

ILLINOIS POLLUTION CONTROL BOARD
October 16, 2014

IN THE MATTER OF:)
)
AMENDMENTS TO THE BOARD'S) R15-10
ADMINISTRATIVE RULES) (Rulemaking – Procedural)
2 ILL. ADM. CODE 2175)

Adopted Rule. Final Notice.

OPINION AND ORDER OF THE BOARD (by D. Glosser):

Today the Board adopts amendments to its administrative rules at Part 2175 of Title 2 of the Illinois Administrative Code. The administrative rules, last amended in 2011, describe the Board's organization, the types of Board proceedings, how to pay filing and copying fees, and how the public may access information. The Board is amending these rules to update the public information provisions by removing the reference to a subscription for the *Environmental Register*, and updating provisions in response to amendments to the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et. seq.* (2012)). The Board is also updating the organizational provisions and organization chart in this rulemaking. Finally, the Board makes changes to reflect current Board practices in holding closed meetings.

The Board is removing the provision allowing the public to purchase a subscription to hard copy of the *Environmental Register*. The Board has decided to eliminate hard copy subscriptions to the *Environmental Register* as a part of the Governor's Green Government Initiative. The Board will continue to provide a hard copy on request, as the Board will print a limited number of copies to have available at its offices. Only one individual currently pays for a print subscription to the *Environmental Register*, and the Board will honor that subscription. Also, the *Environmental Register* is available on-line for anyone to access. Copies of the *Environmental Register* will also be emailed upon request.

The Board's rules are also being updated to reflect changes that have occurred in FOIA since the rules were last updated. Those changes to FOIA require designation by the Board of a FOIA officer, and FOIA sets forth specific steps the FOIA officer must take upon receipt of a request. The Board has been following the provisions of FOIA and working within the existing rules; however, these changes will make the rules compatible with FOIA.

The Board added a General Counsel and an Executive Director since the rules were last amended, so those positions have been added to the organizational rules as well as the organization chart.

The Board will no longer schedule regular closed deliberative sessions, but rather will vote to hold those as necessary in the future. Therefore, the rules are amended to reflect that change.

Order

The Board directs the Clerk of the Board to file the following final rule amendments with the Secretary of State for publication in the *Illinois Register*.

TITLE 2: GOVERNMENTAL ORGANIZATION
SUBTITLE E: MISCELLANEOUS STATE AGENCIES
CHAPTER XXVIII: POLLUTION CONTROL BOARD

PART 2175
ORGANIZATION, PUBLIC INFORMATION, AND TYPES OF PROCEEDINGS

SUBPART A: INTRODUCTION AND ORGANIZATION

Section	
2175.100	Summary and Purpose
2175.105	Board Membership
2175.110	Organization and Supervisory Relationships
2175.115	Location of Offices
2175.120	Board Meetings
2175.125	Public Notice of Open Board Meetings and Closed Deliberative Sessions
2175.130	Agenda of Open Board Meetings and Closed Deliberative Sessions
2175.135	Minutes of Open Board Meetings; Minutes and Verbatim Record of Closed Deliberative Sessions
2175.140	Accessibility of Open Board Meetings and Hearings

SUBPART B: FEES AND FORMS OF PAYMENT

Section	
2175.200	Filing Fees
2175.205	Copying Fees
2175.210	Copying Procedures
2175.215	Forms of Payment
2175.220	Other Fees/Costs

SUBPART C: PUBLIC INFORMATION

Section	
2175.300	Files Open to Reasonable Public Inspection
2175.305	Publications
2175.310	Board Web Site
2175.315	Documents Available from the Clerk's Office
2175.320	Requests For Information

SUBPART D: ACCESS TO BOARD RULES

Section	
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2175.400 Access to Board Rules in the Illinois Administrative Code

SUBPART E: RULEMAKING

Section

2175.500 Proposals
 2175.505 Hearing
 2175.510 First Notice
 2175.515 Second Notice
 2175.520 Adopted Rules
 2175.525 Emergency Rules
 2175.530 Peremptory Rules
 2175.535 Rules Identical-In-Substance to Federal Regulations
 2175.540 Federally Required Rules
 2175.545 Generally Applicable Rules and Site-Specific Rules
 2175.550 Clean Air Act Fast-Track Rulemaking
 2175.555 Updating Incorporations By Reference

SUBPART F: ADJUDICATORY PROCEEDINGS

Section

2175.600 Adjudicatory Proceedings

SUBPART G: EMERGENCY PROCEDURES

2175.700 Emergency Procedures
 2175.710 Emergency Procedures For Hearings
 2175.APPENDIX A: ORGANIZATIONAL CHART

AUTHORITY: Implementing Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15] and authorized by Section 5 of the Environmental Protection Act [415 ILCS 5/5].

