

POLLUTION CONTROL BOARD

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)

| <u>Section Numbers</u> : | <u>Proposed Action</u> : |
|--------------------------|--------------------------|
| 106.100 | Amended |
| 106.900 | New |
| 106.902 | New |
| 106.904 | New |
| 106.906 | New |
| 106.908 | New |
| 106.910 | New |
| 106.912 | New |
| 106.914 | New |
- 4) Statutory Authority: Implementing and authorized by Section 21(q), 26, and 28.1 of the Environmental Protection Act [415 ILCS 5/21(q), 26, and 28.1]
- 5) A Complete Description of the Subjects and Issues Involved: A more-detailed description of this rulemaking is contained in the Board's first notice opinion and order in Procedural Rules for Authorizations Under P. A. 97-220 for Certain Landscape Waste and Compost Applications and On-Farm Composting Facilities: New 35 Ill. Adm. Code 106.Subpart I, R 12-11 (Feb. 2, 2012). This docket will establish adjusted standards procedural rules concerning authorizations under Section 21(q) of the Environmental Protection Act (Act), 415 ILCS 5/21(q). The text of that section was amended by P.A. 97-220, signed and effective July 28, 2011.

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Pollution Control Board

The recent amendment allows the Board, rather than the Illinois Environmental Protection Agency, to grant authorizations under two provisions of Section 21 (q). The first type of Board authorization is under Section 21(q)(2), and is limited to farm owners or operators of a composting facility on which the landscape waste composting material is utilized to operate the compost facility on more than 2% of the property's total acreage. The other type of authorization, available under Section 21(q)(3), would allow any person to apply landscape waste or composted landscape waste at a rate greater than "agronomic rates" of not more than 20 tons per acre per year. Without such Board authorizations, these activities are prohibited acts under Section 21(q), and violators are subject to enforcement.

This is the Board's second first notice publication in this docket. The Board originally adopted first notice of the proposed rules on October 20, 2011. The first notice was

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published at 35 Ill. Reg. 18492 (Nov. 14, 2011). In response to the three public comments before the December 29, 2011 expiration of that first notice period, the Board has enhanced the public notice requirements.

The proposed rules add a new subpart I to the Board's procedural rules for adjusted standards at 35 Ill. Adm. Code Part 106. These procedural rules are similar to those in other subparts in Part 106. These rules differ from the original first notice rules by requiring the applicant for a Section 21(q) authorization to publish newspaper notice of the application in the area likely to be affected. The new notice requirement is similar to that required for adjusted standards under Section 28.1 of the Act and the Board's adjusted standard procedural rules at 35 Ill. Adm. Code 104. These added rules provide that the Board will hold a public hearing if requested to do so in writing by any person within 21 days of the notice's publication. Added rules concerning conduct of the public hearing are similar to those in Part 104.

As the Board is not required to hold hearings to amend procedural rules, the Board does not intend to do so absent a request within the 45-day first notice period following this publication.

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

| <u>Section Numbers:</u> | <u>Proposed Action:</u> | <u>Illinois Register Citation:</u> |
|-------------------------|-------------------------|------------------------------------|
| 106.100 | Amend | 36 Ill. Reg. 2469; 2/17/12 |
| 106.1000 | New | 36 Ill. Reg. 2469; 2/17/12 |
| 106.1002 | New | 36 Ill. Reg. 2469; 2/17/12 |
| 106.1004 | New | 36 Ill. Reg. 2469; 2/17/12 |
| 106.1006 | New | 36 Ill. Reg. 2469; 2/17/12 |
| 106.1008 | New | 36 Ill. Reg. 2469; 2/17/12 |
| 106.1010 | New | 36 Ill. Reg. 2469; 2/17/12 |
| 106.1012 | New | 36 Ill. Reg. 2469; 2/17/12 |
| 106.1014 | New | 36 Ill. Reg. 2469; 2/17/12 |

