

BOARD PROPOSAL FOR PUBLIC COMMENT OCTOBER 3, 1996

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CHAPTER I: POLLUTION CONTROL BOARD
PART 101
GENERAL RULES

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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].

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 Reg. 8357; Part repealed, new Part adopted in R88-5A at 13 Ill.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 Reg. 18078, November 17, 1992; Part repealed, new Part adopted in R97-8 at __Ill. Reg. __, effective .

SUBPART A: GENERAL

Section 101.100 Applicability

- a) This Part sets forth the rules generally applicable to proceedings before the Illinois Pollution Control Board, and should be read in conjunction with procedural rules for the Board's specific processes, found at 35 Ill. Adm. Code Parts 103 through 130 and the Board's Administrative Rules, found at 2 Ill. Adm. Code Part 2175. In the event of a conflict between the rules of this Part and those found in subsequent parts, the more specific requirement applies.

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- b) The provisions of the Code of Civil Procedure [735 ILCS 5/1-101 *et seq.*] and the Supreme Court Rules [Ill. S.Ct.Rules] do not expressly apply to proceedings before the Board. However, 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.

Section 101.102 Severability

If any provision of this Part or its application to any person or under any circumstances is adjudged invalid, such adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

Section 101.104 Repeals

All of the Board's Resolutions adopted in 1970 through 1996, are repealed and are superseded by 35 Ill. Adm. Code 101-130.

Section 101.106 Board Authority

- a) Pursuant to the Illinois Environmental Protection Act (Act) [415 ILCS 5/1 *et. seq.*], 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 this Act.* [415 ILCS 5/(b).]
- b) More specifically, the Board has the *authority to conduct hearings upon complaints charging violations of this act or of regulations thereunder, upon petitions for variances; upon petitions for review of the Agency's denial of a permit in accordance with Title X of this Act; upon petition to remove a seal under Section 34 of this 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; and such other hearings as may be provided by rule.* [415 ILCS 5/5 (d).]

Section 101.108 Board Processes

- a) Board proceedings can generally be divided into two categories: rulemaking proceedings and adjudicatory proceedings. Specific procedures for rulemaking proceedings are found at 35 Ill. Adm. Code 125. Procedures for adjudicatory proceedings are found at 35 Ill. Adm. Code 103-108.
- b) The following are various types of rulemakings that the Board processes: Identical in Substance, Clean Air Act/Fast track, Federally Required Rulemaking, General Rulemaking, Site-Specific Rulemaking. Procedural rules for these types of proceedings can be found at 35 Ill. Adm. Code 125.
- c) The following are various types of Board adjudicatory proceedings: Permit Appeals, UST Appeals, Petition to Contest Siting Decision, Enforcement Actions, Administrative Citations, Variance Petition, Adjusted Standard Petition. Procedural rules for these proceedings can be found at 35 Ill. Adm. Code 103 through 108.
- d) Decisions of the Board will be made at meetings open to the public. Four members of the Board constitute a quorum. Four affirmative votes are required for the adoption of any opinions and orders of the Board, except in a proceeding to remove a seal under Section 34(d) of the Act. [415 ILCS 5/34(d).]

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Section 101.110 Public Participation

- a) General. The Board encourages public participation in all of its proceedings. The extent to which the Act allows for such participation varies, depending on the type of Board proceeding involved and the party status of the person or persons seeking to participate as discussed below and in the specific individual parts governing that proceeding. These procedural rules attempt to delineate the parameters of public participation for each process type. In the context of a particular adjudicatory case or rulemaking, such parameters may be more specifically delineated by Board or hearing officer order.
- b) Party/Non-Party Status. Who constitutes proper parties to each type of adjudicatory proceeding before the Board is delineated in the specific requirements for each case-type before the Board. A person who wishes to participate in a Board adjudicatory process and is not a party shall be deemed a non-party participant and shall have only those rights specifically delineated in these rules.
- c) Amicus Curie Briefs. Amicus curie briefs may be filed in any adjudicatory proceeding by any interested person. Such briefs shall consist of argument only and may not raise facts which are not in evidence in the relevant proceeding. Such briefs shall not exceed 20 pages. Amicus curie briefs will be considered by the Board as time allows. The filing of such briefs shall not serve to delay decision making of the Board.

Section 101.112 Conflicts of Interest

- a) No person who is currently employed by the Board whether full time, part time, or under contract, or who is serving as a Board member may appear or practice before the Board.
- b) No person who has been a Board Member or an employee of the Board shall represent or advise anyone in connection with a contested case or open rulemaking docket in which the person participated personally and substantially as a Board Member or employee, unless the Board and all parties consent after disclosure. Additionally, no person who has been a Board Member or an employee of the Board may represent anyone before the Board until six months after his or her termination date. For purposes of this subsection, representation includes but is not limited to, work as either a legal or technical consultant on a case.
- c) Upon written motion by a party, or on its own motion, the Board may disqualify a hearing officer for bias or conflict of interest. [5 ILCS 100/10 30(b).]

Section 101.114 Ex Parte Contacts

- a) No Board member, hearing officer, or employee of the Board shall communicate ex parte with any person not employed by the Board with respect to the substance of any adjudicatory case or rulemaking proceeding pending before the Board.
- b) Information which is received concerning an individual pollution source during a rulemaking proceeding shall not be considered an ex parte contact in the event that a

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case is currently pending before the Board or a case is later filed concerning the source.

- c) An ex parte communication received by a Board Member or employee of the Board *shall be made part of the record of the pending matter, including all written communications, all written responses to communications, and a memorandum stating the substance of all oral communications and all responses made and the identity of each person from whom the ex parte communication was received.* [5 ILCS 100/10-60(c)]
- d) *Communications regarding matters of procedure and practice, such as the format of pleadings, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications.* [5 ILCS 100/10-60(d).]

SUBPART B: DEFINITIONS

Section 101.200 Definitions Contained in Act

Unless otherwise provided, the definitions of the Act apply to the Board's procedural rules, found in 35 Ill. Adm. Code 101 through 130.

Section 101.202 Definitions for Board's Procedural Rules

The following definitions also apply to the Board's Procedural Rules, found in 35 Ill. Adm. Code 101 through 130:

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

"Adjudicatory proceeding" or "adjudicatory action" means an action of a quasi-judicial nature brought before the Board pursuant to authority granted to the Board under Section 5(d) of the Act. [415 ILCS 5/5(d).] Adjudicatory proceedings include, but are not limited to, 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 a permanent alternative standard granted by the Board in an adjudicatory proceeding pursuant to Section 28.1 of the Act and 35 Ill. Adm. Code 104.Subpart D which applies instead of the rule or regulation of general applicability. [415 ILCS 5/28.1.]

"Administrative citation" or "AC" means a citation issued pursuant to Section 31.1 of the Act [415 ILCS 5/31.1] by the Agency, or by a unit of local government acting as the Agency's delegee pursuant to Section 4(r) of the Act. [415 ILCS 5/4(r).]

"Administrative citation review (appeal)" means a petition for review of an administrative citation filed pursuant to Section 31.1(d) of the Act. [415 ILCS 5/31.1(d).] (See 35 Ill. Adm. Code 108.)

"Affidavit" means a sworn statement attesting that a statement or action is true, witnessed by a Notary Public.

"Affidavit of service" means an affidavit that certifies the service of a document upon specified person(s).

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"Agency" means the Illinois Environmental Protection Agency as established by Section 4 of the Act. [415 ILCS 5/4.]

"Agency investigation" means an investigation conducted by the Agency pursuant to Section 30 of the Act. [415 ILCS 5/30.]

"Agency recommendation" means the document filed by the Agency pursuant to Sections 37(a) and 28.1(d)(3) of the Act in which the Agency provides its recommended disposition of a petition for variance or an adjusted standard. [415 ILCS 5/37(a) and 5/28.1(d)(3).] This includes, but is not limited to, a recommendation to deny, or a recommendation of grant with or without conditions. (See 35 Ill. Adm. Code 104.218 and 104.416.)

"Amicus curie brief" means a brief filed in a proceeding with permission of the Board by a non-party participant who has interest in, or views, on the subject matter of the proceeding. (See 35 Ill. Adm. Code 101.110 and 101.628.)

"APA" means the Illinois Administrative Procedure Act [5 ILCS 100/1-1].

