

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

PART 105  
APPEALS OF FINAL DECISIONS OF STATE AGENCIES

SUBPART A: GENERAL PROVISIONS

Section	
105.100	Applicability
105.102	Severability
105.104	Definitions
105.106	Computation of Time, Filing and Service Requirements
105.108	Dismissal of Petition
105.110	Hearing Process
105.112	Burden of Proof
105.114	Calculation of Decision Deadline
105.116	Record Filing
105.118	Sanctions for Untimely Filing of the Record

SUBPART B: APPEAL OF AGENCY PERMIT DECISIONS AND OTHER FINAL  
DECISIONS OF THE AGENCY

Section	
105.200	Applicability
105.202	Parties
105.204	Who May File a Petition for Review
105.206	Time to File the Petition or Request for Extension
105.208	Extension of Time to File a Petition for Review
105.210	Petition Content Requirements
105.212	Agency Record
105.214	Board Hearing

SUBPART C: CAAPP PERMIT APPEALS

Section	
105.300	Applicability
105.302	General Requirements
105.304	Petition Content Requirements

SUBPART D: APPEAL OF AGENCY LEAKING UNDERGROUND  
STORAGE TANK (LUST) DECISIONS

Section	
105.400	Parties
105.402	Who May File a Petition for Review

105.404	Time for Filing the Petition
105.406	Extension of Time to File a Petition for Review
105.408	Petition Content Requirements
105.410	Agency Record
105.412	Board Hearing

## SUBPART E: APPEAL OF OSFM LUST DECISIONS

Section	
105.500	Applicability
105.502	General Overview
105.504	General Requirements
105.506	Petition Content Requirements
105.508	OSFM Record and Appearance
105.510	Location of Hearing

105.APPENDIX A Agency LUST Final Decisions that are Reviewable

105.APPENDIX B Comparison of Former and Current Rules (Repealed)

**AUTHORITY:** Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 5, 39, 39.5, 40, 40.1, 40.2, and 57 of the Act [415 ILCS 5/5, 39, 39.5, 40, 40.1, 40.2 and 57].

**SOURCE:** Filed with Secretary of State January 1, 1978; amended 4 Ill. Reg. 52, page 41, effective December 11, 1980; codified 6 Ill. Reg. 8357; amended in R93-24 at 18 Ill. Reg. 4244, effective March 8, 1994; amended in R94-11 at 18 Ill. Reg. 16594, effective November 1, 1994; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 406, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8811, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2369, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. 7980, effective May 20, 2016.

## SUBPART A: GENERAL PROVISIONS

### **Section 105.100      Applicability**

- a) This Part applies to appeals of final decisions of the Agency and the OSFM to the Board as described in this Part.
- 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.

**Section 105.102 Severability**

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

**Section 105.104 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.

**Section 105.106 Computation of Time, Filing and Service Requirements**

Unless this Part provides otherwise, service, filing, and computation of time must be in accordance with 35 Ill. Adm. Code 101.Subpart C.

**Section 105.108 Dismissal of Petition**

A petition is subject to dismissal if the Board determines that:

- a) The petition does not contain the informational requirements set forth in Section 105.210, 105.304, 105.408 or 105.506 of this Part;
- b) The petition is untimely pursuant to Section 105.206, 105.302, 105.404 or 105.504 of this Part;
- c) The petitioner fails to timely comply with any order issued by the Board or the hearing officer, including an order requiring additional information;
- d) The petitioner does not have standing under applicable law to petition the Board for review of the State agency's final decision; or
- e) Other grounds exist that bar the petitioner from proceeding.

