

ILLINOIS POLLUTION CONTROL BOARD

December 2, 2004

IN THE MATTER OF:)
)
AMENDMENTS TO THE BOARD'S) R04-24
PROCEDURAL RULES TO) (Procedural Rulemaking)
ACCOMMODATE NEW STATUTORY)
PROVISIONS: 35 ILL. ADM. CODE 101-130)

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

To accommodate recent changes to several statutes that apply to the Board and its proceedings, the Board proposed first-notice amendments to its procedural rules on March 18, 2004. First notice of the proposed amendments was published in the *Illinois Register* on May 7, 2004. Today the Board proposes amendments for second-notice review by the Joint Committee on Administrative Review (JCAR). Upon final adoption, the proposed rules will reflect provisions of the new State Officials and Employees Ethics Act (5 ILCS 430, *created by* P.A. 93-615, eff. Nov. 19, 2003, *amended by* P.A. 93-617, eff. Dec. 9, 2003), as well as recent amendments to the Environmental Protection Act (Act) (415 ILCS 5 (2002)) and Administrative Procedure Act (APA) (5 ILCS 100 (2002)).

In this rulemaking, the Board is proposing to amend each of the ten Parts of its procedural rules: Parts 101, 102, 103, 104, 105, 106, 107, 108, 125, and 130 of Title 35 of the Illinois Administrative Code. In this opinion, the Board first provides this rulemaking's procedural history. The Board then discusses the proposed rule changes necessitated by the new statutory provisions, followed by a discussion of changes suggested in public comment received after first notice. The Board's proposed amendatory language is set forth in the order following this opinion.

PROCEDURAL HISTORY

The Board on November 7, 2002, proposed procedural rule changes for first notice in docket R03-10. *See Revision of the Board's Procedural Rules: 35 Ill. Adm. Code 101-130*, R03-10 (Nov. 7, 2002). The first-notice amendments appeared in the *Illinois Register* on December 2 and 6, 2002, proposing amendments to Parts 101-107, 125, and 130 of Title 35 of the Illinois Administrative Code.

Besides accommodating electronic filing through the Board's Web-based Clerk's Office On Line (COOL), the rule changes proposed for first notice in docket R03-10 were aimed principally at reflecting amendments to the Act in P.A. 92-574 (eff. June 26, 2002) and the APA (5 ILCS 100 (2002)) in P.A. 92-330 (eff. Aug. 9, 2001). The Board held two public hearings on the proposed amendments (December 12 and 19, 2002) and received public comment.

During the pendency of the R03-10 rulemaking, the Act was further amended (P.A. 93-152, eff. July 10, 2003). These statutory amendments necessitate procedural rule changes beyond those proposed for first notice in 2002. The Board decided to address all procedural rule amendments at once in one docket. The Board therefore closed docket R03-10 on August 21, 2003 (*see* Revision of the Board's Procedural Rules: 35 Ill. Adm. Code 101-130, R03-10, slip op. at 1 (Aug. 21, 2003)), and has since withdrawn the R03-10 first-notice proposal (27 Ill. Reg. 14878 (Sept. 19, 1993)).

Also on August 21, 2003, the Board opened docket R04-8. Changes originally proposed in docket R03-10 were to be taken up in rulemaking R04-8, as were other rule changes needed chiefly due to the mentioned legislation. The Board also incorporated the record of R03-10 into the record of R04-8. *See* Amendments to the Board's Procedural Rules: 35 Ill. Adm. Code 101-130, R04-8, slip op. at 1-2 (Aug. 21, 2003).

During the pendency of R04-8, and before R04-8 went to hearing or first notice, the new State Officials and Employees Ethics Act was enacted (5 ILCS 430, *created by* P.A. 93-615, eff. Nov. 19, 2003, *amended by* P.A. 93-617, eff. Dec. 9, 2003). Some of the provisions of this new law also necessitate amendments to the Board's procedural rules.

To most expeditiously amend the Board's procedural rules to reflect all of these statutory changes, the Board on March 18, 2004, opened docket R04-24 to address all statutory-based changes, independent of amendments needed to allow electronic filing through COOL. The Board incorporated the record of R04-8 into the record of this rulemaking, R04-24, and directed the Clerk to copy the R04-8 record and place it into the record of R04-24. The Board is continuing to address electronic filing in R04-8. Materials from all of these rulemakings, including Board opinions and orders, are available through COOL on the Board's Web site at www.ipcb.state.il.us.

When the Board created this docket R04-24 on March 18, 2004, the Board simultaneously proposed first-notice amendments to its procedural rules based on the statutory changes. First notice of the proposed amendments appeared in the *Illinois Register* on May 7, 2004 (28 Ill. Reg. 6772 (Part 101), 6805 (Part 102), 6823 (Part 103), 6833 (Part 104), 6842 (Part 105), 6848 (Part 106), 6859 (Part 107), 6864 (Part 108), 6869 (Part 125), 6873 (Part 130) (May 7, 2004)). The 45-day public comment deadline expired on June 21, 2004, and the Board timely received two public comments on the first-notice proposal: public comment of the Illinois Environmental Protection Agency (Agency) filed on June 17, 2004; and public comment of the Illinois Environmental Regulatory Group (IERG) filed on June 21, 2004.¹

¹ The Board cites the Agency's public comment as "PC 1" and IERG's public comment as "PC 2."

DISCUSSION

This rulemaking proposes changes necessary to make the Board's procedural rules consistent with the new State Officials and Employees Ethics Act, as well as recent amendments to the Act and the APA. These statutory amendments have occurred since the Board adopted an entirely new set of procedural rules in January 2001. Below, the Board discusses the proposed rule changes necessitated by new statutory provisions, along with changes suggested in public comment received after the Board's first-notice proposal. The Board's proposed second-notice amendments are set forth in the order following this opinion.

State Officials and Employees Ethics Act

The new State Officials and Employees Ethics Act created sweeping ethics requirements for State officers and employees. These requirements include provisions on ethics training, political activities during State time, campaign contributions, post-State service employment, protections for whistle-blowers, the registration and activities of lobbyists, and gift bans.

The new ethics statute necessitates changes to the Board's procedural rules on "*ex parte* communications." The Board proposes to amend the definition of "*ex parte* communication" in Section 101.202 to track the statutory language defining the term. The Board does not believe, however, that the proposed definition differs fundamentally from the Board's current definition. The objective of the Board's rule remains to prevent off-the-record communications designed to influence the Board's decision in any pending adjudicatory or regulatory proceeding.