"Applicant" means any person who submits, or has submitted, an application for a permit or for local siting approval pursuant to any of the authorities to issue permits or granting of siting approval identified in Sections 39, 39.1, and 39.5 of the Act. [415 ILCS 5/39, 5/39.1 and 39.5.]

"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 and/or representative(s).

"Authorized representative" means any person who is authorized to act on behalf of another person by formal agreement or contract.

"Board" means the Illinois Pollution Control Board as created in Section 5 of the Act or, if applicable, its designee. [415 ILCS 5/5.]

"Board decision" means that a majority of members of the Board at an open Board meeting vote in agreement on a matter. [415 ILCS 5/5(a).]

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

"Board meeting" means an open meeting held by the Board pursuant to Section 5(a) of the Act in which the Board makes its decisions and determinations. [415 ILCS 5/5(a).]

"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 case, 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, 42 U.S.C. 7661 *et seq.*

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"Case" means an adjudicatory proceeding before the Board brought pursuant to the Act and the Board's regulations.

"Certification 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. Failure to execute renders variance null and void pursuant to 35 Ill. Adm. Code 104.240.

"Chairman" means the Chairman of the Board designated by the Governor pursuant to Section 5(a) of the Act. [415 ILCS 5/5(a).]

"Citizen's enforcement proceeding" or "citizen's enforcement action" means an enforcement action brought before the Board pursuant to Section 31(b) of the Act by any person who is not authorized to bring the action on behalf of the People of the State of Illinois. [415 ILCS 5/31(b).]

"Clean Air Act" means the federal Clean Air Act, 42 U.S.C. 7401 et seq. (See also 415 ILCS 5/39.5(1).)

"Clean Water Act" means the federal Clean Water Act, 33 U.S.C. 1251 et seq.

"Clerk" means the Clerk of the Board.

"Complaint" means the initial filing that begins an enforcement proceeding pursuant to Section 31 of the Act and 35 Ill. Adm. Code 103. [415 ILCS 5/31.]

"Compliance plan" means a detailed description of a program designed to achieve full 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 any cause of action in favor of one or more respondents against one or more complainants.

"Cross-complaint" means a pleading filed by a respondent or cross-respondent setting forth any cause of action he has against a person alleged to be liable thereon, whether or not such person is already a party to the action. A cross-complaint may be filed if the cause of action asserted in the cross-complaint, (1) arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause brought against him or (2) asserts a claim, right, or interest in the property or controversy which is the subject of the cause brought against the respondent. (See 35 Ill. Adm. Code 103.206.)

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

"CSO" means combined sewer overflow.

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

"Decision deadline" means the last day of any decision period, as established in the Act, within which the Board is required to render a decision in an adjudicatory proceeding. (See 35 Ill. Adm. Code 101.Subpart C.) (See e.g. Section 38(a), 40, and 40.1 of the Act which establish a 120 day

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decision deadline for variances permit appeals and review of pollution control facility siting decisions.)

"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 35 Ill. Adm. Code 101.Subpart C.) (See e.g. Section 38(a), 40, and 40.1 of the Act which establish a 120 day decision deadline for variances, permit appeals and review of pollution control facility siting decisions.)

"Declaratory ruling" means an opinion of the Board stating the meaning or applicability of a section or sections of the Act or Board regulations which is issued in response to a request made pursuant to 35 Ill. Adm. Code 101.Subpart I.

"Deinked" means paper that has been processed to remove inks, clays, coatings, binders and other contaminants. (Illinois Solid Waste Management Act, Section 2.1, P.A. 87-485, effective January 1, 1992.)

"Delegated unit" means the unit of local government to which the Agency has delegated its administrative citation or other function pursuant to Section 4(r) of the Act. [415 ILCS 5/4(r).]

"Department or DNR" means the Department of Natural Resources.

"Discovery" means a pre-hearing process that can be used by one party to obtain facts and information about the case from the other party in order to assist the party's preparation for trial. The discovery tools include but are not limited to: depositions upon oral and written questions, written interrogatories, production of documents or things, and requests for admission.

"DNS" means the Illinois Department of Nuclear Safety.

"DOA" means the Department of Agriculture.

"Document" means pleading, notice, motion, affidavit, memorandum, brief, petition, letter or other paper or combination of papers required or permitted to be filed.

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

"Enforcement proceeding" or "action" means an adjudicatory proceeding brought upon a formal complaint filed pursuant to Section 31(a) of the Act by the Attorney General, State's attorney or other persons, in which complaint there is alleged violation of the Act or any rule or regulation or Board order thereunder or any permit or term or condition thereof. [415 ILCS 5/31(a).]

"Evidence" means a paper, drawing, map, chart, report, study, or other tangible thing produced and submitted at hearing, or testimony received at hearing which is produced to prove the existence or nonexistence of some matter of fact.

"Ex parte communication" means a communication with a Board member or Board employee that is conducted outside the record of an adjudicatory proceeding, the content of which communication reflects on the merits of any position advocated in the adjudicatory proceeding. Communications dealing solely with procedural issues are not ex parte communications. (See also Section 101.114 of this Part.)

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"Fast track rulemaking" means a Clean Air Act rulemaking conducted pursuant to Section 28.5 of the Act. [415 ILCS 5/28.5.]

"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 22.7.* [415 ILCS 5/28.2.]

"Filing" means the act of delivering a document into the custody of the Clerk with the intention of incorporating that document into a proceeding or record before the Board.

"Final order" means an order of the Board that terminates the case leaving nothing further to litigate or decide and which is appealable to an appellate court pursuant to Section 41 of the Act. [415 ILCS 5/41.] (See 35 Ill. Adm. Code 101.Subpart J.)

"Form or forms" means a document which contains the information in a reasonably similar format as the Board's form or forms as set forth in 35 Ill. Adm. Code 101.Appendix G or on the Board's Home Page at <http://www.state.il.us/pcb/pcbhp.htm>.

"Frivolous" means a request for relief that the Board does not have the authority to grant.

"Hearing" means a public proceeding where the parties to an action, and other interested persons as provided for by the Act and the Board's procedural rules, present testimony and argument regarding their positions.

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

"Home Page" or "World Wide Web Site" means the Board's computer-based informational service accessed on the internet at <http://www.state.il.us/pcb/pcbhp.htm>.

"Identical-in-substance rules (or 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.]

"Incorporation by reference" means to make one document become part of another document by referring to the first document that is to be made part of the second document. (See 35 Ill. Adm. Code 101.306.)

"Initial filing" means the filing which initiates a Board proceeding. 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.

"Inquiry hearing" means a hearing conducted by the Board with the intent of gaining perspective from the public regarding the need for a rulemaking in a given area.

"Interlocutory appeal" means an appeal of a Board decision which is dispositive of all the contested issues in the case. (See 35 Ill. Adm. Code 101.1004(b)(4).)

"Intervenor" means a person who, with the leave of the Board, voluntarily participates as a party in an adjudicatory proceeding.

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"JCAR" means the Joint Committee on Administrative Rules.

"Joinder" means giving parties brought into an action by the Board the same rights as original parties as co-petitioners, co-complainants or co-respondents.

"Local government enforcement proceeding" or "action" means an action brought pursuant to Section 31(b) of the Act by a unit of local government. [415 ILCS 5/31(b).]

"Material" means important; more or less necessary; having influence or effect; going to the merits; having to do with matter, as distinguished from form. Representation relating to matter which is so substantial and important as to influence party to whom made is "material".

"Misnomer" means a mistake in name, giving an incorrect name in a complaint or other document.

"Motion" means a request made to the Board 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" below.)

"Motion for oral argument before Board" means a motion to verbally argue the law of a case before the Board pursuant to 35 Ill. Adm. Code 101.700.

"Motion for reconsideration" means a motion filed by a party in a proceeding before the Board requesting the Board to change its final order or final opinion and order usually based on an error of law, change in law or new evidence. (See 35 Ill. Adm. Code 101.520.)

"Motion for summary judgment" means a request that the Board find based on the pleadings and prior to the hearing that as a matter of law the movant is entitled to judgment in a case where there is no genuine issue of material fact. (See 35 Ill. Adm. Code 101.516.)

"Motion to cancel hearings" means a motion requesting the Board to not hold or vacate a previously scheduled hearing. (See 35 Ill. Adm. Code 101.510.)

