



OFFICE OF THE SECRETARY OF STATE

JESSE WHITE • Secretary of State

October 5, 2012

R#3-9

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

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CLERK'S OFFICE

OCT 11 2012

STATE OF ILLINOIS
Pollution Control Board

Dear JOHN THERRIAULT ASSISTANT CLERK

Your rules Listed below met our codification standards and have been published in Volume 36, Issue 41 of the Illinois Register, dated 10/12/2012.

PROPOSED RULES

General Rules

35 Ill. Adm. Code 101

14971

Point of Contact: Nancy Miller

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

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NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: General Rules
- 2) Code Citation: 35 Ill. Adm. Code 101
- 3) Section Numbers: Proposed Action:
101.108 Amend
- 4) Statutory Authority: Implementing Sections 5, 10, 13, 21, 22, 22.01, and 22.2 of the Environmental Protection Act (Act) and authorized by Section 27 of the Act [415 ILCS 5/5, 10, 13, 21, 22, 22.01, 22, and 27].
- 5) A Complete Description of the Subjects and Issues Involved: A more complete description of this proposal may be found in the Board's first-notice opinion and order of September 20, 2012 in docket R13-09. In brief, the proposal rule conforms the Board's procedural rules to a statutory change.

35 Ill. Adm. Code 101.108(d), effective January 1, 2000, currently provides that "4 affirmative votes are required to adopt a Board decision." This was consistent with Section 5 of the Act, which provided for a 7 member Board. *See* P.A. 83-770, eff. Sept. 24, 1983. The Board's membership was reduced to 5 in P. A. 93-509, eff. Aug. 11, 2003, amending Section 5(a) of the Act to read in pertinent part:

If there is no vacancy on the Board, 4 members of the Board shall constitute a quorum to transact business; otherwise, a majority of the Board shall constitute a quorum to transact business, and no vacancy shall impair the right of the remaining members to exercise all of the powers of the Board. *Every action approved by a majority of the members of the Board shall be deemed to be the action of the Board.* The Board shall keep a complete and accurate record of all its meetings. 415 ILCS 105/5(a) at para. 12. (2010)(emphasis added)

The Board had not previously amended Section 101.108(d) of the procedural rules, as it has viewed the simple 3 member majority requirement of amended Section 5 of the Act as "trumping" the outdated 4 member majority requirement contained in the pre-existing, unamended rules. As a recent vacancy on the Board has created potential for public confusion, the Board believes it is now prudent to proceed with a proposal.

- 6) Published studies or reports and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed amendment replace an emergency rule currently in effect? No.

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- 8) Does this amendment contain an automatic repeal date? No.
- 9) Does this proposed amendment contain incorporations by reference? Yes.
- 10) Are there any other proposed amendments pending on this Part? No.
- 11) Statement of Statewide Policy Objectives: This proposed amendment does 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 comment on this proposal for a period of 45 days after the date of publication. Comments should refer to docket R13-09 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 R13-09 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 the Clerk's Office at 312-814-3629.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of Professional skills necessary for compliance: None.
- 14) Regulatory Agenda in which this amendment was summarized: None.

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

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NOTICE OF PROPOSED AMENDMENT

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

PART 101
GENERAL RULES

SUBPART A: GENERAL PROVISIONS

Section	
101.100	Applicability
101.102	Severability
101.104	Repeals
101.106	Board Authority
101.108	Board Proceedings
101.110	Public Participation
101.112	Bias and Conflict of Interest
101.114	Ex Parte Communications

SUBPART B: DEFINITIONS

Section	
101.200	Definitions Contained in the Act
101.202	Definitions for Board's Procedural Rules

SUBPART C: COMPUTATION OF TIME, FILING, SERVICE OF DOCUMENTS, AND
STATUTORY DECISION DEADLINES

Section	
101.300	Computation of Time
101.302	Filing of Documents
101.304	Service of Documents
101.306	Incorporation of Documents by Reference
101.308	Statutory Decision Deadlines and Waiver of Deadlines

SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

Section	
101.400	Appearances, Withdrawals, and Substitutions of Attorneys in Adjudicatory Proceedings

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101.402	Intervention of Parties
101.403	Joinder of Parties
101.404	Agency as a Party in Interest
101.406	Consolidation of Claims
101.408	Severance of Claims

SUBPART E: MOTIONS

Section	
101.500	Filing of Motions and Responses
101.502	Motions Directed to the Hearing Officer
101.504	Contents of Motions and Responses
101.506	Motions Attacking the Sufficiency of the Petition, Complaint, or Other Pleading
101.508	Motions to Board Preliminary to Hearing
101.510	Motions to Cancel Hearing
101.512	Motions for Expedited Review
101.514	Motions to Stay Proceedings
101.516	Motions for Summary Judgment
101.518	Motions for Interlocutory Appeal from Hearing Officer Orders
101.520	Motions for Reconsideration
101.522	Motions for Extension of Time