The Board also proposes to amend Section 101.114 on *ex parte* communications. The main change to this section reflects new statutory reporting requirements for the Board's ethics officer. To further help the public locate the rules on how to properly communicate with the Board, the following procedural rule sections will cross-reference each other: Sections 101.202 and 101.114 on *ex parte* communications; Section 101.110 on public participation; and Section 101.628 on statements from participants.

Environmental Protection Act

In these proposed amendments to its procedural rules, the Board is addressing several Public Acts that amended the Act over the last several years.

Illinois Environmental Regulatory Review Commission

Changes to the Act in P.A. 93-152 and P.A. 92-574 (described below) resulted from recommendations of the Illinois Environmental Regulatory Review Commission (IERRC). Created in December 1999 by Executive Order 18, the IERRC was charged with reviewing and recommending improvements to the Act, which was originally enacted in 1970.

P.A. 93-152 (eff. July 10, 2003) amended the Act in several significant ways. The following describes the relevant statutory amendments and notes the locations of the corresponding proposed procedural rule changes: (1) having the Agency rather than the Board

issue provisional variances (*see* Section 101.302(d); Part 104.Subpart C); (2) allowing the Board to adopt settlements in citizen enforcement actions *without* a public hearing (*see* Section 103.301); (3) updating incorporations by reference in Board rules through a new rulemaking procedure that does not require a public hearing or a request that the Department of Commerce and Economic Opportunity (DCEO), formerly the Department of Commerce and Community Affairs, conduct an economic impact study on the proposed rules (*see* Section 102.211); (4) authorizing prevailing citizen complainants before the Board to go to circuit court to enforce a final Board order by injunction or other relief (*see* Part 103.Subpart F); and (5) clarifying that the administrative citation civil penalty amount of \$1,500 (or \$3,000 for a subsequent violation) is to be imposed for *each* violation of *each* provision of Section 21(p) of the Act (415 ILCS 5/21(p) (2002)) (*see* Section 108.500).

P.A. 92-574 (eff. June 26, 2002) resulted in a number of non-substantive changes to the Act. The Board 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.

Section 42(h) Civil Penalty Factors

With Public Act 93-575 (eff. Jan. 1, 2004), the General Assembly changed the Act’s civil penalty provisions for enforcement proceedings, amending Section 42(h) (415 ILCS 5/42(h) (2002)) and adding a new subsection (i) to Section 42. Section 42(h)(3) now states that any economic benefit to respondent from delayed compliance is to be determined by the “lowest cost alternative for achieving compliance.” The amended Section 42(h) also requires the Board to ensure that the penalty is “at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in an arbitrary or unreasonable financial hardship.”

Under these amendments, the Board may also order a penalty lower than a respondent’s economic benefit from delayed compliance if the respondent agrees to perform a “supplemental environmental project” (SEP). A SEP is defined in Section 42(h)(7) as an “environmentally beneficial project” that a respondent “agrees to undertake in settlement of an enforcement action . . . but which the respondent is not otherwise legally required to perform.” SEPs are also added as a new Section 42(h) factor (Section 42(h)(7)), as is whether a respondent has “voluntary self-disclosed . . . the non-compliance to the [Illinois Environmental Protection] Agency” (Section 42(h)(6)). A new Section 42(i) lists nine criteria for establishing voluntary self-disclosure of non-compliance. A respondent establishing these criteria is entitled to a “reduction in the portion of the penalty that is not based on the economic benefit of non-compliance.”

It has long been the practice of the Attorney General’s Office to address the Section 42(h) penalty factors in proposed settlements filed with the Board. However, given these amendments to Section 42(h), and especially in light of the statutory amendments allowing the Board to accept *citizen* enforcement action settlements without a hearing, the Board clarifies its procedural rule on the required contents of stipulations and proposed settlements (Section 103.302). Specifically, the Board amends Section 103.302(e) to make explicit that any penalty included in a proposed settlement of an enforcement action must be supported by factors in mitigation or

aggravation of penalty, including the Section 42(h) factors.

Environmental Management Systems Agreements

P.A. 93-171 (eff. July 10, 2003) amends Act provisions (Sections 52.3-1, 52.3-2, and 52.3-4) addressing Environmental Management Systems Agreements or “EMSAs.” EMSAs are agreements between the Agency and a “sponsor” designed to implement innovative environmental measures not otherwise allowed under the law.

The P.A. 93-171 amendments specify that EMSAs may be executed with participants in the United States Environmental Protection Agency’s (USEPA) “Federal Performance Track Program,” which is the successor to USEPA’s “Federal XL Program.” USEPA operates the Federal Performance Track Program to “recognize and reward businesses and public facilities that demonstrate strong environmental performance beyond current regulatory requirements.” Section 52.3-1(a)(6). P.A. 93-171 states that the Agency may terminate an EMSA if the sponsor ceases to participate in the Federal Performance Track Program.

EMSA terminations are addressed in the Board’s procedural rules. The Board proposes to amend its procedural rules at Section 106.704 to specify this additional ground for Agency termination of EMSAs and the sponsors right to appeal that termination to the Board.

Number of Board Members

P.A. 93-509 (eff. Aug. 11, 2002) amends Section 5 of the Act (415 ILCS 5/5 (2002)). Among other things, this legislation reduces the number of Board members from seven to five and correspondingly reduces the number of Board members needed for a majority vote. Accordingly, the Board proposes to amend the definition of “Board decision” in the procedural rules to reflect that the favorable vote of at least three rather than four Board members is required for a Board decision. *See* Section 101.202; *see also* Section 101.300(d)(1).

Administrative Procedure Act

Also amended since the Board completely revised its procedural rules in January 2001 is the APA. Due to P.A. 92-330 (eff. Aug. 9, 2001), the APA 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 the procedural rules at Sections 102.202, 102.210, and 102.820.

Public Comment

The Board received two public comments after publishing its first-notice proposal, one from the Agency and one from IERG. The Agency proposes three changes to the Board’s first-notice amendments. IERG supports the Board’s proposal and disagrees with one of the Agency’s proposed changes, without commenting on the Agency’s other two proposed changes.