"Motion to consolidate" means a motion requesting the Board to join two separate cases into one case to be considered together.

"Motion to dismiss" means a motion requesting the Board to end a case.

"Motion to file document instanter" means a motion requesting the Board to accept a late filing at the time filed.

"Motion to intervene" means a motion by a non-party to be joined as a party in an ongoing case.

"Motion to join necessary party" means a motion to make a person a party to a case when complete relief cannot be given to those already parties without the joinder.

"Motion to sever" means a motion to separate an action or proceeding into two or more independent actions or proceedings, each of which terminates in a separate, final judgment.

"Motion to waive hearing requirement" means a motion to not hold an otherwise required hearing in a case.

"Movant" means the person who files a motion.

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"New pollution control facility" means:

- (1) *a pollution control facility initially permitted for development or construction after July 1, 1981; or*
- (2) *the area of expansion beyond the boundary of a currently permitted pollution control facility.*

[415 ILCS 5/3.32(b).]

"Non-party participant" means, in an adjudicatory proceeding, a person who cannot or does not wish to appear as a party, but who wishes to participate to the extent the Act and the Board's procedural rules allow.

"Notice list" means in a regulatory proceeding the list of persons who will receive all Board and hearing officer opinions and orders. Persons on a regulatory notice list do not receive copies of all motions and testimony. (See "Service List") (See also, 35 Ill. Adm. Code 125.422.)

"Notice of appearance" means the act of informing the other party(s) that an attorney will be representing a party or non-party participant in a case. (See 35 Ill. Adm. Code 101.Appendix B for an example Notice of Appearance.)

"Notice of withdrawal of a case" means a filing that states that petitioner or complainant withdraws its case before the Board and no longer wishes a decision from the Board. (See 35 Ill. Adm. Code 101.302(l).)

"Notice to reinstate 120-day decision deadline" means to restart the 120-day decision period after a Negotiation Waiver has been filed. Such notice will give the Board a full 120 days in which to make a decision. (See 35 Ill. Adm. Code 101.308.)

"Oral argument" means a formal statement of advocacy made at a Board meeting with leave of the Board. (See 35 Ill. Adm. Code 101.700.)

"Order" means the Board's written mandate; precept; command or direction given to the parties upon a Board decision.

"OSFM" means Office of the State Fire Marshal.

"OSFM appeal" means an appeal of an OSFM final decision concerning eligibility and deductibility made pursuant to Title XVI of the Act. [415 ILCS 5/57 *et seq.*]

"Participant" means any person, not including the Board or its staff, 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, but not limited to, filing a comment, being added to the notice list of a particular proceeding, or testifying at hearing. (See 35 Ill. Adm. Code 125.108.)

"Participant in a CAAPP Comment Process" means a person who participated at the Clean Air Act Permit Program (CAAPP) permit hearing before the Agency.

"Party" means the person by or against whom a case is brought.

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"Party in interest" means the Agency when asked to conduct an investigation pursuant to Section 30 of the Act during an ongoing case. [415 ILCS 5/30.]

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

"Person " means *any individual, partnership, co-partnership, firm, 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 5/3.26.]

"Petition" means the initial filing in an adjudicatory proceeding except for in an enforcement proceeding, including but not limited to, permit appeals, UST determinations, appeals of pollution control facility siting decisions, variances and adjusted standards.

"Pollution control facility" means *any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility or waste incinerator that accepts waste from or that serves an area that exceeds or extends over the boundaries of any local general purpose unit of government. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under Metropolitan Water Reclamation District Act. The following are not pollution control facilities:*

- (1) *[Blank];*
- (2) *waste storage sites regulated under 40 CFR, Part 761.42;*
- (3) *sites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person;*
- (4) *sites or facilities at which the State is performing removal or remedial action pursuant to Section 22.2 or 55.3;*
- (5) *abandoned quarries used solely for the disposal of concrete, earth materials, gravel, or aggregate debris resulting from road construction activities conducted by a unit of government or construction activities due to the construction and installation of underground pipes, lines, conduit or wires off of the premises of a public utility company which are conducted by a public utility;*
- (6) *sites or facilities used by any person to specifically conduct a landscape composting operation;*
- (7) *regional facilities as defined in the Central Midwest Interstate Low-Level Radioactive Waste Compact;*
- (8) *the portion of a site or facility where coal combustion wastes are stored or disposed of in accordance with subdivision (s)(2) or (s)(3) of Section 21;*
- (9) *the portion of a site or facility used for the collection, storage or processing of waste tires as defined in Title XIV;*

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- (10) *the portion of a site or facility used for treatment of petroleum contaminated materials by application onto or incorporation into the soil surface and any portion of that site or facility used for storage of petroleum contaminated materials before treatment. Only those categories of petroleum listed in paragraph (5) of subsection (a) of Section 22.18(b) are exempt under this subdivision (10);*
- (11) *the portion of a site or facility where used oil is collected or stored prior to shipment to a recycling or energy recovery facility, provided that the used oil is generated by households or commercial establishments, and the site or facility is a recycling center or a business where oil or gasoline is sold at retail;*
- (12) *the portion of a site or facility utilizing coal combustion waste for stabilization and treatment or only waste generated on that site or facility when used in connection with response actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the federal Resource Conservation and Recovery Act of 1976, or the Illinois Environmental Protection Act or as authorized by the Agency.*

[415 ILCS 5/3.32(a).]

"Pollution control facility siting appeal" means an appeal to the Board of a decision made by a unit of local government filed pursuant to Section 40.1 of the Act. [415 ILCS 5/40.1.]

"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.* (Illinois Solid Waste Management Act, Section 3(f)(2), P.A. 87-485, effective January 1, 1992.)

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

"Prehearing conference " means a meeting held prior to the hearing with the intent to maximize understanding, reach agreements and identify issues and witnesses for hearing to better utilize the time at the hearing. (See also 35 Ill. Adm. Code 125.404 and 125.406.)

"Proceeding" means an action conducted by the Board pursuant to authority granted under Section 5 of the Act. Board proceedings are of two types: quasi-legislative (e.g., rulemakings 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 variance recommended by the Agency pursuant to Section 35(b) of the Act for a period of time not to exceed 90 days within one calendar year. [415 ILCS 5/35(b).] (See 35 Ill. Adm. Code 104.308.)

"Public comment" means information submitted to the Board either by oral or written testimony or written document that has been filed with the Clerk.

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

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

"RCRA variance" means a variance from a RCRA rule or a RCRA permit required pursuant to Section 21(f) of the Act. [415 ILCS 5/21(f).]

"Record" means the Clerk's official collection, as kept by the Clerk, of all documents and exhibits including but not limited to pleadings, exhibits, transcripts, documents, 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 shall contain at least 30% deinked stock or postconsumer material; beginning July 1, 1998, shall contain at least 40% deinked stock or postconsumer material; beginning July 1, 2000, shall contain at least 45% deinked stock or postconsumer material.

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

"Regulatory hearing" or "proceeding" means a hearing or proceeding held pursuant to Title VII of the Act.

"Regulatory relief mechanism" means variance, provisional variance, adjusted standards, heated effluent demonstrations, artificial cooling lake demonstration, sulfur dioxide demonstrations, revocation and reopening of Clean Air Act Permit Program permits, maximum achievable control technology determinations and culpability determinations for particulate matter less than or equal to 10 microns. (35 Ill. Adm. Code 104.)

"Relevancy or relevant" means applicability to the issue joined. That quality of evidence which renders it properly applicable in determining the truth and falsity of the matters in issue between the parties in a case. Relevancy is that which conduces to the proof of a pertinent hypothesis; a pertinent hypothesis being one which, if sustained, would logically influence the issue.

"Resource Conservation and Recovery Act (RCRA)" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq. (1991)).

"Response" means a filing in reaction to a motion filed before the Board. (See 35 Ill. Adm. Code 101.500.)

"Rule or regulation of general applicability" means a substantive rule or regulation adopted by the Board pursuant to Title VII of the Act, with such regulation applicable to all persons not explicitly exempted either within the regulation or associated site-specific regulation or adjusted standard.

"Rulemaking" or "rulemaking proceeding" means a proceeding brought under Title VII of the Act 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 the compliance with the Board's procedural rules (or rules and regulations). (See also 35 Ill. Adm. Code 101.Subpart H.)

