

ILLINOIS POLLUTION CONTROL BOARD
November 6, 2014

IN THE MATTER OF:)
)
PROCEDURAL RULE AMENDMENTS TO) R14-21
IMPLEMENT ELECTRONIC FILING AND) (Rulemaking - Procedural)
ALLOW FOR PUBLIC REMARKS AT)
BOARD MEETINGS: PROPOSED)
AMENDMENTS TO 35 ILL. ADM. CODE)
101-130)

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by D. Glosser):

Today the Board proposes amendments to its procedural rules for second-notice review by the Joint Committee on Administrative Rules (JCAR). The proposed rules accomplish two primary objectives. First, the rules will codify procedural standards for remarks by members of the public at the Board’s open meetings in accordance with the Open Meetings Act, 5 ILCS 120/2.06(g) (2012). Second, these rules will 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.

In addition, the proposed rules amend other sections of the procedural rules not directly or primarily relating to public remarks. These include, among other matters, the filing of rulemaking proposals that include rulemaking documents both subject to copyright protection and proposed for incorporation by reference (IBR); temporary waivers of the ban on specified electronic products landfills; and pollution control facility certification for property tax purposes.

On June 5, 2014, the Board proposed the rule amendments for first-notice publication and invited public comment on them. Procedural Rule Amendments to Implement Electronic Filing and Allow for Public Remarks at Board Meetings: Proposed Amendments to 35 Ill. Adm. Code 101-130, R14-21 (June 5, 2014) (Board Op.). The proposed amendments appeared in the *Illinois Register* on June 20, 2014. *See* 38 Ill. Reg. 12685 (June 20, 2014). By order of June 27, 2014, the hearing officer set August 19, 2014—60 days following *Illinois Register* publication—as the deadline for the filing of public comments. The Board has received public comments from Schiff Hardin LLP (Schiff) (PC 1) and the Illinois Environmental Protection Agency (Agency) (PC 2). No other public comments were filed, and the Board received no request to hold a public hearing in this docket. A hearing is not required in this procedural rulemaking. *See* 5 ILCS 100/5-40(b) (2012); *see also* 415 ILCS 5/26, 27(b) (2012).

In this opinion, the Board recapitulates, section by section, the handful of procedural rule amendments proposed at first notice that are the subject of the comments the Board has

received.¹ The Board does not discuss amendments proposed at first notice that were not addressed in any comments received during the comment period. The amendments to which the comments relate are those governing filing by e-mail (Section 101.302(d)); filing of rulemaking proposals that include copyright protected material proposed for IBR (Section 101.302(h)(4)); timing of service by e-mail (Section 101.1060(d)), documentation of e-mail service (Section 101.1060 (e)(4)), and the circumstances under which e-mail service may be used (Section 101.1070, and Appendix H). Next, the Board summarizes the comments relating to each affected section, after which the Board discusses the changes it makes to the proposed rules, and those it declines to make, from first notice to second notice. The second- notice rule language is set forth in the order following this opinion.

SECTION-BY-SECTION SUMMARY OF ISSUES RAISED IN FIRST-NOTICE COMMENTS

Section 101.302(d)—Filing of Documents by E-mail

Board’s First-Notice Proposal

The Board proposed to amend this provision to explicitly allow filing by e-mail (in addition to facsimile, as the rule currently provides) only with the prior approval of the Board’s Clerk or the assigned hearing officer. The proposed rule would provide that any prior approval by the Clerk or hearing officer applies only to the specified filing.

Agency (PC 2)

The Agency explains that it has “greatly benefitted” from being able to file by e-mail when “technical problems sometimes prevent use of the COOL system.” PC 2 at 5. For this reason, the Agency requests that the Clerk and assigned hearing officer instead be permitted to allow e-mail filing “in a docket as he or she sees fit.” *Id.* at 5-6. This change, according to the Agency, would save “time spent on the phone or in email traffic processing individual approvals.” *Id.* at 6.

Board Discussion

The Agency requests that proposed Section 101.302(d) be amended to allow filing by e-mail for the duration of a proceeding whenever the Clerk or assigned hearing officer gives approval to do so. However, the Board added the proposed restriction because of past abuses. Some parties and participants before the Board have treated a single authorization of e-mail filing for a single document in a single proceeding as a license to thereafter e-mail file all documents in all proceedings.

Beyond the problem of misuse of a one-time authorization, deleting the restriction and allowing e-mail filing of all documents in a proceeding would be contrary to a primary objective

¹ The Board’s first-notice opinion included a section-by-section summary of the proposed rules. Rather than reproduce that summary in this opinion, the Board recommends that the reader wishing to revisit this summary consult the first-notice opinion.

of this rulemaking: to codify detailed procedures, consistent with practices developed by the Clerk's Office, to accommodate electronic filing through COOL and encourage use of COOL as a single point of access to Board dockets. *See* Board Opinion at 3. The Board developed COOL for electronic filing, and e-mail filing was intended to be the exception rather than the norm. Unrestricted filing by e-mail would also require the Clerk's Office to process numerous e-mail filings in one or more proceedings, which is not efficient. E-mail filing was never intended to be the default means of filing a document with the Board, but rather an exceptional filing method to be used when problems occur with COOL or under other exigent circumstances.

Accordingly, the Board declines to amend subsection (d) to permit unrestricted filing by e-mail. Authorization of e-mail filing will be given on a filing-by-filing basis. The Clerk or hearing officer may grant the request if there are exigent circumstances, including when it is technically infeasible for a party to file through COOL. These requests should not be typical. Allowing each party in each proceeding to make one, as the Agency suggests, would result in more time being spent on these approvals than the Board considers appropriate.

Section 101.302(h)(4)—Filing of Copyright Protected IBR Documents

Board's First-Notice Proposal

The Board proposed to add this subsection to Section 101.302, concerning filing of documents with the Board, to prohibit copyright-protected material proposed for IBR (but not the remainder of the rulemaking proposal) from being filed electronically. The basis for this proposal is that the Board's printing or copying such material for the record or posting such material on COOL could subject it to an action for copyright infringement. *See* Board Op. at 4.

Subsection (h)(4), as proposed at first notice, also substantially reduces, from an original and nine copies to four originals, the number of paper copies of copyright-protected IBR material that must be filed with the Board. The Board considered this a reasonable balance between rulemaking costs and the need for sufficient copies of IBR material for the Board to meet its legal obligations. On the one hand, the Illinois Administrative Procedure Act (IAPA) requires an agency adopting a rule that incorporates any material by reference to "maintain a copy of the referenced rule, regulation, standard or guideline" in at least one principal office and make it available to the public upon request for inspection and copying "at no more than cost." 5 ILCS 100/5-75(c) (2012). But, under the Copyright Act, reproducing copyrighted material for a requester may infringe on the exclusive rights of the copyright owner, and could potentially subject the Board to liability for copyright infringement. *See* 17 U.S.C. §§ 106(1), 501(a); Board Op. at 4.

The Board considered four originals appropriate because it would allow the Board to meet reasonably foreseeable needs without incurring undue expense, while ensuring that the documents, as originals, were lawfully made under the federal Copyright Act. The Board anticipates that, in addition to providing the copyrighted IBR material to a requesting member of the public, the Board may need to provide one to JCAR, as well as include one in the record on appeal to the appellate court. The Board must also maintain one IBR document in at least one of its principal offices to comply with the IAPA. *See* Board Opinion at 5.

Agency (PC 2)

As proposed at first notice, Section 101.302(h)(4) would require the rulemaking proponent to file “four paper originals of any document that is protected by copyright law [17 USC 101 *et seq.*] and proposed pursuant to Section 5-75 of the IAPA [5 ILCS 100/5-75] to be incorporated by reference.” PC 2 at 1.

Waiver of Current Nine-Copy Filing Requirement. The Agency recognizes that the Board’s current rule (35 Ill. Adm. Code 101.302(h)) requires the submission of a paper original and nine paper copies (ten total) of each document being filed, including documents proposed to be incorporated by reference into Board regulations. PC 2 at 1-2. However, the Agency indicates that the proposal—requiring four paper originals of a copyright-protected IBR document—is merely “styled as a lessening of the current filing requirement.” *Id.* at 2. This is so, the Agency continues, because the Board has “routinely” granted its motions to waive the nine-copy filing requirement for a copyright-protected IBR document, allowing the Agency to file a single original with no copies. *Id.* Accordingly, if the Board adopts the first-notice amendment and “stops granting those waivers,” the Agency concludes that it would have to file three more originals of the document than it has in the past. *Id.* For any copyright-protected document that is proposed to be IBR, the Agency asks the Board to at least continue granting waivers of the nine-copy filing requirement until this procedural rulemaking concludes. *Id.*

Require Only One of Each Copyright-Protected IBR Document. The Agency asks the Board to amend the first-notice rule so that the rulemaking proponent would be required to file either of the following: (1) only one original of each copyright-protected IBR document; or (2) only one paper copy of that original document if the rulemaking proponent is permitted by the publisher to make the copy. PC 2 at 2, 5. The Agency maintains that three extra originals of each copyright-protected IBR document “may cost thousands of dollars for a single rulemaking” while providing “very little” increased public access to the document. *Id.* at 2. The Agency refers by way of example to a “public water supply” rulemaking proposal under development that might have over 100 copyright-protected IBR documents. *Id.* According to the Agency, providing four originals of each of those documents at the standard rates would cost over \$31,000. *Id.* at 2-3.

Next, the Agency posits that “if it becomes cost-prohibitive” for national consensus standards to become IBR, the Agency “may need to consider” developing its own standards. PC 2 at 3. Developing those standards, the Agency continues, would “significantly increase” the time needed for, and the administrative expense of, completing Board rulemaking proposals. *Id.* Additionally, according to the Agency, the copyright-protected documents that it typically proposes to be IBR are “widely available and widely used national consensus standards that codify industry practices and procedures.” *Id.* Further, the Agency explains that its Springfield library “maintains, and makes available” to the public, copyright-protected IBR documents. *Id.* It is the Agency’s position that little would be gained by giving the Board three more originals of these costly and widely available documents. *Id.*

The Agency then questions whether, to satisfy the Board’s legal obligations, the Board needs multiples of each copyright-protected IBR document. First, the Agency asserts that the Board can satisfy Section 5-75 of the IAPA (5 ILCS 100/5-75 (2012)) by having a single copyright-protected IBR document “available to the public.” PC 2 at 4. Second, the Agency maintains that under Section 7(1)(g) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(g) (2012)), a copyright-protected IBR document should be exempt from FOIA disclosure requirements. *Id.* Third, the Agency explains that “[b]ased on conversations with other State agencies, it appears that (JCAR) does not generally require agencies to submit originals” of copyright-protected IBR documents. *Id.* JCAR instead asks agencies only for “a copy of the title and copyright pages” of the document because JCAR realizes “how expensive those materials can be for agencies to provide.” *Id.*

Finally, according to the Agency, JCAR and the appellate court will “likely compel the production” of a full copyright-protected document “only rarely.” PC 2 at 4. Due to the “extreme infrequency” of these requests, it would be “much more cost-effective for the State of Illinois” to pay for extra copyright-protected documents only upon demand by JCAR or the appellate court, rather than requiring the rulemaking proponent to pay for extras of a document “that may never be requested or required.” *Id.* at 4-5.

When a Copyright-Protected Document Is Already IBR or Otherwise in the Board’s Possession. The Agency asks the Board to amend the first-notice rule so that the rulemaking proponent would not be required to file any copyright-protected document that is proposed to be IBR “if the document has already been incorporated by reference in another Board rulemaking or is otherwise already in the Board’s possession.” PC 2 at 2. The Agency maintains that “[i]n many cases,” when it obtains a copy of material for its own library, it “also obtains a copy for the Board’s Library.” *Id.* According to the Agency, if a copyright-protected document is already in the Board’s possession, the rulemaking proponent should not be required to supply the Board with additional copies of that document. *Id.*

Board Discussion

As discussed below, in response to the Agency’s comments regarding copyright-protected documents proposed for IBR, the Board makes some changes to its first-notice proposal, but declines to adopt other suggested amendments.

Waiver of Current Nine-Copy Filing Requirement. The Agency maintains that the Board has “routinely” granted its motions to waive the current nine-copy filing requirement for a copyright-protected IBR document, allowing the Agency to file a single original with no copies. PC 2 at 1-2. The Agency asks the Board, for any copyright-protected material that is proposed to be IBR, to at least continue granting waivers of the nine-copy filing requirement until this rulemaking concludes. *Id.* at 2.

The Board is not persuaded that granting an interim blanket waiver to the Agency, or any other rulemaking proponent, is a sound approach. Whatever past practice may have been, the Board has, in its first-notice opinion, articulated the need for the Board to both comply with Section 5-75 of the IAPA (5 ILCS 100/5-75 (2012)) and to avoid actions, such as making copies

of copyrighted material without the publisher's permission, that could expose the Board to liability for copyright infringement. Given these legal constraints, the Board declines to commit here to continue granting motions by the Agency or other rulemaking proponent of the existing nine-copy filing requirement until this rulemaking concludes. Rather, any such motion will be considered on its own merits, taking into account the potential legal consequences, discussed above, of having just a single original of copyright-protected material in the Board's possession.

Number of Originals of Copyrighted IBR Documents to be Filed. The Agency requests that the Board modify proposed Section 101.302(h)(4) to allow the rulemaking proponent to file either a single original of a copyright-protected IBR document or, with the permission of the publisher, a paper copy of the original document. PC 2 at 2, 5. The Agency asserts that the proposed rule could impose massive and undue expenses on rulemaking proponents, to such an extent that the Agency might have to consider developing its own standards rather than relying on the IBR process. *Id.* at 2-3.

The Board appreciates the cost concerns raised by the Agency, and, therefore, reduces, from four to three originals, the proposed filing requirement for copyrighted IBR documents. The Board will not, however, reduce the requirement to a mere single original, as the Agency requests. It is up to the Agency or other rulemaking proponent to make a cost-benefit analysis in deciding whether acquiring three originals of copyrighted material is superior to developing and proposing its own standards.