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

Section	
101.600	Hearings
101.602	Notice of Board Hearings
101.604	Formal Board Transcript
101.606	Informal Recordings of the Proceedings
101.608	Default
101.610	Duties and Authority of the Hearing Officer
101.612	Schedule to Complete the Record
101.614	Production of Information
101.616	Discovery
101.618	Admissions
101.620	Interrogatories
101.622	Subpoenas and Depositions
101.624	Examination of Adverse, Hostile or Unwilling Witnesses
101.626	Information Produced at Hearing
101.628	Statements from Participants

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- 101.630 Official Notice
- 101.632 Viewing of Premises

SUBPART G: ORAL ARGUMENT

- Section
- 101.700 Oral Argument

SUBPART H: SANCTIONS

- Section
- 101.800 Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing Officer Orders
- 101.802 Abuse of Discovery Procedures

SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

- Section
- 101.902 Motions for Reconsideration
- 101.904 Relief from and Review of Final Opinions and Orders
- 101.906 Judicial Review of Board Orders
- 101.908 Interlocutory Appeal

- 101.APPENDIX A Captions
 - 101.ILLUSTRATION A Enforcement Case
 - 101.ILLUSTRATION B Citizen's Enforcement Case
 - 101.ILLUSTRATION C Variance
 - 101.ILLUSTRATION D Adjusted Standard Petition
 - 101.ILLUSTRATION E Joint Petition for an Adjusted Standard
 - 101.ILLUSTRATION F Permit Appeal
 - 101.ILLUSTRATION G Underground Storage Tank Appeal
 - 101.ILLUSTRATION H Pollution Control Facility Siting Appeal
 - 101.ILLUSTRATION I Administrative Citation
 - 101.ILLUSTRATION J General Rulemaking
 - 101.ILLUSTRATION K Site-specific Rulemaking
- 101.APPENDIX B Appearance Form
- 101.APPENDIX C Withdrawal of Appearance Form
- 101.APPENDIX D Notice of Filing
- 101.APPENDIX E Certificate of Service

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101.ILLUSTRATION A	Service by Non-Attorney
101.ILLUSTRATION B	Service by Attorney
101.ILLUSTRATION B	Service by Attorney
101.APPENDIX F	Notice of Withdrawal (Repealed)
101.APPENDIX G	Comparison of Former and Current Rules (Repealed)

AUTHORITY: Implementing Sections 5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; Part repealed, new Part adopted in R88-5A at 13 Ill. Reg. 12055, effective July 10, 1989; amended in R90-24 at 15 Ill. Reg. 18677, effective December 12, 1991; amended in R92-7 at 16 Ill. Reg. 18078, effective November 17, 1992; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 446, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8743, effective June 8, 2005; amended in R06-9 at 29 Ill. Reg. 19666, effective November 21, 2005; amended in R07-17 at 31 Ill. Reg. 16110, effective November 21, 2007; amended in R10-22 at 34 Ill. Reg. 19566, effective December 3, 2010; amended in R12-22 at 36 Ill. Reg. 9211, effective June 7, 2012; and amended in R13-9 at 36 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 101.108 Board Proceedings

- a) Board proceedings can generally be divided into two categories: rulemaking proceedings and adjudicatory proceedings.
- b) The following are examples of Board rulemaking proceedings: Identical-in-Substance, Clean Air Act/Fast Track, Federally Required Rulemaking, General Rulemaking, and Site-Specific Rulemaking. Procedural rules for these types of proceedings can be found at 35 Ill. Adm. Code 102.
- c) The following are examples of Board adjudicatory proceedings: Enforcement Proceedings (35 Ill. Adm. Code 103), Variance Petitions (35 Ill. Adm. Code 104), Adjusted Standard Petitions (35 Ill. Adm. Code 104), Permit Appeals (35 Ill. Adm. Code 105), Leaking Underground Storage Tank Appeals (35 Ill. Adm. Code 105), Pollution Control Facility Siting Appeals (35 Ill. Adm. Code 107), and Administrative Citations (35 Ill. Adm. Code 108).

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- d) Board decisions will be made at meetings open to the public. Except as provided in subsection (e) of this Section, 4 members of the Board constitute a quorum, and 34 affirmative votes are required to adopt a Board decision.

- e) At a hearing pursuant to Section 34(d) of the Act to determine whether a seal should be removed, *at least one Board Member shall be present, and those Board Members present may render a final decision without regard to the requirements of Section 5(a) of the Act [415 ILCS 5/34(d)].*

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