

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Regulatory and Informational Hearings and Proceedings
- 2) Code Citation: 35 Ill. Adm. Code 102
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
102.200	Amendment
102.202	Amendment
102.206	Amendment
102.208	Amendment
102.210	Amendment
102.302	Amendment
102.416	Amendment
102.424	Amendment
102.810	Amendment
102.820	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: In this procedural rulemaking, the Board proposes amendments to codify procedural standards for remarks by members of the public at the Board's open meetings and to permit, with certain limited exceptions, electronic filing in all Board proceedings through the Board's Clerk's Office On-Line or "COOL", as well as service by e-mail of most types of filings. The Board also proposes a handful of updates and housekeeping amendments not directly related to electronic filing or public remarks. The proposed amendments to Part 102 relate to electronic filing and service by e-mail of rulemaking proposals and other documents filed with the Board in rulemaking proceedings. The rules also require the Illinois Environmental Protection Agency to provide an electronic version of its proposed rule language in various types of rulemakings, e.g., Clean Air Act fast-track rulemakings (Section 102.302). For a detailed description of the proposed changes to Part 102, please refer to the Board's June 5, 2014 opinion and order in docket R14-21: Procedural Rule Amendments to Implement Electronic Filing and Allow For Public Remarks at Board Meetings: Proposed Amendments to 35 Ill. Adm. Code 101-130.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule currently in effect? No



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- 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 Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 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 at least 45 days after the date of publication in the *Illinois Register*. Public comments should reference Docket R14-21 and be addressed to:

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

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R08-09(B) 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 Mark Powell at 312/814-6887 or Mark.Powell@illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality or not-for-profit corporation that practices before the Board.
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None

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- 14) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because the Board was required, due to a recent Appellate Court decision, to revisit its procedural rules and develop new proposed rules.

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

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JUN 25 2014

PART 102
REGULATORY AND INFORMATIONAL HEARINGS AND PROCEEDINGS

STATE OF ILLINOIS
Pollution Control Board

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SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL

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102.700	Filing of Motions for Reconsideration

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SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION

- Section
- 102.800 Applicability
- 102.810 Petition
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102.APPENDIX A Comparison of Former and Current Rules (Repealed)

AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 28.6, 29, and 41 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 28.6, 29, and 41] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part II: Regulatory and Other Nonadjudicative Hearings and Proceedings, in R70-4, 1 PCB 43, October 8, ~~197-1970~~; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1398, effective January 16, ~~1984~~1985; Part repealed, new Part adopted in R88-5(B) at 14 Ill. Reg. 9210, effective May 24, 1990; amended in R90-16 at 14 Ill. Reg. ~~20471,20472~~, effective December 11, 1990; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 587, effective January 1, 2001; amended in R01-13 at 26 Ill. Reg. 3498, effective February 22, 2002; amended in R04-24 at 29 Ill. Reg. 8776, effective June 8, 2005; amended in R10-18 at 34 Ill. Reg. ~~34,12193~~, effective August 9, 2010; amended in R14-21 at 38 Ill. Reg. _____, effective _____.

SUBPART B: REGULATIONS OF GENERAL APPLICABILITY, RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AMENDMENTS, AND SITE-SPECIFIC REGULATIONS

Section 102.200 Proposal for Regulations of General Applicability

Any person may submit a regulatory proposal for the adoption, amendment, or repeal of a regulation. The original and 9 copies of each proposal must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h) and served ~~upon one~~upon one copy each with the Attorney General, the Agency, and DNR in accordance with 35 Ill. Adm. Code 101.304(c).

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 102.202 Proposal Contents for Regulations of General Applicability

Each proponent must set forth the following in its proposal:

- a) The language of the proposed rule, including any existing regulatory language proposed to be amended or repealed. Language being added must be indicated by underscoring, and language being deleted must be indicated by strike-outs. The proposed rule must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
- b) A statement of the reasons supporting the proposal, including a statement of the facts that support the proposal, and a statement of the purpose and effect of the proposal, including environmental, technical, and economic justification. The statement must discuss the applicable factors listed in Section 27(a) of the Act. The statement must include, to the extent reasonably practicable, all affected sources and facilities and the economic impact of the proposed rule;
- ~~e)~~c) A synopsis of all testimony to be presented by the proponent at hearing;
- ~~d)~~ ~~Copies~~d) AnyCopies of any ~~Any~~ material to be incorporated by reference within the proposed rule pursuant to Section 5-75 of the IAPA [5 ILCS 100/5-75];
- e) *A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act [5 ILCS 140]. [5 ILCS 100/5-40(3.5)];*
- f) ~~Documentation-Proof~~DocumentationProof of service upon all persons required to be served pursuant to Section 102.422 of this Part;
- g) Unless the proponent is the Agency or DNR, a petition signed by at least 200 persons, pursuant to Section 28 of the Act and Section 102.410(b) of this Part;
- h) When the Agency proposes a rule it believes is federally required, a certification in accordance with Section 102.500 of this Part;
- i) For a proposed rule that amends an existing Board rule, a written statement or certification that the proposal amends the most recent version of the rule as published on the Board's Web site or as obtained from the Clerk;
- j) When the proponent is a State agency, an electronic version of the information

required under subsection (a) of this Section in Microsoft Word for Windows, version 6.0 or greater; and

- k) When any information required under this Section is inapplicable or unavailable, a complete justification for the inapplicability or unavailability.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 102.206 Notice of Site--Specific RCRA Proposals

- a) Public notice of hearings on site--specific RCRA proposals will be given at least 30 days before the date of the hearing.
- b) In addition to the requirements of Section 28 of the Act, the Board, at a minimum, will give notice of hearings on a site--specific RCRA proposal to the following persons:
 - 1) Federal agencies as designated by the USEPA;
 - 2) Illinois Department of Transportation;
 - 3) Illinois Department of Natural Resources;
 - 4) Illinois Department of Public Health;
 - 5) The Governor of any other state adjacent to the county in which the facility is located; and
 - 6) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility.
- c) In addition to the methods of notice by publication of Section 28 of the Act and Section 102.416 of this Part, the Board will give notice by broadcast over at least one radio station in the area of the facility containing the information required by subsections (d)(2) and (d)(4) through (d)(8) of this Section.
- d) A hearing notice on a site-specific RCRA proposal will include the following information:
 - 1) The address of the Board office;
 - 2) Name and address of the proponent and, if different, of the facility for

which the site-specific rule is sought;

- 3) A brief description of the business conducted at the facility and the activity described in the proposal;
- 4) A description of the relief requested in the proposal;
- 5) Name, address, e-mail address, and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the proposal;
- 6) The name, address, e-mail address, and telephone number of the Agency's representative in the rulemaking;
- 7) A description of any written comment period or a statement that a comment period will be established in the future;
- 8) A statement that the record in the rulemaking is available at the Board office for inspection, except those portions that are claimed or determined to be trade secrets, and that procedures are available whereby disclosure may be sought by the public. Any such claim must be made in accordance with 35 Ill. Adm. Code 130;
- 9) A statement that site-specific rules may be adopted pursuant to 415 ILCS 5/27 and Section 102.202 of this Part, and a citation to the Board regulations sought to be modified; and
- 10) Any additional information considered necessary or proper.

(Source: Amended at 38 Ill. Reg. , effective)

Section 102.208 Proposal for Site-Specific Regulations

Any person may submit a written proposal for the adoption, amendment or repeal of a substantive site-specific regulation. The original and 9 copies of each proposal must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h) ~~of and of~~ the Board ~~and~~ one copy each ~~and~~ served upon the Agency, DNR, and the Attorney General in accordance with 35 Ill. Adm. Code 101.304(c).

(Source: Amended at 38 Ill. Reg. , effective)

Section 102.210 Proposal Contents for Site-Specific Regulations

Proponents of site-specific regulations other than those relating to RCRA must comply with the requirements of Section 102.202 of this Part in addition to the following requirements:

- a) The proposal must set forth the language of the proposed site-specific rule, including any existing regulatory language proposed to be amended or repealed. Language being added must be indicated by underscoring and language being deleted must be indicated by strike-outs. If the proposed site-specific rule seeks an exemption from or modification of a rule of general applicability, the proposed site-specific rule may not be proposed as an amendment to the general rule. Instead, the site-specific rule must be proposed as its own Section;
- b) In the event that the proposed rule would replace the applicability of a general rule to the pollution source, the proposal must specify, with supporting documentation, the reasons why the general rule is not technically feasible or economically reasonable for the person or site. The documentation must include relevant information on other similar persons' or sites' ability to comply with the general rule. Where relevant to the Board's consideration, the proposal must also include information pertaining to *existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, and the nature of the existing air quality or receiving body of water* [415 ILCS 5/27(a)];
- c) *A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act* [5 ILCS 140]. [5 ILCS 100/5-40(3.5)];
- d) The proposal must describe the person or site for which regulatory change is sought and the area affected by the proposed change. The proposal must also include a detailed assessment of the environmental impact of the proposed change, and include a description of available treatment or control options;
- e) The proposal must demonstrate that the Board may grant the requested relief consistent with federal law governing the subject of the proposal (e.g., Underground Injection Control program, Resource Conservation and Recovery Act, etc.);
- f) When the proponent is a State agency, the proponent also must provide an electronic version of the information required under subsection (a) of this Section

in Microsoft Word for Windows, version 6.0 or greater; and

- g) When any information required under this Section is inapplicable or unavailable, the proposal must provide a complete justification for the inapplicability or unavailability.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART C: CLEAN AIR ACT AMENDMENTS (CAAA)
FAST TRACK RULEMAKING

Section 102.302 Agency Proposal

- a) When proposing a regulation required by the CAAA, the Agency must meet the following requirements:
- 1) The proposal must set forth the proposed rule, which must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
 - 2) The proposal must have a cover sheet that prominently states that the Agency proposes the rule under Section 28.5 of the Act, *unless another provision of the Act specifies the method for adopting a specific rule* [415 ILCS 5/28.5(c)];
 - 3) The proposal must *clearly identify the provisions and portions of the federal statute, regulations, guidance, policy statement, or other documents upon which the rule is based* [415 ILCS 5/28.5(e)(3)];
 - 4) The proposal must include *supporting documentation for the rule that summarizes the basis of the rule* [415 ILCS 5/28.5(e)(4)];
 - 5) The proposal must *describe in general the alternative selected and the basis for the alternative* [415 ILCS 5/28.5(e)(5)];
 - 6) The proposal must summarize the economic and technical data that the Agency relied upon in drafting the proposed rule;
 - 7) The proposal must include a list of any documents that the Agency directly relied upon in drafting the proposed rule or that the Agency intends to rely upon at hearing, and copies of the documents;
 - 8) The proposal must set forth *a description of the geographical area to which the rule is intended to apply, a description of the process or*

processes affected, and identification by classes of the entities expected to be affected, and a list of sources expected to be affected by the rule to the extent known to the Agency [415 ILCS 5/28.5(e)(8)];

- 9) *A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act [5 ILCS 140], [5 ILCS 100/5-40(3.5)]; and*
 - 10) The proposal must include an electronic version ~~of aofa~~ diskette containing the information required under subsection (a)(1) of this Section in Microsoft Word for Windows, version 6.0 or greater.
- b) If the proposal fails to meet any of the requirements of subsection (a) of this Section, the Board may decide not to accept the proposal for filing.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS,
PRODUCTION OF INFORMATION, SUBPOENAS, PREHEARING
CONFERENCES, AND HEARINGS

Section 102.416 Notice of Hearing

- a) The hearing officer will set a time and place for hearing. The Clerk will give notice of the date of the hearing as follows or as otherwise required by applicable law:
 - 1) By notice in the Board's Environmental Register and on the Board's ~~website~~ ~~Web's website~~ ~~Web~~ site;
 - 2) *At least 20 days prior to the scheduled date of the hearing the Board shall give notice of such hearing by public advertisement in a newspaper of general circulation in the area of the State concerned. The notice will include, the date, time, place and purpose of such hearing [415 ILCS 5/28(a)]; and*
 - 3) Where required by federal law, including air pollution and RCRA

proposals, newspaper notice will be published at least 30 days prior to the hearing date.

b) In accordance with Section 28(a) of the Act or as otherwise required by applicable law, the Clerk will give notice by mail to the proponent and to all persons who are on the notice list in accordance with Section 102.422 of this Part.

~~e)~~c) Hearings that are continued on the hearing record for a period of 45 days or less do not require notice that complies with subsections (a) and (b) of this Section.

(Source: Amended at 38 Ill. Reg. ~~—~~, effective _____)

Section 102.424 Prehearing Submission of Testimony and Exhibits

a) The proponent must submit all written testimony and any related exhibits 21 days prior to the hearing at which the witness testifies, unless the hearing officer directs otherwise to prevent material prejudice or undue delay.

b) The hearing officer may require the prehearing submission of testimony, questions, responses, answers, and any related exhibits by the proponent or participants other than the proponent if the hearing officer determines that such a procedure will provide for a more efficient hearing.

c) ~~TheAllThe~~ original and 9 copies of any ~~All~~ prehearing testimony, questions, answers, responses, ~~and or and/or~~ exhibits must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h). The hearing officer, the Agency, and, if a participant, the Attorney General and DNR must each be served with ~~oneallone~~ copy of any ~~all~~ prehearing testimony, questions, answers, responses, ~~and or and/or~~ exhibits in accordance with 35 Ill. Adm. Code 101.304(c). ~~OneAllOne~~ copy of any ~~All~~ prehearing testimony, questions, answers, responses, ~~and or and/or~~ exhibits must also be served in accordance with 35 Ill. Adm. Code 101.304(c) upon the proponent and each participant on any service list, unless otherwise specified or limited by the hearing officer. The service must be initiated on or before the date that the prehearing ~~documents~~ ~~copiesdocumentscopies~~ are filed with the Clerk.

d) All prehearing testimony, questions, answers, responses, and exhibits must be served and submitted in the form required by 35 Ill. Adm. Code 101.Subpart C₂ and labeled with the docket number of the proceeding, the name of the witness submitting the material or exhibit, and the title of the material or exhibit.

e) The proponent and each participant who has filed testimony, questions, answers,

responses, or exhibits before hearing must bring the number of copies designated by the hearing officer of that material and exhibits to the hearing.

~~f~~ f Testimony, questions, answers, responses, and exhibits submitted prior to hearing will be entered into the record as if read, unless the hearing officer determines that it will aid public understanding to have the material or exhibit read. All persons testifying will be sworn and will be subject to examination. Modifications to previously submitted material and exhibits may be allowed by the hearing officer at hearing provided that the modifications are either non-substantive in nature or would not materially prejudice another person's participation at hearing. Objections to the modifications are waived unless raised at hearing.

g) WhenWhere prehearing submission of testimony, questions, answers, responses, or exhibits, is required pursuant to subsection (a) or (b) of this Section, any material or exhibit that is not filed in a timely manner will be allowed only as time permits, and only whenwhere its submission will not materially prejudice the proponent or any other participant.

(Source: Amended at 38 Ill. Reg. —, effective —)

SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION

Section 102.810 Petition

Any person may submit a petition for the adoption, amendment or repeal of an ORW designation. The original and nine copies of each petition must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h) and one copy each served upon the Agency, ~~DNR~~ ~~Illinois~~ DNR Illinois Department of Natural Resources, and the Attorney General in accordance with 35 Ill. Adm. Code 101.304(c).

(Source: Amended at 38 Ill. Reg. —, effective —)

Section 102.820 Petition Contents

Each proponent must set forth the following information in its proposal:

- a) The language of the proposed rule, amendment, or repealer identifying the surface water body or water body segment being proposed for designation, amendment, or repeal as an ORW. Language being added must be indicated by underscoring, and language being deleted must be indicated by strike-outs. The proposed rule must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
- b) A statement describing the specific surface water body or water body segment for

which the ORW designation, amendment, or repeal is requested and the present designation of the surface water body or water body segment;

- c) A statement describing the area in which the specific surface water body or water body segment exists, including:
 - 1) The existence of wetlands or natural areas;
 - 2) The living organisms in that area, including endangered or threatened species of plants, aquatic life or wildlife listed pursuant to the Endangered Species Act (16 USC 1531 et seq.) or the Illinois Endangered Species Protection Act [41 ILCS 10];
- d) A statement supporting the designation, the amendment, or the repeal, including the health, environmental, recreational, aesthetic or economic benefits of the designation, the amendment, or the repeal thereof;
- e) A statement identifying the anticipated impact on economic and social development of the ORW designation, amendment, or repeal. This statement should include:
 - 1) Impacts on the regional economy;
 - 2) Impacts on regional employment;
 - 3) Impacts on the community;
 - 4) A comparison of the health and environmental impacts to the economic impact of an ORW designation;
- f) A statement describing the existing and anticipated uses of the specific surface water body or water body segment for which the ORW designation, amendment, or repeal is requested;
- g) A statement describing the existing water quality of the specific surface water body or water body segment warranting the ORW designation, amendment, or repeal;
- h) A synopsis of all testimony to be presented by the proponent at hearing;
- i) ~~Copies~~AnyCopies of any ~~Any~~ material to be incorporated by reference within the proposed designation pursuant to Section 5-75 of the Administrative Procedure Act [5 ILCS 100/5-75];

- j) *A descriptive title or other description of any published study or research report used in developing the rule, the identify of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act [5 ILCS 140]. [5 ILCS 100/5-40(3.5)];*
- k) ~~Documentation Proof~~DocumentationProof of service upon all persons required to be served pursuant to Section 102.810 of this Part;
- l) Unless the proponent is the Agency or Illinois Department of Natural Resources or receives a waiver by the Board, a petition signed by at least 200 persons, pursuant to Section 28 of the Act and Section 102.160(a); and
- m) Where any information required by this Section is inapplicable or unavailable, a complete justification for such inapplicability or unavailability.

(Source: Amended at 38 Ill. Reg. , effective —)

Document comparison by Workshare Compare on Monday, June 16, 2014
9:17:13 AM

Input:	
Document 1 ID	file:///I:\Input\Agency Rulemakings - Files Received\2014\June2014\35-102-Agency(issue25).docx
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Description	35-102-r01(issue 25)
Rendering set	JCAR Delta

Legend:	
<u>Insertion</u>	
Deletion	
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<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
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Deletions	52
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	94

1ST NOTICE VERSION

JCAR350102-1412740r01

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JUN 25 2014

STATE OF ILLINOIS
Pollution Control Board

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE A: GENERAL PROVISIONS
3 CHAPTER I: POLLUTION CONTROL BOARD
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56	102.418	Record
57	102.420	Authority of the Hearing Officer
58	102.422	Notice and Service Lists
59	102.424	Prehearing Submission of Testimony and Exhibits
60	102.426	Admissible Information
61	102.428	Presentation of Testimony and Order of Hearing
62	102.430	Questioning of Witnesses

SUBPART E: CERTIFICATION OF REQUIRED RULES

63		
64		
65		
66	Section	
67	102.500	Agency Certification
68	102.502	Challenge to Agency Certification
69	102.504	Board Determination

SUBPART F: BOARD ACTION

70		
71		
72		
73	Section	
74	102.600	Revision of Proposed Regulations
75	102.602	Adoption of Regulations
76	102.604	First Notice of Proposed Regulations
77	102.606	Second Notice of Proposed Regulations
78	102.608	Notice of Board Final Action
79	102.610	Adoption of Identical-in-Substance Regulation
80	102.612	Adoption of Emergency Regulations
81	102.614	Adoption of Peremptory Regulations

SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL

82		
83		
84		
85	Section	
86	102.700	Filing of Motions for Reconsideration

- 87 102.702 Disposition of Motions for Reconsideration
- 88 102.704 Correction of Publication Errors
- 89 102.706 Appeal

90
91 SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION

- 92
- 93 Section
- 94 102.800 Applicability
- 95 102.810 Petition
- 96 102.820 Petition Contents
- 97 102.830 Board Action
- 98

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

100
101 AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28,
102 28.2, 28.6, 29, and 41 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3,
103 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 28.6, 29, and 41] and authorized by Sections 26 and
104 27 of the Act [415 ILCS 5/26 and 27].