**Section 105.110 Hearing Process**

Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 40 Ill. Reg. 7980, effective May 20, 2016)

**Section 105.112 Burden of Proof**

Unless this Part provides otherwise:

- a) *The burden of proof shall be on the petitioner except as provided in subsection (b) of this Section [415 ILCS 5/40(a)(1), 40(b) and (e)(3) and 40.2(a)].*
- b) *The burden of proof is on the Agency if the Agency issues an NPDES permit that imposes limits which are based upon a criterion or denies a permit based upon application of a criterion, then the Agency shall have the burden of going forward with the basis for the derivation of those limits or criterion which were derived under the Board's rules. [415 ILCS 5/40(a)(1)]*

#### **Section 105.114 Calculation of Decision Deadline**

The Board will render its final decision on the petition within any applicable decision period (which commences when the petition is filed in accordance with 35 Ill. Adm. Code 101.300(b)(4)), except:

- a) When the petitioner waives its right to a decision within the prescribed decision period in accordance with 35 Ill. Adm. Code 101.Subpart C; or
- b) When the petitioner files an amended petition, the decision period recommences when the amended petition is filed in accordance with 35 Ill. Adm. Code 101.300(b)(4).

#### **Section 105.116 Record Filing**

- a) The State agency must file with the Board the entire record of its decision within 30 days after the filing of the petition for review, unless this Part provides otherwise, or the Board or hearing officer orders a different filing date. If the State agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. Pursuant to 35 Ill. Adm. Code 101.302(h)(2), the State agency must file the record through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF.
- b) The record must be arranged in chronological sequence, or by category of material and chronologically within each category, and must be sequentially numbered with the letter "R" placed before the number of each page. The record must be certified by the State agency. The certification must be entitled "Certificate of Record on Appeal". The Certificate must contain an index that lists the documents comprising the record and shows the page numbers upon which each document starts and ends. The Certificate of Record must be served on all parties by the State agency.

(Source: Amended at 40 Ill. Reg. 7980, effective May 20, 2016)

#### **Section 105.118 Sanctions for Untimely Filing of the Record**

If the State agency unreasonably fails to timely file the record on or before the date required under this Part, the Board may sanction the State agency in accordance with 35 Ill. Adm. Code 101.Subpart H.

## SUBPART B: APPEAL OF AGENCY PERMIT DECISIONS AND OTHER FINAL DECISIONS OF THE AGENCY

### **Section 105.200      Applicability**

This Subpart applies to any appeal to the Board of the Agency's final permit decisions and other final decisions of the Agency, except:

- a) When the appeal is of a final CAAPP decision of the Agency, which is addressed in Subpart C of this Part; and
- b) When the appeal is of a final leaking underground storage tank decision of the Agency, which is addressed in Subpart D of this Part.

### **Section 105.202      Parties**

- a) Petitioner. The person who files a petition for review of the Agency's final decision must be named the petitioner.
- b) Respondent(s). The Agency must be named the respondent. If a petition is filed pursuant to Section 105.204(b), (c) or (d) by a person other than the permit applicant, the permit applicant must be named as a respondent in addition to the Agency.

### **Section 105.204      Who May File a Petition for Review**

- a) General. *If the Agency refuses to grant or grants with conditions a permit under Section 39 of the Act, the applicant may petition for a hearing before the Board to contest the decision of the Agency. [415 ILCS 5/40(a)(1)]*
- b) National Pollutant Discharge Elimination System (NPDES) Permit. *If the Agency grants or denies a permit under subsection (b) of Section 39 of the Act, a third party, other than the permit applicant or Agency, may petition the Board for a hearing to contest the decision of the Agency [415 ILCS 5/40(e)(1)].*
- c) Resource Conservation and Recovery Act (RCRA) Permit for a Hazardous Waste Disposal Site. *If the Agency grants a RCRA permit for a hazardous waste disposal site, a third party, other than the permit applicant or Agency, may petition the Board for a hearing to contest the issuance of the permit. This*

subsection does not apply to the *granting of permits issued for the disposal or utilization of sludge from publicly-owned sewage works.*[415 ILCS 5/40(b)]

- d) Hazardous Waste Permit. *Any party to an Agency proceeding conducted pursuant to Section 39.3 of the Act may petition as of right to the Board for review of the Agency's decision.*[415 ILCS 5/40(c)]
- e) EMSAs. If the Agency terminates an EMSA under Section 52.3-4(b) of the Act, the sponsor may petition the Board for review of the Agency's final decision.
- f) Other Agency Final Decisions. If the Agency's final decision is to deny or to conditionally grant or approve, the person who applied for or otherwise requested the Agency decision, or the person to whom the Agency directs its final decision, may petition the Board for review of the Agency's final decision. In addition, any third party authorized by law to appeal a final decision of the Agency to the Board may file a petition for review with the Clerk.