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- 11) Statement of Statewide Policy Objective: These proposed amendments do not create or enlarge a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of 45 days after the date of publication in the *Illinois Register*. Comments should refer to docket R12-11 and be addressed to:
- John Therriault
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 R12-11 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 e-mail crowleyk@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, small municipalities, or not-for-profit corporations that own or operate a qualifying source could be affected by the proposed amendments.
- B) Reporting, bookkeeping or other procedures required for compliance: Owner or operators of qualifying sources will have the same or fewer requirements for reporting, bookkeeping, or recordkeeping.
- C) Types of Professional skills necessary for compliance: It is not anticipated that any additional skills will be necessary for compliance, as the goal of small source registration is to reduce the administrative requirements for owners or operators of qualifying units, while maintaining environmental effectiveness of substantive emissions requirements for these sources.
- 14) Regulatory Agenda in which these amendments were summarized: January 2011

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

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

PART 106
PROCEEDINGS PURSUANT TO SPECIFIC RULES OR STATUTORY PROVISIONS

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- 10 Section
- 11 106.100 Applicability
- 12 106.102 Severability
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AND SULFUR DIOXIDE DEMONSTRATIONS

- 18 Section
- 19 106.200 General
- 20 106.202 Petition Requirements
- 21 106.204 Additional Petition Requirements in Sulfur Dioxide Demonstrations
- 22 106.206 Notice
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SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES

- 28 Section
- 29 106.300 General
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SUBPART D: REVOCATION AND REOPENING OF CLEAN AIR ACT
PERMIT PROGRAM (CAAPP) PERMITS

- 39 Section
- 40 106.400 General
- 41 106.402 Definitions
- 42 106.404 Initiation of Proceedings
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| 45 | 106.410 | Hearing |
| 46 | 106.412 | Burden of Proof |
| 47 | 106.414 | Opinion and Order |
| 48 | 106.416 | USEPA Review of Proposed Determination |

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50 SUBPART E: MAXIMUM ACHIEVABLE CONTROL
51 TECHNOLOGY DETERMINATIONS

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53 Section

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| 54 | 106.500 | General |
| 55 | 106.502 | Definitions |
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| 60 | 106.512 | Burden of Proof |
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63 SUBPART F: CULPABILITY DETERMINATIONS FOR PARTICULATE MATTER
64 LESS THAN OR EQUAL TO 10 MICRONS (PM-10)

65

66 Section

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| 67 | 106.600 | General |
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| 70 | 106.606 | Response and Reply |
| 71 | 106.608 | Hearing |
| 72 | 106.610 | Burden of Proof |

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

76

77 Section

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| 78 | 106.700 | Purpose |
| 79 | 106.702 | Applicability |
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| | | |
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| 97 | 106.736 | Post-Hearing Procedures |
| 98 | 106.738 | Motion After Entry of Final Order |
| 99 | 106.740 | Relief from Final Orders |

100

101 SUBPART H: AUTHORIZATIONS UNDER THE REGULATION
102 OF PHOSPHORUS IN DETERGENTS ACT
103

104

104 Section

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| 105 | 106.800 | General |
| 106 | 106.802 | Definitions |
| 107 | 106.804 | Initiation of Proceeding |
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| 109 | 106.808 | Response and Reply |
| 110 | 106.810 | Hearing |
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113 SUBPART I: AUTHORIZATIONS FOR CERTAIN LANDSCAPE WASTE AND
114 COMPOST APPLICATIONS AND ON-FARM COMPOSTING FACILITIES
115

116

116 Section

| | | |
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| 117 | <u>106.900</u> | <u>General</u> |
| 118 | <u>106.902</u> | <u>Initiation of Proceeding</u> |
| 119 | <u>106.904</u> | <u>Petition Content Requirements</u> |
| 120 | <u>106.906</u> | <u>Petition Notice Requirements</u> |
| 121 | <u>106.908</u> | <u>Proof of Petition Notice Requirements</u> |
| 122 | <u>106.910</u> | <u>Response and Reply</u> |
| 123 | <u>106.912</u> | <u>Hearing</u> |
| 124 | <u>106.914</u> | <u>Burden of Proof</u> |

125

126 106.APPENDIX A Comparison of Former and Current Rules (Repealed)

127

128 AUTHORITY: Implementing and authorized by Sections 5, 14.2(c), 21(q), 22.4, 26, 27, 28,
129 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3 of the Environmental Protection Act (the Act) [415