105
106 SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part II: Regulatory and Other
107 Nonadjudicative Hearings and Proceedings, in R70-4, 1 PCB 43, October 8, 1970; codified at 6
108 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1398, effective January 16, 1985; Part repealed,
109 new Part adopted in R88-5(B) at 14 Ill. Reg. 9210, effective May 24, 1990; amended in R90-16
110 at 14 Ill. Reg. 20472, effective December 11, 1990; old Part repealed, new Part adopted in R00-
111 20 at 25 Ill. Reg. 587, effective January 1, 2001; amended in R01-13 at 26 Ill. Reg. 3498,
112 effective February 22, 2002; amended in R04-24 at 29 Ill. Reg. 8776, effective June 8, 2005;
113 amended in R10-18 at 34 Ill. Reg. 12193, effective August 9, 2010; amended in R14-21 at 38 Ill.
114 Reg. _____, effective _____.

115
116 SUBPART B: REGULATIONS OF GENERAL APPLICABILITY, RESOURCE
117 CONSERVATION AND RECOVERY ACT (RCRA) AMENDMENTS,
118 AND SITE-SPECIFIC REGULATIONS

119
120 **Section 102.200 Proposal for Regulations of General Applicability**

121
122 Any person may submit a regulatory proposal for the adoption, amendment, or repeal of a
123 regulation. The original and ~~9 copies of each~~ proposal must be filed with the Clerk in
124 accordance with 35 Ill. Adm. Code 101.302(h) and served upon one copy each with the Attorney
125 General, the Agency, and DNR in accordance with 35 Ill. Adm. Code 101.304(c).

126
127 (Source: Amended at 38 Ill. Reg. _____, effective _____)

128
129 **Section 102.202 Proposal Contents for Regulations of General Applicability**

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Each proponent must set forth the following in its proposal:

- a) The language of the proposed rule, including any existing regulatory language proposed to be amended or repealed. Language being added must be indicated by underscoring, and language being deleted must be indicated by strike-outs. The proposed rule must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
- b) A statement of the reasons supporting the proposal, including a statement of the facts that support the proposal, and a statement of the purpose and effect of the proposal, including environmental, technical, and economic justification. The statement must discuss the applicable factors listed in Section 27(a) of the Act. The statement must include, to the extent reasonably practicable, all affected sources and facilities and the economic impact of the proposed rule;
- c) A synopsis of all testimony to be presented by the proponent at hearing;
- d) ~~Any Copies of any~~ material to be incorporated by reference within the proposed rule pursuant to Section 5-75 of the IAPA [5 ILCS 100/5-75];
- e) *A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act [5 ILCS 140]. [5 ILCS 100/5-40(3.5)];*
- f) ~~Documentation~~ Proof of service upon all persons required to be served pursuant to Section 102.422 of this Part;
- g) Unless the proponent is the Agency or DNR, a petition signed by at least 200 persons, pursuant to Section 28 of the Act and Section 102.410(b) of this Part;
- h) When the Agency proposes a rule it believes is federally required, a certification in accordance with Section 102.500 of this Part;
- i) For a proposed rule that amends an existing Board rule, a written statement or certification that the proposal amends the most recent version of the rule as published on the Board's Web site or as obtained from the Clerk;

- 173 j) When the proponent is a State agency, an electronic version of the information
174 required under subsection (a) of this Section in Microsoft Word for Windows,
175 version 6.0 or greater; and
176
- 177 k) When any information required under this Section is inapplicable or unavailable,
178 a complete justification for the inapplicability or unavailability.
179

180 (Source: Amended at 38 Ill. Reg. _____, effective _____)
181

182 **Section 102.206 Notice of Site-Specific RCRA Proposals**
183

- 184 a) Public notice of hearings on site-specific RCRA proposals will be given at least
185 30 days before the date of the hearing.
186
- 187 b) In addition to the requirements of Section 28 of the Act, the Board, at a minimum,
188 will give notice of hearings on a site-specific RCRA proposal to the following
189 persons:
190
 - 191 1) Federal agencies as designated by the USEPA;
 - 192 2) Illinois Department of Transportation;
 - 193 3) Illinois Department of Natural Resources;
 - 194 4) Illinois Department of Public Health;
 - 195 5) The Governor of any other state adjacent to the county in which the
196 facility is located; and
 - 197 6) Elected officials of any counties, in other states, adjacent to the county in
198 which the facility is located, and elected officials in any municipality, in
199 another state, if it is the closest population center to the facility.
200
- 201 c) In addition to the methods of notice by publication of Section 28 of the Act and
202 Section 102.416 of this Part, the Board will give notice by broadcast over at least
203 one radio station in the area of the facility containing the information required by
204 subsections (d)(2) and (d)(4) through (d)(8) of this Section.
205
- 206 d) A hearing notice on a site-specific RCRA proposal will include the following
207 information:
208
 - 209 1) The address of the Board office;
 - 210
 - 211
 - 212
 - 213
 - 214
 - 215

- 216 2) Name and address of the proponent and, if different, of the facility for
- 217 which the site-specific rule is sought;
- 218
- 219 3) A brief description of the business conducted at the facility and the
- 220 activity described in the proposal;
- 221
- 222 4) A description of the relief requested in the proposal;
- 223
- 224 5) Name, address, e-mail address, and telephone number of the Clerk of the
- 225 Board, from whom interested persons may obtain further information,
- 226 including copies of the proposal;
- 227
- 228 6) The name, address, e-mail address, and telephone number of the Agency's
- 229 representative in the rulemaking;
- 230
- 231 7) A description of any written comment period or a statement that a
- 232 comment period will be established in the future;
- 233
- 234 8) A statement that the record in the rulemaking is available at the Board
- 235 office for inspection, except those portions that are claimed or determined
- 236 to be trade secrets, and that procedures are available whereby disclosure
- 237 may be sought by the public. Any such claim must be made in accordance
- 238 with 35 Ill. Adm. Code 130;
- 239
- 240 9) A statement that site-specific rules may be adopted pursuant to 415 ILCS
- 241 5/27 and Section 102.202 of this Part, and a citation to the Board
- 242 regulations sought to be modified; and
- 243
- 244 10) Any additional information considered necessary or proper.

245
246 (Source: Amended at 38 Ill. Reg. _____, effective _____)

247
248 **Section 102.208 Proposal for Site-Specific Regulations**

249
250 Any person may submit a written proposal for the adoption, amendment or repeal of a
251 substantive site-specific regulation. The original and ~~9~~ copies of each proposal must be filed
252 with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h) and of the Board and one copy
253 ~~each~~ served upon the Agency, DNR, and the Attorney General in accordance with 35 Ill. Adm.
254 Code 101.304(c).

255
256 (Source: Amended at 38 Ill. Reg. _____, effective _____)

257
258 **Section 102.210 Proposal Contents for Site-Specific Regulations**

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Proponents of site-specific regulations other than those relating to RCRA must comply with the requirements of Section 102.202 of this Part in addition to the following requirements:

- a) The proposal must set forth the language of the proposed site-specific rule, including any existing regulatory language proposed to be amended or repealed. Language being added must be indicated by underscoring and language being deleted must be indicated by strike-outs. If the proposed site-specific rule seeks an exemption from or modification of a rule of general applicability, the proposed site-specific rule may not be proposed as an amendment to the general rule. Instead, the site-specific rule must be proposed as its own Section;
- b) In the event that the proposed rule would replace the applicability of a general rule to the pollution source, the proposal must specify, with supporting documentation, the reasons why the general rule is not technically feasible or economically reasonable for the person or site. The documentation must include relevant information on other similar persons' or sites' ability to comply with the general rule. Where relevant to the Board's consideration, the proposal must also include information pertaining to *existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, and the nature of the existing air quality or receiving body of water* [415 ILCS 5/27(a)];
- c) *A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act* [5 ILCS 140]. [5 ILCS 100/5-40(3.5)];
- d) The proposal must describe the person or site for which regulatory change is sought and the area affected by the proposed change. The proposal must also include a detailed assessment of the environmental impact of the proposed change, and include a description of available treatment or control options;
- e) The proposal must demonstrate that the Board may grant the requested relief consistent with federal law governing the subject of the proposal (e.g., Underground Injection Control program, Resource Conservation and Recovery Act, etc.);
- f) When the proponent is a State agency, the proponent also must provide an

302 electronic version of the information required under subsection (a) of this Section
303 in Microsoft Word for Windows, version 6.0 or greater; and

- 304
305 g) When any information required under this Section is inapplicable or unavailable,
306 the proposal must provide a complete justification for the inapplicability or
307 unavailability.

308
309 (Source: Amended at 38 Ill. Reg. _____, effective _____)

310
311 SUBPART C: CLEAN AIR ACT AMENDMENTS (CAAA)
312 FAST TRACK RULEMAKING

313
314 **Section 102.302 Agency Proposal**

- 315
316 a) When proposing a regulation required by the CAAA, the Agency must meet the
317 following requirements:
- 318
319 1) The proposal must set forth the proposed rule, which must be drafted in
320 accordance with 1 Ill. Adm. Code 100.Subpart C;
321
 - 322 2) The proposal must have a cover sheet that prominently states that the
323 Agency proposes the rule under Section 28.5 of the Act, *unless another*
324 *provision of the Act specifies the method for adopting a specific rule* [415
325 ILCS 5/28.5(c)];
326
 - 327 3) The proposal must *clearly identify the provisions and portions of the*
328 *federal statute, regulations, guidance, policy statement, or other*
329 *documents upon which the rule is based* [415 ILCS 5/28.5(e)(3)];
330
 - 331 4) The proposal must include *supporting documentation for the rule that*
332 *summarizes the basis of the rule* [415 ILCS 5/28.5(e)(4)];
333
 - 334 5) The proposal must *describe in general the alternative selected and the*
335 *basis for the alternative* [415 ILCS 5/28.5(e)(5)];
336
 - 337 6) The proposal must summarize the economic and technical data that the
338 Agency relied upon in drafting the proposed rule;
339
 - 340 7) The proposal must include a list of any documents that the Agency
341 directly relied upon in drafting the proposed rule or that the Agency
342 intends to rely upon at hearing, and copies of the documents;
343
 - 344 8) The proposal must set forth *a description of the geographical area to*

345 *which the rule is intended to apply, a description of the process or*
346 *processes affected, and identification by classes of the entities expected to*
347 *be affected, and a list of sources expected to be affected by the rule to the*
348 *extent known to the Agency [415 ILCS 5/28.5(e)(8)];*

- 349
350 9) *A descriptive title or other description of any published study or research*
351 *report used in developing the rule, the identity of the person who*
352 *performed such study, and a description of where the public may obtain a*
353 *copy of any such study or research report. If the study was performed by*
354 *an agency or by a person or entity that contracted with the agency for the*
355 *performance of the study, the agency shall also make copies of the*
356 *underlying data available to members of the public upon request if the*
357 *data are not protected from disclosure under the Freedom of Information*
358 *Act [5 ILCS 140]. [5 ILCS 100/5-40(3.5)]; and*

- 359
360 10) The proposal must include an electronic version of a diskette containing
361 the information required under subsection (a)(1) of this Section in
362 Microsoft Word for Windows, version 6.0 or greater.

- 363
364 b) If the proposal fails to meet any of the requirements of subsection (a) of this
365 Section, the Board may decide not to accept the proposal for filing.

366
367 (Source: Amended at 38 Ill. Reg. _____, effective _____)

368
369 SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS,
370 PRODUCTION OF INFORMATION, SUBPOENAS, PREHEARING
371 CONFERENCES, AND HEARINGS

372
373 **Section 102.416 Notice of Hearing**

- 374
375 a) The hearing officer will set a time and place for hearing. The Clerk will give
376 notice of the date of the hearing as follows or as otherwise required by applicable
377 law:

- 378
379 1) By notice in the Board's Environmental Register and on the Board's
380 website~~Web-site~~;
- 381
382 2) *At least 20 days prior to the scheduled date of the hearing the Board shall*
383 *give notice of such hearing by public advertisement in a newspaper of*
384 *general circulation in the area of the State concerned. The notice will*
385 *include, the date, time, place and purpose of such hearing [415 ILCS*
386 *5/28(a)]; and*

387

- 388 3) Where required by federal law, including air pollution and RCRA
389 proposals, newspaper notice will be published at least 30 days prior to the
390 hearing date.
- 391
- 392 b) In accordance with Section 28(a) of the Act or as otherwise required by applicable
393 law, the Clerk will give notice ~~by mail~~ to the proponent and to all persons who are
394 on the notice list in accordance with Section 102.422 of this Part.
- 395
- 396 c) Hearings that are continued on the hearing record for a period of 45 days or less
397 do not require notice that complies with subsections (a) and (b) of this Section.
- 398

399 (Source: Amended at 38 Ill. Reg. _____, effective _____)
400

401 **Section 102.424 Prehearing Submission of Testimony and Exhibits**
402

- 403 a) The proponent must submit all written testimony and any related exhibits 21 days
404 prior to the hearing at which the witness testifies, unless the hearing officer directs
405 otherwise to prevent material prejudice or undue delay.
- 406
- 407 b) The hearing officer may require the prehearing submission of testimony,
408 questions, responses, answers, and any related exhibits by the proponent or
409 participants other than the proponent if the hearing officer determines that such a
410 procedure will provide for a more efficient hearing.
- 411
- 412 c) ~~All~~The original and ~~9~~ copies of any prehearing testimony, questions, answers,
413 responses, ~~and~~ exhibits must be filed with the Clerk in accordance with 35 Ill.
414 Adm. Code 101.302(h). The hearing officer, the Agency, and, if a participant, the
415 Attorney General and DNR must each be served with ~~all~~one copy of any
416 prehearing testimony, questions, answers, responses, ~~and~~ exhibits in accordance
417 with 35 Ill. Adm. Code 101.304(c). ~~All~~One copy of any prehearing testimony,
418 questions, answers, responses, ~~and~~ exhibits must also be served in accordance
419 with 35 Ill. Adm. Code 101.304(c) upon the proponent and each participant on
420 any service list, unless otherwise specified ~~or limited~~ by the hearing officer. The
421 service must be initiated on or before the date that the prehearing
422 documents ~~copies~~ are filed with the Clerk.
- 423
- 424 d) All prehearing testimony, questions, answers, responses, and exhibits must be
425 served and submitted in the form required by 35 Ill. Adm. Code 101.Subpart C
426 and labeled with the docket number of the proceeding, the name of the witness
427 submitting the material or exhibit, and the title of the material or exhibit.
- 428
- 429 e) The proponent and each participant who has filed testimony, questions, answers,
430 responses, or exhibits before hearing must bring the number of copies designated

431 by the hearing officer of that material and exhibits to the hearing.
432

- 433 f) Testimony, questions, answers, responses, and exhibits submitted prior to hearing
434 will be entered into the record as if read, unless the hearing officer determines that
435 it will aid public understanding to have the material or exhibit read. All persons
436 testifying will be sworn and will be subject to examination. Modifications to
437 previously submitted material and exhibits may be allowed by the hearing officer
438 at hearing provided that the modifications are either non-substantive in nature or
439 would not materially prejudice another person's participation at hearing.
440 Objections to the modifications are waived unless raised at hearing.
441

- 442 g) ~~When~~Where prehearing submission of testimony, questions, answers, responses,
443 or exhibits; is required pursuant to subsection (a) or (b) of this Section, any
444 material or exhibit that is not filed in a timely manner will be allowed only as time
445 permits, and only ~~when~~where its submission will not materially prejudice the
446 proponent or any other participant.
447

448 (Source: Amended at 38 Ill. Reg. _____, effective _____)
449

450 SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION

451 **Section 102.810 Petition**

452 Any person may submit a petition for the adoption, amendment or repeal of an ORW
453 designation. ~~The original and nine copies of each petition must be filed with the Clerk in~~
454 ~~accordance with 35 Ill. Adm. Code 101.302(h) and one copy each served upon the Agency,~~
455 ~~DNR Illinois Department of Natural Resources, and the Attorney General in accordance with 35~~
456 ~~Ill. Adm. Code 101.304(c).~~
457
458

459 (Source: Amended at 38 Ill. Reg. _____, effective _____)
460

461 **Section 102.820 Petition Contents**

462 Each proponent must set forth the following information in its proposal:
463

- 464 a) The language of the proposed rule, amendment, or repealer identifying the surface
465 water body or water body segment being proposed for designation, amendment,
466 or repeal as an ORW. Language being added must be indicated by underscoring,
467 and language being deleted must be indicated by strike-outs. The proposed rule
468 must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
469
470 b) A statement describing the specific surface water body or water body segment for
471 which the ORW designation, amendment, or repeal is requested and the present
472
473

- 474 designation of the surface water body or water body segment;
475
476 c) A statement describing the area in which the specific surface water body or water
477 body segment exists, including:
478
479 1) The existence of wetlands or natural areas;
480
481 2) The living organisms in that area, including endangered or threatened
482 species of plants, aquatic life or wildlife listed pursuant to the Endangered
483 Species Act (16 USC 1531 et seq.) or the Illinois Endangered Species
484 Protection Act [41 ILCS 10];
485
486 d) A statement supporting the designation, the amendment, or the repeal, including
487 the health, environmental, recreational, aesthetic or economic benefits of the
488 designation, the amendment, or the repeal thereof;
489
490 e) A statement identifying the anticipated impact on economic and social
491 development of the ORW designation, amendment, or repeal. This statement
492 should include:
493
494 1) Impacts on the regional economy;
495
496 2) Impacts on regional employment;
497
498 3) Impacts on the community;
499
500 4) A comparison of the health and environmental impacts to the economic
501 impact of an ORW designation;
502
503 f) A statement describing the existing and anticipated uses of the specific surface
504 water body or water body segment for which the ORW designation, amendment,
505 or repeal is requested;
506
507 g) A statement describing the existing water quality of the specific surface water
508 body or water body segment warranting the ORW designation, amendment, or
509 repeal;
510
511 h) A synopsis of all testimony to be presented by the proponent at hearing;
512
513 i) ~~Any Copies of any~~ material to be incorporated by reference within the proposed
514 designation pursuant to Section 5-75 of the Administrative Procedure Act [5 ILCS
515 100/5-75];
516

- 517 j) *A descriptive title or other description of any published study or research report*
518 *used in developing the rule, the identify of the person who performed such study,*
519 *and a description of where the public may obtain a copy of any such study or*
520 *research report. If the study was performed by an agency or by a person or entity*
521 *that contracted with the agency for the performance of the study, the agency shall*
522 *also make copies of the underlying data available to members of the public upon*
523 *request if the data are not protected from disclosure under the Freedom of*
524 *Information Act [5 ILCS 140]. [5 ILCS 100/5-40(3.5)];*
525
526 k) DocumentationProof of service upon all persons required to be served pursuant to
527 Section 102.810 of this Part;
528
529 l) Unless the proponent is the Agency or Illinois Department of Natural Resources
530 or receives a waiver by the Board, a petition signed by at least 200 persons,
531 pursuant to Section 28 of the Act and Section 102.160(a); and
532
533 m) Where any information required by this Section is inapplicable or unavailable, a
534 complete justification for such inapplicability or unavailability.
535

536 (Source: Amended at 38 Ill. Reg. _____, effective _____)

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS



- 1) Heading of the Part: Enforcement
- 2) Code Citation: 35 Ill. Adm. Code 103
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
103.204	Amendment
103.206	Amendment
103.410	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: In this procedural rulemaking, the Board proposes amendments to codify procedural standards for remarks by members of the public at the Board's open meetings and to permit, with certain limited exceptions, electronic filing in all Board proceedings through the Board's Clerk's Office On-Line or "COOL", as well as service by e-mail of most types of filings. The Board also proposes a handful of updates and housekeeping amendments not directly related to electronic filing or public remarks. The proposed amendments to Part 103 relate to electronic filing and service by e-mail of filings in enforcement proceedings before the Board. Section 103.206, as proposed to be amended, also requires that service of counter-complaints, cross-complaints, and third-party complaints conform to the rules for serving initial pleadings in enforcement cases. For a detailed description of the proposed changes to Part 103, please refer to the Board's June 5, 2014 opinion and order in docket R14-21: Procedural Rule Amendments to Implement Electronic Filing and Allow For Public Remarks at Board Meetings: Proposed Amendments to 35 Ill. Adm. Code 101-130.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule 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 Objective: This proposed rulemaking does not create or

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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: 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*. Public comments should reference Docket R14-21 and be addressed to:

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

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R14-21 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 Mark Powell at 312/814-6887 or e-mail at Mark.Powell@illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality or not-for-profit corporation that practices before the Board.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of Professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because the Board was required, due to a recent Appellate Court decision, to revisit its procedural rules and develop new proposed rules.

