



OFFICE OF THE SECRETARY OF STATE

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STATE OF ILLINOIS
Pollution Control Board

POLLUTION CONTROL BOARD
JOHN THERRIAULT ASSISTANT CLERK
100 W RANDOLPH ST, STE 11-500
CHICAGO, IL 60601

Dear JOHN THERRIAULT ASSISTANT CLERK

Your rules Listed below met our codification standards and have been published in Volume 34, Issue 7 of the Illinois Register, dated 2/16/2010.

PROPOSED RULES

Regulatory and Informational Hearings and Proceedings
35 Ill. Adm. Code 102
Point of Contact: Nancy Miller

2422

If you have any questions, you may contact the Administrative Code Division at (217) 782 - 7017.

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NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Regulatory and Informational Hearings and Proceedings
- 2) Code citation: 35 Ill. Adm. Code 102
- 3) Section Numbers: Proposed Action:
102.412 Amend
- 4) Statutory authority: Implementing Sections 21, 22, 22.01 and 22.9, and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/21, 22, 22.01, 22.9, 27].
- 5) A complete description of the subjects and issues involved: For a more detailed description of this rulemaking, see the Board's January 21, 2010 opinion and order Proposed Amendment to Procedural Rules on Hearings in Identical in Substances Rulemakings: 35 Ill. Adm. Code 102 (R10-18).

The Board has traditionally held public hearings at one location in rulemakings that amend the definition of volatile organic material (VOM) pursuant to Section 7.2 of the Act (415 ILCS 5/7.2 (2008)). The Board held those hearings to ensure consistency with the Clean Air Act 42 U.S.C. § 7401 *et. seq.* and the rules adopted by the United States Environmental Protection Agency (USEPA) that require hearings at 40 CFR § 51.102. These hearings are generally brief with little to no testimony placed in the record. *See e.g. Definition of VOM Update, USEPA Amendments (January 1, 2009 through June 30, 2009)*, R10-7. The Board has the ability to videoconference between the Chicago Offices of the Board and the Springfield Offices of the Board. The Board believes that holding these types of hearings via videoconference will allow more economical participation by the public and government officials without hampering the proceedings.

The Board is not required to hold hearings in the other types of rulemakings authorized by Section 7.2 of the Act (*e.g.*, underground injection control rules, underground storage tank rules) (415 ILCS 5/7.2 (2008)) and has not previously done so. However, there is the possibility that a hearing in a future rulemaking pursuant to Section 7.2 of the Act (415 ILCS 5/7.2 (2008)) may serve the public interest. Therefore, the Board proposes to amend the procedural rules to allow the Board to hold these limited types of hearings in rulemakings pursuant to Section 7.2 of the Act (415 ILCS 5/7.2 (2008)) via videoconference. Public participation is welcomed at both sites as managed by the Board's hearing officer assigned to the specific rulemaking.

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- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will these proposed rules replace emergency rules currently in effect? No.
- 8) Does this rulemaking contain an automatic repeal date? No.
- 9) Does this proposed rule contain incorporations by reference? No.
- 10) Are there any other amendments pending on this Part? No

- 11) Statement of statewide policy objectives:

The proposed amendments do not create or expand a State mandate as defined in Section 3 of the State Mandates Act [30 ILCS 805].

- 12) Time, place and manner in which interested persons may comment on this proposed rulemaking:

The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference docket R10-18 and be addressed to:

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

Address questions to Marie Tipsord at 312-814-4925.

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

- 13) Initial regulatory flexibility analysis:

- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking will not impact any small business, small municipality,

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and not-for-profit corporation except to make public participation in rulemaking hearings for identical in substance rules before the Board easier to attend

- B) Reporting, bookkeeping or other procedures required for compliance: There are not reporting, bookkeeping or other procedures required for compliance.
 - C) Types of professional skills necessary for compliance: No professional skills will be required.
- 14) Regulatory Agenda on which this rulemaking was summarized /State reasons for this rulemaking if it was not included in either of the two most recent regulatory agendas.