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

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"Senior Attorney" means the Board employee as designated by the Chairman who reports to the Chairman.

"Service" means delivery of documents upon a person(s). (See 35 Ill. Adm. Code 101.304.)

"Service list" means in a regulatory proceeding the list of persons designated by the hearing officer upon whom participants must serve motions, pre-filed questions and pre-filed testimony. Persons who would like to receive copies of Board and hearing officer opinions and orders must also be on the "Notice List". (See "Notice List.") (See also Ill. Adm. Code 125.422.)

"Set for hearing order" means an order of the Board or its designee issued in an adjudicatory proceeding that authorizes or directs that a hearing be held.

"Severance" means the separation of an action or proceeding into two or more independent actions or 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 125.208.)

"State enforcement proceeding" or "action" means an enforcement action that is not a citizen's enforcement action that is brought pursuant to Section 31(a) of the Act. [415 ILCS 5/31(a).]

"Stay" means a temporary suspension of the regular progress of a proceeding pursuant to an order of the Board or by operation of the Act. (See 35 Ill. Adm. Code 101.514.)

"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 which compels the production of specific documents and other items, material and relevant to the facts in issue in an adjudicatory proceeding, which documents and items are in the control of the person or body served with process.

"Substantive amendment to an initial filing" means an alteration of the initial filing beyond corrections of misnomers or other similar minor or typographical errors.

"Summary judgment" means disposition of the case without hearing when there is no dispute as to the material facts and the only question that remains is a question of law. (See 35 Ill. Adm. Code 101.516.)

"Third party" means a person who is a party to a case or proceeding but was not one of the principal parties in the initial case or proceeding. (See 35 Ill. Adm. Code 105.200.)

"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 measure to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.* [415 ILCS 5/3.48.]

"Trade secret petition" means a petition filed pursuant to the Board's procedural rules regarding trade secret information found at 35 Ill. Adm. Code 130.

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"Transcript" means the official copy of the hearing record.

"Undue delay" means a delay which is unwarranted, unjustified, improper, or is more delay than necessary.

"USEPA" means the United States Environmental Protection Agency.

"UST Act" means Title XVI of the Act. [415 ILCS 5/57 *et seq.*]

"UST appeal/IEPA" means an appeal of an Agency final decision made pursuant to the UST Act.

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

"Waiver" means the intentional relinquishing of a known right, usually with respect to hearing before the Board or entry of a Board decision within the decision period. (See also 35 Ill. Adm. Code 101.308.)

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

Section 101.300 Computation of Time

- a) Computation of Time. Computation of any period of time prescribed in the Act or these rules shall begin with the first calendar day following the day on which the act, event or development occurs and shall run until the end of the last day, or the next business day if the last day is a Saturday, Sunday or national or state legal holiday.
- b) Time of Filing. Documents shall be considered filed when they are filed in conformance with the requirements found in Section 101.302 of this Part and any other filing requirements specifically set out in the other Parts of these rules.
 - 1) If filed in person, by messenger service or mail delivery service other than U.S. Mail documents are considered filed when they are received in the Office of the Clerk.
 - 2) For purposes of filing deadlines, documents filed by U.S. Mail shall be deemed filed when they are postmarked, provided all filing requirements are met as set forth in Section 101.302 of this Part. Proof of mailing shall be made pursuant to subsection (c).
 - 3) Documents received in the Office of the Clerk after 4:30 p.m. shall be marked as filed the following business day. The Clerk shall record the appropriate filing date on all filed documents.
 - 4) For purposes of Board decision deadlines time does not begin until the date on which the initial filing is date-stamped by the Clerk.

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- c) Time of Service. In the case of personal service, service is deemed complete on the date personal delivery was effectuated. In the case of facsimile transmission, service is deemed complete on the date of a complete and proper transmittal (facsimile filings are only allowed in accordance with Section 101.302(d).) In the case of service by registered or certified mail, or by messenger service, service is deemed complete on the date specified on the registered or certified mail receipt or the messenger service receipt. In the case of service by US Mail, service is presumed complete four days after mailing. Such presumption can be rebutted by proper proof.
- d) Date of Board Decision.
 - 1) For purposes of statutory decision deadline cases, the date of the Board decision is the date of the Board meeting where a final opinion and order of the Board was made by the vote of at least four Board members.
 - 2) For purposes of appeal, the date of the Board decision is the date of service of the final opinion and order by the Board upon the appealing party. Or, in the event of a timely filed Motion for Reconsideration was filed pursuant to Section 101.520 of this Part, the date the Board order ruling upon the motion is served by the Board upon the appealing party.

101.302 Filing of Documents and Withdrawal of Cases

- a) This section contains the Board's general filing requirements. However, the more specific Part for a case type may contain additional requirements. The Clerk will refuse for filing any document which does not comply with the requirements below.
- b) All documents filed with the Board must be filed with the Office of the Clerk of the Board at:
 - 100 West Randolph Street
 - James R. Thompson Center, Suite 11-500
 - Chicago, Illinois 60601-3218
- c) Documents may be filed by U.S. Mail or other mail delivery service, in person or by messenger.
- d) Filing by electronic transmission or facsimile will only be allowed in special or emergency circumstances and must receive prior approval of the Senior Attorney or hearing officer assigned to the case. In the event such filing is approved, the original and appropriate number of copies as otherwise required by this section must be postmarked or delivered to the Board within 24 hours of the electronic or facsimile transmission.
- e) All initial filings shall be set forth on a Board Form, or in a reasonably similar format which contains all information required on the relevant form. Board Forms are electronically available on the Board's Home Page or may be obtained at the Board's Chicago or Springfield offices. Additionally copies of the Board forms appear in Appendix G of this Part. Where format requirements exist in these rules, the Clerk shall not accept for filing documents which do not conform.
- f) The following initial filings require filing fees and will only be considered filed when accompanied by the appropriate fee, which may be paid in the form of government

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voucher, money order, or check made payable to the Illinois Pollution Control Board, but which may not be paid in cash:

- 1) Petition for Site-Specific Regulation, \$75;
- 2) Petition for Variance, \$75;
- 3) Petition for Review of Agency Permit Decision, UST Decision, or any other Appeal filed pursuant to Section 40 of the Act, \$75;
- 4) Petition to Review Pollution Control Facility Siting Decisions, pursuant to Section 40.1 of the Act [415 ILCS 5/40.1], \$75; and
- 5) Petition for Adjusted Standard, pursuant to Section 28.1 of the Act [415 ILCS 5/28.1], \$75

[415 ILCS 5/7.1.]

- g) All documents filed shall be served in accordance with Subpart C of this Part.
- h) All documents filed by parties with the Board must be typed in at least 12 pitch font, should contain the relevant case caption and number and must be submitted on 8 1/2 x 11 inch recycled paper as defined in 35 Ill. Adm. Code 101.Subpart B.
- i) Unless otherwise provided in these rules or by the Board, all forms and documents must be filed with a signed original and 11 duplicate copies (12 total), except that documents specifically directed to the assigned hearing officer, such as discovery motions, interrogatories and answers, subpoenas, etc., may be filed with a signed original and four copies (5 total), or as set forth by the hearing officer.
- j) Non-Conforming Exhibits. When possible, exhibits must be reduced to conform to 8 1/2 X 11 inch recycled paper. However, one non-conforming original copy may be filed with the Clerk's Office. Upon closure of the case, the non-conforming copy may be returned to the person filing it in accordance with 2 Ill. Adm. Code 2175.300.
- k) Briefs/Page Limitation. Without prior approval of the Board or hearing officer, no motion, brief in support of motion, or brief may exceed 50 pages and no brief in response to motion or response brief may exceed 25 pages. These limits do not include appendices containing relevant material.

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 case type may contain additional requirements.
- b) Duty to Serve. Parties in Board adjudicatory proceedings are responsible for service of all documents filed with the Office of the Clerk. Proof of service of initial filings may be filed with the Board upon completion of service.
- c) Method of Service. Service may be effectuated by U.S. Mail or other mail delivery service, in person, by messenger or by facsimile, except for service of enforcement complaints and administrative citations which shall be made personally, by registered

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or certified mail, or by messenger service. Proof of service of enforcement complaints and administrative citations must be filed with the Board upon completion of service.

