

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: General Rules
- 2) Code Citation: 35 Ill. Adm. Code 101
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
101.106	Amendment
101.108	Amendment
101.110	Amendment
101.112	Amendment
101.114	Amendment
101.202	Amendment
101.300	Amendment
101.302	Amendment
101.304	Amendment
101.306	Amendment
101.308	Amendment
101.400	Amendment
101.402	Amendment
101.404	Amendment
101.500	Amendment
101.502	Amendment
101.504	Amendment
101.510	Amendment
101.514	Amendment
101.516	Amendment
101.518	Amendment
101.520	Amendment
101.610	Amendment
101.612	Amendment
101.616	Amendment
101.618	Amendment
101.620	Amendment
101.622	Amendment
101.626	Amendment
101.628	Amendment
101.902	Amendment
101.904	Amendment
101.906	Amendment
101.1000	Amendment
101.1010	Amendment

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STATE OF ILLINOIS
Pollution Control Board

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

101.1020	Amendment
101.1030	Amendment
101.1040	Amendment
101.1050	Amendment
101.1060	Amendment
101.1070	Amendment
101.Appendix A	
101.Illustration L	Amendment

- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: Prompted by a recognition that some of its rules were no longer current due to changing technology and the passage of time, the Board began planning a broad review of all its rules, with a view of streamlining, updating and overhauling its regulation. Governor Rauner's Executive Order 2016-13 has provided additional impetus to the Board's initiative. The proposal makes technical changes to the rule as well as changes in response to recently passed legislation. The proposal also makes mandatory e-mail service for attorneys that file an appearance before the Board.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b)].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments must be filed with the Clerk of the Board. Public comments should reference Docket

POLLUTION CONTROL BOARD

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R17-18 and be addressed to:

Clerk's Office
Illinois Pollution Control Board
JRTC
100 W. Randolph St., Suite 11-500
Chicago IL 60601

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R17-18 by calling the Clerk's office at 312/814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality, or not-for-profit corporation that practices before the Board
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: January 2017

The full text of the Proposed Amendments begins on the next page:

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

PART 101
GENERAL RULES

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101.100 Applicability
101.102 Severability
101.104 Repeals
101.106 Board Authority
101.108 Board Proceedings
101.110 Public Participation
101.111 Informal Recordings of Board Meetings
101.112 Bias and Conflict of Interest
101.114 Ex Parte Communications

SUBPART B: DEFINITIONS

Section
101.200 Definitions Contained in the Act
101.202 Definitions for Board's Procedural Rules

SUBPART C: COMPUTATION OF TIME, FILING, SERVICE
OF DOCUMENTS, AND STATUTORY DECISION DEADLINES

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101.302 Filing of Documents
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101.308 Statutory Decision Deadlines and Waiver of Deadlines

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Section
101.400 Appearances, Withdrawals, and Substitutions of Attorneys in
Adjudicatory Proceedings
101.402 Intervention of Parties
101.403 Joinder of Parties
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Section
101.500 Filing of Motions and Responses
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101.504 Contents of Motions and Responses
101.506 Motions Attacking the Sufficiency of the Petition, Complaint,
or Other Pleading
101.508 Motions to Board Preliminary to Hearing
101.510 Motions to Cancel Hearing
101.512 Motions for Expedited Review
101.514 Motions to Stay Proceedings
101.516 Motions for Summary Judgment
101.518 Motions for Interlocutory Appeal from Hearing Officer Orders
101.520 Motions for Reconsideration
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Section

101.600 Hearings
101.602 Notice of Board Hearings
101.604 Formal Board Transcript
101.606 Informal Recordings of the Proceedings
101.608 Default
101.610 Duties and Authority of the Hearing Officer
101.612 Schedule to Complete the Record
101.614 Production of Information
101.616 Discovery
101.618 Admissions
101.620 Interrogatories
101.622 Subpoenas and Depositions
101.624 Examination of Adverse, Hostile or Unwilling Witnesses
101.626 Information Produced at Hearing
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101.630 Official Notice
101.632 Viewing of Premises

