

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	New
106.900	New
106.902	New
106.904	New
106.906	New
106.908	New
106.910	New

R 12-11

RECEIVED
CLERK'S OFFICE
NOV 10 2011
STATE OF ILLINOIS
Pollution Control Board

4) Statutory Authority: Implementing and authorized by Section 21(q), 26, and 28.1 of the Environmental Protection Act [415 ILCS 5/21(q), 26, and 28.1]

5) A Complete Description of the Subjects and Issues Involved: A more-detailed description of this rulemaking is contained in the Board's first notice opinion and order in Procedural Rules for Authorizations Under PA 97-220 for Certain Landscape Waste and Compost Applications and On-Farm Composting Facilities: New 35 Ill. Adm. Code 106.Subpart I, R 12-11 (Oct. 20, 2011). In the Matter of: Procedural Rules for Authorizations Under P. A. 97-220 for Certain Landscape Waste and Compost Applications and On-Farm Composting Facilities: New 35 Ill. Adm. Code 106.Subpart I. This docket is being opened to establish adjusted standards procedural rules concerning authorizations under Section 21(q) of the Environmental Protection Act, 415 ILCS 5/21(q). The text of that Section was amended by PA 97-220, signed and effective July 28, 2011.

The recent amendment allows the Board, rather than the Illinois Environmental Protection Agency, to grant authorizations under two provisions of Section 21(q). The first type of Board authorization is under Section 21(q)(2), and is limited to farm owners or operators of a composting facility on which the landscape waste composting material is utilized to operate the compost facility on more than 2% of the property's total acreage. The other type of authorization, available under Section 21(q)(3), would allow any person to apply landscape waste or composted landscape waste at a rate greater than "agronomic rates" of not more than 20 tons per acre per year. Without such Board authorizations, these activities are prohibited acts under Section 21(q), and violators are subject to enforcement.

The proposed rules add a new Subpart I to the Board's procedural rules for adjusted

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standards at 35 Ill. Adm. Code 106. These procedural rules are similar to those in other Subparts in Part 106. As the Board is not required to hold hearings to amend procedural rules, the Board does not intend to do so absent a request within the 45-day first notice period following this publication.

- 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
- 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: These proposed amendments do not create or enlarge a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of 45 days after the date of publication in the *Illinois Register*. Comments should refer to docket R12-11 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 R12-11 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 e-mail crowleyk@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, small municipalities, or not-for-profit corporations

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that own or operate a qualifying source could be affected by the proposed amendments.

- B) Reporting, bookkeeping or other procedures required for compliance: Owner or operators of qualifying sources will have the same or fewer requirements for reporting, bookkeeping, or recordkeeping.
 - C) Types of Professional skills necessary for compliance: It is not anticipated that any additional skills will be necessary for compliance, as the goal of small source registration is to reduce the administrative requirements for owners or operators of qualifying units, while maintaining environmental effectiveness of substantive emissions requirements for these sources.
- 14) Regulatory Agenda in which these amendments were summarized: These amendments were not summarized in any regulatory agenda, as the legislative amendment requiring the rulemaking, PA 97-220 was not signed and effective until July 28, 2011.

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

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)

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106.700 Purpose
106.702 Applicability
106.704 Termination ~~under~~Under Section 52.3-4(b) or (b-5) 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~~After Entry of Final Order
106.740 Relief from Final Orders

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

Section
106.800 General
106.802 Definitions
106.804 Initiation of Proceeding
106.806 Petition Content Requirements
106.808 Response and Reply
106.810 Hearing
106.812 Burden of Proof

SUBPART I: AUTHORIZATIONS FOR CERTAIN LANDSCAPE WASTE AND
COMPOST APPLICATIONS AND ON-FARM COMPOSTING FACILITIES

Section
106.900 General
106.902 Initiation of Proceeding
106.904 Petition Content Requirements
106.906 Response and Reply
106.908 Hearing
106.910 Burden of Proof

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

AUTHORITY: Implementing and authorized by Sections 5, 14.2(c), 21(q), 22.4, 26, 27, 28, 28.1, 28.1, 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, 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.~~ Reg. 8817, effective June 8, ~~2005, 2005~~; amended in R10-19 at 34 Ill. Reg. 11486, effective July 23, 2010; amended in R12-11 at 36 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~~], and authorizations for certain landscape waste and compost applications and on-farm composting facilities.

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 36 Ill. Reg. _____, effective _____.)

SUBPART I: AUTHORIZATIONS FOR CERTAIN LANDSCAPE WASTE AND COMPOST APPLICATIONS AND ON-FARM COMPOSTING FACILITIES

Section 106.900 General

a) Applicability. This Subpart applies to any person who files a petition for Board authorization concerning an individual site to:

~~i1~~) apply landscape waste or composted landscape waste at a rate greater than the agronomic rates of 20 tons per acre per year pursuant to Section 21(q)(2) of the Act; or

~~ii2~~) operate an on-farm composting facility constituting more than 2% of the property's total acreage pursuant to Section 21(q)(3) of the Act.

b) Demonstration. Any person who files a petition for Board authorization under this Subpart must demonstrate that the site's soil characteristics or crop needs require a higher rate ~~7~~ [415 ILCS 21(q)].