SOURCE: Administrative rules adopted at 3 Ill. Reg. 23, p. 96, effective May 29, 1983; repealed by operation of law effective October 1, 1984; new rules adopted at 9 Ill. Reg. 107, effective December 21, 1984; Part repealed, new Part adopted at 20 Ill. Reg. 107, effective March 5, 1996; amended in R04-9 at 30 Ill. Reg. 14990, effective August 29, 2006; amended in R11-21 at 35 Ill. Reg. 4549, effective March 4, 2011; amended in R15-10 at ___ Ill. Reg. _____, effective _____.

SUBPART A: INTRODUCTION AND ORGANIZATION

Section 2175.110 Organization and Supervisory Relationships

- a) Each member of the Board is aided by a confidential assistant who may be an attorney or who may have an advanced technical degree, and a personal secretary. The Chairman may have two confidential assistants and a personal secretary.

- b) To carry out its functions, the Board is comprised of the following offices and units: Clerk's Office, Legal Unit, Technical Unit, and Fiscal Unit. The function of each is as follows:
- 1) Clerk's Office. This office is responsible for the processing, maintenance, and distribution of all regulatory and adjudicatory case-related materials of the Board. The Clerk's Office is located in Chicago.
 - 2) Legal Unit. This unit is responsible for general legal functions of the Board and case or rule-related legal responsibilities, as designated by the Chairman. Under the direction of the Senior Attorney, this unit ~~also~~ consists of attorneys responsible for conducting Board adjudicatory hearings throughout the State, making such rulings as may be necessary at hearing, and generally managing the Board's adjudicatory caseload.
 - 3) Technical Unit. This unit is comprised of engineering and environmental specialists responsible for gathering such technical and scientific data as may be required by the Board in the performance of its duties and for advising the Board on technical issues related to pending adjudicatory cases and rulemakings, as assigned by the Chairman.
 - 4) Fiscal Unit. Under the direction of a Fiscal Officer, this unit is responsible for budgeting, expenditures, procurement, computer operations, and related duties.
- c) The Board may also employ other professional staff to carry out its functions and mandates, including an Executive Director ~~Coordinator~~, General Counsel, a Public Information Coordinator, a Human Resources Manager, an Information Systems Analyst, and a Rulemaking Coordinator.
- d) Organizational relationships are shown in the organizational chart in Appendix A at the end of this Part. Detailed descriptions of the specific responsibilities and duties of each of the job titles are maintained in the Board's Springfield or Chicago office.

(Source: Amended at _____, effective _____)

Section 2175.120 Board Meetings

- a) The Board makes all decisions on adjudicatory cases and regulatory matters at open meetings of the Board noticed and held in accordance with the Open Meetings Act [5 ILCS 120]. The Board may also hold meetings that are closed to the public pursuant to Section 2(c) of the Open Meetings Act [5 ILCS 120/2(c)], including closed deliberative sessions under Section 2(c)(4) of the Open Meetings

Act [5 ILCS 120/2(c)(4)]. ~~The Board regularly holds closed deliberative sessions (see Sections 2175.125 and 2175.130 of this Part).~~

