, and a general description of the petitioner's activity that is the subject of the adjusted standard proceeding, and the location of that activity. This information must be presented so as to be understood in accordance with the context of this Section's requirements. The concluding portion of the notice must read as follows:

“Any person may cause a public hearing to be held in the above-described adjusted standard proceeding by filing a hearing request with the Illinois Pollution Control Board within 21 days after the date of the publication of this notice. The hearing request should clearly indicate the docket number for the adjusted standard proceeding, as found in this notice. The hearing request and must be mailed to the Clerk of the Board, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601, or submitted electronically to the Clerk’s Office On-Line (COOL), located on the Board’s Web site (www.ipcb.state.il.us).”

Section 104.420 Request for Public Hearing

- a) Any person can request that a public hearing be held in an adjusted standard proceeding. The requests must be filed not later than 21 days after the date of the publication of the petition notice in accordance with Section 104.408 of this Part. Requests for hearing should make reference to the Board docket number assigned to the proceeding. A copy of each timely hearing request will be provided ~~mailed~~ to the petitioner and Agency by the Clerk of the Board. Participation by the public at the hearing must be in accordance with 35 Ill. Adm. Code 101.110 and 101.628.
- b) Where all parties and participants who have requested a hearing pursuant to this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board in its discretion deems it advisable.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

APPENDIX A ~~Comparison of Former and Current Rules~~

The following table compares the former procedural rules (in effect on December 31, 2000) with the current procedural rules (effective January 1, 2001).

FORMER PART 104	CURRENT SECTION
104.102	104.200
104.104	104.206
104.120	104.202
104.121	104.204
104.122	104.208
104.123	104.210
104.124	104.234 104.236
104.125	104.228 104.230
104.126	104.206
104.140	104.214
104.141	104.224
104.142	104.214
104.160	104.228 104.234 104.236 104.232 104.230
104.180	104.216
104.181	104.220
104.182	104.218
104.183	104.224
104.200	104.236

104.201	104.238 101.Subpart F
104.221	104.238

(Source: Repealed at 27 Ill. Reg. _____, effective _____)

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

PART 105
APPEALS OF FINAL DECISIONS OF STATE AGENCIES

SUBPART A: GENERAL PROVISIONS

Section	
105.100	Applicability
105.102	Severability
105.104	Definitions
105.106	Computation of Time, Filing and Service Requirements
105.108	Dismissal of Petition
105.110	Hearing Process
105.112	Burden of Proof
105.114	Calculation of Decision Deadline
105.116	Record Filing
105.118	Sanctions for Untimely Filing of the Record

SUBPART B: APPEAL OF AGENCY PERMIT DECISIONS AND OTHER FINAL
DECISIONS OF THE AGENCY

Section	
105.200	Applicability
105.202	Parties
105.204	Who May File a Petition for Review
105.206	Time to File the Petition or Request for Extension
105.208	Extension of Time to File a Petition for Review
105.210	Petition Content Requirements
105.212	Agency Record
105.214	Board Hearing

SUBPART C: CAAPP PERMIT APPEALS

105.300	Applicability
105.302	General Requirements
105.304	Petition Content Requirements

SUBPART D: APPEAL OF AGENCY LEAKING UNDERGROUND
STORAGE TANK (LUST) DECISIONS

Section	
105.400	Parties
105.402	Who May File a Petition for Review
105.404	Time for Filing the Petition
105.406	Extension of Time to File a Petition for Review
105.408	Petition Content Requirements
105.410	Agency Record
105.412	Board Hearing

SUBPART E: APPEAL OF OSFM LUST DECISIONS

Section	
105.500	Applicability
105.502	General Overview
105.504	General Requirements
105.506	Petition Content Requirements
105.508	OSFM Record and Appearance
105.510	Location of Hearing

APPENDIX A Agency LUST Final Decisions that are Reviewable

~~APPENDIX B Comparison of Former and Current Rules~~

AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 5, 39, 39.5, 40, 40.1, 40.2, and 57 of the Act [415 ILCS 5/5, 39, 39.5, 40, 40.1, 40.2 and 57].

