



OFFICE OF THE SECRETARY OF STATE

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April 8, 2010

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CLERK'S OFFICE

APR 13 2010

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 16 of the Illinois Register, dated 4/16/2010.

OTHER INFORMATION REQUIRED BY LAW TO BE PUBLISHED IN THE ILLINOIS REGISTER

Notice of Public Information

Point of Contact: Mike McCambridge

5791

PROPOSED RULES

Proceedings Pursuant to Specific Rules or Statutory Provisions

35 Ill. Adm. Code 106

Point of Contact: Nancy Miller

5545

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

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NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Proceedings Pursuant to Specific Rules or Statutory Provisions

2) Code Citation: 35 Ill. Adm. Code 106

3) Section Numbers: Proposed Action:

106.100	Amended
106.800	New
106.802	New
106.804	New
106.806	New
106.808	New
106.810	New
106.812	New

4) Statutory Authority: Implementing Section 10 and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/10, 27 and 28] and Section 92.5 of the Regulation of Phosphorus in Detergents Act [415 ILCS 92.5]

5) A Complete Description of the Subjects and Issues Involved:

A more detailed description of this rulemaking is contained in the Board's opinion and order in Procedural Rules for Authorizations under P. A. 95-115 (Regulation of Phosphorus in Detergents Act), 35 Il. Adm. Code 106.Subpart H, R10-19 (March 18, 2010). This proposed rulemaking implements P.A. 95-115, the Regulation of Phosphorus in Detergents Act, signed and effective August 13, 2007. P.A. 95-115, codified at 415 ILCS 92/1 *et seq.*, prohibits the manufacture, distribution, sale, and use of "any cleaning agent" that contains more than 0.5% phosphorus by weight, expressed as elemental phosphorus, after July 1, 2010. Section 5(d) provides that the Board may authorize use of cleaning agents with excess phosphorus "upon finding that there is no adequate substitute for that cleaning agent or that compliance with this . . . would otherwise be unreasonable or create a significant hardship on the user." The Board is directed to promulgate rules to implement the section. The Board has not received any proposals for rulemaking to implement this Section, and so has itself drafted and now proposes procedural rules for Board cleaning agent determinations.

6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None.

7) Will this proposed rulemaking replace an emergency rule currently in effect? No

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- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other proposed amendments pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This proposed rule does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2008)]. The proposed rule implements a statutory means for exception from a legislative prohibition.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board presently does not intend to hold a hearing on these proposed procedural rules unless requested to do so. The Board will accept written public comment on this proposal for 45 days after the date of publication in the *Illinois Register*. Comments should reference Docket R10-19 and be addressed to:

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

Interested persons may request copies of the Board's opinion and order in R10-19 by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

For more information, contact hearing officer Kathleen Crowley at 312/814-6929 or email at crowlek@ipcb.state.il.us.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Any small business that may wish to manufacture, distribute, sale, and use "any cleaning agent" that contains more than 0.5% phosphorus by weight, expressed as elemental phosphorus, after July 1, 2010. These businesses may file a petition for authorization to do so as provided in the proposed rules.
- B) Reporting, bookkeeping or other procedures required for compliance: None, as petitions for authorization are voluntary requests for relief from a legislative prohibition.

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- C) Types of Professional skills necessary for compliance: None, as petitions for authorization are voluntary from a legislative prohibition.
- 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 was not previously included on a regulatory agenda. The Board had initially believed that cleaning authorization petitions could be handled under existing procedural rules, but upon further review determined to issue rules under the Regulation of Phosphorus in Detergents Act to avoid any procedural uncertainty or confusion for members of the general public and regulated community.

The full text of the Proposed Amendments begins on the next page:

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NOTICE OF PROPOSED AMENDMENTS

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

PART 106

PROCEEDINGS PURSUANT TO SPECIFIC RULES OR STATUTORY PROVISIONS

SUBPART A: GENERAL PROVISIONS

Section	
106.100	Applicability
106.102	Severability
106.104	Definitions

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

Section	
106.200	General
106.202	Petition Requirements
106.204	Additional Petition Requirements in Sulfur Dioxide Demonstrations
106.206	Notice
106.208	Recommendation and Response
106.210	Burden of Proof

SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES

Section	
106.300	General
106.302	Initiation of Proceeding
106.304	Petition Content Requirements
106.306	Response and Reply
106.308	Hearing
106.310	Burden of Proof

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

Section	
106.400	General

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106.402	Definitions
106.404	Initiation of Proceedings
106.406	Petition Content Requirements
106.408	Response and Reply
106.410	Hearing
106.412	Burden of Proof
106.414	Opinion and Order
106.416	USEPA Review of Proposed Determination

SUBPART E: MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY
DETERMINATIONS

Section	
106.500	General
106.502	Definitions
106.504	Initiation of Proceedings
106.506	Petition Content Requirements
106.508	Response and Reply
106.510	Hearing
106.512	Burden of Proof
106.514	Board Action

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

Section	
106.600	General
106.602	Initiation of Proceedings
106.604	Petition Content Requirements
106.606	Response and Reply
106.608	Hearing
106.610	Burden of Proof