- b) Open Board meetings may be held when a quorum of Board members is present. *If there is no vacancy on the Board, four members of the Board constitute a quorum; otherwise, a majority of the Board constitutes a quorum, and no vacancy impairs the right of the remaining members to exercise all of the powers of the Board. Every action approved by a majority of the members of the Board constitutes the action of the Board* [415 ILCS 5/5(a)].
- c) The Board may hold a closed meeting upon a majority vote of a quorum present taken at an open meeting for which notice has been given as required by the Open Meetings Act (5 ILCS 120/2a). Closed meetings may be held when a majority of a quorum is present (5 ILCS 120/1.02).
- d) Board members may attend meetings in the following ways:
 - 1) Meetings, whether open or closed, may be held with Board members present physically or by videoconference. Closed meetings may also be held with Board members present telephonically.
 - 2) If a quorum of Board members is present physically or by videoconference at an open meeting, a majority of the Board may allow a Board member to attend the meeting telephonically if the member cannot otherwise attend because of personal illness or disability, the business of the Board, or a family or other emergency. In such instances, the Board member who wishes to attend telephonically will notify the Clerk of the Board before the meeting unless advance notice is impractical.
- e) Section 5 of the Act requires the Board to hold at least one open meeting each month and allows the Board to hold special and emergency meetings [415 ILCS 5/5]. The Chairman or two Board members may call a special or emergency meeting of the Board that is open to the public.

(Source: Amended at _____, effective _____)

Section 2175.125 Public Notice of Open Board Meetings and Closed Deliberative Sessions

- a) Public Notice of Regular Open Board Meetings and Closed Deliberative Sessions.
 - 1) The Board adopts annual schedules of open meetings ~~and closed deliberative sessions~~. Regular open Board meetings are generally held twice a month, usually every first and third Thursday of the month at the James R. Thompson Center (JRTC) in Chicago or at the Board's Springfield office, but dates, times and locations are subject to change. ~~Regular closed deliberative sessions are generally held twice a month,~~

~~usually every second and fourth Thursday of the month at the JRTC in Chicago or at the Board's Springfield office, but dates, times and locations are subject to change.~~

- 2) Notification of regular open Board meetings is given in the Board's *Environmental Register*, a monthly publication available in hard copy and on the Board's Web site (see Section 2175.310 of this Part). Notification of all regular open Board meetings and closed deliberative sessions is also provided pursuant to Sections 2.02 and 2.03 of the Open Meetings Act [5 ILCS 120/2.02 and 2.03].
 - A) At least 48 hours before each regular open Board meeting and closed deliberative session, an agenda for the meeting or session is posted at the Board's Chicago office and at any other location where the meeting or session is to be held. Each such agenda is also posted on the Board's Web site and remains so posted at least until the regular meeting or session is concluded.
 - B) Notification of the annual schedule of regular open Board meetings ~~and closed deliberative sessions~~ is given at the beginning of each fiscal calendar year by posting a copy of the schedule at the Board's Chicago office. In addition, the annual schedule is posted on the Board's Web site and remains so posted at least until a new public notice of the schedule of regular meetings and sessions is approved. The schedule of regular open Board meetings also appears at the end of every regular open Board meeting agenda.
- b) Public Notice of Special or Emergency Meetings.
 - 1) Whether a special or emergency meeting is an open Board meeting or a closed deliberative session, notice of a special or emergency meeting will generally be given to all Board members and the public at least 48 hours prior to the meeting. If, however, a majority of the Board certifies that an emergency exists and exigencies of time are such that the 48-hour notice must be dispensed with, notice to the public of an emergency meeting will be given as soon as is reasonably practicable, but prior to the holding of such meeting.
 - 2) Notice of a special or emergency meeting will include a copy of the meeting agenda and will be posted at the Board's Chicago office, at any other location where the meeting is to be held, and on the Board's Web site (see Section 2175.310 of this Part), pursuant to Section 2.02 of the Open Meetings Act (5 ILCS 120/2.02).
 - 3) Notwithstanding subsections (b)(1) and (2) of this Section, at any open Board meeting for which notice has been given as required by the Open

Meetings Act, the Board may, without additional notice under Section 2.02 of the Open Meetings Act (5 ILCS 120/2.02), hold a special or emergency closed deliberative session. Only topics specified in the vote to close the meeting may be considered during the closed deliberative session (5 ILCS 120/2a) (see Section 2175.120(c) of this Part).

- c) Notice to Media. The Board gives notice of regular, special, or emergency meetings, whether the meeting is an open Board meeting or a closed deliberative session, to any news medium that has filed an annual request for such notice under Section 2.02(b) of the Open Meetings Act (5 ILCS 120/2.02(b)).
- d) Videoconference and Teleconference. Whether the meeting is a regular, special, or emergency meeting, the Board may hold its open meetings and closed deliberative sessions by videoconference between Chicago and Springfield locations. Such open Board meetings may be attended by the public at both locations. A Board member may attend an open Board meeting telephonically only in accordance with Section 2175.120(d)(2) of this Part. The Board may hold its closed deliberative sessions by teleconference.

