

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	Amend
106.1000	New
106.1002	New
106.1004	New
106.1006	New
106.1008	New
106.1010	New
106.1012	New
- 4) Statutory Authority: Implementing Section 95 of the Electronic Products Recycling and Reuse Act [415 ILCS 150/95] and authorized by Sections 26, 27, and 28 of the Environmental Protection Act (the Act) [415 ILCS 5/26, 27, and 28]
- 5) A Complete Description of the Subjects and Issues Involved: The Board is proposing procedural rules applicable to petitions for temporary waivers of the covered electronic device (CED) landfill ban under Section 95 of the Electronic Products Recycling and Reuse Act (EPRRA) [415 ILCS 150/95]. Section 95(e) of EPRRA addresses matters including the contents of a petition for a temporary landfill ban waiver, criteria for the Board's consideration of a petition, the Board's decision deadline, appeal of Board orders denying temporary landfill ban waivers, and implementation of waivers. Specifically, the Board proposes a new 35 Ill. Adm. Code 106.Subpart J following the general format of other subparts of Part 106.
- 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? Yes

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<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Action Citation:</u>
106.100	Amend	35 Ill. Reg. 18492; November 14, 2011
106.900	New	35 Ill. Reg. 18492; November 14, 2011
106.902	New	35 Ill. Reg. 18492; November 14, 2011
106.904	New	35 Ill. Reg. 18492; November 14, 2011
106.906	New	35 Ill. Reg. 18492; November 14, 2011
106.908	New	35 Ill. Reg. 18492; November 14, 2011
106.910	New	35 Ill. Reg. 18492; November 14, 2011

- 11) Statement of Statewide Policy Objective: 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(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

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 R12-21 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 Tim Fox at 312/814-6065 or e-mail FoxT@ipcb.state.il.us.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Under the Section 95(e) of the Environmental Products Recycling and Reuse Act, county governments and municipal joint action agencies may submit petitions seeking a temporary waiver of the landfill ban applicable to covered devices. The proposed procedural rules addressing these petition would have, if any, an indirect effect on small businesses, small municipalities, and not-for-profit corporations.
- B) Reporting, bookkeeping or other procedures required for compliance: These proposed procedural rules do not include reporting, recordkeeping, or other similar requirements for county governments and municipal joint action agencies seeking a temporary waiver of the landfill ban.

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- C) Types of Professional skills necessary for compliance: No professional skills beyond those currently required by landfill and waste regulations are expected to be necessary.
- 14) Regulatory Agenda in which these amendments were summarized: Public Act 97-287, which amended temporary landfill ban waiver provisions, became effective August 10, 2011, after publication of the Board's July 2011 Regulatory Agenda.

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

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

10	Section	
11	106.100	Applicability
12	106.102	Severability
13	106.104	Definitions

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15 SUBPART B: HEATED EFFLUENT, ARTIFICIAL COOLING LAKE,
16 AND SULFUR DIOXIDE DEMONSTRATIONS
17

18	Section	
19	106.200	General
20	106.202	Petition Requirements
21	106.204	Additional Petition Requirements in Sulfur Dioxide Demonstrations
22	106.206	Notice
23	106.208	Recommendation and Response
24	106.210	Burden of Proof

25
26 SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES
27

28	Section	
29	106.300	General
30	106.302	Initiation of Proceeding
31	106.304	Petition Content Requirements
32	106.306	Response and Reply
33	106.308	Hearing
34	106.310	Burden of Proof

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36 SUBPART D: REVOCATION AND REOPENING OF CLEAN AIR ACT
37 PERMIT PROGRAM (CAAPP) PERMITS
38

39	Section	
40	106.400	General
41	106.402	Definitions
42	106.404	Initiation of Proceedings
43	106.406	Petition Content Requirements

- 44 106.408 Response and Reply
- 45 106.410 Hearing
- 46 106.412 Burden of Proof
- 47 106.414 Opinion and Order
- 48 106.416 USEPA Review of Proposed Determination

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50 SUBPART E: MAXIMUM ACHIEVABLE CONTROL
51 TECHNOLOGY DETERMINATIONS

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53 Section

- 54 106.500 General
- 55 106.502 Definitions
- 56 106.504 Initiation of Proceedings
- 57 106.506 Petition Content Requirements
- 58 106.508 Response and Reply
- 59 106.510 Hearing
- 60 106.512 Burden of Proof
- 61 106.514 Board Action

