

SUBTITLE A

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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106.APPENDIX A Comparison of Former and Current Rules (Repealed)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, 28.5, 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), 21.622.4, 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].

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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 Reg. 2697, effective February 16, 1999; old Part repealed, new Part adopted in R00-20 at 25 Ill.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. 9236, effective June 7, 2012; amended in R12-11 at 36 Ill. Reg. 16581, effective November 5, 2012; amended in R13-20 at 38 Ill. Reg. 6086, effective February 26, 2014; amended in R14-21 at 39 Ill. Reg. 2375, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12914, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. 7986, effective May 20, 2016.

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, authorization of use of cleaning agents under the Regulation of Phosphorus in Detergents Act [415 ILCS 92], authorizations for certain landscape waste and compost applications and on-farm composting facilities, and petitions requesting alternative thermal effluent limitations pursuant to section 316(a) of the Clean Water Act (33 USC 1326(a)) and 35 Ill. Adm. Code 304.141(c).
- 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 39 Ill. Reg. 2375, effective January 27, 2015)

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Section 106.102 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 petition not adjudged invalid.

Section 106.104 Definitions

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

Section 106.106 Petitions and Hearings

- a) Each petition must contain an index that lists the documents comprising the petition, including any exhibits, attachments, and supporting documents. All pages of the petition must be sequentially numbered with the letter "P" placed before the number of each page. The index must show the page numbers upon which each document comprising the petition starts and ends.
- b) 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: Added at 40 Ill. Reg. 7986, effective May 20, 2016)

SUBPART B: HEATED EFFLUENT, ARTIFICIAL COOLING LAKE, AND SULFUR DIOXIDE DEMONSTRATIONS**Section 106.200 General**

- a) Description
 - 1) Heated Effluent Demonstration
 - A) The owner or operator of a source of heated effluent that discharges 150 megawatts (0.5 billion British thermal units per hour) or more must demonstrate in an adjudicatory proceeding before the Board, pursuant to 35 Ill. Adm. Code 302.211(f), that discharges from that source have not caused and cannot be reasonably expected to cause significant ecological damage to the receiving waters.

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- B) The owner or operator must make the demonstration under subsection (a)(1)(A) of this Section not less than 5 years nor more than 6 years after operations commence.
 - C) If the Board finds that the proof of the owner or operator under subsection (a)(1)(A) of this Section is inadequate, the Board's order will include a requirement that the owner or operator perform appropriate corrective measures within a reasonable time as determined by the Board.
- 2) Artificial Cooling Lake Demonstration
- A) If a discharger wishes to have the Board establish specific thermal standards for its discharge to an artificial cooling lake pursuant to 35 Ill. Adm. Code 302.211(j)(5) that would apply to the discharge in lieu of the applicable provisions of the thermal water quality standards set forth in 35 Ill. Adm. Code 302.211 and 303, the discharger must demonstrate in an adjudicatory proceeding before the Board, pursuant to 35 Ill. Adm. Code 302.211(j)(3), that the artificial cooling lake receiving the heated effluent will be environmentally acceptable and within the intent of the Act.
 - B) If the Board finds that the proof of the discharger under subsection (a)(2)(A) of this Section is adequate, the Board will establish, pursuant to 35 Ill. Adm. Code 302.211(j)(5), specific thermal standards to be applied to the discharge to the artificial cooling lake in lieu of the applicable provisions of the thermal water quality standards set forth in 35 Ill. Adm. Code 302.211 and 303.
 - C) A Board order providing alternate thermal standards under subsection (a)(2)(B) of this Section will include, but not be limited to, the following conditions:
 - i) Pursuant to 35 Ill. Adm. Code 302.211(j)(1), all discharges from the artificial cooling lake to other waters of the State must comply with the applicable provisions of 35 Ill. Adm. Code 302.211(b) through (e); and
 - ii) Pursuant to 35 Ill. Adm. Code 302.211(j)(2), the heated effluent discharged to the artificial cooling lake must comply with all applicable provisions of 35 Ill. Adm. Code

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Subtitle C, Chapter I, except 35 Ill. Adm. Code 302.211(b) through (e).

- 3) Sulfur Dioxide Demonstrations. Any owner or operator of a fuel combustion emission source may petition the Board, pursuant to 35 Ill. Adm. Code 214.185 and this Subpart, for approval of substitute standards from those set forth in 35 Ill. Adm. Code 214.183 and 214.184.
- b) Initiation of Proceeding. The owner or operator may initiate a heated effluent, artificial cooling lake or sulfur dioxide demonstration by filing with the Clerk a petition in accordance with this Subpart.
- c) Parties. The owner or operator must be named the petitioner and the Agency must be named the respondent.
- d) Filing and Service. Filing and service must be in accordance with 35 Ill. Adm. Code 101.Subpart C.

Section 106.202 Petition Requirements

- a) Heated Effluent Demonstration. The petition must include, where applicable, the following information but may include additional information that the petitioner believes will be relevant to the proceeding:
 - 1) General Plant Description:
 - A) Generating capacity;
 - B) Type of fuel used;
 - C) Operating characteristics of the condenser cooling system;
 - D) History of the load factor of the plant for the time during which the plant has operated, but for no more than the last 5 years;
 - E) Projected load factors for the life of the plant;
 - F) Estimated date of retirement for each unit at the plant and any plans for additional units at the plant;
 - G) History of plant shutdowns; and

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- H) Planned, emergency, and projected shutdowns with frequency and duration.
- 2) Description of Method for Heat Dissipation:
- A) Type of system used (such as once-through, mechanical, and draft cooling towers) in narrative form; and
 - B) Summary information on temperature of discharge to receiving waters in narrative form.
- 3) Plume Studies:
- A) Actual plume studies in the last 5 years correlated with plant operation and meteorological conditions;
 - B) Theoretical plume studies for all four seasons for typical and worst case conditions. Worst case conditions must be identified as worst conditions of plant load factors, precipitation, ambient water temperature, and air temperature; the studies must consider the frequency of occurrence and their joint probabilities of occurrence; and
 - C) Theoretical plume studies that identify isotherms at 3⁰ Fahrenheit (1.7⁰ Centigrade) intervals down to ambient temperature indicating three-dimensional effects.
- 4) A demonstration that discharges from the source of heated effluent have not caused and cannot be reasonably expected to cause significant ecological damage to the receiving waters, including:
- A) Biological studies in the last 5 years on receiving waters, including species studied, location of studies, and conclusions reached, including conclusions as to both the lethal and sublethal effects of the thermal discharge;
 - B) The impact on other animal life (such as waterfowl and amphibians) in the area as a result of the thermal discharge; and
 - C) Secondary Considerations

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- i) Possible and known impact on recreation from thermal discharges; and
- ii) Management practices employed or planned in order to limit the effect of any environmental harm established under this subsection (a)(4).

The demonstration required under this subsection (a)(4) may take any of the forms described in subsection (b)(2) of this Section.

- 5) A citation to any prior proceedings, in which the petitioner was a party, brought pursuant to 35 Ill. Adm. Code 302.211(f) or (j)(3).
- b) Artificial Cooling Lake Demonstration. The petition must include, where applicable, the following information but may include additional information that the petitioner believes will be relevant to the proceeding:
- 1) A demonstration that the artificial cooling lake receiving the heated effluent will be environmentally acceptable and within the intent of the Act, including:
 - A) Provision of conditions capable of supporting shellfish, fish and wildlife, and recreational uses consistent with good management practices; and
 - B) Control of the thermal component of the discharger's effluent by a technologically feasible and economically reasonable method.
 - 2) The demonstration required under subsection (b)(1) of this Section may take the form of any of the following:
 - A) A final environmental impact statement;
 - B) Pertinent provisions of environmental assessments used to prepare the final environmental impact statement; or
 - C) A showing pursuant to Section 316(a) of the Clean Water Act (33 USC 1326).
 - 3) A citation to any prior proceedings, in which the petitioner was a party, brought pursuant to 35 Ill. Adm. Code 302.211(f) or (j)(3).

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- c) Sulfur Dioxide Demonstration. The petition must include the following information:
- 1) An explicit statement of the site-specific emission limitation (in pounds of sulfur dioxide per million British thermal units (btu) actual heat input and total pounds of sulfur dioxide per hour) that is proposed for the facility.
 - 2) Emission Sources Description:
 - A) The diameter, height, exit gas temperature, and exit gas velocity for all stacks or vents through which sulfur dioxide is emitted into the atmosphere;
 - B) A description of the fuels used including type, ultimate analysis, sulfur content, and heat content;
 - C) A description of the type of fuel combustion equipment including method of firing and size (in million btu per hour capacity);
 - D) A topographic map of terrain within 30 miles of the emission source(s);
 - E) A specific description of the location of the emission sources, including a plot plan; and
 - F) A specific description of the operating conditions which produce maximum sulfur dioxide emissions.
 - 3) A summary of any and all ambient air quality data collected by the owner or operator of the source(s) since January 1, 1973. The summary must include annual averages; maximum and second-highest one-hour, 3-hour, and 24-hour averages for each month; and the number of times the 3-hour and 24-hour sulfur dioxide standards were exceeded during each month.
 - 4) A summary of any and all meteorological data collected by the owner or operator of the source(s) since January 1, 1973, if the data are used in the development of the site-specific emission standard.
 - 5) A complete description of and justification for all dispersion models and plume rise equations that are used to develop the site-specific emission limitation, including all model equations.