Agency PC 1

The Agency supports the Board’s proposed amendments, but suggests language changes in three areas of the Board’s first-notice proposal: (1) required number of copies when filing a document with the Board; (2) updating incorporations by reference in rules; and (3) issuance of provisional variances. PC 1 at 1.

First, the Agency proposes that the Board amend Section 101.302(h) to reduce the number of copies that must be filed to reflect the reduction in Board members. PC 1 at 1. Specifically, the Agency asserts that because the number of Board members has been reduced from 7 to 5, the number of copies required to be filed should also be reduced by two, from 10 total to 8 total (*i.e.*, the original document and 7 copies rather than the original and 9 copies). *Id.* The Agency maintains that this change would reduce the administrative burden and costs associated with assembling and making extra copies. *Id.*

Second, the Agency states that Section 28.6 of the Act was added to “streamline” the process for updating incorporations by reference in Board rules. PC 1 at 2. The Agency notes, however, that some Board rules are adopted to meet federal Clean Air Act requirements, and therefore may be part of the State Implementation Plan (SIP). The Agency explains that a SIP revision to reflect such new rules must be approved by USEPA, but that can happen only if there has been a hearing at the State level. *Id.*

The Agency argues that under these circumstances and because Section 28.6 does not *preclude* a Board hearing on a proposal to update incorporations by reference in rules, Section 102.211(c) should be amended “to include the possibility that a hearing could be held and still make use of the new streamlined regulatory process, *e.g.*, forgo the requirement that the [DCEO] conduct an economic analysis.” PC 1 at 2 (emphasis in original). To this end, the Agency proposes the following change (in shading) to the Board’s first-notice language of Section 102.211(c):

Sections 27 and 28 of the Act [415 ILCS 5/27, 28] do not apply to rulemaking under this Section. [415 ILCS 5/28.6(c)] Accordingly, for rulemaking under this Section, the Board will not necessarily hold any public hearings nor will it request that the Department of Commerce and Economic Opportunity conduct a study of the economic impact of the proposed amendment. *Id.*

Third, the Agency asks the Board to cross-reference, in Section 104.304, the Agency’s rules on provisional variances as an “aid to petitioners.” PC 1 at 3. The Agency notes that under amended Section 37(b) of the Act, the Agency rather than the Board now has the authority to issue provisional variances. The Agency adds that “it is in the process of updating its procedural rules at 35 Ill. Adm. Code 180 to reflect this amendment to Section 37(b).” *Id.*

IERG PC 2

IERG supports the Board’s proposed amendments. PC 2 at 1. IERG takes issue with the Agency’s proposed change to the provision on updating incorporations by reference in Board

rules—Section 102.211(c). IERG acknowledges that federal regulations require that a State hold a public hearing on the contents of a SIP or SIP revision before seeking USEPA approval. *Id.* IERG maintains, however, that the Agency’s proposed change is unnecessary. IERG notes that Sections 102.211(e) and (f), as proposed by the Board at first notice, already provide respectively that incorporations by reference cannot be adopted under these new rulemaking provisions if there is an objection filed during public comment, and that nothing in these new rulemaking provisions precludes adopting a change to an incorporation by reference through other lawful rulemaking procedures. *Id.* at 1-2.

IERG suggests therefore that in the Agency’s SIP-revision scenario, if someone other than the Agency were to propose an update to an incorporation by reference under this streamlined process, the Agency could simply object. And if the Agency were the rulemaking proponent, the Agency would simply proceed under other rulemaking procedures provided in the Act. PC 2 at 2.

Board Ruling on the Agency’s Proposed Changes to First-Notice Proposal

Number of Paper Copies with Filing. The Board appreciates the Agency’s point about a reduced number of Board members requiring a reduced number of copies when filing a document with the Board. The Board remains very interested in decreasing the amount of paper generated by Board proceedings. However, the Board declines to adopt, in this docket, the Agency’s proposed change to Section 101.302(h) on the number of paper copies required with a filing.

The subject of reducing the number of paper copies is intimately tied up with the issue of electronic filing through COOL, which is being addressed in Board docket R04-8 and which may lead to an even greater reduction in required copies. *See Amendments to the Board’s Procedural Rules to Accommodate Electronic Filing: 35 Ill. Adm. Code 101-130, R04-8.* The Board finds that the short-term benefit of reduced copies from adopting the Agency’s suggestion in this docket may be outweighed by the risk of confusing those who participate before the Board. The confusion may result from making multiple changes over a relatively short timeframe to this long-standing procedural rule, *i.e.*, if the Board were to reduce required copies here, only to change that same requirement again when the Board amends its procedural rules in R04-8 to accommodate electronic filing.

Hearing to Update Incorporation By Reference in SIP. The Board declines to adopt the Agency’s proposed change to Section 102.211(c) regarding updating incorporations by reference in Board rules. Section 28.6 of the Act provides a streamlined process to update incorporations by reference—a process without the requirements of holding public hearings or requesting that DCEO conduct an economic impact study (EcIS) on the proposed rules. Accordingly, Section 28.6(c) states that Sections 27 and 28 of the Act—the provisions requiring two public hearings on State-wide rulemakings and a request that DCEO conduct an EcIS—“do not apply to rulemaking under this Section.”

The Board understands the streamlining advantage the Agency wants in seeking to use Section 28.6 to update an incorporation by reference in air rules that necessitate a SIP revision.

Under the Agency’s suggestion, the Board, by remaining unbound by Sections 27 and 28 of the Act, would avoid having to hold a *second* hearing and avoid having to ask DCEO to conduct an EcIS and present DCEO’s response at hearing.

The Board finds, however, that the Agency’s suggestion of a hybrid-type rulemaking—having only *one* public hearing *sometimes* and not asking DCEO for an EcIS—does not fit comfortably within the plain language of Section 28.6 of the Act. Moreover, the Agency’s proposed change does not definitively specify or otherwise limit in what instances the Board *may* hold a public hearing on the proposed incorporation by reference update (“the Board will not necessarily hold any public hearings”), which could lead to disputes on when to hold a hearing in what is supposed to be a straightforward rulemaking process. The Board believes that the clearest and best approach is to leave the expedited rulemaking process of Section 28.6 hearing-free, and that if a hearing is required because of a SIP revision in updating an incorporation by reference, the hearing should be held under the “other lawful rulemaking procedures” (Section 28.6(d)) of the Act that call for a hearing (*see, e.g.*, 415 ILCS 5/28, 28.5 (2002)).