(Source: Amended at _____, effective _____)

SUBPART C: PUBLIC INFORMATION

Section 2175.305 Publications

- a) *Environmental Register*
 - 1) The Board's monthly publication, the *Environmental Register*, contains reports of the Board's activities and notices of meetings and hearings. Single hard copies are provided free of charge at the Board's Chicago and Springfield offices.
 - 2) ~~A yearly hard copy subscription may be purchased, at a cost of \$20 to defray reproduction and distribution charges, by contacting the Board's Chicago office. Government entities and not-for-profit organizations properly categorized as such under the Internal Revenue Code may request a free hard copy subscription to the *Environmental Register*. Proof of organizational status is required.~~
 - 3) The *Environmental Register* is provided free of charge on the Board's Web site (see Section 2175.310 of this Part).
- b) Opinions, Orders, Regulations

- 1) Copies of opinions and orders of the Board are available as provided at Section 2175.205 of this Part, including through the Board's Web site (see Section 2175.310 of this Part).
 - 2) The Board's opinions and orders are also available through various commercial services including LEXIS and Westlaw.
 - 3) The Board's regulations are published in the *Illinois Register* (see Section 2175.305(d) of this Part) and by various commercial services. They are also published periodically by the Agency by subtitle and are available in hard copy as quantities permit free of charge from the Board's Chicago office. Additionally, the Board maintains on its Web site the text of the Board's regulations set forth in Title 35 of the Illinois Administrative Code.
- c) Annual Report
- 1) The Board publishes an Annual Report of the Chairman. The report includes information regarding the Board's membership, regulatory and case activities for the fiscal year, a summary of legislative activity affecting the Board, a summary of Board decisions reviewed by the courts during the fiscal year, and information on administrative activities.
 - 2) When completed and printed, the Annual Report is available in hard copy free of charge in reasonable quantities from the Board's Chicago and Springfield offices. The Annual Report is also available free of charge from the Board's Web site (see Section 2175.310 of this Part).
- d) *Illinois Register*
- 1) Required Filings. The *Illinois Register* is a publication containing all State regulations and is published by and available from the Office of the Secretary of State and various commercial services. The Board is required to publish the following information in the *Illinois Register*:
 - A) Notice of all proposed and adopted regulations as required by Section 5-40 of the IAPA (5 ILCS 100/5-40). The notices describe the rules, contain contact names for questions, and provide directions for participation at public hearings and submission of written comments.
 - B) Notice of all emergency and preemptory regulations as required by Sections 5-45 and 5-50 of the IAPA (5 ILCS 100/5-45 and 5/50). The notices describe the rules and contain contact names for questions.

- C) Results of Board determinations in adjusted standards proceedings pursuant to Section 28.1 of the Act (415 ILCS 5/28.1). The Board publishes this list at the close of each fiscal year, in July or August depending upon the *Illinois Register* publication schedule.
 - D) A regulatory agenda setting forth rules that the Board may be considering during a six-month period. This agenda lists rules before publication of the notice described in subsection (d)(1) of this Section. The regulatory agenda appears in January/February or July/August of each year, depending upon the *Illinois Register* publication schedule. The agenda describes the anticipated rules, contains contact names for questions, and provides directions for public participation.
- 2) Discretionary filings. Section 7.3 of the Act (415 ILCS 5/7.3) and Section 5-70(b) of the IAPA (5 ILCS 100/5-70(b)) allow the Board to publish other documents concerning its activities. These include notices of public hearings, and notices of proposed and adopted identical-in-substance rules as discussed in Section 7.2 of the Act (415 ILCS 5/7.2).