- d) Affidavit or Certificate of Service. A case is subject to dismissal, and parties are subject to sanctions in accordance with Section 101.800 of this Part, if service is not timely made. Proof of proper service is the responsibility of the party filing and serving the document. An Affidavit of Service or Certificate of Service must accompany all filings of all parties. A sample form of the Affidavit of Service and Certificate of Service is available at the Board's Offices (the locations of the Board's Offices are listed at 2 Ill. Adm. Code 2175.115) and may be obtained electronically at the Board's Home Page.
- e) Service of amicus curie briefs. Any person who files an amicus curie brief with the Board in any proceeding shall serve copies of that brief to all parties in accordance with this Section.
- f) Service of Comments of Non-Party Participants in an Adjudicatory Proceeding. Non-Party Participants shall not be required to serve their comments upon the parties to the proceeding. The Office of the Clerk shall serve all comments filed by Non-Party Participants upon all parties to the proceeding and the hearing officer. The Board will consider such comments as time and the Act allow.
- g) Service on State Agencies shall be at the addresses listed below unless a specific person has an appearance on file with the Board.
 - 1) Service on the Illinois Environmental Protection Agency (Agency). The Agency shall be served at the following address:

Division of Legal Counsel
Illinois Environmental Protection Agency
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276
 - 2) Service on Office of State Fire Marshall (OSFM). The OSFM shall be served at:

Division of Petroleum and Chemical Safety
Office of the State Fire Marshall
1035 Stevenson Dr.
Springfield, IL 62703
 - 3) Service on the Illinois Attorney General. The Office of the Attorney General shall served at:

Division Chief of Environmental Enforcement
Office of the Attorney General
James R. Thompson Center
100 West Randolph 11th Floor
Chicago, IL 60601

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- 4) Service on the Illinois Department of Natural Resources (DNR) shall be served at:

Office of Legal Services
Illinois Department of Natural Resources
524 S. Second
Springfield, IL 62701-1787

- 5) Service on the Illinois Department of Transportation (IDOT). IDOT shall be at:

Office of Chief Counsel
DOT Administration Building
Room 300
Springfield, IL 62764

- 6) Service of Region Five of the United States Environmental Protection Agency (USEPA). USEPA Region Five shall be served at:

USEPA, Region V
230 South Dearborn Street
Chicago, Illinois 60604

Section 101.306 Incorporation Of Documents by Reference

- a) Upon the separate written request of any person or on its own initiative, the Board or hearing officer may incorporate materials from the record of another Board docket into any proceeding. The person seeking incorporation shall file with the Board four copies of the material to be incorporated. The person seeking incorporation shall demonstrate to the Board or the hearing officer that the material to be incorporated is relevant to the proceeding. Notice of the request shall 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.

Section 101.308 Statutory Decision Deadlines and Waiver of Deadlines

- a) Petitions in the following proceedings have a statutory right to a decision of the Board within 120 days of a complete filing: Variances (Section 38 of the Act), Permit Appeals and UST Fund determinations (Section 40 of the Act), Pollution Control Facility Siting Review (Section 40.1 of the Act). [415 ILCS 5/38, 40, and 40.1.]
- b) Where the petitioner imposes the 120-day decision deadline the Board will proceed expeditiously to establish all hearing and filing requirements. Failure to follow Board requirements on such deadlines will subject the party to sanctions pursuant to Subpart H of this Part. This section will be strictly construed where there is a 120-day decision deadline unless the Board receives a waiver as set out below.

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- c) All waivers of a deadline for Board action, as specified in Sections 38, 40, 40.1 and 41 of the Act, must be filed as a separate document. [415 ILCS 5/38, 40, 40.1 and 41.] 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 his authorized representative or attorney.
- 1) Open Waiver. Waives the decision deadline completely and unequivocally.
 - 2) Negotiation Waiver. Waives the decision deadline until such time as the petitioner elects to reinstate the 120-day decision period by filing a notice to reinstate. Upon proper filing of the notice, the 120-day decision deadline is reinstated by the Board. In accordance with Section 101.300(b)(4), the 120 days begins to run as of the date the notice is filed with the Board.
 - 3) Time Certain Waiver. Waives the decision deadline until a time certain. The time certain may be expressed in length of days (e.g. 90 days) or to a specific calendar date. If expressed in length of days, day one shall be the first day after the date upon which the current time clock expires.

Section 101.310 Notice of Withdrawal of Case

Petitioners or Complainants may withdraw their case before the Board by filing a written notice of withdrawal. This notice must be served in accordance with Section 101.304 of this Part. A sample withdrawal form is available at the Board's Chicago or Springfield offices (the locations of Board Offices are listed at 2 Ill. Adm. Code 2175.115) and may be obtained electronically on the Board's Home Page. A copy of the Notice to Withdraw appears in Appendix F of this part. Upon proper filing and service of the notice, the Board will consider the case withdrawn and the docket closed.

SUBPART D: PARTIES, JOINDER AND CONSOLIDATION

Section 101.400 Appearances, Withdrawals, And Substitutions of Attorneys In Adjudicatory Cases

- 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. [705 ILCS 205/1.]
 - 2) Corporations, associations, and units of government may appear through an attorney-at-law licensed and registered to practice law. [705 ILCS 220/1 and 705 ILCS 205/1.]
 - 3) Attorneys who are licensed to practice in another state than Illinois and who are not licensed and registered to practice in the State of Illinois may request to appear pro hac vice on a particular matter on motion filed with the Board.
 - 4) Any attorney appearing in a representative capacity shall file a separate written notice of appearance with the Clerk, together with proof of service and notice of filing of the appearance on all parties in the proceeding. Law firms, the Agency, and the Attorney General's Office when appearing before the Board shall designate a lead attorney for purposes of phone and mail

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contact pertaining to case. A sample appearance form is available at the Board's offices (the location of the Boards Offices are listed at 2 Ill. Adm. Code 2175.115), on the Board's Home Page, and at Appendix A of this Part.

- 5) Any person appearing before the Board may appear in a special limited capacity to contest jurisdiction.
- b) **Withdrawals.** An attorney who has appeared in a representative capacity and who wishes to withdraw from that representation shall file a notice of withdrawal with the Clerk, together with proof of service and notice of filing on all parties or their representatives. A sample notice of withdrawal form is available at the Board's offices (the locations of the Board's Offices are listed at 2 Ill. Adm. Code 2175.115), Appendix C of this Part, and on the Board's Home Page.
- c) **Substitution.** Any attorney who substitutes for an attorney of record shall file a written appearance pursuant to subsection (a) above. That appearance shall identify the attorney for whom the substitution is made. However, no attorney shall be considered withdrawn from a case until a formal withdrawal is filed in accordance with subsection (b) above.
- d) Any person may appear on behalf of themselves or others in a rulemaking proceeding in accordance with 35 Ill. Adm. Code 125.100(b).

Section 101.402 Intervention or Joinder of Parties

- a) Intervention or joinder may be allowed in specific cases. Where the person seeking to be joined otherwise constitutes a proper party under the Act and the Board's regulations the Board may allow them to be joined. Intervention is only allowed in enforcement actions filed under Title VIII of the Act.
- b) Where the Act and Board rules are silent as to party status the Board may look to the following common law principles to decide if the person may be joined:
 - 1) Material prejudice may result to such person absent joinder;
 - 2) The person is so situated that the person may be adversely affected by a final order of the Board;
 - 3) A complete determination of a controversy cannot be made without joinder of the person; or
 - 4) It may be necessary to impose conditions upon the person if the relief requested is to be granted.
- c) A joined party or intervenor shall have the same rights as any co-party, except that the original petitioner retains sole control of the decision deadline.

Section 101.404 Agency as a Party in Interest

Pursuant to Section 30 of the Act, the Board may request that the Agency investigate any alleged violation of the Act, the regulations or 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

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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 case.

Section 101.406 Consolidation of Claims

The Board, upon the motion of any party or upon its own motion, may consolidate two or more proceedings for the purpose of hearing or decision or both. The Board will consolidate the proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and where material prejudice to any party would not follow as a consequence of consolidation. The Board will not consolidate cases of different types where the burden of proof is different for the cases.

Section 101.408 Severance of Claims

Upon motion of any party or on the Board's own motion, in the interest of convenient, expeditious, and complete determination of claims, and where material prejudice to any party would not follow as a consequence of severance, the Board may sever claims involving any number of parties.