Cross Reference to Agency Rules on Provisional Variances. The Board agrees with the Agency that cross-referencing the Agency’s rules on provisional variances (35 Ill. Adm. Code 180) will assist those persons seeking a provisional variance from the Agency. As the Agency notes in its public comment, the Agency is in the process of amending its Part 180 rules to reflect the statutory changes that made the Agency rather than the Board the authority for issuing provisional variances. The July 2004 Regulatory Agenda in the *Illinois Register* (28 Ill. Reg. 10426-27 (July 23, 2004)) provided that the Agency plans to proceed to first notice on the Part 180 amendments in December 2004.

Section 104.304 of the Board’s rules addresses initiating a request for a provisional variance. At first notice, the Board proposed amendments to this Section because, among other things, the Agency no longer files a recommendation with the Board on a provisional variance request. In accord with the Agency’s recommendation, the Board at second notice also adds to Section 104.304 a cross-reference to the Agency’s provisional variance rules at 35 Ill. Adm. Code 180.

CONCLUSION

The Board proposes procedural rule amendments for second notice. Each of the Parts of the Board’s procedural rules will be amended: Parts 101, 102, 103, 104, 105, 106, 107, 108, 125, and 130 of Title 35 of the Illinois Administrative Code. The changes are needed to reflect the new State Officials and Employees Ethics Act and recent changes to the Act and the APA. The Board also makes several minor clarifying changes that do not merit discussion. No significant changes to the first-notice proposal are being proposed today. In fact, the only change between first and second notice is to add to Part 104 a cross-reference to the Agency’s provisional variance rules.

ORDER

The Board proposes for second notice the following amendments and directs the Clerk to file the proposal with JCAR. Proposed additions to the current rules are underlined; proposed

deletions to the current rules are 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

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 Notice of Withdrawal (Repealed)
- APPENDIX G Comparison of Former and Current Rules (Repealed)

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] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; Part repealed, new Part adopted in R88-5A at 13 Ill. Reg. 12055, effective July 10, 1989; amended in R90-24 at 15 Ill. Reg. 18677, effective December 12, 1991; amended in R92-7 at 16 Ill. Reg. 18078, effective November 17, 1992; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 446, effective January 1, 2001; amended in R04-24 at ___ Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

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 adopted under the Act, any permit or term or condition of a permit, or any Board order; 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 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 the 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 __ Ill. Reg. _____, effective _____)

Section 101.110 Public Participation

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

be considered by the Board only as time allows. The briefs will not delay decision-making of the Board. (See also Section 101.302(k) of this Part.)

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

Section 101.114 Ex Parte Communications

- a) For the purposes of this section, “interested person or party” means a person or entity whose rights, privileges, or interests are the subject of or are directly affected by a regulatory, quasi-adjudicatory, investment, or licensing matter [5 ILCS 430/5-50(d)].
- b) For the purposes of this section, “Executive Ethics Commission” means the commission created by the State Officials and Employees Ethics Act, 5 ILCS 430/1 et seq.
- ~~a) Adjudicatory Proceedings. Board members and employees are prohibited from engaging in ex parte communications with respect to a pending adjudicatory proceeding. (See definition of “ex parte communication” in Section 101.202 of this Part.) For purposes of this Section, Board employee means a person the Board employs on a full time, part time, contract, or intern basis.~~
- ~~b) Adjudicatory and Regulatory Proceedings. Board Members and Board employees should not engage in an ex parte communication designed to influence their action with respect to an pending adjudicatory or regulatory proceeding pending before or under consideration by the Board. (See definition of “ex parte communication” in Section 101.202 of this Part.) Whenever practicable, an interested person or party or his or her official representative or attorney should make all communications with respect to an pending adjudicatory or regulatory proceeding pending before or under consideration by the Board must be in writing and addressed address them to the Clerk rather than to individual Board Members or Board employees. (See Sections 101.110 and 101.628 of this Part.)~~
- ed) Nothing in this Section precludes Board Members or Board employees from receiving informal complaints about individual pollution sources, or forbids the administrative contacts as would be appropriate for judges and other judicial officers. Information about a pollution source included in the record of a regulatory proceeding is not an ex parte communication with respect to any adjudicatory proceeding concerning the pollution source.
- de) When the Clerk on behalf of the Board, a Board member, or a Board employee receives an ex parte communication from an interested person or party or his or her official representative or attorney, the recipient, in consultation with the Board’s ethics officer or his or her designee, must promptly memorialize the communication and make it ~~In the event that an ex parte communication occurs, the Board Member or Board employee will make that communication part of the~~

record of the proceeding. To make an oral ex parte communication part of the record, the substance of the oral communication, along with the identity of each person involved in the communication, will be either set forth in a memorandum and placed in the record or announced on the record at a public hearing.

- f) When the Clerk on behalf of the Board, a Board member, or a Board employee receives an ex parte communication, other than an ex parte communication received from an interested person or party or his or her official representative or attorney, that communication must be promptly reported to the Board's ethics officer or his or her designee by the recipient of the communication and by any other employee of the Board who responds to the communication [5 ILCS 430/5-50(c)].
- 1) The ethics officer or his or her designee, in consultation with the recipient of the ex parte communication, must ensure that the ex parte communication is promptly made part of the record of the proceeding [5 ILCS 430/5-50(c)].
 - 2) The ethics officer or his or her designee, in consultation with the recipient of the ex parte communication, must promptly file the ex parte communication with the Executive Ethics Commission, including:
 - A) All written communications;
 - B) All written responses to the communications;
 - C) A memorandum prepared by the ethics officer stating the nature and substance of all oral communications;
 - D) The identity and job title of the person to whom each communication was made;
 - E) All responses made;
 - F) The identity and job title of the person making each response;
 - G) The identity of each person from whom the written or oral ex parte communication was received;
 - H) The individual or entity represented by that person;
 - I) Any action the person requested or recommended; and
 - J) Any other pertinent information.
 - 3) The disclosure shall also contain the date of any ex parte communication

[5 ILCS 430/5-50(c)].

(Source: Amended at ___ 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 three ~~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.

“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.

“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.

~~“Duplicitous” or “Duplicative”~~ means the matter is identical or substantially similar to one brought before the Board or another forum.