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

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

(Source: Added at 36 Ill. Reg. _____, effective _____~~7~~_____)

Section 106.902 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 36 Ill. Reg. _____, effective _____~~7~~_____)

Section 106.904 Petition Content Requirements

The petition must contain the following information:

a) A written statement, signed by the petitioner or an authorized representative, concerning the property for which authorization is sought, outlining a description of the specific percentage of the property or the specific application rate sought~~7~~and the duration of, the reasons for, and the basis for the authorization sought, consistent with the burden of proof stated in Section 106.910 of this Part;

b) The nature of the petitioner's operations;

c) Any other applicable information ~~which~~that may be required by Section 21 (q) of the Act, including but not limited to a map of the location where land application or composting would take place, a description of the uses of the surrounding areas, the method for nutrient calculations, the number of soil samples, the intended crop or planting, a description of any additives to the landscape waste, the method and timeframe for incorporating the landscape waste or compost into the soil, the method of minimizing stormwater/snowmelt runoff, the measures for removal of noncompostable wastes from the incoming loads, and the method of preventing nuisance conditions such as vectors, odors~~7~~or litter.

(Source: Added at 36 Ill. Reg. _____, effective _____~~7~~_____)

Section 106.906 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 ~~36~~35 Ill. Reg. _____, effective _____~~_____~~)

Section 106.908 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(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 36 Ill. Reg. _____, effective _____~~_____~~)

Section 106.910 Burden of Proof

The burden of proof ~~for~~ is on the petitioner. A petitioner may seek authorization, for an individual site, to:

a) ~~Apply~~apply landscape waste or composted landscape waste at rates greater than "agronomic rates" of not more than 20 tons per acre per year. [415 ILCS 21(q)]. An owner or operator seeking to apply landscape waste or composted landscape waste in accordance with Section 21(q)(2) of the Act at rates greater than agronomic rates must demonstrate to the Board that the site's soil characteristics or crop needs require a higher rate as specified in the petition. ~~—~~ [415 ILCS 21(q)(2)].

b) Increase in total acreage of on-farm composting facility. A farm owner or operator seeking to apply landscape waste or landscape waste compost in accordance with Section 21(q)(3)(A) of the Act at a composting facility on which the composting materials ~~is~~are utilized and who proposes to do so on more than 2% of the property's total acreage on which the composting material is utilized by the farmer, must demonstrate to the Board that the site's soil characteristics or crop needs require a higher rate as specified in the petition. ~~—~~ [415 ILCS 21(q)(3)(A)].

(Source: Added at 36 Ill. Reg. _____, effective _____~~_____~~)

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Format changed	0
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PART 106

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CLERK'S OFFICE

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STATE OF ILLINOIS
Pollution Control Board

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

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75 MANAGEMENT SYSTEM AGREEMENTS (EMSAs)

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- 79 106.702 Applicability
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SUBPART H: AUTHORIZATIONS UNDER THE REGULATION
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119

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

121

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123
124
125 AUTHORITY: Implementing and authorized by Sections 5, 14.2(c), 21(q), 22.4, 26, 27, 28,
126 28.1, 28.1, 35, 36, 37, 38, 39.5 and 52.3 of the Environmental Protection Act (the Act) [415
127 ILCS 5/5, 14.2(c), 22.4, 26, 27, 28, 28.1, 28.1, 35, 36, 37, 38, 39.5 and 52.3], and Section 92.5 of
128 the Regulation of Phosphorus in Detergents Act [415 ILCS 92.5].

129

130 SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186,
131 effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg.
132 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4,
133 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12
134 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective
135 July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in
136 R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579,
137 effective July 11, 1994; amended in R99-9 at 23 Ill. Reg. 2697, effective February 16, 1999; old
138 Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 550, effective January 1, 2001;
139 amended in R04-24 at 29 Ill. Reg. 8817, effective June 8, 2005; amended in R10-19 at 34 Ill.
140 Reg. 11486, effective July 23, 2010; amended in R12-11 at 36 Ill. Reg. _____, effective
141 _____.

142
143 SUBPART A: GENERAL PROVISIONS

144
145 **Section 106.100 Applicability**

- 146
- 147 a) This Part applies to adjudicatory proceedings pursuant to specific rules or
- 148 statutory provisions. Specifically, the Part applies to heated effluent, artificial
- 149 cooling lake and sulfur dioxide demonstrations, water well setback exception
- 150 procedures, revocation and reopening of CAAPP permits, maximum achievable
- 151 control technology determinations, culpability determinations for particulate
- 152 matter less than or equal to 10 microns, the involuntary termination of
- 153 environmental management system agreements, and authorization of use of
- 154 cleaning agents under the Regulation of Phosphorus in Detergents Act [415 ILCS
- 155 92] and authorizations for certain landscape waste and compost applications and
- 156 on-farm composting facilities.
- 157
- 158 b) This Part must be read in conjunction with 35 Ill. Adm. Code 101 which contains
- 159 procedures generally applicable to all of the Board's adjudicatory proceedings. In
- 160 the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and
- 161 those of this Part, the provisions of this Part apply.
- 162