SUBPART E: MOTIONS

Section 101.500 Filing of Motions and Responses

- a) The Board may entertain any motion the parties wish to file which is cognizable in the Act, these rules, and the Illinois Code of Civil Procedure.
- b) All motions must be in writing, unless made orally on the record during a hearing, and shall state whether directed to the Board or to the hearing officer. Motions which should be directed to the hearing officer are set out in Section 101.502 of this Part. All motions should be filed and served in conformance with Subpart C of this Part.
- c) Motions may be filed at anytime unless otherwise specifically provided.
- d) Within 7 days after service of a motion, a party may file a response to the motion. If no response is filed, such party shall be deemed to have waived objection to the granting of the motion, but such 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 7 day response period except in deadline driven cases 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 shall not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice. However any motion for leave to file a reply shall be filed with the Board within 7 days from the service of the response.

Section 101.502 Motions Directed to Hearing Officer

- a) The hearing officer has the authority to rule on all motions which are not dispositive of the case. Examples of motions which hearing officers may not rule upon are 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

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reconsideration. The duties and authorities of the hearing officer are further set out in Section 101.610 of this Part.

- b) An objection to a hearing officer ruling or any oral motion to the Board made at hearing will be deemed waived if not raised in written post-hearing submissions to the Board.
- c) Unless otherwise ordered by the Board to prevent material prejudice, neither the filing of a motion, the certification of a question to the Board, nor any appeal to the Board of a hearing officer order shall stay the proceeding or extend the time for the performance of any act. All hearing officer orders will remain in effect during the pendency of any appeal to the Board.

Section 101.504 Contents Of Motions And Responses

All motions and responses must clearly state the grounds upon which the motion is made and shall contain a concise statement of the position or relief sought. Facts asserted which are not of record in the proceeding must be supported by oath or affidavit. A brief or memorandum in support of the motion or response may be included. Section 101.506 Motions Attacking Sufficiency of Petition or Complaint

All motions to strike, dismiss, or challenge the sufficiency of any pleading filed with the Board must be filed within 21 days after the service of the challenged document, unless the Board determines that material prejudice would result.

Section 101.508 Motions to Board Preliminary to Hearing

Motions which a party desires the Board to rule on before hearing should be filed 21 days prior to the regularly scheduled Board meeting before the noticed hearing date. Any motion filed after the above prescribed time shall be considered by the Board as time permits.

Section 101.510 Motion to Cancel Hearing

- a) **Time for Filing.** Unless otherwise provided by Board or hearing officer order, requests for cancellation of hearing may be granted upon motion to the hearing officer, filed no less than 10 days, or 5 days if the motion is agreed to by all parties, before the scheduled hearing date. Any motion for cancellation filed less than 10 days, or 5 days if the motion is agreed to by all parties, before the hearing date may be granted only upon a showing by the movant that movant would suffer material prejudice if the hearing was not canceled.
- b) **Contents.** All motions for cancellation must be supported by an affidavit of the person or persons having knowledge of the facts supporting the request for cancellation. The affidavit shall include the factual basis for the cancellation, a complete status report detailing the progress of the proceeding, the number of cancellations previously granted, and a proposed date for rescheduling the hearing. The hearing officer shall grant the motion only upon a showing that the request for cancellation is not the result of lack of due diligence by the movant.
- c) A motion for cancellation of a hearing must be accompanied either by a waiver of the decision deadline pursuant to Section 101.308 of this Part or a proposed date for rescheduling the hearing.

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- 1) The hearing officer may grant a motion for cancellation of hearing that is not accompanied by a waiver, only where a waiver of the statutory decision deadline by the petitioner has previously been submitted, in writing, to the hearing officer and the Clerk, or, where a waiver of the decision deadline is not applicable, such as in a non-deadline case.
 - 2) The waiver of the decision deadline must allow enough time to reschedule hearing, provide the statutorily required notice of the hearing, and provide sufficient time for Board decision making.
 - 3) If the hearing officer grants a motion for cancellation, a revised schedule for completion of the record must be filed with the Clerk and served on all parties in accordance with Subpart C of this Part.
- e) The actual cost for newspaper re-notice of a canceled hearing may be assessed against the moving party by the Board in accordance with 2 Ill. Adm. Code 2175.204.
 - f) If the motion for cancellation of hearing is filed less than two business days before the scheduled hearing, the cancellation fee for the court reporter may be assessed against the moving party by the Board.

Section 101.512 Motion for Expedited Review

- a) Motions for expedited review shall be directed to the Board. All motions for expedited review shall contain a complete statement of the facts and or reasons for the request and must be accompanied by an oath or affirmation attesting that the reasons and facts cited are true.
- b) In acting on a motion for expedited review the Board at a minimum will consider all statutory requirements and whether material prejudice will result from the motion being granted or denied.
- c) The Board will grant a motion for expedited review consistent with available resources, decision deadlines, and Board case load.

Section 101.514 Motions to Stay Proceedings

- a) Motions to stay a proceeding must be directed to the Board. A status report detailing the progress of the proceeding and giving information about why the stay is needed must be attached to 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. Additional requests for stay of the proceedings shall be directed to the hearing officer and must be accompanied by waiver of any decision deadline.

Section 101.516 Motions for Summary Judgment

- a) Motion. Any time after the opposing party has appeared (or after the expiration of time within which any party is required to appear), but no less 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

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response to a motion for summary judgment must be filed within 14 days from service of the motion for summary judgment.

- b) Board Determination. If the pleadings, depositions and admissions on file, together with any affidavits, show 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 hearing pending decision on a motion for summary judgment shall file a motion to cancel hearing pursuant to Section 101.510 of this Part.
- d) Any motion for summary judgment not ruled on prior to the commencement of the hearing is deemed denied.

Section 101.518 Motions for Interlocutory Appeal from Hearing Officer Orders

Interlocutory appeals may be taken to the Board from a ruling of the hearing officer. The Board may consider an interlocutory appeal upon the filing of a written motion.

Section 101.520 Motions for Reconsideration

- a) Any motion for reconsideration or modification of a final Board opinion and order must be filed within 35 days of the receipt of the opinion and order. (See Section 101.1002 of this Part.)
- b) Any response to a motion for reconsideration or modification must be filed within 14 days from 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 subsection 101.300(d)(2).

Section 101.522 Motions for Extension of Time

The Board or hearing officer, for good cause shown on a motion after notice to the opposite party, may extend the time for filing any document or doing any act which is required by these rules to be done within a limited period, either before or after the expiration of time.

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

Section 101.600 Hearings Overview

All hearings are open to the public and are held in compliance with the Americans with Disabilities Act. The hearings are generally held in the county where the source or facility is located unless otherwise ordered by the hearing officer. All hearings are subject to cancellation without notice. Interested persons may contact the Clerk's office or hearing officer assigned for information about the hearing. Parties, non-party participants, and any members of the public shall at all times conduct themselves with the same degree of dignity and respect that they would have before a court.

Section 101.602 Notice of Board Hearings

The Clerk of the Board shall provide notice of all hearings, except for administrative citation hearings, in a newspaper of general circulation in the county where the facility, or pollution source is located, or

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where the activity in question occurred. Notice shall be published at least 21 days in advance of hearing. However, if the proceeding involves federal rules which the State has been given delegated authority to administer, the notice shall be published at least 30 days in advance of hearing.

Section 101.604 Formal Board Transcript

All Board hearings shall be transcribed by a certified court reporter in accordance with Section 32 of the Act. Any party or witness may file a motion with the hearing officer to correct the transcript within 14 days after receipt of the transcript in the Board offices. Failure of any party or witness to timely file a motion to correct the transcript constitutes waiver of right to correct, unless material prejudice results.

Section 101.606 Informal Recordings of the Proceedings

Informal recording of Board proceedings is allowed as provided for in this Section. The hearing officer may prohibit audio or video recording at hearing if a witness refuses to testify on the grounds that the witness may not be compelled to testify if any portion of the testimony is to be broadcast or televised. If the hearing officer determines that recording is disruptive or detrimental to proper development of the record, he may limit or prohibit audio and/or video recording

Section 101.608 Default

- a) Failure of a party to appear at the hearing, or failure to proceed as ordered by the Board or hearing officer, shall constitute default.
- b) If a party fails to appear at hearing, the opposing party must prove their prima face case in order to prevail on the merits.