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- 6) A description of and justification for the use of all data that were inputs to the dispersion and plume rise formula used to establish the site-specific emission standard. The description and justification must cover, as a minimum, the following input data:
 - A) Stack diameters, stack heights, exit gas temperatures, and exit gas velocities for all stacks and vents emitting sulfur dioxide at the subject facility as well as for any other sources of sulfur dioxide that were modeled;
 - B) All sulfur dioxide emission sources that were modeled; and
 - C) All meteorological data.
- 7) Calculated maximum ground-level concentrations using the following method, or such other method (or modification of the hereinafter stated method) that the petitioner proves to the satisfaction of the Board to be acceptable.
 - A) Selection of simulation model:
 - i) Gaussian models that allow the input of hourly meteorological data must be used which are appropriate for the specific location and type of source(s) in question.
 - ii) Dispersion models presented in “Guidelines on Air Quality Models” (EPA-450/2-78-027), or those deemed by the Board to be equivalent to these models must be used for detailed air quality studies.
 - B) Selection of meteorological data and stack parameters:
 - i) The most recent 5 years of hour-by-hour meteorological data reasonably available, including wind speed, wind direction, atmospheric stability, mixing height and surface temperature must be used, unless the petitioner demonstrates that one of the 5 years causes substantially higher concentrations than the other four, in which case detailed analyses conducted for only that “worst case” year would be acceptable. Notwithstanding the previous sentence, one year of on-site data may be used in lieu of the 5-year data requirement;

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- ii) Data must be from the nearest, representative, quality controlled meteorological collecting site; and
 - iii) Stack parameters (including emission rate, stack height, stack diameter, exit velocity, and exit temperature) must reflect the maximum operating rate for comparison with the 24-hour and 3-hour sulfur dioxide standards.
- C) Receptors:
- i) Receptors must be located so as to ensure that the source's maximum impact is detected; and
 - ii) The determination of the receptor grid must be fully documented in the modeling study;
- D) Special conditions:
- i) All special conditions that may affect the dispersion of the effluent plume, including local terrain effects and aerodynamic downwash, must be considered in the modeling study;
 - ii) If terrain is a factor in the vicinity of the source, a model capable of handling variable-height receptors must be used; and
 - iii) If the computed height of the effluent plume is less than 2.5 times the height of nearby buildings or local obstructions, aerodynamic downwash must be studied and considered as a possible factor in the dispersion of that effluent.
- E) Determination of violation: The determination of whether an applicable air quality increment or standard is being violated must be based on the second-highest predicted concentration over the receptor grid for short-term averaging times and on the highest predicted concentration for annual averaging times. However, if only one year of meteorological data is used in the short-term analysis, then the highest predicted concentration may be compared to the applicable standard to determine whether a violation has occurred.

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- F) Other sources: Effects of other sources of sulfur dioxide must be taken into account in the modeling study. Methods by which other sources of sulfur dioxide may be accounted are as follows:
- i) An acceptable method is to estimate the “background” from monitoring data which has been subjected to adequate quality control where available. When monitored data is used, the background must be estimated using monitoring days with meteorological conditions similar to those identified as “worst case” for the source in question; or
 - ii) If monitoring data is not available, then all sources of sulfur dioxide having a significant impact in the area of the source's impact area must be used in the simulation model. These sources of sulfur dioxide must also be modeled at their maximum allowable emission rate for any studies addressing 24-hour or 3-hour averaging times.
- 8) Estimates of the frequency, characteristics, probable time of occurrence, and duration of the meteorological conditions associated with the maximum ground-level concentration of sulfur dioxide to which the facility under study contributes. A description of the techniques used in arriving at the above estimates must be included.
- 9) Background concentrations that were determined for all meteorological conditions required to be examined under subsection (c)(7) of this Section and for any other meteorological conditions considered in the development of the alternative standard.
- 10) A description of the method that was used to determine background sulfur dioxide concentrations in the vicinity of the subject facility for each of the meteorological conditions required to be examined under subsection (c)(7) of this Section and for any additional meteorological conditions considered in developing the alternative standard.
- 11) An evaluation and calibration of the dispersion model if air quality monitoring data were available to perform the evaluation and calibration.

Section 106.204 Additional Petition Requirements in Sulfur Dioxide Demonstrations

In addition to meeting the petition content requirements of Section 106.202(c) of this Part the petitioner must ensure that the procedural requirements of 40 CFR 51.4 (1977) are met and, at least 30 days prior to the date of the hearing, petitioner must:

- a) Give notice to the public by prominent advertisement in the Air Quality Control Region affected announcing the date, time and place of the hearing;
- b) Make available a copy of the petition for public inspection in at least one location in the Air Quality Control Region in which the source is located;
- c) Notify the Administrator of USEPA (through the Region V Office);
- d) Notify each local air pollution control agency located within the affected Air Quality Control Region; and
- e) Notify, in the case of an interstate Air Quality Control Region, any air pollution control agencies of other states included, in whole or in part, in the Region.

Section 106.206 Notice

The Clerk will give notice of the petition and hearing in accordance with 35 Ill. Adm. Code 101.602. The proceedings must be in accordance with 35 Ill. Adm. Code 101.Subpart F.

Section 106.208 Recommendation and Response

The Agency must file a recommendation on a petition under this Subpart as prescribed in this Section. The petitioner or any other party to the proceeding may file a response to the Agency recommendation within 14 days after service of the petition. Any person other than a party to the proceeding may file a response to the Agency recommendation within 14 days after the Agency files the recommendation.

- a) Heated Effluent Demonstration

Within 60 days after the owner or operator files the petition, the Agency must make a recommendation to the Board on the petition. The recommendation may include:

- 1) A description of the Agency's efforts in conducting its review of the petition;

- 2) The Agency's conclusion as to whether discharges from the source have caused or can reasonably be expected to cause significant ecological damage to the receiving waters;
- 3) The factual basis for the Agency's conclusion;
- 4) Any corrective measures that the Agency recommends be taken and the recommended time period to implement the measures; and
- 5) The Agency's recommendation on how the Board should dispose of the petition.

b) Artificial Cooling Lake Demonstration

Within 60 days after the owner or operator files the petition, the Agency must make a recommendation to the Board on the petition. The recommendation may include:

- 1) A description of the Agency's efforts in conducting its review of the petition;
- 2) The Agency's conclusion as to whether the artificial cooling lake receiving the heated effluent will be environmentally acceptable and within the intent of the Act;
- 3) The factual basis for the Agency's conclusion; and
- 4) The Agency's recommendation on how the Board should dispose of the petition.

c) Sulfur Dioxide Demonstration

Within 90 days after the filing of the petition the Agency must make a recommendation to the Board as to be proposed site-specific emission limitation. The recommendation may include the following:

- 1) A description of the efforts made by the Agency in conducting its review;
- 2) The Agency's conclusion as to whether the proposed site-specific emission limitation is adequate to prevent violations of the Primary and Secondary Sulfur Dioxide Ambient Air Quality Standards; and
- 3) The Agency's conclusion as to what disposition should be made of the petition.

Section 106.210 Burden of Proof

The burden of proof will be on the petitioner.

SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES

Section 106.300 General

- a) Description. This Subpart applies to any *owner of a new potential route, a new potential primary source other than landfilling or land treating, or new potential secondary source* who files a petition for an exception from the setback requirements of Sections 14.2 and 14.3(e) of the Act pursuant to Section 14.2(c) of the Act and this Subpart. [415 ILCS 5/14.2(c)]
- b) Parties. The owner filing the petition for an exception must be named the petitioner and the Agency must be named the respondent. Affected well owners who are not petitioners also must be named respondents.
- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C will apply to the proceedings of this Subpart.

Section 106.302 Initiation of Proceeding

- a) The petitioner must file the petition for exception with the Clerk of the Board and must serve one copy upon the Agency.
- b) The petitioner must notify and provide a copy of the petition to the owners of each potable water supply for which the setback requirements would be affected by the exception.

Section 106.304 Petition Content Requirements

The petition must contain the following information:

- a) A written statement, signed by the petitioner or an authorized representative, outlining the scope of the evaluation, the nature of, the reasons for, and the basis of the exception, consistent with the burden of proof contained in Section 106.310 of this Part;
- b) The nature of the petitioner's operations and control equipment;

- c) Documentation of service on owners required to be notified and provided with a copy of the petition as required by Section 106.302(b) of this Part, 35 Ill. Adm. Code 101, and Section 14.2(c) of the Act; and
- d) Any other information which may be required by Section 14.2 of the Act.

