

ILLINOIS POLLUTION CONTROL BOARD
April 19, 2012

IN THE MATTER OF:)
)
PROCEDURAL RULES FOR REVIEW OF) R12-21
PETITIONS FOR TEMPORARY LANDFILL) (Rulemaking – Procedural)
BAN WAIVERS UNDER)
SECTION 95 OF THE ELECTRONIC)
PRODUCTS RECYCLING AND REUSE)
ACT: NEW 35 ILL. ADM. CODE)
106.SUBPART J)

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by T.A. Holbrook):

For second-notice review by the Joint Committee on Administrative Rules (JCAR), the Board today proposes new procedural rules to be codified at 35 Ill. Adm. Code 106.Subpart J.¹ These procedural rules apply to petitions filed with the Board for a temporary waiver of the covered electronic device (CED) landfill ban under Section 95 of the Electronic Products Recycling and Reuse Act (EPRRA). *See* 415 ILCS 150/95 (2010). The General Assembly first adopted EPRRA in 2008. *See* Public Act 95-959, eff. Sept. 17, 2008. In 2011, the General Assembly enacted amendments including a revised definition of “CED” and a revised landfill ban reflecting that re-definition. *See* Public Act 97-287, eff. Aug. 10, 2011.

On February 2, 2012, the Board submitted a first-notice proposal to publication in the *Illinois Register*. Procedural Rules for Review of Petitions for Temporary Landfill Ban Waivers Under Section 95 of the Electronic Products Recycling and Reuse Act: New 35 Ill. Adm. Code 106, Subpart J, R12-21 (Feb. 2, 2012)’ *see* 36 Ill. Reg. 2444 (Feb. 17, 2012). During the 45-day comment period (*see* 5 ILCS 100/5-40(b) (2010)), the Board did not receive a comment on its proposal.

In the opinion below, the Board first reviews the statutory background of this rulemaking docket before briefly discussing its proposed procedural rules. The Board then reaches its

¹ Part 106 now consists of Subparts A-H. 35 Ill. Adm. Code 106. On February 2, 2012, however, the Board adopted a second first-notice opinion and order proposing a new Subpart I. 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, R12-11 (Feb. 2, 2012); *see* 36 Ill. Reg. 2643 (Feb. 24, 2012). The Board had adopted its original first-notice opinion and order on October 20, 2011. 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, R12-11 (Oct. 20, 2011); *see* 35 Ill. Reg. 18492 (Nov. 14, 2011).

conclusion and issues its order directing the Clerk to submit the proposal to JCAR for second-notice review.

STATUTORY BACKGROUND

As enacted in Public Act 95-959 and amended by Public Act 97-287, Section 10 of the EPRRA defines “covered electronic device” or “CED” to mean

any computer, computer monitor, television, printer, electronic keyboard, facsimile machine, videocassette recorder, portable digital music player that has memory capability and is battery powered, digital video disc player, video game console, electronic mouse, scanner, digital converter box, cable receiver, satellite receiver, digital video disc recorder, or small-scale server sold at retail and taken out of service from a residence in this State. “Covered electronic device” does not include any of the following:

- 1) an electronic device that is part of a motor vehicle or any component part of a motor vehicle assembled by or for a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle;
- 2) an electronic device that is functionally or physically part of a larger piece of equipment or that is taken out of service from an industrial, commercial (including retail), library checkout, traffic control, kiosk, security (other than household security), governmental, agricultural, or medical setting, including but not limited to diagnostic, monitoring, or control equipment; or
- 3) an electronic device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional over or range, dishwasher, room air conditioner, dehumidifier, waster pump, sump pump, or air purifier. 415 ILCS 150/10 (2010); *see* Public Act 95-959, eff. Sept. 17, 2008; Public Act 97-287, eff. Aug. 10, 2011.