Further, the Board emphasizes, as it did in its first-notice opinion, that it is in no position to fund the purchase of enough copies of copyright-protected materials proposed for IBR to meet all potential needs. *See* Board Op. at 5. Ultimately, the expense of acquiring an additional two originals for the Board to meet reasonably foreseeable needs should be borne by the rulemaking proponent seeking to IBR the copyright-protected material; it is the rulemaking proponent that avoids the cost of developing its own standards by using the IBR process. Even with two extra originals in the rulemaking proposal, the Board would still end up having to purchase copyright-protected IBR documents after meeting minimal requests for a copy under Section 5-75(c) of the IAPA. And such requests could be made years after rule adoption, as long as the IBR standard remained part of a Board regulation. Just as the Board will not risk liability for copyright infringement by photocopying copyrighted IBR materials, the Board will not risk a complaint for an IAPA violation by not providing a requester with such materials.

In a further attempt to help control rulemaking costs, the Board accepts the Agency's alternative proposal that a rulemaking proponent be allowed to file a copy a copyrighted IBR document. As proposed at second notice, if the rulemaking proponent makes the copy or copies with the copyright owner's written permission, the Board will accept two copies of a copyrighted IBR document in addition to one original. Functionally, a clean, high-quality copy made with the copyright owner's written consent is as legitimate as a purchased original. In either case, the Board would not risk liability for infringement by providing the document as needed. But written permission of the copyright owner for the rulemaking proponent to reproduce the copyrighted material is necessary without exception. And the documentation of that permission must specify the number of copies that the proponent is authorized to make. Further, as indicated, the Board will still require at least one original to be filed; without an original of a

standard proposed for IBR, any part of the standard could be omitted, whether inadvertently or otherwise, possibly without detection.

Accordingly, in amending proposed Section 101.302(h)(4) to permit one-for-one substitution of copies for originals of copyrighted IBR documents, the Board will require the rulemaking proponent to file with its rulemaking proposal the publisher's permission for the proponent to make one copy or to make two copies for filing with the Board. This means that for copyrighted material, a proponent may file: three originals; an original and two authorized copies; or two originals and one authorized copy. At second notice, the Board therefore amends proposed Section 101.302(h)(4) as follows:

When filing a rulemaking proposal, the proponent must file three ~~four~~ paper originals of any document that is protected by copyright law (17 USC 101 *et seq.*) and proposed pursuant to Section 5-75 of the IAPA [5 ILCS 100/5-75] to be incorporated by reference; provided, however,

- A) One or two paper copies may be substituted for the corresponding number of required paper originals if the rulemaking proposal includes the copyright owner's written authorization for the rulemaking proponent to create the paper copy or copies.
- B) The proponent may file no more than two authorized copies in lieu of the corresponding number of required originals.
- C) Any ~~such~~ copyrighted document that is proposed for incorporation by reference is prohibited from being filed electronically and must instead be filed only in paper. The remainder of the rulemaking proposal may be filed through COOL.

These amendments are reflected in the Board's order below.

Turning to the remaining issues raised by the Agency, the Agency asserts that requiring four originals is unjustifiable and excessive. At first notice, the Board explained that it needs a sufficient number of originals of copyrighted IBR material to meet its obligations to comply with Section 5-75(c) of the IAPA (5 ILCS 100/5-75(c)), to fulfill requests from JCAR for an IBR document, and to include in the record in any appeal to the appellate court. *See* Board Op. at 5. The Agency argues, however, that a single copy would allow the Board to (a) satisfy any requests by members of the public, and (b) comply with the IAPA. The Board disagrees. Section 5-75(c) of the IAPA requires the Board to "maintain a copy" of an IBR document and to "make [the document] available for inspection *and copying* at no more than cost." 5 ILCS 100/5-75(c) (emphasis added). This statutory requirement mandates that an agency do more than merely maintain a copy of copyright-protected IBR material for the public to review upon request, as the Agency's comment implies. Rather, under Section 5-75(c), the Board must make such material available to the public for copying at no more than cost. The Agency does not

contend otherwise. Further, if the Board were to make a copy of a copyrighted IBR document for a requesting citizen, to meet its obligation under the IAPA, the Board would risk copyright infringement liability. The Agency does not deny this. And, as the Board stated at first notice, the Board does not believe that it can comply with Section 5-75(c) of the IAPA by passing along to a requester the full cost of purchasing copyright-protected material from the publisher. *See* Board Op. at 5.

The Agency also maintains that the copyright-protected materials it generally proposes for IBR are widely known, available, and familiar to regulators and the regulated community. Setting aside instances where that is not the case, however, this fact does not relieve the Board of its obligation under the IAPA to make IBR standards available to the public upon request for copying at no more than cost. Documents are incorporated by reference to make the document a part of the Board's rules "without publishing the incorporated material in full." 5 ILCS 100/5-75(a) (2012). Thus, an IBR standard becomes the law. It should not be unduly burdensome for an interested citizen to obtain a copy of an Illinois law.

Nor is the Board persuaded to modify the proposed rule based on the Agency's claim that copyright-protected IBR material would be exempt under FOIA. The Agency points in particular to the FOIA exemption for "commercial information . . . furnished under a claim that . . . [it is] proprietary. . . ." PC 2 at 4, citing 5 ILCS 140/7(1)(g). Without commenting on the merits of the Agency's legal argument, the Board notes that its first-notice opinion did not mention the Board's needing additional originals of copyright-protected IBR material to satisfy its FOIA obligations. Rather, the Board cited its obligation under Section 5-75(c) of the IAPA; and that provision includes no express exception for documents exempt under FOIA. Thus, even if an IBR document were exempt under FOIA, that would not mean that an agency would be relieved of its obligations under Section 5-75(c) of the IAPA.

Further, the Board cannot agree with the Agency's position that there is no need for the Board to have a complete original of IBR material to provide to JCAR upon request or to include in the record on appeal. JCAR has IBR oversight authority pursuant to the IAPA (5 ILCS 100/5-75(b) (2012)) and could ask for copyright-protected material even after it has become part of the law through IBR (*id.* at 100/5-130). Since an IBR standard constitutes Illinois law, it stands to reason that JCAR could insist on a complete original or copy of IBR material rather than accepting a page or two. Regarding appeals, the Agency's statement that the appellate court would rarely "compel the production of full original copies" (PC 2 at 4) assumes the Board is not required to include the actual, entire copyrighted IBR standard in the record on appeal. However, if a Board rulemaking decision is appealed, the Board must file the *entire* record with the court. *See* Ill. Sup. Ct. R. 335(d). This, of course, would encompass the rulemaking proposal filed with the Board, including any complete copyrighted standards proposed for IBR.

In addition, the Board disagrees that it would be more "cost-effective" for the "State of Illinois" to pay for IBR materials requested by JCAR or the appellate court than to require adequate copies of such materials to be filed by a rulemaking proponent. PC 2 at 4-5. In this context, the "State of Illinois" clearly means an administrative agency—and presumably one other than the Agency, such as the Board. For the reasons discussed above, the Board finds it

inappropriate to shift from the rulemaking proponent to the Board the cost of meeting reasonably foreseeable requests for standards the proponent proposes for IBR.

Copyrighted IBR Documents Already in the Board's Possession. For several reasons, the Board declines to provide, by rule, that a rulemaking proponent need not file copyright-protected IBR material if it has previously been subject to IBR or is otherwise already in the Board's possession. PC 2 at 5. First, each record of a pending rulemaking should be complete. Members of the public or others may access the record to prepare for hearing or to draft public comments (*see* 2 Ill. Adm. Code 2175.300(d)), which will require access to a paper original or copy of copyright-protected material since such material will not be posted on COOL. Second, a rulemaking proponent would not know which copyrighted standards are in the Board's possession. Third, the Board may have only one copy of an IBR material, and therefore require additional copies to meet its legal obligations. Finally, even if the Board does possess a particular standard, there is no guarantee that it is the current industry standard or the version that the rulemaking proponent proposes for IBR. Industry standards are often updated regularly; thus, there may be a mismatch between the standard proposed for IBR and a version of the standard previously incorporated by reference.

Although the Board declines to adopt the blanket rule that the Agency proposes, the Board will continue to entertain motions for waiver of the filing requirement, including those that assert the Board already possesses one or more copies of the IBR standard. The Board would expect a motion along those lines to specify the rules in which the material was previously subject to IBR or to explain why the Board should otherwise already have a copy of the document.

Section 101.1060(d)—Time of Completion of E-Mail Service

Board's First-Notice Proposal

At first notice, subsection (d) of proposed Section 101.1060, regarding e-mail service of filings, provides that service of a document by e-mail is deemed complete on the date of successful e-mail transmission. However, the proposed rule also states that to the extent a document is served outside standard business hours—*i.e.*, after 4:30 p.m.—or on a non-business day, service would be deemed to have occurred on the next business day.

Schiff (PC 1)

Schiff suggests that the Board amend proposed Section 101.1060(d) on determining when a successfully e-mailed document is deemed to have been served. Specifically, Schiff maintains that when a document is e-mailed after 5:00 p.m.—rather than after 4:30 p.m.—on a weekday, the document should be deemed to have been served on the next business day. PC 1 at 2. According to Schiff, with the Board's 4:30 p.m. filing deadline, allowing e-mail service by 5:00 p.m. to count as service that day would conveniently provide one-half hour for a party to provide e-mail service once the document is filed with the Board. *Id.*

Board Discussion

The Board agrees with Schiff's suggestion that a successful e-mail transmission by 5:00 p.m. (rather than by 4:30 p.m.) should count as service on the day of transmission. At second notice, the Board accordingly amends proposed Section 101.1060(d) so that a document successfully e-mailed *after 5:00 p.m.* is deemed served the next business day.

Section 101.1060(e)—Documentation of E-Mail Service

Board's First-Notice Proposal

As proposed at first notice, new Section 101.1060(e)(4) would require an affidavit or certificate of e-mail service to specify the date and time of e-mail transmission. The first-notice proposal included a sample affidavit of e-mail service for non-attorneys (Part 101.Appendix H, Illustration A) and, for attorneys, a sample certificate of e-mail service (Part 101.Appendix H, Illustration B).

Schiff (PC 1)

As proposed at first notice, new Section 101.1060(e)(4) would require the affidavit or certificate of e-mail service to include not only the date of e-mail transmission, but also the "time" at which the document was transmitted by e-mail. This requirement is illustrated in a sample affidavit for non-attorneys who serve the document by e-mail (101.Appendix H, Illustration A) and in a sample certificate for attorneys who serve the document by e-mail (101.Appendix H, Illustration B).

Schiff states its assumption that the affidavit or certificate of e-mail service would not be a separate filing with the Clerk, but instead would accompany the document being served. PC 1 at 1. According to Schiff, having the affidavit or certificate identify the time at which an e-mail is to be sent is "practicably impossible, especially for the non-attorney who must have the affidavit of service notarized." *Id.* Schiff recommends that the Board delete the first-notice requirement of specifying the e-mail transmission time in the affidavit or certificate of service. PC 1 at 2. Alternatively, Schiff proposes that the Board require the affidavit or certificate to show that e-mail service on a particular date was completed by a specified time (*e.g.*, "by 5pm on [DATE]"). *Id.*

Agency (PC 2)

The Agency shares Schiff's concern about how to document the specific time of e-mail service. The Agency observes that proposed Section 101.1060(e) "expressly requires an affidavit or certificate of e-mail service to be filed with any document" that is being e-mail served. PC 2 at 6. Like Schiff, the Agency states that the person certifying the time of e-mail transmission "cannot know, at the time he or she makes that certification, whether his or her e-mail message will actually be transmitted at the certified time." *Id.* at 6-7. The Agency also claims, without citation, that requiring the documentation of service to specify the e-mail transmission time "goes beyond what state and federal courts typically require for their

electronic filing programs.” *Id.* at 7. The Agency asks that the Board change the rule to require documentation of only the *date* of e-mail transmission, *i.e.*, not the time. The Agency adds, however, that if there is a need to certify the transmission time, the Board should require the affidavit or certificate to state that the document was transmitted by e-mail “before a specific time.” *Id.*

Board Discussion

The first-notice rule, which would require documentation of e-mail service to specify the date and “time” of e-mail transmission, was taken verbatim from court rules for documenting e-mail service: Illinois Supreme Court Rule 12(b)(6) and Cook County Circuit Court General Administrative Order No. 2014-02, Section 11(c)(iv). Nonetheless, Schiff and the Agency do raise a valid concern that persons, particularly non-attorneys, may misinterpret the provision as requiring that documentation of e-mail service both (1) identify the precise time when the document is transmitted *and* (2) be attached to the document being e-mailed. Logically, however, the serving party will not know the exact time service has been achieved until the e-mail transmission is complete. Schiff correctly assumes that the affidavit or certificate of e-mail service is to accompany the document being served and is not a separate filing with the Clerk.

The intent of the first-notice proposal was that the documentation of e-mail service simply state the “time by when” the document is being e-mailed. The Board makes this explicit at second notice in Illustrations A and B of Appendix H. The timing of e-mail transmission is significant because it affects the date on which the document is considered to have been served. *See* proposed Section 101.1060(d). The Board therefore declines to eliminate all timing information from the affidavit or certificate of e-mail service, as the Agency suggests. As reflected in Illustrations A and B, documentation of e-mail service must only state that the e-mail transmission took place before 5:00 p.m. on the date the e-mail was sent.

The Board also notes that Illustration B of Appendix H, which provides a form certificate of e-mail service where service is done by attorney, was struck from the first-notice version of the proposed amendments and, therefore, did not appear in the *Illinois Register*. Illustration A, which provides a form affidavit of service where service is made by a non-attorney, was published, however. Although they are similar, the forms set out in Illustrations A and B are not identical, and they are directed at distinct participants in Board proceedings. Accordingly, at second notice the Board restores Illustration B of Appendix H to the proposed rules.

