

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Proceedings Pursuant to Specific Rules or Statutory Provisions
- 2) Code Citation: 35 Ill. Adm. Code 106
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>	
106.100	Amended	RECEIVED CLERK'S OFFICE APR 12 2010 STATE OF ILLINOIS Pollution Control Board
106.800	New	
106.802	New	
106.804	New	
106.806	New	
106.808	New	
106.810	New	
106.812	New	
- 4) Statutory Authority: Implementing Section 10 and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/10, 27 and 28] and Section 92.5 of the Regulation of Phosphorus in Detergents Act [415 ILCS 92.5]
- 5) A Complete Description of the Subjects and Issues Involved: A more detailed description of this rulemaking is contained in the Board's opinion and order in Procedural Rules for Authorizations under PA 95-115 (Regulation of Phosphorus in Detergents Act), 35 Ill. Adm. Code 106.Subpart H, R10-19 (March 18, 2010). This proposed rulemaking implements PA 95-115, the Regulation of Phosphorus in Detergents Act, signed and effective August 13, 2007. PA 95-115, codified at 415 ILCS 92, prohibits the manufacture, distribution, sale, and use of "any cleaning agent" that contains more than 0.5% phosphorus by weight, expressed as elemental phosphorus, after July 1, 2010. Section 5(d) provides that the Board may authorize use of cleaning agents with excess phosphorus "upon finding that there is no adequate substitute for that cleaning agent or that compliance with this . . . would otherwise be unreasonable or create a significant hardship on the user". The Board is directed to promulgate rules to implement the Section. The Board has not received any proposals for rulemaking to implement this Section, and so has itself drafted and now proposes procedural rules for Board cleaning agent determinations.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No

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- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b)]. The proposed rulemaking implements a statutory means for exception from a legislative prohibition.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board presently does not intend to hold a hearing on these proposed procedural rules unless requested to do so. The Board will accept written public comment on this proposal for 45 days after the date of publication in the *Illinois Register*. Comments should reference Docket R10-19 and be addressed to:

John Therriault
Clerk's Office
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Interested persons may request copies of the Board's opinion and order in R10-19 by calling the Clerk's office at 312/814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

For more information, contact hearing officer Kathleen Crowley at 312/814-6929 or email at crowlek@ipcb.state.il.us.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Any small business that may wish to manufacture, distribute, sell, and use "any cleaning agent" that contains more than 0.5% phosphorus by weight, expressed as elemental phosphorus, after July 1, 2010. These businesses may file a petition for authorization to do so as provided in the proposed rules.
- B) Reporting, bookkeeping or other procedures required for compliance: None, as petitions for authorization are voluntary requests for relief from a legislative prohibition.

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- C) Types of Professional skills necessary for compliance: None, as petitions for authorization are voluntary from a legislative prohibition.
- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: The Board had initially believed that cleaning authorization petitions could be handled under existing procedural rules, but upon further review determined to issue rules under the Regulation of Phosphorus in Detergents Act to avoid any procedural uncertainty or confusion for members of the general public and regulated community.

The full text of the Proposed Amendments begins on the next page:

1ST NOTICE VERSION

JCAR350106-1005545r01

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE A: GENERAL PROVISIONS
3 CHAPTER I: POLLUTION CONTROL BOARD
4

5 PART 106
6 PROCEEDINGS PURSUANT TO SPECIFIC RULES OR STATUTORY PROVISIONS
7

8 SUBPART A: GENERAL PROVISIONS
9

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STATE OF ILLINOIS
Pollution Control Board

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12 106.102 Severability
13 106.104 Definitions
14

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16 AND SULFUR DIOXIDE DEMONSTRATIONS
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21 106.204 Additional Petition Requirements in Sulfur Dioxide Demonstrations
22 106.206 Notice
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30 106.302 Initiation of Proceeding
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34 106.310 Burden of Proof
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37 PERMIT PROGRAM (CAAPP) PERMITS
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- 48 106.416 USEPA Review of Proposed Determination

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51 TECHNOLOGY DETERMINATIONS

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64 LESS THAN OR EQUAL TO 10 MICRONS (PM-10)

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

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 - 79 106.702 Applicability
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 - 86 106.714 Board Decision

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91	106.724	Discovery, Admissions
92	106.726	Subpoenas
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94	106.730	Authority of Hearing Officer, Board Members, and Board Assistants
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SUBPART H: AUTHORIZATIONS UNDER THE REGULATION
OF PHOSPHORUS IN DETERGENTS ACT

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103 Section

104 106.800

General

105 106.802

Definitions

106 106.804

Initiation of Proceeding

107 106.806

Petition Content Requirements

108 106.808

Response and Reply

109 106.810

Hearing

110 106.812

Burden of Proof

111

112 106.APPENDIX A Comparison of Former and Current Rules (Repealed)

113

114 AUTHORITY: Implementing and authorized by Sections 5, 14.2(c), 22.4, 26, 27, 28, 28.1, 28.5,
115 35, 36, 37, 38, 39.5 and 52.3 of the Environmental Protection Act (the Act) [415 ILCS 5/5,
116 14.2(c), 22.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3], and Section 92.5 of the
117 Regulation of Phosphorus in Detergents Act [415 ILCS 92.5].