Section 10 of the EPRRA also defines “eligible electronic device” or “EED” to mean

any of the following electronic products sold at retail and taken out of service from a residence in this State: mobile telephone; computer cable; portable digital assistant (PDA); or zip drive. To the extent allowed under federal and state laws and regulations, an EED that is being collected, recycled, or processed for reuse is not considered to be hazardous waste, household waste, solid waste, or special waste. 415 ILCS 150/10 (2010); *see* Public Act 97-287, eff. Aug. 10, 2011.

Section 95(a) of EPRRA provides that, beginning on January 1, 2012, and except as provided by a temporary waiver,

no person may knowingly cause or allow the mixing of a CED, or any other computer, computer monitor, printer, television, electronic keyboard, facsimile machine, videocassette recorder, portable digital music player, digital video disc player, video game console, electronic mouse, scanner, digital converter box, cable receiver, satellite receiver, digital video disc recorder, or small-scale server with municipal waste that is intended for disposal at a landfill. 415 ILCS 150/95(a) (2010); *see* Public Act 97-287, eff. Aug. 10, 2011.

Section 95(b) of EPRRA provides that, beginning on January 1, 2012, and except as provided by a temporary waiver,

no person may knowingly cause or allow the disposal of a CED or any other computer, computer monitor, printer, television, electronic keyboard, facsimile machine, videocassette recorder, portable digital music player, digital video disc player, video game console, electronic mouse, scanner, digital converter box, cable receiver, satellite receiver, digital video disc receiver, or small-scale server in a sanitary landfill.” 415 ILCS 150/95(b) (2010); *see* Public Act 97-287, eff. Aug. 10, 2011.

Section 95(e) authorizes the Board, beginning April 1, 2012, but no later than December 31, 2013, “to review temporary CED landfill ban waiver petitions by county governments or municipal joint action agencies (action agencies). . . .” 415 ILCS 150/95(e) (2010). Specifically, the Board reviews these petitions to “determine whether the respective county’s or action agency’s jurisdiction may be granted a temporary CED landfill ban waiver due to a lack of funds and a lack of collection opportunities to collect CEDs and EEDs within the county’s or action agency’s jurisdiction.” *Id.* The effect of a temporary landfill ban waiver is that Sections 95(a) and (b) “shall not apply to CEDs and EEDs that are taken out of service from residences within the jurisdiction of the county or action agency receiving the waiver and disposed of during the remainder of the program year² in which the petition is filed.” *Id.* Section 95(e) addresses issues including the contents of a petition for a temporary landfill ban waiver, criteria for the Board’s consideration of a petition, the Board’s decision deadline, appeal of Board orders denying temporary landfill ban waivers, and implementation of waivers. *Id.*

DISCUSSION

As the Board noted above, Section 95(e) of EPRRA addresses in some detail issues including the contents of a petition for a temporary landfill ban waiver, criteria for the Board’s consideration of a petition, the Board’s decision deadline, appeal of Board orders denying temporary landfill ban waivers, and implementation of waivers. Particularly because these provisions are not entirely consistent with those for relief mechanisms such as variances or adjusted standards, the Board proposes to add to its procedural rules a new Subpart J establishing procedures applicable specifically to petitions for temporary waivers of the EPRRA’s landfill

² Section 10 of the EPRRA defines “program year” to mean “a calendar year. The first program year is 2010.” 415 ILCS 150/10 (2010); *see* Public Act 97-287, eff. Aug. 10, 2011.

ban. The Board here also proposes to amend Subpart A simply to include the proposed procedural rules within the scope of Part 106.

The proposed new 35 Ill. Adm. Code 106.Subpart J follows the general format of other subparts of Part 106. Unlike the other types of determinations in Part 106, however, the Board does not propose to hold hearings on petitions for a temporary waiver of the landfill ban. Section 95(e) of EPRRA does not require or even refer to a hearing on these petitions. Furthermore, Section 95(e) requires the Board to determine whether to grant a petition within 60 days after it is filed, a deadline very difficult for the Board to meet after publishing notice and taking other procedural steps for hearing. *See* 35 Ill. Adm. Code 101.Subpart F (Hearings, Evidence, and Discovery). As the General Assembly plainly intends that the Board expeditiously review and make determinations on these petitions, the Board's proposed Subpart J does not include provisions for public hearings. *See* 35 Ill. Adm. Code 125 (Tax Certifications).