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 18 Ill. Reg. 4244, effective March 8, 1994; amended in R94-11 at 18 Ill. Reg. 16594, effective November 1, 1994; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 406, effective January 1, 2001, amended in R03-10 at 27 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 105.116 Record Filing

The State agency must file with the Board the entire record of its decision within 30 days after the filing of the petition for review, unless this Part provides otherwise, or the Board or hearing officer orders a different filing date. If the State agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. The State agency must file the record with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h).

(Source: Amended at 27 Ill. Reg. _____, effective _____)

SUBPART B: APPEAL OF AGENCY PERMIT DECISIONS AND OTHER FINAL
DECISIONS OF THE AGENCY

Section 105.214 Board Hearing

- a) Except as provided in subsections (b), (c) and (d) of this Section, the Board will conduct a public hearing, in accordance with 35 Ill. Adm. Code 101.Subpart F, upon an appropriately filed petition for review under this Subpart. The hearing will be based exclusively on the record before the Agency at the time the permit or decision was issued, unless the parties agree to supplement the record pursuant to Section 40(d) of the Act. If any party desires to introduce evidence before the Board with respect to any disputed issue of fact, the Board will conduct a separate hearing and receive evidence with respect to the issue of fact.
- b) The Board will not hold a hearing on a petition for review under this Subpart if the Board disposes of the petition on a motion for summary judgment brought pursuant to 35 Ill. Adm. Code 101.516.
- c) The Board will not hold a hearing on a petition for review under Section 105.204(c) of this Subpart if the Board determines that:
 - 1) The petition is ~~duplicitous~~ duplicative or frivolous; or
 - 2) The petitioner is so located as to not be affected by the permitted facility.
- d) The Board will not hold a hearing on a petition for review under Section 105.204(b) or (d) of this Subpart if the Board determines that the petition is ~~duplicitous~~ duplicative or frivolous.
- d) If the Board determines to hold a hearing, the Clerk will give notice of the hearing pursuant to 35 Ill. Adm. Code 101.602.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

SUBPART E: APPEAL OF OSFM LUST DECISIONS

Section 105.504 General Requirements

- a) **Who May File.** Any owner or operator of an underground storage tank who has been issued an “Eligibility and Deductibility Determination” letter or who has not received an “Eligibility and Deductibility Determination” letter from the OSFM within the time prescribed by Section 57.9(c)(2) of the Act, which is deemed to be a final decision appealable to the Board, may file a petition with the Board seeking review of that final decision. The owner/operator must be named as the

petitioner, and the OSFM must be named as the respondent. Filing requirements are set forth at 35 Ill. Adm. Code 101.Subpart C.

- b) **Timely Petition.** The petition for review must be filed with the Board within 35 days after the date of the OSFM's "Eligibility and Deductibility Determination" letter or within 35 days from the OSFM's final decision due to its failure to act as required under Section 57.9(c)(3) of the Act. There will be a rebuttable presumption that petitioner received the OSFM's "Eligibility and Deductibility Final Determination" letter four days from the date indicated on the letter.
- c) **Service and Filing.** The petitioner must serve all filings upon the OSFM ~~at the address listed in 35 Ill. Adm. Code 101.Subpart C.~~ All filings must be accompanied by a notice of filing. Methods and proof of service, as well as the effective date of service, are governed by 35 Ill. Adm. Code 101.Subpart C.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

~~APPENDIX B – Comparison of Former and Current Rules~~

~~The following table compares the former procedural rules (in effect on December 31, 2000) with the current procedural rules (effective January 1, 2001).~~

FORMER PART 105	CURRENT SECTION
105.102	105.202 105.204 105.206 105.212 105.Subpart C
105.103	105.204

(Source: Repealed at 27 Ill. Reg. _____, effective _____)

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

PART 106
 PROCEEDINGS PURSUANT TO SPECIFIC RULES OR STATUTORY PROVISIONS
 SUBPART A: GENERAL PROVISIONS

Section	
106.100	Applicability
106.102	Severability
106.104	Definitions

SUBPART B: HEATED EFFLUENT, ARTIFICIAL COOLING LAKE, AND SULFUR
DIOXIDE DEMONSTRATIONS

Section	
106.200	General
106.202	Petition Requirements
106.204	Additional Petition Requirements in Sulfur Dioxide Demonstrations
106.206	Notice
106.208	Recommendation and Response
106.210	Burden of Proof

SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES

Section	
106.300	General
106.302	Initiation of Proceeding
106.304	Petition Content Requirements
106.306	Response and Reply
106.308	Hearing
106.310	Burden of Proof

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

Section	
106.400	General
106.402	Definitions
106.404	Initiation of Proceedings
106.406	Petition Content Requirements
106.408	Response and Reply
106.410	Hearing
106.412	Burden of Proof
106.414	Opinion and Order
106.416	USEPA Review of Proposed Determination

SUBPART E: MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY
DETERMINATIONS

Section	
106.500	General
106.502	Definitions
106.504	Initiation of Proceedings
106.506	Petition Content Requirements
106.508	Response and Reply
106.510	Hearing
106.512	Burden of Proof

106.514 Board Action

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

Section	
106.600	General
106.602	Initiation of Proceedings
106.604	Petition Content Requirements
106.606	Response and Reply
106.608	Hearing
106.610	Burden of Proof

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

Section	
106.700	Purpose
106.702	Applicability
106.704	Termination Under Section 52.3-4(b) of the Act
106.706	Who May Initiate, Parties
106.707	Notice, Statement of Deficiency, Answer
106.708	Service
106.710	Notice of Hearing
106.712	Deficient Performance
106.714	Board Decision
106.716	Burden of Proof
106.718	Motions, Responses
106.720	Intervention
106.722	Continuances
106.724	Discovery, Admissions
106.726	Subpoenas
106.728	Settlement Procedure
106.730	Authority of Hearing Officer, Board Members, and Board Assistants
106.732	Order and Conduct of Hearing
106.734	Evidentiary Matters
106.736	Post-Hearing Procedures
106.738	Motion After Entry of Final Order
106.740	Relief from Final Orders

~~APPENDIX A — Comparison of Former and Current Rules~~

AUTHORITY: Implementing and authorized by Sections 5, 14.2(c), 22.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3 of the Environmental Protection Act (the Act) [415 ILCS 5/5, 14.2(c), 22.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3].

SOURCE: Subpart B: Originally adopted as Chapter I: Procedural Rules, Part IV: Variances, in R70-4, at 1 PCB 43, October 8, 1970; amended in R77-16, 29 PCB 503, at 2 Ill. Reg. 16, p. 3, effective May 1978, amended in R79-9, 35 PCB 433, at 3 Ill. Reg. 51, p. 128, effective December 7, 1979; amended in R80-12, 40 PCB 451, at 5 Ill. Reg. 2763, effective March 2, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10, 62 PCB 87, at 9 Ill. Reg. 1409, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 550, effective January 1, 2001; amended in R03-10 at Ill. Reg. _____, effective _____.

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

Section 106.707 Notice, Statement of Deficiency, Answer

- a) A proceeding to terminate an EMSA will be commenced when the Agency serves a notice of filing and a statement of deficiency upon the respondent and files ~~one original plus 9 copies~~ of the notice of filing and statement of deficiency with the Clerk. The notice of filing and statement of deficiency must be filed in accordance with 35 Ill. Adm. Code 101.302(h).
- b) The statement of deficiency must contain:
 - 1) The stated basis for the respondent's alleged deficient performance under Section 106.712(a) of this Subpart;
 - 2) The dates, location, nature, extent and duration of any act or omission, and amount and other characteristics of any discharges or emissions, alleged to violate provisions of the Act or regulations that apply to the pilot project that the EMSA does not address;
 - 3) The dates, location, nature, extent and duration of any act or omission, and amount and other characteristics of any discharges or emissions, alleged to violate the EMSA; and
 - 4) With respect to subsections (b)(1) through (b)(3) of this Section, the statement of deficiency must contain sufficient detail to advise the respondent of the extent and nature of the alleged violations to reasonably allow the respondent to prepare a defense.
- c) The respondent must file an answer within 15 days after receipt of the statement of deficiency, unless the Board or the hearing officer extends the 15-day period for good cause. All material allegations of the statement of deficiency will be taken as admitted if not specifically denied by the answer, or if no answer is filed. Any facts that constitute an affirmative defense that would be likely to surprise the complainant must be plainly set forth in the answer before hearing.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 106.708 Service