**Section 105.206      Time to File the Petition or Request for Extension**

- a) Except as provided in subsection (b) of this Section, if a person who may petition the Board under Section 105.204 of this Subpart wishes to appeal the Agency's final decision to the Board under this Subpart, the person must file the petition with the Clerk within 35 days after the date of service of the Agency's final decision.
- b) If a person with standing as described in Section 105.204(d) of this Subpart, or any third party who is authorized by law to appeal a final decision of the Agency to the Board, wishes to appeal the Agency's final decision to the Board under this Subpart, the person must file a petition for review with the Clerk within 35 days after the date of issuance of the Agency's final decision.
- c) Except as provided in subsection (d) of this Section, if a person who may petition the Board under Section 105.204 of this Subpart wishes to request an extension of time to file a petition for review pursuant to Section 105.208(a) of this Subpart, the person must file the request within 35 days after the date of service of the Agency's final decision.
- d) If a person with standing as described in Section 105.204(d), or any third party who is authorized by law to appeal a final decision of the Agency to the Board, wishes to request an extension of time to file a petition for review pursuant to Section 105.208(b) of this Subpart, the person must file the request within 35 days after the date of issuance of the Agency's final decision.

**Section 105.208      Extension of Time to File a Petition for Review**

- a) Permit or Other Agency Final Decision. For appeals pursuant to Section 40(a)(1) of the Act, *the 35-day period* described in Section 105.206(a) of this Subpart *for petitioning for a hearing may be extended by the applicant for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period* [415 ILCS 5/40(a)(1)].
- 1) The applicant and the Agency must jointly file a request for extension within 35 days after the date of service of the Agency's final decision.
  - 2) The joint request described in subsection (a)(1) of this Section may seek an appeal period not exceeding 125 days from the date of service of the Agency's final decision to file a petition for review under this Subpart.
- b) Hazardous Waste Permit. For appeals pursuant to Section 40(c) of the Act, *the 35-day period* described in Section 105.206(b) of this Subpart *for petitioning for a hearing may be extended by the applicant for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period. If another person with standing to appeal a hazardous waste disposal permit wishes to obtain an extension, there must be a written notice provided to the Board by that person, the Agency, and the applicant, within the initial appeal period.* [415 ILCS 5/40(c)]
- 1) If the applicant is the petitioner, the applicant and the Agency must jointly file a request for extension within 35 days after the date of issuance of the Agency's final decision.
  - 2) If a person with standing other than the applicant is the petitioner, the Agency, the applicant and the other person must jointly file a request for extension within 35 days after the date of issuance of the Agency's final decision.
  - 3) The joint request described in subsection (b)(1) or (2) of this Section may seek an appeal period not exceeding 125 days from the date of issuance of the Agency's final decision to file a petition for review under this Subpart.
- c) Any request for extension of time under this Section must be accompanied by written evidence that the Agency joins in the request, e.g., affidavit of the petitioner or signature of the Agency's representative.
- d) Extensions of time to file petitions under Section 105.204(b), (c), or (e) of this Subpart are not available.

## **Section 105.210      Petition Content Requirements**

In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C, the petition must include:

- a) The Agency's final decision or issued permit;
- b) A statement specifying the date of issuance or service of the Agency's final decision or issued permit, as applicable pursuant to Section 105.206 of this Subpart;
- c) A statement specifying the grounds of appeal; and
- d) For petitions under Section 105.204(b) of this Subpart, *a demonstration that the petitioner raised the issues contained within the petition during the public notice period or during the public hearing on the NPDES permit application, if a public hearing was held, and a demonstration that the petitioner is so situated as to be affected by the permitted facility* [415 ILCS 5/40(e)(2)].

