

ILLINOIS POLLUTION CONTROL BOARD
May 10, 1979

IN THE MATTER OF:)
) R79-5
AMENDMENTS TO THE PROCEDURAL RULES)

ORDER OF THE BOARD (by Mr. Dumelle):

The following Appendix A is hereby adopted as an amendment to the Board's Procedural Rules. This action is being taken pursuant to the requirements of Section 4.01 of the Administrative Procedure act (Ill. Rev. Stat. ch. 127, §1004.1). It should be noted that this appendix is intended for general public informational purposes and is only a summary of existing Board rules and procedures.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 10th day of May, 1979 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board

CHAPTER 1: Procedural Rules

Appendix A

I. THE ORGANIZATION OF THE BOARD

A) Board Membership.

The Board was created pursuant to Section 5 of the Environmental Protection Act (the Act) and consists of five technically qualified members. The members are appointed by the Governor with the advice and consent of the Senate. No more than three members may be of the same political party. Each member holds office for three years, with no more than two offices expiring in the same year.

The Governor designates one member as Chairman, who serves at the pleasure of the Governor. The Chairman may designate another member as Vice-Chairman, who officiates in the absence of the Chairman.

B) Staff.

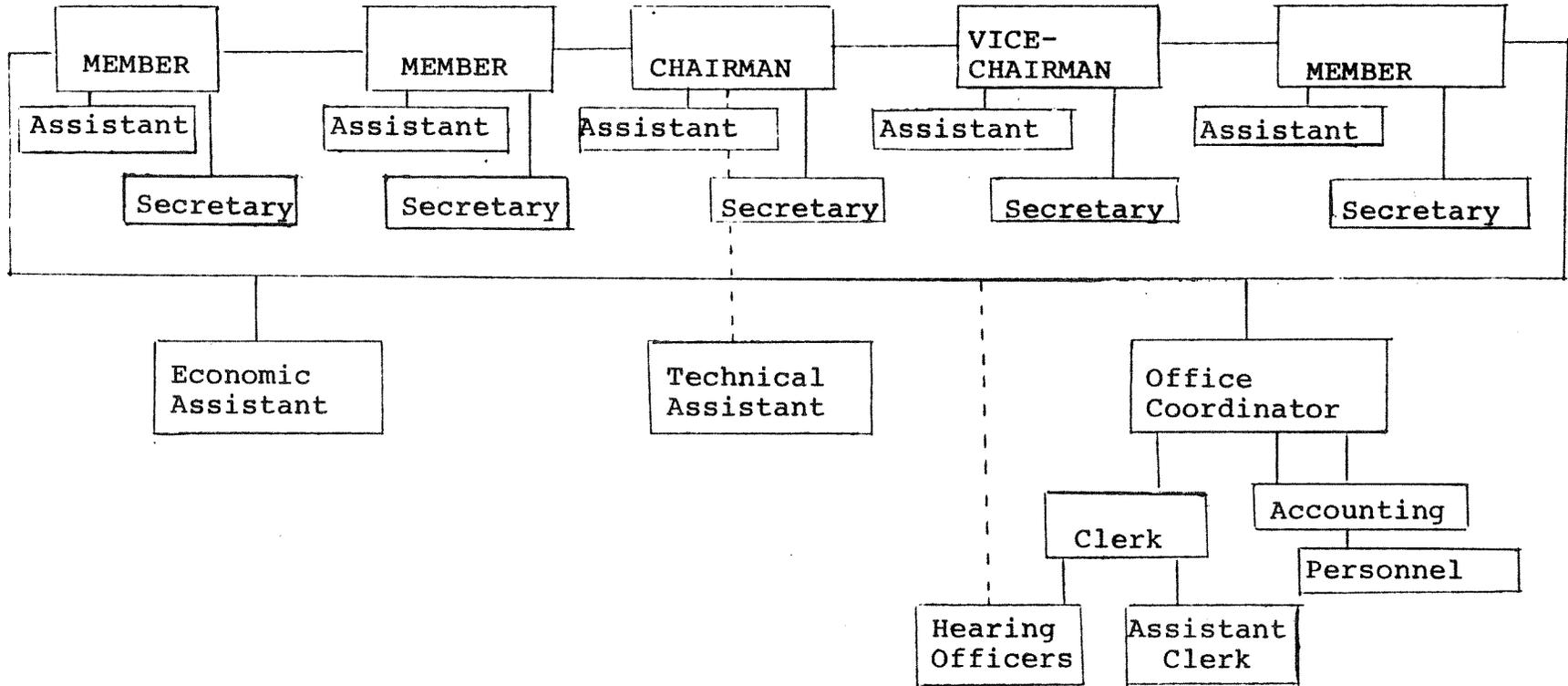
Under the Act, each Board member may employ one assistant and one secretary, except the Chairman who may employ one technical assistant, one administrative assistant and one secretary. However, the services of the technical assistant are available to all Board members as well as the Chairman. In addition, the Board employs one Economic Assistant whose duties include analyzing and making recommendations on the Economic Impact Studies from the Institute of Natural Resources and developing the record for individual case hearings and regulatory hearings.