62

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

65

66 Section

- 67 106.600 General
- 68 106.602 Initiation of Proceedings
- 69 106.604 Petition Content Requirements
- 70 106.606 Response and Reply
- 71 106.608 Hearing
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74 SUBPART G: INVOLUNTARY TERMINATION OF ENVIRONMENTAL
75 MANAGEMENT SYSTEM AGREEMENTS (EMSAs)

76

77 Section

- 78 106.700 Purpose
- 79 106.702 Applicability
- 80 106.704 Termination Under Section 52.3-4(b) or (b-5) of the Act
- 81 106.706 Who May Initiate, Parties
- 82 106.707 Notice, Statement of Deficiency, Answer
- 83 106.708 Service
- 84 106.710 Notice of Hearing
- 85 106.712 Deficient Performance
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87	106.716	Burden of Proof
88	106.718	Motions, Responses
89	106.720	Intervention
90	106.722	Continuances
91	106.724	Discovery, Admissions
92	106.726	Subpoenas
93	106.728	Settlement Procedure
94	106.730	Authority of Hearing Officer, Board Members, and Board Assistants
95	106.732	Order and Conduct of Hearing
96	106.734	Evidentiary Matters
97	106.736	Post-Hearing Procedures
98	106.738	Motion After Entry of Final Order
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100

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

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 SUBPART J: TEMPORARY LANDFILL BAN WAIVERS UNDER
113 THE ELECTRONIC PRODUCTS RECYCLING AND REUSE ACT

114

115 Section

116	<u>106.1000</u>	<u>General</u>
117	<u>106.1002</u>	<u>Definitions</u>
118	<u>106.1004</u>	<u>Initiation of Proceeding</u>
119	<u>106.1006</u>	<u>Petition Content Requirements</u>
120	<u>106.1008</u>	<u>Response and Reply</u>
121	<u>106.1010</u>	<u>Burden of Proof</u>
122	<u>106.1012</u>	<u>Board Decision</u>

123

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

125

126 AUTHORITY: Implementing and authorized by Sections 5, 14.2(c), 22.4, 26, 27, 28, 28.1, 28.5,
127 35, 36, 37, 38, 39.5 and 52.3 of the Environmental Protection Act (the Act) [415 ILCS 5/5,
128 14.2(c), 22.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3], and Section 5 of the
129 Regulation of Phosphorus in Detergents Act [415 ILCS 92/5], and Section 95 of the Electronic

130 Products Recycling and Reuse Act [415 ILCS 150/95].
131
132 SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186,
133 effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg.
134 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4,
135 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12
136 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective
137 July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in
138 R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579,
139 effective July 11, 1994; amended in R99-9 at 23 Ill. Reg. 2697, effective February 16, 1999; old
140 Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 550, effective January 1, 2001;
141 amended in R04-24 at 29 Ill. Reg. 8817, effective June 8, 2005; amended in R10-19 at 34 Ill.
142 Reg. 11486, effective July 23, 2010; amended in R12-21 at 36 Ill. Reg. _____, effective
143 _____.

144
145 SUBPART A: GENERAL PROVISIONS

146
147 **Section 106.100 Applicability**

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

164
165 (Source: Amended at 36 Ill. Reg. _____, effective _____)

166
167 SUBPART J: TEMPORARY LANDFILL BAN WAIVERS UNDER
168 THE ELECTRONIC PRODUCTS RECYCLING AND REUSE ACT

169
170 **Section 106.1000 General**

- 171
172 a) Applicability. This Subpart applies to any county government or municipal joint

173 action agency filing a petition with the Board beginning April 1, 2012, but no
174 later than December 31, 2013, for a temporary CED landfill ban waiver under
175 Section 95(e) of the Electronic Products Recycling and Reuse Act [415 ILCS
176 150/95(e)].

- 177
- 178 b) Demonstration. Any county government or municipal joint action agency filing a
179 petition for a temporary CED landfill ban waiver under this Subpart must
180 demonstrate that *the respective county's or action agency's jurisdiction may be*
181 *granted a temporary CED landfill ban waiver due to a lack of funds and a lack of*
182 *collection opportunities to collect CEDs and EEDs within the county's or action*
183 *agency's jurisdiction.* [415 ILCS 150/95(e)].
- 184
- 185 c) Parties. The person filing the petition for a temporary CED landfill ban waiver
186 must be named the petitioner.
- 187
- 188 d) Filing and service. The filing and service requirements of 35 Ill. Adm. Code
189 101.Subpart C will apply to the proceedings of this Subpart.