**Section 105.212 Agency Record**

- a) The Agency must file its entire record of its decision with the Clerk in accordance with Section 105.116 of this Part.
- b) The record must include:
  - 1) Any permit application or other request that resulted in the Agency's final decision;
  - 2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the permit application;
  - 3) The permit denial letter that conforms to the requirements of Section 39(a) of the Act or the issued permit or other Agency final decision;
  - 4) The hearing file of any hearing that may have been held before the Agency, including any transcripts and exhibits; and
  - 5) Any other information the Agency relied upon in making its final decision.

**Section 105.214 Board Hearing**

- a) Except as provided in subsections (b), (c) and (d) of this Section, the Board will conduct a public hearing, in accordance with 35 Ill. Adm. Code 101.Subpart F, upon an appropriately filed petition for review under this Subpart. The hearing will be based exclusively on the record before the Agency at the time the permit or decision was issued, unless the parties agree to supplement the record pursuant to Section 40(d) of the Act. If any party desires to introduce evidence before the

Board with respect to any disputed issue of fact, the Board will conduct a separate hearing and receive evidence with respect to the issue of fact.

- b) The Board will not hold a hearing on a petition for review under this Subpart if the Board disposes of the petition on a motion for summary judgment brought pursuant to 35 Ill. Adm. Code 101.516.
- c) The Board will not hold a hearing on a petition for review under Section 105.204(c) of this Subpart if the Board determines that:
  - 1) The petition is duplicative or frivolous; or
  - 2) The petitioner is so located as to not be affected by the permitted facility.
- d) The Board will not hold a hearing on a petition for review under Section 105.204(b) or (d) of this Subpart if the Board determines that the petition is duplicative or frivolous.
- e) If the Board determines to hold a hearing, the Clerk will give notice of the hearing pursuant to 35 Ill. Adm. Code 101.602.

(Source: Amended at 29 Ill. Reg. 8811, effective June 8, 2005)

#### SUBPART C: CAAPP PERMIT APPEALS

##### **Section 105.300      Applicability**

This Subpart applies to proceedings before the Board concerning appeals from CAAPP final determinations made pursuant to Section 39.5 of the Act.

## **Section 105.302      General Requirements**

- a) The definitions of 35 Ill. Adm. Code 101.202 and Section 39.5 of the Act will apply to this Subpart unless otherwise provided, or unless the context clearly indicates otherwise.
- b) If the Agency denies a CAAPP permit, permit modification, or permit renewal it shall provide to USEPA, the permit applicant and, upon request, affected states, any person who participated in the public comment process and any other person who could obtain judicial review under Section 40.2 and 41 of the Act a copy of each notification of denial pertaining to the permit applicant.
- c) In the case of a denial of a CAAPP permit, including a permit revision or permit renewal, or a determination of incompleteness by the Agency regarding a submitted CAAPP application, or the issuance by the Agency of a CAAPP permit with one or more conditions or limitations, or the failure of the Agency to act on an application for a CAAPP permit, permit renewal, administrative permit amendment or significant permit modification within the time frames specified in Section 39.5(5)(j) or Section 39.5(13) of the Act, as applicable, or the failure of the Agency to take final action within 90 days after receipt of an application requesting minor permit modification procedures (or 180 days for modifications subject to group processing requirements) pursuant to Section 39.5(14) of the Act, to which the applicant, any person who participated in the public comment process pursuant to Section 39.5(8) of the Act, or any other person who could obtain judicial review pursuant to Section 41(a) of the Act objects, such persons may contest the decision of the Agency by filing with the Clerk a petition for review of the Agency's action in accordance with this Section.
- d) For purposes of this Subpart, a person who participated in the public comment process is someone who, during the public comment period, either commented on the draft permit, submitted written comments, or requested notice of the final action on a specific permit application.
- e) The petition filed pursuant to subsection (c) of this Section must be filed within 35 days after the Agency's final permit action. Notwithstanding the above, if the petition is based solely on grounds arising after the 35 day period expires, the petition may be filed within 35 days after the new grounds for review arise. If the applicant is challenging the Agency's failure to timely take final action pursuant to Section 39.5 of the Act, the petition must be filed before the Agency takes the final action. Under no circumstances may a petition challenging the final permit action on a Phase II acid rain permit be filed more than 90 days subsequent to the final permit action.
- f) The Agency must appear as respondent at the hearing, and must file within 30 days after service of the petition, an answer consisting of the entire Agency record