The Board has not and does not now intend to hold a hearing on this proposal, as the Environmental Protection Act does not require the Board to hold a public hearing on proposals to amend its procedural rules. 415 ILCS 5/26, 27 (2010). As noted above, the Board did not receive a comment during the first-notice comment period. Accordingly, the Board has not substantively amended its first-notice proposal and submits it to JCAR for second-notice review. *See* 5 ILCS 100/5-40(c) (2010).

CONCLUSION

The Board today concludes to submit its first-notice proposal without substantive amendments for second notice review by JCAR. In its order below, the Board directs the Clerk to submit the proposed amendments to Part 106 of its procedural rules to JCAR.

ORDER

The Board directs the Clerk to submit the following proposed amendments to Part 106 of the Board's procedural rules to JCAR for second-notice review. Proposed additions are underlined, and proposed deletions appear stricken.

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
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
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	
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 J: TEMPORARY LANDFILL BAN WAIVERS UNDER
THE ELECTRONIC PRODUCTS RECYCLING AND REUSE ACT**

Section

<u>106.1000</u>	<u>General</u>
<u>106.1002</u>	<u>Definitions</u>
<u>106.1004</u>	<u>Initiation of Proceeding</u>
<u>106.1006</u>	<u>Petition Content Requirements</u>
<u>106.1008</u>	<u>Response and Reply</u>
<u>106.1010</u>	<u>Burden of Proof</u>
<u>106.1012</u>	<u>Board Decision</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, 28.5, 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 5 of the Regulation of Phosphorus in Detergents Act [415 ILCS 92.5], and Section 95 of the Electronic Products Recycling and Reuse Act [415 ILCS 150/95].

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. 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. 11486, effective July 23, 2010; amended in R12-21 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, 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], and temporary landfill ban waivers under the Electronic Products Recycling and Reuse Act [415 ILCS 150].

- 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 36 Ill. Reg. _____, effective _____.)

SUBPART J: TEMPORARY LANDFILL BAN WAIVERS UNDER THE ELECTRONIC PRODUCTS RECYCLING AND REUSE ACT

Section 106.1000 General

- a) Applicability. This Subpart applies to any county government or municipal joint action agency filing a petition with the Board beginning April 1, 2012, but no later than December 31, 2013, for a temporary CED landfill ban waiver under Section 95(e) of the Electronic Products Recycling and Reuse Act [415 ILCS 150/95(e)].
- b) Demonstration. Any county government or municipal joint action agency filing a petition for a temporary CED landfill ban waiver under this Subpart must demonstrate that *the respective county's or action agency's jurisdiction may be granted a temporary CED landfill ban waiver due to a lack of funds and a lack of collection opportunities to collect CEDs and EEDs within the county's or action agency's jurisdiction.* [415 ILCS 150/95(e)].
- c) Parties. The person filing the petition for a temporary CED landfill ban waiver must be named the petitioner.
- d) 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 36 Ill. Reg. _____, effective _____)

Section 106.1002 Definitions

The definitions of 35 Ill. Adm. Code 101.Subpart B and Section 10 of the Electronic Products Recycling and Reuse 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 10 of the Electronic Products Recycling and Reuse Act will apply. Terms defined in Section 10 of the Electronic Products Recycling and Reuse include the following:

“Covered electronic device” or “CED” means any computer, computer monitor, television, printer, electronic keyboard, facsimile machine, videocassette recorder, portable digital music player that has memory capability and is battery powered, digital video disc player, video game console, electronic mouse, scanner, digital converter box, cable receiver, satellite receiver, digital video disc recorder, or small-scale server sold at retail and taken out of service from a residence in this State. “Covered electronic device” does not include any of the following:

an electronic device that is part of a motor vehicle or any component part of a motor vehicle assembled by or for a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle;

an electronic device that is functionally or physically part of a larger piece of equipment or that is taken out of service from an industrial, commercial (including retail), library checkout, traffic control, kiosk, security (other than household security), governmental, agricultural, or medical setting, including but not limited to diagnostic, monitoring, or control equipment; or

an electronic device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, water pump, sump pump, or air purifier.