130 ILCS 5/5, 14.2(c), 21(q), 22.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3], and Section
 131 92.5 of the Regulation of Phosphorus in Detergents Act [415 ILCS 92.5].
 132

133 SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186,
 134 effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg.
 135 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4,
 136 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12
 137 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective
 138 July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in
 139 R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579,
 140 effective July 11, 1994; amended in R99-9 at 23 Ill. Reg. 2697, effective February 16, 1999; old
 141 Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 550, effective January 1, 2001;
 142 amended in R04-24 at 29 Ill. Reg. 8817, effective June 8, 2005; amended in R10-19 at 34 Ill.
 143 Reg. 11486, effective July 23, 2010; amended in R12-11 at 36 Ill. Reg. _____, effective
 144 _____.

145
 146 **SUBPART A: GENERAL PROVISIONS**
 147

148 **Section 106.100 Applicability**
 149

- 150 a) This Part applies to adjudicatory proceedings pursuant to specific rules or
 151 statutory provisions. Specifically, the Part applies to heated effluent, artificial
 152 cooling lake and sulfur dioxide demonstrations, water well setback exception
 153 procedures, revocation and reopening of CAAPP permits, maximum achievable
 154 control technology determinations, culpability determinations for particulate
 155 matter less than or equal to 10 microns, the involuntary termination of
 156 environmental management system agreements, ~~and~~ authorization of use of
 157 cleaning agents under the Regulation of Phosphorus in Detergents Act [415 ILCS
 158 92], and authorizations for certain landscape waste and compost applications and
 159 on-farm composting facilities.
 160
 161 b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains
 162 procedures generally applicable to all of the Board's adjudicatory proceedings. In
 163 the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and
 164 those of this Part, the provisions of this Part apply.
 165

166 (Source: Amended at 36 Ill. Reg. _____, effective _____)
 167

168 **SUBPART I: AUTHORIZATIONS FOR CERTAIN LANDSCAPE WASTE AND**
 169 **COMPOST APPLICATIONS AND ON-FARM COMPOSTING FACILITIES**
 170

171 **Section 106.900 General**
 172

- 173 a) Applicability. This Subpart applies to any person who files a petition for Board
174 authorization concerning an individual site to:
175
176 1) apply landscape waste or composted landscape waste at a rate greater than
177 the agronomic rates of 20 tons per acre per year, pursuant to Section
178 21(q)(2) of the Act; or
179
180 2) operate an on-farm composting facility constituting more than 2% of the
181 property's total acreage, pursuant to Section 21(q)(3) of the Act.
182
183 b) Demonstration. Any person who files a petition for Board authorization under
184 this Subpart must demonstrate *that the site's soil characteristics or crop needs*
185 require a higher rate. [415 ILCS 5/21(q)(3)(A)]
186
187 c) Parties. The person filing the petition for authorization must be named the
188 petitioner and the Agency must be named the respondent.
189
190 d) Filing and Service. The filing and service requirements of 35 Ill. Adm. Code
191 101.Subpart C will apply to the proceedings of this Subpart.
192

193 (Source: Added at 36 Ill. Reg. _____, effective _____)
194

195 **Section 106.902 Initiation of Proceeding**
196

197 The petitioner must file the petition for authorization with the Clerk of the Board and must serve
198 one copy upon the Agency.
199

200 (Source: Added at 36 Ill. Reg. _____, effective _____)
201

202 **Section 106.904 Petition Content Requirements**
203

204 The petition must contain the following information:
205

- 206 a) A written statement, signed by the petitioner or an authorized representative,
207 concerning the property for which authorization is sought, outlining a description
208 of the specific percentage of the property or the specific application rate sought
209 and the duration of, the reasons for, and the basis for the authorization sought,
210 consistent with the burden of proof stated in Section 106.910 of this Part;
211
212 b) The nature of the petitioner's operations;
213
214 c) Any other applicable information that may be required by Section 21(q) of the
215 Act, including but not limited to a map of the location where land application or

216 composting would take place, a description of the uses of the surrounding areas,
217 the method for nutrient calculations, the number of soil samples, the intended crop
218 or planting, a description of any additives to the landscape waste, the method and
219 timeframe for incorporating the landscape waste or compost into the soil, the
220 method of minimizing stormwater/snowmelt runoff, the measures for removal of
221 noncompostable wastes from the incoming loads, and the method of preventing
222 nuisance conditions such as vectors, odors or litter.