163 (Source: Amended at 36 Ill. Reg. _____, effective _____)

164
165 SUBPART I: AUTHORIZATIONS FOR CERTAIN LANDSCAPE WASTE AND
166 COMPOST APPLICATIONS AND ON-FARM COMPOSTING FACILITIES

167
168 **Section 106.900 General**

- 169
- 170 a) Applicability. This Subpart applies to any person who files a petition for Board
- 171 authorization concerning an individual site to:
- 172

- 173 1) apply landscape waste or composted landscape waste at a rate greater than
174 the agronomic rates of 20 tons per acre per year pursuant to Section
175 21(q)(2) of the Act; or
176
177 2) operate an on-farm composting facility constituting more than 2% of the
178 property's total acreage pursuant to Section 21(q)(3) of the Act.
179
180 b) Demonstration. Any person who files a petition for Board authorization under
181 this Subpart must demonstrate that the site's soil characteristics or crop needs
182 require a higher rate [415 ILCS 21(q)].
183
184 c) Parties. The person filing the petition for authorization must be named the
185 petitioner and the Agency must be named the respondent.
186
187 d) Filing and Service. The filing and service requirements of 35 Ill. Adm. Code
188 101.Subpart C will apply to the proceedings under this Subpart.
189

190 (Source: Added at 36 Ill. Reg. _____, effective _____)
191

192 **Section 106.902 Initiation of Proceeding**
193

194 The petitioner must file the petition for authorization with the Clerk of the Board and must serve
195 one copy upon the Agency.
196

197 (Source: Added at 36 Ill. Reg. _____, effective _____)
198

199 **Section 106.904 Petition Content Requirements**
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201 The petition must contain the following information:
202

- 203 a) A written statement, signed by the petitioner or an authorized representative,
204 concerning the property for which authorization is sought, outlining a description
205 of the specific percentage of the property or the specific application rate sought
206 and the duration of, the reasons for, and the basis for the authorization sought,
207 consistent with the burden of proof stated in Section 106.910 of this Part;
208
209 b) The nature of the petitioner's operations;
210
211 c) Any other applicable information that may be required by Section 21(q) of the
212 Act, including but not limited to a map of the location where land application or
213 composting would take place, a description of the uses of the surrounding areas,
214 the method for nutrient calculations, the number of soil samples, the intended crop
215 or planting, a description of any additives to the landscape waste, the method and

216 timeframe for incorporating the landscape waste or compost into the soil, the
217 method of minimizing stormwater/snowmelt runoff, the measures for removal of
218 noncompostable wastes from the incoming loads, and the method of preventing
219 nuisance conditions such as vectors, odors or litter.

220
221 (Source: Added at 36 Ill. Reg. _____, effective _____)
222

223 **Section 106.906 Response and Reply**
224

- 225 a) Within 21 days after the filing of a petition, the Agency may file a response to any
226 petition in which it has not joined as co-petitioner. The response must include the
227 comments concerning potential Board action on the petition.
228
229 b) The petitioner may file a reply within 14 days after the service of any Agency
230 response.

231
232 (Source: Added at 35 Ill. Reg. _____, effective _____)
233

234 **Section 106.908 Hearing**
235

236 The Board will hold a public hearing in an authorization proceeding only if a hearing is
237 requested by the petitioner, the Agency, or any other person within 14 days after the filing of any
238 reply under Section 106.806(b) . The hearing officer will schedule the hearing. The Clerk will
239 give notice of hearing in accordance with 35 Ill. Adm. Code 101. The proceedings will be in
240 accordance with 35 Ill. Adm. Code 101.Subpart F.

241
242 (Source: Added at 36 Ill. Reg. _____, effective _____)
243

244 **Section 106.910 Burden of Proof**
245

246 The burden of proof is on the petitioner. A petitioner may seek authorization, for an individual
247 site, to:

- 248
249 a) apply landscape waste or composted landscape waste at rates greater than
250 "agronomic rates" of not more than 20 tons per acre per year [415 ILCS 21(q)].
251 An owner or operator seeking to apply landscape waste or composted landscape
252 waste in accordance with Section 21(q)(2) of the Act at rates greater than
253 agronomic rates must demonstrate to the Board that the site's soil characteristics
254 or crop needs require a higher rate as specified in the petition [415 ILCS
255 21(q)(2)].
256
257 b) Increase in total acreage of on-farm composting facility. A farm owner or
258 operator seeking to apply landscape waste or landscape waste compost in

259 accordance with Section 21(q)(3)(A) of the Act at a composting facility on which
260 the composting materials are utilized and who proposes to do so on more than 2%
261 of the property's total acreage on which the composting material is utilized by the
262 farmer must demonstrate to the Board that the site's soil characteristics or crop
263 needs require a higher rate as specified in the petition [415 ILCS 21(q)(3)(A)].
264

265 (Source: Added at 36 Ill. Reg. _____, effective _____)