The Board also employs an Office Coordinator who directs and supervises the two administrative units of the Board: the Clerk's office and the administrative and fiscal management of the office. In addition, the Coordinator is responsible for personnel management, office accounting and the general operations of the office.

The Clerk's office consists of a Clerk and an Assistant Clerk who are responsible for maintaining the Board's files, processing complaints and arranging hearings. The Clerk also serves as public liaison for the Board. In addition to the duties mentioned above, the Clerk maintains a list of attorneys in private practice, who serve as the Board's hearing officers. Hearing officers receive a per diem of \$150.00 per hearing day and are reimbursed for travel expenses.

ILLINOIS POLLUTION CONTROL BOARD

ORGANIZATIONAL CHART



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II. HOW THE PUBLIC CAN OBTAIN INFORMATION, MAKE SUBMISSIONS OR REQUESTS ON SUBJECTS, PROGRAMS AND ACTIVITIES OF THE BOARD.

A. Files Open to Reasonable Public Inspection.

1. General access and non-disclosed material.

Pursuant to §7 of the Environmental Protection Act, all files, records and data of the Board are open to reasonable public inspection and copying, except material stamped by Board Order, "Not Subject to Disclosure." Only the following materials may be so stamped by the Board:

- 1) Information which constitutes a trade secret;
- 2) Information privileged against introduction in judicial proceedings;
- 3) Internal communications by the Board;
- 4) Information concerning secret manufacturing processes or confidential data submitted by any person under the Act; and
- 5) Income and earning data when not an issue in the proceeding.

Materials are stamped "Not Subject to Disclosure" only upon written application at the time the material is submitted. Each application must contain the following:

- 1) Identification of the precise material, or parts of material, for which nondisclosure is sought;
- 2) Indication of the particular nondisclosure category into which the material falls; and
- 3) A concise statement of the reasons for requesting nondisclosure. The application shall be verified and contain such data and information as will apprise the Board of the nature of the material for which nondisclosure is sought, the reasons why nondisclosure is necessary, the number and title of all persons familiar with such information, and how long the material has been limited for disclosure.

A single copy of the material for nondisclosure shall be filed with the Clerk with the application and shall be available for examination only by Board members. The Board shall promptly rule on every application and inform the applicant of its decision. An application shall bar public inspection of the material for nondisclosure until the application has been disposed of by the Board and the time for appeal has run. The Board may enter conditional nondisclosure orders allowing withdrawal by an applicant of the material covered by such order, at which time the Board's ruling on the application shall be based on the record excluding the material so withdrawn.

2. Copying Facilities.

Copying facilities are available at the Board's offices, and requests by mail are honored. A single opinion or order, regardless of length, will be furnished upon request as are multiple opinions or orders totalling 10 pages or less. Requests for multiple opinions or orders totalling more than 10 pages will be furnished at a cost to be determined by the Board, including mailing costs. However, the Board reserves the right to contract with a professional reproduction service for any copying that would impose a substantial administrative burden upon the Board, and it reserves the right to charge the requesting party for reproduction and mailing costs incurred.

B. Publications.

1. Environmental Register.

Every two weeks the Board publishes its newsletter the Environmental Register. The Register includes: notice and schedule of public hearings; the results of the Board's meetings, including final actions taken by the Board and new cases before the Board; a calendar of case hearings; proposed regulations, revisions and repeals; the activities of the Board members and their staff; and, any articles of general public interest. Copies of the Register are available at the Board's office free of charge. Copies are also sent free of charge to persons on the Board's mailing list. Persons interested in subscribing to the Register and being included on the mailing list may do so by sending their names and addresses to the Board:

Illinois Pollution Control Board
309 West Washington Street Suite 300
Chicago, Illinois 60606

Phone: 312-793-3620

2. Opinions, Orders, Regulations.

Opinions and orders of the Board are available upon written request and are charged as set out above. The Board's regulations concerning pollution control are published by chapter and are available free of charge at the Board's office.