223
224 (Source: Added at 36 Ill. Reg. _____, effective _____)
225

226 **Section 106.906 Petition Notice Requirements**
227

- 228 a) The petitioner shall submit to the Board proof that, within 14 days after the filing
229 of the petition, it has published notice of the filing of the petition by
230 advertisement in a newspaper of general circulation in the area likely to be
231 affected by the petitioners activity that is the subject of the Section 21(q) petition.
232
- 233 b) The title of the notice must be in the following form: "Notice of Petition For
234 Authorization Under 415 ILCS 5/21(q) by (petitioner's name) before the Illinois
235 Pollution Control Board." The notice must contain the name and address of the
236 petitioner and the statement that the petitioner has filed with the Board an
237 authorization petition under Section 21(q). The notice must also provide the date
238 upon which the petition was filed, the Board docket number, the proposed
239 authorization, and a general description of the petitioner's activity that is the
240 subject of the authorization proceeding and the location of that activity. This
241 information must be presented so as to be understood in accordance with the
242 context of this Section's requirements. The concluding portion of the notice must
243 read as follows: "Any person may cause a public hearing to be held in the above-
244 described authorization proceeding by filing a hearing request with the Illinois
245 Pollution Control Board within 21 days after the date of the publication of this
246 notice. The hearing request should clearly indicate the docket number for the
247 adjusted standard proceeding, as found in this notice, and must be mailed to the
248 Clerk of the Board, Illinois Pollution Control Board, 100 W. Randolph Street,
249 Suite 11-500, Chicago, Illinois 60601."

250
251 (Source: Added at 36 Ill. Reg. _____, effective _____)
252

253 **Section 106.908 Proof of Petition Notice Requirements**
254

255 Within 30 days after the filing of the petition, the petitioner must file a certificate of publication,
256 issued by the publisher of the authorization petition notice certifying the publication of that
257 notice. The certificate must be issued in accordance with Section 1 of the Notice by Publication
258 Act [715 ILCS 5/1].

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(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 106.910 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 36 Ill. Reg. _____, effective _____)

Section 106.912 Hearing

- a) Any person can request that a public hearing be held in an authorization proceeding. The requests must be filed not later than 21 days after the date of the publication of the petition notice in accordance with Section 106.906 of this Part. Requests for hearing should make reference to the Board docket number assigned to the proceeding. A copy of each timely hearing request will be mailed to the petitioner and Agency by the Clerk of the Board. Participation by the public at the hearing must be in accordance with 35 Ill. Adm. Code 101.110 and 101.628. The Board may also, in its discretion, hold a public hearing when it determines a public hearing is advisable.
- b) When all parties and participants who have requested a hearing pursuant to this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board, in its discretion, deems it advisable.
- c) The hearing officer will set a time and place for the hearing. The hearing officer will make an attempt to consult with the petitioner and the Agency prior to the scheduling of a hearing. Hearings are to be held in the county likely to be affected by the petitioner's activity that is the subject of the proposed authorization proceeding.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 106.914 Burden of Proof

The burden of proof is on the petitioner. A petitioner may seek authorization, for an individual site, to:

- 302 a) Apply landscape waste or composted landscape waste at rates greater than
303 "agronomic rates" of not more than 20 tons per acre per year [415 ILCS
304 5/21(q)]. An owner or operator seeking to apply landscape waste or composted
305 landscape waste in accordance with Section 21(q)(2) of the Act at rates greater
306 than agronomic rates must demonstrate to the Board that the site's soil
307 characteristics or crop needs require a higher rate as specified in the petition
308 [415 ILCS 5/21(q)(3)(A)].
309
310 b) Increase in total acreage of on-farm composting facility. A farm owner or
311 operator seeking to apply landscape waste or landscape waste compost in
312 accordance with Section 21(q)(3)(A) of the Act at a composting facility on which
313 the composting material is utilized and who proposes to do so on more than 2% of
314 the property's total acreage on which the composting material is utilized by the
315 farmer, must demonstrate to the Board that the site's soil characteristics or crop
316 needs require a higher rate as specified in the petition.