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

Section	
106.700	Purpose
106.702	Applicability
106.704	Termination under Section 52.3-4(b) or (b-5) of the Act
106.706	Who May Initiate, Parties

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106.707	Notice, Statement of Deficiency, Answer
106.708	Service
106.710	Notice of Hearing
106.712	Deficient Performance
106.714	Board Decision
106.716	Burden of Proof
106.718	Motions, Responses
106.720	Intervention
106.722	Continuances
106.724	Discovery, Admissions
106.726	Subpoenas
106.728	Settlement Procedure
106.730	Authority of Hearing Officer, Board Members, and Board Assistants
106.732	Order and Conduct of Hearing
106.734	Evidentiary Matters
106.736	Post-Hearing Procedures
106.738	Motion after Entry of Final Order
106.740	Relief from Final Orders

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

<u>Section</u>	
<u>106.800</u>	<u>General</u>
<u>106.802</u>	<u>Definitions</u>
<u>106.804</u>	<u>Initiation of Proceeding</u>
<u>106.806</u>	<u>Petition Content Requirements</u>
<u>106.808</u>	<u>Response and Reply</u>
<u>106.810</u>	<u>Hearing</u>
<u>106.812</u>	<u>Burden of Proof</u>
106.APPENDIX A	Comparison of Former and Current Rules (Repealed)

AUTHORITY: Implementing and authorized by Sections 5, 14.2(c), 22.4, 26, 27, 28, 28.1, 28.1, 35, 36, 37, 38, 39.5 and 52.3 of the Environmental Protection Act (the Act) [415 ILCS 5/5, 14.2(c), 22.4, 26, 27, 28, 28.1, 28.1, 35, 36, 37, 38, 39.5 and 52.3], and Section 92.5 of the Regulation of Phosphorus in Detergents Act [415 ILCS 92.5].

SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186, effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg. 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4, 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12

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Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579, effective July 11, 1994; amended in R99-9 at 23 Ill. Reg. 2697, effective February 16, 1999; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 550, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8817, effective June 8, 2005, amended in R10-19 at 34 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 106.100 Applicability

- a) This Part applies to adjudicatory proceedings pursuant to specific rules or statutory provisions. Specifically, the Part applies to heated effluent, artificial cooling lake and sulfur dioxide demonstrations, water well setback exception procedures, revocation and reopening of CAAPP permits, maximum achievable control technology determinations, culpability determinations for particulate matter less than or equal to 10 microns, ~~and~~ the involuntary termination of environmental management system agreements, and authorization of use of cleaning agents under the Regulation of Phosphorus in Detergents Act [415 ILCS 92.5].
- b) This Part must be read in conjunction with 35 Ill. Adm. Code 101 which contains procedures generally applicable to all of the Board's adjudicatory proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part apply.

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

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

Section 106.800 General

- a) Description. This Subpart applies to any person who files a petition for Board authorization to use cleaning agents that contain phosphorus of an amount exceeding 0.5% by weight as provided in Section 5/92. 5(d) of the Regulation of Phosphorus in Detergents Act [415 ILCS 92.5 (d)].
- b) Parties. The person filing the petition for authorization must be named the

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petitioner and the Agency must be named the respondent.

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

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

Section 106.802 Definitions

The definitions of 35 Ill. Adm. Code.Subpart B and Section 92.5 of the Regulation of Phosphorus in Detergents Act [415 ILCS 92.5] Act will apply to this Subpart unless otherwise provided, or unless the context clearly indicates otherwise. If there is a conflict, the definitions of Section 92.5 of the Act will apply.

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

Section 106.804 Initiation of Proceeding

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

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

Section 106.806 Petition Content Requirements

The petition must contain the following information:

- a) A written statement, signed by the petitioner or an authorized representative, concerning the cleaning agent containing excess phosphorus for which authorization is sought, outlining a description of the cleaning agent and its phosphorus content, the duration of, the reasons for, and the basis of the authorization sought, consistent with the burden of proof stated in Section 106.812 of this Part;
- b) The nature of the petitioner's operations;
- c) Any other information which may be required by Section 92.5 of the Regulation of Phosphorus in Detergents Act [415 ILCS 92.5].

(Source: Added at 34 Ill. Reg. _____; effective _____.)

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Section 106.808 Response and Reply

- a) Within 21 days after the filing of a petition, the Agency may file a response to any petition in which it has not joined as co-petitioner. The response must include the comments concerning potential Board action on the petition.
- b) The petitioner may file a reply within 14 days after the service of any Agency response.

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

Section 106.810 Hearing

The Board will hold a public hearing in an authorization proceeding only if a hearing is requested by the petitioner, the Agency, or any other person within 14 days after the filing of any reply under Section 106.806(b). The hearing officer will schedule the hearing. The Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code 101. The proceedings will be in accordance with 35 Ill. Adm. Code 101.Subpart F.

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

Section 106.812 Burden of Proof

The burden of proof is on the petitioner. The petitioner must demonstrate that:

- a) *There is no adequate substitute for that cleaning agent for which authorization is sought, or*
- b) *Compliance with the requirements of Section 5/92.5 of the Act would otherwise be unreasonable or create a significant hardship on the user.*

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