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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

RECEIVED
CLERK'S OFFICE

JUN 25 2014

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

STATE OF ILLINOIS
Pollution Control Board

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

PART 103
ENFORCEMENT

SUBPART A: GENERAL PROVISIONS

- Section
- 103.100 Applicability
- 103.102 Severability
- 103.104 Definitions
- 103.106 General

SUBPART B: COMPLAINT, REQUEST FOR INFORMAL AGENCY INVESTIGATION, SERVICE, AND AUTHORIZATION OF HEARING

- Section
- 103.200 Who May File
- 103.202 Parties
- 103.204 Notice, Complaint, and Answer
- 103.206 Adding Parties; Filing Counter-, Cross-, or Third-Party Complaints; Filing New or Modified Claims
- 103.208 Request for Informal Agency Investigation
- 103.210 Notice of Complaint
- 103.212 Hearing on Complaint

SUBPART C: SETTLEMENT PROCEDURE

- Section
- ~~103.300~~ 103.300 Request for Relief from Hearing Requirement in State Enforcement Proceeding
- 103.301 Request for Relief from Hearing Requirement in Citizen's Enforcement Proceeding
- 103.302 Contents of Proposed Stipulation and Settlement Agreement
- 103.304 Hearing on Proposed Stipulation and Settlement Agreement
- 103.306 Board Order on Proposed Stipulation and Settlement Agreement

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

Section	
103.400	Purpose, Scope, and Applicability
103.402	Interim Order
103.404	Joinder of the Agency
103.406	Draft Permit or Statement
103.408	Stipulated Draft Remedy
103.410	Contents of Public Notice
103.412	Public Comment
103.414	Hearing
103.416	Contents of Board Order

SUBPART E: IMPOSITION OF PENALTIES

Section	
103.500	Default
103.502	Civil Penalties
103.504	Civil Penalties Method of Payment

SUBPART F: ENFORCING BOARD ORDERS

Section	
103.600	Civil Action

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

AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, 30, 31, 41, and 42 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, 30, 31, 41, and 42] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part III, Enforcement Proceedings, in R70-4, at 1 PCB 43, October 8, 1970; amended in R80-2, at 39 PCB 456, at 4 Ill. Reg. 39, p. 285, effective September 12, 1980; amended in R80-18, at 44 PCB 125, at 5 Ill. Reg. 14146, effective December 3, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1383, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 425, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8793, effective June 8, 2005; amended in R14-21 at 38 Ill. Reg. _____, effective _____.

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

SUBPART B: COMPLAINT, REQUEST FOR INFORMAL AGENCY INVESTIGATION, SERVICE, AND AUTHORIZATION OF HEARING

Section 103.204 Notice, Complaint, and Answer

- a) An enforcement proceeding will be commenced by the service of a notice and complaint by registered or certified mail, messenger service, or personal service upon all respondents and the filing ~~of 1 original and 9 copies~~ of the notice and complaint with the Clerk. (See 35 Ill. Adm. Code 101.300(b), (c), 101.302(h), and 101.304(c).)
- b) The notice must be directed to the respondents notifying them of the filing of the accompanying complaint and that they may be required to attend a hearing at a date set by the Board.
- c) The complaint must be captioned in accordance with 35 Ill. Adm. Code 101.Appendix A, Illustration A and contain:
 - 1) A reference to the provision of the Act and regulations that the respondents are alleged to be violating;
 - 2) The dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations. The complaint must advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense; and
 - ~~3)-3)~~ A concise statement of the relief that the complainant seeks.
- d) Except as provided in subsection (e) of this Section, the respondent may file an answer within 60 days after receipt of the complaint if respondent wants to deny any allegations in the complaint. All material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer, unless respondent asserts a lack of knowledge sufficient to form a belief. Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing.
- e) If the respondent timely files a motion under Section 103.212(b) or 35 Ill. Adm.

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

Code 101.506, the 60-day period to file an answer described in subsection (d) of this Section will be stayed. The stay will begin when the motion is filed and end when the Board disposes of the motion.

~~f-d~~ Any party serving a complaint upon another party must include the following language in the notice: “Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk’s Office or an attorney.”

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 103.206 Adding Parties; Filing Counter-, Cross-, or Third-Party Complaints; Filing New or Modified Claims

- a) The Board, on its own motion or the motion of a respondent, may order a person to be added as a respondent if a complete determination of a controversy cannot be had without the presence of the person who is not already a party to the proceeding.
- b) If the Board orders a person to be added as a respondent pursuant to subsection (a) of this Section, the Board will grant the complainant leave to file an amended complaint that sets forth a claim against the added respondent. The amended complaint must meet the requirements of Section 103.204 of this Subpart.
- c) Misjoinder and nonjoinder of parties with respect to enforcement proceedings are governed by 35 Ill. Adm. Code 101.403(b).
- d) If a party wishes to file a counter-complaint, cross-complaint, or third-party complaint, the party must move the Board for leave to file the pleading. If a party wishes to file an amendment to a complaint, counter-complaint, cross-complaint, or third-party complaint that sets forth a new or modified claim against another person, the party who wishes to file the pleading must move the Board for leave to file the pleading.
- e) The pleading sought to be filed pursuant to subsection (d) of this Section must:

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Set forth a claim that arises out of the occurrence or occurrences that are the subject of the proceeding; and
- 2) Meet the requirements of Section 103.204 of this Subpart, including the requirement to serve the pleading by registered or certified mail, messenger service, or personal service upon the respondent, counter-respondent, cross-respondent, or third-party respondent.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

Section 103.410 Contents of Public Notice

- a) In addition to all parties, the Agency must serve a copy of any partial draft permit on USEPA in accordance with 35 Ill. Adm. Code 101.304(c) ~~at the address listed in 35 Ill. Adm. Code 101. Subpart C.~~
- b) In addition to the requirements of the Act and Section 103.210 of this Part, the Agency must, at a minimum, give notice of the filing of a partial draft permit to the following persons:
 - 1) Federal agencies as designated by USEPA;
 - 2) Illinois Department of Transportation;
 - 3) Illinois Department of Natural Resources;
 - 4) Illinois Department of Public Health;
 - 5) The Governor of any other state adjacent to the county in which the facility is located; and
 - 6) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility.
- c) In addition to the methods of notice by publication of Section 103.208 of this Part, the Agency must give notice by broadcast over at least one radio station in the

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

area of the facility containing the information required by subsections (d)(2), (d)(4) and (d)(6) through (d)(8).

- d) A notice of a partial draft permit must include the following information:
- 1) The addresses ~~address~~ of the Board ~~office~~ offices and ~~the~~ Board website;
 - 2) Name and address of the respondent and, if different, of the facility subject to the enforcement proceeding;
 - 3) A brief description of the business conducted at the facility and the activity that is the subject of the enforcement proceeding;
 - 4) A statement of the violations the Board has found or has proposed to find;
 - 5) A statement that the Agency has filed a partial draft permit;
 - 6) Name, address, e-mail address, and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the partial draft permit or stipulated remedy;
 - 7) A notice of a hearing, the address of the Board, a statement that a hearing will be held and that the record will remain open for 45 days after the filing of the partial draft or stipulated remedy for written comments;
 - 8) A statement that the record in the proceeding is available to be inspected at the Board office and may also be available through COOL, located ~~for~~ inspection on the Board website, except those portions of the record that are claimed or determined to be trade secrets or other non-disclosable information, and that procedures are available whereby disclosure may be sought by the public in accordance with 35 Ill. Adm. Code 130;
 - 9) A statement that enforcement proceedings are considered pursuant to 415 ILCS 5/30; and
 - 10) Any additional information considered necessary or proper.

(Source: Amended at 38 Ill. Reg. _____, effective _____ —)

Document comparison by Workshare Compare on Monday, June 16, 2014
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Input:	
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Format changed	0
Total changes	35

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

5 PART 103
6 ENFORCEMENT
7

8 SUBPART A: GENERAL PROVISIONS
9

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Pollution Control Board

10 Section

- 11 103.100 Applicability
12 103.102 Severability
13 103.104 Definitions
14 103.106 General
15

16 SUBPART B: COMPLAINT, REQUEST FOR INFORMAL AGENCY
17 INVESTIGATION, SERVICE, AND AUTHORIZATION OF HEARING
18

19 Section

- 20 103.200 Who May File
21 103.202 Parties
22 103.204 Notice, Complaint, and Answer
23 103.206 Adding Parties; Filing Counter-, Cross-, or Third-Party Complaints; Filing New
24 or Modified Claims
25 103.208 Request for Informal Agency Investigation
26 103.210 Notice of Complaint
27 103.212 Hearing on Complaint
28

29 SUBPART C: SETTLEMENT PROCEDURE
30

31 Section

- 32 103.300 Request for Relief from Hearing Requirement in State Enforcement Proceeding
33 103.301 Request for Relief from Hearing Requirement in Citizen's Enforcement
34 Proceeding
35
36 103.302 Contents of Proposed Stipulation and Settlement Agreement
37 103.304 Hearing on Proposed Stipulation and Settlement Agreement
38 103.306 Board Order on Proposed Stipulation and Settlement Agreement
39

40 SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS
41

42 Section

- 43 103.400 Purpose, Scope, and Applicability

- 44 103.402 Interim Order
- 45 103.404 Joinder of the Agency
- 46 103.406 Draft Permit or Statement
- 47 103.408 Stipulated Draft Remedy
- 48 103.410 Contents of Public Notice
- 49 103.412 Public Comment
- 50 103.414 Hearing
- 51 103.416 Contents of Board Order

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53 SUBPART E: IMPOSITION OF PENALTIES

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- 55 Section
- 56 103.500 Default
- 57 103.502 Civil Penalties
- 58 103.504 Civil Penalties Method of Payment
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60 SUBPART F: ENFORCING BOARD ORDERS

- 61 Section
- 62 103.600 Civil Action
- 63

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

65
66 AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28,
67 28.2, 29, 30, 31, 41, and 42 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c),
68 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, 30, 31, 41, and 42] and authorized by
69 Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].
70

71 SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part III, Enforcement
72 Proceedings, in R70-4, at 1 PCB 43, October 8, 1970; amended in R80-2, at 39 PCB 456, at 4 Ill.
73 Reg. 39, p. 285, effective September 12, 1980; amended in R80-18, at 44 PCB 125, at 5 Ill. Reg.
74 14146, effective December 3, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill.
75 Reg. 1383, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill.
76 Reg. 425, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8793, effective June 8,
77 2005; amended in R14-21 at 38 Ill. Reg. _____, effective _____.
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79 SUBPART B: COMPLAINT, REQUEST FOR INFORMAL AGENCY
80 INVESTIGATION, SERVICE, AND AUTHORIZATION OF HEARING

81
82 Section 103.204 Notice, Complaint, and Answer

- 83
- 84 a) An enforcement proceeding will be commenced by the service of a notice and
- 85 complaint by registered or certified mail, messenger service, or personal service
- 86 upon all respondents and the filing of ~~1 original and 9 copies of the notice and~~

87 complaint with the Clerk. (See 35 Ill. Adm. Code 101.300(b) and (c), 101.302(h)
 88 and 101.304(c).)

- 89
- 90 b) The notice must be directed to the respondents notifying them of the filing of the
 91 accompanying complaint and that they may be required to attend a hearing at a
 92 date set by the Board.
- 93
- 94 c) The complaint must be captioned in accordance with 35 Ill. Adm. Code
 95 101.Appendix A, Illustration A and contain:
- 96
- 97 1) A reference to the provision of the Act and regulations that the
 98 respondents are alleged to be violating;
- 99
- 100 2) The dates, location, events, nature, extent, duration, and strength of
 101 discharges or emissions and consequences alleged to constitute violations
 102 of the Act and regulations. The complaint must advise respondents of the
 103 extent and nature of the alleged violations to reasonably allow preparation
 104 of a defense; and
- 105
- 106 3) A concise statement of the relief that the complainant seeks.
- 107
- 108 d) Except as provided in subsection (e) of this Section, the respondent may file an
 109 answer within 60 days after receipt of the complaint if respondent wants to deny
 110 any allegations in the complaint. All material allegations of the complaint will be
 111 taken as admitted if no answer is filed or if not specifically denied by the answer,
 112 unless respondent asserts a lack of knowledge sufficient to form a belief. Any
 113 facts constituting an affirmative defense must be plainly set forth before hearing
 114 in the answer or in a supplemental answer, unless the affirmative defense could
 115 not have been known before hearing.
- 116
- 117 e) If the respondent timely files a motion under Section 103.212(b) or 35 Ill. Adm.
 118 Code 101.506, the 60-day period to file an answer described in subsection (d) of
 119 this Section will be stayed. The stay will begin when the motion is filed and end
 120 when the Board disposes of the motion.
- 121
- 122 f) Any party serving a complaint upon another party must include the following
 123 language in the notice: "Failure to file an answer to this complaint within 60 days
 124 may have severe consequences. Failure to answer will mean that all allegations in
 125 the complaint will be taken as if admitted for purposes of this proceeding. If you
 126 have any questions about this procedure, you should contact the hearing officer
 127 assigned to this proceeding, the Clerk's Office or an attorney."
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129 (Source: Amended at 38 Ill. Reg. _____, effective _____)

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Section 103.206 Adding Parties; Filing Counter-, Cross-, or Third-Party Complaints; Filing New or Modified Claims

- a) The Board, on its own motion or the motion of a respondent, may order a person to be added as a respondent if a complete determination of a controversy cannot be had without the presence of the person who is not already a party to the proceeding.
- b) If the Board orders a person to be added as a respondent pursuant to subsection (a) of this Section, the Board will grant the complainant leave to file an amended complaint that sets forth a claim against the added respondent. The amended complaint must meet the requirements of Section 103.204 of this Subpart.
- c) Misjoinder and nonjoinder of parties with respect to enforcement proceedings are governed by 35 Ill. Adm. Code 101.403(b).
- d) If a party wishes to file a counter-complaint, cross-complaint, or third-party complaint, the party must move the Board for leave to file the pleading. If a party wishes to file an amendment to a complaint, counter-complaint, cross-complaint, or third-party complaint that sets forth a new or modified claim against another person, the party who wishes to file the pleading must move the Board for leave to file the pleading.
- e) The pleading sought to be filed pursuant to subsection (d) of this Section must:
 - 1) Set forth a claim that arises out of the occurrence or occurrences that are the subject of the proceeding; and
 - 2) Meet the requirements of Section 103.204 of this Subpart, including the requirement to serve the pleading by registered or certified mail, messenger service, or personal service upon the respondent, counter-respondent, cross-respondent, or third-party respondent.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

Section 103.410 Contents of Public Notice

- a) In addition to all parties, the Agency must serve a copy of any partial draft permit on USEPA in accordance with 35 Ill. Adm. Code 101.304(c) at the address listed in 35 Ill. Adm. Code 101. Subpart C.

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- b) In addition to the requirements of the Act and Section 103.210 of this Part, the Agency must, at a minimum, give notice of the filing of a partial draft permit to the following persons:
 - 1) Federal agencies as designated by USEPA;
 - 2) Illinois Department of Transportation;
 - 3) Illinois Department of Natural Resources;
 - 4) Illinois Department of Public Health;
 - 5) The Governor of any other state adjacent to the county in which the facility is located; and
 - 6) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility.

- c) In addition to the methods of notice by publication of Section 103.208 of this Part, the Agency must give notice by broadcast over at least one radio station in the area of the facility containing the information required by subsections (d)(2), (d)(4) and (d)(6) through (d)(8).

- d) A notice of a partial draft permit must include the following information:
 - 1) The ~~addresses~~address of the Board ~~offices and the Board website~~office;
 - 2) Name and address of the respondent and, if different, of the facility subject to the enforcement proceeding;
 - 3) A brief description of the business conducted at the facility and the activity that is the subject of the enforcement proceeding;
 - 4) A statement of the violations the Board has found or has proposed to find;
 - 5) A statement that the Agency has filed a partial draft permit;
 - 6) Name, address, e-mail address, and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the partial draft permit or stipulated remedy;

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- 7) A notice of a hearing, the address of the Board, a statement that a hearing will be held and that the record will remain open for 45 days after the filing of the partial draft or stipulated remedy for written comments;
 - 8) A statement that the record in the proceeding is available to be inspected at the Board office and may also be available through COOL, located on the Board website for inspection, except those portions of the record that are claimed or determined to be trade secrets or other non-disclosable information, and that procedures are available whereby disclosure may be sought by the public in accordance with 35 Ill. Adm. Code 130;
 - 9) A statement that enforcement proceedings are considered pursuant to 415 ILCS 5/30; and
 - 10) Any additional information considered necessary or proper.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

POLLUTION CONTROL BOARD
NOTICE OF PROPOSED AMENDMENTS

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JUN 25 2014

STATE OF ILLINOIS
Pollution Control Board

- 1) Heading of the Part: Regulatory Relief Mechanisms
- 2) Code Citation: 35 Ill. Adm. Code 104
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
104.206	Amendment
104.214	Amendment
104.216	Amendment
104.224	Amendment
104.408	Amendment
104.420	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: In this procedural rulemaking, the Board proposes amendments to codify procedural standards for remarks by members of the public at the Board's open meetings and to permit, with certain limited exceptions, electronic filing in all Board proceedings through the Board's Clerk's Office On-Line or "COOL", as well as service by e-mail of most types of filings. The Board also proposes a handful of updates and housekeeping amendments not directly related to electronic filing or public remarks. The proposed amendments to Part 104 relate to electronic filing and service by e-mail of filings in proceedings seeking regulatory relief before the Board such as variance proceedings. For a detailed description of the proposed changes to Part 104, please refer to the Board's June 5, 2014 opinion and order in docket R14-21: Procedural Rule Amendments to Implement Electronic Filing and Allow For Public Remarks at Board Meetings: Proposed Amendments to 35 Ill. Adm. Code 101-130.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule 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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 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*. Public comments should reference Docket R14-21 and be addressed to:

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

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R14-21 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 Mark Powell at 312/814-6887 or e-mail at Mark.Powell@illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality or not-for-profit corporation that practices before the Board.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because the Board was required, due to a recent Appellate Court decision, to revisit its procedural rules and develop new proposed rules.