SUBPART G: ORAL ARGUMENT

Section

101.700 Oral Argument

SUBPART H: SANCTIONS

Section

101.800 Sanctions for Failure to Comply with Procedural Rules, Board
Orders, or Hearing Officer Orders
101.802 Abuse of Discovery Procedures

SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

Section

101.902 Motions for Reconsideration
101.904 Relief from Final Opinions and Orders
101.906 Judicial Review of Board Orders
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SUBPART J: ELECTRONIC FILING AND E-MAIL SERVICE

Section

- 101.1000 Electronic Filing and E-Mail Service
- 101.1010 Electronic Filing Authorization and Signatures
- 101.1020 Filing Electronic Documents
- 101.1030 Form of Electronic Documents for Filing
- 101.1040 Filing Fees
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101.APPENDIX A Captions

- 101.ILLUSTRATION A Enforcement Case
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- 101.ILLUSTRATION C Variance
- 101.ILLUSTRATION D Adjusted Standard Petition
- 101.ILLUSTRATION E Joint Petition for an Adjusted Standard
- 101.ILLUSTRATION F Permit Appeal
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- 101.ILLUSTRATION H Pollution Control Facility Siting Appeal
- 101.ILLUSTRATION I Administrative Citation
- 101.ILLUSTRATION J Administrative Citation Under Section 23.1
of the Public Water Supply Operations Act
- 101.ILLUSTRATION K General Rulemaking
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- 101.APPENDIX B Appearance Form
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 - 101.ILLUSTRATION A Service by Non-Attorney
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- 101.APPENDIX F Notice of Withdrawal (Repealed)
- 101.APPENDIX G Comparison of Former and Current Rules (Repealed)
- 101.APPENDIX H Affidavit or Certificate of E-Mail Service
 - 101.ILLUSTRATION A E-Mail Service by Non-Attorney
 - 101.ILLUSTRATION B E-Mail Service by Attorney
- 101.APPENDIX I Consent to Receipt of E-Mail Service

AUTHORITY: Implementing Sections 5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27] and Section 25-101 of the Electronic Commerce Security Act [5 ILCS 175/25-101].

SOURCE: Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; Part repealed, new Part adopted in R88-5A at 13 Ill. Reg. 12055, effective July 10, 1989; amended in R90-24 at 15 Ill. Reg. 18677, effective December 12, 1991; amended in R92-7 at 16 Ill. Reg. 18078,

effective November 17, 1992; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 446, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8743, effective June 8, 2005; amended in R06-9 at 29 Ill. Reg. 19666, effective November 21, 2005; amended in R07-17 at 31 Ill. Reg. 16110, effective November 21, 2007; amended in R10-22 at 34 Ill. Reg. 19566, effective December 3, 2010; amended in R12-22 at 36 Ill. Reg. 9211, effective June 7, 2012; amended in R13-9 at 37 Ill. Reg. 1655, effective January 28, 2013; amended in R14-21 at 39 Ill. Reg. 2276, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12848, effective September 8, ~~2015~~, 2015; amended in R16-17 at 40 Ill. Reg. 7912, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. , effective .

SUBPART A: GENERAL PROVISIONS

Section 101.106 Board Authority

a) The Board has the authority to determine, define and implement the environmental control standards applicable in the State of Illinois and may adopt rules and regulations in accordance with Title VII of the Act [415 ILCS 5/5(b)].

b) The Board has the authority to conduct proceedings upon complaints charging violations of the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order; upon administrative citations; upon petitions for variances or adjusted standards; upon petitions for review of the Agency's final determinations on permit applications in accordance with Title X of the Act; upon petitions to remove seals under Section 34 of the Act; upon other petitions for review of final determination which are made pursuant to the Act or Board rules and which involve a subject which the Board is authorized to regulate. The Board may also conduct other proceedings as may be provided by the Act or any other statute or rule. [415 ILCS 5/5(d)]

c) In addition to subsections (a) and (b) ~~of this Section~~, the Board has the authority to act as otherwise provided by law.

