

**RULEMAKING ADDENDUM  
TO THE FIRST-NOTICE OPINION AND ORDER OF THE BOARD**

Proposed Amendments to 35 Ill. Adm. Code 101 through 130

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

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**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 Reg. 8357; Part repealed, new Part adopted in R88-5A at 13 Ill.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 Reg. 18078, effective November 17, 1992; old Part repealed, new Part adopted in R00-20 at 25 Ill.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 39 Ill. Reg. 2276, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12848, effective September 8, 2015, amended in R16-17 at 40 Ill. Reg. 7912, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

### Section 101.106 Board Authority

- a) The Board has the authority to *determine, define and implement the environmental control standards applicable in the State of Illinois and may adopt rules and regulations in accordance with Title VII of the Act [415 ILCS 5/5(b)].*
- b) The Board has the *authority to conduct proceedings upon complaints charging violations of the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order; upon administrative citations; upon petitions for variances or adjusted standards; upon petitions for review of the Agency's final determinations on permit applications in accordance with Title X of the Act; upon petitions to remove seals under Section 34 of the Act; upon other petitions for review of final determination which are made pursuant to the Act or Board rules and which involve a subject which the Board is authorized to*

*regulate. The Board may also conduct other proceedings as may be provided by the Act or any other statute or rule. [415 ILCS 5/5(d)]*

- c) In addition to subsections (a) and (b) ~~of this Section~~, the Board has the authority to act as otherwise provided by law.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.108 Board Proceedings**

- a) Board proceedings can generally be divided into two categories: rulemaking proceedings and adjudicatory proceedings.
- b) The following are examples of Board rulemaking proceedings: Identical-in-Substance, Clean Air Act/Fast Track, Federally Required Rulemaking, General Rulemaking, and Site-Specific Rulemaking. Procedural rules for these types of proceedings can be found at 35 Ill. Adm. Code 102.
- c) The following are examples of Board adjudicatory proceedings: Enforcement Proceedings (35 Ill. Adm. Code 103), Variance Petitions (35 Ill. Adm. Code 104), Adjusted Standard Petitions (35 Ill. Adm. Code 104), Permit Appeals (35 Ill. Adm. Code 105), Leaking Underground Storage Tank Appeals (35 Ill. Adm. Code 105), Pollution Control Facility Siting Appeals (35 Ill. Adm. Code 107), and Administrative Citations (35 Ill. Adm. Code 108).
- d) Board decisions will be made at meetings open to the public. Except as provided in subsection (e) ~~of this Section~~, 3 4 members of the Board constitute a quorum, and 3 affirmative votes are required to adopt a Board decision.
- e) At a hearing ~~under pursuant to~~ Section 34(d) of the Act to determine whether a seal should be removed, *at least one Board Member shall be present, and those Board Members present may render a final decision without regard to the requirements of Section 5(a) of the Act [415 ILCS 5/34(d)].*

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **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 at a Board Meeting.** 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 under ~~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 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.112 Bias and Conflict of Interest**

- a) No Board Member or Board employee may represent any other person in any Board proceeding.
- b) No former Board Member or Board employee may represent any other person in any Board proceeding in which he or she participated personally and substantially as a Board Member or Board employee, unless the Board and, as applicable, all parties or proponents in the proceeding consent in writing after disclosure of the participation. For purposes of subsections (a) and (b) ~~of this Section~~, representation includes consulting on legal or technical matters, and Board employee means a person the Board employs on a full-time, part-time, contract, or intern basis.
- c) The Board, on its own motion or the motion of any party, may disqualify a hearing officer for bias or conflict of interest as provided by Section 10-30(b) of the IAPA [5 ILCS 100/10-30(b)].

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.114 Ex Parte Communications**

- a) For the purposes of this Section, “interested person or party” *means a person or entity whose rights, privileges, or interests are the subject of or are directly affected by a regulatory, quasi-adjudicatory, investment, or licensing matter* [5 ILCS 430/5-50(d)].
- b) For the purposes of this Section, “Executive Ethics Commission” means the commission created by the State Officials and Employees Ethics Act [5 ILCS 430].

- c) Adjudicatory and Regulatory Proceedings. Board Members and Board employees ~~must should~~ not engage in an ex parte communication designed to influence their action with respect to an adjudicatory or regulatory proceeding pending before or under consideration by the Board. (See definition of "ex parte communication" in Section 101.202 ~~of this Part.~~) Whenever practicable, an interested person or party or his or her official representative or attorney should make all communications with respect to an adjudicatory or regulatory proceeding pending before or under consideration by the Board in writing and address them to the Clerk rather than to individual Board Members or Board employees. (See Sections 101.110 and 101.628 ~~of this Part.~~)
- d) Nothing in this Section precludes Board Members or Board employees from receiving informal complaints about individual pollution sources, or forbids the administrative contacts as would be appropriate for judges and other judicial officers. Information about a pollution source included in the record of a regulatory proceeding is not an ex parte communication with respect to any adjudicatory proceeding concerning the pollution source.
- e) When the Clerk on behalf of the Board, a Board member, or a Board employee receives an ex parte communication from an interested person or party or his or her official representative or attorney, the recipient, in consultation with the Board's ethics officer or his or her designee, must promptly memorialize the communication and make it part of the record of the proceeding. To make an oral ex parte communication part of the record, the substance of the oral communication, along with the identity of each person involved in the communication, will be either set forth in a memorandum and placed in the record or announced on the record at a public hearing.
- f) When the Clerk on behalf of the Board, a Board member, or a Board employee receives an ex parte communication, other than an ex parte communication received from an interested person or party or his or her official representative or attorney, that communication must be promptly reported to the Board's ethics officer or his or her designee *by the recipient of the communication and by any other employee of the Board who responds to the communication* [5 ILCS 430/5-50(c)].
- 1) *The ethics officer* or his or her designee, in consultation with the recipient of the ex parte communication, must ensure *that the ex parte communication is promptly made part of the record of the proceeding* [5 ILCS 430/5-50(c)].
  - 2) *The ethics officer* or his or her designee, in consultation with the recipient of the ex parte communication, must *promptly file the ex parte communication with the Executive Ethics Commission, including:*
    - A) *All written communications;*



- B) *All written responses to the communications;*
  - C) *A memorandum prepared by the ethics officer stating the nature and substance of all oral communications;*
  - D) *The identity and job title of the person to whom each communication was made;*
  - E) *All responses made;*
  - F) *The identity and job title of the person making each response;*
  - G) *The identity of each person from whom the written or oral ex parte communication was received;*
  - H) *The individual or entity represented by that person;*
  - I) *Any action the person requested or recommended; and*
  - J) *Any other pertinent information.*
- 3) *The disclosure shall also contain the date of any ex parte communication.*  
[5 ILCS 430/5-50(c)]

(Source: Amended at 41 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].

"Adjudicatory proceeding" means an action of a quasi-judicial nature brought before the Board ~~under 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 ~~under 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 by the Agency or by a unit of local government acting as the Agency's delegate. (See 35 Ill. Adm. Code 108.)

"Administrative citation review" or "administrative citation appeal" means a petition for review of an administrative citation. (See 35 Ill. Adm. Code 108.)

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

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

"Agency recommendation" means the document filed by the Agency ~~under 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 ~~under 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 ~~under 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 ~~under pursuant to~~ Section 5(a) of the Act.

"Citizen's enforcement proceeding" means an enforcement action brought before the Board ~~under 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 at [http://www.ipcb.state.il.us/COOL/ external/](http://www.ipcb.state.il.us/COOL/external/).

"Complaint" means the initial filing that begins an enforcement proceeding ~~under 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 under ~~pursuant to~~ Section 4(r) of the Act.

"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 ~~under 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.

"EPRR Act" means the Electronic Products Recycling and Reuse Act [415 ILCS 150].

"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, 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 ~~under~~ 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. (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 permission ~~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 permission ~~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 under ~~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, 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 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 under ~~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 under ~~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" is defined at Section 3.330(a) of the Act for purposes of ~~this Part~~ and 35 Ill. Adm. Code 107.

"Pollution control facility siting appeal" means an appeal of a decision made by a unit of local government filed with the Board under ~~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 under ~~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 under ~~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.~~)

"PWSO Act" means the Public Water Supply Operations Act [415 ILCS 45].

"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 under ~~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.)

"Regulatory hearing" or "proceeding" means a hearing or proceeding held under ~~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.).

"Responsible Operator in Charge" means an individual who is designated as a Responsible Operator in Charge of a community water supply under Section 1 of the PWSO Act.

"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 a document 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 parties or participants must serve motions, prefiled questions and prefiled testimony and any other documents that the parties or 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 under ~~pursuant to~~ Section 31 of the Act.

"Stay" means a temporary suspension of the regular progress of a proceeding under ~~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 under 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 under 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" means the Board's computer-based informational and filing service accessed on the Internet at <http://www.ipcb.state.il.us>.

(Source: Amended at 41 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 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) **Date of Filing.** Documents will be considered filed with the Clerk only if they are filed in compliance with Section 101.302 and any other filing requirements specified elsewhere in the Board's procedural rules (see 35 Ill. Adm. Code 101 through 130). Subpart J sets forth when electronic documents submitted to COOL will be considered filed.
- 1) If a document is submitted to the Clerk for filing in person, by U.S. Mail, by e-mail or facsimile ~~under pursuant to~~ Section 101.302(d), or by third-party commercial carrier, the document is considered filed on the date it is received by the Clerk. However, a document received by the Clerk after 4:30 p.m. is considered filed on the next business day. The Clerk will mark the filing date on each filed document.
  - 2) Notwithstanding subsection (b)(1), if the Clerk receives a document by U.S. Mail or third-party commercial carrier after a filing deadline date, the document will be deemed filed on:
    - A) The date the document was provided to the U.S. Postal Service; or
    - B) The date the document was provided to the third-party commercial carrier for delivery to the Clerk within three business days.
  - 3) For purposes of subsection (b)(2), documentation of when the document being filed was provided to the U.S. Postal Service or the third-party commercial carrier consists of the affidavit or certificate required by Section 101.304(d)(2)(A) or (d)(4) and must accompany the document being filed. In addition, for delivery by a third-party commercial carrier, the affidavit or certificate must contain the filing party's representation that the charge for delivery to the Clerk within three business days was prepaid.
  - 4) For purposes of Board decision deadlines, the decision period does not begin until the date marked by the Clerk on the initial filing.
- c) **Date of Service.** Documents will be considered served upon another party only if they are served in compliance with Section 101.304 and any other service requirements specified elsewhere in the Board's procedural rules. The date of service is determined as follows:
- 1) **Personal Service.** Personal service of a document is complete on the date the document was delivered, as specified in either the affidavit or certificate of service signed by the person who made personal delivery or the declaration of service signed by the process server who made personal delivery.

- 2) Service by U.S. Mail or Third-Party Commercial Carrier with Recipient Signature. If a recipient's signature is recorded by the U.S. Postal Service or a third-party commercial carrier upon delivery of a document, service ~~by U.S. Mail or a third-party commercial carrier~~ is complete on the date the document was delivered, as specified in the signed delivery confirmation ~~signed by the recipient of service~~.
  - 3) Service by E-Mail or Facsimile. Service of a document by e-mail or facsimile is complete on the date the document was successfully transmitted, as specified in the affidavit or certificate of service, signed by the party to the proceeding who is serving the document. However, a document successfully e-mailed or faxed on a Saturday or Sunday, on a national or State legal holiday, or after 5:00 p.m. on a weekday is deemed served on the next business day.
  - 4) Service by U.S. Mail or Third-Party Commercial Carrier without Recipient Signature. If a recipient's signature is not recorded by the U.S. Postal Service or a third-party commercial carrier upon delivery of a document, service ~~by U.S. Mail or a third-party commercial carrier~~ is presumed complete four days after the date the document was provided to the U.S. Postal Service or the third-party commercial carrier.
    - A) The presumption applies only if an affidavit or certificate of service, signed by the party to the proceeding who is serving the document, states the following: the date, the time by when, and the place ~~where~~ the document was provided to the U.S. Postal Service or the third-party commercial carrier; the address appearing on the envelope or package containing the document; and that proper postage or the delivery charge was prepaid.
    - B) The presumption can be rebutted by proper proof, which may include delivery tracking information from the website of the U.S. Postal Service or the website of the third-party commercial carrier.
- d) Date of Board Decision and Date of Service of Final Board Decision.
- 1) For purposes of statutory decision deadline proceedings, the date of the Board decision is the date of the Board meeting at which a final Board order was adopted ~~by the vote of at least three Board members~~.
  - 2) For purposes of appealing a final adjudicatory decision of the Board, the date of service of the final decision is the date on which the party receives the Board's certified mailing of the decision. ~~In Or, in~~ the event of a timely filed motion for reconsideration filed under ~~pursuant to~~ Section 101.520, the date of service of the final decision is the date on which the party receives the Board's certified mailing of the Board order ruling upon

the motion.

- 3) For purposes of appealing a final rulemaking decision of the Board in which a rule is adopted, amended, or repealed, a person is deemed to have been served with the final decision on the date on which the new rule, the amendment, or the repealer becomes effective under the IAPA. For purposes of appealing a final rulemaking decision in which no rule is adopted, amended, or repealed, the date of service of the final decision is the date on which the participant receives the Board's mailing of the decision. Or, in the event of a timely filed motion for reconsideration filed under pursuant to the Board's procedural rules (35 Ill. Adm. Code 102.700 and 102.702), the date of service of the final decision is the date on which the participant receives the Board's mailing of the Board order ruling upon the motion.

(Source: Amended at 41 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 the Board's procedural rules (see 35 Ill. Adm. Code 101 through 130). 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 be filed with the Clerk.
  - 1) If allowed by the Board, the hearing officer, the Clerk, or the procedural rules to be filed in paper under subsection (h), Documents may be filed documents must be filed at the following address:
 

Pollution Control Board, Attn: Clerk  
100 West Randolph Street  
James R. Thompson Center, Suite 11-500  
Chicago, Illinois 60601-3218
  - 2) All documents filed with the Clerk 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.

- 3) Each document being filed with the Clerk (~~e.g., enforcement complaint, petition for review~~) must be accompanied by a notice of filing (see Appendix D) and documentation of service (see Section 101.304(d)).
  - 4) The date on which a document is considered to have been filed is determined under ~~pursuant to~~ Section 101.300(b).
  - 5) Service of a document upon a hearing officer does not constitute filing with the Clerk unless the document is submitted to the hearing officer during the course of a hearing.
- c) Electronic documents may be filed through COOL under Subpart J. Paper documents may be filed with the Clerk by U.S. Mail, ~~by electronic means in accordance with Subpart J~~, in person, or by third-party commercial carrier.
  - d) A filing by e-mail or facsimile will only be allowed with the prior approval of the Clerk of the Board or the hearing officer assigned to the proceeding. Any prior approval by the Clerk or hearing officer applies only to the specified filing.
  - e) The initial filings listed in this subsection require filing fees and will only be considered filed when accompanied by the appropriate fee. 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), but cannot 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 under ~~pursuant to~~ Section 40 of the Act, \$75;
    - 4) Petition to Review Pollution Control Facility Siting Decisions, under ~~pursuant to~~ Section 40.1 of the Act, \$75; and
    - 5) Petition for Adjusted Standard, under ~~pursuant to~~ Section 28.1 of the Act, \$75.
  - f) For each document filed with the Clerk, the filing party must serve a copy of the document upon the other parties and, if a hearing officer has been assigned, upon the hearing officer in accordance with Section 101.304.
  - g) All documents filed with the Board must contain the relevant proceeding caption and docket number. All documents must be submitted on or formatted to print on 8½ x 11 inch paper, except as provided in subsection (j). Paper documents must be submitted on recycled paper as defined in Subpart B ~~of this Part~~, and, if



~~feasible~~, double sided. 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, the hearing officer, the Clerk, or the procedural rules provide otherwise, all documents must be filed ~~in paper or~~ through COOL electronically pursuant to ~~this subsection (h)~~.
- 1) ~~Except as provided in subsection (h)(2), (h)(3), (h)(4), or (j):~~
    - A) ~~Any type of document may be filed in paper or through COOL.~~
    - B) If a document is filed in paper, the original and two copies of the document (three total) are required.
    - C) If a document is filed through COOL in accordance with Subpart J, no paper original or copy of the document is required.
  - 2) The following documents must be filed through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF and meet the requirements of Section 101.1030(g):
    - A) The 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 OSFM record required by 35 Ill. Adm. Code 105.508 (~~UST Fund eligibility and deductibility~~) (see 35 Ill. Adm. Code 105.116);
    - C) The 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) A petition filed under 35 Ill. Adm. Code 104 (~~regulatory relief mechanisms~~) or 106 (~~proceedings pursuant to specific rules or statutory provisions~~) (see 35 Ill. Adm. Code 104.106 and 106.106); ~~unless the petition is for a variance or adjusted standard and the~~

~~petition states that it is not reasonably practicable for petitioner to file the petition electronically, in which case the petition must be filed in paper pursuant to subsection (h)(1)(B).~~

- 3) A document containing information claimed or determined to be a trade secret, or other non-disclosable information ~~under 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 ~~under pursuant to~~ 35 Ill. Adm. Code 130 must ~~may~~ be filed through COOL.
- 4) When filing a rulemaking proposal, if any document protected by copyright law (17 USC 101 et seq.) is proposed ~~under pursuant to~~ Section 5-75 of the IAPA [5 ILCS 100/5-75] to be incorporated by reference, the copyrighted document is prohibited from being filed electronically, but the remainder of the rulemaking proposal may be filed through COOL. In addition, the rulemaking proponent must: ~~comply with subsection (h)(4)(A) or (h)(4)(B).~~
  - A) File a paper original of the copyrighted document. The rulemaking proposal also must include:
    - i) The copyright owner's written authorization for the Board to make, at no charge to the Board, no more than a total of two paper copies of the copyrighted document if the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public during or after the rulemaking; or
    - ii) The proponent's representation that it will, at its own expense, promptly acquire and deliver to the Clerk's Office no more than a total of two paper originals of the copyrighted document if the Clerk's Office notifies the proponent in writing that the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public during or after the rulemaking; or.
  - B) File a license or similar documentation of access that, at no charge to the Board, gives the Board the rights, during and after the rulemaking, to do the following: electronically access the copyrighted document from the sole designated computer at the Board's Chicago office; print a single copy of the copyrighted document to maintain at the Board's Chicago office; and print no more than a total of two copies of the copyrighted document if the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public.

- 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 with permission 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).
- j) Oversized Exhibits. When reasonably practicable, oversized exhibits must be reduced to conform to or be formatted to print on 8½ x 11 inch paper for filing with the Clerk's Office. However, even when an oversized exhibit is so reduced or formatted, the original oversized exhibit still must be filed with the Clerk's Office. In accordance with 2 Ill. Adm. Code 2175.300, the original oversized exhibit may be returned to the person who filed it.
- k) Page Limitation. No motion, brief in support of a 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; however, materials which may be readily available to the Board such as prior Board opinions and orders, federal regulations, and statutes need not be included in appendices.
- l) Documents filed that do not meet the requirements of 35 Ill. Adm. Code.Subtitle A, may be rejected by the Clerk or the hearing officer. Any rejection of a filing must include a description of the Board's rules that have not been met.

(Source: Amended at 41 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 and When to Initiate Service. A party filing a document with the Clerk under pursuant to Section 101.302 must also serve one copy of the document upon each of the other parties to the adjudicatory proceeding and, if a hearing officer has been assigned, upon the assigned hearing officer. Service of a document must be initiated concurrently with submitting the document to the Clerk for filing.
  - 1) Service of a document upon a party must be made upon a person authorized by law to receive service on behalf of the party. If a party is represented by an attorney who has filed an appearance, service upon the party is made by serving the document upon the party's attorney. If more than one attorney appears for a party, service upon one of the party's attorneys is sufficient.

- 2) Each document being served (e.g., enforcement complaint, petition for review) must be accompanied by a notice of filing (see Appendix D) and a copy of the documentation of service (see subsection (d)).
  - 3) The date on which service of a document is considered to have been completed is determined under ~~pursuant to~~ Section 101.300(c).
  - 4) A proceeding is subject to dismissal, and the filing party is subject to sanctions, if service is not timely initiated or completed.
  - 5) Whether service of a document was proper may be challenged by the party allegedly served. To avoid waiving the right to contest personal jurisdiction, any challenge to service must be made under ~~pursuant to~~ Section 101.400(a)(5).
- c) Methods of Service. A document must be served in one of the following ways:
- 1) Except as provided in subsection (c)(2), service of documents may be made by any of the following methods:
    - A) Personal service;
    - B) U.S. Mail;
    - C) Third-party commercial carrier;
    - D) E-mail in accordance with Subpart J; and
    - E) Facsimile, but only if the party being served has filed a notice consenting to receipt of facsimile service and not filed a notice revoking that consent.
  - 2) Service of enforcement complaints and EMSA statements of deficiency upon respondents must be made by ~~as follows~~:
    - A) Personal ~~By personal~~ service;
    - B) ~~By~~ U.S. Mail with a recipient's signature recorded by the U.S. Postal Service upon delivery; or
    - C) ~~By a~~ third-party commercial carrier with a recipient's signature recorded by the third-party commercial carrier upon delivery.
  - 3) Service of administrative citations must be made as required under 35 Ill. Adm. Code Part 108.
- d) Documentation of Service and When to File Documentation of Service. A party

serving a document upon another party must also file documentation of that service. A proceeding is subject to dismissal, and the filing party is subject to sanctions, if documentation of service is not timely filed with the Clerk.

Documenting service and filing that documentation must be done as follows:

- 1) For personal service of a document, either an affidavit or certificate of service signed by the person who made personal delivery or a declaration of service signed by the process server who made personal delivery must accompany the document being filed with the Clerk. However, if the signed affidavit, certificate, or declaration is not available to the filing party when the document (~~e.g., enforcement complaint, petition for review~~) is filed with the Clerk, the filing must include submitted for filing:
  - A) An affidavit or certificate of service, signed by the filing party, stating must accompany the document being filed with the Clerk. ~~The affidavit or certificate of service must state that service has been initiated, but not yet completed,; and The the following:~~ the date, the time by when, and the place ~~where,~~ the document was provided to the person making personal delivery; the address appearing on the envelope or package containing the document; and that the delivery charge was prepaid must also be included; and
  - B) Within seven days after it becomes available to the filing party, the affidavit or certificate of service containing the signature of the person who made personal delivery or the declaration of service containing the signature of the process server ~~must be filed with the Clerk,~~ accompanied by a notice identifying the filed document (~~e.g., enforcement complaint, petition for review~~) to which the signed affidavit, certificate or declaration corresponds. A copy of the signed affidavit, certificate, or declaration and the notice must be served under pursuant to subsection (a).
  
- 2) For service of a document by U.S. Mail or third-party commercial carrier with a recipient's signature recorded by the U.S. Postal Service or the third-party commercial carrier upon delivery, the delivery confirmation containing the recipient's signature must accompany the document being filed with the Clerk. However, if the delivery confirmation containing the recipient's signature is not available to the filing party when the document (~~e.g., enforcement complaint, petition for review~~) is submitted for filing is filed with the Clerk, the filing must include:
  - A) An affidavit or certificate of service, signed by the filing party, stating must accompany the document being filed with the Clerk. ~~The affidavit or certificate of service must state that service has been initiated, but not yet completed,; and the following: tThe~~

date, the time by when, and the place ~~where~~, the document was provided to the U.S. Postal Service or the third-party commercial carrier; the address appearing on the envelope or package containing the document; and that proper postage or the delivery charge was prepaid must also be included; and

- B) Within seven days after it becomes available to the filing party, the delivery confirmation containing the recipient's signature ~~must be filed with the Clerk~~, accompanied by a notice identifying the filed document (~~e.g., enforcement complaint, petition for review~~) to which the signed delivery confirmation corresponds. A copy of the delivery confirmation and the notice must be served under ~~pursuant to~~ subsection (a).
- 3) For service of a document by e-mail or facsimile, an affidavit or certificate of service must accompany the document being filed with the Clerk. An affidavit or certificate of e-mail service must comply with Section 101.1060. An affidavit or certificate of facsimile service must include the date and time of the facsimile transmission, the telephone number to which the transmission was sent, the number of pages transmitted, and a statement that the document was served by facsimile.
- 4) For service of a document by U.S. Mail or a third-party commercial carrier without a recipient's signature recorded by the U.S. Postal Service or the third-party commercial carrier upon delivery, an affidavit or certificate of service must accompany the document being filed with the Clerk. The affidavit or certificate must state the following: the date, the time by when, and the place ~~where~~ the document was provided to the U.S. Postal Service or the third-party commercial carrier; the address appearing on the envelope or package containing the document; and that proper postage or the delivery charge was prepaid.
- 5) An affidavit of service must be notarized and is for use by a non-attorney. A certificate of service is for use by an attorney. Sample forms of an affidavit of service and a certificate of service are available in Appendices E and H.
- 6) A certificate of service must bear an attorney's ~~handwritten or typographical~~ signature. Signatures in affidavits of service, declarations of service, and delivery confirmations must be written by hand. A handwritten signature in documentation of service filed with the Clerk may be a facsimile or digitized electronic signature.
- 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 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, consented to e-mail service.
- 1) Service on the Illinois Environmental Protection 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. 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 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 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 Region V must be served at ~~the following address:~~

USEPA, Region V  
 77 West Jackson  
 Chicago IL 60604

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.306 Incorporation of Documents from Another Proceeding**

- 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~~. 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 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.308 Statutory Decision Deadlines and Waiver of Deadlines**

- a) Petitions in the following proceedings each have a 120-day statutory decision deadline: Variances (Section 38 of the Act), Permit Appeals and UST appeals (Section 40 of the Act), and Pollution Control Facility Siting Review (Section 40.1 of the Act). Other adjudicatory proceedings may be subject to decision deadlines as provided by law.
- b) Where the petitioner does not waive the decision deadline, the Board will proceed expeditiously to establish all hearing and filing requirements. Willful or unexcused failure to follow Board requirements on the deadlines will subject the party to sanctions under ~~pursuant to~~ Subpart H ~~of this Part~~. This Section will be



strictly construed where there is a decision deadline unless the Board receives a waiver as set out in subsection (c).

- c) All waivers of a deadline for Board action must be filed as a separate document. Waivers must be clearly titled and state which type of waiver it is, identify the proceeding by name and docket number, and be signed by the party or by an ~~his~~ authorized representative or attorney. A waiver of a statutory deadline does not preclude the Board from issuing an opinion or order prior to any decision deadline, nor does it preclude the filing of a motion seeking a decision on the matter.
- 1) ~~An open waiver waives Open Waiver. Waives~~ the decision deadline completely and unequivocally until the petitioner elects to reinstate the 120-day decision period by filing a notice to reinstate. Upon proper filing of the notice, the decision period is reinstated. In accordance with Section 101.300(b)(4) ~~of this Part~~, the decision period recommences as of the date the notice to reinstate is filed with the Board.
  - 2) ~~A time certain waiver must Time Certain Waiver. Waives the decision deadline until a time certain. The time certain may~~ be expressed in length of days or to a specific calendar date. If expressed in length of days, day one will be the first day after the date upon which the current time clock expires. If the petitioner files a time certain waiver before the hearing date, the waiver must be for at least 40 days. If the extension is not renewed for at least 40 days prior to the decision deadline, the Board will set the matter for hearing.

(Source: Amended at 41 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. (See 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. (See 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) An out-of-state attorney may appear as counsel and provide legal services in a particular proceeding before the Board only if the attorney has permission to do so under ~~pursuant to~~ Illinois Supreme Court Rule 707. No Board order is required for an out-of-state attorney to appear and no motions to appear pro hac vice is necessary ~~need be filed with the Board~~. The out-of-state attorney's appearance must include the following:
- A) A representation that the out-of-state attorney is in, and will maintain throughout the proceeding, compliance with Supreme Court Rule 707; and
  - B) Identification of the active status Illinois attorney associated with the out-of-state attorney under ~~pursuant to~~ Supreme Court Rule 707 and the date on which the active status Illinois attorney filed an appearance in the proceeding.
- 4) Any attorney appearing in a representative capacity must file a separate written appearance with the Clerk, together with documentation of service of the appearance under ~~pursuant to~~ Section 101.304(d) and notice of filing of the appearance under ~~pursuant to~~ Section 101.304(b)(2). The appearance must include:
- A) For law firms, the Agency, and the Attorney General's Office ~~when appearing before the Board must designate~~ a lead attorney must be designated for purposes of phone and mail contact pertaining to the proceeding. Absent written notice, the Board will designate the attorney whose signature appears first on the party's first filing as the lead attorney.
  - B) The attorney's business address and designation of a primary e-mail address for service by e-mail.
- 5) Any person seeking to contest personal jurisdiction must do so by filing a motion with the Board in accordance with Section 2-301 of the Code of Civil Procedure [735 ILCS 5/2-301].
- 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 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 under ~~pursuant to~~ subsection (a). 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).

- 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 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.402 Intervention of Parties**

- a) The Board may permit any person to intervene in any adjudicatory proceeding. If a person seeks to intervene in an adjudicatory proceeding, the person must file a motion to do so with the Clerk and serve a copy of the motion on all parties to the proceeding. The motion must set forth the grounds for intervention.
- b) In determining whether to grant a motion to intervene, the Board will consider the timeliness of the motion and whether intervention will unduly delay, or materially prejudice, the proceeding or otherwise interfere with an orderly or efficient proceeding.
- c) Subject to subsection (b) ~~of this Section~~, the Board will permit any person to intervene in any adjudicatory proceeding if:
- 1) The person has an unconditional statutory right to intervene in the proceeding; or
  - 2) It may be necessary for the Board to impose a condition on the person.
- d) Subject to subsection (b) ~~of this Section~~, the Board may permit any person to intervene in any adjudicatory proceeding if:
- 1) The person has a conditional statutory right to intervene in the proceeding;
  - 2) The person may be materially prejudiced absent intervention; or
  - 3) The person is so situated that the person may be adversely affected by a final Board order.
- e) An intervenor will have all the rights of an original party to the adjudicatory proceeding, except that the Board may limit the rights of the intervenor as justice may require. The limits may include providing that: the intervenor is bound by Board and hearing officer orders already issued or by evidence already admitted; that the intervenor does not control any decision deadline; and that the intervenor cannot raise issues that were raised or might more properly have been raised at an earlier stage of the proceeding.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.404 Agency as a Party in Interest**

~~Under pursuant to~~ Section 30 of the Act, the Board may request that the Agency investigate any alleged violation of the Act, the regulations, any permit granted by the Agency, or any term or condition of any such permit and any such other investigations as the Board may deem advisable. Upon such request, the Board may designate the Agency as a party in interest in any ongoing proceeding in that matter. The designation of the Agency as a party in interest does not require the Agency to take a position on the merits of the proceeding.