3. Annual Report.

In addition, the Board also makes available the Annual Report of the Chairman. This Report is first published in the Environmental Register, and when printing is completed, it is available at the Board's office, free of charge. The Report includes: the Board's membership; regulatory and case activities for the fiscal year; administrative and financial expenditures for the fiscal year; penalties levied; activity for the coming year; and a summary of Board decisions reviewed by the courts during the fiscal year.

C. Public Participation.

1. Submissions.

Any person may submit a regulatory proposal for the adoption, amendment or repeal of a substantive regulation by filing ten (10) copies of each proposal with the Clerk. Each proposal shall include:

(a) The language of the proposed regulation or amendment; and

(b) A statement of the reasons supporting the proposal including a short and plain statement of facts known to the proponent which support the proposal, and a short and plain statement of the purpose and effect of the proposal. The applicable factors as listed in Section 27 of the Act shall be discussed in regard to the proposal. Where the proposal covers more than one substantive point, the supporting statement shall include statements in support of each point.

If the proposal is accompanied by a petition signed by at least 200 persons with home address specified, the Clerk assigns a docket number, and the Chairman places the matter on the agenda for the Board's decision whether or not to authorize a hearing. Hearings are authorized unless the proposal is plainly devoid of merit, or deals with a subject on which a hearing has been held within the preceding six months, or is not accompanied by an adequate statement of supporting reasons. Denial of a hearing is accompanied by reasons, and notice is given to the proponent.

In addition, any person may comment on any proposal by making a written submission within 14 days of the close of the last hearing or within 14 days of the publication of the Board's "Proposed Final Draft" of the regulation in the Environmental Register.

2. Other Petitions.

Any person adversely affected by a Board rule or order may file a petition for a variance. The procedures for filing such petitions are set out in the Board's procedural Rules (Chapter 1), Part IV.

Any person adversely affected by the Environmental Protection Agency's decision to grant or deny a permit may also file a petition with the Board for a review of the Agency's action. Procedures for such appeals are set out in Part V of the Board's Procedural Rules (Chapter 1).

3. Complaints.

a) Formal.

Formal complaints are filed to commence enforcement proceedings, pursuant to Rule 304 of the Procedural Rules:

(1) An enforcement action shall be commenced by the service of a notice and formal complaint upon all respondents and the filing of ten (10) copies of the notice and formal complaint with the Clerk.

(2) The notice shall 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.

(3) The formal complaint shall contain:

(a) A reference to the provision of the Act and regulations which the respondents are

alleged to be violating;

(b) The dates, location, events, nature extent, duration, and strength of discharges, or emissions, and consequences alleged to constitute the violations of the Act and regulations. The complaint shall advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense; and

(c) A concise statement of the relief which the complainant seeks.

b) Informal.

Informal complaints are handled pursuant to Rule 110 of the Procedural Rules:

Complaints received by the Board against particular pollution sources shall be filed with the Clerk, who shall maintain a file and index of such complaints. The Clerk shall send a copy of the complaint to the Agency and request a response to the Board. At the time of the filing of the informal complaint, the Clerk shall notify the complainant of his right to commence an enforcement proceeding pursuant to Part III of these rules by filing a formal complaint and shall provide a form on which a formal complaint may be filed with the Clerk.

4. Board Meetings and Hearings.

a) Board Meetings.

All Board meetings are open to the public. The Board holds meetings every other Thursday and the Chairman or any two Board members may call a special meeting upon written notice, at least 24 hours in advance, to each Board member and by posting public notice 24 hours in advance in the Board's offices.

Approximately two weeks in advance of each meeting the Clerk publishes the Tentative Agenda and circulates it to the Board. In addition, the Tentative Agenda is posted in the Board's offices, and copies are made available. One week later, a second Agenda is published with any additions or changes, and the Final Agenda is published 24 hours before the meeting. These agenda are circulated and made available in the same manner as the Tentative Agenda.

b) Hearings.

All hearings conducted by the Board are open to the public; this includes regulatory, economic impact study and adjudicatory hearings conducted pursuant to Part III of the Procedural Rules. At such hearings, the public may examine witnesses (but repetitious examinations may be prevented by the Hearing Officer), examine the record, testify and submit evidence.

D. Other Means of Obtaining Information.

1. Lectures.

Generally, Board members or their staff will speak to interested groups upon request.

III. AIDS IN FINDING AND USING THE POLLUTION REGULATIONS.

The Board maintains nine chapters of regulations:

- 1) Procedural Rules;
- 2) Air Pollution;
- 3) Water Pollution;
- 4) Mine Related Pollution;
- 5) Agriculture Related Pollution;
- 6) Public Water Supplies;
- 7) Solid Waste;
- 8) Noise Pollution; and,
- 9) Special Waste Hauling.