(Source: Amended at 41 Ill. Reg. , effective)

Section 101.108 Board Proceedings

a) Board proceedings can generally be divided into two categories: rulemaking proceedings and adjudicatory proceedings.

b) The following are examples of Board rulemaking proceedings: Identical-in-Substance, Clean Air Act/Fast Track, Federally Required Rulemaking, General Rulemaking, and Site-Specific Rulemaking. Procedural rules for these types of proceedings can be found at 35 Ill. Adm. Code 102.

c) The following are examples of Board adjudicatory proceedings: Enforcement Proceedings (35 Ill. Adm. Code 103), Variance Petitions (35 Ill. Adm. Code 104), Adjusted Standard Petitions (35 Ill. Adm. Code 104), Permit Appeals (35 Ill. Adm. Code 105), Leaking Underground Storage Tank Appeals (35 Ill. Adm. Code 105), Pollution Control Facility Siting Appeals (35 Ill. Adm. Code 107), and Administrative Citations (35 Ill. Adm. Code 108).

d) Board decisions will be made at meetings open to the public. Except as provided in subsection (e) ~~of this Section~~, 3-4 members of the Board constitute a quorum, and 3 affirmative votes are required to adopt a Board decision.

e) At a hearing under ~~pursuant to~~ Section 34(d) of the Act to determine whether a seal should be removed, at least one Board Member shall be present, and those Board Members present may render a final decision without regard to the requirements of Section 5(a) of the Act [415 ILCS 5/34(d)].

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 101.110 Public Participation

a) General. The Board encourages public participation in all of its proceedings. The extent to which the law allows for the participation varies, depending on the type of Board proceeding involved, the party status of the person or persons seeking to participate, and the rules governing that type of proceeding. Public participation in particular proceedings may be more specifically delineated by Board or hearing officer order consistent with the provisions of applicable law and the Board's procedural rules. (See Sections 101.114 and ~~101.628 of this Part.~~ 101.628.)

b) Party/Non-Party Status. The issue of who constitutes a proper party in each type of adjudicatory proceeding before the Board is addressed in the rules. A person who wishes to participate in a Board adjudicatory proceeding and is not a party will be deemed a participant and will have only those rights specifically provided in these rules. A person who wishes to participate in a Board regulatory proceeding will be deemed a participant and will have only those rights specifically provided in these rules.

c) Amicus Curiae Briefs. Amicus curiae briefs may be filed in any adjudicatory proceeding by any interested person, provided permission is granted by the Board. Response briefs may be allowed by permission of the Board, but not as of right. The briefs must consist of argument only and may not raise facts that are not in evidence in the relevant proceeding. Amicus curiae briefs, and any responses, will be considered by the Board only as time allows. The briefs will not delay decision-making of the Board. (See also Section 101.302(k) ~~of this Part.~~)

d) Public Remarks at a Board Meeting. During the time period designated for public remarks ~~at a Board meeting~~, any person physically present ~~at the meeting~~, once recognized by the Chairman, may make public remarks to the Board concerning a proceeding listed on that meeting's agenda.

1) Sign-In Sheet. Beginning at least 15 minutes before the scheduled start of each Board meeting, a public remarks sign-in sheet will be available to the public at the meeting. Anyone who wishes to make public remarks at the meeting must provide the following information on the sign-in sheet:

A) Full name;

B) Any person he or she is representing; and

C) The docket number of the proceeding on which he or she would like to make public remarks.

2) Time Limits. A time period of up to 30 minutes at the beginning of each Board meeting, as designated on the meeting agenda, is reserved for public remarks. The Chairman may extend the duration of the public remarks portion of the meeting as necessary to accommodate persons who signed in under ~~pursuant to~~ subsection (d)(1) ~~of this Section~~. A person's public remarks on a given proceeding must not exceed five minutes in length, but this time period may be extended with the Chairman's permission.

3) Nature of Public Remarks. Public remarks are not made under oath or affirmation and are not subject to cross-examination. Public remarks that are relevant to the proceeding for which they are made may be considered by the Board, but factual statements made during public remarks do not constitute evidence in the proceeding. The public remarks portion of a Board meeting is not a hearing and cannot be used to offer documentary or other physical evidence to the Board. The Chairman may direct persons to cease public remarks that are irrelevant, repetitious, or disruptive. Persons engaging in disorderly conduct may be asked by the Chairman to leave the meeting.