- a) The Agency must serve a copy of the notice of filing and statement of deficiency either personally on the respondent or the respondent's authorized agent, or by registered or certified mail or messenger service with return receipt signed by the respondent or the respondent's authorized agent. Proof must be made by affidavit of the person who makes personal service, or by properly executed registered or certified mail receipt or messenger service receipt. The Agency must file proof of service of the notice of filing and statement of deficiency with the Clerk immediately upon completion of service.
- b) The Agency and the respondent must serve all motions and all other notices personally, by First Class United States mail, with sufficient postage, ~~or~~ by overnight delivery by a nationally recognized courier service, or electronically in accordance with 35 Ill Adm. Code 101.Subpart J. The Agency and the respondent must file ~~an original and 9 copies of the~~ motions and notices with the Clerk ~~with proof of service~~ in accordance with 35 Ill. Adm. Code 101.302(h).
- c) Service is presumed complete upon personal service, four days after deposit in the United States First Class mail, with sufficient postage, ~~or~~ the next business day upon deposit with a nationally recognized courier service for overnight delivery, or on the date of successful electronic transmission in accordance with 35 Ill. Adm. Code 101.1010.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 106.720 Intervention

- a) Upon timely written motion and subject to the need to conduct an orderly and expeditious hearing, the Board will permit a person to intervene in an involuntary termination proceeding under this Subpart if the person submitted written comments on the respondent's EMSA or participated in the public hearing on the respondent's EMSA by signing an attendance sheet or signature card at hearing under the procedures set forth in 35 Ill. Adm. Code 187.404, or is named or listed in the respondent's EMSA as a stakeholder, and if the Board's final order may adversely affect the person.
- b) The movant must file ~~the an original and 9 copies of a~~ motion to intervene with the Board in accordance with 35 Ill. Adm. Code 101.302(h) and serve a copy on each party in accordance with 35 Ill. Adm. Code 101.304(c) not later than 48 hours before the hearing. The Board may permit a person to intervene at any time before the beginning of the hearing when that person shows good cause for the delay.

- c) An intervenor has all the rights of an original party, except that the Board may limit the rights of the intervenor in accordance with 35 Ill. Adm. Code 101.402.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

APPENDIX A Comparison of Former and Current Rules

The following table compares the former procedural rules (in effect on December 31, 2000) with the current procedural rules (effective January 1, 2001).

FORMER PART 106	CURRENT SECTION
106.101	106.200
106.102	106.202
106.103	106.200
106.104	106.208
106.201	106.202
106.202	101.602 106.200 106.210
106.301	106.202 106.204
106.302	106.202
106.303	106.200
106.304	106.208
106.305	101.602 106.200 106.210
106.411	104.402
106.412	104.404
106.413	104.406
106.414	104.416
106.415	104.422 104.424
106.416	104.428
106.501	104.400
106.502	104.402
106.503	104.404
106.504	104.406
106.505	104.416
106.506	104.422 104.424
106.507	104.428
106.601	106.300
106.602	106.302 106.304

106.603	106.306
106.604	106.308
106.701	104.400
106.702	104.104
106.703	104.402
106.704	104.404
106.705	104.406
106.708	106.100 106.306
106.709	106.100 101.Subpart E
106.710	106.100 101.304
106.711	104.408
106.712	104.410
106.713	104.420
106.714	104.416
106.715	104.418
106.801	104.422
106.802	104.424
106.803	104.400
106.804	101.616 104.100
106.805	101.626 104.100 104.400
106.807	104.400
106.808	104.426
106.902	104.414
106.903	104.426 104.428
106.904	104.428
106.906	104.428
106.907	104.412
106.910	106.400
106.911	104.104
106.912	106.400 106.404 106.406
106.913	106.408
106.914	106.410 106.412
106.915	106.414
106.916	106.416

106.920	106.500
106.921	106.502
106.922	106.504 106.506
106.923	106.508
106.924	106.510 106.512
106.925	106.514
106.930	106.600
106.931	106.600 106.602 106.604
106.932	106.606
106.933	106.608 106.610
106.940	106.700 106.702
106.942	101.202
106.944	106.102
106.945	106.704
106.946	106.706
106.948	106.707
106.950	106.708
106.952	106.710
106.954	106.712
106.956	106.714
106.958	106.716
106.960	106.718
106.962	106.720
106.964	106.722
106.966	106.724
106.968	106.726
106.970	106.728
106.972	106.730
106.974	106.732
106.976	106.734
106.978	106.736
106.980	106.738
106.982	106.740