Section 101.610 Duties and Authority of Hearing Officer

The hearing officer shall have the duty to manage cases assigned, set and go to hearing, 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. He shall have all powers necessary to these ends, including (but not limited to) the authority to:

- a) Require parties proceed to hearing and establish a schedule for, and notice and distribution of, any prior submission of testimony and written exhibits;
- c) Administer oaths and affirmations;
- d) Allow for the examination of or examine witnesses to insure a clear and complete record;
- e) Regulate the course of the hearing; including but not limited to controlling the order of proceedings;
- f) Establish reasonable limits on the duration of the testimony and questioning of any witness and limit repetitious or cumulative testimony and questioning;
- g) Determine that a witness is adverse or unwilling pursuant to Section 101.624 of this Part;
- h) Issue an order compelling the answering of interrogatories or other discovery requests;

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- i) Order the production of evidence pursuant to Sections 101.614 of this Part;
- j) 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;
- k) Initiate, schedule and conduct a pre-hearing conference;
- l) Order a briefing and comment schedule and exclude late-filed briefs and comments from inclusion in the record for decision;
- m) Rule upon objections and evidentiary questions;
- n) May order discovery pursuant to Sections 101.614 and 101.616 of this Part;
- o) May 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;
- p) Assist the Board in its deliberations; and,
- q) Manage cases and set status report schedules.

Section 101.612 Schedule for Completion of the Record

- a) The hearing officer may create a schedule for completion of the record. The schedule may provide dates and deadlines for pre-hearing conferences, completion of discovery, 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 and must be filed with the Clerk and served on all parties.
- b) The hearing officer may rule upon any motion to modify the schedule for completion of the record. The hearing office may grant such motion to the extent that the revised schedule continues to provide 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 revised schedule must be filed with the Clerk and served on all parties.

Section 101.614 Production Of Information

The hearing officer may at any time on his or her own motion, or on motion of any party, or at the direction of the Board, order the production of information which is relevant to the matter under consideration. The hearing officer will deny, limit or condition the production of information when necessary to prevent undue delay, undue expense, harassment, or to protect materials from disclosure consistent with the provisions of Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 101 through 130.

Section 101.616 Discovery

The assigned hearing officer will set all time deadlines for discovery not already provided for in this Subpart. Time deadlines will be consistent with Board deadlines. Discovery deadlines provided for in the Code of Civil Procedure do not apply. [735 ILCS 5/1-101 *et seq.*] All discovery disputes will be handled by the assigned hearing officer.

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- a) Scope of Discovery. All relevant information and information calculated to lead to relevant information is discoverable, unless privileged or is found to be a trade secret in accordance with 35 Ill. Adm. Code 130.
- b) Disagreements on Discovery. 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) Time for Discovery. All discovery must be completed at least ten days prior to the scheduled hearing in the case unless the hearing officer orders otherwise.
- d) Protective Orders. The hearing officer may, upon the hearing officer's own initiative, or on the motion of any party or witness, issue protective orders denying, limiting, conditioning or regulating discovery to prevent unreasonable expense, or harassment, and to expedite resolution of the proceeding. These protective orders shall be made in accordance with Section 101.614 of this Part.
- e) Objections to Discovery. 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. Failure to comply with any order regarding discovery subjects the offending persons to sanctions pursuant to Subpart H of this Part.
- g) Bad Faith. If any person in bad faith files any request for discovery or answers to discovery, or knowingly gives a false answer to discovery questions, the Board, upon motion or on its own initiative, may impose sanctions pursuant to Subpart H of this Part.
- h) Duty to Supplement Discovery. 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.

Section 101.618 Admissions

- a) General. All requests to admit must be served upon a party no later than 35 days before hearing. Copies of such requests should be served upon the Board and the hearing officer. All answers or objections to requests to admit shall be served upon the party requesting the admission, the Board, and the hearing officer within 20 days of the service of the request.
- b) 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) Any party serving a request to admit in accordance with subsection (d) or (e) below upon a *pro se* party shall include the following language in the first paragraph of the request. "Failure to respond to the following requests to admit within 20 days may

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have severe consequences. Failure to respond to the following requests will result in all the facts requested being deemed admitted as true for this case. If you have any questions about this procedure, you should contact the hearing officer assigned to this case or an attorney.”

- d) Request for Admission of Fact. A party may serve on any other party, a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request.
- e) Request for Admission of Genuineness of Document. A party may serve on any other party, a written request for admission of 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.
- f) The Board will not consider admissions of conclusions of law. The party requesting the admission may request the opposite party to concede to the admission of uncontroverted facts but the request should not be an attempt to have the opposite party concede a conclusion of law.
- g) 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 20 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 he 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 meet the substance of the requested admission.
- h) Partial denial or qualification. If good faith requires that a party deny only a part, of a matter of which an admission is requested, or if a part requires qualification, the party shall specify so much of it as is not true and deny only the remainder.
- i) Objection. Any objection to a request or to any answer will be heard by the hearing officer upon prompt notice and motion of the party making the request.
- j) Effect of Admission. Any admission made by a party pursuant to a request under this section is for the purpose of the pending action only. It does not constitute an admission by him for any other purpose and may not be used against him in any other proceeding.
- k) Expenses of Refusal to Admit. If a party, after being served with a request to admit the genuineness of any document or the truth of any matters of fact, fails to admit the truth of any of the matters or the genuineness of any documents and serves a sworn denial thereof, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter of fact, the party so moving may apply to the Board for an order under Subpart H of this Part.

Section 101.620 Interrogatories

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- a) A party may serve on any other party, no later than 35 days before hearing, written interrogatories. Unless otherwise ordered by the hearing officer. Copies must be served upon the Clerk of the Board and the hearing officer.
- b) Within 20 days of service thereof, the party to whom the interrogatory is directed shall serve the answers and objections, if any, upon the party submitting the interrogatories, the Clerk of the Board, and the hearing officer. Each interrogatory shall 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.
- c) Grounds for an objection to an interrogatory must be stated with specificity. Any ground that is not stated in a timely objection is waived.

Section 101.622 Subpoenas

- a) Upon request by any party to a contested case, the Clerk shall 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 must be completed 10 days before the date of the required appearance. A copy of the subpoena shall be filed with the Clerk after service upon the witness and served upon the hearing officer. Failure to serve both the Clerk and the hearing officer will render the subpoena null and void. Service shall 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 pursuant to subsection (c) above in accordance with the standards articulated in Section 101.614 of this Part.
- e) If the witness is a non-resident of the state, the witness may be eligible for reasonable expenses from the party requesting the subpoena as provided in Section 47 of the Fees and Salaries Act. [55 ILCS 45/47].
- f) Each witness subpoenaed by a party under this Section is entitled to receive witness fees from that party as provided in Section 47 of the Fees and Salaries Act. [55 ILCS 45/47].
- g) 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 Amended Supreme Court Rule 206(d), depositions shall be limited to three hours in length unless the parties by stipulation agree to a longer time frame or unless the hearing officer orders otherwise after a showing of good cause. [Ill. S.Ct. Amended Rule 206 (d).]
- h) Failure of any witness to comply with a subpoena shall subject the witness to sanctions under this Part, or the judicial enforcement of the subpoena. The Board may, upon

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proper motion by the party requesting the subpoena, request the Attorney General to pursue such judicial enforcement of the subpoena on behalf of the Board.

Section 101.624 Examination of Adverse and Hostile Witnesses

- a) Adverse Witnesses. At hearing, upon motion to the hearing officer, any party, or any person for whose immediate benefit the action is prosecuted or defended, or the officers, directors, managing agents, or foremen of any party may be called as an adverse witness as allowed by the Code of Civil Procedure. [735 ILCS 5/2-1102.] Adverse witnesses may be examined as if under cross-examination. The party calling for the adverse witness may rebut the testimony and may impeach the witness.
- b) Hostile Witnesses. If the hearing officer determines that any witness is hostile or unwilling, the witness may be examined by the party calling the witness as if under cross-examination.

Section 101.626 Information Produced at Hearing

In accordance with Section 10-40 of the APA, the hearing officer shall admit evidence which is admissible under the rules of evidence as applied in the civil courts of Illinois, except as otherwise provided in this Part. [5 ILCS 100/10-40.]