of the CAAPP application including the CAAPP permit application, the hearing record, the CAAPP permit denial or issuance letter, and correspondence with the applicant concerning the CAAPP permit application.

- g) The Clerk will give notice of the petition and hearing in accordance with 35 Ill. Adm. Code 101.
- h) The proceeding will be conducted in accordance with 35 Ill. Adm. Code 101.
- i) *The Agency shall notify USEPA, in writing, of any petition for hearing brought under this Part involving a provision or denial of a Phase II acid rain permit within 30 days of the filing of the petition. USEPA may intervene as a matter of right in any such hearing. The Agency shall notify USEPA, in writing, of any determination or order in a hearing brought under this Section that interprets, voids, or otherwise relates to any portion of a Phase II acid rain permit. [415 ILCS 5/40.2(e)]*

#### **Section 105.304      Petition Content Requirements**

- a) The petition must include:
  - 1) a concise description of the CAAPP source for which the permit is sought;
  - 2) a statement of the Agency's decision or part thereof to be reviewed;
  - 3) a justification as to why the Agency's decision or part thereof was in error; and
  - 4) the other materials upon which the petitioner relies in its petition.
- b) The petition may include a request to stay the effectiveness of a denial of the CAAPP permit until final action is taken by the Board pursuant to Section 40.2 of the Act.

#### **SUBPART D: APPEAL OF AGENCY LEAKING UNDERGROUND STORAGE TANK (LUST) DECISIONS**

#### **Section 105.400      Parties**

- a) Petitioner. The person who files a petition for review of the Agency's final decision made pursuant to Sections 57.1 et seq. of the Act (or under the former Section 22.18b(g) of the Act) must be named as petitioner.
- b) Respondent. The Agency must be named as the respondent.

## **Section 105.402      Who May File a Petition for Review**

Any owner or operator may file a petition for review pursuant to Section 40 of the Act of an Agency final determination made pursuant to Sections 57.1 et seq. of the Act (or under the former Section 22.18b(g) of the Act). There are several Agency determinations that may be appealed pursuant to Section 40 of the Act. The Agency determinations that may be appealed are included in Illustration A of this Part.

## **Section 105.404      Time for Filing the Petition**

Petitions must be filed in accordance with this Section or the Board does not have the authority to review the Agency's decision and will dismiss the proceeding on its own motion or on the motion of any party. Within 35 days after the date of service of the Agency's final decision the petitioner may file with the Clerk of the Board:

- a) a petition for review that contains the requirements of Section 105.408 of this Part; or
- b) a request for an extension of time to file a petition for hearing pursuant to Section 105.406 of this Part.

## **Section 105.406      Extension of Time to File a Petition for Review**

Pursuant to Section 40(a)(1) of the Act, *the 35-day period for petitioning for a hearing may be extended by the applicant for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period* [415 ILCS 5/40(c)]. The applicant and the Agency must jointly file a request for extension with the Board within 35 days after the date of service of the Agency's final decision. Upon an appropriately filed request for an extension, the applicant has a period not exceeding 125 days after the date of service of the Agency's final decision to file a petition for review before the Board pursuant to Section 105.408 of this Part.