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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 104
REGULATORY RELIEF MECHANISMS

SUBPART A: GENERAL PROVISIONS

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JUN 25 2014

STATE OF ILLINOIS
Pollution Control Board

Section	
104.100	Applicability
104.102	Severability
104.104	Definitions

SUBPART B: VARIANCES

Section	
104.200	General
104.202	Filing Requirements
104.204	Petition Content Requirements
104.206	Resource Conservation and Recovery Act (RCRA) Variance Petition Contents
104.208	Consistency with Federal Law
104.210	Petition for Extension of Variance
104.212	Motion for Modification of Internal Variance Compliance Dates
104.214	Agency's Notice of Petition
104.216	Agency Investigation and Recommendation
104.218	Agency Recommendation to RCRA Variance
104.220	Response to Agency Recommendation
104.222	Stipulations
104.224	Objections to Petition, Written Comments and Request for Hearing
104.226	Amended Petition and Amended Recommendation
104.228	Insufficient Petition
104.230	Dismissal of Petition
104.232	Calculation of Decision Deadline
104.234	Hearing
104.236	Hearing Procedures
104.238	Standard of Review
104.240	Certificate of Acceptance
104.242	Term of Variance
104.244	Variance Conditions
104.246	Performance Bonds
104.248 <u>104.248</u>	Objection to Conditions

SUBPART C: PROVISIONAL VARIANCES

Section	
104.300	Applicability
104.302	Agency Action
104.304	Initiating a Request
104.306	Filing and Notice
104.308	Term
104.310	Simultaneous Variance Prohibition (Repealed)

SUBPART D: ADJUSTED STANDARDS

Section	
104.400	General
104.402	Initiation of Proceeding
104.404	Request to Agency to Join as Co-Petitioner
104.406	Petition Content Requirements
104.408	Petition Notice Requirements
104.410	Proof of Petition Notice Requirements
104.412	Effect of Filing a Petition: Stay
104.414	Dismissal of Petition
104.416	Agency Recommendation and Petitioner Response
104.418	Amended Petition, Amended Recommendation, and Amended Response
104.420	Request for Public Hearing
104.422	Public Hearing
104.424	Hearing Notice
104.426	Burden of Proof
104.428	Board Action

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

AUTHORITY: Subparts B and C: Implementing Sections 5, 35, 36, 37 and 38 of the Environmental Protection Act (Act) [415 ILCS 5/5, 35, 36, 37, and 38] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27]. Subpart D: Implementing Sections 5, 14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5 of the Act [415 ILCS 5/5, 14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Subpart B: Originally adopted as Chapter I: Procedural Rules, Part IV: Variances, in R70-4, at 1 PCB 43, October 8, 1970; amended in R77-16, 29 PCB 503, at 2 Ill. Reg. 16, p. 3, effective May, 1974; amended in R79-9, 35 PCB 433, at 3 Ill. Reg. 51, p. 128, effective December 7, 1979; amended in R80-12, 40 PCB 451, at 5 Ill. Reg. 2763, effective March 2, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10, 62 PCB 87, at 9 Ill. Reg. 1409, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 613, effective

January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8803, effective June 8, 2005; amended in R14-21 at 38 Ill. Reg. _____, effective _____.

SUBPART B: VARIANCES

Section 104.206 Resource Conservation and Recovery Act (RCRA) Variance Petition Contents

In addition to the requirements of Sections 104.204 and 104.208 of this Part, a petition for a RCRA variance must meet the following requirements:

- a) All petitions for RCRA variances must include a showing that the Board can grant the requested relief consistent with, and establish RCRA permit conditions no less stringent than, those that would be required by RCRA and the regulations thereunder promulgated by USEPA (40 CFR 260, 261, 262, 263, 264, 265, 266, 267, 268 and 270). Petitions must indicate whether any federal provisions authorize the relief requested, and must include any facts necessary to show that the petitioner would be entitled to the requested relief pursuant to federal law;
- b) Persons who have, or are required to have, a RCRA permit and who seek a RCRA variance that could result in modification or issuance of the RCRA permit must have on file with the Agency a RCRA permit application reflecting the requested variance prior to filing the variance petition;
- c) Petitioner must attach to the variance petition a copy of the RCRA permit application, or such portion as may be relevant to the variance request; and
- d) Petitioner must attach to the variance petition ~~documentation~~ proof of documentation proof of service on USEPA as required by Section 104.202 of this Part.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 104.214 Agency's Notice of Petition

- a) Within 14 days after the petition is filed, the Agency must *publish a single notice of such petition in a newspaper of general circulation in the county where the facility or pollution source is located* [415 ILCS 5/37(a)].
- b) Upon receipt of a petition for variance, *the Agency shall promptly give written notice of such petition to:*
 - 1) *Any person in the county in which the installation or property for which*

variance is sought is located who has in writing requested notice of variance petitions;

- 2) ~~The~~The State's attorney of such county;
 - 3) The Chairman of the County Board of such county; and
 - 4) Each member of the General Assembly from the legislative district in which that installation or property is located. [415 ILCS 5/37(a)]
- c) Upon receipt of a petition for RCRA variance, the Agency must promptly give notice of the petition to:
- 1) Federal agencies as designated by USEPA;
 - 2) Illinois Department of Transportation;
 - 3) Department of Natural Resources;
 - 4) Illinois Department of Public Health;
 - 5) The Governor of any other state adjacent to the county in which the facility or pollution source is located; and
 - 6) Elected officials of any counties, in other states, adjacent to the county in which the facility or pollution source is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility or pollution source.
- d) In addition to the methods of notice stated in subsection (c) of this Section, in a RCRA variance the Agency must also give notice by broadcast over at least one local radio station in the area of the facility or pollution source containing the information required by subsections (e) and (f) of this Section.
- e) All notices required by this Section must include the following:
- 1) The street address of the facility or pollution source, and if there is no street address, then the legal description or the location with reference to any well-known landmark, highway, road, thoroughfare or intersection;
 - 2) A description of the requested relief;
 - 3) An indication that any person may request a hearing by filing with the

Board a written objection to the grant of the variance within 21 days after the publication of the Agency's notice, together with a written request for hearing;

- 4) The Clerk of the Board's address and phone number, the Board's website address, and a statement that a copy of the variance petition may be obtained through the Clerk's Office or COOL, located on the Board's website;
- 5) A statement that the Agency is preparing a recommendation, the date on which the recommendation is to be filed, and the name, address, e-mail address, and telephone number of the Agency employee responsible for the recommendation;
- 6) A statement that a hearing may be held after the filing of the recommendation and that the record will remain open for written comments for 45 days after filing of the recommendation. The notice will include the address of the Board to which the comments must be mailed;
- 7) A statement that the record in the variance proceeding is available at the Board office for inspection, except those portions that are protected from disclosure under 35 Ill. Adm. Code 130, and that procedures are available whereby disclosure may be sought by the public;
- 8) A statement that variances may be granted pursuant to Section 35 of the Act [415 ILCS 5/35] and 35 Ill. Adm. Code 104, and a reference to the Board regulations or order from which a variance is sought; and
- 9) Any additional information considered necessary or proper.

~~f~~ Within 21 days after the publication of notice, the Agency must file with the Board a certification of publication that states the date on which the notice was published and must attach a copy of the published notice.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 104.216 Agency Investigation and Recommendation

- a) Upon receipt of a petition for variance, *the Agency shall promptly investigate such petition and consider the views of persons who might be adversely affected by the grant of a variance [415 ILCS 5/37(a)].*
- b) *The Agency shall make a recommendation to the Board as to the disposition of the*

petition [415 ILCS 5/37(a)]. Unless otherwise ordered by the hearing officer or the Board, the recommendation must be filed with the Board within 45 days after the filing of the petition or amended petition, or where there has been a hearing scheduled, at least 30 days before hearing, whichever is earlier. The Agency must serve a copy of its recommendation, in accordance with 35 Ill. Adm. Code 101.304(c), by First Class mail on the petitioner, joined parties, and assigned hearing officer, if applicable. At a minimum, the recommendation must include:

- ~~1)-1)~~ 1) A description of the efforts made by the Agency to investigate the facts as alleged and to ascertain the views of persons who might be affected, and a summary of the views so ascertained;
- ~~2)-2)~~ 2) The location of the nearest air monitoring station maintained by the Agency where applicable;
- 3) A statement of the degree to which, if at all, the Agency disagrees with the facts as alleged in the petition, including facts refuting any allegations in the petition for variance;
- 4) Allegations of any other facts the Agency believes relevant to the disposition of the petition, including any past or pending enforcement actions against petitioner;
- 5) The Agency's estimate of the costs that compliance would impose on the petitioner and on others;
- 6) The Agency's estimate of the injury that the grant of the variance would impose on the public, including the effect that continued discharge of contaminants will have upon the environment;
- 7) The Agency's analysis of applicable federal laws and regulations and an opinion concerning the consistency of the petition with such federal laws and regulations;
- 8) The status of any permits or pending permit applications that are associated with or affected by the requested variance;
- 9) Allegation of any facts that the Agency believes are relevant to whether the Board should condition a grant of variance on the posting of a performance bond pursuant to Section 104.246 of this Part;
- 10) Citation to supporting documents or legal authorities whenever they are used as a basis for the Agency's recommendation. Relevant portions of the

documents and legal authorities, other than Board decisions, reported state and federal court decisions, state and federal regulations and statutes, must be appended to the recommendation if not already in the record of the proceeding;

- 11) The Agency's recommendation of what disposition should be made of the petition, deny or grant, and suggested conditions. If the Agency recommends that variance be granted, a recommended beginning and end date of the requested variance, and any recommended conditions on the variance; and
- 12) An affidavit verifying any facts outside the record referenced in the recommendation.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 104.224 Objections to Petition, Written Comments and Request for Hearing

- a) A person who files an objection, request for hearing, or comment is a "participant" as defined in 35 Ill. Adm. Code 101.Subpart B.
- b) Except as provided in subsection (e) of this Section for RCRA variances, any person may file with the Clerk, within 21 days after the publication of the Agency's notice pursuant to Section 104.214 of this Part, a written objection to the grant of variance. The Clerk will ~~serve mail~~ servemail a copy of the objection ~~on to~~ onto the petitioner, the Agency, the hearing officer, and any joined parties in accordance with 35 Ill. Adm. Code 101.304(c) by First Class mail.
- c) Any person may also file a written request for hearing. The written request must be filed within 21 days after the publication of the Agency's notice pursuant to Section 104.214 of this Part in order for a hearing to be held in accordance with Section 104.236 of this Part and 35 Ill. Adm. Code 101.Subpart F.
- d) Any person may file written comments in a variance proceeding. If a hearing is held, public comments must be filed within 14 days after the close of the hearing unless the hearing officer specifies a different date. If there is no hearing, comments must be filed no later than 30 days before the decision date, unless the hearing officer orders otherwise to prevent material prejudice. (See 35 Ill. Adm. Code 101.628(c)(1).)
- e) In RCRA variances, subsections (b) and (c) of this Section do not apply. However, persons may file written comments within 45 days after the Agency files its recommendation.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART D: ADJUSTED STANDARDS

Section 104.408 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 adjusted standard proceeding [415 ILCS 5/28.1].*

- b) The title of the notice must be in the form as follows: *"Notice of Petition by [petitioner's name] for an Adjusted Standard 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 a petition for an adjusted standard. The notice must also provide the date upon which the petition was filed, the Board docket number, the regulatory standard (with appropriate Administrative Code citation) from which an adjusted standard is sought, the proposed adjusted standard, and a general description of the petitioner's activity that is the subject of the adjusted standard 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 adjusted standard 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. , The hearing ~~request and requestand~~ must be mailed to the Clerk of the Board, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601, or filed electronically through COOL, located on the Board's website (~~www.ipeb.state.il.us~~)."
www.ipcb.state.il.us

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 104.420 Request for Public Hearing

- a) Any person can request that a public hearing be held in an adjusted standard 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 104.408 of this Part.

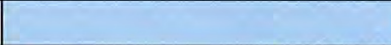

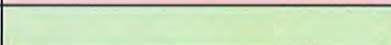

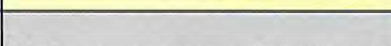
Requests for hearing should make reference to the Board docket number assigned to the proceeding. A copy of each timely hearing request will be served ~~upon~~ mailed uponmailed to the petitioner and Agency by the Clerk of the Board in accordance with 35 Ill. Adm. Code 101.304(c). Participation by the public at the hearing must be in accordance with 35 Ill. Adm. Code 101.110 and 101.628.

- b) Where 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.

(Source: Amended at 38 Ill. Reg. _____, effective _____ —)

Document comparison by Workshare Compare on Monday, June 16, 2014
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Format changed	0
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1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE A: GENERAL PROVISIONS
3 CHAPTER I: POLLUTION CONTROL BOARD

4
5 PART 104
6 REGULATORY RELIEF MECHANISMS

7
8 SUBPART A: GENERAL PROVISIONS
9

RECEIVED
CLERK'S OFFICE
JUN 25 2014
STATE OF ILLINOIS
Pollution Control Board

10 Section
11 104.100 Applicability
12 104.102 Severability
13 104.104 Definitions
14

15 SUBPART B: VARIANCES

16
17 Section
18 104.200 General
19 104.202 Filing Requirements
20 104.204 Petition Content Requirements
21 104.206 Resource Conservation and Recovery Act (RCRA) Variance Petition Contents
22 104.208 Consistency with Federal Law
23 104.210 Petition for Extension of Variance
24 104.212 Motion for Modification of Internal Variance Compliance Dates
25 104.214 Agency's Notice of Petition
26 104.216 Agency Investigation and Recommendation
27 104.218 Agency Recommendation to RCRA Variance
28 104.220 Response to Agency Recommendation
29 104.222 Stipulations
30 104.224 Objections to Petition, Written Comments and Request for Hearing
31 104.226 Amended Petition and Amended Recommendation
32 104.228 Insufficient Petition
33 104.230 Dismissal of Petition
34 104.232 Calculation of Decision Deadline
35 104.234 Hearing
36 104.236 Hearing Procedures
37 104.238 Standard of Review
38 104.240 Certificate of Acceptance
39 104.242 Term of Variance
40 104.244 Variance Conditions
41 104.246 Performance Bonds
42 104.248 Objection to Conditions
43

44 SUBPART C: PROVISIONAL VARIANCES

- 45
- 46 Section
- 47 104.300 Applicability
- 48 104.302 Agency Action
- 49 104.304 Initiating a Request
- 50 104.306 Filing and Notice
- 51 104.308 Term
- 52 104.310 Simultaneous Variance Prohibition (Repealed)

53

54 SUBPART D: ADJUSTED STANDARDS

- 55
- 56 Section
- 57 104.400 General
- 58 104.402 Initiation of Proceeding
- 59 104.404 Request to Agency to Join as Co-Petitioner
- 60 104.406 Petition Content Requirements
- 61 104.408 Petition Notice Requirements
- 62 104.410 Proof of Petition Notice Requirements
- 63 104.412 Effect of Filing a Petition: Stay
- 64 104.414 Dismissal of Petition
- 65 104.416 Agency Recommendation and Petitioner Response
- 66 104.418 Amended Petition, Amended Recommendation, and Amended Response
- 67 104.420 Request for Public Hearing
- 68 104.422 Public Hearing
- 69 104.424 Hearing Notice
- 70 104.426 Burden of Proof
- 71 104.428 Board Action

72

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

74

75 AUTHORITY: Subparts B and C: Implementing Sections 5, 35, 36, 37 and 38 of the

76 Environmental Protection Act (Act) [415 ILCS 5/5, 35, 36, 37, and 38] and authorized by

77 Sections 26 and 27 of the Act [415 ILCS 5/26 and 27]. Subpart D: Implementing Sections 5,

78 14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5 of the Act [415 ILCS 5/5, 14.2(c), 22.4, 27, 28, 28.1,

79 28.5 and 39.5] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

80

81 SOURCE: Subpart B: Originally adopted as Chapter I: Procedural Rules, Part IV: Variances, in

82 R70-4, at 1 PCB 43, October 8, 1970; amended in R77-16, 29 PCB 503, at 2 Ill. Reg. 16, p. 3,

83 effective May 1974; amended in R79-9, 35 PCB 433, at 3 Ill. Reg. 51, p. 128, effective

84 December 7, 1979; amended in R80-12, 40 PCB 451, at 5 Ill. Reg. 2763, effective March 2,

85 1981; codified at 6 Ill. Reg. 8357; amended in R84-10, 62 PCB 87, at 9 Ill. Reg. 1409, effective

86 January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 613, effective

87 January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8803, effective June 8, 2005; amended in
88 R14-21 at 38 Ill. Reg. _____, effective _____.

89
90 **SUBPART B: VARIANCES**

91
92 **Section 104.206 Resource Conservation and Recovery Act (RCRA) Variance Petition**
93 **Contents**

94
95 In addition to the requirements of Sections 104.204 and 104.208 of this Part, a petition for a
96 RCRA variance must meet the following requirements:

- 97
98 a) All petitions for RCRA variances must include a showing that the Board can grant
99 the requested relief consistent with, and establish RCRA permit conditions no less
100 stringent than, those that would be required by RCRA and the regulations
101 thereunder promulgated by USEPA (40 CFR 260, 261, 262, 263, 264, 265, 266,
102 267, 268 and 270). Petitions must indicate whether any federal provisions
103 authorize the relief requested, and must include any facts necessary to show that
104 the petitioner would be entitled to the requested relief pursuant to federal law;
105
106 b) Persons who have, or are required to have, a RCRA permit and who seek a RCRA
107 variance that could result in modification or issuance of the RCRA permit must
108 have on file with the Agency a RCRA permit application reflecting the requested
109 variance prior to filing the variance petition;
110
111 c) Petitioner must attach to the variance petition a copy of the RCRA permit
112 application, or such portion as may be relevant to the variance request; and
113
114 d) Petitioner must attach to the variance petition documentation proof of service on
115 USEPA as required by Section 104.202 of this Part.

116
117 (Source: Amended at 38 Ill. Reg. _____, effective _____)

118
119 **Section 104.214 Agency's Notice of Petition**

- 120
121 a) Within 14 days after the petition is filed, the Agency must *publish a single notice*
122 *of such petition in a newspaper of general circulation in the county where the*
123 *facility or pollution source is located [415 ILCS 5/37(a)].*
124
125 b) Upon receipt of a petition for variance, *the Agency shall promptly give written*
126 *notice of such petition to:*
127
128 1) *Any person in the county in which the installation or property for which*
129 *variance is sought is located who has in writing requested notice of*

- 130 *variance petitions;*
 131
 132 2) ~~The~~ *State's attorney of such county;*
 133
 134 3) *The Chairman of the County Board of such county; and*
 135
 136 4) *Each member of the General Assembly from the legislative district in*
 137 *which that installation or property is located. [415 ILCS 5/37(a)]*
 138
 139 c) Upon receipt of a petition for RCRA variance, the Agency must promptly give
 140 notice of the petition to:
 141
 142 1) Federal agencies as designated by USEPA;
 143
 144 2) Illinois Department of Transportation;
 145
 146 3) Department of Natural Resources;
 147
 148 4) Illinois Department of Public Health;
 149
 150 5) The Governor of any other state adjacent to the county in which the
 151 facility or pollution source is located; and
 152
 153 6) Elected officials of any counties, in other states, adjacent to the county in
 154 which the facility or pollution source is located, and elected officials in
 155 any municipality, in another state, if it is the closest population center to
 156 the facility or pollution source.
 157
 158 d) In addition to the methods of notice stated in subsection (c) of this Section, in a
 159 RCRA variance the Agency must also give notice by broadcast over at least one
 160 local radio station in the area of the facility or pollution source containing the
 161 information required by subsections (e) and (f) of this Section.
 162
 163 e) All notices required by this Section must include the following:
 164
 165 1) The street address of the facility or pollution source, and if there is no
 166 street address, then the legal description or the location with reference to
 167 any well known landmark, highway, road, thoroughfare or intersection;
 168
 169 2) A description of the requested relief;
 170
 171 3) An indication that any person may request a hearing by filing with the
 172 Board a written objection to the grant of the variance within 21 days after

- 173 the publication of the Agency's notice, together with a written request for
174 hearing;
- 175
- 176 4) The Clerk of the Board's address and phone number, the Board's website
177 address, and a statement that a copy of the variance petition may be
178 obtained through the Clerk's Office or COOL, located on the Board's
179 website;
- 180
- 181 5) A statement that the Agency is preparing a recommendation, the date on
182 which the recommendation is to be filed, and the name, address, e-mail
183 address, and telephone number of the Agency employee responsible for
184 the recommendation;
- 185
- 186 6) A statement that a hearing may be held after the filing of the
187 recommendation and that the record will remain open for written
188 comments for 45 days after filing of the recommendation. The notice will
189 include the address of the Board to which the comments must be mailed;
- 190
- 191 7) A statement that the record in the variance proceeding is available at the
192 Board office for inspection, except those portions that are protected from
193 disclosure under 35 Ill. Adm. Code 130, and that procedures are available
194 whereby disclosure may be sought by the public;
- 195
- 196 8) A statement that variances may be granted pursuant to Section 35 of the
197 Act [415 ILCS 5/35] and 35 Ill. Adm. Code 104, and a reference to the
198 Board regulations or order from which a variance is sought; and
- 199
- 200 9) Any additional information considered necessary or proper.
- 201
- 202 f) Within 21 days after the publication of notice, the Agency must file with the
203 Board a certification of publication that states the date on which the notice was
204 published and must attach a copy of the published notice.