“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 adopted under the Act, or Board order thereunder or any permit or term or condition of a permit, thereof or any Board order.~~

“Ex parte communication” means ~~a~~ any written or oral communication between a by any 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 that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi-adjudicatory, investment, or licensing matters pending before or under consideration by the Board. “Ex parte communication” does not include the following: (i) statements by a person publicly made in a public forum, including pleadings, transcripts, and public comments made part of the proceeding’s record; (ii) Communications statements regarding matters of procedure and practice, such as the format of pleadings, the number of copies required, the manner of service filing, and the status of proceedings a matter;

~~are not considered ex parte communications~~ and (iii) *statements made by a State employee of the Board to Board members or other employees of the Board.* [5 ILCS 100/10-60(d)5 ILCS 430/5-50(b)]. For purposes of this definition, “Board employee” means a person the Board employs on a full-time, part-time, contract or intern basis. (See Section 101.114 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.

“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 an applicant and issued a party and recommended by the Agency pursuant to Section 35(b) of the Act. (See 35 Ill. Adm. Code 104.Subpart C 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 service accessed on the Internet at <http://www.ipcb.state.il.us>.

(Source: Amended at ___ 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 in the other Parts of these rules.
 - 1) If filed in person, 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 a document is filed by U.S. Mail subsequent to a filing deadline, yet the postmark date precedes 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 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 three ~~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 ___ 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 filed with the Board 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, 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 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, 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 must be submitted on 8 1/2 x 11 inch recycled paper as defined in Subpart B of this Part, and double sided if feasible.
- h) Unless the Board or its procedural rules provide otherwise, all documents must be filed with a signed original and 9 duplicate copies (10 total), except that:
- 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 with a signed original and 4 duplicate copies (5 total), or as the hearing officer directs.
- j) Non-Conforming Exhibits. When possible, exhibits must be reduced to conform to 8 1/2 X 11 inch recycled paper. However, one non-conforming original copy may be filed with the Clerk's Office. Upon closure of the proceeding, the non-

conforming 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 __ Ill. Reg. _____, effective _____)

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

Section 101.628 Statements from Participants

- a) **Oral Statements.** The hearing officer may permit a participant to make oral statements on the record when time, facilities, and concerns for a clear and concise hearing record so allow. The oral statements must be made under oath and are subject to cross-examination. (See Sections 101.110 and 101.114 of this Part.)
- b) **Written Statements.** Any participant may submit written statements relevant to the subject matter at any time prior to hearing or at hearing. Participants submitting such a statement will be subject to cross-examination by any party. Written statements submitted without the availability of cross-examination will be treated as public comment in accordance with subsection (c) of this Section and will be afforded lesser weight than evidence subject to cross-examination.
- c) **Public Comments or Amicus Curiae Briefs.** Participants may file public comments subject to the requirements of this Section and the hearing officer's schedule for completion of the record. The Board also allows for the filing of amicus curiae briefs by non-party participants. Amicus curiae briefs will be allowed in accordance with Section 101.110 of this Part.
- 1) Public comments must be filed within 14 days after the close of the last hearing unless the hearing officer specifies a different date for submission of post-hearing comments. However, all public comments must be filed with the Board no later than 30 days before the decision date, unless the hearing officer orders otherwise to prevent material prejudice. Consistent with the burden of proof in a proceeding, the hearing officer may provide for differing filing deadlines with respect to post-hearing comments by different persons. Pursuant to hearing officer order, rebuttal public comments may be submitted.
 - 2) All public comments must present arguments or comments based on evidence contained in the record. The comments may also present legal argument citing legal authorities.

- 3) Comments must be filed with the Board. Comments will be distributed to parties and the hearing officer by the Clerk's office.

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

APPENDIX F

Notice of Withdrawal (Repealed)

_____ **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(1) hereby gives notice of withdrawal of this case.

 _____ Attorney's Name

Name of Attorney and Firm
 Address
Telephone Number

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

APPENDIX G Comparison of Former and Current Rules (Repealed)

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 E
101.Appendix A Illustration E	101.Appendix A Illustration F
101.Appendix A Illustration F	101.Appendix A Illustration G
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 __ 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
<u>102.211</u>	<u>Proposal to Update Incorporations by Reference</u>
102.212	Dismissal

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

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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
102.412	Scheduling of Hearings
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 (Repealed)

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, 28.6, 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, 28.6, 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 R04-24 at ___ Ill. Reg. _____, effective _____ .

SUBPART A: GENERAL PROVISIONS

Section 102.106 Types of Regulatory Proposals

- a) The Act provides for 5 4 types of regulatory proposals:
 - 1) Identical-in-substance rulemakings, as defined in Sections 7.2, 13.3, 28.2 and 28.4 of the Act [415 ILCS 5/7.2, 13.3., 28.2, and 28.4];
 - 2) Federally required rules, as defined in Section 28.2 of the Act [415 ILCS 5/28.2];

- 3) Other regulatory proposals, both of general applicability and not of general applicability as allowed by Sections 26, 27 and 28 of the Act [415 ILCS 5/26, 27, and 28]; ~~and~~
 - 4) Clean Air Act fast track rulemakings as defined by Section 28.5 of the Act [415 ILCS 5/28.5]; ~~and-~~
 - 5) Rulemaking to update incorporations by reference, as allowed by Section 28.6 of the Act [415 ILCS 5/28.6].
- b) The IAPA provides for three types of rulemakings:
- 1) General rulemaking pursuant to Section 5-40 of the IAPA [5 ILCS 100/5-40];
 - 2) Emergency rulemaking pursuant to Section 5-45 of the IAPA [5 ILCS 100/5-45]; and
 - 3) Peremptory rulemaking pursuant to Section 5-50 of the IAPA [5 ILCS 100/5-50].

(Source: Amended at __ Ill. Reg. _____, effective_____)

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

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 __ 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 __ Ill. Reg. _____, effective _____)

Section 102.211 Proposal to Update Incorporations by Reference

- a) *Any person may file a proposal with the Board to update an incorporation by reference included in a Board rule. The Board or the Agency may also make such a proposal on its own initiative. [415 ILCS 5/28.6(a)] The proposal must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h) and served on the*

Agency, DNR, and the Attorney General in accordance with 35 Ill. Adm. Code 101.304(c).