317
318 (Source: Added at 36 Ill. Reg. _____, effective _____)

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
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

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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~~Under Section 52.3-4(b) or (b-5) of the Act
106.706 Who May Initiate, Parties
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
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106.728 Settlement Procedure
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106.732 Order and Conduct of Hearing
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106.736 Post-Hearing Procedures
106.738 Motion ~~after~~After Entry of Final Order
106.740 Relief from Final Orders

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

Section
106.800 General
106.802 Definitions
106.804 Initiation of Proceeding
106.806 Petition Content Requirements
106.808 Response and Reply
106.810 Hearing
106.812 Burden of Proof

SUBPART I: AUTHORIZATIONS FOR CERTAIN LANDSCAPE WASTE AND
COMPOST APPLICATIONS AND ON-FARM COMPOSTING FACILITIES

| | |
|---------|---------------------------------------|
| Section | |
| 106.900 | General |
| 106.902 | Initiation of Proceeding |
| 106.904 | Petition Content Requirements |
| 106.906 | Petition Notice Requirements |
| 106.908 | Proof of Petition Notice Requirements |
| 106.910 | Response and Reply |
| 106.912 | Hearing |
| 106.914 | Burden of Proof |

106.APPENDIX A Comparison of Former and Current Rules (Repealed)

AUTHORITY: Implementing and authorized by Sections 5, 14.2(c), 21(q), 22.4, 26, 27, 28, 28.1, ~~28.1, 28.5~~, 35, 36, 37, 38, 39.5 and 52.3 of the Environmental Protection Act (the Act) [415 ILCS 5/5, 14.2(c), 21(q), 22.4, 26, 27, 28, 28.1, ~~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 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.~~ Reg. 550, effective January 1, 2001; amended in R04-24 at 29 Ill. ~~Reg.~~ Reg. 8817, effective June 8, ~~2005, 2005~~; amended in R10-19 at 34 Ill. Reg. 11486, effective July 23, 2010; amended in R12-11 at 36 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 ~~92.592~~], and authorizations for certain landscape waste and compost applications and on-farm composting facilities.

b) This Part must be read in conjunction with 35 Ill. Adm. Code ~~101~~ 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 36 Ill. Reg. _____, effective _____)

SUBPART I: AUTHORIZATIONS FOR CERTAIN LANDSCAPE WASTE AND
COMPOST APPLICATIONS AND ON-FARM COMPOSTING FACILITIES

Section 106.900 General

a) Applicability. This Subpart applies to any person who files a petition for Board authorization concerning an individual site to:

~~i~~1) apply landscape waste or composted landscape waste at a rate greater than the agronomic rates of 20 tons per acre per year pursuant to Section 21(q)(2) of the Act; or

~~ii~~2) operate an on-farm composting facility constituting more than 2% of the property's total acreage pursuant to Section 21(q)(3) of the Act.

b) Demonstration. Any person who files a petition for Board authorization under this Subpart must demonstrate that the site's soil characteristics or crop needs require a higher rate. [415 ILCS 5/21(q)-(3)(A)]

c) Parties. The person filing the petition for authorization must be named the petitioner and the Agency must be named the respondent.

d) Filing and ~~service~~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 36 Ill. Reg. , effective)

Section 106.902 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 36 Ill. Reg. , effective)