Section 101.1070—Requiring Consent to E-Mail Service

Board’s First-Notice Proposal

Proposed Section 101.1070 would allow a person, in any proceeding, to consent to service by e-mail rather than paper delivery by filing a consent form with the Clerk’s Office. The proposed rule would also allow a person to revoke consent to e-mail service at any time during the proceeding by filing a notice of revocation with the Clerk’s Office.

Schiff (PC 1)

As proposed at first notice, Section 101.1070 allows any person, in any proceeding, to consent to e-mail service of documents in lieu of receiving paper documents. Schiff proposes adding a new subsection (e) that would allow the hearing officer to “clarify in each proceeding” whether the consent to e-mail service means “all parties *must* serve the consenting recipient by e-mail” or “*either* e-mail or paper service would suffice.” PC 1 at 2 (emphasis in original). Schiff recognizes, however, that proposed Section 101.1000(e) states: “[n]othing in this Subpart requires a person to serve a document by e-mail or to accept service of a document by e-mail.” Accordingly, to effectuate its intent, Schiff proposes adding the words “except as ordered by the hearing officer” to the end of this Section 101.1000(e) language. *Id.* Schiff believes that with its approach, the serving party’s preference between e-mail service and paper service could vary from proceeding to proceeding, depending upon things like document size and the number of persons who must be served. *Id.*

Agency (PC 2)

The Agency “strongly” favors the “option to serve” documents by e-mail and expresses concern with the Board’s proposal that e-mail service “may only be used if the recipient has consented to e-mail service in the proceeding and has not revoked the consent.” PC 2 at 6. The Agency believes that e-mail service has been used in the past “without permission” and questions how the Board will enforce the consent requirement proposed at first notice. *Id.* The Agency suggests that the Board allow e-mail service for “all filings without limitation.” *Id.* This would, according to the Agency, reduce costs and the need to “routinely check the docket to see who may have revoked e-mail service permission.” *Id.*

Board Discussion

Schiff proposes that Section 101.1070 be amended to allow a hearing officer, in a particular proceeding, to require a party to serve a document by e-mail rather than in paper. The Board is not persuaded that this is appropriate. Section 101.1070, like the proposed rules on electronic filing, are inherently flexible: it allows, but does not require, a party to effect service by paper delivery or by e-mail, with the recipient’s proceeding-specific consent. The intent of the proposed rules is to offer parties the convenience and other benefits of e-mail service—again, with the recipient’s consent to such service in the particular proceeding—but not to force any party to abandon his or her preferences for one method of service or another. Schiff’s proposed amendment would allow a hearing officer to override the proposed rule’s flexibility, to no apparent benefit. The serving party’s preference between e-mail and paper service may change from document to document; the Board sees no reason not to honor that choice, assuming, of course, that the document is not one that must be served in paper, *i.e.*, enforcement complaints, administrative citations, and Environmental Management System Agreement statements of deficiency. *See* proposed Sections 101.1060(a), (b). Moreover, Schiff’s proposed amendment would require the hearing officer, conceivably at the expense of more pressing matters, to make an additional procedural ruling in any proceeding in which any party had consented to e-mail service. *See* 35 Ill. Adm. Code 101.502. Nor does Schiff suggest any criteria to guide the

hearing officer's decision, which would at a minimum be needed where participants' service preferences conflict.

Similarly, the Board declines to adopt the Agency's proposal to allow e-mail service for all filings, without limitation. As discussed above, the proposed rule adds another, potentially more convenient, method of service. But it requires neither that a party consent to service by e-mail nor that a party serve a document by e-mail on a recipient that has consented to such service. There may be a number of reasons that a recipient does not wish to receive filings by e-mail, including that the recipient has no or unreliable access to e-mail. The Board is not inclined to expand the options available to the serving party despite the recipient's wishes. The Agency questions how the Board would enforce the rule when a document is served by e-mail without the recipient's consent, but the Board may sanction any person who "unreasonably fails to comply" with any procedural rule. 35 Ill. Adm. Code 101.800(a). The Agency also suggests the serving party would have to routinely check COOL to see who may have revoked consent to e-mail service. But proposed Section 101.1070(c) requires notices of revocation to be filed with the Clerk's Office; as such, the notices would have to be served on all parties to the affected proceeding.

CONCLUSION

For second-notice review by JCAR, the Board proposes the following amendments to its procedural rules, Parts 101-30 (35 Ill. Adm. Code 101-30). The Board includes in these amendments non-substantive changes suggested by JCAR.

ORDER

The Board directs the Clerk to submit to JCAR the following proposed amendments to the Board's procedural rules. Proposed additions are underlined, and proposed deletions appear stricken.

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

PART 101
GENERAL RULES

SUBPART A: GENERAL PROVISIONS

Section	
101.100	Applicability
101.102	Severability
101.104	Repeals
101.106	Board Authority
101.108	Board Proceedings
101.110	Public Participation

<u>101.111</u>	<u>Informal Recordings of Board Meetings</u>
101.112	Bias and Conflict of Interest
101.114	Ex Parte Communications

SUBPART B: DEFINITIONS

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

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

Section	
101.300	Computation of Time
101.302	Filing of Documents
101.304	Service of Documents
101.306	Incorporation of Documents <u>from Another Proceeding</u> by Reference
101.308	Statutory Decision Deadlines and Waiver of Deadlines

SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

Section	
101.400	Appearances, Withdrawals, and Substitutions of Attorneys in Adjudicatory Proceedings
101.402	Intervention of Parties
101.403	Joinder of Parties
101.404	Agency as a Party in Interest
101.406	Consolidation of Claims
101.408	Severance of Claims

SUBPART E: MOTIONS

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

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

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

SUBPART G: ORAL ARGUMENT

Section	
101.700	Oral Argument

SUBPART H: SANCTIONS

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

SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

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

SUBPART J: ELECTRONIC FILING AND E-MAIL SERVICE

<u>Section</u>	
<u>101.1000</u>	<u>Electronic Filing and E-Mail Service</u>

<u>101.1010</u>	<u>Electronic Filing Authorization and Signatures</u>
<u>101.1020</u>	<u>Filing Electronic Documents</u>
<u>101.1030</u>	<u>Form of Electronic Documents for Filing</u>
<u>101.1040</u>	<u>Filing Fees</u>
<u>101.1050</u>	<u>Documents Required in Paper or Excluded from Electronic Filing</u>
<u>101.1060</u>	<u>E-Mail Service</u>
<u>101.1070</u>	<u>Consenting to Receipt of E-Mail Service</u>

101.APPENDIX A	Captions
101.ILLUSTRATION A	Enforcement Case
101.ILLUSTRATION B	Citizen's Enforcement Case
101.ILLUSTRATION C	Variance
101.ILLUSTRATION D	Adjusted Standard Petition
101.ILLUSTRATION E	Joint Petition for an Adjusted Standard
101.ILLUSTRATION F	Permit Appeal
101.ILLUSTRATION G	Underground Storage Tank Appeal
101.ILLUSTRATION H	Pollution Control Facility Siting Appeal
101.ILLUSTRATION I	Administrative Citation
101.ILLUSTRATION J	General Rulemaking
101.ILLUSTRATION K	Site-specific Rulemaking
101.APPENDIX B	Appearance Form
101.APPENDIX C	Withdrawal of Appearance Form
101.APPENDIX D	Notice of Filing
101.APPENDIX E	<u>Affidavit or Certificate of Service</u>
101.ILLUSTRATION A	Service by Non-Attorney
101.ILLUSTRATION B	Service by Attorney
101.APPENDIX F	Notice of Withdrawal (Repealed)
101.APPENDIX G	Comparison of Former and Current Rules (Repealed)
101.APPENDIX H	<u>Affidavit or Certificate of E-Mail Service</u>
101.ILLUSTRATION A	<u>E-Mail Service by Non-Attorney</u>
101.ILLUSTRATION B	<u>E-Mail Service by Attorney</u>
101.APPENDIX I	<u>Consent to Receipt of E-Mail Service</u>

AUTHORITY: Implementing Sections 5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27] and Section 25-101 of the Electronic Commerce Security Act [5 ILCS 175/25-101].

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

effective December 3, 2010; amended in R12-22 at 36 Ill. Reg. 9211, effective June 7, 2012; amended in R13-9 at 37 Ill. Reg. 1655, effective January 28, 2013; amended in R14-21 at 38 Ill. Reg. _____, effective _____

SUBPART A: GENERAL PROVISIONS

Section 101.110 Public Participation

- a) **General.** The Board encourages public participation in all of its proceedings. The extent to which the law allows for the participation varies, depending on the type of Board proceeding involved, the party status of the person or persons seeking to participate, and the rules governing that type of proceeding. Public participation in particular proceedings may be more specifically delineated by Board or hearing officer order consistent with the provisions of applicable law and the Board's procedural rules. (See Sections 101.114 and 101.628 of this Part.)
- b) **Party/Non-Party Status.** The issue of who constitutes a proper party in each type of adjudicatory proceeding before the Board is addressed in the rules. A person who wishes to participate in a Board adjudicatory proceeding and is not a party will be deemed a participant and will have only those rights specifically provided in these rules. A person who wishes to participate in a Board regulatory proceeding will be deemed a participant and will have only those rights specifically provided in these rules.
- c) **Amicus Curiae Briefs.** Amicus curiae briefs may be filed in any adjudicatory proceeding by any interested person, provided permission is granted by the Board. Response briefs may be allowed by permission of the Board, but not as of right. The briefs must consist of argument only and may not raise facts that are not in evidence in the relevant proceeding. Amicus curiae briefs, and any responses, will be considered by the Board only as time allows. The briefs will not delay decision-making of the Board. (See also Section 101.302(k) of this Part.)
- d) **Public Remarks.** During the time period designated for public remarks at a Board meeting, any person physically present at the meeting, once recognized by the Chairman, may make public remarks to the Board concerning a proceeding listed on that meeting's agenda.
 - 1) Sign-In Sheet. Beginning at least 15 minutes before the scheduled start of each Board meeting, a public remarks sign-in sheet will be available to the public at the meeting. Anyone who wishes to make public remarks at the meeting must provide the following information on the sign-in sheet:
 - A) Full name;
 - B) Any person he or she is representing; and

- C) The docket number of the proceeding on which he or she would like to make public remarks.
- 2) Time Limits. A time period of up to 30 minutes at the beginning of each Board meeting, as designated on the meeting agenda, is reserved for public remarks. The Chairman may extend the duration of the public remarks portion of the meeting as necessary to accommodate persons who signed in pursuant to subsection (d)(1) of this Section. A person's public remarks on a given proceeding must not exceed five minutes in length, but this time period may be extended with the Chairman's permission.
- 3) Nature of Public Remarks. Public remarks are not made under oath or affirmation and are not subject to cross-examination. Public remarks that are relevant to the proceeding for which they are made may be considered by the Board, but factual statements made during public remarks do not constitute evidence in the proceeding. The public remarks portion of a Board meeting is not a hearing and cannot be used to offer documentary or other physical evidence to the Board. The Chairman may direct persons to cease public remarks that are irrelevant, repetitious, or disruptive. Persons engaging in disorderly conduct may be asked by the Chairman to leave the meeting.
- 4) Transcription. The Board will arrange for public remarks to be transcribed. Transcripts of public remarks will be made a part of the record of the proceeding to which the remarks correspond. (See 5 ILCS 120/2.06(g).)

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

Section 101.111 Informal Recordings of Board Meetings

Any person may record a Board meeting by tape, film, or any other means if the recording process does not interfere with the conduct or decorum of the Board meeting. The Chairman may direct any person who is recording a Board meeting to limit or discontinue the recording if the recording process interferes with the conduct or decorum of the Board meeting.

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

SUBPART B: DEFINITIONS

Section 101.202 Definitions for Board's Procedural Rules

Unless otherwise provided in 35 Ill. Adm. Code 101-130, or unless a different meaning of a word or term is clear from the context, the following definitions also apply to the Board's procedural rules, found in 35 Ill. Adm. Code 101 through 130:

"Act" means the Environmental Protection Act [415 ILCS 5/1].

"Adjudicatory proceeding" means an action of a quasi-judicial nature brought before the Board pursuant to authority granted to the Board under Section 5(d) of the Act or as otherwise provided by law. Adjudicatory proceedings include enforcement, variance, permit appeal, pollution control facility siting appeal, Underground Storage Tank (UST) Fund determination, water well set back exception, adjusted standard, and administrative citation proceedings. Adjudicatory proceedings do not include regulatory, quasi-legislative, or informational proceedings.

"Adjusted standard" or "AS" means an alternative standard granted by the Board in an adjudicatory proceeding pursuant to Section 28.1 of the Act and 35 Ill. Adm. Code 104.Subpart D. The adjusted standard applies instead of the rule or regulation of general applicability.

"Administrative citation" or "AC" means a citation issued pursuant to Section 31.1 of the Act by the Agency, or by a unit of local government acting as the Agency's delegate pursuant to Section 4(r) of the Act.

"Administrative citation review-~~(appeal)~~" or "administrative citation appeal" means a petition for review of an administrative citation filed pursuant to Section 31.1(d) of the Act. (See 35 Ill. Adm. Code 108.)

"Affidavit" means a sworn, signed statement witnessed by a notary public.

"Affidavit of service" means an affidavit that states that service of a document upon specified persons was made, and the manner in which, and date upon which, service was made.

"Agency" means the Illinois Environmental Protection Agency as established by Section 4 of the Act.

"Agency recommendation" means the document filed by the Agency pursuant to Sections 37(a) and 28.1(d)(3) of the Act in which the Agency provides its recommended disposition of a petition for variance or an adjusted standard. This includes a recommendation to deny, or a recommendation to grant with or without conditions. (See 35 Ill. Adm. Code 104.218 and 104.416.)

"Amicus curiae brief" means a brief filed in a proceeding by any interested person who is not a party. (See Sections 101.110 and 101.628 of this Part.)

"Applicant" means any person who submits, or has submitted, an application for a permit or for local siting approval pursuant to any of the authorities to issue permits or granting of siting approval identified in Sections 39, 39.1, and 39.5 of the Act.