190

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

192

193 **Section 106.1002 Definitions**

194

195 The definitions of 35 Ill. Adm. Code 101.Subpart B and Section 10 of the Electronic Products
196 Recycling and Reuse Act will apply to this Subpart unless otherwise provided, or unless the
197 context clearly indicates otherwise. If there is a conflict, the definitions of Section 10 of the
198 Electronic Products Recycling and Reuse Act will apply. Terms defined in Section 10 of the
199 Electronic Products Recycling and Reuse include the following:

200

201 *"Covered electronic device" or "CED" means any computer, computer monitor,*
202 *television, printer, electronic keyboard, facsimile machine, videocassette*
203 *recorder, portable digital music player that has memory capability and is battery*
204 *powered, digital video disc player, video game console, electronic mouse,*
205 *scanner, digital converter box, cable receiver, satellite receiver, digital video disc*
206 *recorder, or small-scale server sold at retail and taken out of service from a*
207 *residence in this State. "Covered electronic device" does not include any of the*
208 *following:*

209

210 *an electronic device that is part of a motor vehicle or any component part*
211 *of a motor vehicle assembled by or for a vehicle manufacturer or*
212 *franchised dealer, including replacement parts for use in a motor vehicle;*

213

214 *an electronic device that is functionally or physically part of a larger*
215 *piece of equipment or that is taken out of service from an industrial,*

216 commercial (including retail), library checkout, traffic control, kiosk,
217 security (other than household security), governmental, agricultural, or
218 medical setting, including but not limited to diagnostic, monitoring, or
219 control equipment; or

220
221 an electronic device that is contained within a clothes washer, clothes
222 dryer, refrigerator, refrigerator and freezer, microwave oven,
223 conventional oven or range, dishwasher, room air conditioner,
224 dehumidifier, water pump, sump pump, or air purifier.

225
226 To the extent allowed under federal and State laws and regulations, a CED
227 that is being collected, recycled, or processed for reuse is not considered to be
228 hazardous waste, household waste, solid waste, or special waste. [415 ILCS
229 150/10]

230
231 "Eligible electronic device" or "EED" means any of the following products sold at
232 retail and taken out of service from a residence in this State: mobile telephone;
233 computer cable; portable digital assistant (PDA); or zip drive. To the extent
234 allowed under federal and State laws and regulations, an EED that is being
235 collected, recycled, or processed for reuse is not considered to be hazardous
236 waste, household waste, solid waste, or special waste. [415 ILCS 150/10]

237
238 "Municipal joint action agency" or "action agency" means a municipal joint
239 action agency created under Section 3.2 of the Intergovernmental Cooperation
240 Act. [415 ILCS 150/10]

241
242 "Program year" means a calendar year. The first program year is 2010. [415
243 ILCS 150/10]

244
245 (Source: Added at 36 Ill. Reg. _____, effective _____)

246
247 **Section 106.1004 Initiation of Proceeding**

248
249 The petitioner must file the petition for authorization with the Clerk of the Board and must serve
250 one copy upon the Agency.

251
252 (Source: Added at 36 Ill. Reg. _____, effective _____)

253
254 **Section 106.1006 Petition Content Requirements**

255
256 a) The petition from the county or action agency shall include the following:
257

- 258 1) documentation of the county's or action agency's attempts to gain funding,
- 259 as well as the total funding obtained, for the collection of CEDs and EEDs
- 260 in its jurisdiction from manufacturers or other units of government in the
- 261 State; and
- 262
- 263 2) an assessment of other collection opportunities in the county's or action
- 264 agency's jurisdiction demonstrating insufficient capacity for the
- 265 anticipated volume of CEDs and EEDs for the remainder of the program
- 266 year in which the petition is being filed. [415 ILCS 150/95(e)]
- 267
- 268 b) In addition to the information listed in subsection (a) of this Section, the petition
- 269 from the county or action agency must also include:
- 270
- 271 1) total weight of CEDs and EEDs collected in the county's or action
- 272 agency's jurisdiction during all preceding program years;
- 273
- 274 2) total weight of CEDs and EEDs collected in the county's or action
- 275 agency's jurisdiction during the year in which the petition is filed; and
- 276
- 277 3) the projected difference in weight between prior program year in which
- 278 the petition is filed. [415 ILCS 150/95(e)]
- 279
- 280 c) The petition shall include any other information that may be required by Section
- 281 95 of the Electronic Products Recycling and Reuse Act.
- 282

