

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

PART 108
ADMINISTRATIVE CITATIONS

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AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 21(o), 21(p), 31.1, and 42(b)(4) of the Act [415 ILCS 5/21(o), 21(p), 31.1, and 42(b)(4)].

SOURCE: Adopted in R00-20 at 25 Ill. Reg. 397, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8833, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2397, effective January 27, 2015.

SUBPART A: GENERAL PROVISIONS

Section 108.100 Applicability

- a) This Part applies to proceedings before the Board concerning petitions to contest the issuance of an administrative citation pursuant to Section 31.1 of the Act.
- 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 this Part, the provisions of this Part will apply.

Section 108.102 Severability

If any provision of this Part or its application to any person is adjudged invalid, the adjudication will not affect the validity of this Part as a whole or of any portion not adjudged invalid.

Section 108.104 Definitions

For the purpose of this Part, words and terms will have the meanings as defined in 35 Ill. Adm. Code 101.Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST

Section 108.200 Administrative Citation Issuance

An administrative citation (AC) may be issued by either of the following:

- a) Illinois Environmental Protection Agency (Agency). The Agency may issue an AC pursuant to Section 31.1 of the Act.
- b) Delegated Unit of Local Government (Delegated Unit). Pursuant to Section 4(r) of the Act, the Agency may by agreement delegate its AC authority to a unit of local government which may then issue an AC. All Delegated Units must submit

to the Clerk of the Board a copy of the delegation agreement on or before July 1 of every year.

Section 108.202 Service of Citation/Filing of Citation with the Board

- a) In accordance with Section 31.1 of the Act, the Agency or Delegated Unit may serve an AC upon any person (AC Recipient) believed, through direct observation, to have violated Section 21(o) or (p) of the Act. Service of an AC upon the AC Recipient must be made personally, by registered or certified mail, or by messenger service. (See 35 Ill. Adm. Code 101.300(c) and 101.304(c).)
- b) The AC must be issued and served upon the AC Recipient not more than 60 days after the date of the observed violation and must contain the following information:
 - 1) A statement specifying the provisions of Section 21(0) or (p) of the Act that the AC Recipient was observed to have violated;
 - 2) A copy of the inspection report in which the Agency or Delegated Unit recorded the violation, which report must include the date and time of inspection, and weather conditions prevailing during the inspection;
 - 3) The penalty imposed by Section 42(b)(4) or (b)(4-5) of the Act for the violations;
 - 4) An affidavit by the personnel observing the violation, attesting to their material actions and observations; and
 - 5) Instructions for contesting the AC findings, including notification that the AC Recipient has 35 days within which to file a petition to contest the AC, and if an appeal is filed and the Board finds a violation, the AC Recipient must pay hearing costs pursuant to Section 108.500 of this Part.
- c) As required by Section 31.1 of the Act, the Agency or Delegated Unit must file the AC with the Board no later than 10 days after the date of service upon the AC Recipient.

(Source: Amended at 39 Ill. Reg. 2397, effective January 27, 2015)

Section 108.204 Filing Requirements for Petition to Contest

- a) Who May File. The AC Recipient may file with the Board a petition to contest the AC. The AC Recipient must be named as the respondent and the Agency or

Delegated Unit must be named as the complainant in accordance with Section 31.1(d)(2) of the Act.

- b) Time to File. The petition to contest must be filed with the Board within 35 days after the date of the service of the AC as required by Section 31.1(d)(1) of the Act.
- c) Additional Requirements. Additional filing and service requirements are set forth at 35 Ill. Adm. Code 101.Subpart C.

Section 108.206 Petition Contents

A formal petition to contest must include any reasons why the AC Recipient believes the AC was improperly issued, including:

- a) The AC Recipient does not own the property;
- b) The AC Recipient did not cause or allow the alleged violations;
- c) The AC was not timely filed or properly served; or
- d) The alleged violation was the result of uncontrollable circumstances.

Section 108.208 AC Recipient's Voluntary Withdrawal

The AC Recipient may, at any time before entry of the Board decision, withdraw its petition to contest. It must do so in writing or orally on the record at hearing. If an AC Recipient withdraws its petition to contest, the Board will adopt an order in accordance with Section 108.406 of this Part.

SUBPART C: HEARINGS

Section 108.300 Authorization of Hearing

- a) The hearing date will be set within 60 days after the filing of the petition to contest unless the hearing officer orders otherwise to prevent material prejudice.
- b) The hearing officer will give the parties at least 21 days written notice of the hearing in accordance with Section 31.1(d) of the Act.
- c) The hearing will be held in accordance with 35 Ill. Adm. Code 101.Subpart F.