205
206 (Source: Amended at 38 Ill. Reg. _____, effective _____)

207
208 **Section 104.216 Agency Investigation and Recommendation**

- 209
- 210 a) Upon receipt of a petition for variance, *the Agency shall promptly investigate such*
211 *petition and consider the views of persons who might be adversely affected by the*
212 *grant of a variance* [415 ILCS 5/37(a)].
- 213
- 214 b) *The Agency shall make a recommendation to the Board as to the disposition of the*
215 *petition* [415 ILCS 5/37(a)]. Unless otherwise ordered by the hearing officer or

216 the Board, the recommendation must be filed with the Board within 45 days after
 217 the filing of the petition or amended petition, or where there has been a hearing
 218 scheduled, at least 30 days before hearing, whichever is earlier. The Agency must
 219 serve a copy of its recommendation, in accordance with 35 Ill. Adm. Code
 220 101.304(c), ~~by First Class mail~~ on the petitioner, joined parties, and assigned
 221 hearing officer, if applicable. At a minimum, the recommendation must include:
 222

- 223 1) A description of the efforts made by the Agency to investigate the facts as
 224 alleged and to ascertain the views of persons who might be affected, and a
 225 summary of the views so ascertained;
 226
- 227 2) The location of the nearest air monitoring station maintained by the
 228 Agency where applicable;
 229
- 230 3) A statement of the degree to which, if at all, the Agency disagrees with the
 231 facts as alleged in the petition, including facts refuting any allegations in
 232 the petition for variance;
 233
- 234 4) Allegations of any other facts the Agency believes relevant to the
 235 disposition of the petition, including any past or pending enforcement
 236 actions against petitioner;
 237
- 238 5) The Agency's estimate of the costs that compliance would impose on the
 239 petitioner and on others;
 240
- 241 6) The Agency's estimate of the injury that the grant of the variance would
 242 impose on the public, including the effect that continued discharge of
 243 contaminants will have upon the environment;
 244
- 245 7) The Agency's analysis of applicable federal laws and regulations and an
 246 opinion concerning the consistency of the petition with such federal laws
 247 and regulations;
 248
- 249 8) The status of any permits or pending permit applications that are
 250 associated with or affected by the requested variance;
 251
- 252 9) Allegation of any facts that the Agency believes are relevant to whether
 253 the Board should condition a grant of variance on the posting of a
 254 performance bond pursuant to Section 104.246 of this Part;
 255
- 256 10) Citation to supporting documents or legal authorities whenever they are
 257 used as a basis for the Agency's recommendation. Relevant portions of
 258 the documents and legal authorities, other than Board decisions, reported

259 state and federal court decisions, state and federal regulations and statutes,
260 must be appended to the recommendation if not already in the record of
261 the proceeding;

262
263 11) The Agency's recommendation of what disposition should be made of the
264 petition, deny or grant, and suggested conditions. If the Agency
265 recommends that variance be granted, a recommended beginning and end
266 date of the requested variance, and any recommended conditions on the
267 variance; and

268
269 12) An affidavit verifying any facts outside the record referenced in the
270 recommendation.

271
272 (Source: Amended at 38 Ill. Reg. _____, effective _____)

273
274 **Section 104.224 Objections to Petition, Written Comments and Request for Hearing**

- 275
276 a) A person who files an objection, request for hearing, or comment is a
277 "participant" as defined in 35 Ill. Adm. Code 101.Subpart B.
- 278
279 b) Except as provided in subsection (e) of this Section for RCRA variances, any
280 person may file with the Clerk, within 21 days after the publication of the
281 Agency's notice pursuant to Section 104.214 of this Part, a written objection to the
282 grant of variance. The Clerk will ~~serve~~ email a copy of the objection ~~on~~ to the
283 petitioner, the Agency, the hearing officer, and any joined parties in accordance
284 with 35 Ill. Adm. Code 101.304(c) by First Class mail.
- 285
286 c) Any person may also file a written request for hearing. The written request must
287 be filed within 21 days after the publication of the Agency's notice pursuant to
288 Section 104.214 of this Part in order for a hearing to be held in accordance with
289 Section 104.236 of this Part and 35 Ill. Adm. Code 101.Subpart F.
- 290
291 d) Any person may file written comments in a variance proceeding. If a hearing is
292 held, public comments must be filed within 14 days after the close of the hearing
293 unless the hearing officer specifies a different date. If there is no hearing,
294 comments must be filed no later than 30 days before the decision date, unless the
295 hearing officer orders otherwise to prevent material prejudice. (See 35 Ill. Adm.
296 Code 101.628(c)(1).)
- 297
298 e) In RCRA variances, subsections (b) and (c) of this Section do not apply.
299 However, persons may file written comments within 45 days after the Agency
300 files its recommendation.
- 301

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART D: ADJUSTED STANDARDS

Section 104.408 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 adjusted standard proceeding [415 ILCS 5/28.1].*

b) The title of the notice must be in the form as follows: "Notice of Petition by [petitioner's name] for an Adjusted Standard 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 a petition for an adjusted standard. The notice must also provide the date upon which the petition was filed, the Board docket number, the regulatory standard (with appropriate Administrative Code citation) from which an adjusted standard is sought, the proposed adjusted standard, and a general description of the petitioner's activity that is the subject of the adjusted standard 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 adjusted standard 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. The hearing request must be mailed to the Clerk of the Board, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601, or filed electronically through COOL, located on the Board's website (www.ipcb.state.il.us)."

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 104.420 Request for Public Hearing

a) Any person can request that a public hearing be held in an adjusted standard 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 104.408 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 served

345 upon mailed to the petitioner and Agency by the Clerk of the Board in accordance
346 with 35 Ill. Adm. Code 101.304(c). Participation by the public at the hearing
347 must be in accordance with 35 Ill. Adm. Code 101.110 and 101.628.
348

349 b) Where all parties and participants who have requested a hearing pursuant to this
350 Subpart have withdrawn their requests for a hearing, the hearing will not be held
351 unless the Board in its discretion deems it advisable.
352

353 (Source: Amended at 38 Ill. Reg. _____, effective _____)

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS



- 1) Heading of the Part: Appeals of Final Decisions of State Agencies
- 2) Code Citation: 35 Ill. Adm. Code 105
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
105.116	Amendment
105.504	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: In this procedural rulemaking, the Board proposes amendments to codify procedural standards for remarks by members of the public at the Board's open meetings and to permit, with certain limited exceptions, electronic filing in all Board proceedings through the Board's Clerk's Office On-Line or "COOL", as well as service by e-mail of most types of filings. The Board also proposes a handful of updates and housekeeping amendments not directly related to electronic filing or public remarks. The proposed amendments to Part 105 require that the record in an appeal to the Board from a final State agency decision be filed in paper, specify requirements for the agency record, and provide for e-mail service of filings in particular proceedings. For a detailed description of the proposed changes to Part 105, please refer to the Board's June 5, 2014 opinion and order in docket R14-21: Procedural Rule Amendments to Implement Electronic Filing and Allow For Public Remarks at Board Meetings; Proposed Amendments to 35 Ill. Adm. Code 101-130.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule 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 Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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 at least 45 days after the date of publication in the *Illinois Register*. Public comments should reference Docket R14-21 and be addressed to:

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

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R14-21 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 Mark Powell at 312/814-6887 or Mark.Powell@illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality or not-for-profit corporation that practices before the Board.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because the Board was required, due to a recent Appellate Court decision, to revisit its procedural rules and develop new proposed rules.

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

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JUN 25 2014

STATE OF ILLINOIS
Pollution Control Board

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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

PART 105
APPEALS OF FINAL DECISIONS OF STATE AGENCIES

SUBPART A: GENERAL PROVISIONS

Section	
105.100	Applicability
105.102	Severability
105.104	Definitions
105.106	Computation of Time, Filing and Service Requirements
105.108	Dismissal of Petition
105.110	Hearing Process
105.112	Burden of Proof
105.114	Calculation of Decision Deadline
105.116	Record Filing
105.118	Sanctions for Untimely Filing of the Record

SUBPART B: APPEAL OF AGENCY PERMIT DECISIONS AND
OTHER FINAL DECISIONS OF THE AGENCY

Section	
105.200	Applicability
105.202	Parties
105.204	Who May File a Petition for Review
105.206	Time to File the Petition or Request for Extension
105.208	Extension of Time to File a Petition for Review
105.210	Petition Content Requirements
105.212	Agency Record
105.214	Board Hearing

SUBPART C: CAAPP PERMIT APPEALS

Section	
105.300	Applicability
105.302	General Requirements

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

105.304 Petition Content Requirements

SUBPART D: APPEAL OF AGENCY LEAKING UNDERGROUND STORAGE TANK (LUST) DECISIONS

Section

105.400 Parties
105.402 Who May File a Petition for Review
105.404 Time for Filing the Petition
105.406 Extension of Time to File a Petition for Review
105.408 Petition Content Requirements
105.410 Agency Record
105.412 Board Hearing

SUBPART E: APPEAL OF OSFM LUST DECISIONS

Section

105.500 Applicability
105.502 General Overview
105.504 General Requirements
105.506 Petition Content Requirements
105.508 OSFM Record and Appearance
105.510 Location of Hearing

105.APPENDIX A Agency LUST Final Decisions that are Reviewable
105.APPENDIX B Comparison of Former and Current Rules (Repealed)

AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 5, 39, 39.5, 40, 40.1, 40.2, and 57 of the Act [415 ILCS 5/5, 39, 39.5, 40, 40.1, 40.2 and 57].

SOURCE: Filed with Secretary of State January 1, 1978; amended 4 Ill. Reg. 52, page 41, effective December 11, 1980; codified 6 Ill. Reg. 8357; amended in R93-24 at 18 Ill. Reg. 4244, effective March 8, 1994; amended in R94-11 at 18 Ill. Reg. 16594, effective November 1, 1994; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 406, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8811, effective June 8, 2005; amended in R14-21 at 38 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

Section 105.116 Record Filing

- a) The State agency must file with the Board the entire record of its decision within 30 days after the filing of the petition for review, unless this Part provides otherwise, or the Board or hearing officer orders a different filing date. If the State agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. The State agency must file the original record in paper pursuant to 35 Ill. Adm. Code 101.302(h)(2). (See 35 Ill. Adm. Code 101.1050(a).)
- b) The record must contain the originals of all documents, be arranged in chronological sequence, and be sequentially numbered with the letter "R" placed before the number of each page. The record must be certified by the State agency. The certification must be entitled "Certificate of Record on Appeal". The Certificate must contain an index that lists the documents comprising the record and shows the page numbers upon which each document starts and ends. The Certificate of Record must be served on all parties by the State agency.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART E: APPEAL OF OSFM LUST DECISIONS

Section 105.504 General Requirements

- a) **Who May File.** Any owner or operator of an underground storage tank who has been issued an "Eligibility and Deductibility Determination" letter or who has not received an "Eligibility and Deductibility Determination" letter from the OSFM within the time prescribed by Section 57.9(c)(2) of the Act, which is deemed to be a final decision appealable to the Board, may file a petition with the Board seeking review of that final decision. The owner/operator must be named as the petitioner, and the OSFM must be named as the respondent. Filing requirements are set forth at 35 Ill. Adm. Code 101.Subpart C.
- b) **Timely Petition.** The petition for review must be filed with the Board within 35 days after the date of the OSFM's "Eligibility and Deductibility Determination" letter or within 35 days from the OSFM's final decision due to its failure to act as required under Section 57.9(c)(3) of the Act. There will be a rebuttable

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

presumption that petitioner received the OSFM's "Eligibility and Deductibility Final Determination" letter four days from the date indicated on the letter.

- c) Service and Filing. The petitioner must serve all filings upon the OSFM in accordance with 35 Ill. Adm. Code 101.304(c) ~~at the address listed in 35 Ill. Adm. Code 101.Subpart C.~~ All filings must be accompanied by a notice of filing. Methods and documentation ~~proof~~ of service, as well as the effective date of service, are governed by 35 Ill. Adm. Code 101.Subpart C.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Document comparison by Workshare Compare on Monday, June 16, 2014
4:33:02 PM

Input:	
Document 1 ID	file:///I:\Input\Agency Rulemakings - Files Received\2014\June2014\35-105-Agency(issue25).docx
Description	35-105-Agency(issue25)
Document 2 ID	file:///I:\Input\Agency Rulemakings - Files Received\2014\June2014\35-105-r01(Issue 25).docx
Description	35-105-r01(Issue 25)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	17
Deletions	21
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	38

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

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STATE OF ILLINOIS
Pollution Control Board

PART 105
APPEALS OF FINAL DECISIONS OF STATE AGENCIES

SUBPART A: GENERAL PROVISIONS

10	Section	
11	105.100	Applicability
12	105.102	Severability
13	105.104	Definitions
14	105.106	Computation of Time, Filing and Service Requirements
15	105.108	Dismissal of Petition
16	105.110	Hearing Process
17	105.112	Burden of Proof
18	105.114	Calculation of Decision Deadline
19	105.116	Record Filing
20	105.118	Sanctions for Untimely Filing of the Record

SUBPART B: APPEAL OF AGENCY PERMIT DECISIONS AND
OTHER FINAL DECISIONS OF THE AGENCY

25	Section	
26	105.200	Applicability
27	105.202	Parties
28	105.204	Who May File a Petition for Review
29	105.206	Time to File the Petition or Request for Extension
30	105.208	Extension of Time to File a Petition for Review
31	105.210	Petition Content Requirements
32	105.212	Agency Record
33	105.214	Board Hearing

SUBPART C: CAAPP PERMIT APPEALS

37	Section	
38	105.300	Applicability
39	105.302	General Requirements
40	105.304	Petition Content Requirements

SUBPART D: APPEAL OF AGENCY LEAKING UNDERGROUND
STORAGE TANK (LUST) DECISIONS

44
 45 Section
 46 105.400 Parties
 47 105.402 Who May File a Petition for Review
 48 105.404 Time for Filing the Petition
 49 105.406 Extension of Time to File a Petition for Review
 50 105.408 Petition Content Requirements
 51 105.410 Agency Record
 52 105.412 Board Hearing

53
54 SUBPART E: APPEAL OF OSFM LUST DECISIONS

55
 56 Section
 57 105.500 Applicability
 58 105.502 General Overview
 59 105.504 General Requirements
 60 105.506 Petition Content Requirements
 61 105.508 OSFM Record and Appearance
 62 105.510 Location of Hearing
 63
 64 105.APPENDIX A Agency LUST Final Decisions that are Reviewable
 65 105.APPENDIX B Comparison of Former and Current Rules (Repealed)

66
67 AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act)
68 [415 ILCS 5/26 and 27] and implementing Sections 5, 39, 39.5, 40, 40.1, 40.2, and 57 of the Act
69 [415 ILCS 5/5, 39, 39.5, 40, 40.1, 40.2 and 57].

70
71 SOURCE: Filed with Secretary of State January 1, 1978; amended 4 Ill. Reg. 52, page 41,
72 effective December 11, 1980; codified 6 Ill. Reg. 8357; amended in R93-24 at 18 Ill. Reg. 4244,
73 effective March 8, 1994; amended in R94-11 at 18 Ill. Reg. 16594, effective November 1, 1994;
74 old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 406, effective January 1, 2001;
75 amended in R04-24 at 29 Ill. Reg. 8811, effective June 8, 2005; amended in R14-21 at 38 Ill.
76 Reg. _____, effective _____.

77
78 SUBPART A: GENERAL PROVISIONS

79
80 **Section 105.116 Record Filing**

- 81
 82 a) The State agency must file with the Board the entire record of its decision within
 83 30 days after the filing of the petition for review, unless this Part provides
 84 otherwise, or the Board or hearing officer orders a different filing date. If the
 85 State agency wishes to seek additional time to file the record, it must file a request
 86 for extension before the date on which the record is due to be filed. The State

87 agency must file the original record in paper pursuant to 35 Ill. Adm. Code
88 101.302(h)(2). (See 35 Ill. Adm. Code 101.1050(a).)
89

- 90 b) The record must contain the originals of all documents, be arranged in
91 chronological sequence, and be sequentially numbered with the letter "R" placed
92 before the number of each page. The record must be certified by the State
93 agency. The certification must be entitled "Certificate of Record on Appeal".
94 The Certificate must contain an index that lists the documents comprising the
95 record and shows the page numbers upon which each document starts and ends.
96 The Certificate of Record must be served on all parties by the State agency.
97

98 (Source: Amended at 38 Ill. Reg. _____, effective _____)
99

100 SUBPART E: APPEAL OF OSFM LUST DECISIONS
101

102 **Section 105.504 General Requirements**
103

- 104 a) Who May File. Any owner or operator of an underground storage tank who has
105 been issued an "Eligibility and Deductibility Determination" letter or who has not
106 received an "Eligibility and Deductibility Determination" letter from the OSFM
107 within the time prescribed by Section 57.9(c)(2) of the Act, which is deemed to be
108 a final decision appealable to the Board, may file a petition with the Board
109 seeking review of that final decision. The owner/operator must be named as the
110 petitioner, and the OSFM must be named as the respondent. Filing requirements
111 are set forth at 35 Ill. Adm. Code 101.Subpart C.
112
- 113 b) Timely Petition. The petition for review must be filed with the Board within 35
114 days after the date of the OSFM's "Eligibility and Deductibility Determination"
115 letter or within 35 days from the OSFM's final decision due to its failure to act as
116 required under Section 57.9(c)(3) of the Act. There will be a rebuttable
117 presumption that petitioner received the OSFM's "Eligibility and Deductibility
118 Final Determination" letter four days from the date indicated on the letter.
119
- 120 c) Service and Filing. The petitioner must serve all filings upon the OSFM in
121 accordance with 35 Ill. Adm. Code 101.304(c)at the address listed in 35 Ill. Adm.
122 Code 101.Subpart C. All filings must be accompanied by a notice of filing.
123 Methods and documentationproof of service, as well as the effective date of
124 service, are governed by 35 Ill. Adm. Code 101.Subpart C.
125

126 (Source: Amended at 38 Ill. Reg. _____, effective _____)

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

<u>Section Numbers:</u>	<u>Proposed Action:</u>
106.100	Amendment
106.304	Amendment
106.707	Amendment
106.708	Amendment
106.718	Amendment
106.720	Amendment
106.1000	Repealed
106.1002	Repealed
106.1004	Repealed
106.1006	Repealed
106.1008	Repealed
106.1010	Repealed
106.1012	Repealed



4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]

5) A Complete Description of the Subjects and Issues Involved: In this procedural rulemaking, the Board proposes amendments to codify procedural standards for remarks by members of the public at the Board's open meetings and to permit, with certain limited exceptions, electronic filing in all Board proceedings through the Board's Clerk's Office On-Line or "COOL", as well as service by e-mail of most types of filings. The Board also proposes a handful of updates and housekeeping amendments not directly related to electronic filing or public remarks. The proposed amendments to Part 106: add to the list of proceedings governed by Part 106; clarify service requirements for filings in certain kinds of statutory proceedings; require that the record in an appeal to the Board from a final State agency decision be filed in paper; specify requirements for the agency record, and repeal Subpart J (Sections 106.1000 – 106.1012) in its entirety due to the statutory expiration of the Board's authority to review temporary landfill ban waiver petitions. For a detailed description of the proposed changes to Part 106, please refer to the Board's June 5, 2014 opinion and order in docket R14-21: Procedural Rule Amendments to Implement Electronic Filing and Allow For Public Remarks at Board Meetings: Proposed Amendments to 35 Ill. Adm. Code 101-130.

6) Published studies or reports, and sources of underlying data, used to compose this

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

rulemaking: None

- 7) Will this rulemaking replace an emergency rule 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 Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 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 at least 45 days after the date of publication in the *Illinois Register*. Public comments should reference Docket R14-21 and be addressed to:

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

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

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For more information, contact hearing officer Mark Powell at 312/814-6887 or Mark.Powell@illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality or not-for-profit corporation that practices before the Board.