(Source: Amended at _____, effective _____)

Section 2175.315 Documents Prepared by the Clerk's Office

Various documents are routinely prepared by and for the Clerk's Office for internal use by the Board and are also available for inspection and copying. ~~These include docket sheets, listings of adjudicatory cases and rulemakings by type and status sheets. Hard copies will be available within five working days of a request at a cost of \$5.00 per page.~~

(Source: Amended at _____, effective _____)

Section 2175.320 Requests for Information

- a) Informal requests for information may be made to any Board office. Informal requests will be filled promptly upon receipt of the request. However, where a request for information maintained by the Clerk's Office is made at a Board office other than the Chicago office, some delay may be necessary to allow for the Clerk's Office to provide the material. Inspection of documents can only take place at the Clerk's Office.
- b) FOIA Requests:
 - 1) A formal request for information pursuant to FOIA must state that it is a formal request pursuant to FOIA. The formal request must be addressed to the ~~Clerk of the Board~~ Board's FOIA officer, who: ~~will date stamp the request upon receipt. All formal requests will be processed pursuant to the~~

~~timeframe requirements set forth in FOIA. FOIA requires an initial response to the request be made within seven working days of receipt of the formal request, subject to extension.~~

- A) Notes the date the public body receives the written request;
- B) Computes the day on which the period for response will expire and makes a notation of that date on the written request;
- C) Maintains an electronic or paper copy of a written request, including all documents submitted with the request until the request has been complied with or denied; and
- D) Provides a copy to the Clerk's Office to create a file for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of other communications.

~~Any person whose formal request is denied by the Clerk may appeal such denial by filing a written notice of appeal addressed to the Chairman of the Board. The notice of appeal must include a copy of the formal request, the Clerk's denial letter, and a statement of why the person believes the denial was improper. The Chairman will determine in writing whether the Clerk's denial was proper or improper, and will notify the person within seven working days after receipt of the notice.~~

- 2) The Board will either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended under Section 3(e) of FOIA (5 ILCS 140/3(e)).~~(If the Chairman affirms the denial or fails to take action within seven working days, the person may file suit in circuit court for injunctive or declaratory relief pursuant to Section 11 of FOIA (5 ILCS 140/11).~~
- 3) If denied, the requests will be denied pursuant to Section 7 and 7.5 of FOIA (5 ILCS 140/7 and 7.5). Upon a decision to deny a request, the FOIA officer shall notify the requester in writing of the decision and provide:
 - A) The reasons for denial, including a detailed basis for the exemption claimed,
 - B) the names and titles or positions of each person responsible for the denial,
 - C) Information on the right to review by the Public Access Counselor, and include the address and phone number for the Public Access Counselor, and

D) Information on the right to judicial review.

c) Information that is immediately available on request from the Clerk's Officer, includes, but is not limited to:

- 1) Board Meeting Agendas,
- 2) Board Meeting Minutes,
- 3) Board Opinions and Orders, and
- 4) Filings in cases available in the Clerk's Office On-Line .

(Source: Amended at _____, effective _____)

SUBPART E: RULEMAKING

Section 2175.535 Rules Identical-In-Substance to Federal Regulations

- a) The Board adopts regulations in the following programs pursuant to Section 7.2 of the Act (415 ILCS 5/7.2) that are identical-in-substance to federal regulations and which are exempt from Sections 5-35 and 5-40 of the IAPA (5 ILCS 100/5-35 and 5-40):
 - 1) Exemptions from the definition of volatile organic material: Section 9.1(e) of the Act (415 ILCS 5/9.1(e)),
 - 2) Ambient air quality standards specifying the maximum permissible short-term and long-term concentrations of various contaminants in the atmosphere: (415 ILCS 5/10(H))
 - 23) Underground injection control (UIC): Section 13(c) of the Act (415 ILCS 5/13(c)),
 - 34) Wastewater pretreatment: Section 13.3 of the Act (415 ILCS 5/13.3)),
 - 45) Safe Drinking Water Act (SDWA): Section 17.5 of the Act (415 ILCS 5/17.5)),
 - 56) Resource Conservation and Recovery Act (RCRA), Subtitle C, hazardous waste: Section 22.4(a) of the Act (415 ILCS 5/22.4(a)),
 - 67) RCRA, Subtitle I, UST: Section 22.4(d) of the Act (415 ILCS 22.4(d)),