(Source: Amended at 39 Ill. Reg. 2375, effective January 27, 2015)

Section 106.306 Response and Reply

- a) Within 21 days after the filing of a petition, the Agency and any owner required to be notified 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 response.

Section 106.308 Hearing

The Board will hold at least one public hearing in an exception proceeding. The hearing officer will schedule the hearing. The Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code 101. The proceedings will be in accordance with 35 Ill. Adm. Code 101.Subpart F.

Section 106.310 Burden of Proof

The burden of proof is on the petitioner. The petitioner must demonstrate that:

- a) Compliance with the setback requirements of Section 14.2 or 14.3(e) of the Act would pose an arbitrary and unreasonable hardship;
- b) The petitioner will utilize the best available control technology economically achievable to minimize the likelihood of contamination of the potable water supply well;
- c) The maximum feasible alternative setback will be utilized; and
- d) The location of the potential route will not constitute a significant hazard to the potable water supply well.

**SUBPART D: REVOCATION AND REOPENING OF
CLEAN AIR ACT PERMIT PROGRAM (CAAPP) PERMITS**

Section 106.400 General

- a) Description. The provisions of this Subpart will apply to:
 - 1) Any revocation proceeding initiated by the Agency when it determines that there are grounds to revoke and reissue a Clean Air Act Permit Program (CAAPP) permit for cause, pursuant to Section 39.5(15)(b) of the Act; and
 - 2) Any reopening proceeding initiated by the Agency pursuant to a notice that there are grounds to terminate or revoke and reissue a CAAPP permit for cause, pursuant to Section 39.5(16) of the Act.
- b) Parties.
 - 1) In a revocation proceeding initiated by the Agency, the Agency will be named as petitioner and the holder of the CAAPP will be named as respondent.

- 2) In a reopening proceeding initiated by the Agency, the Agency will be named as petitioner and the holder of the CAAPP will be named as respondent.
- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C will apply to the proceedings of this Subpart.

Section 106.402 Definitions

The definitions of 35 Ill. Adm. Code 101.Subpart B and Section 39.5 of the 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 39.5 of the Act will apply.

Section 106.404 Initiation of Proceedings

- a) Agency Revocation Proceeding. The Agency may initiate a revocation proceeding before the Board by serving a petition for revocation upon the respondent and filing the petition with the Board.
- b) USEPA Reopening Proceeding. If the Agency receives from USEPA a notice to terminate or revoke and reissue a CAAPP permit for cause, the Agency must, within 30 days after receipt of USEPA's notice, serve a petition upon the respondent and file the petition with the Board.

Section 106.406 Petition Content Requirements

- a) Agency Revocation Proceeding. The petition in a revocation proceeding must include:
 - 1) The grounds for the revocation of the CAAPP permit;
 - 2) The associated permit record; and
 - 3) Any other information necessary to establish that the CAAPP permit should be revoked.
- b) USEPA Reopening Proceeding. The petition in a reopening proceeding must include:
 - 1) USEPA notice to terminate or revoke and reissue a CAAPP permit that initiated the matter for cause;
 - 2) The associated permit record; and

- 3) The Agency's proposed determination and the justification for the proposed determination.

Section 106.408 Response and Reply

- a) The respondent may file a response to the Agency's petition within 21 days after service of the petition.
- b) The Agency may file a reply within 21 days after filing of any response.

Section 106.410 Hearing

The Board will hold at least one public hearing. The Clerk will give notice of the petition and hearing in accordance with 35 Ill. Adm. Code 101.602. The proceeding must be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F.

(Source: Amended at 40 Ill. Reg. 7986, effective May 20, 2016)

Section 106.412 Burden of Proof

- a) Agency revocation proceeding. The burden of proof will be on the Agency to establish that the permit should be revoked under the standards set forth in this Act and the Clean Air Act.
- b) USEPA reopening proceeding. The burden of proof will be on the Agency.

Section 106.414 Opinion and Order

- a) Agency Revocation Proceeding:
 - 1) The Board will issue a written opinion and order within 120 days after the filing of the petition that sets forth the Board's decision and supporting rationale.
 - 2) If the Board determines that the permit should be revoked and reissued, its final order will direct the Agency to revoke and reissue the CAAPP permit consistent with Section 39.5 of the Act.
- b) USEPA Reopening Proceeding:
 - 1) *After due consideration of the written and oral statements, the testimony and arguments that shall be submitted at hearing, the Board shall issue and enter an interim order for the proposed determination within 120 days*

after the filing of the petition, which shall set forth all changes, if any, required in the Agency's proposed determination. The interim order shall comply with requirements for final order as set forth in Section 33 of the Act. Issuance of an interim order by the Board under this subsection (b), however, shall not affect the permit status and does not constitute a final action for purposes of the Act or the Administrative Review Law. [415 ILCS 5/39.5(16)(b)(ii)]

- 2) *The Board shall cause a copy of its interim order to be served upon all parties to the proceeding as well as upon USEPA. The Agency shall submit the proposed determination to USEPA in accordance with the Board's interim order within 180 days after receipt of the notification from USEPA.* [415 ILCS 5/39.5(16)(b)(iii)]

Section 106.416 USEPA Review of Proposed Determination

- a) If USEPA does not object to the proposed determination within 90 days after receipt, the Board will, within 7 days after receipt of USEPA's final approval or within 21 days after expiration of the 90-day period, whichever is earlier, enter the interim order as a final order. The final order may be appealed as provided by Title XI of the Act. The Agency must take final action in accordance with the Board's final order.
- b) USEPA Objection
 - 1) If USEPA objects to the proposed determination within 90 days after receipt, *the Agency shall submit USEPA's objection and the Agency's comments and recommendation on the objection to the Board and permittee upon receipt of the objection. Within 15 days after receipt of USEPA's objection, the Agency must submit the Agency's comments and recommendation on the objection to the Board and permittee.* [415 ILCS 5/39.5(16)(c)(ii)]
 - 2) *The Board shall review its interim order in response to USEPA's objection and the Agency's comments and recommendation and issue a final order in accordance with Sections 32 and 33 of the Act within 60 days after receipt of the Agency's comments and recommendation on USEPA's objection. The Agency shall, within 90 days after receipt of such objection, respond to USEPA's objection in accordance with the Board's final order.* [415 ILCS 5/39.5(16)(c)(ii)]

SUBPART E: MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY DETERMINATIONS

Section 106.500 General

- a) Description. The provisions of this Subpart will apply to any proceeding initiated by an owner or operator of a CAAPP source pursuant to Section 39.5(19)(a) or (e) of the Act challenging the Agency's determination not to utilize the hazardous air pollutant emission limitation proposed by the CAAPP source or the hazardous air pollutant limitation for a case-by-case maximum achievable control technology (MACT) proposed by the CAAPP source.
- b) Parties. The owner or operator of the CAAPP source who initiates the proceeding must be named as petitioner and the Agency must be named as respondent.
- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C will apply to the proceedings of this Subpart.

Section 106.502 Definitions

The definitions of 35 Ill. Adm. Code 101.Subpart B and Section 39.5 of the 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 39.5 of the Act will apply.

Section 106.504 Initiation of Proceedings

The owner or operator of a CAAPP source may initiate a proceeding before the Board by serving a petition upon the Agency and filing with the Clerk of the Board.

Section 106.506 Petition Content Requirements

A petition filed pursuant to Section 39.5(19)(a) and (e) of the Act must include:

- a) A detailed description of and justification for the emission limitation that is being proposed for the source and an explanation of how the emission limitation provides for the level of control required under Section 112 of the CAA (42 -USC 7412);
- b) A petition filed pursuant to Section 39.5(19)(a) of the Act must also include justification for the Board to determine whether the emission limitation proposed by the owner or operator of the CAAPP source provides for the emission limitation equivalent to the emission limitation that would apply to the source if USEPA had promulgated the applicable emission standard pursuant to Section 112(d) of the CAA (42 USC 7412(d)) in a timely manner; and

- c) The Agency's notification of its refusal to adopt the CAAPP source's proposed emission limitation or the CAAPP source's MACT determination.

Section 106.508 Response and Reply

- a) The Agency may file a response to the petition of the owner or operator within 21 days after service of the petition.
- b) The owner or operator may file a reply within 21 days after the filing of any response.

Section 106.510 Hearing

The Board will hold at least one public hearing. The Clerk of the Board will give notice of the petition and any hearing in accordance with 35 Ill. Adm. Code 101.602. The proceeding will be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F.

(Source: Amended at 40 Ill. Reg. 7986, effective May 20, 2016)

Section 106.512 Burden of Proof

The burden of proof will be on the petitioner to demonstrate that the emission limitation provides for the level of control required under Section 112 of the Clean Air Act.