(Source: Repealed at 27 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS

CHAPTER 1: POLLUTION CONTROL BOARD

PART 107

PETITION TO REVIEW POLLUTION CONTROL FACILITY SITING DECISIONS

SUBPART A: GENERAL PROVISIONS

Section	
107.100	Applicability
107.102	Severability
107.104	Definitions
107.106	Description

SUBPART B: PETITION FOR REVIEW

Section	
107.200	Who May File Petition
107.202	Parties
107.204	Time for Filing Petition
107.206	Filing and Service Requirements
107.208	Petition Content Requirements

SUBPART C: FILING OF LOCAL RECORD

Section	
107.300	Record
107.302	Filing of the Record
107.304	Record Contents
107.306	Preparing of the Record
107.308	Certification of Record

SUBPART D: HEARING

Section	
107.400	General
107.402	Authority and Duties of Hearing Officer
107.404	Public Participation

SUBPART E: BOARD REVIEW AND DECISION

Section	
107.500	Preliminary Board Determination/Set for Hearing
107.502	Dismissal of Petition
107.504	Decision Deadline
107.506	Burden of Proof

APPENDIX A ——— Comparison of Former and Current Rules

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

SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186, effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg. 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4, 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579, effective July 11, 1994; amended in R99-9 at 23 Ill. Reg. 2697, effective February 16, 1999; old part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 539, effective January 1, 2001; amended in R03-10 _____, effective _____.

SUBPART C: FILING OF LOCAL RECORD

Section 107.302 Filing of the Record

The siting authority must, in accordance with 35 Ill. Adm. Code 101.302(h), file the record of its proceedings with the Board as directed by Board or hearing officer order. Failure to file the entire record on the date directed by the Board or hearing officer may subject the respondent to sanctions as may be ordered by the Board in accordance with 35 Ill. Adm. Code 101.Subpart H.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 107.304 Record Contents

- a) The record must contain all information or evidence presented to the local siting authority or relied upon by the local siting authority during its hearing process including:
- 1) The siting application;
 - 2) Any and all transcripts of local hearings;
 - 3) All briefs and other arguments and statements of parties and participants;
 - 4) All exhibits relied upon by the local siting authority in making its decision;
 - 5) All written public comments relevant to the local government proceeding;
 - 6) Minutes of all relevant open meetings of the siting authority;

- 7) Notices of hearings or all relevant meetings of the siting authority;
- 8) The written decision of the siting authority made pursuant to Section 39.2 of the Act;
- 9) Certificate of Record as described in Section 107.308 of this Part; and
- 10) *If, prior to making a final local siting decision, a county board or governing body of a municipality has negotiated and entered into a host agreement with the local siting applicant, the terms and conditions of the host agreement, whether written or oral, shall be disclosed and made a part of the hearing record for that local siting proceeding. In the case of an oral agreement, the disclosure shall be made in the form of a written summary jointly prepared and submitted by the county board or governing body of the municipality and the siting applicant and shall describe the terms and conditions of the oral agreement. [415 ILCS 5/39.2(e)]*

b) The record must contain the originals or legible copies of all documents, must be arranged in chronological sequence, and must be sequentially numbered, placing the letter “C” before the number of each page.

~~e) Seven copies of the transcript and one original and 9 copies of all other documents in the record must be filed with the Board.~~

(Source: Amended at 27 Ill. Reg. _____, effective _____)

SUBPART E: BOARD REVIEW AND DECISION

Section 107.500 Preliminary Board Determination/Set for Hearing

Upon proper filing of the petition, the Board will set the matter for hearing unless it determines that the matter is frivolous or ~~duplicitous~~ duplicative as required by Section 40.1(b) of the Act.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

~~APPENDIX A Comparison of Former and Current Rules~~

~~The following table compares the former procedural rules (in effect on December 31, 2000) with the current procedural rules (effective January 1, 2001).~~