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because the Board was required, due to a recent Appellate Court decision, to revisit its procedural rules and develop new proposed rules.

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

POLLUTION CONTROL BOARD

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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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)

- Section
- 106.700 Purpose

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

106.904	Petition Content Requirements
106.906	Petition Notice Requirements
106.908	Proof of Petition Notice Requirements
106.910	Response and Reply
106.912	Hearing
106.914	Burden of Proof

SUBPART J: TEMPORARY LANDFILL BAN WAIVERS UNDER
THE ELECTRONIC PRODUCTS RECYCLING AND REUSE ACT ~~(REPEALED)~~

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

SUBPART K: ALTERNATIVE THERMAL EFFLUENT LIMITATIONS PURSUANT TO
SECTION 316(a) OF THE CLEAN WATER ACT AND 35 ILL. ADM. CODE 304.141(c)

Section	
106.1100	Purpose
106.1105	General
106.1110	Definitions
106.1115	Early Screening
106.1120	Detailed Plan of Study
106.1125	Initiation of Proceeding
106.1130	Contents of Petition
106.1135	Petition Notice Requirements
106.1140	Proof of Petition Notice Requirements
106.1145	Recommendation and Response
106.1150	Request for Public Hearing
106.1155	Notice and Conduct of Hearing
106.1160	Burden of Proof
106.1165	Evidentiary Matters
106.1170	Opinion and Order
106.1175	Post-Hearing Procedures

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

106.1180 Renewal of Alternative Thermal Effluent Limitations

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, 28.5, 35, 36, 37, 38, 39.5 and 52.3 of the Environmental Protection Act (the Act) [415 ILCS 5/5, 14.2(c), 21(q), 21.622.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3], and Section 5 of the Regulation of Phosphorus in Detergents Act [415 ILCS 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. 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. 9236, effective June 7, 2012; amended in R12-11 at 36 Ill. Reg. 16581, effective November 5, 2012; amended in R13-20 at 38 Ill. Reg. 6086, effective February 26, 2014; amended in R14-21 at 38 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, authorization of use of cleaning agents under the Regulation of Phosphorus in Detergents Act [415 ILCS 92], ~~and~~ authorizations for certain landscape waste and compost applications and on-farm composting facilities, ~~and~~ petitions requesting alternative thermal effluent

POLLUTION CONTROL BOARD

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limitations pursuant to ~~Section~~ section 316(a) of the Clean Water Act [(33 USC 1326(a))] and 35 Ill. Adm. Code 304.141(c) and temporary landfill ban waivers under the Electronic Products Recycling and Reuse Act [415 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 38 Ill. Reg. _____, effective _____)

SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES

Section 106.304 Petition Content Requirements

The petition must contain the following information:

- a) A written statement, signed by the petitioner or an authorized representative, outlining the scope of the evaluation, the nature of, the reasons for, and the basis of the exception, consistent with the burden of proof contained in Section 106.310 of this Part;
- b) The nature of the petitioner's operations and control equipment;
- c) Documentation ~~Proof~~ of service on owners required to be notified and provided with a copy of the petition as required by Section 106.302(b) of this Part, 35 Ill. Adm. Code 101, and Section 14.2(c) of the Act; and
- d) Any other information which may be required by Section 14.2 of the Act.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

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

Section 106.707 Notice, Statement of Deficiency, Answer

- a) A proceeding to terminate an EMSA will be commenced when the Agency serves a notice of filing and a statement of deficiency upon the respondent and files ~~one~~

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~~original plus 9 copies of~~ the notice of filing and statement of deficiency with the Clerk. (See 35 Ill. Adm. Code 101.300(b), ~~and~~ (c), 101.302(h), ~~and~~ 101.304(c).)

- b) The statement of deficiency must contain:
- 1) The stated basis for the respondent's alleged deficient performance under Section 106.712(a) of this Subpart;
 - 2) The dates, location, nature, extent and duration of any act or omission, and amount and other characteristics of any discharges or emissions, alleged to violate provisions of the Act or regulations that apply to the pilot project that the EMSA does not address;
 - 3) The dates, location, nature, extent and duration of any act or omission, and amount and other characteristics of any discharges or emissions, alleged to violate the EMSA; and
 - 4) With respect to subsections (b)(1) through (b)(3) of this Section, the statement of deficiency must contain sufficient detail to advise the respondent of the extent and nature of the alleged violations to reasonably allow the respondent to prepare a defense.

~~e) c)~~ The respondent must file an answer within 15 days after receipt of the statement of deficiency, unless the Board or the hearing officer extends the 15-day period for good cause. All material allegations of the statement of deficiency will be taken as admitted if not specifically denied by the answer, or if no answer is filed. Any facts that constitute an affirmative defense that would be likely to surprise the complainant must be plainly set forth in the answer before hearing.

(Source: Amended at 38 Ill. Reg. _____, effective)

Section 106.708 Service

- a) The Agency must serve a copy of the notice of filing and statement of deficiency ~~either personally, on the respondent or the respondent's authorized agent, or by registered or certified mail, or by messenger service. (See 35 Ill. Adm. Code 101.300(c), 101.304(c).) with return receipt signed by the respondent or the respondent's authorized agent. Proof must be made by affidavit of the person who makes personal service, or by properly executed registered or certified mail~~

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~~receipt. The Agency must file proof of service of the notice of filing and statement of deficiency with the Clerk immediately upon completion of service, and 101.304(c.)~~

- ~~b) The Agency and the respondent must serve all motions and all other notices personally, by First Class United States mail, with sufficient postage, or by overnight delivery by a nationally recognized courier service. The Agency and the respondent must file an original and 9 copies of the motions and notices with the Clerk with proof of service.—~~
- ~~e) Service is presumed complete upon personal service, four days after deposit in the United States First Class mail, with sufficient postage, or the next business day upon deposit with a nationally recognized courier service for overnight delivery.~~

(Source: Amended at 38 Ill. Reg. _____, effective _____ —)

Section 106.718 Motions, Responses

- a) All motions before a hearing must be presented to the hearing officer at least 10 days before the date of the hearing.
- b) The complainant's motion to voluntarily dismiss an action as to any or all claims must be directed to the Board and may be made orally upon the hearing record, or may be made in writing at any time before the Board issues its decision.
- c) All motions must be served on all parties, including the Agency and its representative and the hearing officer, with documentation ~~proof~~ of service.
- d) Unless made orally on the record during a hearing or unless the hearing officer directs otherwise, a motion must be in writing, must state the reasons for and grounds upon which the motion is made, and may be accompanied by any affidavits or other evidence relied on and, when appropriate, by a proposed order.
- e) Within 7 days after a written motion is served, or another period that the Board or hearing officer may prescribe, a party may file a response to the motion, accompanied by affidavits or other evidence. If no response is filed, the parties will be deemed to have waived objection to the motion, but the waiver of objection does not bind the Board. The moving party does not have the right to reply, except as the hearing officer or the Board permits.

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- f) No oral argument will be heard on a motion before the Board unless the Board directs otherwise. A written brief may be filed with a motion or an answer to a motion.
- g) The hearing officer may rule upon all motions, except that the hearing officer has no authority to dismiss, or rule upon a motion to dismiss or decide a proceeding on the merits, or for failure to state a claim, or for want of jurisdiction, or to strike any claim or defense for insufficiency or want of proof.
- h) No interlocutory appeal of a motion may be taken to the Board from a ruling of the hearing officer.
- i) After the hearing, the Board may review the hearing officer's rulings. The Board will set aside the hearing officer's ruling only to avoid material prejudice to the rights of a party. The hearing officer, if a member of the Board, may vote upon motions to review his or her rulings as hearing officer.
- j) Unless the Board orders or this Subpart provides otherwise, the filing of a motion will not stay the proceeding or extend the time to perform any act.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 106.720 Intervention

- a) Upon timely written motion and subject to the need to conduct an orderly and expeditious hearing, the Board will permit a person to intervene in an involuntary termination proceeding under this Subpart if the person submitted written comments on the respondent's EMSA or participated in the public hearing on the respondent's EMSA by signing an attendance sheet or signature card at hearing under the procedures set forth in 35 Ill. Adm. Code 187.404, or is named or listed in the respondent's EMSA as a stakeholder, and if the Board's final order may adversely affect the person.
- b) The movant must file the ~~an original and 9 copies of a~~ motion to intervene with the Board in accordance with 35 Ill. Adm. Code 101.302(h) and serve a copy on each party in accordance with 35 Ill. Adm. Code 101.304(c) not later than 48 hours before the hearing. The Board may permit a person to intervene at any time before the beginning of the hearing when that person shows good cause for the

POLLUTION CONTROL BOARD

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delay.

- c) An intervenor has all the rights of an original party, except that the Board may limit the rights of the intervenor in accordance with 35 Ill. Adm. Code 101.402.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

SUBPART J: TEMPORARY LANDFILL BAN WAIVERS UNDER
THE ELECTRONIC PRODUCTS RECYCLING AND REUSE ACT ~~(REPEALED)~~

Section 106.1000 General (Repealed)

- 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)].~~
- e) ~~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: Repealed at 38 Ill. Reg. _____, effective _____)

Section 106.1002 Definitions (Repealed)

~~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~~

POLLUTION CONTROL BOARD

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~~Electronic Products Recycling and Reuse Act will apply. Terms defined in Section 10 of the Electronic Products Recycling and Reuse Act 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 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]~~

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

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

(Source: Repealed at 38 Ill. Reg. _____, effective _____)

Section 106.1004 Initiation of Proceeding (Repealed)

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

(Source: Repealed at 38 Ill. Reg. _____, effective _____)

Section 106.1006 Petition Content Requirements (Repealed)

- 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~~

POLLUTION CONTROL BOARD

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- 3) ~~the projected difference in weight between prior program year in which the petition is filed. [415 ILCS 150/95(e)]~~
- e) ~~The petition shall include any other information that may be required by Section 95 of the Electronic Products Recycling and Reuse Act.~~

(Source: Repealed at 38 Ill. Reg. _____, effective _____)

Section 106.1008 Response and Reply (Repealed)

- 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: Repealed at 38 Ill. Reg. _____, effective _____)

Section 106.1010 Burden of Proof (Repealed)

~~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: Repealed at 38 Ill. Reg. _____, effective _____)

Section 106.1012 Board Decision (Repealed)

- 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)]~~

POLLUTION CONTROL BOARD

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- b) ~~If the Board grants a waiver under Section 95(e) of the Electronic Products Recycling and Reuse Act, Section 95(a) and (b) of 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)]~~
- e) ~~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: Repealed at 38 Ill. Reg. _____, effective _____)

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

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

STATE OF ILLINOIS
Pollution Control Board

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12 106.102 Severability
13 106.104 Definitions
14

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

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19 106.200 General
20 106.202 Petition Requirements
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22 106.206 Notice
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50 SUBPART E: MAXIMUM ACHIEVABLE CONTROL
51 TECHNOLOGY DETERMINATIONS

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- 53 Section
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- 55 106.502 Definitions
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- 58 106.508 Response and Reply
- 59 106.510 Hearing
- 60 106.512 Burden of Proof
- 61 106.514 Board Action

62

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

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- 69 106.604 Petition Content Requirements
- 70 106.606 Response and Reply
- 71 106.608 Hearing
- 72 106.610 Burden of Proof

73

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75 MANAGEMENT SYSTEM AGREEMENTS (EMSAs)

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- 79 106.702 Applicability
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- 81 106.706 Who May Initiate, Parties
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- 84 106.710 Notice of Hearing
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- 86 106.714 Board Decision

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99	106.740	Relief from Final Orders

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102 OF PHOSPHORUS IN DETERGENTS ACT

103 Section

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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

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113 COMPOST APPLICATIONS AND ON-FARM COMPOSTING FACILITIES

114

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117	106.902	Initiation of Proceeding
118	106.904	Petition Content Requirements
119	106.906	Petition Notice Requirements
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123	106.914	Burden of Proof

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

127

128 Section

129	106.1000	General (<u>Repealed</u>)
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- 131 106.1004 Initiation of Proceeding (Repealed)
- 132 106.1006 Petition Content Requirements (Repealed)
- 133 106.1008 Response and Reply (Repealed)
- 134 106.1010 Burden of Proof (Repealed)
- 135 106.1012 Board Decision (Repealed)

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 137 SUBPART K: ALTERNATIVE THERMAL EFFLUENT LIMITATIONS PURSUANT TO
 138 SECTION 316(a) OF THE CLEAN WATER ACT AND 35 ILL. ADM. CODE 304.141(c)
 139

- 140 Section
- 141 106.1100 Purpose
- 142 106.1105 General
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- 144 106.1115 Early Screening
- 145 106.1120 Detailed Plan of Study
- 146 106.1125 Initiation of Proceeding
- 147 106.1130 Contents of Petition
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- 154 106.1165 Evidentiary Matters
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- 156 106.1175 Post-Hearing Procedures
- 157 106.1180 Renewal of Alternative Thermal Effluent Limitations

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 159 106.APPENDIX A Comparison of Former and Current Rules (Repealed)
 160

161 AUTHORITY: Implementing and authorized by Sections 5, 14.2(c), 21(q), 22.4, 26, 27, 28,
 162 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3 of the Environmental Protection Act (the Act) [415
 163 ILCS 5/5, 14.2(c), 21(q), 21.622.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3], and
 164 Section 5 of the Regulation of Phosphorus in Detergents Act [415 ILCS 92/5].
 165

166 SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186,
 167 effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg.
 168 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4,
 169 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12
 170 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective
 171 July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in
 172 R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579,

173 effective July 11, 1994; amended in R99-9 at 23 Ill. Reg. 2697, effective February 16, 1999; old
174 Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 550, effective January 1, 2001;
175 amended in R04-24 at 29 Ill. Reg. 8817, effective June 8, 2005; amended in R10-19 at 34 Ill.
176 Reg. 11486, effective July 23, 2010; amended in R12-21 at 36 Ill. Reg. 9236, effective June 7,
177 2012; amended in R12-11 at 36 Ill. Reg. 16581, effective November 5, 2012; amended in R13-
178 20 at 38 Ill. Reg. 6086, effective February 26, 2014; amended in R14-21 at 38 Ill. Reg. _____,
179 effective _____.

180
181 SUBPART A: GENERAL PROVISIONS

182
183 **Section 106.100 Applicability**

- 184
- 185 a) This Part applies to adjudicatory proceedings pursuant to specific rules or
- 186 statutory provisions. Specifically, the Part applies to heated effluent, artificial
- 187 cooling lake and sulfur dioxide demonstrations, water well setback exception
- 188 procedures, revocation and reopening of CAAPP permits, maximum achievable
- 189 control technology determinations, culpability determinations for particulate
- 190 matter less than or equal to 10 microns, the involuntary termination of
- 191 environmental management system agreements, authorization of use of cleaning
- 192 agents under the Regulation of Phosphorus in Detergents Act [415 ILCS 92],
- 193 authorizations for certain landscape waste and compost applications and on-farm
- 194 composting facilities, petitions requesting alternative thermal effluent limitations
- 195 pursuant to section 316(a) of the Clean Water Act (33 USC 1326(a)) and 35 Ill.
- 196 Adm. Code 304.141(c) and temporary landfill ban waivers under the Electronic
- 197 Products Recycling and Reuse Act [415 ILCS 150].
- 198
- 199 b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains
- 200 procedures generally applicable to all of the Board's adjudicatory proceedings. In
- 201 the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and
- 202 those of this Part, the provisions of this Part apply.
- 203

204 (Source: Amended at 38 Ill. Reg. _____, effective _____)

205
206 SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES

207
208 **Section 106.304 Petition Content Requirements**

209
210 The petition must contain the following information:

- 211
- 212 a) A written statement, signed by the petitioner or an authorized representative,
- 213 outlining the scope of the evaluation, the nature of, the reasons for, and the basis
- 214 of the exception, consistent with the burden of proof contained in Section 106.310
- 215 of this Part;

- 216
- 217 b) The nature of the petitioner's operations and control equipment;
- 218
- 219 c) ~~Documentation~~ Proof of service on owners required to be notified and provided
- 220 with a copy of the petition as required by Section 106.302(b) of this Part, 35 Ill.
- 221 Adm. Code 101, and Section 14.2(c) of the Act; and
- 222
- 223 d) Any other information which may be required by Section 14.2 of the Act.
- 224

225 (Source: Amended at 38 Ill. Reg. _____, effective _____)

226

227 **SUBPART G: INVOLUNTARY TERMINATION OF ENVIRONMENTAL**

228 **MANAGEMENT SYSTEM AGREEMENTS (EMSAs)**

229

230 **Section 106.707 Notice, Statement of Deficiency, Answer**

231

- 232 a) A proceeding to terminate an EMSA will be commenced when the Agency serves
- 233 a notice of filing and a statement of deficiency upon the respondent and files ~~one~~
- 234 ~~original plus 9 copies of~~ the notice of filing and statement of deficiency with the
- 235 Clerk. (See 35 Ill. Adm. Code 101.300(b) and (c), 101.302(h), and 101.304(c).)
- 236
- 237 b) The statement of deficiency must contain:
- 238
- 239 1) The stated basis for the respondent's alleged deficient performance under
- 240 Section 106.712(a) of this Subpart;
- 241
- 242 2) The dates, location, nature, extent and duration of any act or omission, and
- 243 amount and other characteristics of any discharges or emissions, alleged to
- 244 violate provisions of the Act or regulations that apply to the pilot project
- 245 that the EMSA does not address;
- 246
- 247 3) The dates, location, nature, extent and duration of any act or omission, and
- 248 amount and other characteristics of any discharges or emissions, alleged to
- 249 violate the EMSA; and
- 250
- 251 4) With respect to subsections (b)(1) through (b)(3) of this Section, the
- 252 statement of deficiency must contain sufficient detail to advise the
- 253 respondent of the extent and nature of the alleged violations to reasonably
- 254 allow the respondent to prepare a defense.
- 255
- 256 c) The respondent must file an answer within 15 days after receipt of the statement
- 257 of deficiency, unless the Board or the hearing officer extends the 15-day period
- 258 for good cause. All material allegations of the statement of deficiency will be

259 taken as admitted if not specifically denied by the answer, or if no answer is filed.
260 Any facts that constitute an affirmative defense that would be likely to surprise
261 the complainant must be plainly set forth in the answer before hearing.
262

263 (Source: Amended at 38 Ill. Reg. _____, effective _____)
264

265 **Section 106.708 Service**
266

267 a) ~~The Agency must serve a copy of the notice of filing and statement of deficiency either~~
268 ~~personally, on the respondent or the respondent's authorized agent, or by registered or certified~~
269 ~~mail, or by messenger service. (See 35 Ill. Adm. Code 101.300(c) and 101.304(c).) with return~~
270 ~~receipt signed by the respondent or the respondent's authorized agent. Proof must be made by~~
271 ~~affidavit of the person who makes personal service, or by properly executed registered or~~
272 ~~certified mail receipt. The Agency must file proof of service of the notice of filing and statement~~
273 ~~of deficiency with the Clerk immediately upon completion of service.~~
274

275 b) ~~The Agency and the respondent must serve all motions and all other notices~~
276 ~~personally, by First Class United States mail, with sufficient postage, or by~~
277 ~~overnight delivery by a nationally recognized courier service. The Agency and~~
278 ~~the respondent must file an original and 9 copies of the motions and notices with~~
279 ~~the Clerk with proof of service.~~
280

281 e) ~~Service is presumed complete upon personal service, four days after deposit in the~~
282 ~~United States First Class mail, with sufficient postage, or the next business day~~
283 ~~upon deposit with a nationally recognized courier service for overnight delivery.~~
284

285 (Source: Amended at 38 Ill. Reg. _____, effective _____)
286

287 **Section 106.718 Motions, Responses**
288

289 a) All motions before a hearing must be presented to the hearing officer at least 10
290 days before the date of the hearing.
291

292 b) The complainant's motion to voluntarily dismiss an action as to any or all claims
293 must be directed to the Board and may be made orally upon the hearing record, or
294 may be made in writing at any time before the Board issues its decision.
295

296 c) All motions must be served on all parties, including the Agency and its
297 representative and the hearing officer, with documentation proof of service.
298

299 d) Unless made orally on the record during a hearing or unless the hearing officer
300 directs otherwise, a motion must be in writing, must state the reasons for and
301 grounds upon which the motion is made, and may be accompanied by any

302 affidavits or other evidence relied on and, when appropriate, by a proposed order.