4) Transcription. The Board will arrange for public remarks to be transcribed. Transcripts of public remarks will be made a part of the record of the proceeding to which the remarks correspond. (See 5 ILCS 120/2.06(g).)

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 101.112 Bias and Conflict of Interest

a) No Board Member or Board employee may represent any other person in any Board proceeding.

b) No former Board Member or Board employee may represent any other person in any Board proceeding in which he or she participated personally and substantially as a Board Member or Board employee, unless the Board and, as applicable, all parties or proponents in the proceeding consent in writing after disclosure of the participation. For purposes of subsections (a) and (b) ~~of this Section~~, representation includes consulting on legal or technical matters, and Board employee means a person the Board employs on a full-time, part-time, contract, or intern basis.

c) The Board, on its own motion or the motion of any party, may disqualify a hearing officer for bias or conflict of interest as provided by Section 10-30(b) of the IAPA [5 ILCS 100/10-30(b)].

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 101.114 Ex Parte Communications

a) For the purposes of this Section, "interested person or party" means a person or entity whose rights, privileges, or interests are the subject of or are directly affected by a regulatory, quasi-adjudicatory, investment, or licensing matter [5 ILCS 430/5-50(d)].

b) For the purposes of this Section, "Executive Ethics Commission" means the commission created by the State Officials and Employees Ethics Act [5 ILCS 430].

c) Adjudicatory and Regulatory Proceedings. Board Members and Board employees must ~~should~~ not engage in an ex parte communication designed to influence their action with respect to an adjudicatory or regulatory proceeding pending before or under consideration by the Board. (See definition of "ex parte communication" in Section ~~101.202 of this Part.~~ 101.202.) Whenever practicable, an interested person or party or his or her official representative or attorney should make all communications with respect to an adjudicatory or regulatory proceeding pending before or under consideration by the Board in writing and address them to the Clerk rather than to individual Board Members or Board employees. (See Sections 101.110 and ~~101.628 of this Part.~~ 101.628.)

d) Nothing in this Section precludes Board Members or Board employees from receiving informal complaints about individual pollution sources, or forbids the administrative contacts as would be appropriate for judges and other judicial officers. Information about a pollution source included in the record of a regulatory proceeding is not an ex parte communication with respect to any adjudicatory proceeding concerning the pollution source.

e) When the Clerk on behalf of the Board, a Board member, or a Board employee receives an ex parte communication from an interested person or party or his or her official representative or attorney, the recipient, in consultation with the Board's ethics officer or his or her designee, must promptly memorialize the communication and make it part of the record of the proceeding. To make an oral ex parte communication part of the record, the substance of the oral communication, along with the identity of each person involved in the communication, will be either set forth in a memorandum and placed in the record or announced on the record at a public hearing.

f) When the Clerk on behalf of the Board, a Board member, or a Board employee receives an ex parte communication, other than an ex parte communication received from an interested person or party or his or her official representative or attorney, that communication must be promptly reported to the Board's ethics officer or his or her designee by the recipient of the communication and by any other employee of the Board who responds to the communication [5 ILCS 430/5-50(c)].

1) The ethics officer or his or her designee, in consultation with the recipient of the ex parte communication, must ensure that the ex parte communication is promptly made part of the record of the proceeding [5 ILCS 430/5-50(c)].

2) The ethics officer or his or her designee, in consultation with the recipient of the ex parte communication, must promptly file the ex parte communication with the Executive Ethics Commission, including:

A) All written communications;

B) All written responses to the communications;

C) A memorandum prepared by the ethics officer stating the nature and substance of all oral communications;

D) The identity and job title of the person to whom each communication was made;

E) All responses made;

F) The identity and job title of the person making each response;

G) The identity of each person from whom the written or oral ex parte communication was received;

H) The individual or entity represented by that person;

I) Any action the person requested or recommended;

and

J) Any other pertinent information.

3) The disclosure shall also contain the date of any ex parte communication. [5 ILCS 430/5-50(c)]

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART B: DEFINITIONS

Section 101.202 Definitions for Board's Procedural Rules

Unless otherwise provided in 35 Ill. Adm. Code 101-130, or unless a different meaning of a word or term is clear from the context, the following definitions also apply to the Board's procedural rules, found in 35 Ill. Adm. Code 101 through 130:

"Act" means the Environmental Protection Act [415 ILCS 5].