## **Section 105.408      Petition Content Requirements**

In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C the petition must contain:

- a) The Agency's final decision;
- b) A statement specifying the date of service of the Agency's final decision; and
- c) A statement specifying the grounds of appeal.

### **Section 105.410 Agency Record**

- a) The Agency must file the entire record of its decision with the Board in accordance with Section 105.116 of this Part.
- b) The record must include:
  - 1) The plan or budget submittal or other request that requires an Agency decision;
  - 2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the plan or budget submittal or other request;
  - 3) The final determination letter; and
  - 4) Any other information the Agency relied upon in making its determination.

### **Section 105.412 Board Hearing**

The Board will conduct a public hearing, in accordance with 35 Ill. Adm. Code 101.Subpart F upon an appropriately filed petition for review, unless a petition is disposed of by a motion for summary judgment brought pursuant to 35 Ill. Adm. Code 101.516. The hearing will be based exclusively on the record before the Agency at the time the permit or decision was issued.

## **SUBPART E: APPEAL OF OSFM LUST DECISIONS**

### **Section 105.500 Applicability**

This Subpart applies to proceedings before the Board concerning appeals from OSFM final determinations made pursuant to Section 57.9(c) of the Act.

### **Section 105.502 General Overview**

OSFM final determinations are made either through the issuance of an “Eligibility and Deductibility Determination” letter or by the failure of OSFM to act upon receipt of an “Eligibility and Deductibility Determination” form within 60 days pursuant to Section 57.9(c)(2) of the Act. The process before the Board for review of final determinations by the OSFM includes the following steps. Upon receipt of a petition for review, unless the Board determines that the petition is insufficient, a hearing date and location will be assigned. Hearings will be publicly-noticed in the county where the underground storage tank site is located. If the parties enter into a settlement agreement prior to or during the hearing process, the parties may request that the Board accept and enter a final order adopting a proposed settlement agreement; the order may be requested with or without a hearing.

## **Section 105.504      General Requirements**

- a) **Who May File.** Any owner or operator of an underground storage tank who has been issued an "Eligibility and Deductibility Determination" letter or who has not received an "Eligibility and Deductibility Determination" letter from the OSFM within the time prescribed by Section 57.9(c)(2) of the Act, which is deemed to be a final decision appealable to the Board, may file a petition with the Board seeking review of that final decision. The owner/operator must be named as the petitioner, and the OSFM must be named as the respondent. Filing requirements are set forth at 35 Ill. Adm. Code 101.Subpart C.
- b) **Timely Petition.** The petition for review must be filed with the Board within 35 days after the date of the OSFM's "Eligibility and Deductibility Determination" letter or within 35 days from the OSFM's final decision due to its failure to act as required under Section 57.9(c)(3) of the Act. There will be a rebuttable presumption that petitioner received the OSFM's "Eligibility and Deductibility Final Determination" letter four days from the date indicated on the letter.
- c) **Service and Filing.** The petitioner must serve all filings upon the OSFM in accordance with 35 Ill. Adm. Code 101.304(c). All filings must be accompanied by a notice of filing. Methods and documentation of service, as well as the effective date of service, are governed by 35 Ill. Adm. Code 101.Subpart C.

(Source: Amended at 39 Ill. Reg. 2369, effective January 27, 2015)

## **Section 105.506      Petition Content Requirements**

In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C the petition must include:

- a) A copy of the OSFM's "Eligibility and Deductibility Final Determination" letter;
- b) A complete and precise description of the underground storage tank site, including the location of the site, including the county, the number of underground storage tanks on-site, the substance(s) stored in each tank, the date of the tank's registration; and the date of Illinois Emergency Management Agency notification;
- c) A statement specifying the date of service of the OSFM's final determination letter and documentation to demonstrate the petition's timely filing;
- d) A statement specifying the grounds of appeal; and
- e) If the owner or operator is represented by counsel, an appearance must be filed in conjunction with the petition.