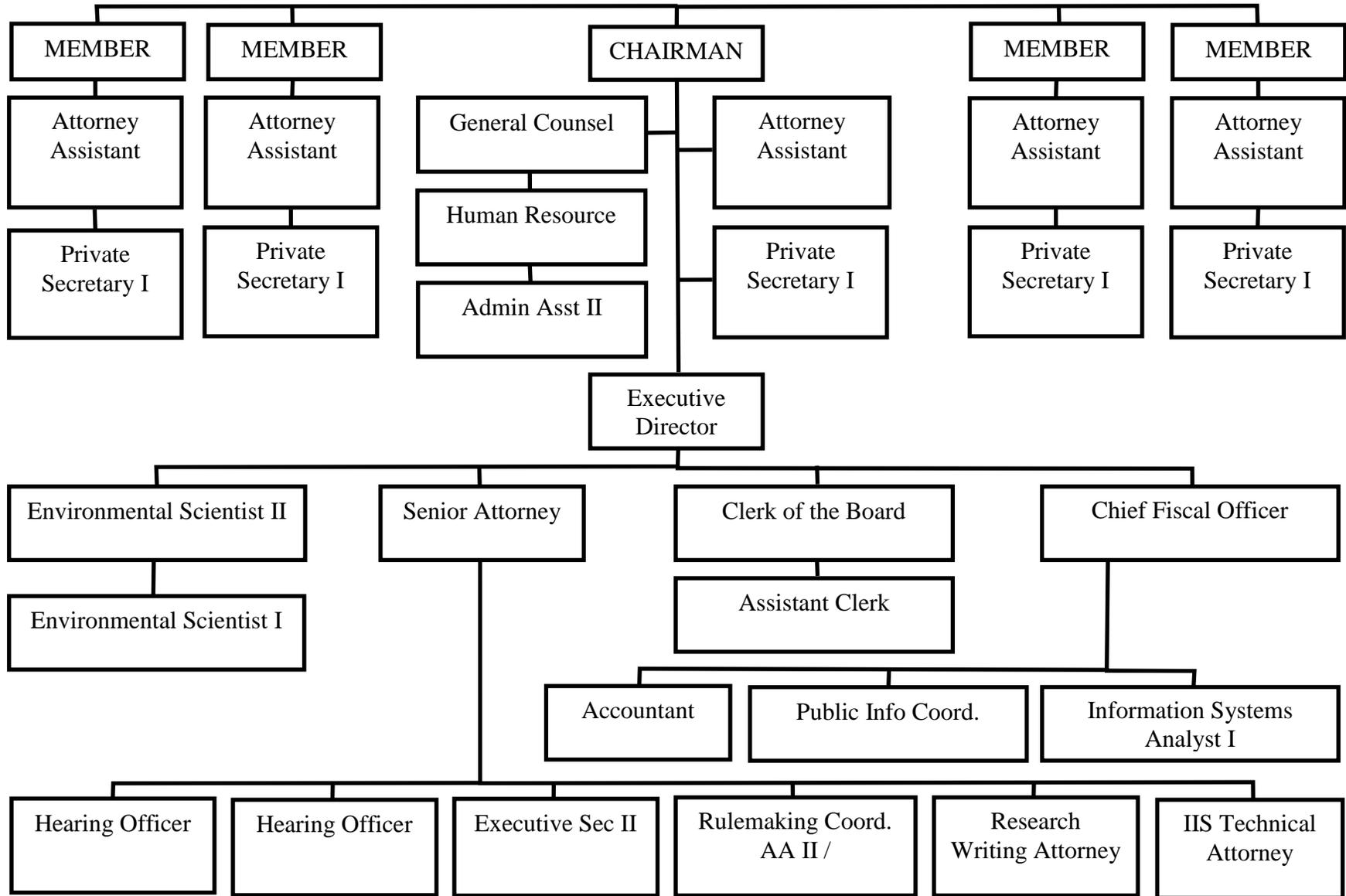
78) RCRA, Subtitle D, municipal solid waste landfills: Section 22.40(a) of the Act (415 ILCS 5/22.40(a)).

- b) Section 7.2(b) of the Act (415 ILCS 5/7.2(b)) provides timetables for rule adoption, but generally the Board must adopt rules within one year after the United States Environmental Protection Agency's (USEPA) adoption of the corresponding federal rule. The Board adopts a proposal for public comment that is published in the Illinois Register. The Board then accepts public comments for 45 days, after which the Board adopts final rules that are published in the Illinois Register.
- c) Because Sections 5-35 and 5-40 of the IAPA (5 ILCS 100/5-35 and 5-40) do not apply to identical-in-substance rulemaking under Section 7.2 of the Act (415 ILCS 5/7.2), the Board does not follow the IAPA's procedure of first notice, second notice, and final adoption.