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IV. THE BOARD'S RULEMAKING PROCEDURE.

A. Proposals.

Proposals for the adoption, amendment or repeal of a substantive regulation may be made by the Environmental Protection Agency, the Institute of Natural Resources, a member of the Board or any member of the public (See, above, Part III, Public Participation: Submissions). Proposals made by the Agency, Institute or Board are automatically scheduled for hearings.

In the case of a proposal made by a member of the public, the proposal should be accompanied by a petition signed by 200 persons, specifying home addresses. When the proposal is accompanied by a petition, the matter is placed on the agenda for Board decision. Generally, the Board will authorize a hearing unless it determines that the proposal is plainly devoid of merit, or deals with a subject on which a hearing has been held within the preceding six months, or is not accompanied by an adequate statement of supporting reasons. The proponent will be notified of an adverse decision and of the reasons for such a decision.

B. Notification of Hearings.

The Clerk sends a copy of all proposed regulations authorized for hearing to the Institute and, if not proposed by the Agency, a copy to the Agency. The Institute then commences an evaluation of the proposal and returns to the Board an Economic Impact Study of the proposal. The Institute's action does not delay the initial hearing, but has effect of requiring additional hearings on the study itself.

The proponent is notified of the hearing after the Board has designated an attending Board member and arranged for a qualified Hearing Officer, pursuant to Rule 204 of the Procedural Rules. Then the Hearing Officer, after appropriate consultation with the proponent, sets a time and place for hearing, which is within a reasonable time after the date on which the proposal was received by the Clerk. The Clerk gives notice at least 20 days prior to the date of the hearing as follows:

1. To the proponent, by mail;
2. To all persons on the Board's mailing list through notice in the Board's Environmental Register or by special mailing; and
3. By public advertisement in a newspaper of general circulation in the area of the state affected.

C. Initial Hearing.

All hearings on proposals are conducted according to Part II of the Board's Procedural Rules. These hearings are open to the public, and at such hearings, the public is permitted to examine the record, examine witnesses (except as limited by the Hearing Officer), testify and submit evidence.

Unless otherwise directed, the record remains open for statements for 14 days following the close of the hearing. Any person may make a written submission on the proposal within this period or within 14 days of the Board's "Proposed Final Draft."

D. Hearings on Economic Impact Study.

Before the final adoption of any proposed regulation or amendment to existing regulations, the Board conducts hearings on the Economic Impact Study of such proposals. These hearings are subject to the same procedures as the hearings described above.

E. Board Action after Hearing.

At the next Board meeting following the conclusion of the required study and hearings, the Board issues a "Proposed Final Draft." This Draft is then published in the Environmental Register and the Illinois Register through the Secretary of State's office. If no objection or additional submissions are made after a period of at least 45 days from publication in the Environmental Register and the Illinois Register, then the Board may take action at its next meeting to formally adopt the proposal. The proposal becomes effective shortly after it is filed with the Secretary of State.

Pursuant to the Act, the Board may revise the proposed regulation before adoption without conducting a further hearing. However, if the Board decides to adopt the proposed regulation with any revisions, the revised proposal must be published in the Illinois Register and go through an additional 45 day comment period before the Board can formally adopt the Proposal.

F. Emergency Conditions.

On proclamation by the Governor, pursuant to Section 8 of the "Illinois Emergency Services and Disaster Act of 1975," that a disaster emergency exists, or when the Board finds that a severe public health emergency is involved in relation to any proposed regulation, then such a regulation shall take effect without delay and the Board may proceed with the required economic impact hearings while the regulation continues in effect. When such an emergency exists the customary 45 day notice provision is waived; however, notice and text of the emergency rule must be published in the Illinois Register. An emergency rule is effective for a maximum period of 150 days, but it may be adopted as a permanent rule by following the procedure outlined above.