- b) A rulemaking to update an incorporation by reference under this Section must:
- 1) Be for the sole purpose of replacing a reference to an older or obsolete version of a document with a reference to the current version of that document or its successor document; and
 - 2) Comply with Sections 5-40 and 5-75 of the IAPA [5 ILCS 100/5-40, 5-75]. [415 ILCS 5/28.6(b), (c)]
- c) Sections 27 and 28 of the Act [415 ILCS 5/27, 28] do not apply to rulemaking under this Section. [415 ILCS 5/28.6(c)] Accordingly, for rulemaking under this Section, the Board will not hold any public hearings nor request that the Department of Commerce and Economic Opportunity conduct a study of the economic impact of the proposed amendment.
- d) A proposal to update an incorporation by reference under this Section must:
- 1) Include 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;
 - 2) Comply with subsections (a), (d), (e), (f), (i), and (j) of Section 102.202 of this Part; and
 - 3) When any information required under this subsection is inapplicable or unavailable, the proposal must provide a complete justification for the inapplicability or unavailability.
- e) If an objection to the proposed amendment is filed during the public comment period required under Section 5-40 of the IAPA [5 ILCS 100/5-40], then the proposed amendment cannot be adopted pursuant to this Section. [415 ILCS 5/28.6(d)]
- f) Nothing in this Section precludes the adoption of a change to an incorporation by reference through other lawful rulemaking procedures. [415 ILCS 5/28.6(d)]

(Source: Added at __ 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) *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)]; and*
 - 109) The proposal must include a diskette containing the information required under subsection (a)(1) of this Section.

- 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 __ Ill. Reg. _____, effective _____)

Section 102.304 Hearings

- a) Within 14 days after the receipt of a rule the Board will file the proposed rule for first notice and schedule all hearings. Additionally, the Board will send notice to the appropriate newspaper of the scheduled hearing. The notice will be published by the newspaper at least 30 days prior to the date of the hearing.
- b) The first hearing will be held within 55 days after receipt of the rule and is reserved for the Agency's testimony and questions of the Agency's witnesses.
- c) Within 7 days after the first hearing, any person may request a second hearing. The request may be made on the record at the first hearing or in writing. If done in writing it must be filed with the Board and served upon the service list.
- d) A second hearing will be held to hear comments on Department of Commerce and Economic Opportunity's ~~Community Affairs'~~ economic impact study of the proposed rules. *At least 20 days before the hearing, the Board shall notify the public of the hearing and make the economic impact study, or the Department of Commerce and Economic Opportunity's ~~Community Affairs'~~ explanation for not producing an economic impact study, available to the public. Such public hearing may be held simultaneously or as part of any Board hearing considering such new rules [415 ILCS 5/27(b)]. See also Section 102.414 of this Part. The second hearing must also permit the presentation of testimony, documents, and comments by affected entities and all other interested persons. [415 ILCS 5/28.5(g)]*
- e) *The third hearing shall be scheduled to commence within 14 days after the first day of the second hearing and shall be devoted solely to any Agency response to the material submitted at the second hearing and to any response by other parties [415 ILCS 5/28.5(g)]. In order to cancel the third hearing, the Agency must state on the record at hearing that it and the affected entities are in agreement or notify the Board and the service list in writing.*
- f) In order to meet statutory deadlines, hearing dates may be chosen by the assigned Board member and hearing officer without consultation with the participants. CAAA hearings need only be held in one affected area of the State.

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

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

Section 102.414 Hearings on the Economic Impact of New Proposals

- a) In accordance with Section 27(b) of the Act, except as otherwise provided by applicable law, before the adoption of any proposed rules, *the Board shall request that the Department of Commerce and Economic Opportunity ~~Community Affairs~~ conduct a study of the economic impact of the proposed rules. The Board shall conduct at least one public hearing on the economic impact of those new rules. At least 20 days before the hearing, the Board shall notify the public of the hearing and make the economic impact study, or the Department of Commerce and Economic Opportunity's ~~Community Affairs's~~ explanation for not producing an economic impact study, available to the public. Such public hearing may be held simultaneously or as a part of any Board hearing considering such new rules. In adopting any such new rule, the Board shall, in its written opinion, make a determination, based upon the evidence in the public hearing record, including, but not limited to, the economic impact study, as to whether the proposed rule has any adverse economic impact on the people of the State of Illinois [415 ILCS 5/27(b)].*
- b) If information of the economic impact of a proposed regulation is given at a general hearing on the proposal, the Board need not hold a special hearing on only the economic impact.

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

SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION

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
- mf) Where any information required by this Section is inapplicable or unavailable, a complete justification for such inapplicability or unavailability.

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

APPENDIX A Comparison of Former and Current Rules (Repealed)

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 __ 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

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103.204	Notice, Complaint, and Answer
103.206	Adding Parties
103.208	Request for Informal Agency Investigation
103.210	Notice of Complaint
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Section	
103.300	Request for Relief from Hearing Requirement in State Enforcement Proceeding
<u>103.301</u>	<u>Request for Relief from Hearing Requirement in Citizen's Enforcement Proceeding</u>
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

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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
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<u>Section</u>	
<u>103.600</u>	<u>Civil Action</u>

APPENDIX A Comparison of Former and Current Rules (Repealed)

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 R04-24 at ___ Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 103.106 General

Enforcement proceedings may be initiated *against any person allegedly violating the this Act, or any rule or regulation adopted under the Act, thereunder or any permit or term or condition of a permit, or any Board order thereof* [415 ILCS 5/31(d)(1)]. Complaints filed by persons other than the Attorney General or a State's Attorney will be known as citizen's complaints.