FORMER PART 107	CURRENT SECTION
107.100	105.500
107.101	105.102
107.102	105.502
107.103	105.104

107.120	105.504(a)
107.121	105.504(b)
107.122	105.506
107.123	105.504(e)
107.124	105.508
107.Subpart C	105.108
107.Subpart D	105.510
107.Subpart E	105.100(b) 101.Subpart F
107.Subpart F	105.100(b) 101.Subpart F
107.Subpart G	105.100 101.Subpart E
107.Subpart H	105.100 101.Subpart F
107.Subpart I	105.100 101.Subpart F
107.Subpart K	105.100 101.Subpart F
107.320	105.100 101.Subpart H
107.Subpart M	105.100 101.Subpart I
107.Subpart N	105.100 101.Subpart I

(Source: Repealed at 27 Ill. Reg. _____, effective _____)

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

PART 125
TAX CERTIFICATIONS

SUBPART A: GENERAL PROVISIONS

Section	
125.100	Applicability
125.102	Severability
125.104	Definitions

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

Section	
125.200	General
125.202	Tax Certification Application
125.204	Agency Recommendation
125.206	Petition to Contest
125.208	Agency Record
125.210	Public Hearing
125.212	Hearing Notice
125.214	Burden of Proof
125.216	Board Action

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

SOURCE: Adopted in R00-20 at 25 Ill. Reg. 642, effective January 1, 2001; amended in R03-10 at 27 Ill. Reg. _____, effective _____.

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

Section 125.216 Board Action

- a) Pollution Control Facilities. *If it is found that the claimed facility or relevant portion thereof is a pollution control facility as defined in Section 125.200(a)(1) of this Part, the Board shall enter a finding and issue a certificate to that effect. The certificate shall require tax treatment as a pollution control facility, but only for the portion certified if only a portion is certified. The effective date of a certificate shall be the date of the application ~~petition~~ for the certificate or the date of the construction, whichever is later. [35 ILCS 200/11-25]*
- b) Low Sulfur Dioxide Emission Coal Fueled Devices. *If it is found that the claimed device meets the definition of low sulfur dioxide emission coal fueled device as set forth in Section 125.200(b)(1) of this Part, the Board shall enter a finding and issue a certificate that requires tax treatment as a low sulfur dioxide emission coal fueled device. The effective date of a certificate shall be on January 1 preceding the date of certification or preceding the date construction or installation of the device commences, whichever is later. [35 ILCS 200/11-55]*
- c) After notice to the holder of the certificate and an opportunity for a hearing pursuant to this Subpart, *the Board may on its own initiative revoke or modify a pollution control certificate or a low sulfur dioxide emission coal fueled device certificate whenever any of the following appears:*

- 1) *The certificate was obtained by fraud or misrepresentation;*
 - 2) *The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of pollution control facilities or a low sulfur dioxide emission coal fueled device; or*
 - 3) *The pollution control facility to which the certificate relates has ceased to be used for the primary purpose of pollution control and is being used for a different purpose. [35 ILCS 200/11-30]*
- d) The Clerk will provide the applicant and the Agency with a copy of the Board's order setting forth *the Board's findings and certificate, if any* [35 ILCS 200/11-30].

(Source: Amended at 27 Ill. Reg. _____, effective _____)

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

PART 130
IDENTIFICATION AND PROTECTION OF TRADE SECRETS AND OTHER NON-
DISCLOSABLE INFORMATION

SUBPART A: GENERAL PROVISIONS

Section	
130.100	Purpose and Applicability
130.102	Additional Procedures
130.104	Definitions and Severability
130.106	Segregation of Articles
130.108	Disposal of Articles
130.110	Articles Containing Emission Data

SUBPART B: PROCEDURES FOR IDENTIFYING ARTICLES THAT REPRESENT TRADE
SECRETS

Section	
130.200	Initiation of a Claim that an Article Represents a Trade Secret
130.201	State Agency Request for Justification of Claims
130.202	Time Limit for Delayed Submission of Justification
130.203	Contents of Statement of Justification
130.204	Waiver of Statutory Deadlines
130.206	Deadline for State Agency Trade Secret Determination
130.208	Standards for State Agency Determination
130.210	State Agency Actions Following a Negative Determination