## **SUBPART E: MOTIONS**

### **Section 101.500 Filing of Motions and Responses**

- a) The Board may entertain any motion the parties wish to file that is permissible under the Act or other applicable law, these rules, or the Illinois Code of Civil Procedure.
- b) All motions must be in writing, unless made orally on the record during a hearing or during a status conference, and must state whether directed to the Board or to the hearing officer. Oral motion to the Board made at hearing must be filed in writing within 14 days after the hearing or the motion is deemed waived. Motions that should be directed to the hearing officer are set out in Section 101.502 ~~of this Part.~~ All motions must ~~should~~ be filed and served in conformance with Subpart C and J ~~of this Part.~~
- c) Motions may be filed at any time unless otherwise specifically provided.
- d) Within 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion. Unless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before expiration of the 14 day response period except in deadline driven proceedings where no waiver has been filed. Parties may request that the Board grant more time to respond by filing a motion for extension of time.
- e) The moving person will not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice. A motion for permission ~~leave~~ to file a reply must be filed with the Board within 14 days after service of the response.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.502 Motions Directed to the Hearing Officer**

- a) The hearing officer has the authority to rule on all motions that are not dispositive of the proceeding. ~~Examples of Dispositive motions that hearing officers may not rule upon are~~ include motions to dismiss, motions to decide a proceeding on the merits, motions to strike any claim or defense for insufficiency or want of proof, motions claiming lack of jurisdiction, motions for consolidation, motions for summary judgment, and motions for reconsideration. Oral motions directed to a hearing officer at a status conference will be summarized in a written hearing officer order. The duties and authorities of the hearing officer are further set out in Section ~~g of this Part~~.
- b) An objection to a hearing officer ruling made at hearing ~~or any oral motion to the Board made at hearing~~ will be deemed waived if not filed within 14 days after the Board receives the hearing transcript.
- c) Unless otherwise ordered by the Board, neither the filing of a motion, nor any appeal to the Board of a hearing officer order will stay the proceeding or extend the time for the performance of any act. Unless otherwise provided, all hearing officer orders will remain in effect during the pendency of any appeal to the Board.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **Section 101.504 Contents of Motions and Responses**

All motions and responses must ~~clearly~~ state the grounds upon which the motion is made and must contain a concise statement of the position or relief sought. Facts asserted that are not of record in the proceeding must be supported by oath, affidavit, or certification in accordance with Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109]. A brief or memorandum in support of the motion or response may be included.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **Section 101.510 Motions to Cancel Hearing**

- a) **Time to File.** Unless the Board or the hearing officer orders otherwise the hearing officer may grant motions to cancel hearings that are filed no fewer than 10 days or, if all parties agree to the motion, 5 days before the scheduled hearing date. The hearing officer may grant a motion filed after the prescribed time only if the movant demonstrates that the movant will suffer material prejudice if the hearing is not canceled.
- b) **Contents.** All motions to cancel a hearing must set forth a proposed date to reschedule the hearing and must be supported by an affidavit of the person or persons with knowledge of the facts that support the motion. The affidavit must include the factual basis for the request to cancel and a complete status report that describes the progress of the proceeding and sets forth the number of cancellation

requests previously granted to the movant. The hearing officer will grant the motion only if the movant demonstrates that the request to cancel is not the result of the movant's lack of diligence.

- c) In a proceeding for which there is a decision deadline, the hearing officer will deny a motion to cancel a hearing if the decision deadline does not allow enough time for the Board to reschedule the hearing, provide the required notice of the rescheduled hearing, complete the hearing, and deliberate and decide the matter.
- d) If the hearing officer grants a motion to cancel a hearing, the hearing officer will revise the schedule to complete the record in accordance with Section 101.612-~~of this Part~~. The hearing officer also will file the revised schedule with the Clerk and serve a copy of the revised schedule on all parties in accordance with Subpart C-~~of this Part~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.514 Motions to Stay Proceedings**

- a) Motions to stay a proceeding must be directed to the Board and must be accompanied by sufficient information detailing why a stay is needed, and in decision deadline proceedings, by a waiver of any decision deadline. A status report detailing the progress of the proceeding must be included in the motion. (See also Section 101.308-~~of this Part~~.)
- b) If the motion to stay is granted, at the close of the stay, the parties must file a status report in accordance with Subpart C-~~of this Part~~. Additional requests for stay of the proceedings must be directed to the hearing officer.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.516 Motions for Summary Judgment**

- a) Any time after the opposing party has appeared (or after the expiration of time within which any party is required to appear), but no fewer than 30 days prior to the regularly scheduled Board meeting before the noticed hearing date, a party may move the Board for summary judgment for all or any part of the relief sought. Any response to a motion for summary judgment must be filed within 14 days after service of the motion for summary judgment. The hearing officer may extend the filing and response deadlines contained in this subsection upon written motion by a party, consistent with any statutory deadlines.
- b) If 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, the Board will enter summary judgment.

- c) Any party wishing to cancel a hearing pending decision on a motion for summary judgment must file a motion to cancel hearing ~~under pursuant to~~ Section 101.510 ~~of this Part.~~

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.518 Motions for Interlocutory Appeal from Hearing Officer Orders**

Interlocutory appeals from a ruling of the hearing officer may be taken to the Board by filing a motion within 14 days after receipt of the hearing officer's written order. However, if the hearing officer's ruling is rendered on the record at hearing, any motion for interlocutory appeal must be filed within 14 days after the hearing ~~Board receives the hearing transcript setting forth the ruling.~~ Filing a motion for interlocutory appeal will not postpone a scheduled hearing, stay the effect of the hearing officer's ruling, or otherwise stay the proceeding. Failure of a party to timely file a motion for interlocutory appeal constitutes a waiver of any objection to the hearing officer's ruling.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.520 Motions for Reconsideration**

- a) Any motion for reconsideration or modification of a ~~final~~ Board order must be filed within 35 days after the receipt of the order. (See Section 101.902 ~~of this Part.~~)
- b) Any response to a motion for reconsideration or modification must be filed within 14 days after the filing of the motion.
- c) A timely-filed motion for reconsideration or modification stays the effect of the ~~final~~ order until final disposition of the motion in accordance with Section 101.300(d)(2) ~~of this Part.~~

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## **SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY**

### **Section 101.610 Duties and Authority of the Hearing Officer**

The hearing officer has the duty to manage proceedings assigned, to set hearings, to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear, complete, and concise record for timely transmission to the Board. The hearing officer has all powers necessary to these ends, including the authority to:

- a) Require parties to proceed to hearing and establish a schedule for, and notice and service of, any prefiled submission of testimony and written exhibits;

- b) Administer oaths and affirmations;
- c) Allow for the examination of or examine witnesses to ensure a clear and complete record;
- d) Regulate the course of the hearing, including controlling the order of proceedings;
- e) Establish reasonable limits on the duration of the testimony and questioning of any witness, and limit repetitive or cumulative testimony and questioning;
- f) Determine that a witness is adverse, hostile, or unwilling under pursuant to Section 101.624 ~~of this Part~~;
- g) Issue an order compelling the answers to interrogatories or responses to other discovery requests;
- h) Order the production of evidence under pursuant to Section 101.614 ~~of this Part~~;
- i) Order the filing of any required record or recommendation in a manner which provides for a timely review and development of issues prior to the hearing and consistent with any statutory decision deadline;
- j) Initiate, schedule, and conduct a pre-hearing conference;
- k) Order a briefing and comment schedule and exclude late-filed briefs and comments from the record;
- l) Rule upon objections and evidentiary questions;
- m) Order discovery under pursuant to Sections 101.614 and 101.616 ~~of this Part~~;
- n) Rule on any motion directed to the hearing officer or deferred to the hearing officer by the Board in accordance with Section 101.502 ~~of this Part~~;
- o) Set status report schedules;
- p) Require all participants in a rulemaking proceeding to state their positions with respect to the proposal; and
- q) Rule upon offers of proof and receive evidence and rule upon objections to the introduction of evidence.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.612 Schedule to Complete the Record**



- a) The hearing officer must establish a schedule to complete the record by hearing officer order. The schedule may provide dates and deadlines for pre-hearing conferences, discovery completion, and hearing and post-hearing submissions (including public comments). The schedule must provide for a completed record at least 30 days before the decision date, unless the hearing officer orders otherwise to prevent material prejudice. ~~The schedule must be in the form of a hearing officer order.~~ The hearing officer must file the schedule with the Clerk and serve a copy of the schedule on all parties in accordance with Subpart C ~~of this Part.~~
- b) The hearing officer may rule upon any motion to revise the schedule to complete the record. The hearing officer may grant the motion to the extent that the revised schedule provides for a completed record at least 30 days before the decision date or to prevent material prejudice. If the hearing officer grants a motion to revise the schedule, the hearing officer must file the revised schedule with the Clerk and serve a copy of the revised schedule on all parties in accordance with Subpart C ~~of this Part.~~ (See also Section 101.510(d) ~~of this Part.~~)

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.616 Discovery**

The assigned hearing officer will set all time deadlines for discovery not already provided for in this Subpart consistent with Board deadlines. For purposes of discovery, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent (see Section 101.100(b)). All discovery disputes will be handled by the assigned hearing officer.

- a) All relevant information and information calculated to lead to relevant information is discoverable, excluding those materials that would be protected from disclosure in the courts of this State under pursuant to statute, Supreme Court Rules or common law, and materials protected from disclosure under 35 Ill. Adm. Code 130.
- b) If the parties cannot agree on the scope of discovery or the time or location of any deposition, the hearing officer has the authority to order discovery or to deny requests for discovery.
- c) All discovery must be completed at least 10 days prior to the scheduled hearing in the proceeding unless the hearing officer orders otherwise.
- d) The hearing officer may, on his or her own motion or on the motion of any party or witness, issue protective orders that deny, limit, condition or regulate discovery to prevent unreasonable expense, or harassment, to expedite resolution of the

proceeding, or to protect non-disclosable materials from disclosure consistent with Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 130.

- e) Unless a claim of privilege is asserted, it is not a ground for objection that the testimony of a deponent or person interrogated will be inadmissible at hearing, if the information sought is reasonably calculated to lead to relevant information. Any appeals of rulings by the hearing officer regarding discovery must be in writing and filed with the Board prior to hearing.
- f) Failure to comply with any order regarding discovery may subject the offending persons to sanctions under ~~pursuant to~~ Subpart H ~~of this Part~~.
- g) If any person serves any request for discovery or answers to discovery for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, or knowingly gives a false answer to discovery questions, the Board, on its own motion or the motion of a party, may impose sanctions under ~~pursuant to~~ Subpart H ~~of this Part~~.
- h) A party must amend any prior responses to interrogatories, requests for production, or requests for admission if the party learns that the response is in some material respect incomplete or incorrect, and the additional or corrected information has not otherwise been made known to the other parties during the discovery process or in writing.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.618 Admissions**

- a) General. All requests to admit must be served upon a party no later than 35 days before hearing. All answers or objections to requests to admit must be served upon the party requesting the admission within 28 days after the service of the request.
- b) Extension of Time. In accordance with Sections 101.522 and 101.610 ~~of this Part~~, the hearing officer may extend the time for filing any request, answer, or objection either before or after the expiration of time.
- c) Request to Admit. Any party serving a request to admit in accordance with subsection (d) or (e) must include the following language in the first paragraph of the request. "Failure to respond to the following requests to admit within 28 days may have severe consequences. Failure to respond to the following requests will result in all the facts requested being deemed admitted as true for this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding or an attorney."

- d) Request for Admission of Fact. A party may serve a written request for admission of the truth of specific statements of fact on any other party.
- e) Request for Admission of Genuineness of Document. A party may serve a written request for admission of the genuineness of documents on any other party. Copies of the document must be served unless the document has already been furnished in the present proceeding.
- f) Admission in the Absence of Denial. Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 28 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully admit or deny those matters, or written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request are made, the remainder of the request must be answered within the period designated in the request. A denial must fairly address the substance of the requested admission.
- g) Partial Denial or Qualification. If good faith requires that a party deny a part of a matter for which an admission is requested, or if a part requires qualification, the party must specify the part which is denied or qualified and admit only the remainder.
- h) Objection. Any objection to a request or to any answer must be stated with specificity, and will be heard by the hearing officer upon notice and motion of the party making the request.
- i) Effect of Admission. Any admission made by a party ~~under pursuant to~~ a request under this Section is for the purpose of the pending proceeding only. It does not constitute an admission by the party for any other purpose and may not be used against him in any other proceeding.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.620 Interrogatories**

- a) Unless ordered otherwise by the hearing officer, a party may serve a maximum of 30 written interrogatories, including subparts, on any other party, no later than 35 days before hearing.
- b) Within 28 days after service thereof, the party to whom the interrogatory is directed must serve the answers and objections, if any, upon the party submitting the interrogatories. Each interrogatory must be answered separately and fully in writing under oath, unless it is objected to. Answers must be signed by the person

making them and objections must be signed by the attorney making them or, in the event of an individual representing himself or herself, the individual making them.

- c) Grounds for an objection to an interrogatory must be stated with specificity, and be accompanied by a copy of the interrogatory. Any ground that is not stated in a timely objection is waived unless it results in material prejudice or good cause for the delay is shown.

### **Section 101.622 Subpoenas and Depositions**

- a) Upon request by any party to a contested proceeding, the Clerk will issue subpoenas for the attendance of witnesses at a hearing or deposition. Subpoena forms are available at the Board's Chicago office. The person requesting the subpoena is responsible for completing the subpoena and serving it upon the witness.
- b) Service of the subpoena on the witness must be completed no later than 10 days before the date of the required appearance. A copy of the subpoena must be filed with the Clerk and served upon the hearing officer within 7 days after service upon the witness. Failure to serve both the Clerk and the hearing officer will render the subpoena null and void. Service and filing must be in accordance with Subpart C ~~of this Part~~.
- c) Subpoenas may include a command to produce books, papers, documents, or other tangible things designated therein and relevant to the matter under consideration.
- d) The hearing officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance, may quash or modify the subpoena if it is unreasonable or irrelevant. The hearing officer will rule upon motions to quash or modify material requested in the subpoena under pursuant to subsection (c) ~~of this Section~~ in accordance with the standards articulated in Section 101.614 ~~of this Part~~.
- e) Each witness subpoenaed by a party under this Section is entitled to receive witness fees from that party as provided in Section 4.3 of the Circuit Courts Act [705 ILCS 35/4.3].
- f) Unless the hearing officer orders otherwise, any witness subpoenaed for a deposition may be required to attend only in the county in which he resides or maintains an office address. In accordance with Supreme Court Rule 206(d), all depositions must be limited to 3 hours in length unless the parties and the non-party deponent by stipulation agree to a longer time frame or unless the hearing officer orders otherwise after a showing of good cause. (See Ill. S. Ct. Amended Rule 206(d).)

- g) Failure of any witness to comply with a subpoena will subject the witness to sanctions under this Part, or the judicial enforcement of the subpoena. The Board may, upon proper motion by the party requesting the subpoena, request the Attorney General to pursue judicial enforcement of the subpoena on behalf of the Board.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.626 Information Produced at Hearing**

In accordance with Section 10-40 of the IAPA, the hearing officer will admit evidence that is admissible under the rules of evidence as applied in the civil courts of Illinois, except as otherwise provided in this Part.

- a) Evidence. The hearing officer may admit evidence that is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged.
- b) Admissibility of Evidence. When the admissibility of evidence depends upon a good faith argument as to the interpretation of substantive law, the hearing officer will admit the evidence.
- c) Scientific Articles and Treatises. Relevant scientific or technical articles, treatises, or materials may be introduced into evidence by a party. The materials are subject to refutation or disputation through introduction of documentary evidence or expert testimony.
- d) Written Testimony. Written testimony may be introduced by a party in a hearing only if provided to all other parties of record prior to the date of the hearing and only after the opposing parties have had an opportunity to object to the written testimony and to obtain a ruling on the objections prior to its introduction. Written testimony may be introduced by a party only if the persons whose written testimony is introduced are available for cross-examination at hearing.
- e) Admission of Business Records. A writing or record, whether in the form of any entry in a book or otherwise made as a memorandum or record of any act, transaction, occurrence, or event, may be admissible as evidence of the act, transaction, occurrence, or event. To be admissible, the writing or record must ~~will~~ have been made in the regular course of business, provided it was the regular course of business to make the memorandum or record at the time of the act, transaction, occurrence, or event, or within a reasonable time afterwards ~~thereafter~~. All other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be admitted to affect the weight of the evidence, but will not affect admissibility. The term

“business,” as used in this subsection (e), includes businesses, professions, occupations, and callings of every kind.

- f) **Prior Inconsistent Statements.** Prior statements made under oath may be admitted to impeach a witness if the statement is inconsistent with the witness' testimony at hearing.
- g) **Oral and Written Statements.** Oral and written statements from participants may be taken at hearing in accordance with Section 101.628 ~~of this Part.~~

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.628 Statements from Participants**

- a) **Oral Statements.** The hearing officer may permit a participant to make oral statements on the record when time, facilities, and concerns for a clear and concise hearing record so allow. The oral statements must be made under oath and are subject to cross-examination. (See Sections 101.110 and 101.114 ~~of this Part.~~)
- b) **Written Statements.** Any participant may submit written statements relevant to the subject matter at any time prior to hearing or at hearing. Participants submitting such a statement will be subject to cross-examination by any party. Written statements submitted without the availability of cross-examination will be treated as public comment in accordance with subsection (c) ~~of this Section~~ and will be afforded lesser weight than evidence subject to cross-examination.
- c) **Public Comments or Amicus Curiae Briefs.** Oral public comment may be made on the record at a hearing and is not subject to cross-examination. Additionally, ~~p~~Participants may file written public comments subject to the requirements of this Section and the hearing officer's schedule for completion of the record. The Board also allows for the filing of amicus curiae briefs by non-party participants. Amicus curiae briefs will be allowed in accordance with Section 101.110 ~~of this Part.~~
  - 1) Written public ~~Public~~ comments must be filed within 14 days after the close of the last hearing unless the hearing officer specifies a different date for submission of post-hearing comments. However, all public comments must be filed with the Board no later than 30 days before the decision date, unless the hearing officer orders otherwise to prevent material prejudice. Consistent with the burden of proof in a proceeding, the hearing officer may provide for differing filing deadlines with respect to post-hearing comments by different persons. Under ~~pursuant to~~ hearing officer order, rebuttal public comments may be submitted.

- 2) All public comments must present arguments or comments based on evidence contained in the record. The comments may also present legal argument citing legal authorities.
- 3) Comments must be filed with the Board. Comments will be distributed to parties and the hearing officer by the Clerk's office.

(Source: Amended at 41 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 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.904 Relief from 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. After~~ Thereafter, while the appeal is pending, the mistakes may be corrected only with permission ~~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 under 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.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.906 Judicial Review of Board Orders**

- a) Under pursuant to Sections 29 and 41 of the Act [415 ILCS 5/29 and 41] and Supreme Court Rule 335, judicial review of final Board orders is available from the appellate court. However, under 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, a final Board order is appealable as of the date of service of the final order upon the appealing person (see Section 101.300(d)).
- 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 40 Ill. Reg. 7912, effective May 20, 2016)

## 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](http://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), (h)(4), and (j) ~~of this Part~~ and Section 101.1050 ~~of this Subpart~~, all documents may be filed through COOL. However, if filing through COOL is not reasonably practicable, the Board, the



hearing officer, or the Clerk may grant permission to file in paper. 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.

- d) Generally, the Clerk's Office will not accept paper documents for filing; however, the Clerk's Office will convert paper-filed documents into electronic documents and place them on COOL, when permission to file a paper document is granted under subsection (c).
- 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.~~)

(Source: Amended at 41 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 under 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: Amended at 41 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 under ~~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 under ~~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 under ~~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 under 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: Amended at 41 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.
- g) Documents filed under Section 101.302(h)(2) must:
- 1) Include bookmarks, immediately viewable when the document is opened, to individual documents in the same order as they appear in the corresponding Table of Contents to facilitate navigation and location of specific contents within the record; and
  - 2) Pagination must be displayed on each document in the bottom right-corner.

(Source: Amended at 41 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: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 101.1050 Documents Required in Paper or Excluded from Electronic Filing**

- a) A document containing information claimed or determined to be a trade secret, or other non-disclosable information under pursuant to 35 Ill. Adm. Code 130, is prohibited from being filed electronically and must instead be filed only in paper under pursuant to Section 101.302(h)(3) ~~of this Part~~. The version of the document that is redacted under pursuant to 35 Ill. Adm. Code 130 may be filed through COOL.
- b) If a rulemaking proposal contains a document that is protected by copyright law (17 USC 101 *et seq.*) and proposed under 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 under pursuant to Section 101.302(h)(4) ~~of this Part~~. The remainder of the rulemaking proposal may be filed through COOL.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 101.1060 E-Mail Service**

- a) Except as provided in subsections (b) and (c), 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.) 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 and EMSA statements of deficiency on a respondent must be made personally, by U.S. Mail with a recipient's signature recorded, or by a third-party commercial carrier with a recipient's signature recorded. (See Section 101.304(c)(2).)
- c) Service of administrative citations must be made as required under 35 Ill. Adm. Code 108.
- d) A person required to serve a document on the hearing officer must serve the hearing officer by sending the document to the hearing officer's e-mail address in lieu of serving a paper document upon the hearing officer if the person has the capability of serving the document by e-mail.
- 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. An affidavit or certificate of e-mail service must 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 of the e-mail transmission and the time by when it took place.
- 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 under ~~pursuant to~~ Section 101.304(c).
- g) Except for final adjudicatory orders of the Board, which the Clerk's Office serves in paper by certified mail, the Clerk's Office will 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.) The Clerk will record the date and time of e-mail service, consistent with subsection (e) ~~of this Section~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.1070 Consenting to Receipt of E-Mail Service**

- a) In any proceeding, a person consents to e-mail service of documents in lieu of receiving paper documents by:
  - 1) Filing a "Consent to Receipt of E-Mail Service" (see sample form of consent in Appendix I);

- 2) Providing the hearing officer, during a hearing or conference, with an e-mail address that is designated for receiving service;
  - 3) Filing an attorney's appearance ~~containing an e-mail address that is designated for receiving service~~; or
  - 4) Appearing on a notice list or service list and providing the Clerk's Office with an e-mail address that is designated for receiving service.
- b) At any time during a proceeding, consent to e-mail service may be provided as set forth in subsection (a). 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. However, an attorney who filed an appearance may not revoke consent unless the appearance is withdrawn.
  - d) Upon a change in the e-mail address of a recipient of e-mail service, the recipient must notify the Clerk's Office of the e-mail address change for each pending proceeding in which the person has consented to e-mail service.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 101.APPENDIX A Captions**

**Section 101.ILLUSTRATION A Enforcement Case**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF	)	
ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB xx-xxx
	)	(Enforcement-X)
W. R. JONES Co.,	)	
	)	
Respondent.	)	

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 101.ILLUSTRATION B Citizen's Enforcement Case**



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOHN DOE,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB xx-xxx
	)	(Enforcement-X)
W. R. JONES Co.,	)	
	)	
Respondent.	)	

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 101.ILLUSTRATION C Variance**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

W.R. WATER CO.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB xx-xxx
	)	(Variance-X)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 101.ILLUSTRATION D Adjusted Standard Petition**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
PETITION OF ABC COMPANY	)	AS xx-xxx
FOR AN ADJUSTED STANDARD	)	(Adjusted Standard-X)
FROM 35 Ill. Adm. Code XXX.XXX	)	

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 101.ILLUSTRATION E Joint Petition for an Adjusted Standard**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
PETITION OF ABC COMPANY AND	)	AS xx-xxx
THE ILLINOIS ENVIRONMENTAL	)	(Adjusted Standard-X)
PROTECTION AGENCY FOR	)	
ADJUSTED STANDARD FROM	)	
35 Ill. Adm. Code XXX.XXX	)	

**Section 101.ILLUSTRATION F Permit Appeal**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

GENERAL COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB xx-xxx
	)	(Permit Appeal-X)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 101.ILLUSTRATION G Underground Storage Tank Appeal**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

GENERAL COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB xx-xxx
	)	(UST Fund Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

GENERAL COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB xx-xxx
	)	(UST Appeal)
OFFICE OF THE STATE	)	
FIRE MARSHAL,	)	
	)	
Respondent.	)	

**Section 101.ILLUSTRATION H Pollution Control Facility Siting Appeal**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

GENERAL COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB xx-xxx
	)	(Pollution Control Facility Siting Appeal)
	)	
XXX COUNTY AND ABC DISPOSAL	)	
COMPANY,	)	
	)	
Respondents.	)	

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ABC DISPOSAL COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB xx-xxx
	)	(Pollution Control Facility Siting Appeal)
	)	
XXX COUNTY,	)	
	)	
Respondent.	)	

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 101.ILLUSTRATION I Administrative Citation**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

COUNTY OF COOK,	)	
	)	
Complainant,	)	
	)	
v.	)	AC xx-xxx
	)	IEPA or County Number
ABC DISPOSAL AND	)	(Administrative Citation)
RECYCLING, INC.,	)	
	)	
Respondent.	)	

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 101.ILLUSTRATION J Administrative Citation Under Section 23.1 of the Public Water Supply Operations Act**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC xx-xxx
	)	IEPA Number
JOHN SMITH,	)	(Administrative Citation)
	)	
Respondent.	)	

**Section 101.ILLUSTRATION L Site-specific Rulemaking**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
PROPOSED SITE SPECIFIC WATER	)	Rxx-xxx
POLLUTION REGULATIONS	)	(Site-Specific Rulemaking-X)
APPLICABLE TO XYZ	)	
UTILITIES COMPANY OF ILLINOIS	)	
DISCHARGE TO XYZ CREEK:	)	
35 Ill. Adm. Code	)	

BOARD NOTE: The Board notes that all docket numbers consist of letter(s) followed by two numbers. The first two digit number is the fiscal year the matter was filed. Then the second number is the sequential number for that type of filing the Board has received that year. Persons making filings are not responsible for the Board docket number on the original filing. The Clerk

of the Board will assign the appropriate docket number when the matter is filed. All filings in a matter that has been assigned a docket number must ~~should~~ contain a docket number located as indicated on the examples above. The Board will also be designating its opinion and orders with the type of case and media involved in the matter. Where the above examples have the type of case followed by "X", the Board will, for example if the case is dealing with a variance from certain water regulations, put the media, water, after variance to become "Variance-Water". Again, persons making filings need not place this on original filings. However, all filings in a matter that has been assigned the media must ~~should~~ indicate that media in the location as in the above examples. Where there are specific procedural rules developed for specific types of cases, as in a "UST Appeal", persons making filings must ~~should~~ follow those examples.

**Section 101.APPENDIX B Appearance Form**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

APPEARANCE

I hereby file my appearance in this proceeding, on behalf of ABC Company.

\_\_\_\_\_  
Attorney's Name

Name of Attorney and Firm  
Address  
Telephone Number

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 101.APPENDIX C Withdrawal of Appearance Form**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF WITHDRAWAL OF APPEARANCE

I hereby give notice of withdrawal of my appearance as representative of ABC Company in this proceeding.

\_\_\_\_\_  
Attorney's Name

Name of Attorney and Firm  
Address  
Telephone Number

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 101.APPENDIX D Notice of Filing**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

To: (List all persons served.)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the [specify what document was filed] of [name of persons filing the document], a copy of which is herewith served upon you.

\_\_\_\_\_  
Name of Attorney or Other Representative

Date

Name  
Address  
Telephone Number

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 101.APPENDIX E Affidavit or Certificate of Service**

**Section 101.ILLUSTRATION A Service by Non-Attorney**

AFFIDAVIT OF SERVICE

I, the undersigned, on oath [or affirmation] state that I have served on the date of \_\_\_\_\_, the attached [describe document served] upon the following persons by [describe method of service, e.g., depositing the document in a U.S. Postal Service mailbox or delivering the document to a third-party commercial carrier], by the time of \_\_\_\_\_, with proper postage or delivery charges prepaid:

[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

**Section 101.ILLUSTRATION B Service by Attorney**

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served on the date of \_\_\_\_\_ the attached [describe document served] upon the following persons by [describe method of service, e.g., depositing the document in a U.S. Postal Service mailbox or delivering the document to a third-party commercial carrier], by the time of \_\_\_\_\_, with proper postage or delivery charges prepaid:

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

[signature]

[date]

(

**Section 101.APPENDIX F Notice of Withdrawal (Repealed)**

(Source: Repealed 29 Ill. Reg. 8743, effective June 8, 2005)

**Section 101.APPENDIX G Comparison of Former and Current Rules (Repealed)**

(Source: Repealed 29 Ill. Reg. 8743, effective June 8, 2005)

**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 e-mail transmission 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 39 Ill. Reg. 2276, effective January 27, 2015)

**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 39 Ill. Reg. 2276, effective January 27, 2015)

**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 39 Ill. Reg. 2276, effective January 27, 2015)

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

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

SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part II: Regulatory and Other Nonadjudicative Hearings and Proceedings, in R70-4, 1 PCB 43, October 8, 197-; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1398, effective January 16, 1984; Part repealed, new Part adopted in R88-5(B) at 14 Ill. Reg. 9210, effective May 24, 1990; amended in R90-16 at 14 Ill. Reg. 20471, effective December 11, 1990; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 587, effective January 1, 2001; amended in R01-13 at 26 Ill. Reg. 3498, effective February 22, 2002; amended in R04-24 at 29 Ill. Reg. 8776, effective June 8, 2005; amended in R10-18 at 34 Ill. Reg. 34, effective August 9, 2010; amended in R14-21 at 39 Ill. Reg. 2333, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. 7955, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

### Section 102.100 Applicability

- a) This Part applies to all regulatory and informational hearings and proceedings, and must be read in conjunction with 35 Ill. Adm. Code 101. Hearings conducted ~~under pursuant to~~ this Part are quasi-legislative in nature and the purpose of the hearings is to gather information and comments to guide the Board in its rulemaking process. All testimony must be sworn.
- b) All persons taking part in these hearings are participants, rather than parties as in contested cases. Non-attorneys may represent themselves and others at regulatory hearings and may ask questions of witnesses or give testimony or comment as allowed by the hearing officer.

### Section 102.106 Types of Regulatory Proposals

- a) The Act provides for 5 types of regulatory proposals:
  - 1) Identical-in-substance rulemakings, as defined in Sections 7.2, 13.3, 28.2 and 28.4 of the Act [415 ILCS 5/7.2, 13.3, 28.2, and 28.4];
  - 2) Federally required rules, as defined in Section 28.2 of the Act [415 ILCS 5/28.2];
  - 3) Other regulatory proposals, both of general applicability and not of general applicability as allowed by Sections 26, 27 and 28 of the Act [415 ILCS 5/26, 27, and 28];
  - 4) Clean Air Act fast track rulemakings as defined by Section 28.5 of the Act [415 ILCS 5/28.5]; and
  - 5) Rulemakings to update incorporations by reference, as allowed by Section 28.6 of the Act [415 ILCS 5/28.6].
- b) The IAPA provides for three types of rulemakings:
  - 1) General rulemaking ~~under pursuant to~~ Section 5-40 of the IAPA [5 ILCS 100/5-40];
  - 2) Emergency rulemaking ~~under pursuant to~~ Section 5-45 of the IAPA [5 ILCS 100/5-45]; and
  - 3) Peremptory rulemaking ~~under pursuant to~~ Section 5-50 of the IAPA [5 ILCS 100/5-50].