Section 106.514 Board Action

The Board shall determine whether the emission limitation proposed by the owner or operator or an alternative emission limitation proposed by the Agency provides for the level of control required under Section 112 of the Clean Air Act, or shall otherwise establish an appropriate emission limitation, pursuant to Section 112 of the Clean Air Act. [415 ILCS 5/39.5(19)(a) and (e)]

SUBPART F: CULPABILITY DETERMINATIONS FOR PARTICULATE MATTER LESS THAN OR EQUAL TO 10 MICRONS (PM-10)

Section 106.600 General

- a) Description. The provisions of this Subpart will apply to any appeal initiated under 35 Ill. Adm. Code 212.702 by an owner or operator of a source pursuant to a finding by the Agency of culpability for an exceedence of the 24-hour ambient air quality standard for particulate matter less than or equal to 10 icrons (PM-10) at 35 Ill. Adm. Code 243.120.

- b) Parties. The owner or operator of a source who initiated the proceeding will be named as the petitioner and the Agency will be named as respondent.
- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C will apply to the proceedings of this Subpart.

Section 106.602 Initiation of Proceedings

The owner or operator of a source may initiate a proceeding before the Board by serving a petition for review of the Agency culpability determination and filing the petition with the Clerk of the Board.

Section 106.604 Petition Content Requirements

A petition for review filed pursuant to this Subpart must include:

- a) A copy of the letter, or other written communication, setting forth the Agency's finding of culpability;
- b) A clear identification of the county in which the source is located; and
- c) A detailed description of, and justification for, the source's position that the Agency's finding of culpability is incorrect.

Section 106.606 Response and Reply

- a) The Agency must file a response to a petition appealing a determination of culpability within 21 days after service of the petition.
- b) The Agency's response must contain, at a minimum, the basis of its determination of the petitioner's culpability, including any meteorological, monitoring, or sampling data upon which the determination was made.
- c) The petitioner may file a reply within 7 days after the service of any response by the Agency.

Section 106.608 Hearing

- a) Within 14 days after a petition is filed, the Agency must publish notice of the petition in a newspaper of general circulation in the county in which the source is located. Within 30 days after the filing of the petition, any person may file with the Clerk of the Board a request for hearing on the petition.

- b) The hearing officer will schedule any hearing. The Clerk of the Board must give notice of the hearing in accordance with 35 Ill. Adm. Code 101.602. The proceeding will be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F.

Section 106.610 Burden of Proof

The burden of proof will be on the petitioner to demonstrate that the Agency's determination of culpability is incorrect.

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

Section 106.700 Purpose

The purpose of this Subpart is to set forth the criteria and procedures under which the Board or the Agency may terminate an EMSA, as defined in 35 Ill. Adm. Code 101.202.

Section 106.702 Applicability

- a) When the Agency terminates an EMSA under Section 52.3-4(b) or (b-5) of the Act, only Section 106.704 of this Subpart applies.
- b) This Subpart, except for Section 106.704, applies to proceedings in which the Board will determine whether to terminate an EMSA.

(Source: Amended 29 Ill. Reg. 8817, effective June 8, 2005)

Section 106.704 Termination Under Section 52.3-4(b) or (b-5) of the Act

- a) To terminate an EMSA under Section 52.3-4(b) of the Act, the Agency must determine that the sponsor's performance under the EMSA has failed to:
 - 1) *Achieve emissions reductions or reductions in discharges of wastes beyond the otherwise applicable statutory and regulatory requirements through pollution prevention or other suitable means; or*
 - 2) *Achieve real environmental risk reduction or foster environmental compliance by other persons regulated under the Act in a manner that is clearly superior to the existing regulatory system. [415 ILCS 5/52.3-1(b)]*

- b) To terminate an EMSA under Section 52.3-4(b-5) of the Act, the Agency must determine that the sponsor's *participation in the Federal Performance Track Program has ceased*. [415 ILCS 5/52.3-4(b-5)]
- c) If the Agency terminates an EMSA under Section 52.3-4(b) or (b-5) of the Act, the sponsor may file an appeal with the Board. Appeals to the Board will be pursuant to 35 Ill. Adm. Code 105.Subparts A and B.

(Source: Amended at 29 Ill. Reg. 8817, effective June 8, 2005)

Section 106.706 Who May Initiate, Parties

- a) Only the Agency may commence a proceeding to terminate an EMSA under this Subpart.
- b) The Agency must be designated the complainant. The sponsor must be designated the respondent.
- c) Misnomer of a party is not a ground for a dismissal; the name of any party may be corrected at any time.

Section 106.707 Notice, Statement of Deficiency, Answer

- a) A proceeding to terminate an EMSA will be commenced when the Agency serves a notice of filing and a statement of deficiency upon the respondent and files the notice of filing and statement of deficiency with the Clerk. (See 35 Ill. Adm. Code 101.300(b) and (c), 101.302(h), and 101.304(c).)
- b) The statement of deficiency must contain:
 - 1) The stated basis for the respondent's alleged deficient performance under Section 106.712(a) of this Subpart;
 - 2) The dates, location, nature, extent and duration of any act or omission, and amount and other characteristics of any discharges or emissions, alleged to violate provisions of the Act or regulations that apply to the pilot project that the EMSA does not address;
 - 3) The dates, location, nature, extent and duration of any act or omission, and amount and other characteristics of any discharges or emissions, alleged to violate the EMSA; and

- 4) With respect to subsections (b)(1) through (b)(3) of this Section, the statement of deficiency must contain sufficient detail to advise the respondent of the extent and nature of the alleged violations to reasonably allow the respondent to prepare a defense.
- c) The respondent must file an answer within 15 days after receipt of the statement of deficiency, unless the Board or the hearing officer extends the 15-day period for good cause. All material allegations of the statement of deficiency will be taken as admitted if not specifically denied by the answer, or if no answer is filed. Any facts that constitute an affirmative defense that would be likely to surprise the complainant must be plainly set forth in the answer before hearing.

(Source: Amended at 39 Ill. Reg. 2375, effective January 27, 2015)

Section 106.708 Service

The Agency must serve a copy of the notice of filing and statement of deficiency personally, by U.S. Mail with a recipient's signature recorded, or by a third-party commercial carrier with a recipient's signature recorded. (See 35 Ill. Adm. Code 101.300(c) and 101.304(c)(2).)

(Source: Amended at 39 Ill. Reg. 12914, effective September 8, 2015)

Section 106.710 Notice of Hearing

- a) The Clerk will assign a docket number to each statement of deficiency filed. Any hearing will be held not later than 60 days after the respondent files the answer, subject to any extensions ordered under subsection (c).
- b) The Chairman of the Board will designate a hearing officer and the Clerk will notify the parties of the designation. The hearing officer may be a Member of the Board if otherwise qualified.
- c) The hearing officer, after reasonable efforts to consult with the parties, will set a time and place for hearing. The Board or the hearing officer may extend the time for hearing if all parties agree or there are extreme and unanticipated or uncontrollable circumstances that warrant a delay. The Board or the hearing officer may delay the hearing more than once. In each event, the Board or the hearing officer will not delay the hearing for more than 30 days.
- d) The hearing will be held pursuant to 35 Ill. Adm. Code 101.Subpart F.
- e) The hearing officer or the Clerk will give notice of the hearing, at least 30 days before the hearing, to the parties under Section 106.708(b), and to the public by

public advertisement in a newspaper of general circulation in the county in which the pilot project is located.

- f) The Agency must give notice of each statement of deficiency and hearing under Section 106.708(b) at least 10 days before the hearing to:
 - 1) All stakeholders named or listed in the EMSA; and
 - 2) Any person who submitted written comments on the respondent's EMSA or participated in the public hearing on the respondent's EMSA by signing an attendance sheet or signature card under the procedures set forth in 35 Ill. Adm. Code 187.404, if less than 100 persons attended the public hearing on the respondent's EMSA as indicated by signatures on the attendance sheet or signature cards.
- g) Failure to comply with this Section is not a defense to an involuntary termination proceeding under this Subpart, but the hearing officer may postpone the hearing upon the motion of any person prejudiced by a failure to comply with this Section.

(Source: Amended at 40 Ill. Reg. 7986, effective May 20, 2016)

Section 106.712 Deficient Performance

- a) For purposes of this Subpart, a respondent's performance under its EMSA is deficient if the Agency asserts and the Board finds that any of the following conditions exist:
 - 1) The respondent misrepresented the factual basis for entering into the EMSA.
 - 2) The respondent failed to provide access to the pilot project for the Agency to monitor compliance with an EMSA.
 - 3) The respondent falsified any monitoring data, record-keeping information or reports regarding the pilot project.
 - 4) The respondent or the owner or operator of the pilot project failed to comply with any requirement of any federal or local environmental law or regulation that applies to the pilot project and that the EMSA does not address, and for which a citizen's complaint has been filed with a court of competent jurisdiction or the appropriate authority has sent a notice of violation, complaint or other notice of failure to comply to the respondent or the owner or operator of the pilot project.

