



## OFFICE OF THE SECRETARY OF STATE

JESSE WHITE • Secretary of State

July 30, 2010

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CLERK'S OFFICE

AUG 05 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 32 of the Illinois Register, dated 8/6/2010.

### ADOPTED RULES

Proceedings Pursuant to Specific Rules or Statutory Provisions  
35 Ill. Adm. Code 106 11486  
Point of Contact: Nancy Miller

### PROPOSED RULES

RCRA Permit Program  
35 Ill. Adm. Code 703 10991  
Point of Contact: Mike McCambridge

Hazardous Waste Management System: General  
35 Ill. Adm. Code 720 11021  
Point of Contact: Mike McCambridge

Identification and Listing of Hazardous Waste  
35 Ill. Adm. Code 721 11096  
Point of Contact: Mike McCambridge

Standards Applicable to Generators of Hazardous Waste  
35 Ill. Adm. Code 722 11298  
Point of Contact: Mike McCambridge

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities  
35 Ill. Adm. Code 724 11354  
Point of Contact: Mike McCambridge

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal

Index Department - Administrative Code Division - 111 East Monroe Springfield, IL 62756



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Facilities

35 Ill. Adm. Code 725

11368

Point of Contact: Mike McCambridge

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

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POLLUTION CONTROL BOARD

NOTICE OF ADOPTED 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:      Adopted 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].
- 5) Effective Date of Amendments:      **JUL 23 2010**
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these amendments contain incorporations by reference? No
- 8) The adopted amendments, on file in the Board's Chicago office at the James R. Thompson Center, 100 W. Randolph, Suite 11-500 and are available for public inspection.
- 9) Notice of Proposal Published in Illinois Register:

April 16, 2010; 34 Ill. Reg. 5545
- 10) Has JCAR issued a Statement of Objections to these amendments? No
- 11) Differences between proposal and final version: deleted "and the Agency must be named the respondent" from Section 106.800(b) and inserted the word "101" after "35 Ill. Adm. Code" in Section 106.802.

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**SECRETARY OF STATE**  
**INDEX DEPARTMENT**

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- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes
- 13) Will these amendments replace emergency amendments currently in effect? No
- 14) Are there any amendments pending on this Part?
- 15) Summary and Purpose of Amendments: 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 (July 15, 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.
- 16) Information and questions regarding these adopted amendments shall be directed to:

Kathleen Crowley  
Illinois Pollution Control Board  
100 W. Randolph 11-500  
Chicago, IL 60601  
312-814-6929

Copies of the Board's opinions and orders may be requested from the Clerk of the Board at the address listed in #8 above or by calling 312/814-3620. Please refer to the Docket number R10-19 in your request. The Board order is also available from the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us))

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

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NOTICE OF ADOPTED 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

Section

<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, 28.5, 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].
- 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(e) of the Regulation of Phosphorus in Detergents Act [415 ILCS 92/5(e)].
- b) Parties. The person filing the petition for authorization must be named the



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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 101 Subpart B and Section 5 of the Regulation of Phosphorus in Detergents Act will apply to this Subpart unless otherwise provided, or unless the context clearly indicates otherwise. If there is a conflict, the definitions of Section 5 of the Act will apply.

(Source: Added at 34 Ill. Reg. \_\_\_\_\_, 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 and outlining a description of the cleaning agent and its phosphorus content, the duration of, the reasons for, and the basis of the authorization sought, consistent with the burden of proof stated in Section 106.812 of this Part;
- b) The nature of the petitioner's operations;
- c) Any other information that may be required by Section 5 of the Regulation of Phosphorus in Detergents Act.

(Source: 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 106.808(b). The hearing officer will schedule the hearing. The Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code 101. The proceedings will be in accordance with 35 Ill. Adm. Code 101.Subpart F.

(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 of the Regulation of Phosphorus in Detergents Act would otherwise be unreasonable or create a significant hardship on the user. [415 ILCS 92/5(e)]

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