(Source: Amended at 29 Ill. Reg. 8776, effective June 8, 2005)

### **Section 102.108 Public Comments**

- a) The Board will accept written comments from any person concerning a regulatory proposal during the first notice period as defined in Section 102.604 ~~of this Part~~. However, when adopting identical-in-substance regulations, the Board will accept written comments from USEPA and other persons for at least 45 days after the date of publication of the proposed regulations or amendments in the Illinois Register in accordance with Section 102.610 ~~of this Part~~.
- b) Any person may submit written comments on any proposal within 14 days after the receipt of the hearing transcript in Board offices unless otherwise specified by the hearing officer or the Board.
- c) Comments must be filed with the Clerk and served in accordance with 35 Ill. Adm. Code 101.Subpart C, upon the ~~Environmental Protection Agency (Agency), Department of Natural Resources (DNR)~~, the Attorney General (if a participant), the proponent, and the participants on any service list established by the hearing officer ~~under pursuant to Section 102.422 of this Part~~ unless otherwise specified by the hearing officer or the Board.
- d) Comments that are not timely filed or properly served will not be considered, except as allowed by the hearing officer or the Board to prevent material prejudice.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 102.110 Waiver of Requirements (Repealed)**

~~The Board may waive any of the non-statutory requirements of this Part upon a showing by a person that a particular requirement would create an undue burden on that person such as where the burden of compliance imposes financial costs that would preclude further participation, or where compliance would result in the provision of information already provided in that proceeding.~~

(Source: Repealed at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 102.112 Other Proceedings**

~~Under pursuant to~~ Section 5(d) of the Act or other applicable law, the Board may conduct such other noncontested or informational hearings as may be necessary to accomplish the purposes of the Act or other applicable law. The hearings may include inquiry hearings to gather information on any subject the Board is authorized to regulate.

### **Section 102.114 Hearings**

Hearings will be conducted ~~under pursuant to~~ 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Added at 40 Ill. Reg. 7955, effective May 20, 2016)

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 proposal must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h) and served upon the Attorney General, the Agency, and DNR in accordance with 35 Ill. Adm. Code 101.304(c).

(Source: Amended at 39 Ill. Reg. 2333, effective January 27, 2015)

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

~~Each proponent must set forth the following in its~~ A proposal must include:

- a) The language of the proposed rule, including any existing regulatory language proposed to be amended or repealed. Language being added must be indicated by underscoring, and language being deleted must be indicated by strike-outs. The proposed rule must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
- b) A statement of the reasons supporting the proposal, including a statement of the facts that support the proposal, and a statement of the purpose and effect of the proposal, including environmental, technical, and economic justification. The statement must discuss the applicable factors listed in Section 27(a) of the Act. The statement must include, to the extent reasonably practicable, all affected sources and facilities and the economic impact of the proposed rule;
- c) A synopsis of all testimony to be presented by the proponent at hearing;
- d) Any material to be incorporated by reference within the proposed rule under ~~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 of service upon all persons required to be served under 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, under 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) ~~An~~ ~~When the proponent is a State agency, an~~ electronic version of the proposed rule language information required under subsection (a) ~~of this Section in the format specified in Section 101.1030 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 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 102.204 Proposal of RCRA Amendments**

In addition to satisfying the requirements of Section 102.202 ~~of this Part~~, any proposal to amend the RCRA regulations must:

- a) Indicate whether it is made under pursuant to the provisions of Section 22.4(a), 22.4(b) or 22.4(c) of the Act;
- b) Include a listing of all amendments to the corresponding federal regulations since the period encompassed by the last amendment of the Board's RCRA rules; and
- c) Include a certificate of service indicating that a copy of the proposal has been served on the USEPA. Service must be made at the following address:

Director, Waste Management Division  
 USEPA, Region V  
 77 W. Jackson Street  
 Chicago, Illinois 60604

(Source: Amended at 41 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) ~~DNR~~ 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 102.416(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 ~~under 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 41 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 underlining 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~~
- f) 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 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 102.211 Proposal to Update Incorporations by Reference**

- a) *Any person may file a proposal with the Board to update an incorporation by reference included in a Board rule. The Board or the Agency may also make such a proposal on its own initiative. [415 ILCS 5/28.6(a)] The proposal must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h) and served on the Agency, DNR, and the Attorney General in accordance with 35 Ill. Adm. Code 101.304(c).*
- b) *A rulemaking to update an incorporation by reference under this Section must:*
  - 1) *Be for the sole purpose of replacing a reference to an older or obsolete version of a document with a reference to the current version of that document or its successor document; and*
  - 2) *Comply with Sections 5-40 and 5-75 of the IAPA [5 ILCS 100/5-40, 5-75]. [415 ILCS 5/28.6(b), (c)]*

- c) *Sections 27 and 28 of the Act [415 ILCS 5/27, 28] do not apply to rulemaking under this Section. [415 ILCS 5/28.6(c)] Accordingly, for rulemaking under this Section, the Board will not hold any public hearings nor request that the Department of Commerce and Economic Opportunity conduct a study of the economic impact of the proposed amendment.*
- d) A proposal to update an incorporation by reference under this Section must:
- 1) Include 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;
  - 2) Comply with subsections (a), (d), (e), (f), (i), and (j) of Section 102.202 ~~of this Part~~; and
  - 3) When any information required under this subsection (d) is inapplicable or unavailable, the proposal must provide a complete justification for the inapplicability or unavailability.
- e) *If an objection to the proposed amendment is filed during the public comment period required under Section 5-40 of the IAPA [5 ILCS 100/5-40], then the proposed amendment cannot be adopted pursuant to this Section. [415 ILCS 5/28.6(d)]*
- f) *Nothing in this Section precludes the adoption of a change to an incorporation by reference through other lawful rulemaking procedures. [415 ILCS 5/28.6(d)]*

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 102.212 Dismissal**

- a) Failure of the proponent to satisfy the content requirements for proposals under this Subpart or failure to respond to Board requests for additional information will render a proposal subject to dismissal for inadequacy.
- b) Failure of the proponent to pursue disposition of the proposal in a timely manner will render a proposal subject to dismissal. In making this determination, the Board will consider factors including the history of the proceeding and the proponent's compliance with any Board or hearing officer orders.
- c) A proposal will be dismissed for inadequacy in cases in which the Board, after evaluating the proposal, cannot determine the statutory authority on which the proposal is made. ~~In all such cases, a statement informing the proponent of the Board's basis for dismissal will be made.~~ Dismissal of a proposal will not bar a proponent from re-submitting a proposal in the absence of any deadline imposed by applicable law or Board regulations.

- d) Any person may file a motion challenging the statutory authority or sufficiency of the proposal under pursuant to 35 Ill. Adm. Code 101.Subpart E.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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

### Section 102.300 Applicability

This Subpart applies to ~~the adoption of~~ rules proposed by the Agency and required to be adopted by the State under the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (CAAA). A "fast-track" rulemaking proceeding is a proceeding to promulgate a rule that the CAAA requires to be adopted. For purposes of this Section, "requires to be adopted" refers only to those regulations or parts of regulations for which the United States Environmental Protection Agency is empowered to impose sanctions against the State for failure to adopt such rules. [415 ILCS 5/28.5(a), (c)]

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 102.302 Agency Proposal

- a) When proposing a regulation required by the CAAA, the Agency proposal must meet the following requirements:
- 1) Set ~~The proposal must set forth~~ the proposed rule, which must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
  - 2) Include ~~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) Clearly ~~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) Include ~~The proposal must include~~ supporting documentation for the rule that summarizes the basis of the rule [415 ILCS 5/28.5(e)(4)];
  - 5) Describe ~~The proposal must describe~~ in general the alternative selected and the basis for the alternative [415 ILCS 5/28.5(e)(5)];
  - 6) Summarize ~~The proposal must summarize~~ the economic and technical data that the Agency relied upon in drafting the proposed rule;

- 7) Include ~~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) Set ~~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) Include ~~a~~ *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) Include ~~The proposal must include~~ an electronic version of 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 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 102.306 Prefiled Testimony**

- a) The hearing officer will close the service list for purposes of prefiled testimony at 4:30 p.m. 16 days before the date of hearing.
- b) Ten days before the hearing, copies of prefiled testimony must be filed with the Clerk and served upon all people who are on the service list as closed under ~~pursuant to~~ subsection (a) ~~of this Section~~.
- c) The Board may grant a waiver of the prefiling deadline or service requirement for good cause.
- d) Participants who do not pre-file their testimony will only be allowed to testify if time remains in that hearing day. The hearing will not be continued from day to day to accommodate participants who do not prefile.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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

**Section 102.400 Service and Filing of Documents**

All documents must be served and filed in accordance with 35 Ill. Adm. Code 101. Subpart C and J.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 102.402 Motions, Production of Information, and Subpoenas**

Motion practice, production of information and the issuance of subpoenas in regulatory proceedings is governed by 35 Ill. Adm. Code 101. All motions and responses must be filed with the Board and served upon the hearing officer, the proponent, the Agency, and all persons on any service list established under pursuant to Section 102.422(b) ~~of this Part~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 102.408 Prehearing Order**

- a) *No record need be kept of the prehearing conference, nor shall any participant or the Board be bound by any discussions conducted at the prehearing conference [415 ILCS 5/27(d)].*
- b) *Notwithstanding subsection (a) ~~of this Section~~, with the consent of all participants in the prehearing conference, the hearing officer may enter a prehearing order delineating issues to be heard, agreed facts, and other matters [415 ILCS 5/27(d)].*
- c) *If the participants in the prehearing conference agree to have a prehearing order entered under pursuant to subsection (b) ~~of this Section~~, the hearing officer may require that those participants furnish a draft of a proposed order setting forth the substance of the agreements reached at the prehearing conference. The hearing officer will enter that order if he agrees that it sets forth the substance of the agreement. The order will identify which participants have agreed to the substance of the order.*
- d) *A prehearing order will not be binding on non-participants in the prehearing conference [415 ILCS 5/27(d)].*

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 102.410 Authorization of Hearing**

- a) ~~The Clerk will assign a docket number to any proposal.~~ All regulatory proposals will be placed on the Board agenda for determination of adequacy under the applicable law and this Part. The proponent must cure any inadequacy identified by Board order before the proposal will proceed to hearing.
- b) The Board will schedule a hearing on a proposal if it finds that the proposal is *supported by an adequate statement of reasons, is accompanied by a petition signed by at least 200 persons, is not plainly devoid of merit and does not deal with a subject on which a hearing has been held within the preceding six months* [415 ILCS 5/28(a)].
- c) In accordance with Section 28(a) of the Act, if a proposal is made by the Agency, or DNR, *the Board shall schedule a public hearing without regard to the above conditions* in subsection (b) ~~of this Section~~ as soon as practicable [415 ILCS 5/28(a)].
- d) ~~Under pursuant to~~ Section 28 of the Act, *the Board may also in its discretion schedule a public hearing upon any proposal without regard to the above conditions* in subsection (b) ~~of this Section~~ [415 ILCS 5/28(a)].
- e) If the Board determines that a proposal meets the requirements of subsection (b) ~~of this Section~~ or is otherwise adequate under applicable law, and if any required filing fee has been paid, the Board will issue an order accepting the proposal for hearing. Such an order will be construed as starting the time clock for purposes of any first notice publication deadlines under pursuant to Sections 28.2 and 28.5 of the Act.
- f) When the Board authorizes a hearing, the Chairman will designate one or more attending Board members and a qualified hearing officer. A member of the Board may serve as hearing officer if otherwise qualified.
- g) The Board may consolidate proposals for hearing or decision.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 102.412 Scheduling of Hearings**

- a) Except as otherwise provided by applicable law, *no substantive regulation shall be adopted, amended, or repealed until after a public hearing within the area of the State concerned.* In the case of site-specific rules, a public hearing will be held in the affected area. Except as otherwise provided by applicable law, *in the case of state-wide regulations, hearings shall be held in at least two areas.* [415 ILCS 5/28(a)]
- b) If the proponent or any participant wishes to request a hearing beyond the number of hearings specified by the hearing officer, that person must demonstrate, in a

motion to the hearing officer, that failing to hold an additional hearing would result in material prejudice to the movant. The motion may be oral, if made at hearing, or written. The movant must show that he exercised due diligence in his participation in the proceeding and why an additional hearing, as opposed to the submission of written comments ~~under pursuant to~~ Section 102.108, is necessary.

(Source: Amended at 40 Ill. Reg. 7955, effective May 20, 2016)

### **Section 102.414 Hearings on the Economic Impact of New Proposals**

- a) In accordance with Section 27(b) of the Act, except as otherwise provided by applicable law, before the adoption of any proposed rules, *the Board shall request that the Department of Commerce and ~~Economic Opportunity~~ ~~Economic Opportunity~~ conduct a study of the economic impact of the proposed rules. The Board shall conduct at least one public hearing on the economic impact of those new rules. At least 20 days before the hearing, the Board shall notify the public of the hearing and make the economic impact study, or the Department of Commerce and ~~Economic Opportunity's~~ ~~Economic Opportunity's~~ explanation for not producing an economic impact study, available to the public. Such public hearing may be held simultaneously or as a part of any Board hearing considering such new rules. In adopting any such new rule, the Board shall, in its written opinion, make a determination, based upon the evidence in the public hearing record, including, but not limited to, the economic impact study, as to whether the proposed rule has any adverse economic impact on the people of the State of Illinois. [415 ILCS 5/27(b)]*
- b) If information of the economic impact of a proposed regulation is given at a general hearing on the proposal, the Board need not hold a special hearing on only the economic impact.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **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 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;
  - 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 before 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 to the proponent and to all persons who are on the notice list in accordance with Section 102.422 ~~of this Part~~.
- c) Unless otherwise required by applicable law, when a hearing is to be held to satisfy the public hearing requirement of the Clean Air Act (42 USC 7401 *et seq.*) for State Implementation Plan revisions, the Clerk will give notice of the hearing by publication in the Illinois Register in lieu of newspaper notice.
- d) Hearings that are continued on the hearing record for a period of 45 days or less do not require notice that complies with subsection (a), (b), or (c) ~~of this Section~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 102.418 Record**

All oral testimony will be recorded stenographically. The proposal and all attachments, the transcript, all written testimony, all exhibits admitted in connection with the hearing, and all written submissions filed with the Clerk under Section 102.108 ~~of this Part~~ before or after the close of the hearing will constitute the record.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 102.422 Notice and Service Lists**

- a) The Clerk's Office will maintain a notice list for each regulatory proceeding. The notice list will consist of those persons who have furnished their names and addresses to the Clerk's Office concerning the proposal. The Clerk will serve a copy of all Board orders and hearing officer orders upon the persons appearing on the notice list.
- b) The hearing officer may establish a service list for any regulatory proceeding, in addition to the notice list. Unless ordered otherwise by the hearing officer, participants must serve copies of all their respective filings upon the persons appearing on the service list. In deciding whether to establish a service list, factors that the hearing officer will consider include the complexity of the proceeding and the number of participants. For purposes of fast-track rulemakings under Section 28.5 of the Act, participants of record will be the individuals on the service list.

- c) The Board will not accept general requests to appear on all notice lists. Interested persons must submit their names and addresses for each proceeding in accordance with subsection (a) ~~of this Section~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 102.424 Prehearing Submission of Testimony and Exhibits**

- a) The proponent must file all written testimony and any related exhibits 21 days before 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 filing of testimony, questions, responses, and any related exhibits by the proponent or participants other than the proponent if the hearing officer determines that the procedure will provide for a more efficient hearing.
- c) All prehearing testimony, questions, responses, and any related exhibits must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h). Persons filing these prehearing documents must serve them in accordance with 35 Ill. Adm. Code 101.304(c) upon the hearing officer, the Agency, the Attorney General's Office, DNR, the proponent, and each participant appearing on any service list, unless otherwise specified by the hearing officer. The service must be initiated on or before the date that the prehearing documents are filed with the Clerk.
- d) All prehearing testimony, questions, responses, and any related exhibits must be labeled with the docket number of the proceeding, the name of the witness corresponding to the material, and the title of the material.
- e) The proponent and each participant who has filed testimony, questions, responses, or any related exhibits before hearing must bring to the hearing the number of paper copies of the material that the hearing officer designates.
- f) Testimony, questions, and responses that are timely filed before the 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 read at the hearing. All persons testifying will be sworn and subject to cross-examination. Modifications to prehearing documents may be allowed by the hearing officer at the hearing if the modifications are either nonsubstantive in nature or would not materially prejudice another person's participation at the hearing. Objections to hearing officer rulings allowing or disallowing the modifications are waived unless raised at the hearing.
- g) When prehearing filing of testimony, questions, responses, and any related exhibits is required ~~under pursuant to~~ subsection (a) or (b), material that is not

timely filed will be allowed at the hearing only if time permits and the hearing officer determines that allowing the material will not materially prejudice the proponent or any other participant. Any of these documents that is not allowed at the hearing because it was not timely filed before the hearing can be filed after the hearing as a public comment.

- h) For a videoconference hearing under Section 102.114, in addition to the other requirements of this Section, all written testimony, questions, responses, and any related exhibits, as well as any other document to be offered as a hearing exhibit, must be received by the Clerk's Office at least 24 hours before the scheduled start of the hearing. Any of these documents that is not filed at least 24 hours before the scheduled start of the videoconference hearing will not be allowed at the hearing, but can be filed after the hearing as a public comment.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### SUBPART E: CERTIFICATION OF REQUIRED RULES

##### **Section 102.502 Challenge to Agency Certification**

- a) If any person wishes to challenge the Agency's certification that a proposed rule is a required rule, that person must file an objection to that certification within 21 days after the date of the Board's order accepting a proposal for hearing. The objection must state the reasons that the objector believes that the proposed rule is not a required rule, and must include all arguments that the objector wishes the Board to consider. A copy of the objection must be served upon the Agency, the Attorney General's Office, and DNR.
- b) The Agency may file a response to any objection within 14 days after the service of that objection. No reply by the objector will be allowed, unless the Board orders otherwise to avoid material prejudice.
- c) No hearing will be held on any objection filed under pursuant to this Section.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

##### **Section 102.504 Board Determination**

- a) The Board will rule upon any objection filed under pursuant to this Subpart within 60 days after the date that the Board accepts a proposal for hearing.
- b) In ruling upon an objection to an Agency certification, the Board will consider all information in the record of that proceeding, including the proposal, the objection, and the Agency response to the objection. The burden of proof is on the objector.

- e) ~~The Board will give notice of its determination to the objector, the Agency, DNR, and any person who has asked to be placed on the notice list pursuant to Section 102.422 of this Part for that proposal.~~
- d) ~~Orders entered pursuant to this Section are interlocutory in nature and may be appealed only pursuant to 35 Ill. Adm. Code 101.308.~~

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART F: BOARD ACTION

### **Section 102.604 First Notice of Proposed Regulations**

Except when otherwise directed by applicable law, the Board will give first notice of its proposed adoption, amendment, or repeal of regulations ~~under pursuant to~~ Section 5-40 of the IAPA [5 ILCS 100/5-40]. The first notice period will be at least 45 days, and will begin on the day that first notice is published in the Illinois Register. The Board will accept written comments from any person concerning the proposed regulations during the first notice period.

### **Section 102.606 Second Notice of Proposed Regulations**

- a) Except when otherwise directed by applicable law, the Board will give second notice of its proposed adoption, amendment, or repeal of regulations to JCAR. The second notice period will begin on the date written notice is received by JCAR, and will expire 45 days after that date, except as provided by Section 5-40 of the IAPA [5 ILCS 100/5-40]. The Board will accept comments only from JCAR during the second notice period.
- b) After the beginning of the second notice period, no substantive changes will be made to the proposed regulation, except in response to objections or suggestions from JCAR. Those changes will be made ~~under pursuant to~~ Section 102.600 ~~of this Part.~~

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 102.608 Notice of Board Final Action**

The Board will give notice of its final action on a proposal to the proponent, the Agency, DNR, the Attorney General, and all persons on the notice list. The Board will publish notice of its final action ~~in the Environmental Register and~~ on its Web site, and will enter a written opinion stating the reasons in support of its final action.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 102.614 Adoption of Peremptory Regulations**

- a) When the Board finds that a peremptory rulemaking is necessary ~~under pursuant to~~ Section 5-50 of the IAPA, and states in writing its reasons for that finding, the Board will adopt that peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State ~~under pursuant to~~ Section 5-70 of the IAPA.
- b) Notice of the peremptory rulemaking will be published in the Illinois Register in accordance with Section 5-50 of the IAPA.

#### SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL

##### **Section 102.706 Appeal**

Any final Board order may be appealed to the appellate court within 35 days after the service of that order (see 35 Ill. Adm. Code 101.300(d)), ~~under pursuant to~~ Sections 29 and 41 of the Act [415 ILCS 5/29 and 41].

(Source: Amended at 40 Ill. Reg. 7955, effective May 20, 2016)

#### SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION

##### **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 ~~under 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 ~~must~~ 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) Any material to be incorporated by reference within the proposed designation ~~under 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 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 of service upon all persons required to be served ~~under pursuant to~~ Section 102.810 ~~of this Part~~;
- l) Unless the proponent is the Agency or ~~DNR Illinois Department of Natural Resources~~ or receives a waiver by the Board, a petition signed by at least 200 persons, ~~under 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 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 102.830 Board Action**

- a) Dismissal
- 1) Failure of the proponent to satisfy the content requirements for proposals under this Subpart or failure to respond to Board requests for additional information will render a proposal subject to dismissal for inadequacy.
  - 2) Failure of the proponent to pursue disposition of the petition in a timely manner will render a petition subject to dismissal. In making this determination, the Board may consider factors, including the history of the proceeding and the proponent's compliance with any Board or hearing officer orders.
  - 3) Any person may file a motion challenging the sufficiency of the petition under pursuant to 35 Ill. Adm. Code 101.Subpart E.
- b) Designation of ORW. The Board must designate a surface water body or water body segment as an ORW and list it in 35 Ill. Adm. Code 303.206 if it finds:
- 1) The surface water body or water body segment is of exceptional ecological or recreational significance; and
  - 2) The benefits of protection of the surface water body or water body segment from future degradation outweigh the benefits of economic or social opportunities that will be lost if the surface water body or water body segment is designated as an ORW.

(Source: Added at 26 Ill. Reg. 3498 effective February 22, 2002)

### **Section 102.APPENDIX A Comparison of Former and Current Rules (Repealed)**

(Source: Repealed at 29 Ill. Reg. 8776, effective June 8, 2005)

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

PART 103  
ENFORCEMENT

## SUBPART A: GENERAL PROVISIONS

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103.102	Severability
103.104	Definitions
103.106	General
103.108	Hearings

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

Section	
103.200	Who May File
103.202	Parties
103.204	Notice, Complaint, and Answer
103.206	Adding Parties; Filing Counter-, Cross-, or Third-Party Complaints; Filing New or Modified Claims
103.208	Request for Informal Agency Investigation
103.210	Notice of Complaint
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## SUBPART C: SETTLEMENT PROCEDURE

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

## SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

Section	
103.400	Purpose, Scope, and Applicability
103.402	Interim Order
103.404	Joinder of the Agency
103.406	Draft Permit or Statement
103.408	Stipulated Draft Remedy
103.410	Contents of Public Notice
103.412	Public Comment
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## SUBPART E: IMPOSITION OF PENALTIES



Section	
103.500	Default
103.502	Civil Penalties
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#### SUBPART F: ENFORCING BOARD ORDERS

Section	
103.600	Civil Action

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

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

**SOURCE:** Originally adopted as Chapter 1: Procedural Rules, Part III, Enforcement Proceedings, in R70-4, at 1 PCB 43, October 8, 1970; amended in R80-2, at 39 PCB 456, at 4 Ill. Reg. 39, p. 285, effective September 12, 1980; amended in R80-18, at 44 PCB 125, at 5 Ill. Reg. 14146, effective December 3, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1383, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 425, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8793, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2349, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12898, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. 7966, effective May 20, 2016; amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

#### SUBPART A: GENERAL PROVISIONS

##### **Section 103.100 Applicability**

- a) This Part applies to proceedings before the ~~Illinois Pollution Control Board~~ ~~(Board)~~ concerning complaints alleging violations of the ~~Environmental Protection Act (Act)~~, regulations, and orders of the Board ~~under pursuant to~~ Section 31 of the Act. [415 ILCS 5/31].
- 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 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

##### **Section 103.106 General**

Enforcement proceedings may be initiated by any person against any person allegedly violating the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order [415 ILCS 5/31(d)(1)]. Complaints filed by persons other than the Attorney General or a State's Attorney will be known as citizen's complaints.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 103.108 Hearings**

Hearings will be conducted under pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Added at 40 Ill. Reg. 7966, effective May 20, 2016)

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

### **Section 103.200 Who May File**

Under pursuant to Section 31 of the Act, an enforcement proceeding may be commenced by any person.

### **Section 103.202 Parties**

- a) The person initiating an enforcement proceeding must be named the complainant. Any adverse party must be named the respondent. If the Agency is requested by the Board to conduct an investigation under pursuant to Section 30 of the Act, the Board will name the Agency as a "party in interest" under pursuant to 35 Ill. Adm. Code 101.404. Upon motion of the Agency, the Board may align the Agency with any other party or parties as appropriate.
- b) With permission leave of the Board and in accordance with Section 103.206 of this Part, cross-complainants, counter-complainants, and third-party complainants may be named as parties.
- c) Misnomer of a party is not a ground for dismissal; the name of any party may be corrected at any time.

### **Section 103.204 Notice, Complaint, and Answer**

- a) An enforcement proceeding will be commenced by the service of a notice and complaint by U.S. Mail with a recipient's signature recorded, a third-party commercial carrier with a recipient's signature recorded, or personal service upon all respondents and the filing 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)(2).)

- 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), the respondent must ~~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 41 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 ~~under pursuant to~~ subsection (a), the Board will grant the complainant permission 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.
- 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 permission 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 permission leave to file the pleading.
- e) The pleading sought to be filed ~~under pursuant to~~ subsection (d) 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 U.S. Mail with a recipient's signature recorded, a third-party commercial carrier with a recipient's signature recorded, or personal service upon the respondent, counter-respondent, cross-respondent, or third-party respondent.

(Source: Amended at 39 Ill. Reg. 12898, effective September 8, 2015)

### **Section 103.208 Request for Informal Agency Investigation**

- a) Any person may request an informal Agency investigation by submitting a request to the Board.
- b) The Board will forward the request to the Agency with a copy to the person requesting the investigation. The Agency must send an acknowledgment of receipt of the informal investigation request to the Board.
- c) The Board will take no further action upon the request for informal investigation beyond the action described in subsection (b) ~~of this Section~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 103.210 Notice of Complaint**

- a) In addition to the notice of hearing requirements set forth in 35 Ill. Adm. Code 101, if the complainant is the Office of the Attorney General or the State's Attorney of the county in which the alleged violation occurred, ~~when complainant,~~ the complainant must give notice of each complaint and hearing at least 21 days before the hearing to:
- 1) Any ~~any~~ person that has complained to the Agency respecting the respondent within the six months preceding the date of the complaint; and
  - 2) Any ~~to any~~ person in the county in which the offending activity occurred that has requested notice of enforcement proceedings [415 ILCS 5/31(c)(1)].
- b) Failure to comply with the provisions of this Section may not be used as a defense to an enforcement proceeding, but any person adversely affected by the failure of compliance may upon motion to the hearing officer have the hearing postponed if prejudice is shown.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 103.212 Hearing on Complaint**

- a) *Any person may file with the Board a complaint against any person allegedly violating the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order. When the Board receives a citizen's complaint, unless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing. [415 ILCS 5/31(d)(1)] The ~~definitions~~ definition for duplicative and frivolous can be found at 35 Ill. Adm. Code 101.Subpart B.*
- b) Motions made by respondents alleging that a citizen's complaint is duplicative or frivolous must be filed no later than 30 days following the date of service of the complaint upon the respondent. Motions under this subsection may be made only with respect to citizen's enforcement proceedings. Timely filing the motion will, under pursuant to Section 103.204(e) ~~of this Subpart~~, stay the 60 day period for filing an answer to the complaint.
- c) The Board will automatically set for hearing all complaints filed by the Attorney General or a State's Attorney on behalf of the People of the State of Illinois.
- d) The Board in its discretion may hold a hearing on the violation and a separate hearing on the remedy.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART C: SETTLEMENT PROCEDURE

**Section 103.300 Request for Relief from Hearing Requirement in State Enforcement Proceeding**

- a) *Whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a proposed stipulation and settlement accompanied by a request for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act [415 ILCS 5/31(c)(2)]. The proposed stipulation and settlement agreement must conform to the statement required for settlement submissions at hearing in Section 103.302-of this Part.*
- b) *Unless the Board, ~~in its discretion~~, concludes that a hearing will be held, the Board will cause notice of the proposed stipulation and settlement, and request for relief, to be published and sent, as is required for hearing, by the Clerk's office. The notice will include a statement that any person may file with the Clerk of the Board a written demand for a hearing within 21 days after publication of the notice. The written demand for hearing must ~~clearly~~ state that a public hearing is requested and ~~must should~~ indicate the assigned Board Docket number and respondent's name in the matter.*
- c) *If any person files a timely written demand for a hearing, the Board will deny the request for relief from a hearing and will hold a hearing in accordance with the notice provisions of Section 31(c)(1) of the Act. [415 ILCS 5/31(c)(2)] A copy of the proposed stipulation and settlement will be entered into and presented for the record.*

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 103.301 Request for Relief from Hearing Requirement in Citizen's Enforcement Proceeding**

- a) *Whenever a complaint has been filed by a person other than the Attorney General or State's Attorney, the parties may file with the Board a stipulation and proposed settlement accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act [415 ILCS 5/31(c)(1)]. [415 ILCS 5/31(d)(2)] The stipulation and proposed settlement agreement must conform to the statement required for settlement submissions at hearing in Section 103.302-of this Part.*
- b) *Unless the Board, in its discretion, concludes that a hearing should be held, no hearing on the stipulation and proposal for settlement is required. [415 ILCS 5/31(d)(2)]*

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 103.304 Hearing on Proposed Stipulation and Settlement Agreement**

When the parties submit a proposed stipulation and settlement agreement to the hearing officer at hearing, or when the Board orders that a hearing be held in accordance with Section 103.300(c) or 103.301(b) ~~of this Part~~, the hearing officer will conduct a hearing in which interested persons may make statements with respect to the nature of the alleged violation and its impact on the environment, together with their views on the proposed stipulation and settlement agreement. The statements must be in accordance with 35 Ill. Adm. Code 101.628.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 103.306 Board Order on Proposed Stipulation and Settlement Agreement**

- a) The Board will consider the proposed settlement and stipulation agreement and the hearing record, if any. The Board may accept, suggest revisions in, reject the proposed settlement and stipulation agreement, or direct initial or further hearings as it deems appropriate. ~~Where a National Pollutant Discharge Elimination System (NPDES) permit is involved in the settlement, notice of settlement must be published in the Environmental Register at least 30 days prior to the settlement.~~
- b) If the Board determines that a settlement involves or may involve the issuance or modification of a Resource Conservation Recovery Act (RCRA) permit, it will enter an interim order under ~~pursuant to~~ Section 103.402 ~~of this Part~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS**

### **Section 103.402 Interim Order**

- a) The Board will enter an interim order invoking the procedures of this Subpart on its own motion or on the motion of any party. Before the Board enters an interim order the parties must develop, through hearings or admissions under ~~pursuant to~~ 35 Ill. Adm. Code 101.Subpart F, a sufficient record to support the findings that the Board must make in subsection (b) ~~of this Section~~.
- b) An interim order invoking the procedures of this Subpart will include:
  - 1) A finding or proposed finding of violation and any penalty or proposed monetary penalty;
  - 2) A finding that the proceeding is an enforcement action that involves or may involve the issuance or modification of a RCRA permit;
  - 3) Joinder of the Agency if it is not already a party; and

- 4) A time schedule for filing by the Agency of a partial draft permit.
- c) The interim order is not a final order and may be appealed only with permission ~~leave~~ of the Board.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **Section 103.408 Stipulated Draft Remedy**

- a) The parties may agree to a stipulated draft remedy.
- b) A stipulated draft remedy must include the following:
  - 1) Proposed mandatory orders that the parties agree should be included in the Board's final order, which may include one or more of the following:
    - A) An order to cease and desist conducting regulated activities;
    - B) An order to close a facility or unit;
    - C) An order to execute a post-closure care plan;
    - D) A compliance plan, including a time schedule to assure compliance with regulations in the shortest possible time;
    - E) An order to provide a performance bond or other financial assurance;
    - F) An order to apply for a permit or permit modification; and
    - G) An order revoking a permit.
  - 2) A partial draft permit or statement as provided by Section 103.406 ~~of this Part~~.
  - 3) A statement as to whether or not the stipulation is divisible for purposes of Board determinations.
- c) All parties, including the Agency, must sign the stipulated draft remedy before notice is given under ~~pursuant to~~ Section 103.410 ~~of this Part~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **Section 103.410 Contents of Public Notice**



- a) In addition to serving 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).
- b) In addition to the requirements of the Act and Section 103.210, 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~~DNR;
  - 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 population center that is closest to the facility.
- c) 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 of the Board offices and the Board website;
  - 2) Name and address of the respondent and, if different, of the facility subject to the enforcement proceeding;
  - 3) A brief description of the business conducted at the facility and the activity that is the subject of the enforcement proceeding;
  - 4) A statement of the violations the Board has found or has proposed to find;
  - 5) A statement that the Agency has filed a partial draft permit;
  - 6) Name, address, e-mail address, and telephone number of the Clerk ~~of the Board~~, from whom interested persons may obtain further information, including copies of the partial draft permit or stipulated remedy;

- 7) A notice of a hearing, the address of the Board, a statement that a hearing will be held and that the record will remain open for 45 days after the filing of the partial draft or stipulated remedy for written comments;
- 8) A statement that the record in the proceeding is available to be inspected at the Board office and may also be available through the Clerk's Office On-Line (COOL), located 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 under pursuant ~~to~~ 415 ILCS 5/30; and
- 10) Any additional information considered necessary or proper.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 103.412 Public Comment**

Any person, including USEPA, may comment on the partial draft permit or stipulated draft remedy within 45 days after it has been filed with the Board and notice given under pursuant to ~~Section 103.410 of this Part~~. Parties will receive distributions from the Clerk's Office in accordance with 35 Ill. Adm. Code 101.628(c)(3).