118

119 SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186,
120 effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg.
121 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4,
122 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12
123 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective
124 July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in
125 R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579,
126 effective July 11, 1994; amended in R99-9 at 23 Ill. Reg. 2697, effective February 16, 1999; old
127 Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 550, effective January 1, 2001;
128 amended in R04-24 at 29 Ill. Reg. 8817, effective June 8, 2005; amended in R10-19 at 34 Ill.
129 Reg. _____, effective _____.

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SUBPART A: GENERAL PROVISIONS

Section 106.100 Applicability

- a) This Part applies to adjudicatory proceedings pursuant to specific rules or statutory provisions. Specifically, the Part applies to heated effluent, artificial cooling lake and sulfur dioxide demonstrations, water well setback exception procedures, revocation and reopening of CAAPP permits, maximum achievable control technology determinations, culpability determinations for particulate matter less than or equal to 10 microns, and the involuntary termination of environmental management system agreements, and authorization of use of cleaning agents under the Regulation of Phosphorus in Detergents Act [415 ILCS 92].
- 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 34 Ill. Reg. _____, effective _____)

SUBPART H: AUTHORIZATIONS UNDER THE REGULATION OF PHOSPHORUS IN DETERGENTS ACT

Section 106.800 General

- a) Description. This Subpart applies to any person who files a petition for Board authorization to use cleaning agents that contain phosphorus of an amount exceeding 0.5% by weight as provided in Section 5(e) of the Regulation of Phosphorus in Detergents Act [415 ILCS 92/5(e)].
- b) Parties. The person filing the petition for authorization must be named the petitioner and the Agency must be named the respondent.
- c) Filing and Service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C will apply to the proceedings of this Subpart.

(Source: Added at 34 Ill. Reg. _____, effective _____)

Section 106.802 Definitions

172 The definitions of 35 Ill. Adm. Code, Subpart B and Section 5 of the Regulation of Phosphorus in
173 Detergents Act will apply to this Subpart unless otherwise provided, or unless the context clearly
174 indicates otherwise. If there is a conflict, the definitions of Section 5 of the Act will apply.

175
176 (Source: Added at 34 Ill. Reg. _____, effective _____)
177

178 **Section 106.804 Initiation of Proceeding**

179
180 The petitioner must file the petition for authorization with the Clerk of the Board and must serve
181 one copy upon the Agency.

182
183 (Source: Added at 34 Ill. Reg. _____, effective _____)
184

185 **Section 106.806 Petition Content Requirements**

186
187 The petition must contain the following information:

188
189 a) A written statement, signed by the petitioner or an authorized representative,
190 concerning the cleaning agent containing excess phosphorus for which
191 authorization is sought and outlining a description of the cleaning agent and its
192 phosphorus content, the duration of, the reasons for, and the basis of the
193 authorization sought, consistent with the burden of proof stated in Section
194 106.812 of this Part;

195
196 b) The nature of the petitioner's operations;

197
198 c) Any other information that may be required by Section 5 of the Regulation of
199 Phosphorus in Detergents Act.

200
201 (Source: Added at 34 Ill. Reg. _____, effective _____)
202

203 **Section 106.808 Response and Reply**

204
205 a) Within 21 days after the filing of a petition, the Agency may file a response to any
206 petition in which it has not joined as co-petitioner. The response must include the
207 comments concerning potential Board action on the petition.

208
209 b) The petitioner may file a reply within 14 days after the service of any Agency
210 response.

211
212 (Source: Added at 34 Ill. Reg. _____, effective _____)
213

214 **Section 106.810 Hearing**

215
216 The Board will hold a public hearing in an authorization proceeding only if a hearing is
217 requested by the petitioner, the Agency, or any other person within 14 days after the filing of any
218 reply under Section 106.808(b). The hearing officer will schedule the hearing. The Clerk will
219 give notice of hearing in accordance with 35 Ill. Adm. Code 101. The proceedings will be in
220 accordance with 35 Ill. Adm. Code 101.Subpart F.

221
222 (Source: Added at 34 Ill. Reg. _____, effective _____)

223
224 **Section 106.812 Burden of Proof**

225
226 The burden of proof is on the petitioner. The petitioner must demonstrate that:

- 227
228 a) *There is no adequate substitute for that cleaning agent for which authorization is*
229 *sought; or*
230
231 b) *Compliance with the requirements of Section 5 of the Regulation of Phosphorus*
232 *in Detergents Act would otherwise be unreasonable or create a significant*
233 *hardship on the user. [415 ILCS 92/5(e)]*

234
235 (Source: Added at 34 Ill. Reg. _____, effective _____)

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

PART 106
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AND SULFUR DIOXIDE DEMONSTRATIONS

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106.812 Burden of Proof

106.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, ~~28.1, 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, ~~28.1, 28.5~~, 35, 36, 37, 38, 39.5 and 52.3], and Section 92.5 of the Regulation of Phosphorus in Detergents Act [415 ILCS 92.5].