To the extent allowed under federal and State laws and regulations, a CED that is being collected, recycled, or processed for reuse is not considered to be hazardous waste, household waste, solid waste, or special waste. [415 ILCS 150/10]

“Eligible electronic device” or “EED” means any of the following products sold at retail and taken out of service from a residence in this State: mobile telephone; computer cable; portable digital assistant (PDA); or zip drive. To the extent allowed under federal and State laws and regulations, an EED that is being collected, recycled, or processed for reuse is not considered to be hazardous waste, household waste, solid waste, or special waste. [415 ILCS 150/10]

“Municipal joint action agency” or “action agency” means a municipal joint action agency created under Section 3.2 of the Intergovernmental Cooperation Act. [415 ILCS 150/10]

“Program year” means a calendar year. The first program year is 2010. [415 ILCS 150/10]

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

Section 106.1004 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 106.1006 Petition Content Requirements

- a) The petition from the county or action agency shall include the following:
- 1) documentation of the county's or action agency's attempts to gain funding, as well as the total funding obtained, for the collection of CEDs and EEDs in its jurisdiction from manufacturers or other units of government in the State; and
 - 2) an assessment of other collection opportunities in the county's or action agency's jurisdiction demonstrating insufficient capacity for the anticipated volume of CEDs and EEDs for the remainder of the program year in which the petition is being filed. [415 ILCS 150/95(e)]
- b) In addition to the information listed in subsection (a) of this Section, the petition from the county or action agency must also include:
- 1) total weight of CEDs and EEDs collected in the county's or action agency's jurisdiction during all preceding program years;
 - 2) total weight of CEDs and EEDs collected in the county's or action agency's jurisdiction during the year in which the petition is filed; and
 - 3) the projected difference in weight between prior program year in which the petition is filed. [415 ILCS 150/95(e)]
- c) The petition shall include any other information that may be required by Section 95 of the Electronic Products Recycling and Reuse Act.

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

Section 106.1008 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 comments concerning potential Board action on the petition.

- b) The petitioner may file a reply within 7 days after the service of any Agency response.

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

Section 106.1010 Burden of Proof

The burden of proof is on the petitioner. A county government or municipal joint action agency filing a petition for a temporary CED landfill waiver ban must show *by clear and convincing evidence that a county or action agency has a lack of funds and its respective jurisdiction lacks sufficient collection opportunities to collect CEDs and EEDs.* [415 ILCS 150/95(e)]

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

Section 106.1012 Board Decision

- a) *Within 60 days after the filing of the petition with the Board, the Board shall determine, based on the criteria in Section 95(e)(1) and (e)(2) of the Electronic Products Recycling and Reuse Act, whether a temporary CED landfill ban waiver shall be granted to the respective county or action agency for the remainder of the program year in which the petition is filed.* [415 ILCS 150/95(e)]
- b) *If the Board grants a waiver under Section 95(e) of the Electronic Products Recycling and Reuse Act, Section 95(a) and (b) of that Act shall not apply to CEDs and EEDs that are taken out of service from residences within the jurisdiction of the county or action agency receiving the waiver and disposed of during the remainder of the program year in which the petition is filed.* [415 ILCS 150/95(e)]
- c) *Within 5 days after granting a temporary CED landfill ban waiver, the Board shall provide written notice to the Agency of the Board's decision. The notice shall be provided at least 15 days prior to the waiver taking effect.* [415 ILCS 150/95(e)]
- d) *If the Board denies the petition for a landfill ban waiver, the Board's order shall be final and immediately appealable to the circuit court having jurisdiction over the petitioner.* [415 ILCS 150/95(e)]

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

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 19, 2012, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board