Section 106.904 Petition Content Requirements

The petition must contain the following information:

a) A written statement, signed by the petitioner or an authorized representative, concerning the property for which authorization is sought, outlining a description of the specific percentage of the property or the specific application rate sought and the duration of, the reasons for, and the basis for the authorization sought, consistent with the burden of proof stated in Section 106.910 of this Part;

b) The nature of the petitioner's operations;

c) Any other applicable information ~~which~~that may be required by Section 21 (q) of the Act, including but not limited to a map of the location where land application or composting would take place, a description of the uses of the surrounding areas, the method for nutrient calculations, the number of soil samples, the intended crop or planting, a description of any additives to the landscape waste, the method and timeframe for incorporating the landscape waste or compost into the soil, the method of minimizing stormwater/snowmelt runoff, the measures for removal of noncompostable wastes from the incoming loads, and the method of preventing nuisance conditions such as vectors, odors or litter.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 106.906 Petition Notice Requirements

a) The petitioner shall submit to the Board proof that, within 14 days after the filing of the petition, it has published notice of the filing of the petition by advertisement in a newspaper of general circulation in the area likely to be affected by the petitioners activity that is the subject of the Section 21 (q) petition.

b) The title of the notice must be in the following ~~form as follows~~: "Notice of Petition For Authorization Under 415 ILCS 5/21(q) by f(petitioner's name) before the Illinois Pollution Control Board." The notice must contain the name and address of the petitioner and the statement that the petitioner has filed with the Board an authorization petition under Section 21(q). The notice must also provide the date upon which the petition was filed, the Board docket number, the proposed authorization, and a general description of the petitioner's activity that is the subject of the authorization proceeding, and the location of that activity. This information must be presented so as to be understood in accordance with the context of this Section's requirements. The concluding portion of the notice must read as follows: "Any person may cause a public hearing to be held in the above-described authorization proceeding by filing a hearing request with the Illinois Pollution Control Board within 21 days after the date of the publication of this notice. The hearing request should clearly indicate the docket number for the adjusted standard proceeding, as found in this notice, and must be mailed to the Clerk of the Board, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601."

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 106.908 Proof of Petition Notice Requirements

Within 30 days after the filing of the petition, the petitioner must file a certificate of publication, issued by the publisher of the authorization petition notice certifying the publication of that notice. The certificate must be issued in accordance with Section 1 of the Notice by Publication Act [715 ILCS 5/1].

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 106.910 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 36 Ill. Reg. _____, effective _____)

Section 106.912 Hearing

a) Any person can request that a public hearing be held in an authorization proceeding. The requests must be filed not later than 21 days after the date of the publication of the petition notice in accordance with Section 106.906 of this Part. Requests for hearing should make reference to the Board docket number assigned to the proceeding. A copy of each timely hearing request will be mailed to the petitioner and Agency by the Clerk of the Board. Participation by the public at the hearing must be in accordance with 35 Ill. Adm. Code 101.110 and 101.628. The Board may also, in its discretion, hold a public hearing when it determines a public hearing is advisable.

b) ~~Where~~When all parties and participants who have requested a hearing pursuant to this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board, in its discretion, deems it advisable.

c) The hearing officer will set a time and place for the hearing. The hearing officer will make an attempt to consult with the petitioner and the Agency prior to the scheduling of a hearing. Hearings are to be held in the county likely to be affected by the petitioner's activity that is the subject of the proposed authorization proceeding.

(Source: Added at 36 Ill. Reg. _____, effective _____)

Section 106.914 Burden of Proof

The burden of proof ~~for~~ is on the petitioner. A petitioner may seek authorization, for an individual site, to:

a) Apply landscape waste or composted landscape waste at rates greater than "agronomic rates" of not more than 20 tons per acre per year. ~~[415 ILCS 5/21(q)]~~.

An owner or operator seeking to apply landscape waste or composted landscape waste in accordance with Section 21(q)(2) of the Act at rates greater than agronomic rates must demonstrate to the Board that the site's soil characteristics or crop needs require a higher rate as specified in the petition. ~~[415 ILCS 5/21(q)(23)(A)]~~.

b) Increase in total acreage of on-farm composting facility. A farm owner or operator seeking to apply landscape waste or landscape waste compost in accordance with Section 21(q)(3)(A) of the Act at a composting facility on which the composting ~~materials~~material is utilized and who proposes to do so on more than 2% of the property's total acreage on which the composting material is utilized by the farmer, must demonstrate to the Board that the site's soil characteristics or crop needs require a higher rate as specified in the petition. ~~415 ILCS 21(q)(3)(A)~~.

(Source: Added at 36 Ill. Reg. _____, effective _____)

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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