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. ~~Reg.~~ 550, effective January 1, 2001; ~~amended in R04-24 at 29 Ill. Reg. amended in R04-24 at 29 Ill. Reg. 8817, effective June 8, 2005, amended in R10-19 at 34 Ill. Reg. 2005; amended in R10-19 at 34 Ill. Reg. _____, effective _____.~~

SUBPART A: GENERAL PROVISIONS

Section 106.100 Applicability

a) This Part applies to adjudicatory proceedings pursuant to specific rules or statutory provisions. Specifically, the Part applies to heated effluent, artificial cooling lake and sulfur dioxide demonstrations, water well setback exception procedures, revocation and reopening of CAAPP permits, maximum achievable control technology determinations, culpability determinations for particulate matter less than or equal to 10 microns, ~~and the involuntary termination of environmental management system agreements, and authorization of use of cleaning agents under the Regulation of Phosphorus in Detergents Act [415 ILCS 92.592].~~

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 34 Ill. Reg. _____, effective _____.)

SUBPART H: AUTHORIZATIONS UNDER THE REGULATION OF PHOSPHORUS IN DETERGENTS ACT

Section 106.800 General

a) Description. This Subpart applies to any person who files a petition for Board authorization to use cleaning agents that contain phosphorus of an amount exceeding 0.5% by weight as provided in Section 5/92.5 ~~(de)~~ of the Regulation of Phosphorus in Detergents Act [415 ILCS 92.5 ~~(d)92/5(e)~~].

b) Parties. The person filing the petition for authorization must be named the petitioner and the Agency must be named the respondent.

c) Filing and ~~service~~Service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C will apply to the proceedings of this Subpart.

(Source: Added at 34 Ill. Reg. _____, effective _____.)

Section 106.802 Definitions

The definitions of 35 Ill. Adm. Code Subpart B and Section ~~92.55~~ of the Regulation of Phosphorus in Detergents Act ~~[415 ILCS 92.5]~~ Act will apply to this Subpart unless otherwise provided, or unless the context clearly indicates otherwise. If there is a conflict, the definitions of Section ~~92.55~~ of the Act will apply.

(Source: Added at 34 Ill. Reg. _____, effective _____.)

Section 106.804 Initiation of Proceeding

The petitioner must file the petition for authorization with the Clerk of the Board and must serve one copy upon the Agency.

(Source: Added at 34 Ill. Reg. _____, effective _____.)

Section 106.806 Petition Content Requirements

The petition must contain the following information:

- a) A written statement, signed by the petitioner or an authorized representative, concerning the cleaning agent containing excess phosphorus for which authorization is sought, and outlining a description of the cleaning agent and its phosphorus content, the duration of, the reasons for, and the basis of the authorization sought, consistent with the burden of proof stated in Section 106.812 of this Part;
- b) The nature of the petitioner's operations;
- c) Any other information ~~which~~that may be required by Section ~~92.55~~ of the Regulation of Phosphorus in Detergents Act ~~[415 ILCS 92.5]~~.

(Source: Added at 34 Ill. Reg. _____, effective _____.)

Section 106.808 Response and Reply

- a) Within 21 days after the filing of a petition, the Agency may file a response to any petition in which it has not joined as co-petitioner. The response must include the comments concerning potential Board action on the petition.
- b) The petitioner may file a reply within 14 days after the service of any Agency response.

(Source: Added at 34 Ill. Reg. _____, effective _____.)

Section 106.810 Hearing

The Board will hold a public hearing in an authorization proceeding only if a hearing is requested by the petitioner, the Agency, or any other person within 14 days after the filing of any reply under Section ~~106.806~~106.808(b). The hearing officer will schedule the hearing. The Clerk will give notice of

hearing in accordance with 35 Ill. Adm. Code 101. The proceedings will be in accordance with 35 Ill. Adm. Code 101.Subpart F.

(Source: Added at 34 Ill. Reg. _____, effective _____)

Section 106.812 Burden of Proof

The burden of proof is on the petitioner. The petitioner must demonstrate that:

a) There is no adequate substitute for that cleaning agent for which authorization is sought; or

b) Compliance with the requirements of Section 5/92-5 of the Regulation of Phosphorus in Detergents Act would otherwise be unreasonable or create a significant hardship on the user. [415 ILCS 92/5(e)]

(Source: Added at 34 Ill. Reg. _____, effective _____)

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~~ILLINOIS REGISTER~~

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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Legend:	
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Split/Merged cell	
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Statistics:	
	Count
Insertions	38
Deletions	34
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	72