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

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

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 adopted under the Act, thereunder or any permit or term or condition of a permit, or any Board order 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)(1)] 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 ___ Ill. Reg. _____, effective _____)

SUBPART C: SETTLEMENT PROCEDURE

Section 103.301 Request for Relief from Hearing Requirement in Citizen's Enforcement Proceeding

- a) Whenever a complaint has been filed by a person other than the Attorney General or State's Attorney, the parties may file with the Board a stipulation and proposed settlement accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act [415 ILCS 5/31(c)(1)]. [415 ILCS 5/31(d)(2)] The stipulation and proposed settlement agreement must conform to the statement required for settlement submissions at hearing in Section 103.302 of this Part.
- b) Unless the Board, in its discretion, concludes that a hearing should be held, no hearing on the stipulation and proposal for settlement is required. [415 ILCS 5/31(d)(2)]

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

Section 103.302 Contents of Proposed Stipulation and Settlement Agreement

No proceeding pending before the Board will be disposed of or modified without an order of the Board. A proposed stipulation and settlement agreement must contain a written statement, signed by the parties or their authorized representatives, outlining the nature of, the reasons for, and the purpose to be accomplished by the settlement. The written statement must include:

- a) A full stipulation of all material facts pertaining to the nature, extent, and causes of the alleged violations proposed to be settled;
- b) The nature of the relevant parties' operations and control equipment;
- c) *Facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved, including:*
- 1) *the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;*
 - 2) *the social and economic value of the pollution source;*
 - 3) *the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;*
 - 4) *the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and*

- 5) *any subsequent compliance.* [415 ILCS 5/33(c)]
- d) Details as to future plans for compliance, including a description of additional control measures and the dates for their implementation, if any; and
- e) The proposed penalty, if any, supported by factors in mitigation or aggravation of penalty, including the factors set forth in Section 42(h) of the Act [415 ILCS 5/42(h)].

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

Section 103.304 Hearing on Proposed Stipulation and Settlement Agreement

When the parties submit a proposed stipulation and settlement agreement to the hearing officer at hearing, or when the Board orders that a hearing be held in accordance with Section 103.300(c) or 103.301(b) of this Part, the hearing officer will conduct a hearing in which interested persons may make statements with respect to the nature of the alleged violation and its impact on the environment, together with their views on the proposed stipulation and settlement agreement. The statements must be in accordance with 35 Ill. Adm. Code 101.628.

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

Section 103.306 Board Order on Proposed Stipulation and Settlement Agreement

- a) The Board will consider the proposed settlement and stipulation agreement and the hearing record, if any. The Board may accept, suggest revisions in, reject the proposed settlement and stipulation agreement, or direct initial or further hearings as it deems appropriate. Where a National Pollutant Discharge Elimination System (NPDES) permit is involved in the settlement, notice of settlement must be published in the Environmental Register at least 30 days prior to the settlement.
- b) If the Board determines that a settlement involves or may involve the issuance or modification of a Resource Conservation Recovery Act (RCRA) permit, it will enter an interim order pursuant to Section 103.402 of this Part.

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

SUBPART F: ENFORCING BOARD ORDERS

Section 103.600 Civil Action

- a) All orders issued and entered by the Board pursuant to Section 33 of the Act [415 ILCS 5/33] in a State enforcement proceeding are enforceable by injunction,

mandamus, or other appropriate remedy, in accordance with Section 42 of the Act [415 ILCS 5/42]. [415 ILCS 5/33(d)]

- b) A final order issued by the Board pursuant to Section 33 of the Act [415 ILCS 5/33] in a citizen's enforcement proceeding may be enforced through a civil action for injunctive or other relief instituted by a person who was a party to the Board enforcement proceeding in which the Board issued the final order. [415 ILCS 5/45(e)]

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

APPENDIX A Comparison of Former and Current Rules (Repealed)

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 __ 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 Agency Board Action
 104.304 Initiating a Request
 104.306 Filing and Notice
 104.308 Term
 104.310 Simultaneous Variance Prohibition (Repealed)

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 (Repealed)

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 R04-24 at ___ Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 104.100 Applicability

- a) This Part applies to mechanisms for obtaining adjudicatory proceedings before the Board that provide relief from environmental regulations under certain circumstances as set forth in Titles VII and IX of the Act. Specifically, this Part applies to regulatory relief mechanisms, meaning variances, provisional variances and adjusted standards.
- b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all of the Board's adjudicatory proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part apply.

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

SUBPART C: PROVISIONAL VARIANCES

Section 104.300 Applicability

This Subpart applies to any person seeking a provisional variance from the Agency pursuant to Title IX of the Act. This Subpart must be read in conjunction with 35 Ill. Adm. Code 101 and this Part. In the event of conflict between this Subpart and the requirements of 35 Ill. Adm. Code 101, the requirements of this Subpart apply.

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

Section 104.302 Agency Board Action

The Agency Board shall grant provisional variances whenever it is found, upon presentation of adequate proof, only upon notification from the Agency that compliance on a short term basis with any rule or regulation, requirement or order of the Board, or with any permit requirement, would impose an arbitrary or unreasonable hardship. Such provisional variances shall be issued within 2 working days of notification from the Agency. [415 ILCS 5/35(b)]

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

Section 104.304 Initiating a Request

Any person seeking a provisional variance pursuant to Section 35(b) of the Act and 35 Ill. Adm. Code 180 104.401 of this Part shall make a request to the Agency. The Agency shall promptly investigate and consider the merits of the request. The Agency may notify the Board of its recommendation. If the Agency fails to take final action within 30 days after receipt of the request for a provisional variance, or if the Agency denies the request ~~or if the Agency denies~~

~~the request, the person may initiate a variance proceeding with the Board pursuant to Subpart B of this Part. [415 ILCS 5/37(b)]~~

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

Section 104.306 Filing and Notice

If the Agency grants a provisional variance, the Agency must promptly file a copy of its written decision with the Board, and ~~The Board~~ shall give prompt notice of its action ~~on provisional variance requests~~ to the public by issuing a press release for distribution to newspapers of general circulation in the county. The Clerk will maintain for public inspection copies of all provisional variances filed with the Board by the Agency. [415 ILCS 5/37(b)]

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

Section 104.308 Term

Any provisional variance granted by the Agency Board pursuant to subsection (b) of Section 35 shall be for a period of time not to exceed 45 days. A provisional variance may be extended Upon receipt of a recommendation from the Agency to extend this time period, the Board shall grant up to an additional 45 days by written decision of the Agency. The provisional variances granted to any one person shall not exceed a total of 90 days during any calendar year. [415 ILCS 5/36(c)]

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

Section 104.310 Simultaneous Variance Prohibition (Repealed)

~~The Board will not grant a provisional variance to the extent that the petitioner already holds a variance from the same regulation or Board order for the same time period.~~

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

APPENDIX A Comparison of Former and Current Rules (Repealed)

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 __ 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 (Repealed)

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 R04-24 at ___ 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 ___ Ill. Reg. _____, effective _____)

APPENDIX B Comparison of Former and Current Rules (Repealed)

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 __ 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 (Repealed)

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 R04-24 at ___ Ill. Reg. _____, effective _____ .