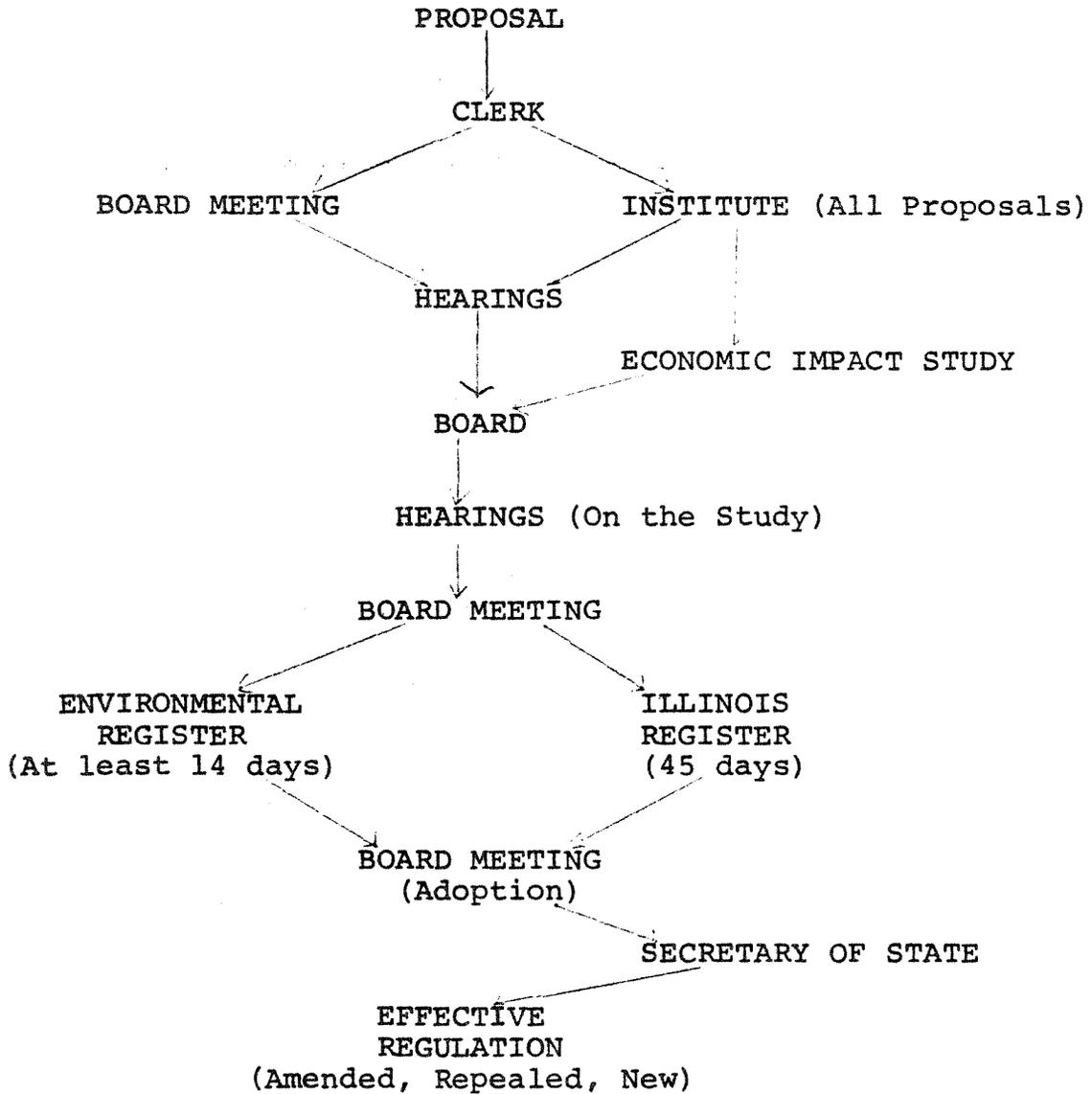
G. Rules Required by Federal Law or Court Order.

When the Board is required by federal law, federal rules and regulations or by a court order to adopt a certain rule, that rule need not be published in the Illinois Register until it has been adopted. However, notice and text of the adopted rule must be published in the Illinois Register, and the Environmental Register and the necessary hearings must be held before the rule becomes effective.

H. Regulations Promulgated Under §§111 and 112 of the Federal Clean Air Act.

An exception to the general rule-making procedure exists in the case of federal regulations promulgated under §§111 and 112 of the Federal Clean Air Act. Following the promulgation of a regulation by the Administrator of the United States Environmental Protection Agency relating to either standards of performance for new stationary sources (§111) or the establishment of national emissions standards for hazardous air pollutants (§112), the Board shall adopt the federal regulation as its own, in identical form, at the next scheduled Board meeting. The 45 day notice provision and the customary hearings are waived in this instance, but the rule must be filed with the Secretary of State within 60 days of the Board's adoption resolution in order to become effective.

FLOW CHART FOR RULEMAKING PROCEDURES



Proposals are made by the Agency, Institute, Board or Public. If made by the Public, the proposal must be accompanied by a proper petition and must be approved for hearings by the Board.