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART E: IMPOSITION OF PENALTIES

### **Section 103.502 Civil Penalties**

Civil penalties will be determined under pursuant to Sections 33(c) and 42 of the Act. [415 ILCS 5/33(c) and 42]

### **Section 103.504 Civil Penalties Method of Payment**

- a) Payment of the penalty must be made by certified or cashier's check, money order, electronic funds transfer, or in installments by the foregoing means after execution of a promissory note containing an agreement for judgment.
- b) All remittances must be made payable to the Environmental Protection Trust Fund or ~~such~~ other fund as specified by the Board.

- c) Any such penalty not paid within the time prescribed in the Board order will incur interest at the rate set forth in Section 1003(a) of the Illinois Income Tax Act [35 ILCS 5/1003(a)].

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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

(Source: Repealed 29 Ill. Reg. 8793, effective June 8, 2005)

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

PART 104  
REGULATORY RELIEF MECHANISMS

SUBPART A: GENERAL PROVISIONS

Section	
104.100	Applicability
104.102	Severability
104.104	Definitions
104.106	Petitions and Hearings

SUBPART B: VARIANCES

Section	
104.200	General
104.202	Filing Requirements
104.204	Petition Content Requirements
104.206	<del>Resource Conservation and Recovery Act (RCRA)</del> Variance Petition Contents
104.208	Consistency with Federal Law
104.210	Petition for Extension of Variance
104.212	Motion for Modification of Internal Variance Compliance Dates
104.214	Notice of Petition
104.216	Agency Investigation and Recommendation
104.218	Agency Recommendation to RCRA Variance
104.220	Response to Agency Recommendation
104.222	Stipulations
104.224	Objections to Petition, Written Comments and Request for Hearing
104.226	Amended Petition and Amended Recommendation
104.228	Insufficient Petition
104.230	Dismissal of Petition
104.232	Calculation of Decision Deadline

104.234	Hearing
104.236	Hearing Procedures
104.238	Standard of Review
104.240	Certificate of Acceptance
104.242	Term of Variance
104.244	Variance Conditions
104.246	Performance Bonds
104.248	Objection to Conditions

#### SUBPART C: PROVISIONAL VARIANCES

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

#### SUBPART D: ADJUSTED STANDARDS

Section	
104.400	General
104.402	Initiation of Proceeding
104.404	Request to Agency to Join as Co-Petitioner
104.406	Petition Content Requirements
104.408	Petition Notice Requirements
104.410	Proof of Petition Notice Requirements
104.412	Effect of Filing a Petition: Stay
104.414	Dismissal of Petition
104.416	Agency Recommendation and Petitioner Response
104.418	Amended Petition, Amended Recommendation, and Amended Response
<u>104.419</u>	<u>Insufficient Petition</u>
104.420	Request for Public Hearing
104.422	Public Hearing
104.424	Hearing Notice
104.426	Burden of Proof
104.428	Board Action

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

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

SOURCE: Subpart B: Originally adopted as Chapter I: Procedural Rules, Part IV: Variances, in R70-4, at 1 PCB 43, October 8, 1970; amended in R77-16, 29 PCB 503, at 2 Ill. Reg. 16, p. 3, effective May 1974; amended in R79-9, 35 PCB 433, at 3 Ill. Reg. 51, p. 128, effective December 7, 1979; amended in R80-12, 40 PCB 451, at 5 Ill. Reg. 2763, effective March 2, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10, 62 PCB 87, at 9 Ill. Reg. 1409, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 613, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8803, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2357, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12905, effective September 8, 2015 amended in R16-17 at 40 Ill. Reg. 7973, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

### Section 104.100 Applicability

- a) This Part applies to mechanisms for obtaining relief from environmental regulations under ~~certain circumstances as set forth in~~ Titles VII and IX of the Act, ~~such as.~~ ~~Specifically, this Part applies to regulatory relief mechanisms, meaning~~ variances, provisional variances and adjusted standards.
- 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 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 104.106 Petitions and Hearings

- a) Each petition must contain an index that lists the documents comprising the petition, including any exhibits, attachments, and supporting documents. All pages of the petition must be sequentially numbered with the letter "P" placed before the number of each page. The index must show the page numbers upon which each document comprising the petition starts and ends.
- b) Hearings will be conducted ~~under pursuant to~~ 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Added at 40 Ill. Reg. 7973, effective May 20, 2016)

## SUBPART B: VARIANCES

### Section 104.200 General

- a) Description:
- 1) General Variance. A variance is a temporary exemption from any specified rule, regulation, requirement or order of the Board, which may be granted by the Board with or without conditions for a period of time not to exceed five years, *upon presentation of adequate proof*, by the petitioner *that compliance with any rule, regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship* [415 ILCS 5/35(a)].
  - 2) Resource Conservation and Recovery Act (RCRA) Variance. A RCRA variance is an exemption from 35 Ill. Adm. Code 703, 720, 721, 722, 723, 724 or 725 or which allows the Illinois Environmental Protection Agency (Agency) to issue or modify any provision of a RCRA permit required under pursuant to Section 21(f) of the Act.
- b) Effect of Filing:
- 1) The filing of a petition for a variance does not stay enforcement of a regulation except as provided in subsection (b)(2) ~~of this Section~~.
  - 2) *If any person files a petition for variance from a rule or regulation within 20 days after the effective date of such rule or regulation, the operation of such rule or regulation shall be stayed as to such person pending the disposition of the petition; provided, however, that the operation of any rule or regulation adopted by the Board which implements, in whole or in part, a State RCRA, [Underground Injection Control] UIC, or [National Pollutant Discharge Elimination System] NPDES program shall not be stayed. The Board may hold a hearing upon said petition 5 days from the date of notice of such hearing or thereafter.* [415 ILCS 5/38(b)]

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **Section 104.202 Filing Requirements**

- a) Who May File. Any person seeking a variance from any rule or regulation, requirement or order of the Board that would otherwise be applicable to that person may file a variance petition.
- b) General Filing and Service Requirements. All general filing and service requirements for Board filings, including the form of filing and the fee requirements for filing, apply to the filing of a petition for variance. These general requirements are found at 35 Ill. Adm. Code 101.Subpart C and J.

- c) Special Filing and Service Requirements. In addition to the general requirements found at 35 Ill. Adm. Code 101.Subpart C, a person filing a petition for variance must meet the following requirements:
- 1) One copy of the petition and all related documents must be served on the Agency. The service on the Agency must be initiated on or before the date the petition is filed with the Board. Additionally, all RCRA variance petitions must be served on the ~~United States Environmental Protection Agency (USEPA)~~ Region V Director of Waste Management. An affidavit of service of the petition and related documents must accompany the filing with the Board; and
  - 2) The petition must contain all information or documents necessary to satisfy the petition content requirements found in Sections 104.204, 104.206, and 104.208 ~~of this Part~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **Section 104.204 Petition Content Requirements**

The petition must include the information required by subsections (a) through (n) ~~of this Section~~. Additionally, there are specific content requirements set forth at Section 104.206 ~~of this Part~~ for RCRA variance petitions. If the petitioner believes that any of these requirements are not applicable to the specific variance requested, the petitioner must so state and explain the reasoning.

- a) A statement describing the regulation, requirement, or order of the Board from which a variance is sought. If variance from a regulation is sought, the statement must include the Illinois Administrative Code citation to the regulation as well as the effective date of that regulation. If variance from a requirement or order of the Board is sought, the statement must include the citation to that requirement or order of the Board promulgating that requirement, including docket number;
- b) A complete and concise description of the nature of petitioner's activity that is the subject of the proposed variance, including:
  - 1) The location of, and area affected by, the petitioner's activity;
  - 2) The location of points of discharge, and, as applicable, the identification of the receiving waterway or land, or, if known, the location of the nearest air monitoring station maintained by the Agency;
  - 3) An identification, including docket number, of any prior variance issued to the petitioner and, if known, the petitioner's predecessors, concerning similar relief;

- 4) An identification, including number, of the environmental permits held by petitioner for the activity which may be affected by grant of variance;
  - 5) The number of persons employed by the petitioner's facility at issue and the age of that facility;
  - 6) The nature and amount of the materials used in the process or activity for which the variance is sought and a full description of the particular process or activity in which the materials are used;
  - 7) A description of the relevant pollution control equipment already in use; and
  - 8) The nature and amount of emissions, discharges or releases of the constituent in question currently generated by the petitioner's activity;
- c) Data describing the nature and extent of the present or anticipated failure to meet the regulation, requirement, or order of the Board from which variance is sought and facts that support petitioner's argument that compliance with the regulation, requirement, or order of the Board was not or cannot be achieved by any required compliance date;
- d) A description of the efforts that would be necessary for the petitioner to achieve immediate compliance with the regulation, requirement, or Board order at issue. All possible compliance alternatives, with the corresponding costs for each alternative, must be set forth and discussed. The discussion of compliance alternatives must include the availability of alternate methods of compliance, the extent that the methods were studied, and the comparative factors leading to the selection of the control program proposed for compliance. The discussion of the costs of immediate compliance may include the overall capital costs and the annualized capital and operating costs;
- e) Facts that set forth the reasons the petitioner believes that immediate compliance with the regulation, requirement, or order of the Board would impose an arbitrary or unreasonable hardship;
- f) A detailed description of the compliance plan, including:
- 1) A discussion of the proposed equipment or proposed method of control to be undertaken to achieve full compliance with the regulation, requirement, or order of the Board;
  - 2) A time schedule for the implementation of all phases of the control program from initiation of design to program completion; and



- 3) The estimated costs involved for each phase and the total cost to achieve compliance;
- g) A description of the environmental impact of the petitioner's activity including:
- 1) The nature and amount of emissions, discharges, or releases of the constituent in question if the requested variance is granted, compared to that which would result if immediate compliance is required;
  - 2) The qualitative and quantitative description of the impact of petitioner's activity on human health and the environment if the requested variance is granted, compared to the impact of petitioner's activity if immediate compliance is required. Cross-media impacts, if any, must be discussed; and
  - 3) A statement of the measures to be undertaken during the period of the variance to minimize the impact of the discharge of contaminants on human, plant, and animal life in the affected area, including the numerical interim discharge limitations that can be achieved during the period of the variance;
- h) Citation to supporting documents or legal authorities whenever they are used as a basis for the petition. Relevant portions of the documents and legal authorities other than Board decisions, reported state and federal court decisions, or state and federal regulations and statutes must be appended to the petition;
- i) If the requested variance involves an existing permit or a pending permit application, a copy of the material portion of the permit or permit application must be appended to the petition;
- j) Any conditions petitioner suggests for the requested variance;
- k) A proposed beginning and ending date for the variance. If the petitioner requests that the term of the variance begin on any date other than the date on which the Board takes final action on the petition, a detailed explanation and justification for the alternative beginning date;
- l) A discussion of consistency with federal law, including an analysis of applicable federal law and facts that may be necessary to show compliance with federal law as set forth in Section 104.208 of this Part;
- m) An affidavit verifying any facts submitted in the petition; and
- n) A statement requesting or denying that a hearing should be held in this matter.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **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 under ~~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 of service on USEPA as required by Section 104.202 ~~of this Part~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_))

### **Section 104.208 Consistency with Federal Law**

- a) All petitions for variances from Title II of the Act or from 35 Ill. Adm. Code.Subtitle B, Ch. I "Air Pollution", must indicate whether the Board may grant the requested relief consistent with the Clean Air Act (CAA) (42 USC 7401 et seq.) and the federal regulations adopted under the CAA ~~pursuant thereto~~. If granting a variance would require revision of the State Implementation Plan, the petition must indicate whether the requirements of Section 110(a) of the CAA (42 USC 7410(a)) and 40 CFR 51 will be satisfied.
- b) All petitions for variances from Title III of the Act, from 35 Ill. Adm. Code.Subtitle C, Ch. I "Water Pollution", or from water pollution related requirements of any other Title of the Act or Chapter of the Board's regulations, must indicate whether the Board may grant the relief consistent with the Clean Water Act (CWA) (33 USC 1251 et seq.), USEPA effluent guidelines and standards, any other federal regulations, or any area-wide waste treatment management plan approved by the Administrator of USEPA under ~~pursuant to~~ Section 208 of the CWA (33 USC 1288).

- c) All petitions for variances from Title IV of the Act or from 35 Ill. Adm. Code.Subtitle F, Ch. I "Public Water Supplies", and to the extent applicable, from Title V of the Act or from 35 Ill. Adm. Code.Subtitle D, Ch. I "Mine Related Water Pollution", must indicate whether the Board may grant the relief consistent with the Safe Drinking Water Act (42 USC 300(f) et seq.), the federal National Primary Drinking Water Regulations (40 CFR 141) and Underground Injection Control Program and other federal regulations adopted pursuant thereto.
- d) All petitions for variances from Title V of the Act or from 35 Ill. Adm. Code.Subtitle G, Ch. I "Waste Disposal" must indicate whether the Board may grant the requested relief consistent with RCRA, and the federal regulations adopted pursuant thereto.
- e) For all petitions for RCRA variances, petitioner must ~~should~~ consult the federal RCRA rules which contain procedures that are referred to as "Variances" (40 CFR 260, 261, 262, 263, 264, 265, 266, 267, 268 and 270). The petitioner must ~~should~~ consult the comparable Board regulations to decide whether the variance procedures of this Part need to be followed.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **Section 104.210 Petition for Extension of Variance**

- a) A variance ~~extension pursuant to Section 36(b) of the Act~~ *may be extended from year to year by affirmative action of the Board, but only if satisfactory progress has been shown by the petitioner [415 ILCS 5/36(b)].*
- b) A petition to extend a variance ~~is considered granted by the Board~~ is a new petition for variance before the Board, and must be filed in accordance with this Subpart and 35 Ill. Adm. Code 101.Subpart C, including payment of the filing fee ~~under pursuant to Section 104.202(b) of this Part and 35 Ill. Adm. Code 101.302(e)(2).~~
- c) If the petitioner desires to have the term of the variance extension be sequential with the term of the prior variance, the petition to extend the variance must be filed with the Board no later than 120 days prior to the termination of the variance, unless the petitioner can demonstrate that the petition for variance extension was filed as soon as practicable after the petitioner learned that it could not meet the compliance time frame under the existing variance.
- d) In addition to the requirements of this Subpart, the petition for extension of variance must contain:

- 1) A detailed statement showing that *satisfactory progress* toward compliance has been or will have been achieved during the term of the prior variance [415 ILCS 5/36(b)];
- 2) A statement that the conditions of the prior variance have been fully met, or, if any condition or conditions have not been fully met, a detailed explanation of the reason or reasons that the condition or conditions have not been fully met; and
- 3) A motion to incorporate any material from the record of the prior variance proceeding in accordance with 35 Ill. Adm. Code 101.306.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 104.212 Motion for Modification of Internal Variance Compliance Dates**

- a) The petitioner may request, by written motion, modification of internal dates within a compliance schedule of an existing variance, so long as the modification does not extend the length of the existing variance period. The written motion will not be considered to be an extension of the prior variance. The motion must be filed under the docket number of the existing variance, and must be filed with the Clerk and served upon the Agency, and any joined parties ~~under pursuant to~~ 35 Ill. Adm. Code 101.Subpart D. The Agency must, and any joined parties may, file a response to that motion. Any response must be filed within 14 days after receipt of the motion.
- b) A motion for modification that would extend the length of the existing variance period constitutes a Petition for Extension of Variance and must be filed in accordance with Section 104.210 ~~of this Part~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 104.214 Notice of Petition**

- a) Within 14 days after the petition is filed, the petitioner 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 filing a petition for variance, the petitioner *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 filed with the Board a written request for 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) ~~DNR~~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.
- ~~7) d) In addition, to the methods of notice stated in subsection (e) of this Section, in a RCRA variance the 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 (de) and (ef) of this Section.~~
- de) 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 [415 ILCS 5/37(a)];*
  - 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 petitioner's notice, together with a written request for hearing;
  - 4) The Clerk's ~~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 and seeking the views of persons who may be adversely affected by the variance. All comments and inquiries should be addressed to the Agency employee responsible for the recommendation within 21 days after publication of the petitioner's notice. The notice must include the date on which the recommendation is to be filed, and the name, address, email 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 ~~under 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.
- e) Within 21 days after the publication of notice, the petitioner 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 41 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), 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 under ~~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 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 104.218 Agency Recommendation to RCRA Variance**

In addition to the recommendation requirements stated in Section 104.216 ~~of this Part~~, the Agency recommendation on petitions for RCRA variances must also include the following and, in addition to the service requirements of Section 104.216 ~~of this Part~~, the Agency must serve its recommendation on USEPA and all persons who have notified the Agency that they intend to comment or have otherwise asked to be served a copy of the recommendation.

- a) The recommendation must include a fact sheet or statement of basis as provided in 35 Ill. Adm. Code 705.141 through 705.143, where relevant.
- b) If the Agency recommends that the variance be granted, a partial draft permit reflecting the variance and recommended conditions must be included with the recommendation.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 104.220 Response to Agency Recommendation**

- a) Within 14 days after service of the Agency recommendation the petitioner may file a response to the Agency recommendation or an amended petition. The petitioner must serve a copy of the response or amended petition upon the hearing officer, the Agency, and any other parties to the proceeding.
- b) The response or amended petition may include a request for hearing. New information in a response or amended petition must be verified by oath or affidavit.
- c) Any amended petition or request for hearing under this Section recommences the decision period under ~~pursuant to~~ Section 104.232 ~~of this Subpart~~.

(Source: Amended at 41 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 ~~petitioner's~~ Petitioner's notice ~~under pursuant to Section 104.214 of this Part~~, a written objection to the grant of variance. The Clerk will serve a copy of the objection on the petitioner, the Agency, the hearing officer, and any joined parties in accordance with 35 Ill. Adm. Code 101.304(c).
- 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 ~~petitioner's~~ Petitioner's notice ~~under 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, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).
- 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 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **Section 104.226 Amended Petition and Amended Recommendation**

- a) The petitioner may amend the petition prior to the close of the hearing, if a hearing is held, or prior to the Board's decision, if a hearing is not held, by filing a motion ~~under pursuant to~~ 35 Ill. Adm. Code 101.Subpart E. Amended petitions subsequent to hearing will be accepted only with permission ~~leave~~ of the Board. Amended petitions must be in writing and filed with the Board and served in accordance with 35 Ill. Adm. Code 101.Subpart C. If the petitioner substantively amends the petition, the filing of the amended petition recommences the decision period, under pursuant to Section 104.232 ~~of this Part~~.
- b) If the petitioner amends the petition, the Agency must file or give an amended recommendation in writing or orally at hearing, but in any event not later than 45 days after the filing of an amended petition. The Agency may amend its recommendation even if the petitioner has not amended its petition. In such an instance, a recommendation may be amended prior to close of the hearing, if a hearing is held, or 40 days prior to the Board's decision date if a hearing is not

held. The petitioner may file a response to an Agency recommendation under ~~pursuant to~~ Section 104.220 ~~of this Part~~.

- c) Written amendments to the petition or recommendation need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 104.228 Insufficient Petition**

If the Board finds the petition fails to contain information as required by Sections 104.204, 104.206, and 104.208 ~~of this Part~~, the Board may order the petitioner to supplement the information contained in the petition. Filings made in response to the order constitute an amended petition for the purposes of calculating the decision deadline under ~~pursuant to~~ Section 104.232 ~~of this Part~~. Alternatively, under ~~pursuant to~~ Section 104.230 ~~of this Part~~, the Board may dismiss the petition for lack of sufficient information. Failure of the Board to require supplemental information does not preclude a later finding that the information provided is insufficient to support grant of variance, or constitute a Board decision on the merits of the petition.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 104.230 Dismissal of Petition**

A petition is subject to dismissal if the Board determines that:

- a) The petition requests relief that the Board is not empowered to grant;
- b) The petition fails to comply with the requirements of 35 Ill. Adm. Code 101.Subpart C and Sections 104.202, 104.204, 104.206 and 104.208 ~~of this Part~~;
- c) The petitioner fails to timely comply with any order issued by the Board or the hearing officer, including an order requiring additional information under ~~pursuant to~~ Section 104.228 ~~of this Part~~; or
- d) The petitioner is not subject to the rule or regulation, requirement, or order of the Board at issue.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 104.232 Calculation of Decision Deadline**

- a) Under ~~pursuant to~~ Section 38(a) of the Act, the Board will render its final decision on the petition within 120 days after the date of filing of the petition or the receipt

of a request for hearing ~~under pursuant to~~ Section 37(a) of the Act, whichever is later, except:

- 1) When the petitioner waives its right to a decision within the prescribed decision period in accordance with 35 Ill. Adm. Code 101.Subpart C;
  - 2) When the petitioner files an amended petition for variance ~~under pursuant to~~ this Subpart, the decision period recommences from the date of filing of the amended petition; or
  - 3) When a hearing is canceled ~~under pursuant to~~ 35 Ill. Adm. Code 101.510.
- b) Time will be computed in accordance with 35 Ill. Adm. Code 101.Subpart C.

(Source: Amended at 39 Ill. Reg. 12905, effective September 8, 2015)

### **Section 104.234 Hearing**

The Board will order a hearing on a variance petition if:

- a) A hearing is requested by the petitioner at the time of initial filing on the associated form or in writing, which is filed and served in accordance with 35 Ill. Adm. Code 101.Subpart C;
- b) A hearing is requested in a response or amended petition;
- c) *The Board, in its discretion, concludes that a hearing would be advisable* [415 ILCS 5/37(a)];
- d) *The Agency or any other person files a written objection to the grant of such variance within 21 days after the publication of the petitioner's ~~Petitioner's~~ notice ~~under pursuant to~~ Section 104.214 of this Part, together with a written request for hearing* [415 ILCS 5/37(a)]; or
- e) The request concerns a RCRA variance.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 104.236 Hearing Procedures**

Hearings will be conducted ~~under pursuant to~~ 35 Ill. Adm. Code 101.Subpart F, except that:

- a) Hearings may be canceled ~~by pursuant to~~ a motion filed in accordance with 35 Ill. Adm. Code 101.510 at the discretion of the hearing officer.

- b) If all parties and participants who have requested a hearing ~~under pursuant to~~ this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board in its discretion deems it advisable.
- c) The hearing on a RCRA variance petition will be held, whenever possible, at a location convenient to the population center that is closest to the facility.
- d) The hearing officer will give notice of RCRA hearings to the following persons:
  - 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 and the State's attorney of the county;
  - 2) The Chairman of the county board of the county;
  - 3) Each member of the General Assembly from the legislative district in which that installation or property is located;
  - 4) Federal agencies as designated by USEPA;
  - 5) Illinois Department of Transportation;
  - 6) ~~DNR~~Department of Natural Resources;
  - 7) Illinois Department of Public Health;
  - 8) The Governor of any other state adjacent to the county in which the facility or pollution source is located;
  - 9) 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 population center that is closest to the facility or pollution source; and
  - 10) USEPA's Region V Director of Waste, Pesticides and Toxics Division.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **Section 104.238 Standard of Review**

- a) *The Board may grant individual variances beyond the limitations prescribed by the Act, whenever it is found, upon presentation of adequate proof, that compliance with any rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship. [415 ILCS 5/35(a)] The burden of proof in a variance proceeding is on the petitioner.*

- b) In addition to subsection (a) ~~of this Section~~ the Board may grant a RCRA variance only to the extent consistent with, and with conditions no less stringent than, those that would be required by RCRA and 40 CFR 260, 261, 262, 263, 264, 265, 266, 267, 268, and 270. Variances must require compliance with the regulations in the shortest practicable time.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **Section 104.240 Certificate of Acceptance**

The Board's order granting a variance will include a certificate of acceptance. The certificate constitutes acceptance of the variance and its conditions by the petitioner. A variance and its conditions are not binding upon the petitioner until the executed certificate is filed with the Board and served on the Agency. Failure to timely file the executed certificate with the Board and serve the Agency renders the variance void. However, execution of the certificate is not necessary prior to seeking reconsideration under ~~pursuant to~~ 35 Ill. Adm. Code 101.Subpart I, or appeal under ~~pursuant to~~ Section 104.244 ~~of this Part~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **Section 104.248 Objection to Conditions**

*The Board may include such conditions in granting a variance and may adopt such rules and regulations as the policies of the Act may require. If an objection is made to a variance condition, the Board shall reconsider the condition within not more than 75 days from the date of the objection.* [415 ILCS 5/41(b)] An objection to a specific variance condition may be made by filing a motion under ~~pursuant to~~ 35 Ill. Adm. Code 101.Subpart E within 35 days after the receipt of the Board's opinion and order containing the objectionable condition.

### SUBPART C: PROVISIONAL VARIANCES

#### **Section 104.300 Applicability**

This Subpart applies to any person seeking a provisional variance from the Agency under ~~pursuant to~~ Title IX of the Act. This Subpart must be read in conjunction with 35 Ill. Adm. Code 101 and this Part. In the event of conflict between this Subpart and the requirements of 35 Ill. Adm. Code 101, the requirements of this Subpart apply.

(Source: Amended at 29 Ill. Reg. 8803, effective June 8, 2005)

#### **Section 104.304 Initiating a Request**

*Any person seeking a provisional variance pursuant to Section 35(b) of the Act and 35 Ill. Adm. Code 180 shall make a request to the Agency. The Agency shall promptly investigate and consider the merits of the request. If the Agency fails to take final action within 30 days after receipt of the request for a provisional variance, or if the Agency denies the request, the person*

*may initiate a* variance proceeding with the Board ~~under pursuant to Subpart B of this Part.~~ [415 ILCS 5/37(b)].

(Source: Amended at 29 Ill. Reg. 8803, effective June 8, 2005)

## SUBPART D: ADJUSTED STANDARDS

### Section 104.400 General

- a) Description. An adjusted standard has the effect of an environmental regulation that would apply to petitioner, if granted, in lieu of the general regulation that would otherwise be applicable to a petitioner and the regulated community.
- b) Applicability. This Subpart will apply to any person seeking an adjusted standard ~~under pursuant to~~ Section 28.1 of the Act. This includes an adjusted standard sought ~~under pursuant to~~ 35 Ill. Adm. Code 212.126 (~~CAA~~) and 35 Ill. Adm. Code ~~720 700 through 750 (RCRA)~~. This Subpart must be read in conjunction with 35 Ill. Adm. Code Part 101 which contains procedures generally applicable to all adjudicatory proceedings before the Board. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Subpart, the provisions of this Subpart apply.

### Section 104.402 Initiation of Proceeding

A person may initiate an adjusted standard proceeding by filing a petition that meets the requirements of Section 104.406 of this Part. A petition for an adjusted standard (petition) may be filed either jointly with the Agency or singly ~~under pursuant to~~ the filing requirements of 35 Ill. Adm. Code 101. If filed singly, the petitioner ~~must shall~~ also serve the petition upon the Agency in accordance with 35 Ill. Adm. Code 101. Additionally, a person may file a petition and request the Agency to join as a co-petitioner as set forth in Section 104.404 ~~of this Part~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 104.404 Request to Agency to Join as Co-Petitioner

- a) The Agency may, in its discretion, act as a co-petitioner in any adjusted standard proceeding.
- b) Any person may request Agency assistance in initiating a petition for adjusted standard. The Agency may require the person to submit to the Agency any background information in the person's possession relevant to the adjusted standard that is sought.
- c) Discretionary decisions made by the Agency ~~under pursuant to~~ this Section are not appealable to the Board.

- d) Subsequent to the filing of the petition and prior to hearing, the Board will grant the Agency co-petitioner status upon joint motion of the Agency and the petitioner who originally filed the petition.