- 5) The respondent or the owner or operator of the pilot project failed to comply with any requirement of any State environmental law or regulation that applies to the pilot project and that the EMSA does not address, and for which a citizen's complaint has been filed with the Board, or the Agency has mailed a notice of violation to the respondent or the owner or operator of the pilot project under Section 31(a) or (b) of the Act.
 - 6) The respondent failed to comply with its EMSA, subject to any grace or cure periods or rights contained in the EMSA.
- b) Any Board finding of deficient performance under subsection (a)(4) or (a)(5) of this Section will not be binding for any purpose or in any other proceeding under the Act, other than under this Subpart.

Section 106.714 Board Decision

- a) The Board will prepare a written opinion and order for all final determinations that will include findings of fact (with specific page references to principal supporting items of evidence in the record) and conclusions of law (supported by adequate reasoning) on all material issues.
- b) The Board will render its decision as expeditiously as practicable. The Board will render a decision as an order that:
 - 1) Terminates the EMSA;
 - 2) Defers termination for a specified time, not to exceed 90 days from the date of the order, during which the respondent may rectify the deficient performance; or
 - 3) Rejects termination of the EMSA.
- c) The Board may extend the time period under subsection (b)(2) of this Section for good cause.
- d) The Board may order any or all of the following:
 - 1) Direct the respondent to cease and desist from violating the Act, the Board's regulations, or the EMSA;
 - 2) Require the respondent to provide performance assurance compensation in appropriate amounts;

- 3) Require the respondent to post a sufficient performance bond or other security to assure that the respondent corrects the violation within the time that the Board prescribes;
 - 4) Enforce any remedy provision of the EMSA; and
 - 5) Order other relief as appropriate.
- e) The Clerk will publish the order and opinion with the vote of each Board Member recorded and will notify the parties required to be notified of the hearing from which the order arose of the order and opinion.

Section 106.716 Burden of Proof

The Agency has the burden to prove, by a preponderance of the evidence, that there has been deficient performance under the EMSA, as set forth in Section 106.712(a) of this Subpart.

Section 106.718 Motions, Responses

- a) All motions before a hearing must be presented to the hearing officer at least 10 days before the date of the hearing.
- b) The complainant's motion to voluntarily dismiss an action as to any or all claims must be directed to the Board and may be made orally upon the hearing record, or may be made in writing at any time before the Board issues its decision.
- c) All motions must be served on all parties, including the Agency and its representative and the hearing officer, with documentation of service.
- d) Unless made orally on the record during a hearing or unless the hearing officer directs otherwise, a motion must be in writing, must state the reasons for and grounds upon which the motion is made, and may be accompanied by any affidavits or other evidence relied on and, when appropriate, by a proposed order.
- e) Within 7 days after a written motion is served, or another period that the Board or hearing officer may prescribe, a party may file a response to the motion, accompanied by affidavits or other evidence. If no response is filed, the parties will be deemed to have waived objection to the motion, but the waiver of objection does not bind the Board. The moving party does not have the right to reply, except as the hearing officer or the Board permits.
- f) No oral argument will be heard on a motion before the Board unless the Board directs otherwise. A written brief may be filed with a motion or an answer to a motion.

- g) The hearing officer may rule upon all motions, except that the hearing officer has no authority to dismiss, or rule upon a motion to dismiss or decide a proceeding on the merits, or for failure to state a claim, or for want of jurisdiction, or to strike any claim or defense for insufficiency or want of proof.
- h) No interlocutory appeal of a motion may be taken to the Board from a ruling of the hearing officer.
- i) After the hearing, the Board may review the hearing officer's rulings. The Board will set aside the hearing officer's ruling only to avoid material prejudice to the rights of a party. The hearing officer, if a member of the Board, may vote upon motions to review his or her rulings as hearing officer.
- j) Unless the Board orders or this Subpart provides otherwise, the filing of a motion will not stay the proceeding or extend the time to perform any act.

(Source: Amended at 39 Ill. Reg. 2375, effective January 27, 2015)

Section 106.720 Intervention

- a) Upon timely written motion and subject to the need to conduct an orderly and expeditious hearing, the Board will permit a person to intervene in an involuntary termination proceeding under this Subpart if the person submitted written comments on the respondent's EMSA or participated in the public hearing on the respondent's EMSA by signing an attendance sheet or signature card at hearing under the procedures set forth in 35 Ill. Adm. Code 187.404, or is named or listed in the respondent's EMSA as a stakeholder, and if the Board's final order may adversely affect the person.
- b) The movant must file the motion to intervene with the Board in accordance with 35 Ill. Adm. Code 101.302(h) and serve a copy on each party in accordance with 35 Ill. Adm. Code 101.304(c) not later than 48 hours before the hearing. The Board may permit a person to intervene at any time before the beginning of the hearing when that person shows good cause for the delay.
- c) An intervenor has all the rights of an original party, except that the Board may limit the rights of the intervenor in accordance with 35 Ill. Adm. Code 101.402.

(Source: Amended at 39 Ill. Reg. 2375, effective January 27, 2015)

Section 106.722 Continuances

The hearing officer will grant a motion to continue an involuntary termination proceeding under this Subpart when justice requires. All motions to continue must be supported by an affidavit or written motion before the hearing officer by the person or persons with knowledge of the facts that support the motion. However, if the Board determines that any involuntary termination proceeding under this Subpart is not proceeding expeditiously, the Board may order actions that it deems appropriate to expedite the proceeding.

Section 106.724 Discovery, Admissions

- a) Discovery, except requests to produce documents, admit facts and state the identity and location of persons with knowledge of facts, as set forth in subsection (b) of this Section, is not permitted unless the hearing officer orders otherwise.
- b) Regarding any matter not privileged, the hearing officer may order a party to produce documents and to state the identity and location of persons with knowledge of facts upon the written request of any party when parties cannot agree on the legitimate scope of the requests. It is not a ground for objection that the documents will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence or is relevant to the subject matter involved in the pending proceeding.
- c) The hearing officer may order a party:
 - 1) To state the identity and location of persons with knowledge of relevant facts.
 - 2) To produce evidence that a party controls or possesses so that it may be inspected, copied or duplicated. The order may grant the right to reasonably inspect the pilot project.
- d) The hearing officer may at any time on his or her own initiative, or on motion of any party or witness, make a protective order as justice requires. The protective order may deny, limit, condition or regulate discovery to prevent unreasonable delay, expense, harassment, or oppression, or to protect non-disclosable materials from disclosure consistent with Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 130.
- e) All objections to rulings of the hearing officer must be made in the record.
- f) Sections 106.718(d), (e), (f), (g), (h), (i) and (j) of this Subpart apply regarding procedures to rule on objections.

- g) Failure to comply with any ruling may subject the person to sanctions under 35 Ill. Adm. Code 101.Subpart H.
- h) A party may serve on any other party, no sooner than 15 days after the Agency files the statement of deficiency, a written request that the latter admit the truth of any specified relevant fact set forth in the request.
- i) A party may serve on any other party, no sooner than 15 days after the Agency files the statement of deficiency, a written request to admit to the genuineness of any relevant documents described in the request. Copies of the document must be served with the request unless copies have already been furnished.
- j) Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 15 days after service under subsection (h) or (i) of this Section, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement that denies specifically the matters on which the admission is requested or that sets forth in detail the reasons why the party cannot truthfully admit or deny those matters or written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If a party objects in writing to a part of the request, the remainder of the request must be answered within the period designated in the request. A denial must fairly meet the substance of the requested admission. If good faith requires that a party deny only a part, or requires qualification, of a matter of which an admission is requested, the party must specify so much of it as is true and deny only the remainder. The hearing officer will hear any objection to a request or to an answer upon prompt notice and motion of the party making the request.
- k) Any admission made under this Section is for the purpose of the pending proceeding only. It does not constitute an admission by the party for any other purpose and may not be used against the party in any other proceeding.

Section 106.726 Subpoenas

- a) Upon any party's timely motion to the Board, or on motion of the hearing officer or the Board, the hearing officer or the Board may issue a subpoena to attend a hearing. The subpoena may include a command to produce evidence reasonably necessary to resolve the matter under consideration, subject to this Subpart's limitations on discovery. A copy of the subpoena must be served upon the Clerk.
- b) Every subpoena must state the title of the proceeding and command each person to whom it is directed to attend and give testimony at the time and place specified.

- c) The hearing officer or the Board, upon motion made promptly and in any event at or before the time specified for compliance with the subpoena, may quash or modify the subpoena if it is unreasonable and oppressive.
- d) Failure of any witness to comply with a Board subpoena may subject the witness to sanctions under 35 Ill. Adm. Code 101.Subpart H.

