



OFFICE OF THE SECRETARY OF STATE

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July 9, 2012

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CLERK'S OFFICE

JUL 16 2012

STATE OF ILLINOIS
Pollution Control Board

POLLUTION CONTROL BOARD
JOHN THERRIAULT ASSISTANT CLERK
100 W RANDOLPH ST, STE 11-500
CHICAGO, IL 60601

Dear JOHN THERRIAULT ASSISTANT CLERK

Your rules Listed below met our codification standards and have been published in Volume 36, Issue 28 of the Illinois Register, dated 7/13/2012.

ADOPTED RULES

Maximum Setback Zones
35 Ill. Adm. Code 618
Point of Contact: Nancy Miller

10042 R11-25

PROPOSED RULES

Proceedings Pursuant to Specific Rules or Statutory Provisions
35 Ill. Adm. Code 106
Point of Contact: Nancy Miller

9924 R12-11

Proceedings Pursuant to Specific Rules or Statutory Provisions (Withdrawal)
35 Ill. Adm. Code 106
Point of Contact: Nancy Miller

10537 R12-11

If you have any questions, you may contact the Administrative Code Division at (217) 782 - 7017.

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1) Heading of the Part: Proceedings Pursuant to Specific Rules or Statutory Provisions

2) Code Citation: 35 Ill. Adm. Code 106

<u>Section Numbers:</u>	<u>Proposed Action:</u>
106.100	Amended
106.900	New
106.902	New
106.904	New
106.906	New
106.908	New
106.910	New
106.912	New
106.914	New

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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 and its procedural history is contained in the Board's third first notice opinion and order in 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, R 12-11 (June 21, 2012). This docket will establish adjusted standards procedural rules concerning authorizations under Section 21(q) of the Environmental Protection Act (Act), 415 ILCS 5/21(q). The text of that section was amended by P.A. 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.

This is the Board's third Notice of Proposed Amendments in this docket. The proposed rules add a new subpart I to the Board's procedural rules for adjusted standards at 35 Ill.

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Adm. Code Part 106. These procedural rules are similar to those in other subparts in Part 106. The Board's first notice of the proposal, published at 35 Ill. Reg. 18492 (Nov. 14, 2011). The Board's first Notice of Proposed Amendments, was published at 35 Ill. Reg. 18492 (Nov. 14, 2011). Based on public comments, the Board made changes to the notice provisions of the rules, and published a second notice of proposed amendments on February 24, 2012 at 36 Ill. Reg. 2643. The Board specifically requested comments from the initial commenters and the IEPA, which did not comment on the Notice of Proposed Amendments published at 35 Ill. Reg. 18492 (Nov. 14, 2011).

Based on public comments received from the IEPA during the notice period following the February 24, 2012 publication, the Board decided to add specificity to the requirements for information to be provided in a petition, and also to give the IEPA 45-days to respond to the petition. Given the nature of the changes, the Board decided to withdraw both the Notices of Proposed Amendments published at 35 Ill. Reg. 18492, Nov. 14, 2011 and 36 Ill. Reg. 2643, Feb. 24, 2012 and to file a new Notice of Proposed Amendments. The Board particularly requested public comment from the original commenters, as well as from IEPA. *See* 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, R12-11 (June 21, 2012) (third first notice opinion and order).

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 these proposed amendments replace an emergency rule currently in effect? No.
- 8) Do these amendments contain an automatic repeal date? No.
- 9) Do these proposed amendments contain incorporations by reference? No.
- 10) Are there any other proposed amendments 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

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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:

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 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: January 2011 Regulatory Agenda published at 35 Ill. Reg. 20774 (Dec. 23, 2011).

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

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NOTICE OF PROPOSED AMENDMENTS

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

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- 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) or (b-5) of the Act
 - 106.706 Who May Initiate, Parties

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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

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

<u>Section</u>	
<u>106.900</u>	<u>General</u>
<u>106.902</u>	<u>Initiation of Proceeding</u>
<u>106.904</u>	<u>Petition Content Requirements</u>
<u>106.906</u>	<u>Petition Notice Requirements</u>
<u>106.908</u>	<u>Proof of Petition Notice Requirements</u>
<u>106.910</u>	<u>Response and Reply</u>
<u>106.912</u>	<u>Hearing</u>

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106.914 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. 550, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8817, effective June 8, 2005, amended in R10-19 at 34 Ill. Reg. 11486, effective July 23, 2010; amended in R12-21 at 36 Ill. Reg. _____; 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 92.5], 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

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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:
 - 1) 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) and (q)(2) of the Act; or
 - 2) 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.* [415 ILCS 5/21(q) and (q)(3)(A)]
- 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. 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 106.902 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 _____)