### **Section 104.406 Petition Content Requirements**

If the Agency is a co-petitioner, the petition must so state. The petition must contain headings corresponding to the informational requirements of each subsection of this Section. If the petitioner believes that any of the informational requirements are not applicable to the specific adjusted standard requested, the petitioner must so state and explain his reasoning. The following information must be contained in the petition:

- a) A statement describing the standard from which an adjusted standard is sought. This must include the Illinois Administrative Code citation to the regulation of general applicability imposing the standard as well as the effective date of that regulation;
- b) A statement that indicates whether the regulation of general applicability was promulgated to implement, in whole or in part, the requirements of the CWA (33 USC 1251 et seq.), Safe Drinking Water Act (42 USC 300(f) et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 USC 9601 et seq.), CAA (42 USC 7401 et seq.), or the State programs concerning RCRA, UIC, or NPDES [415 ILCS 5/28.1];
- c) The level of justification as well as other information or requirements necessary for an adjusted standard as specified by the regulation of general applicability or a statement that the regulation of general applicability does not specify a level of justification or other requirements [415 ILCS 5/28.1] (See Section 104.426);
- d) A description of the nature of the petitioner's activity that is the subject of the proposed adjusted standard. The description must include the location of, and area affected by, the petitioner's activity. This description must also include the number of persons employed by the petitioner's facility at issue, age of that facility, relevant pollution control equipment already in use, and the qualitative and quantitative description of the nature of emissions, discharges or releases currently generated by the petitioner's activity;
- e) A description of the efforts that would be necessary if the petitioner was to comply with the regulation of general applicability. All compliance alternatives, with the corresponding costs for each alternative, must be discussed. The discussion of costs must include the overall capital costs as well as the annualized capital and operating costs;
- f) A narrative description of the proposed adjusted standard as well as proposed language for a Board order that would impose the standard. Efforts necessary to

achieve this proposed standard and the corresponding costs must also be presented;

- g) The quantitative and qualitative description of the impact of the petitioner's activity on the environment if the petitioner were to comply with the regulation of general applicability as compared to the quantitative and qualitative impact on the environment if the petitioner were to comply only with the proposed adjusted standard. To the extent applicable, cross-media impacts must be discussed. Also, the petitioner must compare the qualitative and quantitative nature of emissions, discharges or releases that would be expected from compliance with the regulation of general applicability as opposed to that which would be expected from compliance with the proposed adjusted standard;
- h) A statement which explains how the petitioner seeks to justify, ~~under pursuant to~~ the applicable level of justification, the proposed adjusted standard;
- i) A statement with supporting reasons that the Board may grant the proposed adjusted standard consistent with federal law. The petitioner must also inform the Board of all procedural requirements applicable to the Board's decision on the petition that are imposed by federal law and not required by this Subpart. Relevant regulatory and statutory authorities must be cited;
- j) A statement requesting or waiving a hearing on the petition (~~under pursuant to~~ Section 104.422(a)(4) ~~of this Part~~ a hearing will be held on all petitions for adjusted standards filed ~~under pursuant to~~ 35 Ill. Adm. Code 212.126 (CAA));
- k) The petition must cite to supporting documents or legal authorities whenever they are used as a basis for the petitioner's proof. Relevant portions of the documents and legal authorities other than Board decisions, State regulations, statutes, and reported cases must be appended to the petition;
- l) Any additional information which may be required in the regulation of general applicability.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **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 information in the notice must be presented so as to be understood in accordance with the context of this Section's requirements. The notice must contain:

- 1) ~~The~~ The name and address of the petitioner and the statement that the petitioner has filed with the Board a petition for an adjusted standard;
- 2) ~~The notice must also provide the~~ date upon which the petition was filed;
- 3) ~~The~~ The Board docket number;
- 4) ~~The~~ The regulatory standard (with appropriate Administrative Code citation) from which an adjusted standard is sought;
- 5) ~~The~~ The proposed adjusted standard; ~~and~~
- 6) A general description of the petitioner's activity that is the subject of the adjusted standard proceeding, and the location of that activity; and ~~This information must be presented so as to be understood in accordance with the context of this Section's requirements.~~
- 7) The concluding portion of the notice must state ~~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](http://www.ipcb.state.il.us))."

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **Section 104.414 Dismissal of Petition**

The Board may at any time dismiss a petition for any of the following reasons:

- a) The Board determines that the petition is frivolous, duplicative, or deficient with respect to the requirements of Sections 104.406, 104.408, and 104.410 ~~of this Part~~; or
- b) The Board determines that the petitioner is not pursuing disposition of the petition in a timely manner.

### **Section 104.416 Agency Recommendation and Petitioner Response**

- 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 a hearing has been scheduled, at least 30 days before hearing, whichever is earlier. The recommendation must set forth the rationale for the Agency's position and may present any information which the Agency believes is relevant to the Board's consideration of the proposed adjusted standard. If the Agency recommends a denial of the petition due to informational deficiencies within the petition, the recommendation must identify the types of information needed to correct the deficiencies.
- b) At a minimum, the Agency must address and respond to the petition with respect to each issue raised by the requirements of subsections (a) through (j) of Section 104.406 ~~of this Part~~.
- c) The recommendation must cite to supporting documents or legal authorities whenever such are used as a basis for the Agency's conclusion. Relevant portions of the documents and legal authorities other than Board decisions, State regulations, statutes and reported cases must be appended to the recommendation if not already in the record of the proceeding.
- d) The petitioner may file a response to the recommendation within 14 days after the date of service of the recommendation.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 104.418 Amended Petition, Amended Recommendation, and Amended Response**

- a) Amended Petition. The petitioner may amend its petition at any time. The amendment must be in writing and filed with the Board unless made orally at hearing. If the petitioner amends the petition such that the amendment is a substantive change to the requested relief in that it requests additional or alternative relief, petitioner must re-notice the amended petition under ~~pursuant to~~ Section 104.408 ~~of this Part~~.
- b) Amended Recommendation. The Agency may amend its recommendation at any time, even if the petitioner has not amended its petition, if the amendment does not cause material prejudice. The amendment must be in writing and filed with the Board unless made orally at hearing.
- c) Amended Response. The petitioner may file a reply to a written amended recommendation within 14 days after the date of receipt of the amended recommendation or within 14 days after the hearing when the Agency orally amended its recommendation.

- d) Written amendments to the petition or recommendations need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 104.419 Insufficient Petition**

If the Board finds the petition fails to contain information as required by Sections 104.406, the Board may order the petitioner to supplement the information contained in the petition through its own order or through a Hearing Officer order. Filings made in response to the order constitute an amended petition and will be subject to requirements of Section 104.418. Alternatively, under Section 104.414, the Board may dismiss the petition for lack of sufficient information. Failure of the Board to require supplemental information does not preclude a later finding that the information provided is insufficient to support grant of an adjusted standard, or constitute a Board decision on the merits of the petition.

### **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 ~~must should~~ make reference to the Board docket number assigned to the proceeding. A copy of each timely hearing request will be served upon the petitioner and Agency by the Clerk ~~of the Board~~ in accordance with 35 Ill. Adm. Code 101.304(c). Public participation ~~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 ~~under 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 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 104.422 Public Hearing**

- a) A public hearing will be held and the Board will assign a hearing officer to an adjusted standard proceeding when:
- 1) The petitioner requests a hearing be held; or
  - 2) The Board receives a hearing request by any person ~~under pursuant to~~ Section 104.420, not later than 21 days after the date of the publication of the petition notice in accordance with Section 104.408; or

- 3) The Board *in its discretion determines that a hearing would be advisable* [415 ILCS 5/28.1]; or
  - 4) The adjusted standard is sought ~~under~~ pursuant to 35 Ill. Adm. Code 212.126 ~~(CAA)~~.
- b) ~~The hearing officer will set a time and place for the hearing.~~ The hearing officer will attempt to consult with the petitioner and the Agency before setting a time and place for scheduling a hearing.

(Source: Amended at 40 Ill. Reg. 7973, effective May 20, 2016)

### **Section 104.424 Hearing Notice**

After receiving notification from the hearing officer of the scheduled hearing date ~~made pursuant to Section 104.422 of this Part~~, the Clerk will cause the publication of a hearing in accordance with Section 28.1 of the Act [415 ILCS 5/28.1] and 35 Ill. Adm. Code 101.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 104.426 Burden of Proof**

The burden of proof in an adjusted standard proceeding is on the petitioner. ~~A petitioner must justify an adjusted standard consistent with Section 27(a) of the Act.~~

- a) *If the regulation of general applicability does not specify a level of justification required of a petitioner to qualify for an adjusted standard, the Board may grant individual adjusted standards whenever the Board determines, upon adequate proof by petitioner, that:*
  - 1) *factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;*
  - 2) *the existence of those factors justifies an adjusted standard;*
  - 3) *the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and*
  - 4) *the adjusted standard is consistent with any applicable federal law. [415 ILCS 5/28.1(c)]*
- b) If the regulation of general applicability specifies a level of justification for an adjusted standard, the Board may adopt the proposed adjusted standard, if the petitioner proves the level of justification specified by the regulation of general applicability.

**Section 104.428 Board Action**

- a) The Board may grant an adjusted standard for persons who can justify such an adjustment consistent with subsection (a) of Section 27 of this Act. [415 ILCS 5/28.1(a)]. In adopting adjusted standards the Board may impose such conditions as may be necessary to accomplish the purposes of the Act.
- b) Subsequent to the Board's adoption of an adjusted standard, the Board will publish, in the Environmental Register, the name of the petitioner, date of the Order that adopted the adjusted standard, and a brief narrative description of the adopted adjusted standard.
- c) *Board orders and opinions shall be maintained for public inspection by the Clerk of the Board and a listing of all determinations made pursuant to Section 28.1 of the Act shall be published in the Illinois Register and the Environmental Register at the end of each fiscal year. [415 ILCS 5/28.1(d)]* Board opinions and orders will also be available from the Board's Website.

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

(Source: Repealed at 29 Ill. Reg. 8803, effective June 8, 2005)

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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105.APPENDIX A Agency LUST Final Decisions that are Reviewable (Repeal)

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 39 Ill. Reg. 2369, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. 7980, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

### **Section 105.106 Computation of Time, Filing and Service Requirements**

Unless this Part provides otherwise, service, filing, and computation of time must be in accordance with 35 Ill. Adm. Code 101.Subpart C and J.

### **Section 105.108 Dismissal of Petition**

A petition is subject to dismissal if the Board determines that:

- a) The petition does not contain the informational requirements set forth in Section 105.210, 105.304, 105.408 or 105.506 ~~of this Part~~;
- b) The petition is untimely under ~~pursuant to~~ Section 105.206, 105.302, 105.404 or 105.504 ~~of this Part~~;
- c) The petitioner fails to timely comply with any order issued by the Board or the hearing officer, including an order requiring additional information;
- d) The petitioner does not have standing under applicable law to petition the Board for review of the State agency's final decision; or
- e) Other grounds exist that bar the petitioner from proceeding.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 105.110 Hearing Process**

Hearings will be conducted under ~~pursuant to~~ 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 40 Ill. Reg. 7980, effective May 20, 2016)

### **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. Under ~~pursuant to~~ 35 Ill. Adm. Code 101.302(h)(2), the State agency must file the record through COOL or on compact disk or other portable electronic data storage device and, the record must meet the requirements set forth in 35 Ill. Adm. Code 101.Subpart J to the extent technically feasible, in text-searchable Adobe PDF.

- b) The record must be arranged in chronological sequence, or by category of material and chronologically within each category, and must 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 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 105.118 Sanctions for Untimely Filing of the Record**

If the State agency unreasonably fails to timely file the record on or before the date required under this Part, or fails to prepare the record in accordance with this Part and 35 Ill. Adm. Code 101.Subpart J, the Board may sanction the State agency in accordance with 35 Ill. Adm. Code 101.Subpart H.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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

### **Section 105.202 Parties**

- a) Petitioner. The person who files a petition for review of the Agency's final decision must be named the petitioner.
- b) Respondent(s). The Agency must be named the respondent. If a petition is filed under pursuant to Section 105.204(b), (c) or (d) by a person other than the permit applicant, the permit applicant must be named as a respondent in addition to the Agency.

### **Section 105.206 Time to File the Petition or Request for Extension**

- a) Except as provided in subsection (b) ~~of this Section~~, if a person who may petition the Board under Section 105.204 ~~of this Subpart~~ wishes to appeal the Agency's final decision ~~to the Board under this Subpart~~, the person must file the petition



with the Clerk within 35 days after the date of service of the Agency's final decision.

- b) If a person with standing as described in Section 105.204(d) ~~of this Subpart~~, or any third party who is authorized by law to appeal a final decision of the Agency to the Board, wishes to appeal the Agency's final decision ~~to the Board under this Subpart~~, the person must file a petition for review with the Clerk within 35 days after the date of issuance of the Agency's final decision.
- c) Except as provided in subsection (d) ~~of this Section~~, if a person who may petition the Board under Section 105.204 of this Subpart wishes to request an extension of time to file a petition for review under pursuant to Section 105.208(a) ~~of this Subpart~~, the person must file the request within 35 days after the date of service of the Agency's final decision.
- d) If a person with standing as described in Section 105.204(d), or any third party who is authorized by law to appeal a final decision of the Agency to the Board, wishes to request an extension of time to file a petition for review under pursuant to Section 105.208(b) ~~of this Subpart~~, the person must file the request within 35 days after the date of issuance of the Agency's final decision.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 105.208 Extension of Time to File a Petition for Review**

- a) Permit or Other Agency Final Decision. For appeals under pursuant to Section 40(a)(1) of the Act, *the 35-day period* described in Section 105.206(a) of this Subpart *for petitioning for a hearing may be extended by the applicant for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period* [415 ILCS 5/40(a)(1)].
  - 1) The applicant and the Agency must jointly file a request for extension within 35 days after the date of service of the Agency's final decision.
  - 2) The joint request ~~described in subsection (a)(1) of this Section~~ may seek an appeal period not exceeding 125 days from the date of service of the Agency's final decision to file a petition for review under this Subpart.
- b) Hazardous Waste Permit. For appeals under pursuant to Section 40(c) of the Act, *the 35-day period* described in Section 105.206(b) ~~of this Subpart~~ *for petitioning for a hearing may be extended by the applicant for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period. If another person with standing to appeal a hazardous waste disposal permit wishes to obtain an extension, there must be a*

*written notice provided to the Board by that person, the Agency, and the applicant, within the initial appeal period. [415 ILCS 5/40(c)]*

- 1) If the applicant is the petitioner, the applicant and the Agency must jointly file a request for extension within 35 days after the date of issuance of the Agency's final decision.
  - 2) If a person with standing other than the applicant is the petitioner, the Agency, the applicant and ~~that the other~~ person must jointly file a request for extension within 35 days after the date of issuance of the Agency's final decision.
  - 3) The joint request ~~described in subsection (b)(1) or (2) of this Section~~ may seek an appeal period not exceeding 125 days from the date of issuance of the Agency's final decision to file a petition for review under this Subpart.
- c) Any request for extension of time under this Section must be accompanied by written evidence that the Agency joins in the request, e.g., affidavit of the petitioner or signature of the Agency's representative.
  - d) Extensions of time to file petitions under Section 105.204(b), (c), or (e) ~~of this Subpart~~ are not available.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 105.210 Petition Content Requirements**

In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C, the petition must include:

- a) The Agency's final decision or issued permit;
- b) A statement specifying the date of issuance or service of the Agency's final decision or issued permit, as applicable under ~~pursuant to~~ Section 105.206 ~~of this Subpart~~;
- c) A statement specifying the grounds of appeal; and
- d) For petitions under Section 105.204(b) ~~of this Subpart~~, *a demonstration that the petitioner raised the issues contained within the petition during the public notice period or during the public hearing on the NPDES permit application, if a public hearing was held, and a demonstration that the petitioner is so situated as to be affected by the permitted facility [415 ILCS 5/40(e)(2)].*

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 105.212 Agency Record**

- a) The Agency must file its entire record of its decision with the Clerk in accordance with Section 105.116 ~~of this Part~~.
- b) The record must include:
  - 1) Any permit application or other request that resulted in the Agency's final decision;
  - 2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the permit application;
  - 3) The permit denial letter that conforms to the requirements of Section 39(a) of the Act or the issued permit or other Agency final decision;
  - 4) The hearing file of any hearing that may have been held before the Agency, including any transcripts and exhibits; and
  - 5) Any other information the Agency relied upon in making its final decision.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **Section 105.214 Board Hearing**

- a) Except as provided in subsections (b), (c) and (d) ~~of this Section~~, the Board will conduct a public hearing, in accordance with 35 Ill. Adm. Code 101.Subpart F, upon an appropriately filed petition for review ~~under this Subpart~~. The hearing will be based exclusively on the record before the Agency at the time the permit or decision was issued, unless the parties agree to supplement the record under pursuant to Section 40(d) of the Act. If any party desires to introduce evidence before the Board with respect to any disputed issue of fact, the Board will conduct a separate hearing and receive evidence with respect to the issue of fact.
- b) The Board will not hold a hearing on a petition for review under this Subpart if the Board disposes of the petition on a motion for summary judgment brought under pursuant to 35 Ill. Adm. Code 101.516.
- c) The Board will not hold a hearing on a petition for review under Section 105.204(c) ~~of this Subpart~~ if the Board determines that:
  - 1) The petition is duplicative or frivolous; or
  - 2) The petitioner is so located as to not be affected by the permitted facility.

- d) The Board will not hold a hearing on a petition for review under Section 105.204(b) or (d) ~~of this Subpart~~ if the Board determines that the petition is duplicative or frivolous.
- e) If the Board determines to hold a hearing, the Clerk will give notice of the hearing under pursuant to 35 Ill. Adm. Code 101.602.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### SUBPART C: CAAPP PERMIT APPEALS

#### Section 105.300 Applicability

This Subpart applies to proceedings before the Board concerning appeals from CAAPP final determinations made under pursuant to Section 39.5 of the Act.

#### Section 105.302 General Requirements

- a) The definitions of 35 Ill. Adm. Code 101.202 and Section 39.5 of the Act will apply to this Subpart unless otherwise provided, or unless the context clearly indicates otherwise.
- b) If the Agency denies a CAAPP permit, permit modification, or permit renewal it must shall provide to USEPA, the permit applicant and, upon request, affected states, any person who participated in the public comment process and any other person who could obtain judicial review under Section 40.2 and 41 of the Act a copy of each notification of denial pertaining to the permit applicant.
- c) The applicant, any person who participated in the public comment process under Section 39.5(8) of the Act, or any other person who could obtain judicial review under Section 41(a) of the Act may contest the decisions of the Agency enumerated below by filing with the Clerk a petition for review of the Agency's action in accordance with this Section:
  - 1) Denial ~~In the case of a denial~~ of a CAAPP permit, including a permit revision or permit renewal, or a determination of incompleteness by the Agency regarding a submitted CAAPP application, ~~or~~
  - 2) Issuance ~~the issuance~~ by the Agency of a CAAPP permit with one or more conditions or limitations,
  - 3) Failure ~~or the failure~~ of the Agency to act on an application for a CAAPP permit, permit renewal, administrative permit amendment or significant permit modification within the time frames specified in Section 39.5(5)(j) or Section 39.5(13) of the Act, as applicable, or

- 4) ~~Failure the failure~~ of the Agency to take final action within 90 days after receipt of an application requesting minor permit modification procedures (or 180 days for modifications subject to group processing requirements) ~~under pursuant to~~ Section 39.5(14) of the Act, ~~to which the applicant, any person who participated in the public comment process pursuant to Section 39.5(8) of the Act, or any other person who could obtain judicial review pursuant to Section 41(a) of the Act objects, such persons may contest the decision of the Agency by filing with the Clerk a petition for review of the Agency's action in accordance with this Section.~~
- d) For purposes of this Subpart, a person who participated in the public comment process is someone who, during the public comment period, either commented on the draft permit, submitted written comments, or requested notice of the final action on a specific permit application.
- e) The petition filed ~~under pursuant to~~ subsection (c) ~~of this Section~~ must be filed within 35 days after the Agency's final permit action unless:- Notwithstanding the above, if
- 1) ~~The the~~ petition is based solely on grounds arising after the 35 day period expires, in which case the petition may be filed within 35 days after the new grounds for review arise.
  - 2) ~~If The the~~ applicant is challenging the Agency's failure to timely take final action ~~under pursuant to~~ Section 39.5 of the Act, in which case the petition must be filed before the Agency takes the final action.
  - 3) However, under Under no circumstances may a petition challenging the final permit action on a Phase II acid rain permit be filed more than 90 days subsequent to the final permit action.
- f) The Agency must appear as respondent at the hearing, and must file within 30 days after service of the petition, an answer consisting of the entire Agency record of the CAAPP application including the CAAPP permit application, the hearing record, the CAAPP permit denial or issuance letter, and correspondence with the applicant concerning the CAAPP permit application.
- g) The Clerk will give notice of the petition and hearing in accordance with 35 Ill. Adm. Code 101.
- h) The proceeding will be conducted in accordance with 35 Ill. Adm. Code 101.
- i) *The Agency shall notify USEPA, in writing, of any petition for hearing brought under this Part involving a provision or denial of a Phase II acid rain permit within 30 days of the filing of the petition. USEPA may intervene as a matter of right in any such hearing. The Agency shall notify USEPA, in writing, of any*

*determination or order in a hearing brought under this Section that interprets, voids, or otherwise relates to any portion of a Phase II acid rain permit. [415 ILCS 5/40.2(e)]*

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 105.304 Petition Content Requirements**

- a) The petition must include:
  - 1) a concise description of the CAAPP source for which the permit is sought;
  - 2) a statement of the Agency's decision or part thereof to be reviewed;
  - 3) a justification as to why the Agency's decision or part thereof was in error; and
  - 4) the other materials upon which the petitioner relies in its petition.
- b) The petition may include a request to stay the effectiveness of a denial of the CAAPP permit until final action is taken by the Board ~~under pursuant to~~ Section 40.2 of the Act.

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

### **Section 105.400 Parties**

- a) Petitioner. The person who files a petition for review of the Agency's final decision made ~~under pursuant to~~ Sections 57.1 et seq. of the Act (or under the former Section 22.18b(g) of the Act) must be named as petitioner.
- b) Respondent. The Agency must be named as the respondent.

### **Section 105.402 Who May File a Petition for Review**

Any owner or operator may file a petition for review ~~under pursuant to~~ Section 40 of the Act of an Agency final determination made ~~under pursuant to~~ Sections 57.1 et seq. of the Act (or under the former Section 22.18b(g) of the Act). There are several Agency determinations that may be appealed ~~under pursuant to~~ Section 40 of the Act. The Agency determinations that may be appealed are included in Illustration A of this Part.

### **Section 105.404 Time for Filing the Petition**

Petitions must be filed in accordance with this Section or the Board does not have the authority to review the Agency's decision and will dismiss the proceeding on its own motion or on the

motion of any party. Within 35 days after the date of service of the Agency's final decision the petitioner may file with the Clerk ~~of the Board~~:

- a) a petition for review that contains the requirements of Section 105.408 ~~of this Part~~; or
- b) a request for an extension of time to file a petition for hearing under ~~pursuant to~~ Section 105.406 ~~of this Part~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 105.406 Extension of Time to File a Petition for Review**

Under ~~pursuant to~~ Section 40(a)(1) of the Act, *the 35-day period for petitioning for a hearing may be extended by the applicant for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period.* [415 ILCS 5/40(c)]. The applicant and the Agency must jointly file a request for extension with the Board within 35 days after the date of service of the Agency's final decision. Upon an appropriately filed request for an extension, the applicant has a period not exceeding 125 days after the date of service of the Agency's final decision to file a petition for review before the Board under ~~pursuant to~~ Section 105.408 ~~of this Part~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 105.410 Agency Record**

- a) The Agency must file the entire record of its decision with the Board in accordance with Section 105.116 ~~of this Part~~.
- b) The record must include:
  - 1) The plan or budget submittal or other request that requires an Agency decision;
  - 2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the plan or budget submittal or other request;
  - 3) The final determination letter; and
  - 4) Any other information the Agency relied upon in making its determination.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 105.412 Board Hearing**

The Board will conduct a public hearing, in accordance with 35 Ill. Adm. Code 101.Subpart F including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)) upon an appropriately filed petition for review, unless a petition is disposed of by a motion for summary judgment brought under pursuant to 35 Ill. Adm. Code 101.516. The hearing will be based exclusively on the record before the Agency at the time the permit or decision was issued.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART E: APPEAL OF OSFM LUST DECISIONS

### **Section 105.500 Applicability**

This Subpart applies to proceedings before the Board concerning appeals from OSFM final determinations made under pursuant to Section 57.9(c) of the Act.

### **Section 105.502 General Overview**

OSFM final determinations are made either through the issuance of an "Eligibility and Deductibility Determination" letter or by the failure of OSFM to act upon receipt of an "Eligibility and Deductibility Determination" form within 60 days under pursuant to Section 57.9(c)(2) of the Act. The process before the Board for review of final determinations by the OSFM includes the following steps. Upon receipt of a petition for review, unless the Board determines that the petition is insufficient, a hearing date and location will be assigned. Hearings will be publicly-noticed in the county where the underground storage tank site is located. If the parties enter into a settlement agreement prior to or during the hearing process, the parties may request that the Board accept and enter a final order adopting a proposed settlement agreement; the order may be requested with or without a hearing.

### **Section 105.508 OSFM Record and Appearance**

- a) Within 14 days after a petition for review of an OSFM eligibility or deductibility determination, the attorney representing the OSFM must file an appearance with the Board.
- b) The OSFM must file the entire record of its decision with the Board in accordance with Section 105.116 ~~of this Part~~. The record must include:
  - 1) The request for OSFM determination of eligibility or deductibility;
  - 2) Correspondence with the petitioner;
  - 3) The denial letter; and
  - 4) Any other information the OSFM relied upon in making its determination.



(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 105.510 Location of Hearing**

#### **~~Section 105.510 Location of Hearing~~**

The hearing will be held in either Springfield, ~~or~~ Chicago, by videoconference (see 35 Ill. Adm. Code 101.600(b)), or in such other location as the hearing officer or the Board may designate to prevent material prejudice or undue delay. Upon the proceeding being set for hearing, the Clerk will cause notice of the hearing to be published. Public notice will be published at least 21 days before the hearing by public advertisement in a newspaper of general circulation in the county in which the LUST site in question is located. Nothing in this Section precludes holding the hearing by videoconference under pursuant to 35 Ill. Adm. Code 101.600(b).

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **105.APPENDIX A Agency LUST Final Decisions that are Reviewable (Repeal)**

The following table includes Agency final determinations which may be appealed to the Board pursuant to the Leaking Underground Storage Tank Program, Title XVI of the Act. Appealable determinations are listed in Title XVI, so the reader should consult the Act for amendments to Title XVI which may affect this list.

Description of Final Determination	Section of the Act Citation	35 Ill. Adm. Code Citation
Agency's determination concerning the owner's or operator's physical soil classification and groundwater investigation plan.	57.7(a)(1)(A)	732.305(a) and (e) and 732.503(b) and (f)
Agency's determination as to a request for reimbursement for costs associated with early action pursuant to Section 57.6(b) of the Act.	57.7(a)(1)(B)	732.305(b)(1) and (c) and 732.602
Agency's determination concerning the owner's or operator's budget for the physical soil classification and groundwater investigation plan.	57.7(a)(2)	732.305(b)(2) and (e) and 732.503 (b) and (f)
Agency's determination concerning the site classification.	57.7(b)	732.309, 732.500(a) and 732.503(b) and (f)
Agency's determination concerning the corrective action plan submitted for a high priority site.	57.7(c)(1)(A)	732.405(a) and 732.503(b) and (f)

<del>Agency's determination concerning the budget associated with a corrective action plan submitted for a high priority site.</del>	<del>57.7(c)(1)(B)</del>	<del>732.405(b) and 732.503(b) and (f)</del>
<del>Agency's determination as to issuance of a no further remediation letter in accordance with Section 57.10 of the Act for a high priority site.</del>	<del>57.7(c)(1)(E)</del>	<del>732.410(a) and (d)</del>
<del>Agency's determination concerning the groundwater monitoring plan and associated budget submitted for a low priority site.</del>	<del>57.7(c)(2)(B)</del>	<del>732.403(b) and (c) and 732.503(b) and (f)</del>
<del>Agency's determination associated with a groundwater monitoring completion report.</del>	<del>57.7(c)(2)(C)</del>	<del>732.403(g)</del>
<del>Agency's determination as to issuance of a no further remediation letter in accordance with Section 57.10 of the Act for a low priority site.</del>	<del>57.7(c)(2)(E)</del>	<del>732.403(f) and 732.410(d)</del>
<del>Agency's determination as to the site classification for a no further action site.</del>	<del>57.7(c)(3)(B)</del>	<del>732.402 and 732.410(d)</del>
<del>Agency's determination as to amount of reimbursement.</del>	<del>57.8(i)</del>	<del>732.602(h)</del>
<del>Agency's determination concerning the completeness of plan or budget submittals by the owner or operator.</del>		<del>732.502(b); 732.503(f)</del>
<del>Agency's determination concerning the completeness of reimbursement submittals by the owner or operator.</del>		<del>732.602(a) and (b)</del>

~~BOARD NOTE: The above list was complete at time of adoption. However, the list is subject to subsequent changes in the Act, the Board's regulations and the interpretation of the corresponding law. By no means should this list be interpreted to limit any right to appeal an Agency final determination before the Board. The list should only be used as an aid for interpreting Title XVI and the corresponding law.~~

## **105.APPENDIX B Comparison of Former and Current Rules (Repealed)**

(Source: Repealed at 29 Ill. Reg. 8811, effective June 8, 2005)

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

PART 106  
 PROCEEDINGS PURSUANT TO SPECIFIC RULES OR STATUTORY PROVISIONS

SUBPART A: GENERAL PROVISIONS

Section	
106.100	Applicability
106.102	Severability
106.104	Definitions
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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].

**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 39 Ill. Reg. 2375, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12914, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. 7986, effective May 20, 2016; amended in R17-18 at 41 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], 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(e).~~
- 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 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 106.106 Petitions and Hearings

- a) Each petition must contain an index that lists the documents comprising the petition, including any exhibits, attachments, and supporting documents. All pages of the petition must be sequentially numbered with the letter "P" placed before the number of each page. The index must show the page numbers upon which each document comprising the petition starts and ends.
- b) Hearings will be conducted ~~under pursuant to~~ 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Added at 40 Ill. Reg. 7986, effective May 20, 2016)

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

### Section 106.200 General

- a) Description
- 1) Heated Effluent Demonstration

- A) The owner or operator of a source of heated effluent that discharges 150 megawatts (0.5 billion British thermal units per hour) or more must demonstrate ~~in an adjudicatory proceeding before the Board, under pursuant to~~ 35 Ill. Adm. Code 302.211(f), that discharges from that source have not caused and cannot be reasonably expected to cause significant ecological damage to the receiving waters.
- B) The owner or operator must make the demonstration under subsection (a)(1)(A) ~~of this Section~~ not less than 5 years nor more than 6 years after operations commence.
- C) If the Board finds that the proof of the owner or operator under subsection (a)(1)(A) ~~of this Section~~ is inadequate, the Board's order will include a requirement that the owner or operator perform appropriate corrective measures within a reasonable time as determined by the Board.