- 130.212 State Agency Actions Following a Positive Determination
- 130.214 Review of State Agency Trade Secret Determination
- 130.216 Effect of a Determination of Trade Secret Status on Other State Agencies
- 130.218 Status of Article Determined or Claimed to Represent a Trade Secret Before January 1, 2001
- 130.220 Extension of Deadlines to Participate in Proceedings

SUBPART C: PROCEDURES FOR PROTECTING ARTICLES THAT REPRESENT TRADE SECRETS

Section

- 130.300 Applicability
- 130.302 Owner's Responsibility to Mark Article
- 130.304 State Agency's Responsibility to Mark Article
- 130.306 Transmission of Article Between State Agencies
- 130.308 Public Access to Information Related to Article
- 130.310 Access to Claimed or Determined Article
- 130.312 Unauthorized Disclosure or Use of Article
- 130.314 Limitation on Copying Article

SUBPART D: NON-DISCLOSABLE INFORMATION OTHER THAN TRADE SECRETS

Section

- 130.400 General
- 130.402 Who May View Non-Disclosable Information
- 130.404 Application for Non-Disclosure
- 130.406 Public Inspection
- 130.408 Board Order

~~APPENDIX A — Comparison of Former and Current Rules~~

AUTHORITY: Implementing Sections 7 and 7.1 of the Environmental Protection Act (Act) [415 ILCS 5/7 and 7.1] and authorized by Sections 7, 7.1, 26, and 27 of the Act [415 ILCS 5/7, 7.1, 26, 27].

SOURCE: Subparts A, B, and C originally adopted in R81-30 at 7 Ill. Reg. 16149, effective November 23, 1983. Subpart D originally adopted in R88-5(A) at 13 Ill. Reg. 12055, effective July 10, 1989; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 516, effective January 1, 2001; amended in R03-10 at 27 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 130.110 Articles Containing Emission Data

- a) *All emission data reported to or otherwise obtained by the Illinois Environmental Protection Agency, the Board, or DNR in connection with any examination,*

inspection or proceeding under the Act shall be available to the public to the extent required by the federal Clean Air Act Amendments of 1977 (P.L. 95-95) as amended [415 ILCS 5/7(c)].

- b) For purposes of this Section, “emission data” means:
- 1) The identity, amount, frequency, concentration, or other characteristics (related to air quality) of any contaminant that:
 - A) Has been emitted from an emission unit;
 - B) Results from any emission by the emission unit;
 - C) Under an applicable standard or limitation, the emission unit was authorized to emit; or
 - D) Is a combination of any of the items described in subsection (b)(1)(A), (B), or (C) of this Section.
 - 2) The name, address (or description of the location), and the nature of the emission unit necessary to identify the emission unit, including a description of the device, equipment, or operation constituting the emission unit.
- c) In addition to subsection (b) of this Section, information necessary to determine or calculate emission data, including rate of operation, rate of production, rate of raw material usage, or material balance, will be deemed to represent emission data for the purposes of this Section if the information is contained in a permit to ensure that the permit is practically enforceable.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

SUBPART C: PROCEDURES FOR PROTECTING ARTICLES THAT REPRESENT TRADE SECRETS

Section 130.302 Owner’s Responsibility to Mark Article

- a) When an entire article is claimed to represent a trade secret, the owner must mark the article with the words “Trade Secret” in red or bold letters ~~ink~~ on the face or front of the article.
- b) When less than an entire article is claimed to represent a trade secret, the owner must:
 - 1) Mark the article with the words “Trade Secret” in red or bold letters ~~ink~~ on the face or front of the article;

- 2) Indicate on the face or front of the article which page or portion of the article is claimed to represent a trade secret;
- 3) Mark every page or portion of the article that is claimed to represent a trade secret with the words “Trade Secret;” in red or bold letters; and
- 4) Furnish the State agency with a second copy of the article that is marked pursuant to subsections (b)(1) and (2) of this Section and from which the page or portion of the article that is claimed to represent a trade secret is deleted.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 130.304 State Agency’s Responsibility to Mark Article