Section 106.904 Petition Content Requirements

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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 and the duration of, the reasons for, and the basis for the authorization sought, consistent with the burden of proof stated in 35 Ill. Adm. Code 106.914;
- b) The nature of the petitioner's operations;
- c) Any other applicable information 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 soil sampling analysis for samples taken within one year prior to the filing of the petition in accordance with the sampling protocols of 35 Ill. Adm. Code 106.904(e) and (f); the intended crop or planting; a description of any additives to the landscape waste; the method for incorporating the landscape waste or compost into the soil; the maximum time between acceptance of landscape waste or compost and its incorporation into soil; the weather conditions under which incorporation will occur; the method of minimizing stormwater/snowmelt runoff; a screening plan to ensure materials accepted do not contain materials other than landscape waste; a contingency plan that describes methods for dealing with emergency situations and methods for the removal of material that is not landscape waste from incoming loads; and the method of preventing nuisance conditions such as vectors, odors, litter or dust.
- d) For demonstrations under 35 Ill. Adm. Code 106.914(a), a plan, including soil testing, in accordance with 35 Ill. Adm. Code 106.904(e) and (f) and no less than once every five years, to show when application of landscape waste or composted landscape waste at rates greater than an agronomic rate of 20 tons per acre per year will be, or will continue to be, beneficial to the site's soil characteristics or crop needs. Such a plan must specify any soil parameters to be analyzed, such as soil organic content and nutrients, and any limits on them.
- e) Soil samples collected so as to be representative of the entire landscape waste or composted landscape waste application site.

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- 1) Soil Plow Zone - one soil sample shall be collected per 8 acres of application site area to a depth of 12 inches. Each soil sample taken shall be a homogeneous mixture composed of at least 10 subsamples randomly collected within the 8 acre area.
 - 2) Soil Profiles - one soil core sample per 8 acres of land application site shall be obtained to a depth of 5 feet using a soil tube or soil auger type implement. Soil cores shall be divided into 5 - one foot subsamples and each subsample shall be analyzed separately.
 - 3) Soil sample collection pursuant to 35 Ill. Adm. Code 106.904(a) and (b) may be modified by the Board upon request by the petitioner after considering the application rate of the landscape waste or composted landscape waste, and the continuity of soil types of the application site.
- f) Soil analysis performed in accordance with the following references unless equivalent results can be obtained by other methods. The petitioner shall demonstrate that equivalent results are obtainable based on the nature of the test methodology, the nature of the parameter, and the level of statistical accuracy.
- 1) Physical Testing Methods
Methods of Soil Analysis - Part 1, Physical and Mineralogical Properties (1986), Soil Science Society of America (SSSA) and American Society of Agronomy, Inc. (ASA), 5585 Guilford Road, Madison, Wisconsin 53711.
 - 2) Chemical Testing Methods
Methods of Soil Analysis - Part 3, Chemical Methods (1996), Soil Science Society of America (SSSA) and American Society of Agronomy, Inc. (ASA), 5585 Guilford Road, Madison, Wisconsin 53711.
 - 3) For the purposes of 35 Ill. Adm. Code Subpart I, the Board incorporates by reference the soil test methods listed in 35 Ill. Adm. Code 106.904(f)(1) and (f)(2). This incorporation includes no later amendments or editions.

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

Section 106.906 Petition Notice Requirements

- a) The petitioner shall submit to the Board proof that, within 14 days after the filing of the petition, it has published notice of the filing of the petition by advertisement in a newspaper of general circulation in the area likely to be affected by the petitioner's activity that is the subject of the Section 21(q) petition.
- b) The title of the notice must be in the following form: "Notice of Petition For Authorization Under 415 ILCS 5/21(q) by (petitioner's name) before the Illinois Pollution Control Board." The notice must contain the name and address of the petitioner and the statement that the petitioner has filed with the Board an authorization petition under Section 21(q). The notice must also provide the date upon which the petition was filed, the Board docket number, the proposed authorization, and a general description of the petitioner's activity that is the subject of the authorization proceeding and the location of that activity. This information must be presented so as to be understood in accordance with the context of this Section's requirements. The concluding portion of the notice must read as follows: "Any person may cause a public hearing to be held in the above-described authorization proceeding by filing a hearing request with the Illinois Pollution Control Board within 21 days after the date of the publication of this notice. The hearing request should clearly indicate the docket number for the adjusted standard proceeding, as found in this notice, and must be mailed to the Clerk of the Board, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601."

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

Section 106.908 Proof of Petition Notice Requirements

Within 30 days after the filing of the petition, the petitioner must file a certificate of publication, issued by the publisher of the authorization petition notice certifying the publication of that notice. The certificate must be issued in accordance with Section 1 of the Notice by Publication Act [715 ILCS 5/1].

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

Section 106.910 Response and Reply

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- a) Within 45 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 Ill. Reg. _____, effective _____.)

Section 106.912 Hearing

- a) Any person can request that a public hearing be held in an authorization proceeding. The requests must be filed not later than 21 days after the date of the publication of the petition notice in accordance with Section 106.906 of this Part. Requests for hearing should make reference to the Board docket number assigned to the proceeding. A copy of each timely hearing request will be mailed to the petitioner and Agency by the Clerk of the Board. Participation by the public at the hearing must be in accordance with 35 Ill. Adm. Code 101.110 and 101.628. The Board may also, in its discretion, hold a public hearing when it determines a public hearing is advisable.
- b) When all parties and participants who have requested a hearing pursuant to this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board, in its discretion, deems it advisable.
- c) The hearing officer will set a time and place for the hearing. The hearing officer will make an attempt to consult with the petitioner and the Agency prior to the scheduling of a hearing. Hearings are to be held in the county likely to be affected by the petitioner's activity that is the subject of the proposed authorization proceeding.

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

Section 106.914 Burden of Proof

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

- a) Apply landscape waste or composted landscape waste at rates greater than

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“agronomic rates” of not more than 20 tons per acre per year. [415 ILCS 5/21(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 5/21(q)]

- 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 material is 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.

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