Section 106.728 Settlement Procedure

- a) All parties to any proceeding in which a settlement or compromise is proposed must file with the Clerk before the time of the scheduled hearing a written statement, signed by the parties or their authorized representatives, that outlines the nature of, the reasons for, and the purpose to be accomplished by, the settlement. The statement must contain:
 - 1) A full stipulation of all material facts that pertain to the nature, extent and causes of the alleged violations;
 - 2) The nature of the relevant parties' operations and control equipment;
 - 3) Any explanation for past failures to comply and an assessment of the impact on the public from the failure to comply;
 - 4) Details about future plans for compliance, including a description of additional control measures and the dates on which they will be implemented; and
 - 5) The proposed performance assurance payment, if any.
- b) If an agreed settlement is filed under this Section, the Board may dismiss the proceeding without holding a hearing.

Section 106.730 Authority of Hearing Officer, Board Members, and Board Assistants

- a) The hearing officer has the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear and complete record. The hearing officer has all powers necessary to these ends, including the authority to:
 - 1) Issue discovery orders;
 - 2) Rule upon objections to discovery orders;

- 3) Make protective orders as justice requires, which may deny, limit, condition or regulate discovery to prevent unreasonable delay, expense, harassment, or oppression, or to protect materials from disclosure by the party who obtains the materials;
 - 4) Administer oaths and affirmations;
 - 5) Rule upon offers of proof, receive evidence and rule upon objections to introducing evidence, subject to Section 106.732(b) of this Subpart;
 - 6) Regulate the course of the hearings and the conduct of the parties and their counsel;
 - 7) Examine witnesses solely to clarify the record of the hearing. When any party is not represented by counsel, the hearing officer may examine and cross-examine any witness to insure a clear and complete record. However, the hearing officer may not exclude exhibits or other testimony because of the examination unless all parties agree; and
 - 8) Except as otherwise provided, consider and rule as justice may require upon motions appropriate to an adjudicative proceeding.
- b) Any Board Member or assistant to a Board Member present at the hearing may advise the hearing officer and may interrogate witnesses, but does not have the authority to rule on objections or motions or to overrule the hearing officer during the hearing.

Section 106.732 Order and Conduct of Hearing

- a) The following will be the order of all involuntary termination hearings under this Subpart, unless modified by the hearing officer for good cause:
- 1) Present, argue and dispose of preliminary motions on the matters that the statement of deficiency raises;
 - 2) Present opening statements;
 - 3) Complainant's case in chief;
 - 4) Respondent's case in chief;
 - 5) Complainant's case in rebuttal;
 - 6) Statements from interested citizens, as the hearing officer authorizes;

- 7) Complainant's opening argument, which may include legal argument;
 - 8) Respondent's closing argument, which may include legal argument;
 - 9) Complainant's closing argument, which may include legal argument;
 - 10) Present and argue all motions before submitting the transcript to the Board; and
 - 11) A schedule to submit briefs to the Board.
- b) All hearings under this Subpart will be public, and any person not a party and not otherwise a witness for a party may submit written statements relevant to the subject matter of the hearing. Any party may cross-examine any person who submits a statement. If the person is not available to be cross-examined upon timely request, the written statement may be stricken from the record. The hearing officer will permit any person to offer reasonable oral testimony whether or not a party to the proceedings.
 - c) All witnesses will be sworn.
 - d) At the conclusion of the hearing, the hearing officer will make a statement about the credibility of witnesses. This statement will be based upon the hearing officer's legal judgment and experience and will indicate whether he or she finds credibility to be at issue in the proceeding and if so, the reasons why. This statement will become a part of the official record and will be transmitted by the hearing officer to each of the parties. No other statement will be made or be appropriate unless the Board orders otherwise.

Section 106.734 Evidentiary Matters

The provisions of 35 Ill. Adm. Code 101 regarding admissible evidence, written narrative testimony, official notice, viewing premises, admitting business records, examining adverse parties or agents and hostile witnesses and compelling them to appear at hearing, and amendment and variance of pleadings and proof will apply to proceedings under this Subpart.

Section 106.736 Post-Hearing Procedures

The provisions of 35 Ill. Adm. Code 101 regarding default, transcripts, the record, briefs and oral arguments will apply to proceedings under this Subpart.

Section 106.738 Motion After Entry of Final Order

Within 35 days after the Board adopts a final order, any party may file a motion to rehear, modify or vacate the order or for other relief. Response to the motion must be filed within 14 days after the motion is filed. A motion filed within 35 days stays enforcement of the final order.

Section 106.740 Relief from Final Orders

- a) The Board may at any time correct errors in orders or other parts of the record that arise from oversight or omission or clerical mistakes. The Board may do so on its own initiative or on the motion of any party and after notice, if any, as the Board orders. During the pendency of an appeal, the Board may correct the mistakes before the appeal is docketed in the appellate court. While the appeal is pending, the Board may correct the mistakes with leave of the appellate court.
- b) On motion and upon terms that are just, the Board may relieve a party or a party's legal representative from a final order, for the following:
 - 1) Newly discovered evidence that by due diligence could not have been discovered in time under Section 106.714 of this Subpart;
 - 2) Fraud (whether previously denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or
 - 3) Void order.
- c) A motion under this Section does not affect the finality of a Board order or suspend the operation of a Board order. The motion must be filed in the same proceeding in which the Board entered the order but the motion is not a continuation of the proceeding. The motion must be supported by affidavit or other appropriate showing as to matters not of record. All parties must be notified under Section 106.708(b) of this Subpart.
- d) This motion must be filed with the Board within 60 days after entry of the order.

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

Section 106.800 General

- a) Description. This Subpart applies to any person who files a petition for Board authorization *to use cleaning agents that contain phosphorus of an amount exceeding 0.5% by weight* as provided in Section 5(e) of the Regulation of Phosphorus in Detergents Act [415 ILCS 92/5(e)].
- b) Parties. The person filing the petition for authorization must be named the petitioner.
- c) Filing and Service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C will apply to the proceedings of this Subpart.

(Source: Added at 34 Ill. Reg. 11486, effective July 23, 2010)

Section 106.802 Definitions

The definitions of 35 Ill. Adm. Code 101 Subpart B and Section 5 of the Regulation of Phosphorus in Detergents Act will apply to this Subpart unless otherwise provided, or unless the context clearly indicates otherwise. If there is a conflict, the definitions of Section 5 of the Act will apply.

(Source: Added at 34 Ill. Reg. 11486, effective July 23, 2010)

Section 106.804 Initiation of Proceeding

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

(Source: Added at 34 Ill. Reg. 11486, effective July 23, 2010)

Section 106.806 Petition Content Requirements

The petition must contain the following information:

- a) A written statement, signed by the petitioner or an authorized representative, concerning the cleaning agent containing excess phosphorus for which authorization is sought and outlining a description of the cleaning agent and its phosphorus content, the duration of, the reasons for, and the basis of the authorization sought, consistent with the burden of proof stated in Section 106.812 of this Part;

- b) The nature of the petitioner's operations;
- c) Any other information that may be required by Section 5 of the Regulation of Phosphorus in Detergents Act.

(Source: Added at 34 Ill. Reg. 11486, effective July 23, 2010)

Section 106.808 Response and Reply

- a) Within 21 days after the filing of a petition, the Agency may file a response to any petition in which it has not joined as co-petitioner. The response must include the comments concerning potential Board action on the petition.
- b) The petitioner may file a reply within 14 days after the service of any Agency response.

(Source: Added at 34 Ill. Reg. 11486, effective July 23, 2010)

Section 106.810 Hearing

The Board will hold a public hearing in an authorization proceeding only if a hearing is requested by the petitioner, the Agency, or any other person within 14 days after the filing of any reply under Section 106.808(b) . The hearing officer will schedule the hearing. The Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code 101. The proceedings will be in accordance with 35 Ill. Adm. Code 101.Subpart F.

(Source: Added at 34 Ill. Reg. 11486, effective July 23, 2010)

Section 106.812 Burden of Proof

The burden of proof is on the petitioner. The petitioner must demonstrate that:

- a) *There is no adequate substitute for that cleaning agent for which authorization is sought; or*
- b) *Compliance with the requirements of Section 5 of the Regulation of Phosphorus in Detergents Act would otherwise be unreasonable or create a significant hardship on the user. [415 ILCS 92/5(e)]*

(Source: Added at 34 Ill. Reg. 11486, effective July 23, 2010)

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:
 - 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) and (q)(2) of the Act; or
 - 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) and (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. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C will apply to the proceedings under this Subpart.