- 303
- 304 e) Within 7 days after a written motion is served, or another period that the Board or
- 305 hearing officer may prescribe, a party may file a response to the motion,
- 306 accompanied by affidavits or other evidence. If no response is filed, the parties
- 307 will be deemed to have waived objection to the motion, but the waiver of
- 308 objection does not bind the Board. The moving party does not have the right to
- 309 reply, except as the hearing officer or the Board permits.
- 310
- 311 f) No oral argument will be heard on a motion before the Board unless the Board
- 312 directs otherwise. A written brief may be filed with a motion or an answer to a
- 313 motion.
- 314
- 315 g) The hearing officer may rule upon all motions, except that the hearing officer has
- 316 no authority to dismiss, or rule upon a motion to dismiss or decide a proceeding
- 317 on the merits, or for failure to state a claim, or for want of jurisdiction, or to strike
- 318 any claim or defense for insufficiency or want of proof.
- 319
- 320 h) No interlocutory appeal of a motion may be taken to the Board from a ruling of
- 321 the hearing officer.
- 322
- 323 i) After the hearing, the Board may review the hearing officer's rulings. The Board
- 324 will set aside the hearing officer's ruling only to avoid material prejudice to the
- 325 rights of a party. The hearing officer, if a member of the Board, may vote upon
- 326 motions to review his or her rulings as hearing officer.
- 327
- 328 j) Unless the Board orders or this Subpart provides otherwise, the filing of a motion
- 329 will not stay the proceeding or extend the time to perform any act.
- 330

331 (Source: Amended at 38 Ill. Reg. _____, effective _____)

332

333 **Section 106.720 Intervention**

334

- 335 a) Upon timely written motion and subject to the need to conduct an orderly and
- 336 expeditious hearing, the Board will permit a person to intervene in an involuntary
- 337 termination proceeding under this Subpart if the person submitted written
- 338 comments on the respondent's EMSA or participated in the public hearing on the
- 339 respondent's EMSA by signing an attendance sheet or signature card at hearing
- 340 under the procedures set forth in 35 Ill. Adm. Code 187.404, or is named or listed
- 341 in the respondent's EMSA as a stakeholder, and if the Board's final order may
- 342 adversely affect the person.
- 343
- 344 b) The movant must file ~~thean original and 9 copies of~~ a motion to intervene with the

345 Board in accordance with 35 Ill. Adm. Code 101.302(h) and serve a copy on each
346 party in accordance with 35 Ill. Adm. Code 101.304(c) not later than 48 hours
347 before the hearing. The Board may permit a person to intervene at any time
348 before the beginning of the hearing when that person shows good cause for the
349 delay.

- 350
351 c) An intervenor has all the rights of an original party, except that the Board may
352 limit the rights of the intervenor in accordance with 35 Ill. Adm. Code 101.402.

353
354 (Source: Amended at 38 Ill. Reg. _____, effective _____)

355
356 SUBPART J: TEMPORARY LANDFILL BAN WAIVERS UNDER
357 THE ELECTRONIC PRODUCTS RECYCLING AND REUSE ACT

358
359 **Section 106.1000 General (Repealed)**

- 360
361 a) ~~Applicability. This Subpart applies to any county government or municipal joint~~
362 ~~action agency filing a petition with the Board beginning April 1, 2012, but no~~
363 ~~later than December 31, 2013, for a temporary CED landfill ban waiver under~~
364 ~~Section 95(e) of the Electronic Products Recycling and Reuse Act [415 ILCS~~
365 ~~150/95(e)].~~
366
367 b) ~~Demonstration. Any county government or municipal joint action agency filing a~~
368 ~~petition for a temporary CED landfill ban waiver under this Subpart must~~
369 ~~demonstrate that *the respective county's or action agency's jurisdiction may be*~~
370 ~~*granted a temporary CED landfill ban waiver due to a lack of funds and a lack of*~~
371 ~~*collection opportunities to collect CEDs and EEDs within the county's or action*~~
372 ~~*agency's jurisdiction.* [415 ILCS 150/95(e)].~~
373
374 e) ~~Parties. The person filing the petition for a temporary CED landfill ban waiver~~
375 ~~must be named the petitioner.~~
376
377 d) ~~Filing and service. The filing and service requirements of 35 Ill. Adm. Code~~
378 ~~101.Subpart C will apply to the proceedings of this Subpart.~~

379
380 (Source: Repealed at 38 Ill. Reg. _____, effective _____)

381
382 **Section 106.1002 Definitions (Repealed)**

383
384 ~~The definitions of 35 Ill. Adm. Code 101.Subpart B and Section 10 of the Electronic Products~~
385 ~~Recycling and Reuse Act will apply to this Subpart unless otherwise provided, or unless the~~
386 ~~context clearly indicates otherwise. If there is a conflict, the definitions of Section 10 of the~~

387 Electronic Products Recycling and Reuse Act will apply. Terms defined in Section 10 of the
 388 Electronic Products Recycling and Reuse Act include the following:

389
 390 *"Covered electronic device" or "CED" means any computer, computer monitor,*
 391 *television, printer, electronic keyboard, facsimile machine, videocassette*
 392 *recorder, portable digital music player that has memory capability and is battery*
 393 *powered, digital video disc player, video game console, electronic mouse,*
 394 *scanner, digital converter box, cable receiver, satellite receiver, digital video disc*
 395 *recorder, or small-scale server sold at retail and taken out of service from a*
 396 *residence in this State. "Covered electronic device" does not include any of the*
 397 *following:*

398
 399 *an electronic device that is part of a motor vehicle or any component part*
 400 *of a motor vehicle assembled by or for a vehicle manufacturer or*
 401 *franchised dealer, including replacement parts for use in a motor vehicle;*

402
 403 *an electronic device that is functionally or physically part of a larger*
 404 *piece of equipment or that is taken out of service from an industrial,*
 405 *commercial (including retail), library checkout, traffic control, kiosk,*
 406 *security (other than household security), governmental, agricultural, or*
 407 *medical setting, including but not limited to diagnostic, monitoring, or*
 408 *control equipment; or*

409
 410 *an electronic device that is contained within a clothes washer, clothes*
 411 *dryer, refrigerator, refrigerator and freezer, microwave oven,*
 412 *conventional oven or range, dishwasher, room air conditioner,*
 413 *dehumidifier, water pump, sump pump, or air purifier.*

414
 415 *To the extent allowed under federal and State laws and regulations, a CED*
 416 *that is being collected, recycled, or processed for reuse is not considered to be*
 417 *hazardous waste, household waste, solid waste, or special waste. [415 ILCS*
 418 *150/10]*

419
 420 *"Eligible electronic device" or "EED" means any of the following products sold at*
 421 *retail and taken out of service from a residence in this State: mobile telephone;*
 422 *computer cable; portable digital assistant (PDA); or zip drive. To the extent*
 423 *allowed under federal and State laws and regulations, an EED that is being*
 424 *collected, recycled, or processed for reuse is not considered to be hazardous*
 425 *waste, household waste, solid waste, or special waste. [415 ILCS 150/10]*

426
 427 *"Municipal joint action agency" or "action agency" means a municipal joint*
 428 *action agency created under Section 3.2 of the Intergovernmental Cooperation*
 429 *Act. [415 ILCS 150/10]*

430
431 ~~"Program year" means a calendar year. The first program year is 2010. [415~~
432 ~~ILCS 150/10]~~
433

434 (Source: Repealed at 38 Ill. Reg. _____, effective _____)
435

436 **Section 106.1004 Initiation of Proceeding (Repealed)**
437

438 ~~The petitioner must file the petition for authorization with the Clerk of the Board and must serve~~
439 ~~one copy upon the Agency.~~
440

441 (Source: Repealed at 38 Ill. Reg. _____, effective _____)
442

443 **Section 106.1006 Petition Content Requirements (Repealed)**
444

445 a) ~~The petition from the county or action agency shall include the following:~~
446

447 1) ~~documentation of the county's or action agency's attempts to gain funding,~~
448 ~~as well as the total funding obtained, for the collection of CEDs and EEDs~~
449 ~~in its jurisdiction from manufacturers or other units of government in the~~
450 ~~State; and~~
451

452 2) ~~an assessment of other collection opportunities in the county's or action~~
453 ~~agency's jurisdiction demonstrating insufficient capacity for the~~
454 ~~anticipated volume of CEDs and EEDs for the remainder of the program~~
455 ~~year in which the petition is being filed. [415 ILCS 150/95(e)]~~
456

457 b) ~~In addition to the information listed in subsection (a) of this Section, the petition~~
458 ~~from the county or action agency must also include:~~
459

460 1) ~~total weight of CEDs and EEDs collected in the county's or action~~
461 ~~agency's jurisdiction during all preceding program years;~~
462

463 2) ~~total weight of CEDs and EEDs collected in the county's or action~~
464 ~~agency's jurisdiction during the year in which the petition is filed; and~~
465

466 3) ~~the projected difference in weight between prior program year in which~~
467 ~~the petition is filed. [415 ILCS 150/95(e)]~~
468

469 e) ~~The petition shall include any other information that may be required by Section~~
470 ~~95 of the Electronic Products Recycling and Reuse Act.~~
471

472 (Source: Repealed at 38 Ill. Reg. _____, effective _____)

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Section 106.1008 Response and Reply (Repealed)

- 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: Repealed at 38 Ill. Reg. _____, effective _____)

Section 106.1010 Burden of Proof (Repealed)

~~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: Repealed at 38 Ill. Reg. _____, effective _____)

Section 106.1012 Board Decision (Repealed)

- 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, Section 95(a) and (b) of 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)]~~
- e) ~~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)]~~

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

517

518 (Source: Repealed at 38 Ill. Reg. _____, effective _____)

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Petition to Review Pollution Control Facility Siting Decisions
- 2) Code Citation: 35 Ill. Adm. Code 107
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
107.302	Amendment
107.304	Amendment
107.308	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: In this procedural rulemaking, the Board proposes amendments to codify procedural standards for remarks by members of the public at the Board's open meetings and to permit, with certain limited exceptions, electronic filing in all Board proceedings through the Board's Clerk's Office On-Line or "COOL", as well as service by e-mail of most types of filings. The Board also proposes a handful of updates and housekeeping amendments not directly related to electronic filing or public remarks. The proposed amendments to Part 107 require the siting authority in a pollution control facility siting appeal to file the original record in paper, clarifies copy requirements for the record, and makes various clarifying changes. For a detailed description of the proposed changes to Part 107, please refer to the Board's June 5, 2014 opinion and order in docket R14-21: Procedural Rule Amendments to Implement Electronic Filing and Allow For Public Remarks at Board Meetings: Proposed Amendments to 35 Ill. Adm. Code 101-130.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule 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 Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].



POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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 at least 45 days after the date of publication in the *Illinois Register*. Public comments should reference Docket R14-21 and be addressed to:

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

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R14-21 by calling the Clerk's office at 312/814-3620, or may download copies from the Board's website at www.ipcb.state.il.us.

For more information, contact hearing officer Mark Powell at 312/814-6887 or Mark.Powell@illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality, or not-for-profit corporation that practices before the Board.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because the Board was required, due to a recent Appellate Court decision, to revisit its procedural rules and develop new proposed rules.

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

RECEIVED
CLERK'S OFFICE

JUN 25 2014

STATE OF ILLINOIS
Pollution Control Board

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER 1: POLLUTION CONTROL BOARD

PART 107

PETITION TO REVIEW POLLUTION CONTROL FACILITY SITING DECISIONS

SUBPART A: GENERAL PROVISIONS

Section	
107.100	Applicability
107.102	Severability
107.104	Definitions
107.106	Description

SUBPART B: PETITION FOR REVIEW

Section	
107.200	Who May File Petition
107.202	Parties
107.204	Time for Filing Petition
107.206	Filing and Service Requirements
107.208	Petition Content Requirements

SUBPART C: FILING OF LOCAL RECORD

Section	
107.300	Record
107.302	Filing of the Record
107.304	Record Contents
107.306	Preparing of the Record
107.308	Certification of Record

SUBPART D: HEARING

Section	
107.400	General
107.402	Authority and Duties of Hearing Officer
107.404	Public Participation

SUBPART E: BOARD REVIEW AND DECISION

Section	
107.500	Preliminary Board Determination/Set for Hearing

POLLUTION CONTROL BOARD

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107.502 Dismissal of Petition
107.504 Decision Deadline
107.506 Burden of Proof

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

AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 39.2, and 40.1 of the Act [415 ILCS 5/39.2 and 40.1].

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; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 539, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8828, effective June 8, 2005; amended in R14-21 at 38 Ill. Reg. _____, effective _____.

SUBPART C: FILING OF LOCAL RECORD

Section 107.302 Filing of the Record

The siting authority must file the record of its proceedings with the Board as directed by Board or hearing officer order. Failure to file the entire record on the date directed by the Board or hearing officer may subject the respondent to sanctions as may be ordered by the Board in accordance with 35 Ill. Adm. Code 101.Subpart H. The siting authority must file the original record in paper pursuant to 35 Ill. Adm. Code 101.302(h)(2). (See 35 Ill. Adm. Code 101.1050(a).)

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 107.304 Record Contents

- a) The record must contain all information or evidence presented to the local siting authority or relied upon by the local siting authority during its hearing process including:

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

- 1) The siting application;
 - 2) Any and all transcripts of local hearings;
 - 3) All briefs and other arguments and statements of parties and participants;
 - 4) All exhibits relied upon by the local siting authority in making its decision;
 - 5) All written public comments relevant to the local government proceeding;
 - 6) Minutes of all relevant open meetings of the siting authority;
 - 7) Notices of hearings or all relevant meetings of the siting authority;
 - 8) The written decision of the siting authority made pursuant to Section 39.2 of the Act;
 - 9) Certificate of Record as described in Section 107.308 of this Part; and
 - 10) *If, prior to making a final local siting decision, a county board or governing body of a municipality has negotiated and entered into a host agreement with the local siting applicant, the terms and conditions of the host agreement, whether written or oral, shall be disclosed and made a part of the hearing record for that local siting proceeding. In the case of an oral agreement, the disclosure shall be made in the form of a written summary jointly prepared and submitted by the county board or governing body of the municipality and the siting applicant and shall describe the terms and conditions of the oral agreement. [415 ILCS 5/39.2(e)]*
- b) The record must contain the originals ~~or legible copies~~ of all documents, ~~must~~ be arranged in chronological sequence, and ~~must~~ be sequentially numbered, ~~placing~~ with the letter ~~"C"~~ placed before the number of each page.
- e) ~~Seven copies of the transcript and one original and 9 copies of all other documents in the record must be filed with the Board.~~

(Source: Amended at 38 Ill. Reg. _____, effective _____)

POLLUTION CONTROL BOARD

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Section 107.308 Certification of Record

The record filed with the Board must be certified by the county clerk, if the siting authority is a county, or the municipal clerk, if the siting authority is a municipality. The certification must be entitled "Certificate of Record on Appeal". The Certificate must contain an index that lists the documents comprising the record and shows ~~show~~ the page numbers ~~number~~ upon which each document starts and ends ~~they start and end~~. The Certificate of Record must be served on all parties by the siting authority.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Document comparison by Workshare Compare on Monday, June 16, 2014
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Input:	
Document 1 ID	file:///I:\Input\Agency Rulemakings - Files Received\2014\June2014\35-107-Agency(issue25).docx
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Document 2 ID	file:///I:\Input\Agency Rulemakings - Files Received\2014\June2014\35-107-JCARr01(issue25).docx
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Legend:	
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Padding cell	

Statistics:	
	Count
Insertions	7
Deletions	16
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	23

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER 1: POLLUTION CONTROL BOARD

PART 107

PETITION TO REVIEW POLLUTION CONTROL FACILITY SITING DECISIONS

SUBPART A: GENERAL PROVISIONS

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107.100 Applicability
107.102 Severability
107.104 Definitions
107.106 Description

SUBPART B: PETITION FOR REVIEW

Section

107.200 Who May File Petition
107.202 Parties
107.204 Time for Filing Petition
107.206 Filing and Service Requirements
107.208 Petition Content Requirements

SUBPART C: FILING OF LOCAL RECORD

Section

107.300 Record
107.302 Filing of the Record
107.304 Record Contents
107.306 Preparing of the Record
107.308 Certification of Record

SUBPART D: HEARING

Section

107.400 General
107.402 Authority and Duties of Hearing Officer
107.404 Public Participation

SUBPART E: BOARD REVIEW AND DECISION

Section

107.500 Preliminary Board Determination/Set for Hearing
107.502 Dismissal of Petition
107.504 Decision Deadline
107.506 Burden of Proof

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

45
46 AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act)
47 [415 ILCS 5/26 and 27] and implementing Sections 39.2, and 40.1 of the Act [415 ILCS 5/39.2
48 and 40.1].

49
50 SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186,
51 effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg.
52 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4,
53 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12
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55 July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in
56 R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579,
57 effective July 11, 1994; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 539,
58 effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8828, effective June 8, 2005;
59 amended in R14-21 at 38 Ill. Reg. _____, effective _____.

60
61 SUBPART C: FILING OF LOCAL RECORD

62
63 **Section 107.302 Filing of the Record**

64
65 The siting authority must file the record of its proceedings with the Board as directed by Board
66 or hearing officer order. Failure to file the entire record on the date directed by the Board or
67 hearing officer may subject the respondent to sanctions as may be ordered by the Board in
68 accordance with 35 Ill. Adm. Code 101.Subpart H. The siting authority must file the original
69 record in paper pursuant to 35 Ill. Adm. Code 101.302(h)(2). (See 35 Ill. Adm. Code
70 101.1050(a).)

71
72 (Source: Amended at 38 Ill. Reg. _____, effective _____)

73
74 **Section 107.304 Record Contents**

- 75
76 a) The record must contain all information or evidence presented to the local siting
77 authority or relied upon by the local siting authority during its hearing process
78 including:
79
80 1) The siting application;
81
82 2) Any and all transcripts of local hearings;
83
84 3) All briefs and other arguments and statements of parties and participants;
85
86 4) All exhibits relied upon by the local siting authority in making its

87 decision;

88
89 5) All written public comments relevant to the local government proceeding;

90
91 6) Minutes of all relevant open meetings of the siting authority;

92
93 7) Notices of hearings or all relevant meetings of the siting authority;

94
95 8) The written decision of the siting authority made pursuant to Section 39.2
96 of the Act;

97
98 9) Certificate of Record as described in Section 107.308 of this Part; and

99
100 10) *If, prior to making a final local siting decision, a county board or*
101 *governing body of a municipality has negotiated and entered into a host*
102 *agreement with the local siting applicant, the terms and conditions of the*
103 *host agreement, whether written or oral, shall be disclosed and made a*
104 *part of the hearing record for that local siting proceeding. In the case of*
105 *an oral agreement, the disclosure shall be made in the form of a written*
106 *summary jointly prepared and submitted by the county board or governing*
107 *body of the municipality and the siting applicant and shall describe the*
108 *terms and conditions of the oral agreement. [415 ILCS 5/39.2(e)]*

109
110 b) The record must contain the originals ~~or legible copies~~ of all documents, ~~must be~~
111 arranged in chronological sequence, and ~~must be~~ sequentially numbered with;
112 ~~placing~~ the letter "C" placed before the number of each page.

113
114 e) ~~Seven copies of the transcript and one original and 9 copies of all other~~
115 ~~documents in the record must be filed with the Board.~~

116
117 (Source: Amended at 38 Ill. Reg. _____, effective _____)

118
119 **Section 107.308 Certification of Record**

120
121 The record filed with the Board must be certified by the county clerk, if the siting authority is a
122 county, or the municipal clerk, if the siting authority is a municipality. The certification must be
123 entitled "Certificate of Record on Appeal". The Certificate must contain an index that lists the
124 documents comprising the record and ~~show~~ show the page ~~numbers~~ number upon which each
125 document starts and ends ~~they start and end~~. The Certificate of Record must be served on all
126 parties by the siting authority.