"Article" means *any object, material, device or substance, or whole or partial copy thereof, including any writing, record, document, recording, drawing, sample, specimen, prototype, model, photograph, culture, microorganism, blueprint or map* [415 ILCS 5/7.1].

"Attorney General" means the Attorney General of the State of Illinois or representatives thereof.

"Authorized representative" means any person who is authorized to act on behalf of another person.

"Board" means the Illinois Pollution Control Board as created in Section 5 of the Act or, if applicable, its designee.

"Board decision" means an opinion or an order voted in favor of by at least three members of the Board at an open Board meeting except in a proceeding to remove a seal under Section 34(d) of the Act.

"Board designee" means an employee of the Board who has been given authority by the Board to carry out a function for the Board (e.g., the Clerk, Assistant Clerk of the Board, or hearing officer).

"Board meeting" means an open meeting held by the Board pursuant to Section 5(a) of the Act in which the Board makes its decisions and determinations.

"Board's procedural rules" means the Board's regulations set forth at 35 Ill. Adm. Code 101 through 130.

"Brief" means a written statement that contains a summary of the facts of a proceeding, the pertinent laws, and an argument of how the law applies to the facts supporting a position.

"CAAPP" means the Clean Air Act Permit Program, as adopted in Section 39.5 of the Act.

"Certificate of acceptance" means a certification, executed by a successful petitioner in a variance proceeding, in which the petitioner agrees to be bound by all terms and conditions that the Board has affixed to the grant of variance.

"Chairman" means the Chairman of the Board designated by the Governor pursuant to Section 5(a) of the Act.

"Citizen's enforcement proceeding" means an enforcement action brought before the Board pursuant to Section 31(d) of the Act by any person who is not authorized to bring the action on behalf of the People of the State of Illinois.

"Clean Air Act" or "CAA" *means the federal Clean Air Act, as now and hereafter amended, 42 USC 7401 et seq.* [415 ILCS 5/39.5]

"Clean Water Act" means the federal Clean Water Act, 33 USC 1251 et seq.

"Clerk" means the Clerk of the Board.

"Clerk's Office On-Line" or "COOL" means the Board's web-based file management system that allows electronic filing of and access to electronic documents in the records of the Board's adjudicatory and regulatory proceedings. COOL is located on the Board's website.

"Complaint" means the initial filing that begins an enforcement proceeding pursuant to Section 31 of the Act and 35 Ill. Adm. Code 103.

"Compliance plan" means a detailed description of a program designed to achieve compliance with the Act and Board regulations.

"Copy" means *any facsimile, replica, photograph or other reproduction of an article, and any note, drawing or sketch made of or from an article* [415 ILCS 5/7.1].

"Counter-complaint" means a pleading that a respondent files setting forth a claim against a complainant. (See 35 Ill. Adm. Code 103.206.)

"Cross-complaint" means a pleading that a party files setting forth a claim against a co-party. (See 35 Ill. Adm. Code 103.206.)

"Cross-media impacts" means impacts that concern multiple environmental areas, such as air, land and/or water.

"Decision date" means the date of the Board meeting immediately preceding the decision deadline.

"Decision deadline" means the last day of any decision period, as established by law, within which the Board is required to render a decision in an adjudicatory proceeding. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions respectively.)

"Decision period" means the period of time established by the Act within which the Board is required to make a Board decision in certain adjudicatory proceedings. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions, respectively.)

"Deinked stock" means paper that has been processed to remove inks, clays, coatings, binders and other contaminants [415 ILCS 20/2.1].

"Delegated unit" means the unit of local government to which the Agency has delegated its administrative citation or other function pursuant to Section 4(r) of the Act.

~~"DNR" means the Illinois Department of Natural Resources.~~

"Digital signature" means a type of electronic signature created by transforming an electronic document using a message digest function and encrypting the resulting transformation with an asymmetric cryptosystem using the signer's private key such that any person having the initial untransformed electronic document, the encrypted transformation, and the signer's corresponding public key can accurately determine whether the transformation was created using the private key that corresponds to the signer's public key and whether the initial electronic document has been altered since the transformation was made. A digital signature is a security device [5 ILCS 175/5-105].

"Discovery" means a pre-hearing process that can be used to obtain facts and information about the adjudicatory proceeding in order to prepare for hearing. The discovery tools include depositions upon oral and written questions, written interrogatories, production of documents or things, and requests for admission.

"DNR" means the Illinois Department of Natural Resources.

"DOA" means the Illinois Department of Agriculture.

"Duplicative" means the matter is identical or substantially similar to one brought before the Board or another forum.

"Electronic" includes electrical, digital, magnetic, optical, electromagnetic, or any other form of technology that entails capabilities similar to these technologies [5 ILCS 175/5-105].

"Electronic document" means any notice, information, or filing generated, communicated, received or stored by electronic means to use in an information system or to transmit from one information system to another. (See 5 ILCS 175/5-105.)

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic document [5 ILCS 175/5-105].

"Environmental Management System Agreement" or "EMSA" means the agreement between the Agency and a sponsor, entered into under Section 52.3 of

the Act and 35 Ill. Adm. Code 187, that describes the innovative environmental measures to be implemented, schedules to attain goals, and mechanisms for accountability.

"Enforcement proceeding" means an adjudicatory proceeding brought upon a complaint filed pursuant to Section 31 of the Act by the Attorney General, State's Attorney, or other persons, in which the complaint alleges violation of the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order.

"Ex parte communication" means *any written or oral communication by any person that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi-adjudicatory, investment, or licensing matters pending before or under consideration by the Board. "Ex parte communication" does not include the following:*

statements by a person publicly made in a public forum, including pleadings, transcripts, ~~and~~ public comments, and public remarks made part of the proceeding's record [5 ILCS 430/5-50(b)(i)];

statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter [5 ILCS 430/5-50(b)(ii)]; and

statements made by a State employee of the Board to Board members or other employees of the Board: [5 ILCS 430/5-50(b) (iii)]. For purposes of this definition, "Board employee" means a person the Board employs on a full-time, part-time, contract or intern basis. (See Section 101.114 of this Part.)

"Fast Track rulemaking" means a Clean Air Act rulemaking conducted pursuant to Section 28.5 of the Act.

"Federally required rule" means *a rule that is needed to meet the requirements of the federal Clean Water Act, Safe Drinking Water Act, Clean Air Act (including required submission of a State Implementation Plan), or Resource Conservation and Recovery Act, other than a rule required to be adopted under subsection (c) of Section 13, Section 13.3, Section 17.5, subsection (a) or (d) of Section 22.4, or subsection (a) of Section 22.40 [415 ILCS 5/28.2].*

"Filing" means the act of delivering a document or article into the custody of the Clerk with the intention of incorporating that document or article into the record of a proceeding before the Board. The Clerk's Office is located at 100 West Randolph Street, Suite 11-500, Chicago, IL 60601. Electronic filing is done through COOL on the Board's website.

"Final order" means an order of the Board that terminates the proceeding leaving nothing further to litigate or decide and that is subject to judicial review ~~appealable to an appellate court pursuant to Section 41 of the Act.~~ (See Subpart I of this Part.)

"Frivolous" means a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.

"Hearing" means a public proceeding conducted by a hearing officer where the parties and other interested persons, as provided for by law and the Board's procedural rules, present evidence and argument regarding their positions.

"Hearing officer" means a person licensed to practice law in the State of Illinois who presides over hearings and otherwise carries out record development responsibilities as directed by the Board.

"IAPA" means the Illinois Administrative Procedure Act [5 ILCS 100].

"Identical-in-substance rules" or "identical-in-substance regulations" means *State regulations which require the same actions with respect to protection of the environment, by the same group of affected persons, as would federal regulations if USEPA administered the subject program in Illinois* [415 ILCS 5/7.2].

"Initial filing" means the filing that initiates a Board proceeding and opens a docket. For instance, the initial filing in an enforcement proceeding is the complaint; in a permit appeal it is a petition for review; and in a regulatory proceeding it is the proposal.

"Innovative environmental measures" means any procedures, practices, technologies or systems that pertain to environmental management and are expected to improve environmental performance when applied. (See 35 Ill. Adm. Code 106.Subpart G.)

"Inquiry hearing" means a hearing conducted by the Board for the purpose of seeking input and comment from the public regarding the need for a rulemaking proceeding in a specific area.

"Interlocutory appeal" means an appeal of a Board decision to the appellate court that is not dispositive of all the contested issues in the proceeding. (See Section 101.908 of this Part.) An interlocutory appeal may also be the appeal of a hearing officer ruling to the Board. (See Section 101.518 of this Part.)

"Intervenor" means a person, not originally a party to an adjudicatory proceeding, who voluntarily participates as a party in the proceeding with the leave of the Board. (See Section 101.402 of this Part.)

"Intervention" means the procedure by which a person, not originally a party to an adjudicatory proceeding, voluntarily comes into the proceeding as a party with the leave of the Board. (See Section 101.402 of this Part.)

"JCAR" means the Illinois General Assembly's Joint Committee on Administrative Rules established by the IAPA (see 5 ILCS 100/5-90).

"Joinder" means the procedure by which the Board adds a person, not originally a party to an adjudicatory proceeding, as a party to the proceeding. (See Section 101.403 of this Part and 35 Ill. Adm. Code 103.206.)

"Misnomer" means a mistake in name, giving an incorrect name in a complaint or other document with respect to any properly included party.

"Motion" means a request made to the Board or the hearing officer for the purposes of obtaining a ruling or order directing or allowing some act to be done in favor of the movant. (See definition of "movant" in this Section.)

"Movant" means the person who files a motion.

"New pollution control facility" means *a pollution control facility initially permitted for development or construction after July 1, 1981; or the area of expansion beyond the boundary of a currently permitted pollution control facility; or a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste* [415 ILCS 5/3.330(b)].

"Non-disclosable information" means *information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; information concerning secret manufacturing processes or confidential data submitted by any person under the Act* [415 ILCS 5/7(a)].

"Notice list" means the list of persons in a regulatory proceeding who will receive all Board opinions and orders and all hearing officer orders. Persons on a notice list generally do not receive copies of motions, public comments, or testimony. (See definition of "service list" in this Section.) (See also 35 Ill. Adm. Code 102.422.)

"Notice to reinstate" means a document filed that recommences the decision period after a decision deadline waiver has been filed. The notice will give the Board a full decision period in which to make a decision. (See Section 101.308 of this Part.)

"Oral argument" means a formal verbal statement of advocacy on a proceeding's legal questions made at a Board meeting with the Board's permission. (See Section 101.700 of this Part.)

"OSFM" means Office of the State Fire Marshal.

"OSFM appeal" means an appeal of an OSFM final decision concerning eligibility and deductibility made pursuant to Title XVI of the Act.

"Participant" means any person, not including the Board or its staff, who takes part in an adjudicatory proceeding who is not a party, or a person who takes part in a regulatory or other quasi-legislative proceeding before the Board. A person becomes a participant in any of several ways, including filing a comment, being added to the notice list of a particular proceeding, ~~or~~ testifying at hearing, or making public remarks at a Board meeting.

"Participant in a CAAPP Comment Process" means a person who takes part in a Clean Air Act Permit Program (CAAPP) permit hearing before the Agency or comments on a draft CAAPP permit.

"Party" means the person by or against whom a an adjudicatory proceeding is brought or who is granted party status by the Board through intervention or joinder.

"Party in interest" means the Agency when asked to conduct an investigation pursuant to Section 30 of the Act during an ongoing proceeding. (See Section 101.404 of this Part.)

"Peremptory rulemaking" means *any rulemaking that is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions that preclude compliance with the general rulemaking requirements of Section 5-40 of the IAPA and that preclude the exercise by the Board as to the content of the rule it is required to adopt.* [5 ILCS 100/5-50]

"Permit appeal" means an adjudicatory proceeding brought before the Board pursuant to Title X of the Act.

"Person" means *any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.* [415 ILCS 5/3.315]

"Petition" means the initial filing in an adjudicatory proceeding other than an enforcement proceeding, including permit appeals, OSFM appeals, UST appeals, appeals of pollution control facility siting decisions, variances and adjusted standards.

"Pilot project" means an innovative environmental project that covers one or more designated facilities, designed and implemented in the form of an EMSA. (See Section 52.3 of the Act.)