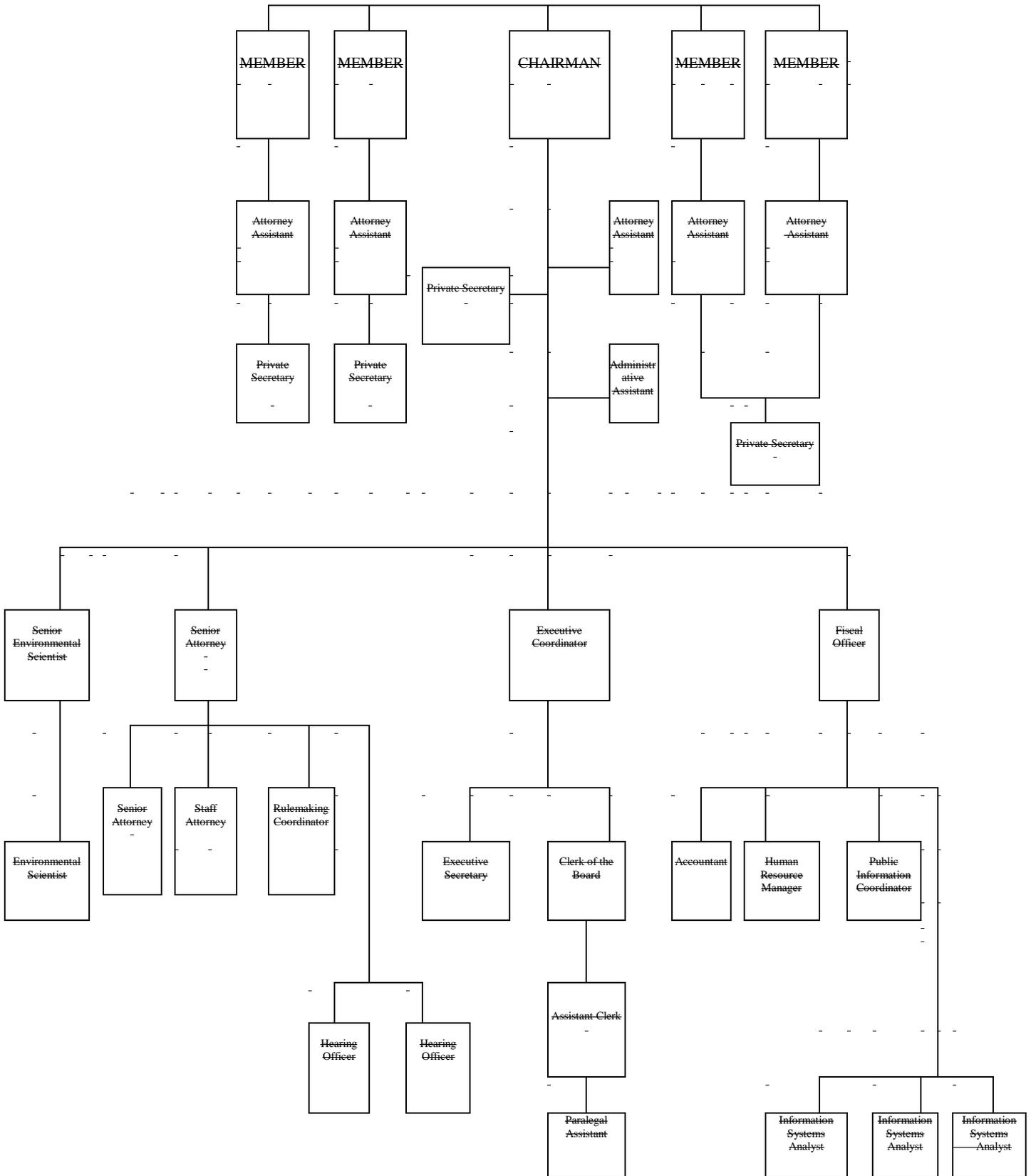
(Source: Amended at _____, effective _____)

Section 2175.APPENDIX A Organizational Chart

ORGANIZATION CHART



ORGANIZATIONAL CHART



(Source: Amended at _____, effective _____)

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 16, 2014, by a vote of 4-0.

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

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board