127
128 (Source: Amended at 38 Ill. Reg. _____, effective _____)

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT



- 1) Heading of the Part: Administrative Citations
- 2) Code Citation: 35 Ill. Adm. Code 108
- 3) Section Number: 108.202 Proposed Action: Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: In this procedural rulemaking, the Board proposes amendments to codify procedural standards for remarks by members of the public at the Board's open meetings and to permit, with certain limited exceptions, electronic filing in all Board proceedings through the Board's Clerk's Office On-Line or "COOL", as well as service by e-mail of most types of filings. The Board also proposes a handful of updates and housekeeping amendments not directly related to electronic filing or public remarks. The proposed amendments to Part 108 require that administrative citations be served personally, by registered or certified mail, or by messenger service, and not by e-mail. For a detailed description of the proposed changes to Part 108, please refer to the Board's June 5, 2014 opinion and order in docket R14-21: Procedural Rule Amendments to Implement Electronic Filing and Allow For Public Remarks at Board Meetings: Proposed Amendments to 35 Ill. Adm. Code 101-130.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule 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 Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

of at least 45 days after the date of publication in the *Illinois Register*. Public comments should reference Docket R14-21 and be addressed to:

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

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R14-21 by calling the Clerk's office at 312/814-3620, or may download copies from the Board's website at www.ipcb.state.il.us.

For more information, contact hearing officer Mark Powell at 312/814-6887 or e-mail at Mark.Powell@illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality or not-for-profit corporation that practices before the Board.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because the Board was required, due to a recent Appellate Court decision, to revisit its procedural rules and develop new proposed rules.

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

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JUN 25 2014
STATE OF ILLINOIS
Pollution Control Board

POLLUTION CONTROL BOARD
NOTICE OF PROPOSED AMENDMENT

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

PART 108
ADMINISTRATIVE CITATIONS

SUBPART A: GENERAL PROVISIONS

Section	
108.100	Applicability
108.102	Severability
108.104	Definitions

SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO
CONTEST

Section	
108.200	Administrative Citation Issuance
108.202	Service of Citation/Filing of Citation with the Board
108.204	Filing Requirements for Petition to Contest
108.206	Petition Contents
108.208	AC Recipients Voluntary Withdrawal

SUBPART C: HEARINGS

Section	
108.300	Authorization of Hearing

SUBPART D: BOARD DECISIONS

Section	
108.400	Burden of Proof
108.402	Dismissal
108.404	Default
108.406	Non-Contested Citations

SUBPART E: ASSESSMENT OF PENALTIES AND COSTS

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

violations;

- 4) An affidavit by the personnel observing the violation, attesting to their material actions and observations; and
 - 5) Instructions for contesting the AC findings, including notification that the AC Recipient has 35 days within which to file a petition to contest the AC, and if an appeal is filed and the Board finds a violation, the AC ~~recipient~~[Recipient](#) must pay hearing costs pursuant to Section 108.500 of this Part.
- c) As required by Section 31.1 of the Act, the Agency or Delegated Unit must file the AC with the Board no later than 10 days after the date of service upon the AC Recipient.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Document comparison by Workshare Compare on Monday, June 16, 2014
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Format changed	0
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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD

PART 108
ADMINISTRATIVE CITATIONS

SUBPART A: GENERAL PROVISIONS



- 10 Section
- 11 108.100 Applicability
- 12 108.102 Severability
- 13 108.104 Definitions

SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST

- 17 Section
- 18 108.200 Administrative Citation Issuance
- 19 108.202 Service of Citation/Filing of Citation with the Board
- 20 108.204 Filing Requirements for Petition to Contest
- 21 108.206 Petition Contents
- 22 108.208 AC Recipient's Voluntary Withdrawal

SUBPART C: HEARINGS

- 26 Section
- 27 108.300 Authorization of Hearing

SUBPART D: BOARD DECISIONS

- 31 Section
- 32 108.400 Burden of Proof
- 33 108.402 Dismissal
- 34 108.404 Default
- 35 108.406 Non-Contested Citations

SUBPART E: ASSESSMENT OF PENALTIES AND COSTS

- 39 Section
- 40 108.500 Penalties and Costs
- 41 108.502 Claimed Costs of Agency or Delegated Unit
- 42 108.504 Board Costs
- 43 108.506 Response to Claimed Costs and Reply

44
45 AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act)
46 [415 ILCS 5/26 and 27] and implementing Sections 21(o), 21(p), 31.1, and 42(b)(4) of the Act
47 [415 ILCS 5/21(o), 21(p), 31.1, and 42(b)(4)].
48

49 SOURCE: Adopted in R00-20 at 25 Ill. Reg. 397, effective January 1, 2001; amended in R04-24
50 at 29 Ill. Reg. 8833, effective June 8, 2005; amended in R14-21 at 38 Ill. Reg. _____, effective
51 _____.

52
53 SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST

54
55 **Section 108.202 Service of Citation/Filing of Citation with the Board**

- 56
57 a) In accordance with Section 31.1 of the Act, the Agency or Delegated Unit may
58 serve an AC upon any person (AC Recipient) believed, through direct
59 observation, to have violated ~~subsection (o) or (p)~~ of Section 21(o) or (p) of the
60 Act. Service of an AC upon the AC Recipient must be made personally, by
61 registered or certified mail, or by messenger service. (See 35 Ill. Adm. Code
62 101.300(c) and 101.304(c).)
63
64 b) The AC must be issued and served upon the AC Recipient not more than 60 days
65 after the date of the observed violation and must contain the following
66 information:
67
68 1) A statement specifying the provisions of ~~subsection (o) or (p)~~ of Section
69 21(o) and (p) of the Act that the AC Recipient was observed to have
70 violated;
71
72 2) A copy of the inspection report in which the Agency or Delegated Unit
73 recorded the violation, which report must include the date and time of
74 inspection, and weather conditions prevailing during the inspection;
75
76 3) The penalty imposed by Section 42(b)(4) or (b)(4-5) of the Act for the
77 violations;
78
79 4) An affidavit by the personnel observing the violation, attesting to their
80 material actions and observations; and
81
82 5) Instructions for contesting the AC findings, including notification that the
83 AC Recipient has 35 days within which to file a petition to contest the AC,
84 and if an appeal is filed and the Board finds a violation, the AC
85 Recipient must pay hearing costs pursuant to Section 108.500 of
86 this Part.

87
88
89
90
91
92

- c) As required by Section 31.1 of the Act, the Agency or Delegated Unit must file the AC with the Board no later than 10 days after the date of service upon the AC Recipient.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS



- 1) Heading of the Part: Tax Certifications
- 2) Code Citation: 35 Ill. Adm. Code 125
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
125.208	Amendment
125.210	Amendment
125.216	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: In this procedural rulemaking, the Board proposes amendments to codify procedural standards for remarks by members of the public at the Board's open meetings and to permit, with certain limited exceptions, electronic filing in all Board proceedings through the Board's Clerk's Office On-Line or "COOL", as well as service by e-mail of most types of filings. The Board also proposes a handful of updates and housekeeping amendments not directly related to electronic filing or public remarks. The proposed amendments to Part 125 add requirements for the contents and filing of the Illinois Environmental Protection Agency record in tax certification proceedings concerning potential pollution control facilities and low sulfur dioxide emission coal fueled devices. The amendments also add language explicitly addressing situations where the Board is considering denial, revocation, or modification of tax certification and a subsection setting out the process for appeal by a certificate applicant or holder of Board orders in tax certification proceedings pursuant to the Property Tax Code. For a detailed description of the proposed changes to Part 125, please refer to the Board's June 5, 2014 opinion and order in docket R14-21: Procedural Rule Amendments to Implement Electronic Filing and Allow For Public Remarks at Board Meetings: Proposed Amendments to 35 Ill. Adm. Code 101-130.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule 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

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 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 at least 45 days after the date of publication in the *Illinois Register*. Public comments should reference Docket R14-21 and be addressed to:

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

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R14-10 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 Mark Powell at 312/814-6887 or e-mail at Mark.Powell@illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality or not-for-profit corporation that practices before the Board.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because the Board was required, due to a recent Appellate Court decision, to revisit its procedural rules and develop new proposed rules.

POLLUTION CONTROL BOARD
NOTICE OF PROPOSED AMENDMENTS

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

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JUN 25 2014

STATE OF ILLINOIS
Pollution Control Board

PART 125
TAX CERTIFICATIONS

SUBPART A: GENERAL PROVISIONS

- 10 Section
- 11 125.100 Applicability
- 12 125.102 Severability
- 13 125.104 Definitions

SUBPART B: TAX CERTIFICATION OF POLLUTION CONTROL FACILITIES
AND LOW SULFUR DIOXIDE EMISSION COAL FUELED DEVICES

- 18 Section
- 19 125.200 General
- 20 125.202 Tax Certification Application
- 21 125.204 Agency Recommendation
- 22 125.206 Petition to Contest
- 23 125.208 Agency Record
- 24 125.210 Public Hearing
- 25 125.212 Hearing Notice
- 26 125.214 Burden of Proof
- 27 125.216 Board Action

29 AUTHORITY: Implementing and authorized by Sections 11-5, 11-10, 11-20, 11-25, 11-30, 11-
30 35, 11-40, 11-50, and 11-55 of the Property Tax Code [35 ILCS 200/11-5, 11-10, 11-20, 11-25,
31 11-30, 11-35, 11-40, 11-50, and 11-55] and Sections 26 and 27 of the Environmental Protection
32 Act (the Act) [415 ILCS 5/26 and 27].

34 SOURCE: Adopted in R00-20 at 25 Ill. Reg. 642, effective January 1, 2001; amended in R04-24
35 at 29 Ill. Reg. 8838, effective June 8, 2005; amended in R14-21 at 38 Ill. Reg. _____, effective
36 _____.

SUBPART B: TAX CERTIFICATION OF POLLUTION CONTROL FACILITIES
AND LOW SULFUR DIOXIDE EMISSION COAL FUELED DEVICES

41 **Section 125.208 Agency Record**

42
43 The Agency must file with the Board the entire record on which it based its recommendation

44 within 30 days after the applicant files a petition to contest under Section 125.206 of this Subpart
 45 ~~or as, unless~~ the Board or hearing officer orders otherwise. If the Agency wishes to seek
 46 additional time to file the record, it must file a request for extension before the date on which the
 47 record is due to be filed. The Agency must file the original record in paper pursuant to 35 Ill.
 48 Adm. Code 101.302(h)(2). (See 35 Ill. Adm. Code 101.1050(a).) The record must comply with
 49 35 Ill. Adm. Code 105.116(b).

50
 51 (Source: Amended at 38 Ill. Reg. _____, effective _____)
 52

53 **Section 125.210 Public Hearing**

- 54
- 55 a) The Board will hold a public hearing in a tax certification proceeding if:
 - 56
 - 57 1) The applicant files a petition to contest in accordance with Section
 - 58 125.206 of this Subpart, unless the Board disposes of the petition on a
 - 59 motion for summary judgment brought pursuant to 35 Ill. Adm. Code
 - 60 101.516; ~~or~~
 - 61
 - 62 2) The applicant or holder timely requests a hearing after the Board provides
 - 63 notice pursuant to Section 125.216(c) of this Subpart; or
 - 64
 - 65 3) The Board, in its discretion, determines that a hearing would be advisable.
 - 66
 - 67 b) If a hearing is to be held, the hearing officer will set a time and place for the
 - 68 hearing. The hearing officer will make an attempt to consult with the applicant
 - 69 and the Agency before scheduling a hearing. Hearings will be held in the county
 - 70 where the facility or portion thereof or the device for which the applicant seeks a
 - 71 tax certification is located, unless the hearing officer orders otherwise.
 - 72

73 (Source: Amended at 38 Ill. Reg. _____, effective _____)
 74

75 **Section 125.216 Board Action**

- 76
- 77 a) *Pollution Control Facilities. If it is found that the claimed facility or relevant*
 - 78 *portion thereof is a pollution control facility as defined in Section 125.200(a)(1)*
 - 79 *of this Part, the Board shall enter a finding and issue a certificate to that effect.*
 - 80 *The certificate shall require tax treatment as a pollution control facility, but only*
 - 81 *for the portion certified if only a portion is certified. The effective date of a*
 - 82 *certificate shall be the date of the application for the certificate or the date of the*
 - 83 *construction of the facility, whichever is later. [35 ILCS 200/11-25]*
 - 84
 - 85 b) *Low Sulfur Dioxide Emission Coal Fueled Devices. If it is found that the claimed*
 - 86 *device meets the definition of low sulfur dioxide emission coal fueled device as*

87 set forth in Section 125.200(b)(1) of this Part, *the Board shall enter a finding and*
 88 *issue a certificate that requires tax treatment as a low sulfur dioxide emission*
 89 *coal fueled device. The effective date of a certificate shall be on January 1*
 90 *preceding the date of certification or preceding the date construction or*
 91 *installation of the device commences, whichever is later. [35 ILCS 200/11-55]*
 92

93 c) *Before denying any certificate, the Board shall give reasonable notice in writing*
 94 *to the applicant and provide the applicant a reasonable opportunity for a fair*
 95 *hearing pursuant to Section 125.210 of this Subpart. [35 ILCS 200/11-30] On*
 96 *like notice to the holder and opportunity for hearing.* ~~*After notice to the holder of*~~
 97 ~~*the certificate and an opportunity for a hearing pursuant to this Subpart, the Board*~~
 98 *may on its own initiative revoke or modify a pollution control certificate or a low*
 99 *sulfur dioxide emission coal fueled device certificate whenever any of the*
 100 *following appears:*
 101

- 102 1) *The certificate was obtained by fraud or misrepresentation;*
- 103
- 104 2) *The holder of the certificate has failed substantially to proceed with the*
 105 *construction, reconstruction, installation, or acquisition of pollution*
 106 *control facilities or a low sulfur dioxide emission coal fueled device; or*
 107
- 108 3) *The pollution control facility to which the certificate relates has ceased to*
 109 *be used for the primary purpose of pollution control and is being used for*
 110 *a different purpose. [35 ILCS 200/11-30]*
 111

112 d) *The Clerk will provide the applicant and the Agency with a copy of the Board's*
 113 *order setting forth the Board's findings and certificate, if any [35 ILCS 200/11-*
 114 *30].*
 115

116 e) *Any applicant or holder aggrieved by the issuance, refusal to issue, denial,*
 117 *revocation, modification or restriction of a pollution control certificate or a low*
 118 *sulfur dioxide emission coal fueled device certificate may appeal the finding and*
 119 *order of the Pollution Control Board, under the Administrative Review Law, to*
 120 *the circuit court [35 ILCS 200/11-60].*
 121

122 (Source: Amended at 38 Ill. Reg. _____, effective _____)

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Pollution Control Board

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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

PART 125
TAX CERTIFICATIONS

SUBPART A: GENERAL PROVISIONS

Section	
125.100	Applicability
125.102	Severability
125.104	Definitions

SUBPART B: TAX CERTIFICATION OF POLLUTION CONTROL FACILITIES
AND LOW SULFUR DIOXIDE EMISSION COAL FUELED DEVICES

Section	
125.200	General
125.202	Tax Certification Application
125.204	Agency Recommendation
125.206	Petition to Contest
125.208	Agency Record
125.210	Public Hearing
125.212	Hearing Notice
125.214	Burden of Proof
125.216	Board Action

AUTHORITY: Implementing and authorized by Sections 11-5, 11-10, 11-20, 11-25, 11-30, 11-35, 11-40, 11-50, and 11-55 of the Property Tax Code [35 ILCS 200/11-5, 11-10, 11-20, 11-25, 11-30, 11-35, 11-40, 11-50, and 11-55] and Sections 26 and 27 of the Environmental Protection Act (the Act) [415 ILCS 5/26 and 27].

SOURCE: Adopted in R00-20 at 25 Ill. Reg. 642, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8838, effective June 8, 2005; amended in R14-21 at 38 Ill. Reg. _____, effective _____.

SUBPART B: TAX CERTIFICATION OF POLLUTION CONTROL FACILITIES
AND LOW SULFUR DIOXIDE EMISSION COAL FUELED DEVICES

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

Section 125.208 Agency Record

The Agency must file with the Board the entire record on which it based its recommendation within 30 days after the applicant files a petition to contest under Section 125.206 of this Subpart, ~~unless~~ or as the Board or hearing officer orders ~~otherwise~~. If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. The Agency must file the original record in paper pursuant to 35 Ill. Adm. Code 101.302(h)(2). (See 35 Ill. Adm. Code 101.1050(a).) The record must comply with 35 Ill. Adm. Code 105.116(b).

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 125.210 Public Hearing

- a) The Board will hold a public hearing in a tax certification proceeding if:
 - 1) The applicant files a petition to contest in accordance with Section 125.206 of this Subpart, unless the Board disposes of the petition on a motion for summary judgment brought pursuant to 35 Ill. Adm. Code 101.516; ~~or~~
 - 2) The applicant or holder timely requests a hearing after the Board provides notice pursuant to Section 125.216(c) of this Subpart; or
 - ~~323~~) The Board, in its discretion, determines that a hearing would be advisable.
- b) If a hearing is to be held, the hearing officer will set a time and place for the hearing. The hearing officer will make an attempt to consult with the applicant and the Agency before scheduling a hearing. Hearings will be held in the county where the facility or portion thereof or the device for which the applicant seeks a tax certification is located, unless the hearing officer orders otherwise.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 125.216 Board Action

- a) **Pollution Control Facilities.** *If it is found that the claimed facility or relevant portion thereof is a pollution control facility as defined in Section 125.200(a)(1)*

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

of this Part, the Board shall enter a finding and issue a certificate to that effect. The certificate shall require tax treatment as a pollution control facility, but only for the portion certified if only a portion is certified. The effective date of a certificate shall be the date of the application for the certificate or the date of the construction of the facility, whichever is later. [35 ILCS 200/11-25]

b) Low Sulfur Dioxide Emission Coal Fueled Devices. *If it is found that the claimed device meets the definition of low sulfur dioxide emission coal fueled device as set forth in Section 125.200(b)(1) of this Part, the Board shall enter a finding and issue a certificate that requires tax treatment as a low sulfur dioxide emission coal fueled device. The effective date of a certificate shall be on January 1 preceding the date of certification or preceding the date construction or installation of the device commences, whichever is later. [35 ILCS 200/11-55]*

c) *Before denying any certificate, the Board shall give reasonable notice in writing to the applicant and provide the applicant a reasonable opportunity for a fair hearing pursuant to Section 125.210 of this Subpart. [35 ILCS 200/11-30]—After notice to the holder of the certificate and an opportunity for a hearing pursuant to this Subpart, On like notice to the holder and opportunity for hearing, the Board may on its own initiative revoke or modify a pollution control certificate or a low sulfur dioxide emission coal fueled device certificate whenever any of the following appears:*

1) *The certificate was obtained by fraud or misrepresentation;*

2) *The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of pollution control facilities or a low sulfur dioxide emission coal fueled device; or*

3) *The pollution control facility to which the certificate relates has ceased to be used for the primary purpose of pollution control and is being used for a different purpose. [35 ILCS 200/11-30]*

~~d)~~ d) *The Clerk will provide the applicant and the Agency with a copy of the Board's order setting forth the Board's findings and certificate, if any [35 ILCS 200/11-30].*

e) *Any applicant or holder aggrieved by the issuance, refusal to issue, denial, revocation, modification or restriction of a pollution control certificate or a low*

ILLINOIS REGISTER [JCAR350125-1412814r01](#)

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

sulfur dioxide emission coal fueled device certificate may appeal the finding and order of the Pollution Control Board, under the Administrative Review Law, to the circuit court [35 ILCS 200/11-60].

(Source: Amended at 38 Ill. Reg. _____, effective _____)

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Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
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Padding cell	

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Moved to	0
Style change	0
Format changed	0
Total changes	25