"Pollution control facility" means *any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act. The following are not pollution control facilities:*

waste storage sites regulated under 40 CFR 761.42;

sites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person;

sites or facilities at which the State is performing removal or remedial action pursuant to Section 22.2 or 55.3 of the Act;

abandoned quarries used solely for the disposal of concrete, earth materials, gravel, or aggregate debris resulting from road construction activities conducted by a unit of government or construction activities due to the construction and installation of underground pipes, lines, conduit or wires off of the premises of a public utility company which are conducted by a public utility;

sites or facilities used by any person to specifically conduct a landscape composting operation;

regional facilities as defined in the Central Midwest Interstate Low-Level Radioactive Waste Compact;

the portion of a site or facility where coal combustion wastes are stored or disposed of in accordance with subdivision (r)(2) or (r)(3) of Section 21 of the Act;

the portion of a site or facility used for the collection, storage or processing of waste tires as defined in Title XIV;

the portion of a site or facility used for treatment of petroleum contaminated materials by application onto or incorporation into the soil

surface and any portion of that site or facility used for storage of petroleum contaminated materials before treatment. Only those categories of petroleum listed in Section 57.9(a)(3) of the Act are exempt under this definition;

the portion of a site or facility where used oil is collected or stored prior to shipment to a recycling or energy recovery facility, provided that the used oil is generated by households or commercial establishments, and the site or facility is a recycling center or a business where oil or gasoline is sold at retail;

processing sites or facilities that receive only on-specification used oil, as defined in 35 Ill. Adm. Code 739, originating from used oil collectors for processing that is managed under 35 Ill. Adm. Code 739 to produce products for sale to off-site petroleum facilities, if these processing sites or facilities are:

located within a home rule unit of local government with a population of at least 30,000 according to the 2000 federal census, that home rule unit of local government has been designated as an Urban Round II Empowerment Zone by the United States Department of Housing and Urban Development, and that home rule unit of local government has enacted an ordinance approving the location of the site or facility and provided funding for the site or facility; and

in compliance with all applicable zoning requirements;

the portion of a site or facility utilizing coal combustion waste for stabilization and treatment of only waste generated on that site or facility

when used in connection with response actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the federal Resource Conservation and Recovery Act of 1976, or the Illinois Environmental Protection Act or as authorized by the Agency;

the portion of a site or facility that accepts exclusively general construction or demolition debris, is located in a county with a population over 3,000,000 as of January 1, 2000 or in a county that is contiguous to such a county, and is operated and located in accordance with Section 22.38 of the Act;

the portion of a site or facility, located within a unit of local government that has enacted local zoning requirements, used to accept, separate, and process uncontaminated broken concrete, with or without protruding metal bars, provided that the uncontaminated broken concrete and metal

bars are not speculatively accumulated, are at the site or facility no longer than one year after their acceptance, and are returned to the economic mainstream in the form of raw materials or products;

the portion of a site or facility located in a county with a population over 3,000,000 that has obtained local siting approval under Section 39.2 of the Act for a municipal waste incinerator on or before July 1, 2005 and that is used for a non-hazardous waste transfer station;

the portion of a site or facility located in a county with a population greater than 3,000,000 that has obtained local siting approval, under Section 39.2 of the Act, for a municipal waste incinerator on or before July 1, 2005 and that is used for wood combustion facilities for energy recovery that accept and burn only wood material, as included in a fuel specification approved by the Agency;

effective January 1, 2008, a site or facility that temporarily holds in transit for 10 days or less, non-putrescible solid waste in original containers, no larger in capacity than 500 gallons, provided that such waste is further transferred to a recycling, disposal, treatment, or storage facility on a non-contiguous site and provided such site or facility complies with the applicable 10-day transfer requirements of the federal Resource Conservation and Recovery Act of 1976 and United States Department of Transportation hazardous material requirements. For purposes of this Section only, "non-putrescible solid waste" means waste other than municipal garbage that does not rot or become putrid, including, but not limited to, paints, solvent, filters, and absorbents;

a transfer station used exclusively for landscape waste, including a transfer station where landscape waste is ground to reduce its volume, where the landscape waste is held no longer than 24 hours from the time it was received;

the portion of a site or facility that is used for the composting of food scrap, livestock waste, crop residue, uncontaminated wood waste, or paper waste, including, but not limited to, corrugated paper or cardboard, and meets all of the following requirements:

there must not be more than a total of 30,000 cubic yards of livestock waste in raw form or in the process of being composted at the site or facility at any one time;

all food scrap, livestock waste, crop residue, uncontaminated wood waste, and paper waste must, by the end of each operating day, be processed and placed into an enclosed vessel in which air flow and temperature are controlled, or all of the following additional requirements must be met:

the portion of the site or facility used for the composting operation must include a setback of at least 200 feet from the nearest potable water supply well;

the portion of the site or facility used for the composting operation must be located outside the boundary of the 10-year floodplain or floodproofed;

except in municipalities with more than 1,000,000 inhabitants, the portion of the site or facility used for the composting operation must be located at least one-eighth of a mile from the nearest residence, other than a residence located on the same property as the site or facility;

the portion of the site or facility used for the composting operation must be located at least one-eighth of a mile from the property line of all of the following areas:

facilities that primarily serve to house or treat people that are immunocompromised or immunosuppressed, such as cancer or AIDS patients; people with asthma, cystic fibrosis, or

bioaerosol allergies; or children under the age of one year;

primary and secondary schools and adjacent areas that the schools use for recreation;

any facility for child care licensed under Section 3 of the Child Care Act of 1969; preschools; and adjacent areas that the facilities or preschools use for recreation;

by the end of each operating day, all food scrap, livestock waste, crop residue, uncontaminated wood waste, and paper waste must be processed into windrows or other piles and covered in a manner that prevents scavenging by birds and animals and that prevents other nuisances;

food scrap, livestock waste, crop residue, uncontaminated wood waste, paper waste, and compost must not be placed within 5 feet of the water table;

the site or facility must meet all of the requirements of the Wild and Scenic Rivers Act (16 USC: 1271 et seq.);

the site or facility must not restrict the flow of a 100-year flood, result in washout of food scrap, livestock waste, crop residue, uncontaminated wood waste, or paper waste from a 100-year flood, or reduce the temporary water storage capacity of the 100-year floodplain, unless measures are undertaken to provide alternative storage capacity, such as by providing lagoons, holding tanks, or drainage around structures at the facility;

the site or facility must not be located in any area where it may pose a threat of harm or destruction to the features for which:

an irreplaceable historic or archaeological site has been listed under the National Historic Preservation Act (16 USC: 470 et seq.) or the Illinois Historic Preservation Act [20 ILCS 3410];

a natural landmark has been designated by the National Park Service or the Illinois State Historic Preservation Office; or

a natural area has been designated as a Dedicated Illinois Nature Preserve under the Illinois Natural Areas Preservation Act [525 ILCS 30];

the site or facility must not be located in an area where it may jeopardize the continued existence of any designated endangered species, result in the destruction or adverse modification of the critical habitat for such species, or cause or contribute to the taking of any endangered or threatened species of plant, fish, or wildlife listed under the Endangered Species Act (16 USC: 1531 et seq.) or the Illinois Endangered Species Protection Act [520 ILCS 10];

the portion of a site or facility that is located entirely within a home rule unit having a population no less than 120,000 and no more than 135,000, according to the 2000 federal census, and that meets all of the following requirements:

the portion of the site or facility is used exclusively to perform testing of a thermochemical conversion technology using only woody biomass, collected as landscape waste within the boundaries of the home rule unit, as the hydrocarbon feedstock for

the production of synthetic gas in accordance with Section 39.9 of the Act;

the portion of the site or facility is in compliance with all applicable zoning requirements; and

a complete application for a demonstration permit at the portion of the site or facility has been submitted to the Agency in accordance with Section 39.9 of the Act within one year after July 27, 2010 (the effective date of Public Act 96-1314);

the portion of a site or facility used to perform limited testing of a gasification conversion technology in accordance with Section 39.8 of the Act and for which a complete permit application has been submitted to the Agency prior to one year from April 9, 2010 (the effective date of Public Act 96-887); ~~and~~

the portion of a site or facility that it used to incinerate only pharmaceuticals from residential sources that are collected and transported by law enforcement agencies under Section 17.9A of the Act; and

until July 1, 2017, the portion of a site or facility:

that is used exclusively for the transfer of commingled landscape waste and food scrap held at the site or facility for no longer than 24 hours after their receipt;

that is located entirely within a home rule unit having a population of either not less than 100,000 and not more than 115,000 according to the 2010 federal census or not less than 5,000 and not more than 10,000 according to the 2010 federal census;

that is permitted, by the Agency, prior to January 1, 2002, for the transfer of landscape waste; and

for which a permit application is submitted to the Agency by July 1, 2014 to modify an existing permit for the transfer of landscape waste to also include, on a demonstration basis not to exceed 18 months, the transfer of commingled landscape waste and food scrap. [415 ILCS 5/3.330]

"Pollution control facility siting appeal" means an appeal of a decision made by a unit of local government filed with the Board pursuant to Section 40.1 of the Act.

"Postconsumer material" means *paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after the waste has been passed through its end usage as a consumer item, including used corrugated boxes, old newspapers, mixed waste paper, tabulating cards, and used cordage.* Additionally, it includes *all paper, paperboard, and other fibrous wastes that are diverted or separated from the municipal solid waste stream* [415 ILCS 20/3(f)(2)(i) and (ii)]. (See also definition of "recycled paper" in this Section.)

"Prehearing conference" means a meeting held in an adjudicatory case to determine the status of the proceedings. A prehearing conference may also be a meeting held in a regulatory proceeding prior to the hearing, the purposes of which *shall be to maximize understanding of the intent and application of the proposal, if possible, and to attempt to identify and limit the issues of disagreement among participants to promote efficient use of time at hearing* [415 ILCS 5/27(d)]. (See 35 Ill. Adm. Code 102.404 and 102.406.)

"Proceeding" means an action conducted before the Board pursuant to authority granted under Section 5 of the Act or as otherwise provided by law. Board proceedings are of two types: quasi-legislative (rulemaking and inquiry proceedings) and quasi-judicial (adjudicatory proceedings).

"Proponent" means any person, not including the Board or its staff, who submits a regulatory proposal to the Board for the adoption, amendment, or repeal of a regulation.

"Provisional variance" means a short term variance sought by an applicant and issued by the Agency pursuant to Section 35(b) of the Act. (See 35 Ill. Adm. Code 104.Subpart C.)

"Public comment" means information submitted to the Board during a pending proceeding either by oral statement made at hearing or written statement filed with the Board.

"Public remarks" mean an oral statement that is publicly made at a Board meeting and directed to the Board concerning a proceeding listed on that meeting's agenda. (See Section 101.110(d) of this Subpart.)

"Qualitative description" means a narrative description pertaining to attributes and characteristics.

"Quantitative description" means a numerically based description pertaining to attributes and characteristics.

"RCRA variance" means a variance from a RCRA rule or a RCRA permit required pursuant to Section 21(f) of the Act.

"Record" means the official collection, as kept by the Clerk, of all documents and exhibits including pleadings, transcripts, and orders filed during the course of a proceeding.

"Recycled paper" means paper which contains at least 50% recovered paper material. The recovered paper material must contain at least 45% deinked stock or postconsumer material. (See also "postconsumer material" in this Section.)

"Registered agent" means a person registered with the Secretary of State for the purpose of accepting service for any entity, or a person otherwise authorized in writing as an agent for the purpose of accepting service for that entity.

"Regulatory hearing" or "proceeding" means a hearing or proceeding held pursuant to Title VII of the Act or other applicable law with respect to regulations.

"Regulatory relief mechanisms" means variances, provisional variances and adjusted standards. (See 35 Ill. Adm. Code 104.)

"Representing" means, for purposes of Part 130, *describing, depicting, containing, constituting, reflecting or recording* [415 ILCS 5/7.1].

"Requester" means, for purposes of Part 130, the person seeking from the agency the material claimed or determined to be a trade secret (see 415 ILCS 5/7.1).

"Resource Conservation and Recovery Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.).

"Rulemaking" or "rulemaking proceeding" means a proceeding brought under Title VII of the Act or other applicable law for the purpose of adoption, amendment, or repeal of a regulation.

"Sanction" means a penalty or other mechanism used by the Board to provide incentives for compliance with the Board's procedural rules, Board orders or hearing officer orders. (See also Subpart H of this Part.)

"SDWA" means the federal Safe Drinking Water Act (42 USC 300f et seq.).

"Service" means delivery of documents upon a person. (See Sections 101.300(c) and 101.304 of this Part.)

"Service list" means the list of persons designated by the hearing officer or Clerk in a regulatory or adjudicatory proceeding upon whom participants must serve motions, prefiled questions and prefiled testimony and any other documents that the participants file with the Clerk unless the hearing officer otherwise directs.

(See definition of "notice list" in this Section.) (See also 35 Ill. Adm. Code 102.422.)

"Severance" means the separation of a proceeding into two or more independent proceedings, each of which terminates in a separate, final judgment.

"Site-specific rule or regulation" means a proposed or adopted regulation, not of general applicability, that applies only to a specific facility, geographic site, or activity. (See 35 Ill. Adm. Code 102.208.)

"Sponsor" means the proponent of a pilot project that enters into an EMSA with the Agency.

"State enforcement proceeding" means an enforcement proceeding, other than a citizen's enforcement proceeding, that is brought pursuant to Section 31 of the Act.

"Stay" means a temporary suspension of the regular progress of a proceeding pursuant to an order of the Board or by operation of law. (See Section 101.514 of this Part.)

"Subpoena" means a command to appear at a certain time and place to give testimony upon a certain matter.

"Subpoena duces tecum" means a document that compels the production of specific documents and other items at a specified time and place.

"Summary judgment" means the disposition of an adjudicatory proceeding without hearing when the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (See Section 101.516 of this Part.)

"Third party complaint" means a pleading that a respondent files setting forth a claim against a person who is not already a party to the proceeding. (See 35 Ill. Adm. Code 103.206.)

"Trade secret" means *the whole or any portion or phase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.* [415 ILCS 5/3.490]

"Transcript" means the official recorded testimony from a hearing or public remarks from a Board meeting.

"USEPA" means the United States Environmental Protection Agency.

"Underground storage tank appeal" or "UST appeal" means an appeal of an Agency final decision made pursuant to Title XVI of the Act.

"UST" means underground storage tank.

"Variance" means a temporary exemption from any specified regulation, requirement or order of the Board granted to a petitioner by the Board pursuant to Title IX of the Act *upon presentation of adequate proof that compliance with the rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship* [415 ILCS 5/35(a)].

"Waiver" means the intentional relinquishing of a known right, usually with respect to a hearing before the Board or entry of a Board decision within the decision period. (See also Section 101.308 of this Part.)

~~"Website~~Web site" means the Board's computer-based informational and filing service accessed on the Internet at <http://www.ipcb.state.il.us>.

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

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

Section 101.300 Computation of Time

- a) Computation of Time. Computation of any period of time prescribed in the Act, other applicable law, or this Subpart~~these rules~~ will begin with the first calendar day following the day on which the act, event or development occurs and will run until the close of business on the last day, or the next business day if the last day is a Saturday, Sunday or national or State legal holiday.
- b) Time of Filing. Documents will be considered filed when they are filed in conformance with the requirements found in Section 101.302 of this Subpart Part and any other filing requirements ~~specifically set out~~ specified elsewhere in the other Parts of these the Board's procedural rules. Subpart J of this Part sets forth when electronic documents submitted to COOL will be considered filed.
 - 1) If delivered ~~filed~~ in person, by messenger service, or by mail delivery service other than U.S. Mail, documents are considered filed when they are received in the Office of the Clerk.