2) Artificial Cooling Lake Demonstration

- A) If a discharger wishes to have the Board establish specific thermal standards for its discharge to an artificial cooling lake under pursuant to 35 Ill. Adm. Code 302.211(j)(5) that would apply to the discharge in lieu of the applicable provisions of the thermal water quality standards set forth in 35 Ill. Adm. Code 302.211 and 303, the discharger must demonstrate ~~in an adjudicatory proceeding before the Board, under pursuant to~~ 35 Ill. Adm. Code 302.211(j)(3), that the artificial cooling lake receiving the heated effluent will be environmentally acceptable and within the intent of the Act.
- B) If the Board finds that the proof of the discharger under subsection (a)(2)(A) ~~of this Section~~ is adequate, the Board will establish, under pursuant to 35 Ill. Adm. Code 302.211(j)(5), specific thermal standards to be applied to the discharge to the artificial cooling lake in lieu of the applicable provisions of the thermal water quality standards set forth in 35 Ill. Adm. Code 302.211 and 303.
- C) A Board order providing alternate thermal standards under subsection (a)(2)(B) ~~of this Section~~ will include, but not be limited to, the following conditions:
  - i) Under pursuant to 35 Ill. Adm. Code 302.211(j)(1), all discharges from the artificial cooling lake to other waters of



the State must comply with the applicable provisions of 35 Ill. Adm. Code 302.211(b) through (e); and

- ii) ~~Under pursuant to~~ 35 Ill. Adm. Code 302.211(j)(2), the heated effluent discharged to the artificial cooling lake must comply with all applicable provisions of 35 Ill. Adm. Code Subtitle C, Chapter I, except 35 Ill. Adm. Code 302.211(b) through (e).
- 3) Sulfur Dioxide Demonstrations. Any owner or operator of a fuel combustion emission source may petition the Board, ~~under pursuant to~~ 35 Ill. Adm. Code 214.185 and this Subpart, for approval of substitute standards from those set forth in 35 Ill. Adm. Code 214.183 and 214.184.
- b) Initiation of Proceeding. The owner or operator may initiate a heated effluent, artificial cooling lake or sulfur dioxide demonstration by filing with the Clerk a petition in accordance with this Subpart.
  - c) Parties. The owner or operator must be named the petitioner and the Agency must be named the respondent.
  - d) Filing and Service. Filing and service must be in accordance with 35 Ill. Adm. Code 101.Subpart C and J.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.202 Petition Requirements**

- a) Heated Effluent Demonstration. The petition must include, ~~where applicable,~~ the following information but may include additional information that the petitioner believes will be relevant to the proceeding:
  - 1) General Plant Description:
    - A) Generating capacity;
    - B) Type of fuel used;
    - C) Operating characteristics of the condenser cooling system;
    - D) History of the load factor of the plant for the time during which the plant has operated, but for no more than the last 5 years;
    - E) Projected load factors for the life of the plant;

- F) Estimated date of retirement for each unit at the plant and any plans for additional units at the plant;
  - G) History of plant shutdowns; and
  - H) Planned, emergency, and projected shutdowns with frequency and duration.
- 2) Description of Method for Heat Dissipation:
- A) Type of system used (such as once-through, mechanical, and draft cooling towers) in narrative form; and
  - B) Summary information on temperature of discharge to receiving waters in narrative form.
- 3) Plume Studies:
- A) Actual plume studies in the last 5 years correlated with plant operation and meteorological conditions;
  - B) Theoretical plume studies for all four seasons for typical and worst case conditions. Worst case conditions must be identified as worst conditions of plant load factors, precipitation, ambient water temperature, and air temperature; the studies must consider the frequency of occurrence and their joint probabilities of occurrence; and
  - C) Theoretical plume studies that identify isotherms at 3<sup>0</sup> Fahrenheit (1.7<sup>0</sup> Centigrade) intervals down to ambient temperature indicating three-dimensional effects.
- 4) A demonstration, that may take any of the forms described in subsection (b)(2), that discharges from the source of heated effluent have not caused and cannot be reasonably expected to cause significant ecological damage to the receiving waters, including:
- A) Biological studies in the last 5 years on receiving waters, including species studied, location of studies, and conclusions reached, including conclusions as to both the lethal and sublethal effects of the thermal discharge;
  - B) The impact on other animal life (such as waterfowl and amphibians) in the area as a result of the thermal discharge; and
  - C) Secondary Considerations

- i) Possible and known impact on recreation from thermal discharges; and
- ii) Management practices employed or planned in order to limit the effect of any environmental harm established under this subsection (a)(4).

~~The demonstration required under this subsection (a)(4) may take any of the forms described in subsection (b)(2) of this Section.~~

- 5) A citation to any prior proceedings, in which the petitioner was a party, brought under ~~pursuant to~~ 35 Ill. Adm. Code 302.211(f) or (j)(3).
- b) Artificial Cooling Lake Demonstration. The petition must include, ~~where applicable,~~ the following information but may include additional information that the petitioner believes will be relevant to the proceeding:
- 1) A demonstration that the artificial cooling lake receiving the heated effluent will be environmentally acceptable and within the intent of the Act, including:
    - A) Provision of conditions capable of supporting shellfish, fish and wildlife, and recreational uses consistent with good management practices; and
    - B) Control of the thermal component of the discharger's effluent by a technologically feasible and economically reasonable method.
  - 2) The demonstration required under subsection (b)(1) ~~of this Section~~ may take the form of any of the following:
    - A) A final environmental impact statement;
    - B) Pertinent provisions of environmental assessments used to prepare the final environmental impact statement; or
    - C) A showing under ~~pursuant to~~ Section 316(a) of the Clean Water Act (33 USC 1326).
  - 3) A citation to any prior proceedings, in which the petitioner was a party, brought under ~~pursuant to~~ 35 Ill. Adm. Code 302.211(f) or (j)(3).
- c) Sulfur Dioxide Demonstration. The petition must include the following information:

- 1) An explicit statement of the site-specific emission limitation (in pounds of sulfur dioxide per million British thermal units (btu) actual heat input and total pounds of sulfur dioxide per hour) that is proposed for the facility.
- 2) Emission Sources Description:
  - A) The diameter, height, exit gas temperature, and exit gas velocity for all stacks or vents through which sulfur dioxide is emitted into the atmosphere;
  - B) A description of the fuels used including type, ultimate analysis, sulfur content, and heat content;
  - C) A description of the type of fuel combustion equipment including method of firing and size (in million btu per hour capacity);
  - D) A topographic map of terrain within 30 miles of the emission source(s);
  - E) A specific description of the location of the emission sources, including a plot plan; and
  - F) A specific description of the operating conditions which produce maximum sulfur dioxide emissions.
- 3) A summary of any and all ambient air quality data collected by the owner or operator of the source(s) since January 1, 1973. The summary must include annual averages; maximum and second-highest one-hour, 3-hour, and 24-hour averages for each month; and the number of times the 3-hour and 24-hour sulfur dioxide standards were exceeded during each month.
- 4) A summary of any and all meteorological data collected by the owner or operator of the source(s) since January 1, 1973, if the data are used in the development of the site-specific emission standard.
- 5) A complete description of and justification for all dispersion models and plume rise equations that are used to develop the site-specific emission limitation, including all model equations.
- 6) A description of and justification for the use of all data that were inputs to the dispersion and plume rise formula used to establish the site-specific emission standard. The description and justification must cover, as a minimum, the following input data:
  - A) Stack diameters, stack heights, exit gas temperatures, and exit gas velocities for all stacks and vents emitting sulfur dioxide at the

subject facility as well as for any other sources of sulfur dioxide that were modeled;

- B) All sulfur dioxide emission sources that were modeled; and
  - C) All meteorological data.
- 7) Calculated maximum ground-level concentrations using the following method, or such other method (or modification of the hereinafter stated method) that the petitioner proves to the satisfaction of the Board to be acceptable.
- A) Selection of simulation model:
    - i) Gaussian models that allow the input of hourly meteorological data must be used which are appropriate for the specific location and type of source(s) in question.
    - ii) Dispersion models presented in "Guidelines on Air Quality Models" (EPA-450/2-78-027), or those deemed by the Board to be equivalent to these models must be used for detailed air quality studies.
  - B) Selection of meteorological data and stack parameters:
    - i) The most recent 5 years of hour-by-hour meteorological data reasonably available, including wind speed, wind direction, atmospheric stability, mixing height and surface temperature must be used, unless the petitioner demonstrates that one of the 5 years causes substantially higher concentrations than the other four, in which case detailed analyses conducted for only that "worst case" year would be acceptable. Notwithstanding the previous sentence, one year of on-site data may be used in lieu of the 5-year data requirement;
    - ii) Data must be from the nearest, representative, quality controlled meteorological collecting site; and
    - iii) Stack parameters (including emission rate, stack height, stack diameter, exit velocity, and exit temperature) must reflect the maximum operating rate for comparison with the 24-hour and 3-hour sulfur dioxide standards.
  - C) Receptors:

- i) Receptors must be located so as to ensure that the source's maximum impact is detected; and
  - ii) The determination of the receptor grid must be fully documented in the modeling study;
- D) Special conditions:
- i) All special conditions that may affect the dispersion of the effluent plume, including local terrain effects and aerodynamic downwash, must be considered in the modeling study;
  - ii) If terrain is a factor in the vicinity of the source, a model capable of handling variable-height receptors must be used; and
  - iii) If the computed height of the effluent plume is less than 2.5 times the height of nearby buildings or local obstructions, aerodynamic downwash must be studied and considered as a possible factor in the dispersion of that effluent.
- E) Determination of violation: The determination of whether an applicable air quality increment or standard is being violated must be based on the second-highest predicted concentration over the receptor grid for short-term averaging times and on the highest predicted concentration for annual averaging times. However, if only one year of meteorological data is used in the short-term analysis, then the highest predicted concentration may be compared to the applicable standard to determine whether a violation has occurred.
- F) Other sources: Effects of other sources of sulfur dioxide must be taken into account in the modeling study. Methods by which other sources of sulfur dioxide may be accounted are as follows:
- i) An acceptable method is to estimate the "background" from monitoring data which has been subjected to adequate quality control where available. When monitored data is used, the background must be estimated using monitoring days with meteorological conditions similar to those identified as "worst case" for the source in question; or
  - ii) If monitoring data is not available, then all sources of sulfur dioxide having a significant impact in the area of the source's impact area must be used in the simulation model.

These sources of sulfur dioxide must also be modeled at their maximum allowable emission rate for any studies addressing 24-hour or 3-hour averaging times.

- 8) Estimates of the frequency, characteristics, probable time of occurrence, and duration of the meteorological conditions associated with the maximum ground-level concentration of sulfur dioxide to which the facility under study contributes. A description of the techniques used in arriving at the above estimates must be included.
- 9) Background concentrations that were determined for all meteorological conditions required to be examined under subsection (c)(7) ~~of this Section~~ and for any other meteorological conditions considered in the development of the alternative standard.
- 10) A description of the method that was used to determine background sulfur dioxide concentrations in the vicinity of the subject facility for each of the meteorological conditions required to be examined under subsection (c)(7) ~~of this Section~~ and for any additional meteorological conditions considered in developing the alternative standard.
- 11) An evaluation and calibration of the dispersion model if air quality monitoring data were available to perform the evaluation and calibration.
- 12) That the procedural requirements of 40 CFR 51.4 (1977) are met and, at least 30 days prior to the date of the hearing, petitioner must:
  - A) Give notice to the public by prominent advertisement in the Air Quality Control Region affected announcing the date, time and place of the hearing;
  - B) Make available a copy of the petition for public inspection in at least one location in the Air Quality Control Region in which the source is located;
  - C) Notify the Administrator of USEPA (through the Region V Office);
  - D) Notify each local air pollution control agency located within the affected Air Quality Control Region; and
  - E) Notify, in the case of an interstate Air Quality Control Region, any air pollution control agencies of other states included, in whole or in part, in the Region.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 106.204 Additional Petition Requirements in Sulfur Dioxide Demonstrations (Repealed)**

In addition to meeting the petition content requirements of Section 106.202(e) of this Part the petitioner must ensure that the procedural requirements of 40 CFR 51.4 (1977) are met and, at least 30 days prior to the date of the hearing, petitioner must:

- a) Give notice to the public by prominent advertisement in the Air Quality Control Region affected announcing the date, time and place of the hearing;
- b) Make available a copy of the petition for public inspection in at least one location in the Air Quality Control Region in which the source is located;
- e) Notify the Administrator of USEPA (through the Region V Office);
- d) Notify each local air pollution control agency located within the affected Air Quality Control Region; and
- e) Notify, in the case of an interstate Air Quality Control Region, any air pollution control agencies of other states included, in whole or in part, in the Region.

(Source: Repealed at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 106.206 Notice**

The Clerk will give notice of the petition and hearing in accordance with 35 Ill. Adm. Code 101.602. The proceedings must be in accordance with 35 Ill. Adm. Code 101.Subpart F including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 106.208 Recommendation and Response**

The Agency must file a recommendation on a petition under this Subpart as prescribed in this Section. The petitioner, ~~or any other party to the proceeding, or any person~~ may file a response to the Agency recommendation within 14 days after the filing of the recommendation ~~service of the petition. Any person other than a party to the proceeding may file a response to the Agency recommendation within 14 days after the Agency files the recommendation.~~

- a) Heated Effluent Demonstration

Within 60 days after the owner or operator files the petition, the Agency must make a recommendation to the Board on the petition. The recommendation may include:



- 1) A description of the Agency's efforts in conducting its review of the petition;
- 2) The Agency's conclusion as to whether discharges from the source have caused or can reasonably be expected to cause significant ecological damage to the receiving waters;
- 3) The factual basis for the Agency's conclusion;
- 4) Any corrective measures that the Agency recommends be taken and the recommended time period to implement the measures; and
- 5) The Agency's recommendation on how the Board should dispose of the petition.

b) Artificial Cooling Lake Demonstration

Within 60 days after the owner or operator files the petition, the Agency must make a recommendation to the Board on the petition. The recommendation may include:

- 1) A description of the Agency's efforts in conducting its review of the petition;
- 2) The Agency's conclusion as to whether the artificial cooling lake receiving the heated effluent will be environmentally acceptable and within the intent of the Act;
- 3) The factual basis for the Agency's conclusion; and
- 4) The Agency's recommendation on how the Board should dispose of the petition.

c) Sulfur Dioxide Demonstration

Within 90 days after the filing of the petition the Agency must make a recommendation to the Board as to be proposed site-specific emission limitation. The recommendation may include the following:

- 1) A description of the efforts made by the Agency in conducting its review;
- 2) The Agency's conclusion as to whether the proposed site-specific emission limitation is adequate to prevent violations of the Primary and Secondary Sulfur Dioxide Ambient Air Quality Standards; and

- 3) The Agency's conclusion as to what disposition should be made of the petition.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES

### Section 106.300 General

- a) Description. This Subpart applies to any *owner of a new potential route, a new potential primary source other than landfilling or land treating, or new potential secondary source* who files a petition for an exception from the setback requirements of Sections 14.2 and 14.3(e) of the Act ~~under pursuant to~~ Section 14.2(c) of the Act and this Subpart. [415 ILCS 5/14.2(c)]
- b) Parties. The owner filing the petition for an exception must be named the petitioner and the Agency must be named the respondent. Affected well owners who are not petitioners also must be named respondents.
- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C and J will apply to the proceedings of this Subpart.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 106.302 Initiation of Proceeding

- a) The petitioner must file the petition for exception with the Clerk ~~of the Board~~ and must serve one copy upon the Agency.
- b) The petitioner must notify and provide a copy of the petition to the owners of each potable water supply for which the setback requirements would be affected by the exception.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### 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 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 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.308 Hearing**

The Board will hold at least one public hearing in an exception proceeding. The hearing officer will schedule the hearing. The Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code 101. The proceedings will be in accordance with 35 Ill. Adm. Code 101.Subpart F including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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

### **Section 106.400 General**

- a) Description. The provisions of this Subpart will apply to:
  - 1) Any revocation proceeding initiated by the Agency when it determines that there are grounds to revoke and reissue a Clean Air Act Permit Program (CAAPP) permit for cause, under pursuant to Section 39.5(15)(b) of the Act; and
  - 2) Any reopening proceeding initiated by the Agency under pursuant to a notice that there are grounds to terminate or revoke and reissue a CAAPP permit for cause, under pursuant to Section 39.5(16) of the Act.
- b) Parties.
  - 1) In a revocation proceeding initiated by the Agency, the Agency will be named as petitioner and the holder of the CAAPP will be named as respondent.
  - 2) In a reopening proceeding initiated by the Agency, the Agency will be named as petitioner and the holder of the CAAPP will be named as respondent.

- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C and J will apply to the proceedings of this Subpart.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.410 Hearing**

The Board will hold at least one public hearing. The Clerk will give notice of the petition and hearing in accordance with 35 Ill. Adm. Code 101.602. The proceeding must be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART E: MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY DETERMINATIONS

### **Section 106.500 General**

- a) Description. The provisions of this Subpart will apply to any proceeding initiated by an owner or operator of a CAAPP source under ~~pursuant to~~ Section 39.5(19)(a) or (e) of the Act challenging the Agency's determination not to utilize the hazardous air pollutant emission limitation proposed by the CAAPP source or the hazardous air pollutant limitation for a case-by-case maximum achievable control technology (MACT) proposed by the CAAPP source.
- b) Parties. The owner or operator of the CAAPP source who initiates the proceeding must be named as petitioner and the Agency must be named as respondent.
- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C and J will apply to the proceedings of this Subpart.

### **Section 106.504 Initiation of Proceedings**

The owner or operator of a CAAPP source may initiate a proceeding before the Board by serving a petition upon the Agency and filing with the Clerk ~~of the Board~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.506 Petition Content Requirements**

A petition filed under ~~pursuant to~~ Section 39.5(19)(a) and (e) of the Act must include:

- a) A detailed description of and justification for the emission limitation that is being proposed for the source and an explanation of how the emission limitation

provides for the level of control required under Section 112 of the CAA (42 USC 7412);

- b) A petition filed ~~under pursuant to~~ Section 39.5(19)(a) of the Act must also include justification for the Board to determine whether the emission limitation proposed by the owner or operator of the CAAPP source provides for the emission limitation equivalent to the emission limitation that would apply to the source if USEPA had promulgated the applicable emission standard ~~under pursuant to~~ Section 112(d) of the CAA (42 USC 7412(d)) in a timely manner; and
- c) The Agency's notification of its refusal to adopt the CAAPP source's proposed emission limitation or the CAAPP source's MACT determination.

### **Section 106.510 Hearing**

The Board will hold at least one public hearing. The Clerk ~~of the Board~~ will give notice of the petition and any hearing in accordance with 35 Ill. Adm. Code 101.602. The proceeding will be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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

### **Section 106.600 General**

- a) Description. The provisions of this Subpart will apply to any appeal initiated under 35 Ill. Adm. Code 212.702 by an owner or operator of a source under ~~pursuant to~~ a finding by the Agency of culpability for an exceedence of the 24-hour ambient air quality standard for particulate matter less than or equal to 10 microns (PM-10) at 35 Ill. Adm. Code 243.120.
- b) Parties. The owner or operator of a source who initiated the proceeding will be named as the petitioner and the Agency will be named as respondent.
- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C and J will apply to the proceedings of this Subpart.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.602 Initiation of Proceedings**

The owner or operator of a source may initiate a proceeding before the Board by serving a petition for review of the Agency culpability determination and filing the petition with the Clerk ~~of the Board~~ .

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.604 Petition Content Requirements**

A petition for review filed ~~under~~ pursuant to this Subpart must include:

- a) A copy of the letter, or other written communication, setting forth the Agency's finding of culpability;
- b) A clear identification of the county in which the source is located; and
- c) A detailed description of, and justification for, the source's position that the Agency's finding of culpability is incorrect.

### **Section 106.608 Hearing**

- a) Within 14 days after a petition is filed, the Agency must publish notice of the petition in a newspaper of general circulation in the county in which the source is located. Within 30 days after the filing of the petition, any person may file with the Clerk ~~of the Board~~ a request for hearing on the petition.
- b) The hearing officer will schedule any hearing. The Clerk ~~of the Board~~ must give notice of the hearing in accordance with 35 Ill. Adm. Code 101.602. The proceeding will be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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

### **Section 106.702 Applicability**

- a) When the Agency terminates an EMSA under Section 52.3-4(b) or (b-5) of the Act, only Section 106.704 ~~of this Subpart~~ applies.
- b) This Subpart, except for Section 106.704, applies to proceedings in which the Board will determine whether to terminate an EMSA.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.704 Termination Under Section 52.3-4(b) or (b-5) of the Act**

- a) To terminate an EMSA under Section 52.3-4(b) of the Act, the Agency must determine that the sponsor's performance under the EMSA has failed to:
  - 1) *Achieve emissions reductions or reductions in discharges of wastes beyond the otherwise applicable statutory and regulatory requirements through pollution prevention or other suitable means; or*
  - 2) *Achieve real environmental risk reduction or foster environmental compliance by other persons regulated under the Act in a manner that is clearly superior to the existing regulatory system. [415 ILCS 5/52.3-1(b)]*
- b) To terminate an EMSA under Section 52.3-4(b-5) of the Act, the Agency must determine that the sponsor's *participation in the Federal Performance Track Program has ceased. [415 ILCS 5/52.3-4(b-5)]*
- c) If the Agency terminates an EMSA under Section 52.3-4(b) or (b-5) of the Act, the sponsor may file an appeal with the Board. Appeals to the Board will be under pursuant to 35 Ill. Adm. Code 105.Subparts A and B.

(Source: Amended at 29 Ill. Reg. 8817, effective June 8, 2005)

#### **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 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 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.710 Notice of Hearing**

- a) Upon the filing of a statement of deficiency, a hearing officer will be designated and the Clerk will notify the parties of the designation. ~~The Clerk will assign a docket number to each statement of deficiency filed.~~ Any hearing will be held not later than 60 days after the respondent files the answer, subject to any extensions ordered under subsection (be).
- b) ~~The Chairman of the Board will designate a hearing officer and the Clerk will notify the parties of the designation. The hearing officer may be a Member of the Board if otherwise qualified.~~
- be) The hearing officer, after reasonable efforts to consult with the parties, will set a time and place for hearing. The Board or the hearing officer may extend the time for hearing if all parties agree or there are extreme and unanticipated or uncontrollable circumstances that warrant a delay. The Board or the hearing officer may delay the hearing more than once. In each event, the Board or the hearing officer will not delay the hearing for more than 30 days.
- cd) The hearing will be held under pursuant to 35 Ill. Adm. Code 101.Subpart F including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).
- de) After the hearing officer schedules the hearing, the Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code 101. The hearing officer or the Clerk will give notice of the hearing, at least 30 days before the hearing, to the parties under Section 106.708(b), and to the public by public advertisement in a newspaper of general circulation in the county in which the pilot project is located.
- ef) The Agency must give notice of each statement of deficiency and hearing under Section 106.708(b) at least 10 days before the hearing to:



- 1) All stakeholders named or listed in the EMSA; and
  - 2) Any person who 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 under the procedures set forth in 35 Ill. Adm. Code 187.404, if less than 100 persons attended the public hearing on the respondent's EMSA as indicated by signatures on the attendance sheet or signature cards.
- f) Failure to comply with this Section is not a defense to an involuntary termination proceeding under this Subpart, but the hearing officer may postpone the hearing upon the motion of any person prejudiced by a failure to comply with this Section.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.712 Deficient Performance**

- a) For purposes of this Subpart, a respondent's performance under its EMSA is deficient if ~~the Agency asserts and~~ the Board finds that any of the following conditions exist:
  - 1) The respondent misrepresented the factual basis for entering into the EMSA.
  - 2) The respondent failed to provide access to the pilot project for the Agency to monitor compliance with an EMSA.
  - 3) The respondent falsified any monitoring data, record-keeping information or reports regarding the pilot project.
  - 4) The respondent or the owner or operator of the pilot project failed to comply with any requirement of any federal or local environmental law or regulation that applies to the pilot project and that the EMSA does not address, and for which a citizen's complaint has been filed with a court of competent jurisdiction or the appropriate authority has sent a notice of violation, complaint or other notice of failure to comply to the respondent or the owner or operator of the pilot project.
  - 5) The respondent or the owner or operator of the pilot project failed to comply with any requirement of any State environmental law or regulation that applies to the pilot project and that the EMSA does not address, and for which a citizen's complaint has been filed with the Board, or the Agency has mailed a notice of violation to the respondent or the owner or operator of the pilot project under Section 31(a) or (b) of the Act.

- 6) The respondent failed to comply with its EMSA, subject to any grace or cure periods or rights contained in the EMSA.
- b) Any Board finding of deficient performance under subsection (a)(4) or (a)(5) of this Section will not be binding for any purpose or in any other proceeding under the Act, other than under this Subpart.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.714 Board Decision**

- a) ~~The Board will prepare a written opinion and order for all final determinations that will include findings of fact (with specific page references to principal supporting items of evidence in the record) and conclusions of law (supported by adequate reasoning) on all material issues.~~
- b) The Board will make a ~~will render its~~ decision as expeditiously as practicable. The Board's will render a decision as an order will that:
- 1) Terminate ~~Terminates~~ the EMSA;
  - 2) Defer ~~Defers~~ termination for a specified time, not to exceed 90 days from the date of the order, during which the respondent may rectify the deficient performance; or
  - 3) Reject ~~Rejects~~ termination of the EMSA.
- be) The Board may extend the time period under subsection (~~a~~)b(2) of this Section for good cause.
- c~~d~~) The Board may order any or all of the following:
- 1) Direct the respondent to cease and desist from violating the Act, the Board's regulations, or the EMSA;
  - 2) Require the respondent to provide performance assurance compensation in appropriate amounts;
  - 3) Require the respondent to post a sufficient performance bond or other security to assure that the respondent corrects the violation within the time that the Board prescribes;
  - 4) Enforce any remedy provision of the EMSA; and
  - 5) Order other relief as appropriate.

- ~~de) The Clerk will serve the final order on the parties under pursuant to 35 Ill. Adm. Code 101.Subpart C and J.publish the order and opinion with the vote of each Board Member recorded and will notify the parties required to be notified of the hearing from which the order arose of the order and opinion.~~

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.718 Motions, Responses (Repealed)**

- ~~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 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 39 Ill. Reg. 2375, effective January 27, 2015)~~

(Source: Repealed at 41 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 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 39 Ill. Reg. 2375, effective January 27, 2015)

### **Section 106.722 Continuances (Repealed)**

~~The hearing officer will grant a motion to continue an involuntary termination proceeding under this Subpart when justice requires. All motions to continue must be supported by an affidavit or written motion before the hearing officer by the person or persons with knowledge of the facts that support the motion. However, if the Board determines that any involuntary termination proceeding under this Subpart is not proceeding expeditiously, the Board may order actions that it deems appropriate to expedite the proceeding.~~

### **Section 106.724 Discovery, Admissions (Repealed)**

- a) ~~Discovery, except requests to produce documents, admit facts and state the identity and location of persons with knowledge of facts, as set forth in subsection (b) of this Section, is not permitted unless the hearing officer orders otherwise.~~

- b) ~~Regarding any matter not privileged, the hearing officer may order a party to produce documents and to state the identity and location of persons with knowledge of facts upon the written request of any party when parties cannot agree on the legitimate scope of the requests. It is not a ground for objection that the documents will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence or is relevant to the subject matter involved in the pending proceeding.~~
- e) ~~The hearing officer may order a party:
 
  - 1) ~~To state the identity and location of persons with knowledge of relevant facts.~~
  - 2) ~~To produce evidence that a party controls or possesses so that it may be inspected, copied or duplicated. The order may grant the right to reasonably inspect the pilot project.~~~~
- d) ~~The hearing officer may at any time on his or her own initiative, or on motion of any party or witness, make a protective order as justice requires. The protective order may deny, limit, condition or regulate discovery to prevent unreasonable delay, expense, harassment, or oppression, or to protect non-disclosable materials from disclosure consistent with Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 130.~~
- e) ~~All objections to rulings of the hearing officer must be made in the record.~~
- f) ~~Sections 106.718(d), (e), (f), (g), (h), (i) and (j) of this Subpart apply regarding procedures to rule on objections.~~
- g) ~~Failure to comply with any ruling may subject the person to sanctions under 35 Ill. Adm. Code 101.Subpart H.~~
- h) ~~A party may serve on any other party, no sooner than 15 days after the Agency files the statement of deficiency, a written request that the latter admit the truth of any specified relevant fact set forth in the request.~~
- i) ~~A party may serve on any other party, no sooner than 15 days after the Agency files the statement of deficiency, a written request to admit the genuineness of any relevant documents described in the request. Copies of the document must be served with the request unless copies have already been furnished.~~
- j) ~~Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 15 days after service under subsection (h) or (i) of this Section, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement that denies specifically the matters on which the admission is requested or that sets~~

~~forth in detail the reasons why the party cannot truthfully admit or deny those matters or written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If a party objects in writing to a part of the request, the remainder of the request must be answered within the period designated in the request. A denial must fairly meet the substance of the requested admission. If good faith requires that a party deny only a part, or requires qualification, of a matter of which an admission is requested, the party must specify so much of it as is true and deny only the remainder. The hearing officer will hear any objection to a request or to an answer upon prompt notice and motion of the party making the request.~~

- k) ~~Any admission made under this Section is for the purpose of the pending proceeding only. It does not constitute an admission by the party for any other purpose and may not be used against the party in any other proceeding.~~

(Source: Repealed at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.726 Subpoenas (Repealed)**

- a) ~~Upon any party's timely motion to the Board, or on motion of the hearing officer or the Board, the hearing officer or the Board may issue a subpoena to attend a hearing. The subpoena may include a command to produce evidence reasonably necessary to resolve the matter under consideration, subject to this Subpart's limitations on discovery. A copy of the subpoena must be served upon the Clerk.~~
- b) ~~Every subpoena must state the title of the proceeding and command each person to whom it is directed to attend and give testimony at the time and place specified.~~
- e) ~~The hearing officer or the Board, upon motion made promptly and in any event at or before the time specified for compliance with the subpoena, may quash or modify the subpoena if it is unreasonable and oppressive.~~
- d) ~~Failure of any witness to comply with a Board subpoena may subject the witness to sanctions under 35 Ill. Adm. Code 101.Subpart H.~~

(Source: Repealed at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.728 Settlement Procedure**

- a) All parties to any proceeding in which a settlement ~~or compromise~~ is proposed must file with the Clerk before the time of the scheduled hearing a written statement, signed by the parties or their authorized representatives, that outlines the nature of, the reasons for, and the purpose to be accomplished by, the settlement. The statement must contain:

- 1) A full stipulation of all material facts that pertain to the nature, extent and causes of the alleged violations;
  - 2) The nature of the relevant parties' operations and control equipment;
  - 3) Any explanation for past failures to comply and an assessment of the impact on the public from the failure to comply;
  - 4) Details about future plans for compliance, including a description of additional control measures and the dates on which they will be implemented; and
  - 5) The proposed performance assurance payment, if any.
- b) If an agreed settlement is filed under this Section, the Board may dismiss the proceeding without holding a hearing.