- a) When an entire article is determined to represent a trade secret pursuant to Section 130.208 of this Part, the State agency must mark the article with the word “DETERMINED” in red or bold letters ~~ink~~ on the face or front of the article and must also mark any claim letter submitted for the article.
- b) When less than an entire article is determined to represent a trade secret pursuant to Section 130.208 of this Part, the State agency must:
 - 1) Mark the article with the word “DETERMINED” in red or bold letters ~~ink~~ on the face or front of the article;
 - 2) Indicate on the face or front of the article and any claim letter submitted for the article which page or portion of the article is determined to represent a trade secret; and
 - 3) Mark every page or portion of the article that is determined to represent a trade secret with the word “DETERMINED;” in red or bold letters.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

SUBPART D: NON-DISCLOSABLE INFORMATION OTHER THAN TRADE SECRETS

Section 130.404 Application for Non-Disclosure

- a) Except as provided in subsection (c)(4) of this Section, the applicant must file a single copy of the following:
 - 1) The article that is sought to be protected from disclosure; and
 - 2) The application for non-disclosure.

- b) When an entire article is sought to be protected from disclosure, the applicant must mark the article with the words “NON-DISCLOSABLE INFORMATION” in red or bold letters ~~ink~~ on the face or front of the article.
- c) When less than an entire article is sought to be protected from disclosure, the applicant must:
- 1) Mark the article with the words “NON-DISCLOSABLE INFORMATION” in red or bold letters ~~ink~~ on the face or front of the article;
 - 2) Indicate on the face or front of the article which page or portion of the article is claimed to be non-disclosable information;
 - 3) Mark every page or portion of the article sought to be protected from disclosure with the words “NON-DISCLOSABLE INFORMATION;” in red or bold letters;
 - 4) File with the Clerk a second copy of the article that is marked pursuant to subsections (c)(1) and (c)(2) of this Section and from which the page or portion sought to be protected from disclosure is deleted.
- d) The applicant is not required to serve any other persons with the article or the page or portion thereof for which the applicant seeks protection from disclosure.
- e) The application for non-disclosure must contain the following:
- 1) Identification of the particular non-disclosure category into which the material that is sought to be protected from disclosure falls (see 35 Ill. Adm. Code 101.202 for the definition of “non-disclosable information”);
 - 2) A concise statement of the reasons for requesting non-disclosure;
 - 3) Data and information on the nature of the material that is sought to be protected from disclosure, identification of the number and title of all persons familiar with the data and information, and a statement of how long the material has been protected from disclosure;
 - 4) An affidavit verifying the facts set forth in the application for non-disclosure that are not of record in the proceeding; and
 - 5) A waiver of any decision deadline in accordance with Section 130.204 of this Part.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

Section 130.408 Board Order

- a) If the Board determines that the article or any page or portion thereof is non-disclosable information, the Board will mark the word “DETERMINED” in red or bold letters on the face or front and on every page or portion determined to be non-disclosable information.
- b) If the Board determines that the article, or any page or portion thereof is not non-disclosable information, the Board may enter a conditional non-disclosure order allowing the applicant to withdraw the material addressed in the order. If the applicant fails to withdraw the material by the deadline given in the Board order, the material ~~will be returned to the Clerk’s normal file and~~ will be made available for the public to inspect.

(Source: Amended at 27 Ill. Reg. _____, effective _____)

~~APPENDIX A Comparison of Former and Current Rules~~

The following table compares the former procedural rules (in effect on December 31, 2000) with the current procedural rules (effective January 1, 2001).

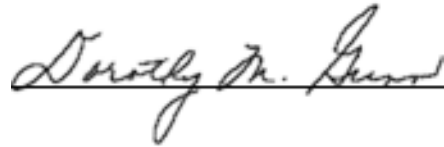
FORMER PART 120	CURRENT SECTION
120.101	130.100
120.102	130.100
120.103	101.200 101.202 130.104
120.201	130.200
120.202	130.203
120.203	130.204
120.215	130.201
120.220	130.202
120.225	130.206
120.230	130.208
120.240	130.210
120.245	130.212
120.250	130.214
120.260	130.216
120.265	130.218
120.270	130.220
120.301	130.300
120.305	130.302
120.310	130.304
120.315	130.306

120.320	130.106
120.325	130.308
120.330	130.310
120.340	130.310
120.350	130.312
120.360	130.108
120.401	130.102

(Source: Repealed at 27 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 7, 2002, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board