- 2) If the Clerk receives a document ~~is filed~~ by U.S. Mail subsequent to a filing deadline date, yet the postmark date precedes or is the same as the filing deadline date, the document will be deemed filed on the postmark date, provided all filing requirements ~~are met as~~ set forth in Section 101.302 of this Subpart Part are met.
 - 3) Documents ~~filed and~~ received in the Office of the Clerk after 4:30 p.m. will be marked as filed the following business day, provided all filing requirements set forth in Section 101.302 of this Subpart are met. The Clerk will record the appropriate filing date on all filed documents.
 - 4) For purposes of Board decision deadlines, the decision period time does not begin until the date on which the initial filing is date-stamped by the Clerk.
- c) Time of Service. In the case of personal service, service is deemed complete on the date personal delivery was effectuated. In the case of facsimile transmission, service is deemed complete on the date of a complete and proper transmittal. ~~(facsimile Facsimile~~ Facsimile filings are only allowed in accordance with Section 101.302(d) of this Subpart Part). In the case of service by e-mail, Section 101.1060(d) of this Part sets forth when service is deemed complete. E-mail filings are only allowed in accordance with Section 101.302(d) of this Subpart. In the case of service by registered or certified mail, or by messenger service, service is deemed complete on the date specified on the registered or certified mail receipt or the messenger service receipt. ~~In the case of service by or the~~ U.S. Mail, service is presumed complete four days after mailing. The presumption can be rebutted by proper proof.
- d) Date of Board Decision.
- 1) For purposes of statutory decision deadline proceedings, the date of the Board decision is the date of the Board meeting where a final opinion and order of the Board was adopted by the vote of at least three Board members.
 - 2) For purposes of appeal, the date of the party's certified mail receipt of the Board decision is the date of service of the final opinion and order by the Board upon the appealing party. Or, in the event of a timely filed motion for reconsideration filed pursuant to Section 101.520 of this Part, the date of the party's certified mail receipt of the Board order ruling upon the motion is the date of service by the Board upon the appealing party.

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

Section 101.302 Filing of Documents

- a) This Section contains the Board's general filing requirements. Additional requirements may exist for specific proceedings elsewhere in ~~these~~ the Board's procedural rules. The Clerk will refuse for filing any document that does not comply with the minimum requirements of this Section.
- b) All documents to be filed with the Board must provide the name and signature of the person seeking to file the document and identify the name of the person on whose behalf the document is being filed. If a paper document is submitted for filing, the original must bear the original pen-and-ink signature of the person seeking to file the document. Signatures for purposes of electronic filings through COOL are addressed in Section 101.1010 of this Part. All documents to be filed with the Board must be filed with the Clerk's Office. Service on a hearing officer does not constitute filing with the Board unless the document is submitted to the hearing officer during the course of a hearing. Documents may be filed at:
- Pollution Control Board, Attn: Clerk
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218
- c) Documents may be filed by U.S. Mail or other mail delivery service, by electronic means in accordance with Subpart J of this Part, in person, or by messenger.
- d) A filing ~~Filing~~ by ~~electronic transmission~~ e-mail or facsimile will only be allowed with the prior approval of the Clerk of the Board or hearing officer assigned to the proceeding. Any prior approval by the Clerk or hearing officer applies only to the specified filing.
- e) The ~~following~~ initial filings listed in this subsection require filing fees and will only be considered filed when accompanied by the appropriate fee, ~~which~~ The fee may be paid in the form of government voucher, money order, or check made payable to the Illinois Pollution Control Board, or electronically through COOL in accordance with Section 101.1040(b)(1) of this Part, but cannot ~~which may not~~ be paid in cash,:
- 1) Petition for Site-Specific Regulation, \$75;
 - 2) Petition for Variance, \$75;
 - 3) Petition for Review of Agency Permit Decision, UST Decision, or any other appeal filed pursuant to Section 40 of the Act, \$75;
 - 4) Petition to Review Pollution Control Facility Siting Decisions, pursuant to Section 40.1 of the Act, \$75; and
 - 5) Petition for Adjusted Standard, pursuant to Section 28.1 of the Act, \$75.

- f) All documents filed must be served in accordance with Subpart C of this Part.
- g) All documents filed with the Board ~~must should~~ contain the relevant proceeding caption and docket number, ~~and~~ All documents must be submitted on or formatted to print on 8½ 4/2 x 11 inch paper, except as provided in subsection (j) of this Section. Paper documents must be submitted on recycled paper as defined in Subpart B of this Part, and, if feasible, double sided-if feasible. All pages in a document must be sequentially numbered. All documents created by word processing programs must be formatted as follows:
- 1) The margins must each be a minimum one inch on the top, bottom, and both sides of the page; and
 - 2) The size of the type in the body of the text must be no less than 12 point font, and in footnotes no less than 10 point font.
- h) Unless the Board or its procedural rules provide otherwise, all documents must be filed in paper or through COOL electronically pursuant to this subsection.~~with a signed original and 9 duplicate copies (10 total), except that:~~
- 1) Except as provided in subsection (h)(2), (h)(3), or (h)(4) of this Section:
 - A) Any type of document may be filed in paper or through COOL.
 - B) If a document is filed in paper, the original and three copies of the document (four total) are required.
 - C) If a document is filed through COOL in accordance with Subpart J of this Part, no paper original or copy of the document is required.
 - 2) The original documents listed in this subsection (h)(2) must be filed in paper. In lieu of filing three paper copies with the original pursuant to subsection (h)(1)(B) of this Section, a compact disk of the document in text searchable Adobe PDF may be filed with the original. The following documents must be filed in paper:
 - A) The original Agency record required by 35 Ill. Adm. Code 105.212 (permit decision or other final decision), 105.302 (CAAPP permit application), 105.410 (leaking UST decision), or 125.208 (recommendation on tax certification) (see 35 Ill. Adm. Code 105.116);
 - B) The original OSFM record required by 35 Ill. Adm. Code 105.508 (UST Fund eligibility and deductibility) (see 35 Ill. Adm. Code 105.116);

- C) The original local siting authority record required by 35 Ill. Adm. Code 107.302 (pollution control facility siting) (see 35 Ill. Adm. Code 107.304); and
- D) An original oversized exhibit (see subsection (j) of this Section).
- 3) A document containing information claimed or determined to be a trade secret or other non-disclosable information pursuant to 35 Ill. Adm. Code 130, is prohibited from being filed electronically and must instead be filed only in paper. The version of the document that is redacted pursuant to 35 Ill. Adm. Code 130 may be filed through COOL.
- 4) When filing a rulemaking proposal, the proponent must file ~~three~~ ~~four~~ paper originals of any document that is protected by copyright law (17 USC 101 *et seq.*) and proposed pursuant to Section 5-75 of the IAPA [5 ILCS 100/5-75] to be incorporated by reference; provided, however,
- D) One or two paper copies may be substituted for the corresponding number of required paper originals if the rulemaking proposal includes the copyright owner's written authorization for the rulemaking proponent to create the paper copy or copies.
- E) The proponent may file no more than two authorized copies in lieu of the corresponding number of required originals.
- F) Any ~~such~~ copyrighted document that is proposed for incorporation by reference is prohibited from being filed electronically and must instead be filed only in paper. The remainder of the rulemaking proposal may be filed through COOL.
- 1) ~~Documents and motions specifically directed to the assigned hearing officer must be filed with the Clerk with a signed original and 4 duplicate copies (5 total), or as the hearing officer orders;~~
- 2) ~~The Agency may file a signed original and 4 duplicate copies (5 total) of the record required by Section 105.116, 105.302, and 105.410;~~
- 3) ~~The OSFM may file a signed original and 4 duplicate copies (5 total) of the record required by Section 105.508; and~~
- 4) ~~The siting authority may file a signed original and 4 duplicate copies (5 total) of the record required by Sections 107.300 and 302.~~
- i) No written discovery, including interrogatories, requests to produce, and requests for admission, or any response to written discovery, may be filed with the Clerk of the Board except upon leave or direction of the Board or hearing officer. Any

discovery request under these rules to any nonparty must be filed with the Clerk of the Board in accordance with subsection (h) of this Section with a signed original and 4 duplicate copies (5 total), or as the hearing officer directs.

- j) Oversized Non-Conforming Exhibits. When reasonably practicable possible, oversized exhibits must be reduced to conform to or be formatted to print on 8½ 1/2 xX 11 inch recycled paper for filing with the Clerk's Office. However, ~~one~~ even when an oversized exhibit is so reduced or formatted, the non-conforming original oversized exhibit still must copy may be filed with the Clerk's Office. ~~Upon closure of the proceeding,~~ In accordance with 2 Ill. Adm. Code 2175.300, the ~~non-conforming original oversized exhibit copy~~ may be returned to the person who filed filing it in accordance with 2 Ill. Adm. Code 2175.300.
- k) Page Limitation. No motion, brief in support of motion, or brief may exceed 50 pages, and no amicus curiae brief may exceed 20 pages, without prior approval of the Board or hearing officer. These limits do not include appendices containing relevant material.

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

Section 101.304 Service of Documents

- a) Service Requirements. This Section contains the Board's general service requirements. However, the more specific Part for a proceeding type may contain additional requirements.
- b) Duty to Serve. Parties in Board adjudicatory proceedings are responsible for service of all documents they file with the Clerk's Office. Documentation Proof of service of initial filings must be filed with the Board upon completion of service.
- c) Method of Service. Service may be effectuated by U.S. Mail or other mail delivery service, in person, by messenger, or by e-mail in accordance with Subpart J of this Part or as prescribed in Section 101.302(d), except for service of enforcement complaints, and administrative citations, and EMSA statements of deficiency, which must be made personally, by registered or certified mail, or by messenger service. Documentation Proof of service of enforcement complaints, and administrative citations, and EMSA statements of deficiency must be filed with the Board upon completion of service.
- d) Affidavit or Certificate of Service. A proceeding is subject to dismissal, and persons parties are subject to sanctions in accordance with Section 101.800 of this Part, if service is not timely made. Documentation Proof of proper service is the responsibility of the party person filing and serving the document. An affidavit of service or certificate of service must accompany all filings of all parties. A sample form of the affidavit of service and certificate of service is available in

~~Appendix E of this Part at the Board's Offices (the locations of the Board's Offices are listed at 2 Ill. Adm. Code 2175.115) and may be obtained electronically at the Board's Web site.~~

- e) Service of Amicus Curiae Briefs. Any person who files an amicus curiae brief with the Board in any proceeding must serve copies of that brief on all parties in accordance with this Section.
- f) Service of Comments of Participants in an Adjudicatory Proceeding. Participants are required to serve their comments upon the parties to the proceeding. The Board will consider the comments as time and the Act or other applicable law allow.
- g) Service on ~~State~~ Agencies. Service must be at the addresses listed below unless a specific person has an appearance on file with the Board or has, in accordance with Section 101.1070 of this Part, consented to e-mail service.

- 1) Service on the Illinois Environmental Protection Agency (Agency). The Agency must be served at the following address:

Division of Legal Counsel
 Illinois Environmental Protection Agency
 1021 North Grand Avenue East
 P.O. Box 19276
 Springfield IL 62794-9276

- 2) Service on Office of State Fire Marshal (OSFM). The OSFM must be served at the following address:

Division of Petroleum and Chemical Safety
 Office of the State Fire Marshal
 1035 Stevenson Dr.
 Springfield IL 62703

- 3) Service on the Illinois Attorney General. The Office of the Attorney General must be served at the following address:

Division Chief of Environmental Enforcement
 Office of the Attorney General
 100 West Randolph St., Suite 1200
 Chicago IL 60601

- 4) Service on the Illinois Department of Natural Resources (DNR). DNR must be served at the following address:

Office of Legal Services

Illinois Department of Natural Resources
 One Natural Resources Way
 Springfield IL 62702-1271

- 5) Service on the Illinois Department of Transportation (IDOT). IDOT must be served at the following address:

Office of Chief Counsel
 DOT Administration Building
 2300 S. Dirksen Parkway, Room 300
 Springfield IL 62764

- 6) Service on Region V of the United States Environmental Protection Agency (USEPA). USEPA Region V must be served at the following address:

USEPA, Region V
 77 West Jackson
 Chicago IL 60604

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

Section 101.306 Incorporation of Documents from Another Proceeding by Reference

- a) Upon the separate written request of any person or on its own initiative, the Board or hearing officer may incorporate materials from the record of another Board docket into any proceeding. The person seeking incorporation must file the material to be incorporated with the Board in accordance with Section 101.302(h) of this Subpart ~~4 copies of the material to be incorporated. The Board or hearing officer may approve a reduced number of copies for documents incorporated in other Board dockets.~~ The person seeking incorporation must demonstrate to the Board or the hearing officer that the material to be incorporated is authentic, credible, and relevant to the proceeding. Notice of the request must be given to all identified participants or parties by the person seeking incorporation.
- b) The Board will give the incorporated matter the appropriate weight in light of the following factors: the standard of evidence under which the material was previously presented to the Board; the present purpose for incorporating the material; and the past and current opportunity for cross-examination of the matters asserted within the incorporated material.

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

SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

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

- a) Appearances. A person who is a party in a Board adjudicatory proceeding may appear as follows:
- 1) Individuals may appear on their own behalf or through an attorney-at-law licensed and registered to practice law. (Section 1 of the Attorney Act [705 ILCS 205/1])
 - 2) When appearing before the Board, any person other than individuals must appear through an attorney-at-law licensed and registered to practice law. (Section 1 of the Corporation Practice of Law Prohibition Act [705 ILCS 220/1] and Section 1 of the Attorney Act [705 ILCS 205/1])
 - 3) Attorneys who are licensed to practice in a state other than Illinois and who are not licensed and registered to practice in the State of Illinois may request to appear pro hac vice on a particular matter on a motion filed with the Board.
 - 4) Any attorney appearing in a representative capacity must file a separate written notice of appearance with the Clerk, together with documentation ~~proof~~ of service and notice of filing of the appearance on all parties in the proceeding. Law firms, the Agency, and the Attorney General's Office when appearing before the Board must designate a lead attorney for purposes of phone and mail contact pertaining to the proceeding. Absent a separate written notice, the Board will designate the attorney whose signature appears first on the complaint as the lead attorney.
 - 5) Any person appearing before the Board may appear in a special limited capacity to contest jurisdiction.
- b) Withdrawals. An attorney who has appeared in a representative capacity and who wishes to withdraw from that representation must file a notice of withdrawal with the Clerk, together with documentation ~~proof~~ of service and notice of filing on all parties or their representatives.
- c) Substitution. Any attorney who substitutes for an attorney of record must file a written appearance pursuant to subsection (a) of this Section. That appearance must identify the attorney for whom the substitution is made. However, no attorney will be considered withdrawn from a proceeding until a formal withdrawal is filed in accordance with subsection (b) of this Section.
- d) Any person may appear on behalf of himself or others in a rulemaking proceeding in accordance with 35 Ill. Adm. Code 102.100(b).