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

Section 106.1008 Response and Reply

- 287 a) Within 21 days after the filing of a petition, the Agency may file a response to any
- 288 petition in which it has not joined as co-petitioner. The response must include
- 289 comments concerning potential Board action on the petition.
- 290
- 291 b) The petitioner may file a reply within 7 days after the service of any Agency
- 292 response.
- 293

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

Section 106.1010 Burden of Proof

The burden of proof is on the petitioner. A county government or municipal joint action agency filing a petition for a temporary CED landfill waiver ban must show *by clear and convincing*

300 evidence that a county or action agency has a lack of funds and its respective jurisdiction lacks
301 sufficient collection opportunities to collect CEDs and EEDs. [415 ILCS 150/95(e)]

302

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

304

305 **Section 106.1012 Board Decision**

306

307 a) Within 60 days after the filing of the petition with the Board, the Board shall
308 determine, based on the criteria in Section 95(e)(1) and (e)(2) of the Electronic
309 Products Recycling and Reuse Act, whether a temporary CED landfill ban waiver
310 shall be granted to the respective county or action agency for the remainder of the
311 program year in which the petition is filed. [415 ILCS 150/95(e)]

312

313 b) If the Board grants a waiver under Section 95(e) of the Electronic Products
314 Recycling and Reuse Act, Section 95(a) and (b) of that Act shall not apply to
315 CEDs and EEDs that are taken out of service from residences within the
316 jurisdiction of the county or action agency receiving the waiver and disposed of
317 during the remainder of the program year in which the petition is filed. [415
318 ILCS 150/95(e)]

319

320 c) Within 5 days after granting a temporary CED landfill ban waiver, the Board
321 shall provide written notice to the Agency of the Board's decision. The notice
322 shall be provided at least 15 days prior to the waiver taking effect. [415 ILCS
323 150/95(e)]

324

325 d) If the Board denies the petition for a landfill ban waiver, the Board's order shall
326 be final and immediately appealable to the circuit court having jurisdiction over
327 the petitioner. [415 ILCS 150/95(e)]

328

329 (Source: Added at 36 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

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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~~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 J: TEMPORARY LANDFILL BAN WAIVERS UNDER
THE ELECTRONIC PRODUCTS RECYCLING AND REUSE ACT

Section
106.1000 General
106.1002 Definitions
106.1004 Initiation of Proceeding
106.1006 Petition Content Requirements
106.1008 Response and Reply
106.1010 Burden of Proof
106.1012 Board Decision

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, 28.5, 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], and Section ~~92-55~~ of the Regulation of Phosphorus in Detergents Act [415 ILCS ~~92-92~~/5], and Section 95 of the Electronic Products Recycling and Reuse Act [415 ILCS 150/95].

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 R12-21 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, 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], and temporary landfill ban waivers under the Electronic Products Recycling and Reuse Act [415 ~~ILCS~~ILCS 150].

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 J: TEMPORARY LANDFILL BAN WAIVERS UNDER
THE ELECTRONIC PRODUCTS RECYCLING AND REUSE ACT

Section 106.1000 General

- a) Applicability. This Subpart applies to any county government or municipal joint action agency filing a petition with the Board beginning April 1, 2012, but no later than December 31, 2013, for a temporary CED landfill ban waiver under Section 95(e) of the Electronic Products Recycling and Reuse Act [415 ILCS 150/95(e)].
- b) Demonstration. Any county government or municipal joint action agency filing a petition for a temporary CED landfill ban waiver under this Subpart must demonstrate that the respective county's or action agency's jurisdiction may be granted a temporary CED landfill ban waiver due to a lack of funds and a lack of collection opportunities to collect CEDs and EEDs within the county's or action agency's jurisdiction. [415 ILCS 150/95(e)].
- c) Parties. The person filing the petition for a temporary CED landfill ban waiver must be named the petitioner.
- d) 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 36 Ill. Reg. _____, effective _____)

Section 106.1002 Definitions

The definitions of 35 Ill. Adm. Code 101.Subpart B and Section 10 of the Electronic Products Recycling and Reuse 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 10 of the Electronic Products Recycling and Reuse Act will apply. Terms defined in Section 10 of the Electronic Products Recycling and Reuse include the following:

"Covered electronic device" or "CED" means any computer, computer monitor, television, printer, electronic keyboard, facsimile machine, videocassette recorder, portable digital music player that has memory capability and is battery powered, digital video disc player, video game console, electronic mouse, scanner, digital converter box, cable receiver, satellite receiver, digital video disc recorder, or small-scale server sold at retail and taken out of service from a residence in this State. "Covered electronic device" does not include any of the following:

an electronic device that is part of a motor vehicle or any component part of a motor vehicle assembled by or for a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle;

an electronic device that is functionally or physically part of a larger piece of equipment or that is taken out of service from an industrial, commercial (including retail), library checkout, traffic control, kiosk, security (other than household security), governmental, agricultural, or medical setting, including but not limited to diagnostic, monitoring, or control equipment; or

an electronic device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, water pump, sump pump, or air purifier.