**Section 105.508 OSFM Record and Appearance**

- a) Within 14 days after a petition for review of an OSFM eligibility or deductibility determination, the attorney representing the OSFM must file an appearance with the Board.
- b) The OSFM must file the entire record of its decision with the Board in accordance with Section 105.116 of this Part. The record must include:
  - 1) The request for OSFM determination of eligibility or deductibility;
  - 2) Correspondence with the petitioner;
  - 3) The denial letter; and
  - 4) Any other information the OSFM relied upon in making its determination.

**Section 105.510 Location of Hearing**

**Section 105.510 Location of Hearing**

The hearing will be held in either Springfield or Chicago or in such other location as the hearing officer or the Board may designate to prevent material prejudice or undue delay. Upon the proceeding being set for hearing, the Clerk will cause notice of the hearing to be published. Public notice will be published at least 21 days before the hearing by public advertisement in a newspaper of general circulation in the county in which the LUST site in question is located. Nothing in this Section precludes holding the hearing by videoconference pursuant to 35 Ill. Adm. Code 101.600(b).

(Source: Amended at 40 Ill. Reg. 7980, effective May 20, 2016)

**APPENDIX A Agency LUST Final Decisions that are Reviewable**

The following table includes Agency final determinations which may be appealed to the Board pursuant to the Leaking Underground Storage Tank Program, Title XVI of the Act. Appealable determinations are listed in Title XVI, so the reader should consult the Act for amendments to Title XVI which may affect this list.

Description of Final Determination	Section of the Act Citation	35 Ill. Adm. Code Citation
Agency’s determination concerning the owner’s or operator’s physical soil classification and groundwater	57.7(a)(1)(A)	732.305(a) and (c) and 732.503(b) and (f)

investigation plan.

Agency's determination as to a request for reimbursement for costs associated with early action pursuant to Section 57.6(b) of the Act.	57.7(a)(1)(B)	732.305(b)(1) and (c) and 732.602
Agency's determination concerning the owner's or operator's budget for the physical soil classification and groundwater investigation plan.	57.7(a)(2)	732.305(b)(2) and (c) and 732.503 (b) and (f)
Agency's determination concerning the site classification.	57.7(b)	732.309, 732.500(a) and 732.503(b) and (f)
Agency's determination concerning the corrective action plan submitted for a high priority site.	57.7(c)(1)(A)	732.405(a) and 732.503(b) and (f)
Agency's determination concerning the budget associated with a corrective action plan submitted for a high priority site.	57.7(c)(1)(B)	732.405(b) and 732.503(b) and (f)
Agency's determination as to issuance of a no further remediation letter in accordance with Section 57.10 of the Act for a high priority site.	57.7(c)(1)(E)	732.410(a) and (d)
Agency's determination concerning the groundwater monitoring plan and associated budget submitted for a low priority site.	57.7(c)(2)(B)	732.403(b) and (c) and 732.503(b) and (f)
Agency's determination associated with a groundwater monitoring completion report.	57.7(c)(2)(C)	732.403(g)
Agency's determination as to issuance of a no further remediation letter in accordance with Section 57.10 of the Act for a low priority site.	57.7(c)(2)(E)	732.403(f) and 732.410(d)
Agency's determination as to the site classification for a no further action site.	57.7(c)(3)(B)	732.402 and 732.410(d)
Agency's determination as to amount of	57.8(i)	732.602(h)

reimbursement.

Agency's determination concerning the completeness of plan or budget submittals by the owner or operator.

732.502(b),  
732.503(f)

Agency's determination concerning the completeness of reimbursement submittals by the owner or operator.

732.602(a) and (b)

BOARD NOTE: The above list was complete at time of adoption. However, the list is subject to subsequent changes in the Act, the Board's regulations and the interpretation of the corresponding law. By no means should this list be interpreted to limit any right to appeal an Agency final determination before the Board. The list should only be used as an aid for interpreting Title XVI and the corresponding law.

105.APPENDIX B Comparison of Former and Current Rules (Repealed)

(Source: Repealed at 29 Ill. Reg. 8811, effective June 8, 2005)