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

SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

Section 101.902 Motions for Reconsideration

In ruling upon a motion for reconsideration, the Board will consider factors including new evidence, or a change in the law, to conclude that the Board's decision was in error. (See also Section 101.520 of this Part.) A motion for reconsideration of a final Board order is not a prerequisite for the appeal of the final Board order.

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

Section 101.904 Relief from ~~and Review of~~ Final Opinions and Orders

- a) Upon its own motion or motion of any party, the Board may correct clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission. The mistakes may be so corrected by the Board before the appeal is docketed in the appellate court. Thereafter, while the appeal is pending, the mistakes may be corrected only with leave of the appellate court. Any corrected order will be mailed to all parties and participants in that proceeding.
- b) On written motion, the Board may relieve a party from a final order entered in a contested proceeding, for the following:
 - 1) Newly discovered evidence that existed at the time of hearing and that by due diligence could not have been timely discovered;
 - 2) Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or
 - 3) Void order, such as an order based upon jurisdictional defects.
- c) A motion under this Section does not affect the finality of a Board order or suspend the operation of a Board order. The motion must be filed in the same proceeding in which the order was entered but is not a continuation of the proceeding. The motion must be supported by oath or affidavit or other appropriate showing as to matters not of record. All parties or participants in the proceeding must be notified by the movant as provided by Section 101.304 of this Part.
- d) A motion under subsection (b) of this Section must be filed with the Board within one year after entry of the order except that a motion pursuant to subsection (b)(3) of this Section must be filed within a reasonable time after entry of the order.
- e) Any response to a motion under this Section must be filed within 14 days after the filing of the motion.

- f) ~~A motion for reconsideration of a final Board order is not a prerequisite for the appeal of that final Board order.~~

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

Section 101.906 Judicial Review of Board Orders

- a) Pursuant to Sections 29 and 41 of the Act [415 ILCS 5/29 and 41] and, Supreme Court Rule 335, ~~and Section 10-50 of the IAPA,~~ judicial review of final Board orders is available from the appellate court. However, pursuant to Section 11-60 of the Property Tax Code [35 ILCS 200/11-60], judicial review of final Board orders in tax certification proceedings is available from the circuit court.
- b) For purposes of judicial review, final Board orders are appealable as of the date of service by the Board upon the appealing party.
- c) The procedure for stay of any final Board order during appeal will be as provided in Rule 335 of the Rules of the Supreme Court of Illinois (Ill. S. Ct. Rule 335).

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

SUBPART J: ELECTRONIC FILING AND E-MAIL SERVICE

Section 101.1000 Electronic Filing and E-Mail Service

- a) The Board provides the opportunity to file and access documents electronically through its Clerk's Office On-Line (COOL). COOL is located on the Board's website (www.ipcb.state.il.us). The Board has taken steps designed to ensure the integrity and security of COOL in accordance with State policies developed under the Electronic Commerce Security Act [5 ILCS 175].
- b) To file an electronic document with the Board, a person must upload the document on COOL. Electronic filing is not accomplished by sending a document to the e-mail address of the Clerk or hearing officer.
- c) Except as provided in Section 101.302(h)(2), (h)(3), and (h)(4) of this Part and Section 101.1050 of this Subpart, all documents may be filed through COOL. If a person files an electronic document in accordance with this Subpart, the person is not required to file a paper original or copy of that document. However, as provided in Section 101.302(h)(2), (h)(3), and (h)(4) of this Part and Section 101.1050 of this Subpart, some original documents must be filed in paper and other documents are prohibited from being filed electronically.
- d) Nothing in this Subpart requires a person to file a document electronically. Generally, the Clerk's Office will convert paper-filed documents into electronic documents and place them on COOL.

- e) All documents filed with the Board may be served by e-mail except for enforcement complaints, administrative citations, and EMSA statements of deficiency. (See Section 101.304(c) of this Part and Section 101.1060 of this Subpart.) Nothing in this Subpart requires a person to serve a document by e-mail or to accept service of a document by e-mail.

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

Section 101.1010 Electronic Filing Authorization and Signatures

- a) A person seeking to upload a document on COOL for filing must have been issued a State of Illinois digital signature certificate pursuant to Section 15-310 of the Electronic Commerce Security Act. (See 5 ILCS 175/15-310.) A link to the subscriber agreement and application for a State of Illinois digital signature certificate is available through COOL.
- 1) Maintaining digital signature confidentiality is the responsibility of the holder of the digital signature certificate. The certificate holder is responsible for any document electronically filed by anyone using his or her digital signature certificate.
 - 2) The digital signature certificate holder is responsible for keeping his or her contact information current.
- b) Each electronic document uploaded on COOL for filing must bear a facsimile electronic signature (i.e., scanned image of original pen-and-ink signature) or typographical electronic signature (i.e., "/s/ typed name") of the person authorizing the filing (e.g., attorney, participant, pro se party). However, if this electronic signature is absent, the document will be deemed to have been signed by the holder of the digital signature certificate used to upload the document and the certificate holder will be deemed to have authorized the filing. (See 5 ILCS 175/5-120.) To file an electronic document on behalf of another person in an adjudicatory proceeding, an electronic signature of a licensed and registered attorney is required. (See Section 101.400(a) of this Part.)
- c) If an electronic document or portion thereof requires the signatures of any persons in addition to those specified in subsection (b) of this Section (e.g., settlement agreement, witness' affidavit), the person authorizing the filing must:
- 1) Confirm that the additional persons have approved the document or corresponding portion thereof and obtain their original pen-and-ink signatures before the document is uploaded on COOL for filing;

- 2) Ensure that the document or corresponding portion thereof bears the facsimile electronic signatures of, and indicates the identity of, the additional persons;
- 3) Upload the document on COOL as a scanned image containing the necessary signatures; and
- 4) Retain the paper original of the document, including the original pen-and-ink signatures of the additional persons, for one year after the later of the following:
 - A) The date on which the time period expires for appealing the final order of the Board; or
 - B) If the final order of the Board is appealed, the date on which the time period expires for seeking any further review in the courts.
- d) In lieu of complying with subsection (c) of this Section, the person authorizing the filing may file the paper original of the document, including the original pen-and-ink signatures of the additional persons, and separately file the document through COOL without the facsimile electronic signatures of the additional persons (see Section 101.1020(e)(2) of this Subpart).

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

Section 101.1020 Filing Electronic Documents

- a) COOL. To file an electronic document through COOL, the document must first be uploaded on COOL.
- b) Digital Signature Certificate. Uploading a document on COOL requires a valid State of Illinois digital signature certificate.
- c) Uploading Hours. Electronic documents may be uploaded on COOL 24 hours per day, every day.
- d) E-Mail Receipt. Uploading a document on COOL will generate an e-mail receipt for the digital signature certificate holder. The receipt will verify the date and time when the document was uploaded on COOL.
- e) Time of Filing. Subject to subsection (f) of this Section, an electronic document uploaded on COOL will be considered filed as of the date and time specified on the e-mail receipt generated pursuant to subsection (d) of this Section, except that:

- 1) A document uploaded on a Saturday or Sunday, on a national or State legal holiday, or after 4:30 p.m. on a weekday is deemed filed the next business day.
 - 2) A document uploaded without one or more portions of the filing (e.g., oversized exhibit; trade secret or non-disclosable information; copyrighted document proposed for incorporation by reference in a rule) or without a required oath, affidavit, notarization, signature, or filing fee is considered filed:
 - A) On the date that the Clerk receives the document's last missing item; or
 - B) On the postmark date of the document's last missing item if that item was sent by U.S. Mail, was received after the date of a filing deadline, and has a postmark date that precedes or is the same as the deadline date.
 - 3) A document consisting of multiple electronic files is considered filed as of the date and time specified on the e-mail receipt generated pursuant to subsection (d) of this Section for the last file uploaded to complete the document.
- f) Review by the Clerk. The Clerk will review electronically each document uploaded on COOL, validate the proceeding information provided, and accept or reject the document for filing.
- 1) If the Clerk accepts an uploaded document, the Clerk's Office will e-mail a notice of acceptance to the digital signature certificate holder, indicating that the filed document may be viewed on COOL.
 - 2) If the Clerk rejects an uploaded document, the Clerk's Office will e-mail a notice of rejection to the digital signature certificate holder. The Clerk may reject an uploaded document because the document is prohibited from being filed electronically pursuant to Section 101.302(h)(3) or (h)(4) of this Part, the document fails to comply with file size or naming requirements of Section 101.1030(c) of this Subpart, or the document is corrupted or otherwise cannot be readily opened. If an uploaded document is rejected by the Clerk, the Board may, upon good cause shown, enter an order deeming the document filed as of the date and time specified when the document was uploaded on COOL, subject to subsections (e)(1) through (e)(3) of this Section.
- g) Technical Failure. If an electronic document is not uploaded, or is materially delayed in uploading, on COOL due to a technical failure, the Board may, upon good cause shown, enter an order deeming the document uploaded pursuant to

subsection (d) of this Section as of the date and time of the first attempted uploading. "Technical failure" as used in this subsection is limited to a system outage of COOL or other malfunction of the hardware, software, or telecommunications facilities of the Board or the Board's electronic filing provider. "Technical failure", therefore, does not include any malfunction of the equipment used by the person authorizing the filing or the digital signature certificate holder.

- h) Clerk's Electronic Stamp. An electronic document uploaded on COOL and accepted by the Clerk for filing will be endorsed by the Clerk with a file stamp setting forth the date of filing. This file stamp will be merged with the electronic document and visible when the document is viewed on COOL. Electronically filed documents so endorsed have the same legal effect as paper documents file-stamped by the Clerk conventionally in accordance with Section 101.300(b) of this Part.
- i) Decision Deadlines. For purposes of Board decision deadlines, the decision period does not begin until the date on which the electronic document constituting the initial filing is considered filed under this Section.
- j) Filing Deadlines. The electronic filing of a document does not alter any applicable filing deadlines.

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

Section 101.1030 Form of Electronic Documents for Filing

- a) In addition to complying with the formatting requirements of Section 101.302(g) and (j) of this Part, electronic documents uploaded on COOL for filing must be in one of the following electronic formats:
 - 1) Adobe Portable Document Format (PDF), version 2.0 or greater;
 - 2) Microsoft Word for Windows, version 6.0 or greater;
 - 3) Corel WordPerfect for Windows, version 6.0 or greater; or
 - 4) Microsoft Excel for Windows, version 4.0 or greater.
- b) Generally, electronic documents filed in accordance with this Subpart will be posted to COOL by the Clerk's Office in text searchable Adobe PDF. When practicable, persons should:
 - 1) Upload their electronic documents on COOL in text searchable Adobe PDF; and

- 2) Convert their electronic documents to a text searchable Adobe PDF directly from the program used to create the document, rather than from a scanned image of the paper document.
- c) No single electronic file uploaded on COOL, whether constituting all or part of an electronic document, may contain more than 10 megabytes (MB) of data. To comply with this requirement, an electronic document may be divided into parts and submitted as multiple electronic files, each file being 10 MB or less. The person authorizing the filing is responsible for dividing the document into appropriately-sized files and naming each file to reflect its place within the electronic document.
- d) Multiple electronic documents, whether for the same proceeding or different proceedings, must be uploaded separately on COOL and, therefore, must not be combined into a single electronic file for filing through COOL.
- e) Electronic documents may contain links to material external to the filed document. However, links to external material are for convenience purposes only. The external material behind the link is not considered part of the filing or the record of the proceeding in which the document was filed.
- f) All documents uploaded on COOL must be free of viruses or other harmful processes. If an electronic document containing a virus or other harmful process is uploaded on COOL, the Board may, consistent with Section 101.800(b) and (c) of this Part, impose sanctions, including barring the document from being filed in any manner and barring the person authorizing the filing or the digital signature certificate holder from any further electronic filing through COOL.

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

Section 101.1040 Filing Fees

- a) Filing fees are specified in Section 101.302(e) of this Part. The Clerk's Office imposes no additional fee to file a document electronically.
- b) A person seeking to file an electronic document that requires a filing fee must either:
- 1) Pay the fee with a valid credit card through COOL when the document is uploaded on COOL; or
 - 2) Deliver payment to the Clerk's Office in the form of government voucher, money order, or check made payable to the Illinois Pollution Control Board.

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

Section 101.1050 Documents Required in Paper or Excluded from Electronic Filing

- a) The following documents must be filed in paper pursuant to Section 101.302(h)(2) of this Part:
- 1) The original Agency record required by 35 Ill. Adm. Code 105.212 (permit decision or other final decision), 105.302 (CAAPP permit application), 105.410 (leaking UST decision), or 125.208 (recommendation on tax certification);
 - 2) The original OSFM record required by 35 Ill. Adm. Code 105.508 (UST Fund eligibility and deductibility);
 - 3) The original local siting authority record required by 35 Ill. Adm. Code 107.302 (pollution control facility siting); and
 - 4) An original oversized exhibit (see Section 101.302(j) of this Part).
- b) A document containing information claimed or determined to be a trade secret, or other non-disclosable information pursuant to 35 Ill. Adm. Code 130, is prohibited from being filed electronically and must instead be filed only in paper pursuant to Section 101.302(h)(3) of this Part. The version of the document that is redacted pursuant to 35 Ill. Adm. Code 130 may be filed through COOL.
- c) If a rulemaking proposal contains a document that is protected by copyright law (17 USC 101 *et seq.*) and proposed pursuant to Section 5-75 of the IAPA [5 ILCS 100/5-75] to be incorporated by reference, that copyrighted document is prohibited from being filed electronically and must instead be filed only in paper pursuant to Section 101.302(h)(4) of this Part. The remainder of the rulemaking proposal may be filed through COOL.