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

Section 106.702 Applicability

- a) When the Agency terminates an EMSA under Section 52.3-4(b) or (b-5) of the Act, only Section 106.704 of this Subpart applies.
- b) This Subpart, except for Section 106.704, applies to proceedings in which the Board will determine whether to terminate an EMSA.

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

Section 106.704 Termination Under Section 52.3-4(b) or (b-5) of the Act

- a) To terminate an EMSA under Section 52.3-4(b) of the Act, the Agency must determine that the sponsor's performance under the EMSA has failed to:
- 1) *Achieve emissions reductions or reductions in discharges of wastes beyond the otherwise applicable statutory and regulatory requirements through pollution prevention or other suitable means; or*
 - 2) *Achieve real environmental risk reduction or foster environmental compliance by other persons regulated under the Act in a manner that is clearly superior to the existing regulatory system. [415 ILCS 5/52.3-1(b)]*
- b) To terminate an EMSA under Section 52.3-4(b-5) of the Act, the Agency must determine that the sponsor's participation in the Federal Performance Track Program has ceased. [415 ILCS 5/52.3-4(b-5)]
- cb) If the Agency terminates an EMSA under Section 52.3-4(b) or (b-5) of the Act, the sponsor may file an appeal with the Board. Appeals to the Board will be pursuant to 35 Ill. Adm. Code 105.Subparts A and B.

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

APPENDIX A Comparison of Former and Current Rules (Repealed)

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 __ 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 (Repealed)

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 R04-24 at __ 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 __ Ill. Reg. _____, effective _____)

APPENDIX A Comparison of Former and Current Rules (Repealed)

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(c)
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 __ Ill. Reg. _____, effective _____)

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

PART 108
 ADMINISTRATIVE CITATIONS

SUBPART A: GENERAL PROVISIONS

Section	
108.100	Applicability
108.102	Severability
108.104	Definitions

SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST

Section	
108.200	Administrative Citation Issuance
108.202	Service of Citation/Filing of Citation with the Board
108.204	Filing Requirements for Petition to Contest
108.206	Petition Contents
108.208	AC Recipient's Voluntary Withdrawal

SUBPART C: HEARINGS

Section	
108.300	Authorization of Hearing

SUBPART D: BOARD DECISIONS

Section	
108.400	Burden of Proof
108.402	Dismissal
108.404	Default
108.406	Non-Contested Citations

SUBPART E: ASSESSMENT OF PENALTIES AND COSTS

Section	
108.500	Penalties and Costs
108.502	Claimed Costs of Agency or Delegated Unit
108.504	Board Costs
108.506	Response to Claimed Costs and Reply

AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 21(o), 21(p), 31.1, and 42(b)(4) of the Act [415 ILCS 5/21(o), 21(p), 31.1, and 42(b)(4)].

SOURCE: Adopted in R00-20 at Ill. Reg. 397, effective January 1, 2001; amended in R04-24 at ___ Ill. Reg. ____, effective _____.

SUBPART E: ASSESSMENT OF PENALTIES AND COSTS

Section 108.500	Penalties and Costs
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The Board will impose penalties and assess costs as follows:

- a) If the AC is defaulted or non-contested as set forth in Sections 108.404 or 108.406 of this Part, respectively, the Board will do the following:
- 1) Impose on the AC Recipient found to have violated any provision of Section 21(o) of the Act a \$500 penalty for each violation of each such provision; and
 - 2) Impose on the AC Recipient found to have violated any provision of Section 21(p) of the Act a \$1,500 penalty for each violation of each such provision, except that the penalty amount imposed will be a first offense and a \$3,000 penalty for each violation of any provision of Section 21(p) of the Act that is the AC recipient's a second or subsequent adjudicated violation of that provision offense.
- b) If the AC Recipient contests the AC and the Board finds, based on the record, that the violation occurred and that the AC Recipient has not shown that the violation resulted from uncontrollable circumstances, the Board will do the following:
- 1) Impose on the AC Recipient found to have violated any provision of Section 21(o) of the Act a \$500 penalty for each violation of each such provision;
 - 2) Impose on the AC Recipient found to have violated any provision of Section 21(p) of the Act a \$1,500 penalty for each violation of each such provision, except that the penalty amount imposed will be a first offense and a \$3,000 penalty for each violation of any provision of Section 21(p) of the Act that is the AC recipient's a second or subsequent adjudicated violation of that provision offense; and
 - 3) Assess the AC Recipient found to have violated any provision of Section 21(o) or (p) of the Act associated hearing costs pursuant to Sections 108.502 and 108.504 of this Subpart.
- c) If the AC Recipient contests the AC but voluntarily withdraws the petition for review pursuant to Section 108.208 of this Part after the hearing starts, the Board will do the following:
- 1) Impose on the AC Recipient found to have violated any provision of Section 21(o) of the Act a \$500 penalty for each violation of each such provision;
 - 2) Impose on the AC Recipient found to have violated any provision of Section 21(p) of the Act a \$1,500 penalty for each violation of each such provision, except that the penalty amount imposed will be a first offense and a \$3,000 penalty for each violation of any provision of Section 21(p)

of the Act that is the AC recipient's a second or subsequent adjudicated violation of that provision offense; and

- 3) Assess the AC Recipient found to have violated any provision of Section 21(o) or (p) of the Act associated hearing costs pursuant to Sections 108.502 and 108.504 of this Subpart.

(Source: Amended at __ 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 R04-24 at __ 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 of the facility, 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 ___ Ill. Reg. _____, effective _____)

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

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 (Repealed)

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 R04-24 at __ 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 __ Ill. Reg. _____, effective _____)

APPENDIX A Comparison of Former and Current Rules (Repealed)

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

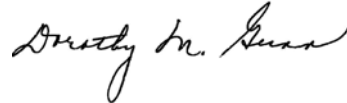
FORMER PART 120	CURRENT SECTION
120.101	130.100
120.102	130.100
120.103	101.200 101.202 130.104
120.201	130.200
120.202	130.203
120.203	130.204
120.215	130.201
120.220	130.202
120.225	130.206
120.230	130.208
120.240	130.210
120.245	130.212
120.250	130.214
120.260	130.216
120.265	130.218
120.270	130.220
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
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(Source: Repealed at __ 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 December 2, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board