**Section 106.730 Authority of Hearing Officer, Board Members, and Board Assistants (Repealed)**

- a) ~~The hearing officer has the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear and complete record. The hearing officer has all powers necessary to these ends, including the authority to:~~
- ~~1) Issue discovery orders;~~
  - ~~2) Rule upon objections to discovery orders;~~
  - ~~3) Make protective orders as justice requires, which may deny, limit, condition or regulate discovery to prevent unreasonable delay, expense, harassment, or oppression, or to protect materials from disclosure by the party who obtains the materials;~~
  - ~~4) Administer oaths and affirmations;~~
  - ~~5) Rule upon offers of proof, receive evidence and rule upon objections to introducing evidence, subject to Section 106.732(b) of this Subpart;~~
  - ~~6) Regulate the course of the hearings and the conduct of the parties and their counsel;~~
  - ~~7) Examine witnesses solely to clarify the record of the hearing. When any party is not represented by counsel, the hearing officer may examine and cross-examine any witness to insure a clear and complete record.~~

~~However, the hearing officer may not exclude exhibits or other testimony because of the examination unless all parties agree; and~~

- ~~8) Except as otherwise provided, consider and rule as justice may require upon motions appropriate to an adjudicative proceeding.~~
- b) ~~Any Board Member or assistant to a Board Member present at the hearing may advise the hearing officer and may interrogate witnesses, but does not have the authority to rule on objections or motions or to overrule the hearing officer during the hearing.~~

(Source: Repealed at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.732 Order and Conduct of Hearing (Repealed)**

- a) ~~The following will be the order of all involuntary termination hearings under this Subpart, unless modified by the hearing officer for good cause:~~
  - ~~1) Present, argue and dispose of preliminary motions on the matters that the statement of deficiency raises;~~
  - ~~2) Present opening statements;~~
  - ~~3) Complainant's case in chief;~~
  - ~~4) Respondent's case in chief;~~
  - ~~5) Complainant's case in rebuttal;~~
  - ~~6) Statements from interested citizens, as the hearing officer authorizes;~~
  - ~~7) Complainant's opening argument, which may include legal argument;~~
  - ~~8) Respondent's closing argument, which may include legal argument;~~
  - ~~9) Complainant's closing argument, which may include legal argument;~~
  - ~~10) Present and argue all motions before submitting the transcript to the Board; and~~
  - ~~11) A schedule to submit briefs to the Board.~~
- b) ~~All hearings under this Subpart will be public, and any person not a party and not otherwise a witness for a party may submit written statements relevant to the subject matter of the hearing. Any party may cross-examine any person who submits a statement. If the person is not available to be cross-examined upon~~



~~timely request, the written statement may be stricken from the record. The hearing officer will permit any person to offer reasonable oral testimony whether or not a party to the proceedings.~~

- e) ~~All witnesses will be sworn.~~
- d) ~~At the conclusion of the hearing, the hearing officer will make a statement about the credibility of witnesses. This statement will be based upon the hearing officer's legal judgment and experience and will indicate whether he or she finds credibility to be at issue in the proceeding and if so, the reasons why. This statement will become a part of the official record and will be transmitted by the hearing officer to each of the parties. No other statement will be made or be appropriate unless the Board orders otherwise.~~

(Source: Repealed at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.734 Evidentiary Matters (Repealed)**

~~The provisions of 35 Ill. Adm. Code 101 regarding admissible evidence, written narrative testimony, official notice, viewing premises, admitting business records, examining adverse parties or agents and hostile witnesses and compelling them to appear at hearing, and amendment and variance of pleadings and proof will apply to proceedings under this Subpart.~~

(Source: Repealed at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.736 Post-Hearing Procedures (Repealed)**

~~The provisions of 35 Ill. Adm. Code 101 regarding default, transcripts, the record, briefs and oral arguments will apply to proceedings under this Subpart.~~

(Source: Repealed at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.738 Motion After Entry of Final Order (Repealed)**

~~Within 35 days after the Board adopts a final order, any party may file a motion to rehear, modify or vacate the order or for other relief. Response to the motion must be filed within 14 days after the motion is filed. A motion filed within 35 days stays enforcement of the final order.~~

(Source: Repealed at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.740 Relief from Final Orders (Repealed)**

- a) ~~The Board may at any time correct errors in orders or other parts of the record that arise from oversight or omission or clerical mistakes. The Board may do so on its own initiative or on the motion of any party and after notice, if any, as the Board orders. During the pendency of an appeal, the Board may correct the mistakes~~

~~before the appeal is docketed in the appellate court. While the appeal is pending, the Board may correct the mistakes with leave of the appellate court.~~

- ~~b) On motion and upon terms that are just, the Board may relieve a party or a party's legal representative from a final order, for the following:~~
- ~~1) Newly discovered evidence that by due diligence could not have been discovered in time under Section 106.714 of this Subpart;~~
  - ~~2) Fraud (whether previously denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or~~
  - ~~3) Void order.~~
- ~~e) 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 Board entered the order but the motion is not a continuation of the proceeding. The motion must be supported by affidavit or other appropriate showing as to matters not of record. All parties must be notified under Section 106.708(b) of this Subpart.~~
- ~~d) This motion must be filed with the Board within 60 days after entry of the order.~~

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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

### Section 106.800 General

- a) Description. This Subpart applies to any person who files a petition for Board authorization *to use cleaning agents that contain phosphorus of an amount exceeding 0.5% by weight* as provided in Section 5(e) of the Regulation of Phosphorus in Detergents Act [415 ILCS 92/5(e)].
- b) Parties. The person filing the petition for authorization must be named the petitioner.
- c) Filing and Service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C and J will apply to the proceedings of this Subpart.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 106.802 Definitions

The definitions of 35 Ill. Adm. Code 101 Subpart B and Section 5 of the Regulation of

Phosphorus in Detergents 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 5 of the Act will apply.

(Source: Added at 34 Ill. Reg. 11486, effective July 23, 2010)

### **Section 106.804 Initiation of Proceeding**

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

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.806 Petition Content Requirements**

The petition must contain the following information:

- a) A written statement, signed by the petitioner or an authorized representative, concerning the cleaning agent containing excess phosphorus for which authorization is sought and outlining a description of the cleaning agent and its phosphorus content, the duration of, the reasons for, and the basis of the authorization sought, consistent with the burden of proof stated in Section 106.812 ~~of this Part~~;
- b) The nature of the petitioner's operations;
- c) Any other information that may be required by Section 5 of the Regulation of Phosphorus in Detergents Act.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.810 Hearing**

The Board will hold a public hearing in an authorization proceeding only if a hearing is requested by the petitioner, the Agency, or any other person within 14 days after the filing of any reply under Section 106.808(b). The hearing officer will schedule the hearing. The Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code 101. The proceedings will be in accordance with 35 Ill. Adm. Code 101.Subpart F including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## **SUBPART I: AUTHORIZATIONS FOR CERTAIN LANDSCAPE WASTE AND COMPOST APPLICATIONS AND ON-FARM COMPOSTING FACILITIES**

### Section 106.900 General

- a) Applicability. This Subpart applies to any person who files a petition for Board authorization concerning an individual site to:
- 1) ~~Apply apply~~-landscape waste or composted landscape waste at a rate greater than the agronomic rates of 20 tons per acre per year , under ~~pursuant to~~ Section 21(q) and (q)(2) of the Act; or
  - 2) Operate operate-an on-farm composting facility constituting more than 2% of the property's total acreage, under pursuant to Section 21(q)(3) of the Act.
- b) Demonstration. Any person who files a petition for Board authorization under this Subpart must demonstrate *that the site's soil characteristics or crop needs require a higher rate.* [415 ILCS 5/21(q) and (q)(3)(A)]
- c) Parties. The person filing the petition for authorization must be named the petitioner and the Agency must be named the respondent.
- d) Filing and Service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C and J will apply to the proceedings ~~under this Subpart.~~

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 106.902 Initiation of Proceeding

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

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 106.904 Petition Content Requirements

The petition must contain the following information:

- a) A written statement, signed by the petitioner or an authorized representative, concerning the property for which authorization is sought, outlining a description of the specific percentage of the property or the specific application rate sought and the duration of, the reasons for, and the basis for the authorization sought, consistent with the burden of proof stated in Section 106.914;
- b) The nature of the petitioner's operations;
- c) Any other applicable information that may be required by Section 21(q) of the Act, including: ~~but not limited to~~

- 1) A a-map of the location where land application or composting would take place;
  - 2) A a-description of the uses of the surrounding areas; the method for nutrient calculations;
  - 3) The ~~the~~-soil sampling analysis for samples taken within one year prior to the filing of the petition in accordance with the sampling protocols of subsections (e) and (f);
  - 4) The ~~the~~-intended crop or planting; a description of any additives to the landscape waste;
  - 5) The ~~the~~-method for incorporating the landscape waste or compost into the soil;
  - 6) The ~~the~~-maximum time between acceptance of landscape waste or compost and its incorporation into soil;
  - 7) The ~~the~~-weather conditions under which incorporation will occur; the method of minimizing stormwater/snowmelt runoff;
  - 8) A a-screening plan to ensure materials accepted do not contain materials other than landscape waste;
  - 9) Aa-contingency plan that describes methods for dealing with emergency situations and methods for the removal of material that is not landscape waste from incoming loads; and
  - 10) The ~~the~~ method of preventing nuisance conditions such as vectors, odors, litter or dust.
- d) For demonstrations under Section 106.914(a), a plan, ~~including soil testing,~~ in accordance with subsections (e) and (f) that includes soil testing and no less than once every five years, to show when application of landscape waste or composted landscape waste at rates greater than an agronomic rate of 20 tons per acre per year will be, or will continue to be, beneficial to the site's soil characteristics or crop needs. Such a plan must specify any soil parameters to be analyzed, such as soil organic content and nutrients, and any limits on them.
- e) Soil samples collected that will represent the entire landscape waste or composted landscape waste application site.

- 1) Soil Plow Zone—one soil sample ~~must shall~~ be collected per 8 acres of application site area to a depth of 12 inches. Each soil sample taken ~~must shall~~ be a homogeneous mixture composed of at least 10 subsamples randomly collected within the 8-acre area.
  - 2) Soil Profiles—one soil core sample per 8 acres of land application site ~~must shall~~ be obtained to a depth of 5 feet using a soil tube or soil auger type implement. Soil cores ~~must shall~~ be divided into 5 - one foot subsamples and each subsample ~~must shall~~ be analyzed separately.
  - 3) Soil sample collection ~~under pursuant to~~ subsections (a) and (b) may be modified by the Board upon request by the petitioner after considering the application rate of the landscape waste or composted landscape waste, and the continuity of soil types of the application site.
- f) Soil analysis performed in accordance with the following references, unless equivalent results can be obtained by other methods. The petitioner ~~must shall~~ demonstrate that equivalent results are obtainable based on the nature of the test methodology, the nature of the parameter, and the level of statistical accuracy.
- 1) Physical Testing Methods  

Methods of Soil Analysis—Part 1, Physical and Mineralogical Properties (1986), Soil Science Society of America (SSSA) and American Society of Agronomy, Inc. (ASA), 5585 Guilford Road, Madison, Wisconsin 53711.
  - 2) Chemical Testing Methods  

Methods of Soil Analysis—Part 3, Chemical Methods (1996), Soil Science Society of America (SSSA) and American Society of Agronomy, Inc. (ASA), 5585 Guilford Road, Madison, Wisconsin 53711.
  - 3) For the purposes of this Subpart I, the Board incorporates by reference the soil test methods listed in subsections (f)(1) and (f)(2). This incorporation includes no later amendments or editions.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## **Section 106.906 Petition Notice Requirements**

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

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.912 Hearing**

- a) Any person can request that a public hearing be held in an authorization proceeding. The requests must be filed not later than 21 days after the date of the publication of the petition notice in accordance with Section 106.906. Requests for hearing ~~must should~~ make reference to the Board docket number assigned to the proceeding. A copy of each timely hearing request will be mailed to the petitioner and Agency by the Clerk ~~of the Board~~. Participation by the public at the hearing must be in accordance with 35 Ill. Adm. Code 101.110 and 101.628. The Board may also, in its discretion, hold a public hearing when it determines a public hearing is advisable.

- b) When all parties and participants who have requested a hearing ~~under pursuant to~~ this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board, in its discretion, deems it advisable.
- c) The hearing officer will set a time and place for the hearing. The hearing officer will attempt to consult with the petitioner and the Agency before scheduling a hearing.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### 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 106.1105 General**

- a) Description. This Subpart applies to any point source that discharges pollutants to waters of the United States who seeks to demonstrate, ~~under pursuant to~~ 35 Ill. Adm. Code 304.141(c) and section 316(a) of the Clean Water Act that any effluent limitation proposed for the control of a thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made.
- b) Parties. The person making the demonstration must be named the petitioner. The Agency must be named as a respondent. Any interested person may become a participant in the alternative thermal effluent limitation demonstration proceeding in accordance with 35 Ill. Adm. Code 101.110 and 101.628.
- c) Filing and Service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C and J apply to the proceedings of this Subpart.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

##### **Section 106.1110 Definitions**

In addition to these definitions, all definitions of the Illinois Environmental Protection Act [415 ILCS 5], and 35 Ill. Adm. Code 301, apply to this Subpart. For the purpose of this Subpart:

"Alternative thermal effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge that are established under 35 Ill. Adm. Code 304.141(c), Section 316(a) of the CWA and this Subpart.



"CWA" means the Federal Water Pollution Control Act, as amended, (33 USC 1251 et seq., Public Law 92-500 enacted by Congress October 18, 1972, as amended by the Clean Water Act, Public Law 95-217, enacted December 12, 1977, as amended).

"Representative important species" means species that are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish, and wildlife in the body of water into which a discharge of heat is made.

"Balanced, indigenous community" is synonymous with the term "balanced, indigenous population" in the CWA and means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and by a lack of domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modifications. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with section 301(b)(2) of the CWA; and may not include species whose presence or abundance is attributable to alternative thermal effluent limitations imposed under ~~pursuant to~~ this Subpart or through regulatory relief from otherwise applicable thermal limitations under Chapter I of Subtitle C or standards granted by the Board.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

### **Section 106.1115 Early Screening**

- a) Prior to filing a petition for an alternative thermal effluent limitation, the petitioner must submit the following early screening information to the Agency:
  - 1) A description of the alternative thermal effluent limitation requested;
  - 2) A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;
  - 3) A general description of the type of data, studies, experiments and other information that the discharger intends to submit for the demonstration; and
  - 4) A proposed representative important species list and supporting data and information.
- b) Within 30 days after the early screening information is submitted under subsection (a), the petitioner must ~~shall~~ consult with the Agency to discuss the petitioner's early screening information.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

**Section 106.1120 Detailed Plan of Study**

- a) Within 60 days after the early screening information is submitted ~~under pursuant~~ ~~to~~ Section 106.1115, the petitioner ~~must shall~~ submit to the Agency a detailed plan of study that the petitioner will undertake to support its alternative thermal effluent limitation demonstration.
- b) The petitioner ~~must shall~~ specify the nature and extent of the following types of information to be included in the plan of study:
  - 1) biological, hydrographical, and meteorological data;
  - 2) physical monitoring data;
  - 3) engineering or diffusion models;
  - 4) laboratory studies;
  - 5) representative important species; and
  - 6) other relevant information.
- c) In selecting representative important species, special consideration ~~must shall~~ be given to species mentioned in applicable water quality standards.
- d) The petitioner ~~must shall~~ provide any additional information or studies that the Agency subsequently determines necessary to support the alternative thermal effluent limitation demonstration, including such field or other studies as may be necessary to select representative important species.
- e) In making the alternative thermal effluent limitation demonstration, the petitioner ~~must shall~~ consider any information or guidance published by USEPA to assist in making such demonstrations.
- f) Within 90 days after petitioner's submittal of its detailed plan of study, the Agency ~~must shall~~ respond in writing, either approving the detailed plan of study and representative important species or recommending necessary revisions.
- g) After receiving the Agency's response ~~under pursuant to~~ subsection (f), or after 90 days have passed with no Agency response, the petitioner may proceed with the plan of study with or without making the Agency's recommended revisions. The petitioner ~~must shall~~ complete the plan of study prior to filing the petition for an alternative thermal effluent limitation with the Board.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.1125 Initiation of Proceeding**

After completion of the plan of study ~~under pursuant to~~ Section 106.1120, the petitioner may file a petition for an alternative thermal effluent limitation with the Clerk ~~of the Board~~ and must serve one copy on the Agency and one copy on ~~DNR the Illinois Department of Natural Resources~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.1130 Contents of Petition**

A petition for an alternative thermal effluent limitation must include the following:

- a) Information providing a general plant description, including, as applicable:
  - 1) Generating capacity;
  - 2) Type of fuel used;
  - 3) Operating characteristics of the condenser cooling system;
  - 4) History of the load factor of the plant for the last 5 years;
  - 5) Projected load factors of the plant for the next 5 years;
  - 6) Estimated date of retirement for each unit at the plant and any plans for additional units at the plant;
  - 7) History of plant shutdowns for the last 5 years;
  - 8) Planned and emergency shutdowns with frequency and duration for the last 5 years; and
  - 9) Planned and projected shutdowns with frequency and duration for the next five years;
- b) Description of Method for Heat Dissipation:
  - 1) Type of system used (such as once-through, mechanical, and draft cooling towers) in narrative form; and
  - 2) Summary information on temperature of discharge to receiving waters in narrative form;
- c) A summary of compliance or non-compliance with thermal requirements at the facility in the past five years;

- d) The detailed plan of study submitted to the Agency ~~under pursuant to~~ Section 106.1120(a) and the Agency's written response ~~under pursuant to~~ Section 106.1120(f);
- e) The results of the studies conducted ~~under pursuant to~~ the detailed plan of study submitted under Section 106.1120, including, ~~but not limited to~~:
  - 1) background on the proposed thermal standards;
  - 2) information on data collection program and methodologies;
  - 3) summaries of physical, chemical, biological and technical data supporting the demonstration, along with a discussion of the data; and
  - 4) criteria or methodology used to assess whether a balanced indigenous community of shellfish, fish and wildlife will be maintained in the receiving waters and the protection of threatened and endangered species;
- f) Any additional information or studies, including information or guidance published by USEPA, that the petitioner judges to be appropriate to support the alternative thermal effluent limitation demonstration; and
- g) A statement of the requested relief, including:
  - 1) the alternative thermal effluent limitation;
  - 2) any relief from the mixing zone regulations in 35 Ill. Adm. Code 302.102, if applicable; and
  - 3) any other relief sought.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

### **Section 106.1135 Petition Notice Requirements**

- a) Within 14 days after the filing of the petition, the petitioner must publish notice of the filing of the petition by advertisement in a newspaper of general circulation in the county where the facility is located.
- b) The notice must include:
  - 1) The ~~notice must contain~~ the name and address of the petitioner and a ~~statement it must state~~ that the petitioner has filed with the Board a petition for an alternative thermal effluent limitation,-

- 2) ~~The notice must also provide~~ the date on which the petition was filed, the Board docket number,
- 3) ~~The~~ the regulatory standard (with appropriate Administrative Code citation) from which the alternative thermal effluent limitation is sought,
- 4) ~~The~~ the proposed alternative thermal effluent limitation,
- 5) ~~A~~ a general description of the petitioner's activity that is the subject of the alternative thermal effluent limitation proceeding, ~~and~~
- 6) ~~The~~ the location of the facility, ~~and~~;
- 7) The concluding portion of the notice must read as follows:

"Any person may cause a public hearing to be held in the above-described 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 proceeding, as found in this notice, and must be filed with the Clerk ~~of the Board~~, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601."

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **Section 106.1140 Proof of Petition Notice Requirements**

Within 30 days after the filing of the petition, the petitioner must file a certificate of publication with the Clerk ~~of the Board, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601~~. This certification must be issued by the newspaper that published the notice and must certify when the notice was published and the information the notice contained.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **Section 106.1145 Recommendation and Response**

- a) Unless otherwise ordered by the hearing officer or the Board, the Agency must file with the Board a recommendation within 45 days after the filing of a petition or amended petition for an alternative thermal effluent limitation, or when a hearing has been scheduled, at least 30 days before hearing, whichever is earlier.
- b) The recommendation must state the following:
  - 1) ~~Whether~~ whether the Board should grant the petitioner's requested alternative thermal effluent limitation;

- 2) The ~~the~~ rationale for the Agency's position;
  - 3) Whether ~~whether~~ the plan of study sufficiently addresses the Agency's response pursuant to Section 106.1120(f) of this Part;  
under pursuant to
  - 4) Whether ~~whether~~ the petition has met the requirements of this Part;
  - 5) Any ~~any~~ information the Agency believes is relevant to the Board's consideration of the proposed alternative thermal effluent limitation; and
  - 6) Whether ~~whether~~ the Agency communicated with or received comments from DNR ~~the Illinois Department of Natural Resources~~, the United States Fish and Wildlife Service, or USEPA and the content of those communications.
- c) The petitioner, any party to the proceeding, or any interested person may file a response to the Agency recommendation within 21 days after the Agency files its recommendation.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.1150 Request for Public Hearing**

Any person can request that a public hearing be held in a proceeding under this Subpart. The requests must be filed with the Clerk ~~of the Board~~ no later than 21 days after the date of the publication of the petition notice in accordance with Section 106.1135. Requests for hearing must ~~should~~ make reference to the Board docket number assigned to the proceeding.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.1155 Notice and Conduct of Hearing**

- a) The Board will ~~shall~~ hold a public hearing on the petition and alternative thermal effluent limitation demonstration when one is requested in accordance with Section 106.1150, when requested by the petitioner, or if the Board, in its discretion, determines that a hearing would be advisable.
- b) The hearing officer will schedule the hearing.
- c) The Clerk will give notice of the hearing in accordance with 35 Ill. Adm. Code 101. The proceedings will be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 106.1160 Burden of Proof**

- a) The burden of proof is on the petitioner.
- b) The petitioner must demonstrate to the satisfaction of the Board that the otherwise applicable effluent limitations under Chapter I of Subtitle C are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made.
- c) The demonstration must show that the alternative thermal effluent limitation desired by the petitioner, considering the cumulative impact of its thermal discharge, together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made.
- d) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies.
  - 1) When the petitioner bases the alternative thermal effluent limitation demonstration upon the absence of prior appreciable harm, the demonstration must show:
    - A) That no appreciable harm has resulted from the normal component of the discharge, taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge has been made; or
    - B) That despite the occurrence of such previous harm, the desired alternative thermal effluent limitation (or appropriate modifications thereof) will nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made.
  - 2) In determining whether prior appreciable harm has occurred, the Board will ~~shall~~ consider the length of time during which the petitioner has been discharging and the nature of the discharge.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

### **Section 106.1170 Opinion and Order**

- a) After an opportunity for a public hearing and upon a satisfactory alternative

thermal effluent limitation demonstration, the Board may order the Agency to include thermal discharge effluent limitations or standards in the petitioner's NPDES permit that are less stringent than those required by applicable standards and limitations if the thermal component of the discharge, taking into account the interaction of such thermal component with other pollutants, will assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water.

- b) In granting an alternative thermal effluent limitation, the Board may impose such conditions as may be necessary to accomplish the purposes of the Act.
- c) If the petitioner intends for the alternative thermal effluent limitation granted by the Board ~~under pursuant to~~ this Subpart to continue beyond the expiration of the petitioner's NPDES permit, the petitioner must apply for renewal of the alternative thermal effluent limitation ~~under pursuant to~~ Section 106.1180.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

#### **Section 106.1175 Post-Hearing Procedures**

- a) The provisions of 35 Ill. Adm. Code 101 regarding default, transcripts, the record, motions, briefs, and oral arguments apply to proceedings under this Subpart.
- b) In addition to the provisions of 35 Ill. Adm. Code 101.520 and 101.902, if USEPA objects ~~under pursuant to~~ 40 CFR 123.44 to issuance in the petitioner's NPDES permit of the alternative thermal effluent limitation ordered by the Board, the Agency is given ~~permission leave~~ to file a motion for reconsideration of the Board's order granting the effluent limitation ~~under pursuant to~~ 35 Ill. Adm. Code 101.520 within 35 days after the Agency's receipt of USEPA's objection.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

#### **Section 106.1180 Renewal of Alternative Thermal Effluent Limitations**

- a) The permittee may request continuation of an alternative thermal effluent limitation granted by the Board, ~~pursuant to this Subpart~~, as part of its NPDES permit renewal application.
- b) Any application for renewal ~~must should~~ include sufficient information for the Agency to compare the nature of the permittee's thermal discharge and the balanced, indigenous population of shellfish, fish, and wildlife at the time the Board granted the alternative thermal effluent limitation and the current nature of the petitioner's thermal discharge and the balanced, indigenous population of shellfish, fish, and wildlife. The permittee ~~must should~~ be prepared to support this comparison with documentation based upon the discharger's actual operation experience during the previous permit term.



- c) If the permittee demonstrates that the nature of the thermal discharge has not materially changed to cause appreciable harm to the balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is made and the alternative thermal effluent limitation granted by the Board has not caused appreciable harm to a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is made, the Agency may include the alternative thermal effluent limitation in the permittee's ~~permittee's~~ renewed NPDES permit.
- d) If the nature of the thermal discharge has materially changed to cause appreciable harm to the balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is made ~~materially~~ or the alternative thermal effluent limitation granted by the Board has caused appreciable harm to a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is made, the Agency must ~~may~~ not include the thermal relief granted by the Board in the permittee's ~~permittee's~~ renewed NPDES permit. The permittee must file a new petition and make the required demonstration under ~~pursuant to~~ this Subpart before the alternative thermal effluent limitation may be included in the permittee's renewed NPDES permit.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

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

PART 107

PETITION TO REVIEW POLLUTION CONTROL FACILITY SITING DECISIONS

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## 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 39 Ill. Reg. 2391, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. 7997, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

### **Section 107.100 Applicability**

- a) This Part applies to adjudicatory proceedings before the Board concerning petitions to review a pollution control facility siting decision made by local government ~~under pursuant to~~ Sections 39.2 and 40.1 of the Act [415 ILCS 5/39.2 and 40.1]. "Pollution control facility" is defined at Section 3.330 of the Act [415 ILCS 5/3.330] for purposes of this Part.
- 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 40 Ill. Reg. 7997, effective May 20, 2016)

### **Section 107.106 Description**

~~Under pursuant to~~ Section 39(c) of the Act, any new pollution control facility, prior to receiving a permit from the Agency to construct and operate, must first receive siting approval from the *County Board of the county if in an unincorporated area, or the governing body of the municipality when in an incorporated area, in which the facility is to be located* [415 ILCS 5/39(c)]. The siting approval can only be given ~~under pursuant to~~ Section 39.2 of the Act and only after the unit of local government conducts a public hearing that comports with the requirements of Section 39.2(d) and with general standards of fundamental fairness. ~~Under pursuant to~~ Section 40.1 of the Act, a decision of a unit of local government to site or deny siting of a new pollution control facility is reviewable by the Board. The decision of the Board is appealable to the Illinois appellate court.

#### **SUBPART B: PETITION FOR REVIEW**

### **Section 107.200 Who May File Petition**

The following persons may file a petition for review of a decision concerning siting of a new pollution control facility ~~under pursuant to~~ Section 40.1 of the Act:

- a) Siting applicants. Any person who has properly applied to one or more units of local government, ~~under pursuant to~~ Section 39.2 of the Act, for siting approval of a new pollution control facility and has been denied siting approval under Section 39.2 of the Act, may file a petition for review of the decision to deny siting. The siting applicant may also appeal conditions imposed in a decision granting siting approval.
- b) Other persons. Any person who has participated in the public hearing conducted by the unit of local government and is so located as to be affected by the proposed facility may file a petition for review of the decision to grant siting. Associations

that file a petition before the Board must be represented by an attorney in accordance with 35 Ill. Adm. Code 101.400.

### **Section 107.202 Parties**

- a) In a petition to review a local government's decision concerning a new pollution control facility, the following are parties to the proceeding:
  - 1) The petitioner or petitioners are the persons described in Section 107.200 of this Part. If there is more than one petitioner, they must be referred to as co-petitioners; and
  - 2) The unit(s) of local government whose decision is being reviewed must be named the respondent(s). In an appeal ~~under pursuant to~~ Section 107.200(b), the siting applicant must also be named as a respondent.
- b) Where the interests of the public would be served, the Board or hearing officer may allow intervention by the Attorney General or the State's Attorney of the county in which the facility will be located.

### **Section 107.204 Time for Filing Petition**

A petition for review must be filed within 35 days after the local siting authority's action to approve or disapprove siting. Action means the local government's official written decision granting or denying local siting approval. ~~Under pursuant to~~ Section 39.2(e) of the Act, action includes failure of the governing body to act within 180 days after receiving a request for siting approval.

### **Section 107.206 Filing and Service Requirements**

- a) Filing. The petition for review must be filed with the Clerk ~~of the Board~~ in accordance with the filing requirements contained in the Board's general procedural rules, found at 35 Ill. Adm. Code 101.Subpart C and Section 107.208 ~~of this Part~~.
- b) Service. The petition for review must be served upon all parties in accordance with the Board's service requirements contained in the Board's general procedural rules, found at 35 Ill. Adm. Code 101.Subpart C.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 107.208 Petition Content Requirements**

In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C the petition must also include:

- a) A copy of the local siting authority's written decision or ordinance;
- b) A statement as to how the filing party is a proper petitioner under Section 107.200 ~~of this Part~~; and
- c) In accordance with Section 39.2 of the Act, a specification of the grounds for the appeal, including any allegations for fundamental unfairness or any manner in which the decision as to particular criteria is against the manifest weight of the evidence.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### SUBPART C: FILING OF LOCAL RECORD

##### **Section 107.300 Record**

~~Under pursuant to~~ Sections 39.2 and 40.1 of the Act, the siting authority must compile a complete record of its proceedings.

##### **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. ~~Pursuant to 35 Ill. Adm. Code 101.302(h)(2),~~ The the siting authority must file the record through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. The record must meet the requirements of 35 Ill. Adm. Code 101.Subpart J

(Source: Amended at 40 Ill. Reg. 7997, effective May 20, 2016)

##### **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 under 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 be arranged in chronological sequence, or by category of material and chronologically within each category, and must be sequentially numbered with the letter "C" placed before the number of each page. In addition, the record must meet the requirements of 35 Ill. Adm. Code 101.Subpart J.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### SUBPART D: HEARING

##### **Section 107.400 General**

Hearings, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)), and discovery will be conducted under pursuant to 35 Ill. Adm. Code 101.Subpart F.

(Source: Amended at 40 Ill. Reg. 7997, effective May 20, 2016)

##### **Section 107.404 Public Participation**

Parties to the proceeding will have all rights of examination and cross-examination relevant in any judicial proceeding. Persons who are not parties as set forth in Section 107.202 ~~of this Part~~ are considered participants and will have hearing participation rights as determined by the hearing officer in accordance with 35 Ill. Adm. Code 101.628. Participants may offer comment at a specifically determined time in the proceeding, but may not examine or cross-examine

witnesses for either party. In accordance with this Section and 35 Ill. Adm. Code 101.628, public comment will not be considered testimony unless sworn and subject to cross-examination.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART E: BOARD REVIEW AND DECISION

**Section 107.502 Dismissal of Petition**

- a) The Board on its own motion or motion by any party, may dismiss any petition that:
  - 1) is untimely filed ~~under pursuant to~~ Section 107.204 ~~of this Part~~;
  - 2) fails to name all parties as required by Section 39.2 of the Act;
  - 3) fails to include the required fee and all information as required by Section 107.208 of this Part; or
  - 4) fails to meet the requirements in 35 Ill. Adm. Code 101.Subpart C.
- b) Upon motion by any unit of local government that is required to prepare and certify its record alleging that any petitioner required to pay costs of preparing and certifying the record of the proceedings has failed to pay those costs, the Board may enter a dismissal or other order as allowed by Section 39.2(n) of the Act.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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

(Source: Repealed at 29 Ill. Reg. 8828, effective June 8, 2005)

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 under the Act
108.201	Administrative Citation under the PWSO Act
108.202	Administrative Citation under the EPRR Act
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 [415 ILCS 5/26 and 27] and implementing Sections 21(o), 21(p), 22.51, 22.51a, 31.1, 42(b)(4), 42(b)(4-5), and 55(k) of the Act [415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1, 42(b)(4), 42(b)(4-5), and 55(k)] and Sections 1.1(b)(3) and 23.1 of the Public Water Supply Operations Act [415 ILCS 45/1.1(b)(3) and 23.1] and Sections 20 and 80 of the Electronic Products Recycling and Reuse Act [415 ILCS 150/20 and 80].

**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 39 Ill. Reg. 2397, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12921, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. 8003, effective May 20, 2016.



## SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST

**Section 108.200 Administrative Citation under the Act**

- a) An administrative citation (AC) under the Act may be issued by either of the following:
- 1) ~~Illinois Environmental Protection Agency.~~ The Agency may issue an AC under pursuant to Section 31.1 of the Act, or:-
  - 2) Delegated Unit of Local Government, under. ~~Pursuant to~~ Section 4(r) of the Act.; ~~The~~ the Agency may by agreement delegate its AC authority to a unit of local government, which may then issue an AC. All Delegated Units must submit to the Clerk ~~of the Board~~ a copy of the delegation agreement on or before July 1 of every year.
- b) In accordance with Section 31.1 of the Act, the Agency or Delegated Unit may serve an AC upon any person believed, through direct observation, to have violated Section 21(o), 21(p), 22.51, 22.51a, or 55(k) of the Act.
- 1) 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:
    - A) *A statement specifying the provisions of Section 21(o), 21(p), 22.51, 22.51a, or 55(k) of the Act that the AC Recipient was observed to have violated;*
    - B) *A copy of the inspection report in which the Agency or Delegated Unit recorded the violation. The report must include the date and time of inspection and weather conditions prevailing during the inspection;*
    - C) *The penalty imposed by Section 42(b)(4) or (b)(4-5) of the Act for the violations;*
    - D) *An affidavit by the personnel observing the violation, attesting to their material actions and observations; and*
    - E) *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 may have to pay hearing costs under pursuant to Section 108.500. [415 ILCS 5/31.1(b)]*

- 2) The Agency or Delegated Unit must serve the AC upon the AC Recipient as follows:
  - A) Personal service;
  - B) U.S. Mail with a recipient's signature recorded by the U.S. Postal Service upon delivery; or
  - C) Third-party commercial carrier with a recipient's signature recorded by the third-party commercial carrier upon delivery.
- 3) 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. [415 ILCS 5/31.1(c)]

(Source: Amended at 39 Ill. Reg. 12921, effective September 8, 2015)

### **Section 108.201 Administrative Citation under the PWSO Act**

- a) An AC under the Public Water Supply Operations Act [415 ILCS 45] may be issued by the ~~Illinois Environmental Protection Agency. The Agency may issue an AC under pursuant to~~ Section 23.1(b) of the PWSO Act.
- b) In accordance with Section 23.1 of the PWSO Act, *if Agency personnel discover that a Responsible Operator in Charge has violated Section 1.1(b)(3) of the PWSO Act, the Agency may serve an AC upon that individual.*
  - 1) The AC must be issued and served upon the AC Recipient *not more than 90 days after the date of the discovery of the violation* and must contain the following information:
    - A) *A statement specifying the report or result that the Responsible Operator in Charge failed to submit in accordance with Board rules and a citation to the Board rules that were violated;*
    - B) *A copy of any report in which the Agency recorded the violation;*
    - C) *The penalty imposed by Section 23.1(f) of the PWSO Act for the violation;*
    - D) *Instructions for contesting the AC findings pursuant to Section 23.1 of the PWSO Act, including notification that the individual has 35 days within which to file a petition for review before the Board to contest the AC and, if an appeal is filed and the Board finds a violation, a statement that the AC Recipient may have to pay hearing costs under pursuant to Section 108.500; and*

- E) *An affidavit by the personnel recording the violation.* [415 ILCS 45/23.1(b)]
- 2) The Agency must serve the AC upon the AC Recipient by personal service or certified mail.
- 3) The Agency must file the AC with the Board *no later than 15 days after the date of service* upon the AC Recipient. [415 ILCS 45/23.1(c)]

(Source: Added at 39 Ill. Reg. 12921, effective September 8, 2015)

### **Section 108.202 Administrative Citation under the EPRR Act**

- a) An AC under the Electronic Products Recycling and Reuse Act [415 ILCS 150] may be issued by either of the following:
  - 1) ~~Illinois Environmental Protection Agency.~~ The Agency may issue an AC under pursuant to Section 20(k) of the EPRR Act; or-
  - 2) A Delegated Unit, under- Pursuant to Section 4(r) of the Act. ~~The,~~ the Agency may delegate its AC authority to a unit of local government, which may then issue an AC. Under Section 20(k) of the EPRR Act, a Delegated Unit must be a county. All Delegated Units must submit to the Clerk ~~of the Board~~ a copy of the delegation agreement on or before July 1 of every year.
- b) In accordance with Section 20(k) of the EPRR Act, the Agency or Delegated Unit may serve an AC upon any person believed, based on direct observation, to have violated any provision of the EPRR Act or the entity employing that person.
  - 1) 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:
    - A) *A statement specifying the provisions of the EPRR Act that the person or the entity employing the person has violated;*
    - B) *A copy of the inspection report in which the Agency or Delegated Unit recorded the violation;* the report must include the *date and time of inspection;*
    - C) *The penalty imposed by Section 80 of the EPRR Act for the violations;*

- D) *An affidavit by the personnel observing the violation, attesting to their material actions and observations; and*
  - E) 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. [415 ILCS 150/20(k)]
- 2) The Agency or Delegated Unit must serve the AC upon the AC Recipient as follows:
- A) Personal service;
  - B) U.S. Mail with a recipient's signature recorded by the U.S. Postal Service upon delivery; or
  - C) Third-party commercial carrier with a recipient's signature recorded by the third-party commercial carrier upon delivery.

(Source: Amended at 39 Ill. Reg. 12921, effective September 8, 2015)

#### SUBPART C: HEARINGS

##### **Section 108.300 Authorization of Hearing**

- a) The hearing date will be set within 60 days after the filing of the petition to contest unless the hearing officer orders otherwise to prevent material prejudice.
- b) The hearing officer will give the parties at least 21 days written notice of the hearing.
- c) The hearing will be held and conducted in accordance with 35 Ill. Adm. Code 101.Subpart F:
- ~~d) Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F,~~ including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 40 Ill. Reg. 8003, effective May 20, 2016)

#### SUBPART D: BOARD DECISIONS

##### **Section 108.402 Dismissal**

The Board may issue an order dismissing the AC and closing the docket upon its own motion or a motion by the AC Recipient, Agency or Delegated Unit if the AC was not timely and properly

served ~~under pursuant to~~ the relevant statute and Section 108.200, 108.201 or 108.202.

(Source: Amended at 39 Ill. Reg. 12921, effective September 8, 2015)

### **Section 108.406 Non-Contested Citations**

The Board will consider the AC non-contested if the AC Recipient does not file a petition to contest, fails to timely file a petition to contest, or withdraws its petition to contest under ~~pursuant to~~ Section 108.208.

(Source: Amended at 39 Ill. Reg. 12921, effective September 8, 2015)

## **SUBPART E: ASSESSMENT OF PENALTIES AND COSTS**

### **Section 108.500 Penalties and Costs**

- a) Unless the AC Recipient has shown that the violations resulted from uncontrollable circumstances, the Board will impose penalties as follows:
  - 1) For violations of the Act, the Board will impose penalties as set forth in Sections 42(b)(4) and 42(b)(4-5) of the Act.
  - 2) For violations of the PWSO Act, the Board will impose penalties as set forth in Section 23.1(f) of the PWSO Act.
  - 3) For violations of the EPRR Act, the Board will impose penalties as set forth in Section 80(j) of the EPRR Act.
- b) When the Board imposes penalties under pursuant to subsection (a) following a finding of violation of the Act or the PWSO Act, the Board will assess the AC Recipient associated hearing costs, if any, under pursuant to Sections 108.502 and 108.504.

(Source: Amended at 39 Ill. Reg. 12921, effective September 8, 2015)

### **Section 108.502 Claimed Costs of Agency or Delegated Unit**

Within 30 days after the close of the hearing or as otherwise directed by the hearing officer, the Agency or Delegated Unit must submit to the Clerk ~~of the Board~~ and serve on all parties an itemized listing of the costs associated with the hearing. The costs must not include attorney's fees or witness fees for persons employed by the Agency or Delegated Unit.

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 39 Ill. Reg. 2402, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. 8007, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: GENERAL PROVISIONS

**Section 125.100 Applicability**

- a) This Part applies to any person seeking, for property tax purposes, a Board certification that a facility or portion thereof is a pollution control facility, as defined in Section 125.200(a)(1) of this Part, or that a device is a low sulfur dioxide emission coal fueled device, as defined in Section 125.200(b)(1) ~~of this Part.~~

- b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all adjudicatory proceedings before the Board. 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 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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

### Section 125.202 Tax Certification Application

A person may apply for tax certification by submitting a tax certification form to the Agency on a form or forms that the Agency may prescribe.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 125.204 Agency Recommendation

- a) If the Agency receives a tax certification application under Section 125.202 of this Subpart, the Agency must file a recommendation on the application with the Clerk, unless the applicant withdraws the application. The Agency's filing must:
- 1) Identify the name and address of the applicant;
  - 2) Identify the location of the facility or portion thereof or the device to which the recommendation applies;
  - 3) Identify the facility or portion thereof or the device to which the recommendation applies;
  - 4) Recommend that the Board issue or deny tax certification; and
  - 5) Set forth the Agency's reasoning for the recommendation.
- b) If the Agency recommends that the Board deny tax certification, the Agency's filing must state that the applicant has 35 days after ~~the date of service of the recommendation~~ thereof to file a petition with the Board to contest the Agency recommendation. If the Agency recommends that the Board deny tax certification due to informational deficiencies in the application, the Agency's filing must identify the types of information needed to correct the deficiencies.
- c) The Agency must serve the applicant with a copy of the filing under this Section.

### Section 125.206 Petition to Contest

- a) If the applicant wishes to contest an Agency recommendation that the Board deny tax certification, the applicant must file a petition to contest with the Clerk within 35 days after the Agency serves the applicant under Section 125.204(c) ~~of this Subpart~~. The petition must:
- 1) Specify the grounds for contesting the Agency's recommendation; and
  - 2) Specify the date on which the Agency served the applicant under Section 125.204(c) ~~of this Subpart~~.
- b) The applicant must serve the Agency with a copy of any petition to contest under subsection (a) ~~of this Section~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### 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 or as the Board or hearing officer orders. 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. Under ~~pursuant to~~ 35 Ill. Adm. Code 101.302(h)(2), the Agency must file the record through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. The record must comply with 35 Ill. Adm. Code 105.116 ~~(b)~~.

(Source: Amended at 40 Ill. Reg. 8007, effective May 20, 2016)

### 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, unless the Board disposes of the petition on a motion for summary judgment brought under ~~pursuant to~~ 35 Ill. Adm. Code 101.516;
  - 2) The applicant or holder timely requests a hearing after the Board provides notice under ~~pursuant to~~ Section 125.216(c); 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 attempt to consult with the applicant and the Agency before scheduling a hearing. Hearings will be conducted under ~~pursuant~~



~~to~~ 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 40 Ill. Reg. 8007, effective May 20, 2016)

### **Section 125.212 Hearing Notice**

After receiving notification from the hearing officer of the scheduled hearing date made under ~~pursuant to~~ Section 125.210 of this Subpart, the Clerk will, in accordance with 35 Ill. Adm. Code 101, cause publication of a notice of hearing in a newspaper of general circulation in the county where the facility or portion thereof or the device for which the applicant seeks tax certification is located.

### **Section 125.214 Burden of Proof**

If the applicant files a petition to contest under Section 125.206 ~~of this Subpart~~ or the Board otherwise directs that a hearing be held under ~~pursuant to~~ Section 125.210 ~~of this Subpart~~, the applicant has the burden to prove that the facility or portion thereof for which it seeks tax certification is a pollution control facility, as defined in Section 125.200(a)(1) ~~of this Subpart~~, or that the device for which it seeks tax certification is a low sulfur dioxide emission coal fueled device, as defined in Section 125.200(b)(1) ~~of this Subpart~~.

(Source: Amended at 41 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 under ~~pursuant to~~ Section 125.210 ~~of this Subpart~~. [35 ILCS 200/11-30] 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 41 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
130.112	Filings with the Board

**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
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**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 39 Ill. Reg. 2408, effective January 27, 2015; amended in R17-18 at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

### **Section 130.100 Purpose and Applicability**

- a) Section 7(a) of the Act provides that *all files, records, and data of the ~~Illinois Environmental Protection Agency~~, the Board, and DNR shall be open for reasonable public inspection except for information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; and information concerning secret manufacturing processes or confidential data submitted by any person under the Act.* [415 ILCS 5/7(a)]
- b) This Part establishes procedures to identify and protect trade secrets and other non-disclosable information.
  - 1) Subpart A of this Part sets forth general provisions that apply with respect to both trade secrets and other non-disclosable information. References in this Subpart to non-disclosable information other than trade secrets apply only to proceedings before the Board.
  - 2) Subparts B and C of this Part address only trade secrets. Those Subparts apply to articles submitted to or otherwise obtained by the Board, the ~~Illinois Environmental Protection Agency~~, or DNR.
  - 3) Subpart D of this Part addresses only non-disclosable information other than trade secrets. That Subpart applies only to filings of articles with the Board.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 130.102 Additional Procedures**

The ~~Illinois Environmental Protection Agency~~ and DNR each may adopt additional procedures that are not inconsistent with this Part to protect articles that are claimed or determined to represent a trade secret.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 130.104 Definitions and Severability**

- a) Definitions. For the purpose of this Part, "State agency" refers to the Board, the ~~Illinois Environmental Protection~~ Agency, or DNR. Other words and terms have the meanings set forth in 35 Ill. Adm. Code 101.Subpart B, unless otherwise provided or unless the context clearly indicates otherwise.
- b) Severability. If any provision of this Part or its application to any person is adjudged invalid, the adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 130.110 Articles Containing Emission Data**

- a) *All emission data reported to or otherwise obtained by the ~~Illinois Environmental Protection~~ Agency, the Board, or DNR in connection with any examination, inspection or proceeding under the Act shall be available to the public to the extent required by the federal Clean Air Act as amended [415 ILCS 5/7(c)].*
- b) For purposes of this Section, "emission data" means:
  - 1) The identity, amount, frequency, concentration, or other characteristics (related to air quality) of any contaminant that:
    - A) Has been emitted from an emission unit;
    - B) Results from any emission by the emission unit;
    - C) Under an applicable standard or limitation, the emission unit was authorized to emit; or
    - D) Is a combination of any of the items described in subsection (b)(1)(A), (B), or (C) ~~of this Section~~.
  - 2) The name, address (or description of the location), and the nature of the emission unit necessary to identify the emission unit, including a description of the device, equipment, or operation constituting the emission unit.
- c) ~~In addition to subsection (b) of this Section,~~ information necessary to determine or calculate emission data, including rate of operation, rate of production, rate of raw material usage, or material balance, will be deemed to represent emission data

for the purposes of this Section if the information is contained in a permit to ensure that the permit is practically enforceable.

(Source: Amended at 41 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 ~~under pursuant to~~ this Part is prohibited from being filed electronically with the Board and must instead be filed with the Board only in paper ~~under pursuant to~~ 35 Ill. Adm. Code 101.302(h)(3). (See 35 Ill. Adm. Code 101.1010(b).)

(Source: Added at 39 Ill. Reg. 2408, effective January 27, 2015)

## **SUBPART B: PROCEDURES FOR IDENTIFYING ARTICLES THAT REPRESENT TRADE SECRETS**

### **Section 130.200 Initiation of a Claim that an Article Represents a Trade Secret**

- a) ~~In order to claim an article is a trade secret, the~~ The owner of ~~the an~~ article ~~may claim that the article represents a trade secret only by submitting~~ must submit to the State agency the claim letter required by subsection (b)(1) ~~of this Section~~ at the time the ~~owner submits~~ the article is submitted to the State agency. If the owner of the article submits the article to the State agency without simultaneously submitting the claim letter required by subsection (b)(1) ~~of this Section~~, the article will be considered a matter of general public knowledge and cannot be protected as a trade secret.
- b) The owner of an article seeking trade secret protection must submit the following information to the State agency at the time the owner submits the article to the State agency:
  - 1) A claim letter that ~~clearly~~ states the name of the article, briefly describes the article, and states that the article is claimed to represent a trade secret, as defined in 35 Ill. Adm. Code 101.Subpart B and the Act; and
  - 2) A copy of the article marked as provided in Section 130.302 ~~of this Part~~.
- c) The owner of an article seeking trade secret protection must submit to the State agency a statement of justification for the claim meeting the requirements of Section 130.203 ~~of this Subpart~~. The owner of the article may submit the statement of justification at the time the owner submits the article, or at a later time, but in no event later than the time limit established ~~under pursuant to~~ Section 130.202 ~~of this Subpart~~.

- d) If the State agency is provided with a claim letter required by subsection (b)(1) ~~of this Section~~, the State agency must consider the article a trade secret and must protect it from disclosure under pursuant to Subpart C of this Part until the State agency makes a final determination and the appeal time has expired.
- e) The owner of an article seeking trade secret protection is not required to serve any other persons with the article or the page or portion thereof for which the owner seeks trade secret protection.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 130.201 State Agency Request for Justification of Claims**

- a) The State agency may request that the owner of an article claimed to represent a trade secret submit a statement of justification meeting the requirements of Section 130.203 ~~of this Subpart~~. The State agency may make the request when the article is submitted or obtained, or at any later time.
- b) The request under subsection (a) ~~of this Section~~ must be in writing. The State agency must set forth in the request the reasoning for the request. Reasons for the request may include the following:
  - 1) The State agency has received or reasonably expects to receive a request from the public to disclose the article;
  - 2) The article is required to be available to the public in a proceeding before the State agency;
  - 3) Information within the article is required to be contained in a permit issued by the State agency;
  - 4) To facilitate public participation in a proceeding before the State agency;
  - 5) A regulation requires that the State agency determine whether the article represents a trade secret at the time that the article is submitted to or obtained by the State agency; or
  - 6) Determining the validity of the claim will facilitate the timely performance of State agency responsibilities.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 130.202 Time Limit for Delayed Submission of Justification**

- a) Within 10 working days after the date on which the owner of an article claimed to represent a trade secret receives a State agency request for justification under Section 130.201 ~~of this Subpart~~, the owner must submit to the State agency a

statement of justification meeting the requirements of Section 130.203 ~~of this Subpart~~.

- b) The State agency may extend the time period under subsection (a) ~~of this Section~~ for a second period of 10 working days if, within the first 10 day period, the owner of the article requests an extension and demonstrates that the extension is necessary to complete the statement of justification.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 130.204 Waiver of Statutory Deadlines**

- a) When the owner of an article seeking trade secret protection submits a statement of justification under this Subpart to the State agency, the owner must simultaneously submit to the State agency a waiver of any statutory deadline for the State agency to decide the underlying proceeding or matter, such as a permit application.
- b) The waiver under subsection (a) ~~of this Section~~ must extend the statutory deadline for a period equal to the period by which the decision on the underlying proceeding or matter is delayed due to any subsequent trade secret justification and determination process plus 45 days.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 130.206 Deadline for State Agency Trade Secret Determination**

- a) The State agency must determine whether the article represents a trade secret within 45 days after the date it receives a complete statement of justification as prescribed in Section 130.203 ~~of this Subpart~~.
- b) The owner of an article seeking trade secret protection may extend the time period for the State agency to determine whether the article represents a trade secret by submitting to the State agency a waiver of the deadline for the State agency to determine whether the article represents a trade secret.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 130.210 State Agency Actions Following a Negative Determination**

- a) If the State agency determines that an article, or any page or portion thereof, does not meet the standards specified in Section 130.208(a)(1) or (2) ~~of this Subpart~~, the State agency must deny the claim for trade secret protection for the article or page or portion thereof, and must give written notice of the determination to the owner of the article and any requester under ~~pursuant to~~ subsection (b) ~~of this Section~~.



- b) Written notice that the State agency denied a claim for trade secret protection must be given by certified mail, return receipt requested, and must contain the following information:
- 1) A statement of the State agency's reasoning for denying the claim;
  - 2) A notification that the State agency determination may be reviewed under ~~pursuant to~~ Section 130.214 of this Subpart; and
  - 3) A notification that the State agency will cease protecting the article, or the page or portion thereof, as a trade secret unless the State agency is served with notice of the filing of a petition for review of the State agency's determination within 35 days after service of the notice of denial on the owner and any requester.
- c) If the State agency is served with notice of the filing of a petition for review of its determination within 35 days after service of the notice of denial on the owner and any requester, the State agency must notify the requester of the action and must continue to protect the article, or the page or portion thereof, under ~~pursuant to~~ Subpart C of this Part until the State agency receives official notification of a final order by a reviewing body with proper jurisdiction that does not reverse the State agency determination and that is not subject to further appeal.
- d) If the State agency does not receive the notification of a petition for review within 35 days after service of the notice of denial on the owner and any requester or does receive official notification of a final, non-appealable action that does not reverse the State agency determination, the article will not be protected under ~~pursuant to~~ Subpart C of this Part and the State agency must so notify the owner and any requester by certified mail, return receipt requested.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 130.212 State Agency Actions Following a Positive Determination**

- a) If the State agency determines that an article, or any page or portion thereof, meets the standards specified in subsection 130.208(a)(1) and (2) ~~of this Subpart~~, the State agency must grant the claim for trade secret protection for the article or page or portion thereof, and must give written notice of the determination to the owner of the article and any requester under ~~pursuant to~~ subsection (b) ~~of this Section~~.
- b) Written notice of the granting of a claim for trade secret protection must be given by certified mail, return receipt requested, and must contain the following information:

- 1) A statement of the State agency's reasoning for granting the claim;
  - 2) A notification that the State agency determination may be reviewed under ~~pursuant to~~ Section 130.214 ~~of this Subpart~~; and
  - 3) A notification that the article, or the page or portion thereof, will be protected under ~~pursuant to~~ Subpart C ~~of this Part~~ until the State agency receives official notification of a final order by a reviewing body that reverses the State agency determination and that is not subject to further appeal.
- c) The State agency must continue to protect an article, or the page or portion thereof, for which trade secret protection has been granted under ~~pursuant to~~ Subpart C ~~of this Part~~ until the State agency receives official notification of a final order by a reviewing body with proper jurisdiction that reverses the State agency determination and that is not subject to further appeal.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **Section 130.214 Review of State Agency Trade Secret Determination**

- a) An owner or requester who is adversely affected by a final determination of the ~~Illinois Environmental Protection Agency or DNR~~ under ~~pursuant to~~ this Subpart may petition the Board to review the final determination within 35 days after service of the determination. Appeals to the Board will be under ~~pursuant to~~ 35 Ill. Adm. Code 105.Subparts A and B.
- b) An owner or requester who is adversely affected by a final determination of the Board under ~~pursuant to~~ this Subpart may obtain judicial review from the appellate court by filing a petition for review under ~~pursuant to~~ Section 41 of the Act [415 ILCS 5/41].
- c) If the State agency fails to make a final determination within the time limits prescribed by this Subpart, the State agency must continue to protect the article as set forth in Subpart C ~~of this Part~~ until the State agency issues a final determination under ~~pursuant to~~ this Subpart.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **Section 130.216 Effect of a Determination of Trade Secret Status on Other State Agencies**

- a) Except as provided in subsection (b) ~~of this Section~~, a claim or determination by one State agency that an article represents a trade secret made under ~~pursuant to~~ this Subpart will apply to that same article when in the possession of either of the other two State agencies.

- b) When an article described in subsection (a) of this Section is the subject of a review before the Board ~~under pursuant to~~ Section 130.214(a) ~~of this Subpart~~, the article will be treated as a trade secret only unless or until the Board determines that the article does not represent a trade secret.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 130.218 Status of Article Determined or Claimed to Represent a Trade Secret Before January 1, 2001**

- a) Any article that was determined by a State agency before January 1, 2001 to represent a trade secret in accordance with State agency procedures adopted ~~under pursuant to~~ the IAPA will be deemed to have been determined to represent a trade secret for the purposes of this Part. The State agency must protect the article in accordance with Subpart C ~~of this Part~~.
- b) If a State agency possesses an article that was claimed before January 1, 2001 to represent a trade secret and the State agency did not determine before January 1, 2001 whether the article represents a trade secret in accordance with procedures adopted ~~under pursuant to~~ the IAPA, the article is deemed to have been claimed to represent a trade secret for the purposes of this Part. These claims are deemed pending with unlimited waivers of any deadlines for decision.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 130.220 Extension of Deadlines to Participate in Proceedings**

- a) Upon the State agency's finding that a person has satisfied the requirements of subsection (b) ~~of this Section~~, the State agency must extend any deadline for the person to participate in the proceeding before the State agency until 10 days after the State agency determines the trade secret status of the article.
- b) The person seeking an extension to participate in a proceeding before the State agency has the burden to demonstrate that the person will be adversely affected in the proceeding due to the timing of the State agency's trade secret determination, that the person could not have avoided the resulting delay by making an earlier request, and that the article is relevant to the proceeding.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**SUBPART C: PROCEDURES FOR PROTECTING ARTICLES THAT REPRESENT TRADE SECRETS**

**Section 130.300 Applicability**

Any article that is claimed or determined to represent a trade secret ~~under pursuant to~~ Subpart B ~~of this Part~~ must be protected from unauthorized disclosure ~~under pursuant to~~ this Subpart.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 130.302 Owner's Responsibility to Mark Article**

- a) When an entire article is claimed to represent a trade secret, the owner must mark the article with the words "Trade Secret" in red ink on the face or front of the article.
- b) When less than an entire article is claimed to represent a trade secret, the owner must:
  - 1) Mark the article with the words "Trade Secret" in red ink on the face or front of the article;
  - 2) Indicate on the face or front of the article which page or portion of the article is claimed to represent a trade secret;
  - 3) Mark every page or portion of the article that is claimed to represent a trade secret with the words "Trade Secret;" and
  - 4) Furnish the State agency with a second copy of the article ~~that is marked pursuant to subsections (b)(1) and (2) of this Section~~ and from which the page or portion of the article that is claimed to represent a trade secret is deleted.

### **Section 130.304 State Agency's Responsibility to Mark Article**

- a) When an entire article is determined to represent a trade secret under ~~pursuant to Section 130.208 of this Part~~, the State agency must mark the article with the word "DETERMINED" in red ink on the face or front of the article and must also mark any claim letter submitted for the article.
- b) When less than an entire article is determined to represent a trade secret under ~~pursuant to Section 130.208 of this Part~~, the State agency must:
  - 1) Mark the article with the word "DETERMINED" in red ink on the face or front of the article;
  - 2) Indicate on the face or front of the article and any claim letter submitted for the article which page or portion of the article is determined to represent a trade secret; and
  - 3) Mark every page or portion of the article that is determined to represent a trade secret with the word "DETERMINED".

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 130.306 Transmission of Article Between State Agencies**

Before transmitting any article that is claimed or determined to represent a trade secret to another State agency, the State agency must ensure that the article is marked under pursuant to Sections 130.302 and 130.304 ~~of this Subpart~~ and is clearly distinguished and segregated from other transmitted materials.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 130.308 Public Access to Information Related to Article**

- a) A copy of the claim letter submitted under pursuant to Section 130.200(b)(1) ~~of this Part~~ will be open to public inspection.
- b) When an article was determined to represent a trade secret before January 1, 2001, and no claim letter exists, the State agency must prepare a statement that will be open to public inspection, and ~~that~~ names and briefly describes the article.
- c) When a page or portion of an article is claimed or determined to represent a trade secret, a copy of the article must be open to public inspection, with the part or portion of the article that is claimed or determined to represent a trade secret or that would lead to disclosure of the trade secret deleted.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 130.310 Access to Claimed or Determined Article**

- a) The State agency must designate the State agency employees or officers who are authorized to review articles that are claimed to represent trade secrets for the purpose of making a determination under pursuant to Section 130.208 ~~of this Part~~.
- b) Access to an article that is claimed or determined to represent a trade secret must be limited to:
  - 1) Employees or officers designated under pursuant to subsection (a) ~~of this Section~~;
  - 2) Other employees, officers, or authorized representatives of the State specifically authorized by the State agency to have access to the article for the purpose of carrying out the Act or regulations promulgated thereunder or when relevant to a proceeding or matter under the Act; or
  - 3) Employees, officers, or authorized representatives of the United States who are specifically authorized by the State agency to have access to the

article for the purpose of carrying out federal environmental statutes or regulations.

- c) The State agency must maintain the following information with regard to an article that is claimed or determined to represent a trade secret:
- 1) A record of the number of copies held by the State agency;
  - 2) A log of the location of all copies; and
  - 3) A log of all persons who are authorized to review the article or copies thereof.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 130.312 Unauthorized Disclosure or Use of Article**

- a) The State agency must ensure that all persons who are authorized to have access to an article that is claimed or determined to represent a trade secret are given notice of the restrictions on disclosure and use of the article contained in this Subpart.
- b) No State agency officer, employee, or authorized representative may disclose, except as authorized by this Subpart, or use for private gain or advantage, any article that is claimed or determined to represent a trade secret.
- c) Each State agency officer, employee, or authorized representative must take reasonable measures to safeguard an article that is claimed or determined to represent a trade secret and to protect against disclosure that is inconsistent with these rules.
- d) Each authorized representative of the State agency who is furnished with access to an article that is claimed or determined to represent a trade secret ~~under pursuant to~~ this Part must use or disclose that information only as authorized by the contract or agreement under which the person is authorized to represent the State agency.

### **Section 130.314 Limitation on Copying Article**

No State agency officer, employee, or authorized representative of the State or the United States may copy an article that is claimed or determined to represent a trade secret ~~under pursuant to~~ this Part except when authorized to do so by the State agency officer or employee designated to review the article ~~under pursuant to~~ Section 130.312(a) ~~of this Subpart~~. All copies must be recorded and logged in accordance with Section 130.312(c) ~~of this Subpart~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART D: NON-DISCLOSABLE INFORMATION OTHER THAN TRADE SECRETS

**Section 130.404 Application for Non-Disclosure**

- a) Except as provided in subsection (c)(4) ~~of this Section~~, the applicant must file a single copy of the following:
- 1) The article that is sought to be protected from disclosure; and
  - 2) The application for non-disclosure.
- b) When an entire article is sought to be protected from disclosure, the applicant must mark the article with the words "NON-DISCLOSABLE INFORMATION" in red ink on the face or front of the article.
- c) When less than an entire article is sought to be protected from disclosure, the applicant must:
- 1) Mark the article with the words "NON-DISCLOSABLE INFORMATION" in red ink on the face or front of the article;
  - 2) Indicate on the face or front of the article which page or portion of the article is claimed to be non-disclosable information;
  - 3) Mark every page or portion of the article sought to be protected from disclosure with the words "NON-DISCLOSABLE INFORMATION";<sup>22</sup>
  - 4) File with the Clerk a second copy of the article ~~that is marked pursuant to subsections (c)(1) and (c)(2) of this Section~~ and from which the page or portion sought to be protected from disclosure is deleted.
- d) The applicant is not required to serve any other persons with the article or the page or portion thereof for which the applicant seeks protection from disclosure.
- e) The application for non-disclosure must contain the following:
- 1) Identification of the particular non-disclosure category into which the material that is sought to be protected from disclosure falls (see 35 Ill. Adm. Code 101.202 for the definition of "non-disclosable information");
  - 2) A concise statement of the reasons for requesting non-disclosure;
  - 3) Data and information on the nature of the material that is sought to be protected from disclosure, identification of the number and title of all persons familiar with the data and information, and a statement of how long the material has been protected from disclosure;

- 4) An affidavit verifying the facts set forth in the application for non-disclosure that are not of record in the proceeding; and
- 5) A waiver of any decision deadline in accordance with Section 130.204 of ~~this Part~~.

(Source: Amended at 41 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)