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

Section 101.1060 E-Mail Service

- a) Except as provided in subsection (b) of this Section, a person required to serve a document may serve the document by e-mail, in lieu of serving a paper document, if the recipient has consented to e-mail service in the proceeding and has not revoked the consent. (See Section 101.1070 of this Subpart.) To serve a document by e-mail, it is not necessary to electronically file the document or to obtain a State of Illinois digital signature certificate.
- b) Service of enforcement complaints, administrative citations, and EMSA statements of deficiency on a respondent must be made personally, by registered or certified mail, or by messenger service. (See Section 101.304(c) of this Part.)

- c) A person required to serve a document on the hearing officer may serve the hearing officer by sending the document to the hearing officer's e-mail address in lieu of serving a paper document.
- d) When a document is served by e-mail, service is considered complete on the date of successful e-mail transmission, except that a document successfully e-mailed on a Saturday or Sunday, on a national or State legal holiday, or after 5:00~~4:30~~ p.m. on a weekday is deemed served the next business day.
- e) When a document is served by e-mail, documentation of service must be filed with the Clerk and served on all persons entitled to service in that proceeding. A sample form of affidavit or certificate of e-mail service is available in Appendix H to this Part. An affidavit or certificate of e-mail service must be filed with the document in question and include the following:
 - 1) The e-mail address of the recipient and the person authorizing the filing;
 - 2) The number of pages in the e-mail transmission;
 - 3) A statement that the document was served by e-mail; and
 - 4) The date and time of the e-mail transmission.
- f) If any computer malfunction precludes the e-mail service of a document, the person authorizing the filing must promptly serve the document in paper pursuant to Section 101.304(c) of this Part.
- g) Except for final orders of the Board, which the Clerk's Office serves in paper, the Clerk's Office may serve Board orders and hearing officer orders by e-mail, in lieu of serving paper documents, if the recipient has consented to e-mail service in the proceeding and has not revoked the consent. (See Section 101.1070 of this Subpart.) The Clerk will record the date and time of e-mail service, consistent with subsection (e) of this Section.

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

Section 101.1070 Consenting to Receipt of E-Mail Service

- a) In any proceeding, a person may consent to e-mail service of documents in lieu of receiving paper documents by filing a "Consent to Receipt of E-Mail Service" with the Clerk's Office. A sample form of consent is available in Appendix I to this Part.

- b) Consent to e-mail service may be filed with the Clerk's Office at any time during the proceeding. To accept e-mail service, it is not necessary to obtain a State of Illinois digital signature certificate.
- c) A person's consent to receiving e-mail service may be revoked by that person at any time during the proceeding upon the person's filing of a notice of the revocation with the Clerk's Office.
- d) Upon a change in the e-mail address of a recipient of e-mail service, the recipient must file a notice of the e-mail address change with the Clerk's Office for each proceeding in which the person has consented to e-mail service.

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

Section 101.APPENDIX E Affidavit or Certificates of Service

Section 101.ILLUSTRATION A Service by Non-Attorney

AFFIDAVIT~~PROOF~~ OF SERVICE

I, the undersigned, on oath [or affirmation] state that I have served on the date of _____, the attached [describe document served], by [describe method of service], upon the following persons:

[~~(list persons served and the respective addresses at which they were served)~~]

[signature]

Notary Seal

SUBSCRIBED AND SWORN TO BEFORE ME this ___ day of _____, 20__.

Notary Public

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

Section 101. APPENDIX E Affidavit or Certificates of Service

Section 101. ILLUSTRATION B Service by Attorney

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached [describe document served], by [describe method of service], upon the following persons:

[list persons served and the respective addresses at which they were served]

[signature]

[date]

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

Section 101.APPENDIX H Affidavit or Certificate of E-Mail Service

Section 101.ILLUSTRATION A E-Mail Service by Non-Attorney

AFFIDAVIT OF E-MAIL SERVICE

I, the undersigned, on oath [or affirmation] state the following:

That I have served the attached [describe document served] by e-mail upon [identify person served] at the e-mail address of [identify e-mail address of person served].

That my e-mail address is _____.

That the number of pages in the e-mail transmission is _____.

That ~~the date and time of the e-mail transmission are~~ took place before 5:00 p.m. on the date of _____.

[signature]

Notary Seal

SUBSCRIBED AND SWORN TO BEFORE ME this _____ day of _____, 20____.

Notary Public

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

Section 101.ILLUSTRATION B E-Mail Service by Attorney

CERTIFICATE OF E-MAIL SERVICE

I, the undersigned, on oath [or affirmation] state the following:

That I have served the attached [describe document served] by e-mail upon [identify person served] at the e-mail address of [identify e-mail address of person served].

That my e-mail address is _____.

That the number of pages in the e-mail transmission is _____.

That the e-mail transmission took place before 5:00 p.m. on the date of _____.

[signature]

[date]

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

Section 101.APPENDIX I Consent to Receipt of E-Mail Service

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

_____))
Applicable Caption))
(see Appendix A)) docket number
_____))

I, the undersigned, authorize the service of documents on me by e-mail in lieu of receiving paper documents in the above-captioned proceeding. My e-mail address to receive service is as follows: _____.

[signature]

[date]

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

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

PART 102
 REGULATORY AND INFORMATIONAL HEARINGS AND PROCEEDINGS

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SUBPART B: REGULATIONS OF GENERAL APPLICABILITY, RESOURCE
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 REGULATIONS

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102.200	Proposal for Regulations of General Applicability
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SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL

Section	
102.700	Filing of Motions for Reconsideration
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SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION

Section	
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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, 1970; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1398, effective January 16, 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. 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. 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 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;

- c) A synopsis of all testimony to be presented by the proponent at hearing;
- d) ~~Copies 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~~ 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 the Board 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 [5ILCS 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 a 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 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.
- 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) ~~The original and 9 copies of any~~ All prehearing testimony, questions, answers, responses, ~~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 ~~one copy of any~~ all prehearing testimony, questions, answers, responses, ~~and~~ ~~or~~ exhibits in accordance with 35 Ill. Adm. Code 101.304(c). ~~One copy of any~~ All prehearing testimony, questions, answers, responses, ~~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 ~~copies~~ 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 C, 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) 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) ~~When~~Where 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 when ~~where~~ 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 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 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 ~~identity~~ 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 [5ILCS 140]. [5 ILCS 100/5-40(3.5)];*
- k) Documentation ~~Proof~~ 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 _____)

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

PART 103
ENFORCEMENT

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

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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 _____.

**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) and (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) 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. 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) 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:
 - 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 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;
- 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 _____)

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

PART 104
 REGULATORY RELIEF MECHANISMS

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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 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~~ 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) 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) 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 a copy of the objection ~~on~~ to 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~~ 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 upon~~mailed 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 _____)

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

PART 105
APPEALS OF FINAL DECISIONS OF STATE AGENCIES

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SUBPART B: APPEAL OF AGENCY PERMIT DECISIONS AND OTHER FINAL
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105.204	Who May File a Petition for Review

105.206	Time to File the Petition or Request for Extension
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SUBPART C: CAAPP PERMIT APPEALS

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105.300	Applicability
105.302	General Requirements
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SUBPART D: APPEAL OF AGENCY LEAKING UNDERGROUND STORAGE TANK (LUST) DECISIONS

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105.400	Parties
105.402	Who May File a Petition for Review
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SUBPART E: APPEAL OF OSFM LUST DECISIONS

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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

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 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 _____)

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

PART 106
PROCEEDINGS PURSUANT TO SPECIFIC RULES OR STATUTORY PROVISIONS

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106.102	Severability
106.104	Definitions

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

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106.200	General
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106.206	Notice
106.208	Recommendation and Response
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SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES

Section	
106.300	General
106.302	Initiation of Proceeding
106.304	Petition Content Requirements
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SUBPART D: REVOCATION AND REOPENING OF CLEAN AIR ACT PERMIT PROGRAM (CAAPP) PERMITS

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106.400	General
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106.404	Initiation of Proceedings
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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

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

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106.700	Purpose
106.702	Applicability
106.704	Termination Under Section 52.3-4(b) or (b-5) of the Act
106.706	Who May Initiate, Parties
106.707	Notice, Statement of Deficiency, Answer
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106.718	Motions, Responses
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106.722	Continuances
106.724	Discovery, Admissions
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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
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**SUBPART H: AUTHORIZATIONS UNDER THE REGULATION OF PHOSPHORUS IN
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Section	
106.800	General
106.802	Definitions
106.804	Initiation of Proceeding
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106.810	Hearing
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**SUBPART I: AUTHORIZATIONS FOR CERTAIN LANDSCAPE WASTE AND COMPOST
APPLICATIONS AND ON-FARM COMPOSTING FACILITIES**

Section	
106.900	General
106.902	Initiation of Proceeding
106.904	Petition Content Requirements
106.906	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**

Section	
106.1000	General (<u>Repealed</u>)
106.1002	Definitions (<u>Repealed</u>)
106.1004	Initiation of Proceeding (<u>Repealed</u>)
106.1006	Petition Content Requirements (<u>Repealed</u>)

- 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
- 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 limitations pursuant to 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 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.
- 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) and 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 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.~~

- 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.
- 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 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

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 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]~~

~~"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~~
 - 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)]~~

- 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 _____)

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
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:
- 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 _____)

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 _____)

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 Recipient's 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

Section	
108.500	Penalties and Costs
108.502	Claimed Costs of Agency or Delegated Unit
108.504	Board Costs
108.506	Response to Claimed Costs and Reply

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

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

SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST

Section 108.202 Service of Citation/Filing of Citation with the Board

- a) In accordance with Section 31.1 of the Act, the Agency or Delegated Unit may serve an AC upon any person (AC Recipient) believed, through direct observation, to have violated ~~subsection (o) or (p)~~ of Section 21(o) or (p) of the Act. Service of an AC upon the AC Recipient must be made personally, by registered or certified mail, or by messenger service. (See 35 Ill. Adm. Code 101.300(c) and 101.304(c).)
- b) The AC must be issued and served upon the AC Recipient not more than 60 days after the date of the observed violation and must contain the following information:
 - 1) A statement specifying the provisions of ~~subsection (o) or (p)~~ of Section 21(o) or (p) of the Act that the AC Recipient was observed to have violated;
 - 2) A copy of the inspection report in which the Agency or Delegated Unit recorded the violation, which report must include the date and time of inspection, and weather conditions prevailing during the inspection;
 - 3) The penalty imposed by Section 42(b)(4) or (b)(4-5) of the Act for the 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 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 _____)

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

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
 - 3) 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 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) 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) *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 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 _____)

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

PART 130
 IDENTIFICATION AND PROTECTION OF TRADE SECRETS AND OTHER NON-
 DISCLOSABLE INFORMATION

SUBPART A: GENERAL PROVISIONS

Section	
130.100	Purpose and Applicability
130.102	Additional Procedures
130.104	Definitions and Severability
130.106	Segregation of Articles
130.108	Disposal of Articles
130.110	Articles Containing Emission Data
<u>130.112</u>	<u>Filings with the Board</u>

SUBPART B: PROCEDURES FOR IDENTIFYING ARTICLES THAT REPRESENT TRADE
 SECRETS

Section	
130.200	Initiation of a Claim that an Article Represents a Trade Secret
130.201	State Agency Request for Justification of Claims
130.202	Time Limit for Delayed Submission of Justification
130.203	Contents of Statement of Justification
130.204	Waiver of Statutory Deadlines
130.206	Deadline for State Agency Trade Secret Determination
130.208	Standards for State Agency Determination
130.210	State Agency Actions Following a Negative Determination
130.212	State Agency Actions Following a Positive Determination
130.214	Review of State Agency Trade Secret Determination
130.216	Effect of a Determination of Trade Secret Status on Other State Agencies
130.218	Status of Article Determined or Claimed to Represent a Trade Secret Before January 1, 2001
130.220	Extension of Deadlines to Participate in Proceedings

SUBPART C: PROCEDURES FOR PROTECTING ARTICLES THAT REPRESENT TRADE
 SECRETS

Section	
130.300	Applicability
130.302	Owner's Responsibility to Mark Article
130.304	State Agency's Responsibility to Mark Article
130.306	Transmission of Article Between State Agencies

- 130.308 Public Access to Information Related to Article
- 130.310 Access to Claimed or Determined Article
- 130.312 Unauthorized Disclosure or Use of Article
- 130.314 Limitation on Copying Article

SUBPART D: NON-DISCLOSABLE INFORMATION OTHER THAN
TRADE SECRETS

Section

- 130.400 General
- 130.402 Who May View Non-Disclosable Information
- 130.404 Application for Non-Disclosure
- 130.406 Public Inspection
- 130.408 Board Order

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

AUTHORITY: Implementing Sections 7 and 7.1 of the Environmental Protection Act (Act) [415 ILCS 5/7 and 7.1] and authorized by Sections 7, 7.1, 26, and 27 of the Act [415 ILCS 5/7, 7.1, 26, 27].

SOURCE: Subparts A, B, and C originally adopted in R81-30 at 7 Ill. Reg. 16149, effective November 23, 1983. Subpart D originally adopted in R88-5(A) at 13 Ill. Reg. 12055, effective July 10, 1989; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 516, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8842, effective June 8, 2005; amended in R14-21 at 38 Ill. Reg. _____, effective _____.

Section 130.112 Filings with the Board

A document containing information claimed or determined to be a trade secret or other non-disclosable information pursuant to this Part is prohibited from being filed electronically with the Board and must instead be filed with the Board only in paper pursuant to 35 Ill. Adm. Code 101.302(h)(3). (See 35 Ill. Adm. Code 101.1010(b).)

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

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 6, 2014, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board