- a) Hearsay. The hearing officer may admit hearsay evidence which is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless such evidence is privileged.
- b) When the admissibility of evidence depends upon an arguable interpretation of substantive law, the hearing officer shall admit such evidence.
- c) Scientific Articles and Treatises. Relevant scientific or technical articles, treatises, or materials may be introduced into evidence by a party. Such 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 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 will have been made in the regular course of business, provided it was the regular course of business to make such a memorandum or record at the time of such act, transaction, occurrence, or event, or within a reasonable time 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 business, profession, occupation, and calling 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.

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- g) Oral and written statements from non-party participants may be taken at hearing in accordance with Section 101.628 of this Part.

Section 101.628 Statements from Non-Party Participants

- a) Oral statements. The hearing officer may permit a non-party participant, to make oral statements on the record when time, facilities, and concerns for a clear and concise hearing record so allow. Such oral statements shall be made under oath and are subject to cross-examination.
- b) Written statements. Any non-party participant may submit written statements relevant to the subject matter at any time prior to hearing or at hearing. Any persons submitting such a statement shall 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) below and will be afforded lesser weight than evidence subject to cross-examination.
- c) Post-hearing Comments or Amicus Curiae Briefs. Parties and non-party participants may file post-hearing 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 should be filed in accordance with Section 101.110 of this Part.
 - 1) Post-hearing 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 post-hearing 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 case, the hearing officer may provide for differing filing deadlines with respect to post-hearing comments by different persons. Pursuant to hearing officer order, rebuttal post-hearing comments may be submitted.
 - 2) All post-hearing comments must present arguments or comments based on evidence contained in the record. Such 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.

SUBPART G: ORAL ARGUMENT

Section 101.700 Oral Argument

- a) The Board will hear oral argument upon written motion of a party or the Board's own motion. Such oral argument will be transcribed by a stenographer provided by the Board and become part of the record of the proceedings before the Board. The purpose of oral argument is to address legal questions and oral argument is not intended to address new facts.
- b) A written motion for oral argument must be filed within 14 days of the close of hearing or, within 14 days of the filing of the petition or complaint, a motion for

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summary judgment, a motion to dismiss, the filing of the Agency recommendation, or any other substantive motion. Motions for oral argument shall contain arguments supporting the grant of the motion for oral argument. In considering a motion for oral argument, the Board will consider but is not limited to considering, the uniqueness of the issue or case and whether the issue or case involves a conflict of law.

- c) A waiver of any statutory decision deadline must accompany a request.
- d) If the Board grants the motion for oral argument, it will issue an order setting forth a schedule for oral argument including a briefing schedule. The brief will be limited to the issues for which oral argument was granted.

SUBPART H: SANCTIONS

Section 101.800 Sanctions For Failure to Comply with Procedural Rules, Board Orders, or Hearing Officer Orders

- a) If a party or any person fails to comply with any provision of 35 Ill. Adm. Code 101 through 130 or fails to comply with any order entered by the Board or the hearing officer, including any subpoena issued by the Board, the Board may order sanctions. The Board may order sanctions on its own motion, or in response to a motion by a hearing officer or a party.
- b) Sanctions include but are not limited to the following:
 - 1) That further proceedings be stayed until the order or rules are complied with, except in cases with a statutory decision deadline, such proceedings may be dismissed prior to the date on which decision is due;
 - 2) That the offending person be barred from filing any other pleading relating to any issue to which the refusal or failure relates;
 - 3) That the offending person be barred from maintaining any particular claim, counter claim, third-party complaint, or defense relating to that issue;
 - 4) That, as to claims or defense asserted in any pleading to which that issue is material, a judgment by default be entered against the offending person or that the proceeding be dismissed with or without prejudice;
 - 5) That any portion of the offending person's pleadings relating to that issue be stricken and, if appropriate, judgment be entered as to that issue;
 - 6) That the offending person pay the amount of reasonable expenses incurred by the other party, which includes reasonable attorney fees, as a result of their non-compliance with a Board rule or Board or hearing officer order; and
 - 7) That the offending party pay the amount of reasonable expenses incurred by the Board as a result of their non-compliance with a Board rule or Board or hearing officer order.
- c) The Board reserves the right to remove an attorney from the case if they are not diligently prosecuting the case or diligently working toward settlement of the case.

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- d) In deciding what sanction to impose the Board will consider factors including, but not limited to, the relative severity of the refusal or failure to comply, the past history of the proceeding, and the degree to which the proceeding has been delayed or prejudiced.

Section 101.802 Sanctions For Abuse Of Discovery Procedures

The Board or the hearing officer may order that information obtained through abuse of discovery procedures be suppressed. If a person willfully obtains or attempts to obtain information by an improper discovery method, willfully obtains or attempts to obtain information to which he is not entitled, or otherwise abuses discovery rules, the Board or hearing officer may enter any order provided for in Subpart F of this Part.

SUBPART I: DECLARATORY RULINGS

Section 101.900 Declaratory Rulings

- a) The Board may entertain requests for a declaratory ruling concerning the meaning or applicability of a particular Section or Sections of the Act or the Board's rules.
- b) The Board may entertain the request if it poses questions:
 - 1) Which are relevant to more than one pollution source;
 - 2) Involving newly effective sections of the Act or Board rules;
 - 3) To which the Board answer will involve administrative economics for the Board or Agency
 - 4) Which involves a conflict of law.
- c) A written request for declaratory ruling may be filed by any person, and shall be served on the Agency and the Attorney General. The request shall specify the section of the Act or Board rules involved, pose the question, and explain how the factors outlined in this Section are applicable.
- d) Clerk will docket such requests, and place them on the Board's agenda for consideration. The Board may, by order, allow responses to the request from the Agency, the Attorney General, or any other person.
- e) If the Board grants the request, it will issue an opinion setting forth its views. Opinions pursuant to this section are advisory only, and are not appealable pursuant to Section 40 of the Act. [415 ILCS 5/40.] Pendency of a request for declaratory ruling does not automatically stay any case which may pose the same or similar issue.

SUBPART J: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

Section 101.1000 Board Decisions

- a) In making its decision on a case, the Board will consider only the record of the proceeding except:

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- 1) Notice may be taken of matters of which the circuit courts of this State may take judicial notice; and
 - 2) Notice may be taken of generally recognized technical or scientific facts within the Board's specialized knowledge.
- b) Parties shall be notified either before or during the hearing, if any of the material noticed, including any staff memoranda and data, and they shall be afforded an opportunity to contest the material so noticed. The material so noticed must be identified in the Board's opinion and becomes part of the record for purposes of appeal; and
- c) The Board's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence.

[5 ILCS 100/10-40(c).]

Section 101.1002 Motions For Reconsideration

In ruling upon a motion under this Section, the Board will consider factors including, but not limited to, new evidence, a change in the law, or any other reason to conclude that the Board's decision was in error.

Section 101.1004 Relief from and Review of Final Opinions and Orders

- a) Upon its own motion or motion from any party, the Board may correct clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission. Such mistakes may be so corrected by the Board before the appeal is docketed in the appellate court. Thereafter, while the appeal is pending, such mistakes may be corrected only with leave of the appellate court. Any corrected order will be mailed to all parties and participants in that proceeding.
- b) On written motion, the Board may relieve a party from a final order entered in a contested case, for the following:
 - 1) Newly discovered evidence which existed at the time of hearing and which 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 shall be notified by the movant as provided by Section 101.304 of this Part.

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- d) A motion under subsection (b) must be filed with the Board within one year after entry of the order except that a motion pursuant to subsection (b)(3) 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 of the filing of the motion.

Section 101.1006 Judicial Review Of Board Orders

- a) Pursuant to Sections 29 and 41 of the Act, Supreme Court Rule 335, and Section 10-50 of the APA judicial review of Board opinions and orders is available from the appellate court. [415 ILCS 5/29; 41 Ill. S.Ct.Rule 335; and 5 ILCS 100/10-50.]
- b) For purposes of judicial review, Board's opinions and orders are appealable as of the date of service by the Board upon the appealing party.
- c) The procedure for stay of any 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.]

Section 101.1008 Interlocutory Appeal

Upon motion of any party the Board may consider an interlocutory appeal in accordance with Supreme Court Rule 308. [Ill. S.Ct.Rule 308.]