(Source: Added at 36 Ill. Reg. 16581, effective November 5, 2012)

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. 16581, effective November 5, 2012)

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 106.914;

- b) The nature of the petitioner's operations;
- c) Any other applicable information 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 soil sampling analysis for samples taken within one year prior to the filing of the petition in accordance with the sampling protocols of subsections (e) and (f); the intended crop or planting; a description of any additives to the landscape waste; the method for incorporating the landscape waste or compost into the soil; the maximum time between acceptance of landscape waste or compost and its incorporation into soil; the weather conditions under which incorporation will occur; the method of minimizing stormwater/snowmelt runoff; a screening plan to ensure materials accepted do not contain materials other than landscape waste; a contingency plan that describes methods for dealing with emergency situations and methods for the removal of material that is not landscape waste from incoming loads; and the method of preventing nuisance conditions such as vectors, odors, litter or dust.
- d) For demonstrations under Section 106.914(a), a plan, including soil testing, in accordance with subsections (e) and (f) and no less than once every five years, to show when application of landscape waste or composted landscape waste at rates greater than an agronomic rate of 20 tons per acre per year will be, or will continue to be, beneficial to the site's soil characteristics or crop needs. Such a plan must specify any soil parameters to be analyzed, such as soil organic content and nutrients, and any limits on them.
- e) Soil samples collected that will represent the entire landscape waste or composted landscape waste application site.
 - 1) Soil Plow Zone—one soil sample shall be collected per 8 acres of application site area to a depth of 12 inches. Each soil sample taken shall be a homogeneous mixture composed of at least 10 subsamples randomly collected within the 8 acre area.
 - 2) Soil Profiles—one soil core sample per 8 acres of land application site shall be obtained to a depth of 5 feet using a soil tube or soil auger type implement. Soil cores shall be divided into 5 - one foot subsamples and each subsample shall be analyzed separately.
 - 3) Soil sample collection pursuant to subsections (a) and (b) may be modified by the Board upon request by the petitioner after

considering the application rate of the landscape waste or composted landscape waste, and the continuity of soil types of the application site.

f) Soil analysis performed in accordance with the following references, unless equivalent results can be obtained by other methods. The petitioner shall demonstrate that equivalent results are obtainable based on the nature of the test methodology, the nature of the parameter, and the level of statistical accuracy.

1) Physical Testing Methods

Methods of Soil Analysis–Part 1, Physical and Mineralogical Properties (1986), Soil Science Society of America (SSSA) and American Society of Agronomy, Inc. (ASA), 5585 Guilford Road, Madison, Wisconsin 53711.

2) Chemical Testing Methods

Methods of Soil Analysis–Part 3, Chemical Methods (1996), Soil Science Society of America (SSSA) and American Society of Agronomy, Inc. (ASA), 5585 Guilford Road, Madison, Wisconsin 53711.

3) For the purposes of this Subpart I, the Board incorporates by reference the soil test methods listed in subsections (f)(1) and (f)(2). This incorporation includes no later amendments or editions.

(Source: Added at 36 Ill. Reg. 16581, effective November 5, 2012)

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 petitioner's activity that is the subject of the Section 21(q) petition.

b) The title of the notice must be in the following form: "Notice of Petition For Authorization Under 415 ILCS 5/21(q) by (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, a general description of the petitioner's activity that is the subject of the authorization proceeding and the location of the petitioner's 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. 16581, effective November 5, 2012)

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. 16581, effective November 5, 2012.)

Section 106.910 Response and Reply

- a) Within 45 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. 16581, effective November 5, 2012.)

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. 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 attempt to consult with the petitioner and the Agency before scheduling a hearing.

(Source: Amended at 40 Ill. Reg. 7986, effective May 20, 2016)

Section 106.914 Burden of Proof

The burden of proof 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*. 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)]
- 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 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.

(Source: Added at 36 Ill. Reg. 16581, effective November 5, 2012.)

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

Section 106.1000 General (Repealed)

(Source: Repealed at 39 Ill. Reg. 2375, effective January 27, 2015)

Section 106.1002 Definitions (Repealed)

(Source: Repealed at 39 Ill. Reg. 2375, effective January 27, 2015)

Section 106.1004 Initiation of Proceeding (Repealed)

(Source: Repealed at 39 Ill. Reg. 2375, effective January 27, 2015)

Section 106.1006 Petition Content Requirements (Repealed)

(Source: Repealed at 39 Ill. Reg. 2375, effective January 27, 2015)

Section 106.1008 Response and Reply (Repealed)

(Source: Repealed at 39 Ill. Reg. 2375, effective January 27, 2015)

Section 106.1010 Burden of Proof (Repealed)

(Source: Repealed at 39 Ill. Reg. 2375, effective January 27, 2015)

Section 106.1012 Board Decision (Repealed)

(Source: Repealed at 39 Ill. Reg. 2375, effective January 27, 2015)

SUBPART K: ALTERNATIVE THERMAL EFFLUENT LIMITATIONS PURSUANT TO
SECTION 316(a) OF THE CLEAN WATER ACT AND 35 ILL. ADM. CODE 304.141(c)

Section 106.1100 Purpose

This Subpart describes the factors, criteria, and standards for the establishment of alternative thermal effluent limitations under 35 Ill. Adm. Code 304.141(c) and section 316(a) of the Clean Water Act (33 USC 1251) in permits issued under 35 Ill. Adm. Code 309.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

Section 106.1105 General

- a) Description. This Subpart applies to any point source that discharges pollutants to waters of the United States who seeks to demonstrate, pursuant to 35 Ill. Adm. Code 304.141(c) and section 316(a) of the Clean Water Act that any effluent limitation proposed for the control of a thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made.
- b) Parties. The person making the demonstration must be named the petitioner. The Agency must be named as a respondent. Any interested person may become a participant in the alternative thermal effluent limitation demonstration proceeding in accordance with 35 Ill. Adm. Code 101.110 and 101.628.
- c) Filing and Service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C apply to the proceedings of this Subpart.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

Section 106.1110 Definitions

In addition to these definitions, all definitions of the Illinois Environmental Protection Act [415 ILCS 5], and 35 Ill. Adm. Code 301, apply to this Subpart. For the purpose of this Subpart:

"Alternative thermal effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge that are established under 35 Ill. Adm. Code 304.141(c), Section 316(a) of the CWA and this Subpart.

"CWA" means the Federal Water Pollution Control Act, as amended, (33 USC 1251 et seq., Public Law 92-500 enacted by Congress October 18, 1972, as amended by the Clean Water Act, Public Law 95-217, enacted December 12, 1977, as amended).

"Representative important species" means species that are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish, and wildlife in the body of water into which a discharge of heat is made.

"Balanced, indigenous community" is synonymous with the term "balanced, indigenous population" in the CWA and means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and by a lack of domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results

from substantial, irreversible environmental modifications. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with section 301(b)(2) of the CWA; and may not include species whose presence or abundance is attributable to alternative thermal effluent limitations imposed pursuant to this Subpart or through regulatory relief from otherwise applicable thermal limitations under Chapter I of Subtitle C or standards granted by the Board.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

Section 106.1115 Early Screening

- a) Prior to filing a petition for an alternative thermal effluent limitation, the petitioner must submit the following early screening information to the Agency:
 - 1) A description of the alternative thermal effluent limitation requested;
 - 2) A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;
 - 3) A general description of the type of data, studies, experiments and other information that the discharger intends to submit for the demonstration; and
 - 4) A proposed representative important species list and supporting data and information.
- b) Within 30 days after the early screening information is submitted under subsection (a), the petitioner shall consult with the Agency to discuss the petitioner's early screening information.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

Section 106.1120 Detailed Plan of Study

- a) Within 60 days after the early screening information is submitted pursuant to Section 106.1115, the petitioner shall submit to the Agency a detailed plan of study that the petitioner will undertake to support its alternative thermal effluent limitation demonstration.
- b) The petitioner shall specify the nature and extent of the following types of information to be included in the plan of study:

- 1) biological, hydrographical, and meteorological data;
 - 2) physical monitoring data;
 - 3) engineering or diffusion models;
 - 4) laboratory studies;
 - 5) representative important species; and
 - 6) other relevant information.
- c) In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards.
- d) The petitioner shall provide any additional information or studies that the Agency subsequently determines necessary to support the alternative thermal effluent limitation demonstration, including such field or other studies as may be necessary to select representative important species.
- e) In making the alternative thermal effluent limitation demonstration, the petitioner shall consider any information or guidance published by USEPA to assist in making such demonstrations.
- f) Within 90 days after petitioner's submittal of its detailed plan of study, the Agency shall respond in writing, either approving the detailed plan of study and representative important species or recommending necessary revisions.
- g) After receiving the Agency's response pursuant to subsection (f), or after 90 days have passed with no Agency response, the petitioner may proceed with the plan of study with or without making the Agency's recommended revisions. The petitioner shall complete the plan of study prior to filing the petition for an alternative thermal effluent limitation with the Board.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

Section 106.1125 Initiation of Proceeding

After completion of the plan of study pursuant to Section 106.1120, the petitioner may file a petition for an alternative thermal effluent limitation with the Clerk of the Board and must serve one copy on the Agency and one copy on the Illinois Department of Natural Resources.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

Section 106.1130 Contents of Petition

A petition for an alternative thermal effluent limitation must include the following:

- a) Information providing a general plant description, including, as applicable:
 - 1) Generating capacity;
 - 2) Type of fuel used;
 - 3) Operating characteristics of the condenser cooling system;
 - 4) History of the load factor of the plant for the last 5 years;
 - 5) Projected load factors of the plant for the next 5 years;
 - 6) Estimated date of retirement for each unit at the plant and any plans for additional units at the plant;
 - 7) History of plant shutdowns for the last 5 years;
 - 8) Planned and emergency shutdowns with frequency and duration for the last 5 years; and
 - 9) Planned and projected shutdowns with frequency and duration for the next five years;
- b) Description of Method for Heat Dissipation:
 - 1) Type of system used (such as once-through, mechanical, and draft cooling towers) in narrative form; and
 - 2) Summary information on temperature of discharge to receiving waters in narrative form;
- c) A summary of compliance or non-compliance with thermal requirements at the facility in the past five years;
- d) The detailed plan of study submitted to the Agency pursuant to Section 106.1120(a) and the Agency's written response pursuant to Section 106.1120(f);
- e) The results of the studies conducted pursuant to the detailed plan of study submitted under Section 106.1120, including, but not limited to:
 - 1) background on the proposed thermal standards;

- 2) information on data collection program and methodologies;
 - 3) summaries of physical, chemical, biological and technical data supporting the demonstration, along with a discussion of the data; and
 - 4) criteria or methodology used to assess whether a balanced indigenous community of shellfish, fish and wildlife will be maintained in the receiving waters and the protection of threatened and endangered species;
- f) Any additional information or studies, including information or guidance published by USEPA, that the petitioner judges to be appropriate to support the alternative thermal effluent limitation demonstration; and
- g) A statement of the requested relief, including:
- 1) the alternative thermal effluent limitation;
 - 2) any relief from the mixing zone regulations in 35 Ill. Adm. Code 302.102, if applicable; and
 - 3) any other relief sought.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

Section 106.1135 Petition Notice Requirements

- a) Within 14 days after the filing of the petition, the petitioner must publish notice of the filing of the petition by advertisement in a newspaper of general circulation in the county where the facility is located.
- b) The notice must contain the name and address of the petitioner and it must state that the petitioner has filed with the Board a petition for an alternative thermal effluent limitation. The notice must also provide the date on which the petition was filed, the Board docket number, the regulatory standard (with appropriate Administrative Code citation) from which the alternative thermal effluent limitation is sought, the proposed alternative thermal effluent limitation, a general description of the petitioner's activity that is the subject of the alternative thermal effluent limitation proceeding, and the location of the facility. The concluding portion of the notice must read as follows:

"Any person may cause a public hearing to be held in the above-described 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 proceeding, as found in this notice, and must be filed with the Clerk of the Board, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601."

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

Section 106.1140 Proof of Petition Notice Requirements

Within 30 days after the filing of the petition, the petitioner must file a certificate of publication with the Clerk of the Board, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601. This certification must be issued by the newspaper that published the notice and must certify when the notice was published and the information the notice contained.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

Section 106.1145 Recommendation and Response

- a) Unless otherwise ordered by the hearing officer or the Board, the Agency must file with the Board a recommendation within 45 days after the filing of a petition or amended petition for an alternative thermal effluent limitation, or when a hearing has been scheduled, at least 30 days before hearing, whichever is earlier.
- b) The recommendation must state the following:
 - 1) whether the Board should grant the petitioner's requested alternative thermal effluent limitation;
 - 2) the rationale for the Agency's position;
 - 3) whether the plan of study sufficiently addresses the Agency's response pursuant to Section 106.1120(f) of this Part;
 - 4) whether the petition has met the requirements of this Part;
 - 5) any information the Agency believes is relevant to the Board's consideration of the proposed alternative thermal effluent limitation; and
 - 6) whether the Agency communicated with or received comments from the Illinois Department of Natural Resources, the United States Fish and Wildlife Service, or USEPA and the content of those communications.
- c) The petitioner, any party to the proceeding, or any interested person may file a response to the Agency recommendation within 21 days after the Agency files its recommendation.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

Section 106.1150 Request for Public Hearing

Any person can request that a public hearing be held in a proceeding under this Subpart. The requests must be filed with the Clerk of the Board no later than 21 days after the date of the publication of the petition notice in accordance with Section 106.1135. Requests for hearing should make reference to the Board docket number assigned to the proceeding.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

Section 106.1155 Notice and Conduct of Hearing

- a) The Board shall hold a public hearing on the petition and alternative thermal effluent limitation demonstration when one is requested in accordance with Section 106.1150, when requested by the petitioner, or if the Board, in its discretion, determines that a hearing would be advisable.
- b) The hearing officer will schedule the hearing.
- c) The Clerk will give notice of the hearing in accordance with 35 Ill. Adm. Code 101. The proceedings will be conducted in accordance with 35 Ill. Adm. Code 101. Subpart F.

(Source: Amended at 40 Ill. Reg. 7986, effective May 20, 2016)

Section 106.1160 Burden of Proof

- a) The burden of proof is on the petitioner.
- b) The petitioner must demonstrate to the satisfaction of the Board that the otherwise applicable effluent limitations under Chapter I of Subtitle C are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made.
- c) The demonstration must show that the alternative thermal effluent limitation desired by the petitioner, considering the cumulative impact of its thermal discharge, together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made.

- d) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies.
 - 1) When the petitioner bases the alternative thermal effluent limitation demonstration upon the absence of prior appreciable harm, the demonstration must show:
 - A) That no appreciable harm has resulted from the normal component of the discharge, taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge has been made; or
 - B) That despite the occurrence of such previous harm, the desired alternative thermal effluent limitation (or appropriate modifications thereof) will nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made.
 - 2) In determining whether prior appreciable harm has occurred, the Board shall consider the length of time during which the petitioner has been discharging and the nature of the discharge.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

Section 106.1165 Evidentiary Matters

- a) The provisions of 35 Ill. Adm. Code 101 regarding admissible evidence, written narrative testimony, official notice, viewing premises, admitting business records, examining adverse parties or agents and hostile witnesses and compelling them to appear at hearing, and amendment and variance of pleadings and proof will apply to proceedings under this Subpart.
- b) In determining whether the protection and propagation of the affected species will be assured, the Board may consider any information contained or referenced in any applicable thermal water quality criteria and thermal water quality information published by the USEPA under section 304(a) of the CWA, or any other information in the record the Board deems relevant.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

Section 106.1170 Opinion and Order

- a) After an opportunity for a public hearing and upon a satisfactory alternative thermal effluent limitation demonstration, the Board may order the Agency to include thermal discharge effluent limitations or standards in the petitioner's NPDES permit that are less stringent than those required by applicable standards and limitations if the thermal component of the discharge, taking into account the interaction of such thermal component with other pollutants, will assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water.
- b) In granting an alternative thermal effluent limitation, the Board may impose such conditions as may be necessary to accomplish the purposes of the Act.
- c) If the petitioner intends for the alternative thermal effluent limitation granted by the Board pursuant to this Subpart to continue beyond the expiration of the petitioner's NPDES permit, the petitioner must apply for renewal of the alternative thermal effluent limitation pursuant to Section 106.1180.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

Section 106.1175 Post-Hearing Procedures

- a) The provisions of 35 Ill. Adm. Code 101 regarding default, transcripts, the record, motions, briefs, and oral arguments apply to proceedings under this Subpart.
- b) In addition to the provisions of 35 Ill. Adm. Code 101.520 and 101.902, if USEPA objects pursuant to 40 CFR 123.44 to issuance in the petitioner's NPDES permit of the alternative thermal effluent limitation ordered by the Board, the Agency is given leave to file a motion for reconsideration of the Board's order granting the effluent limitation pursuant to 35 Ill. Adm. Code 101.520 within 35 days after the Agency's receipt of USEPA's objection.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)

Section 106.1180 Renewal of Alternative Thermal Effluent Limitations

- a) The permittee may request continuation of an alternative thermal effluent limitation granted by the Board, pursuant to this Subpart, as part of its NPDES permit renewal application.
- b) Any application for renewal should include sufficient information for the Agency to compare the nature of the permittee's thermal discharge and the balanced, indigenous population of shellfish, fish, and wildlife at the time the Board granted the alternative thermal effluent limitation and the current nature of the petitioner's

thermal discharge and the balanced, indigenous population of shellfish, fish, and wildlife. The permittee should be prepared to support this comparison with documentation based upon the discharger's actual operation experience during the previous permit term.

- c) If the permittee demonstrates that the nature of the thermal discharge has not changed and the alternative thermal effluent limitation granted by the Board has not caused appreciable harm to a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is made, the Agency may include the alternative thermal effluent limitation in the permittee's renewed NPDES permit.
- d) If the nature of the thermal discharge has changed materially or the alternative thermal effluent limitation granted by the Board has caused appreciable harm to a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is made, the Agency may not include the thermal relief granted by the Board in the permittee's renewed NPDES permit. The permittee must file a new petition and make the required demonstration pursuant to this Subpart before the alternative thermal effluent limitation may be included in the permittee's renewed NPDES permit.

(Source: Added at 38 Ill. Reg. 6086, effective February 26, 2014)