- d) The hearing will be held at a time and location consistent with the Board's resources as designated by the hearing officer.

SUBPART D: BOARD DECISIONS

Section 108.400 Burden of Proof

The burden of proof is on the Agency or Delegated Unit.

Section 108.402 Dismissal

The Board may issue an order dismissing the AC and closing the docket upon its own motion or a motion by the AC Recipient, Agency or Delegated Unit if the AC was not timely and properly served pursuant to Section 31.1 of the Act and Section 108.200 of this Part.

Section 108.404 Default

Failure of a party to appear at the hearing, or failure to proceed as ordered by the Board or hearing officer, may constitute default. Upon default the Board will issue an order against the defaulting party.

Section 108.406 Non-Contested Citations

The Board will consider the AC non-contested if the AC Recipient does not file a petition to contest, fails to timely file a petition to contest, or withdraws its petition to contest pursuant to Section 108.208. If the AC is non-contested prior to hearing, the Board will adopt a final order in accordance with Section 108.500(a). If the AC Recipient withdraws its petition to contest after the hearing starts, the Board will adopt a final order in accordance with Section 108.500(c) of this Part.

SUBPART E: ASSESSMENT OF PENALTIES AND COSTS

Section 108.500 Penalties and Costs

The Board will impose penalties and assess costs as follows:

- a) If the AC is defaulted or non-contested as set forth in Section 108.404 or 108.406 of this Part, respectively, the Board will do the following:
 - 1) Impose on the AC Recipient found to have violated any provision of Section 21(o) of the Act a \$500 penalty for each violation of each such provision; and

- 2) Impose on the AC Recipient found to have violated any provision of Section 21(p) of the Act a \$1,500 penalty for each violation of each such provision, except that the penalty amount imposed will be \$3,000 for each violation of any provision of Section 21(p) of the Act that is the AC recipient's second or subsequent adjudicated violation of that provision.
- b) If the AC Recipient contests the AC and the Board finds, based on the record, that the violation occurred and that the AC Recipient has not shown that the violation resulted from uncontrollable circumstances, the Board will do the following:
- 1) Impose on the AC Recipient found to have violated any provision of Section 21(o) of the Act a \$500 penalty for each violation of each such provision;
 - 2) Impose on the AC Recipient found to have violated any provision of Section 21(p) of the Act a \$1,500 penalty for each violation of each such provision, except that the penalty amount imposed will be \$3,000 for each violation of any provision of Section 21(p) of the Act that is the AC recipient's second or subsequent adjudicated violation of that provision; and
 - 3) Assess the AC Recipient found to have violated any provision of Section 21(o) or (p) of the Act associated hearing costs pursuant to Sections 108.502 and 108.504 of this Subpart.
- c) If the AC Recipient contests the AC but voluntarily withdraws the petition for review pursuant to Section 108.208 of this Part after the hearing starts, the Board will do the following:
- 1) Impose on the AC Recipient found to have violated any provision of Section 21(o) of the Act a \$500 penalty for each violation of each such provision;
 - 2) Impose on the AC Recipient found to have violated any provision of Section 21(p) of the Act a \$1,500 penalty for each violation of each such provision, except that the penalty amount imposed will be \$3,000 for each violation of any provision of Section 21(p) of the Act that is the AC recipient's second or subsequent adjudicated violation of that provision; and
 - 3) Assess the AC Recipient found to have violated any provision of Section 21(o) or (p) of the Act associated hearing costs pursuant to Sections 108.502 and 108.504 of this Subpart.

(Source: Amended at 29 Ill. Reg. 8833, effective June 8, 2005)

Section 108.502 Claimed Costs of Agency or Delegated Unit

Within 30 days after the close of the hearing or as otherwise directed by the hearing officer, the Agency or Delegated Unit must submit to the Clerk of the Board and serve on all parties an itemized listing of the costs associated with the hearing. The costs must not include attorney's fees or witness fees for persons employed by the Agency or Delegated Unit.

Section 108.504 Board Costs

At the beginning of every fiscal year the Board will place on file a schedule of hearing costs for AC cases. The schedule will include a per day breakdown of the Board's costs for holding a hearing. A copy will be available at the Board's offices and on the Board's Web site.

Section 108.506 Response to Claimed Costs and Reply

- a) The AC Recipient may challenge the claimed costs submitted by the Agency, Delegated Unit, or the Board by filing a response. The response must be filed within 21 days after the service of the claimed costs and must be served on all parties.
- b) The Agency or Delegated Unit may file a reply to the AC Recipient's response to claimed costs within 14 days after the service of the response.
- c) The Board may hold an evidentiary hearing on hearing costs.