This rulemaking was not included on regulatory agendas in the last year as the necessity and advisability for the rule became clear only recently in the Board's proceedings in a Board rulemaking to amend the definition of VOM.

The full text of the proposed amendment begins on the next page:

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

PART 102

REGULATORY AND INFORMATIONAL HEARINGS AND PROCEEDINGS

SUBPART A: GENERAL PROVISIONS

Section	
102.100	Applicability
102.102	Severability
102.104	Definitions
102.106	Types of Regulatory Proposals
102.108	Public Comments
102.110	Waiver of Requirements
102.112	Other Proceedings

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

Section	
102.200	Proposal for Regulations of General Applicability
102.202	Proposal Contents for Regulations of General Applicability
102.204	Proposal of RCRA Amendments
102.206	Notice of Site-Specific RCRA Proposals
102.208	Proposal for Site-Specific Regulations
102.210	Proposal Contents for Site-Specific Regulations
102.211	Proposal to Update Incorporations by Reference
102.212	Dismissal

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

Section	
102.300	Applicability
102.302	Agency Proposal
102.304	Hearings
102.306	Prefiled Testimony

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

Section	
102.400	Service and Filing of Documents
102.402	Motions, Production of Information, and Subpoenas
102.404	Initiation and Scheduling of Prehearing Conferences
102.406	Purpose of Prehearing Conference
102.408	Prehearing Order
102.410	Authorization of Hearing
102.412	Scheduling of Hearings
102.414	Hearings on the Economic Impact of New Proposals
102.416	Notice of Hearing
102.418	Record
102.420	Authority of the Hearing Officer
102.422	Notice and Service Lists
102.424	Prehearing Submission of Testimony and Exhibits
102.426	Admissible Information
102.428	Presentation of Testimony and Order of Hearing
102.430	Questioning of Witnesses

SUBPART E: CERTIFICATION OF REQUIRED RULES

Section	
102.500	Agency Certification
102.502	Challenge to Agency Certification
102.504	Board Determination

SUBPART F: BOARD ACTION

Section	
102.600	Revision of Proposed Regulations
102.602	Adoption of Regulations
102.604	First Notice of Proposed Regulations
102.606	Second Notice of Proposed Regulations
102.608	Notice of Board Final Action
102.610	Adoption of Identical-in-Substance Regulation
102.612	Adoption of Emergency Regulations

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102.614 Adoption of Peremptory Regulations

SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL

Section

102.700 Filing of Motions for Reconsideration
102.702 Disposition of Motions for Reconsideration
102.704 Correction of Publication Errors
102.706 Appeal

SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION

Section

102.800 Applicability
102.810 Petition
102.820 Petition Contents
102.830 Board Action
102.APPENDIX A Comparison of Former and Current Rules (Repealed)

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

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

Section 102.412 Scheduling of Hearings

- a) Except as otherwise provided by applicable law, *no substantive regulation shall be adopted, amended, or repealed until after a public hearing within the area of the State concerned.* In the case of site-specific rules, a public hearing will be held in the affected county. Except as otherwise provided by applicable law, *in the case of state-wide regulations, hearings shall be held in at least two areas.*

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[415 ILCS 5/28(a)]

- b) If the proponent or any participant wishes to request a hearing beyond the number of hearings specified by the hearing officer, that person must demonstrate, in a motion to the hearing officer that failing to hold an additional hearing would result in material prejudice to the movant. The motion may be oral, if made at hearing, or written. The movant must show that he exercised due diligence in his participation in the proceeding and why an additional hearing, as opposed to the submission of written comments pursuant to Section 102.108 of this Part, is necessary.

- c) If a hearing is scheduled in a rulemaking proposed pursuant to Section 7.2 of the Act (415 ILCS 5/7.2 (2008)), the hearing may be held by videoconference.

(Source: Amended at 34 Ill. Reg. _____, effective _____.)