To the extent allowed under federal and State laws and regulations, a CED that is being collected, recycled, or processed for reuse is not considered to be hazardous waste, household waste, solid waste, or special waste. [415 ILCS 150/10]

"Eligible electronic device" or "EED" means any of the following products sold at retail and taken out of service from a residence in this State: mobile telephone; computer cable; portable digital assistant (PDA); or zip drive. To the extent allowed under federal and ~~state~~State laws and regulations, an EED that is being collected, recycled, or processed for reuse is not considered to be hazardous waste, household waste, solid waste, or special waste. [415 ILCS 150/10]

"Municipal joint action agency" or "action agency" means a municipal joint action agency created under Section 3.2 of the Intergovernmental Cooperation Act~~7.4~~. [415 ILCS 150/10]

"Program year" means a calendar year. The first program year is 2010. [415 ILCS 150/10]

(Source: Added at 36 Ill. Reg. _____, effective _____~~7.4~~)

Section 106.1004 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 _____~~7.4~~)

Section 106.1006 Petition Content Requirements

a) The petition from the county or action agency shall include the following:

1) documentation of the county's or action agency's attempts to gain funding, as well as the total funding obtained, for the collection of CEDs and EEDs in its jurisdiction from manufacturers or other units of government in the State; and

2) an assessment of other collection opportunities in the county's or action agency's jurisdiction demonstrating insufficient capacity for the anticipated volume of CEDs and EEDs for the remainder of the program year in which the petition is being filed. [415 ILCS 150/95(e)]

b) In addition to the information listed in subsection (a) of this Section, the petition from the county or action agency must also include:

1) total weight of CEDs and EEDs collected in the county's or action agency's jurisdiction during all preceding program years;

2) total weight of CEDs and EEDs collected in the county's or action agency's jurisdiction during the year in which the petition is filed; and

3) the projected difference in weight between prior program year in which the petition is filed. [415 ILCS 150/95(e)]

c) The petition shall include any other information ~~which~~that may be required by Section 95 of the Electronic Products Recycling and Reuse Act.

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

Section 106.1008 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 comments concerning potential Board action on the petition.

b) The petitioner may file a reply within 7 days after the service of any Agency response.

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

Section 106.1010 Burden of Proof

The burden of proof is on the petitioner. A county government or municipal joint action agency filing a petition for a temporary CED landfill waiver ban must show by clear and convincing evidence that a county or action agency has a lack of funds and its respective jurisdiction lacks sufficient collection opportunities to collect CEDs and EEDs. [415 ILCS 150/95(e)]

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

Section 106.1012 Board Decision

a) Within 60 days after the filing of the petition with the Board, the Board shall determine, based on the criteria in Section 95(e)(1) and (e)(2) of the Electronic Products Recycling and Reuse Act, whether a temporary CED landfill ban waiver shall be granted to the respective county or action agency for the remainder of the program year in which the petition is filed. [415 ILCS 150/95(e)]

b) If the Board grants a waiver under Section 95(e) of the Electronic Products Recycling and Reuse Act, ~~Sections~~Section 95(a) and (b) of ~~the Electronic Products Recycling and Reuse~~that Act shall not apply to CEDs and EEDs that are taken out of service from residences within the jurisdiction of the county or action agency receiving the waiver and disposed of during the remainder of the program year in which the petition is filed. [415 ILCS 150/95(e)]

c) Within 5 days after granting a temporary CED landfill ban waiver, the Board shall provide written notice to the Agency of the Board's decision. The notice shall be provided at least 15 days prior to the waiver taking effect. [415 ILCS 150/95(e)]

d) If the Board denies the petition for a landfill ban waiver, the Board's order shall be final and immediately appealable to the circuit court having jurisdiction over the petitioner. [415 ILCS 150/95(e)]

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

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE PROPOSED AMENDMENTS

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