"Adjudicatory proceeding" means an action of a quasi-judicial nature brought before the Board under ~~pursuant to~~ authority granted to the Board under Section 5(d) of the Act or as otherwise provided by law. Adjudicatory proceedings include enforcement, variance, permit appeal, pollution control facility siting appeal, Underground Storage Tank (UST) Fund determination, water well set back exception, adjusted standard, and administrative citation proceedings. Adjudicatory proceedings do not include regulatory, quasi-legislative, or informational proceedings.

"Adjusted standard" or "AS" means an alternative standard granted by the Board in an adjudicatory proceeding under ~~pursuant to~~ Section 28.1 of the Act and 35 Ill. Adm. Code 104.Subpart D. The adjusted standard applies instead of the rule or regulation of general applicability.

"Administrative citation" or "AC" means a citation issued by the Agency or by a unit of local government acting as the Agency's delegate. (See 35 Ill. Adm. Code 108.)

"Administrative citation review" or "administrative citation appeal" means a petition for review of an administrative citation. (See 35 Ill. Adm. Code 108.)

"Affidavit" means a sworn, signed statement witnessed by a notary public.

"Agency" means the Illinois Environmental Protection Agency as established by Section 4 of the Act.

"Agency recommendation" means the document filed by the Agency under ~~pursuant to~~ Sections 37(a) and 28.1(d)(3) of the Act in which the Agency provides its recommended disposition of a petition for variance or an adjusted standard. This includes a recommendation to deny, or a recommendation to grant with or without conditions. (See 35 Ill. Adm. Code 104.218 and 104.416.)

"Amicus curiae brief" means a brief filed in a proceeding by any interested person who is not a party. (See Sections 101.110 and ~~101.628 of this Part. 101.628.~~)

"Applicant" means any person who submits, or has submitted, an application for a permit or for local siting approval under ~~pursuant to~~ any of the authorities to issue permits or granting of siting approval identified in Sections 39, 39.1, and 39.5 of the Act.

"Article" means any object, material, device or substance, or whole or partial copy thereof, including any writing, record, document, recording, drawing, sample, specimen, prototype, model, photograph, culture, microorganism, blueprint or map [415 ILCS 5/7.1].

"Attorney General" means the Attorney General of the State of Illinois or representatives thereof.

"Authorized representative" means any person who is authorized to act on behalf of another person.

"Board" means the Illinois Pollution Control Board as created in Section 5 of the Act or, if applicable, its designee.

"Board decision" means an opinion or an order voted in favor of by at least three members of the Board at an open Board meeting except in a proceeding to remove a seal under Section 34(d) of the Act.

"Board designee" means an employee of the Board who has been given authority by the Board to carry out a function for the Board (e.g., the Clerk, Assistant Clerk of the Board, or hearing officer).

"Board meeting" means an open meeting held by the Board under ~~pursuant to~~ Section 5(a) of the Act in which the Board makes its decisions and determinations.

"Board's procedural rules" means the Board's regulations set forth at 35 Ill. Adm. Code 101 through 130.

"Brief" means a written statement that contains a summary of the facts of a proceeding, the pertinent laws, and an argument of how the law applies to the facts supporting a position.

"CAAPP" means the Clean Air Act Permit Program, as adopted in Section 39.5 of the Act.

"Certificate of acceptance" means a certification, executed by a successful petitioner in a variance proceeding, in which the petitioner agrees to be bound by all terms and conditions that the Board has affixed to the grant of variance.

"Chairman" means the Chairman of the Board designated by the Governor under ~~pursuant to~~ Section 5(a) of the Act.

"Citizen's enforcement proceeding" means an enforcement action brought before the Board under ~~pursuant to~~ Section 31(d) of the Act by any person who is not authorized to bring the action on behalf of the People of the State of Illinois.

"Clean Air Act" or "CAA" means the federal Clean Air Act, as now and hereafter amended, 42 USC 7401 et seq. [415 ILCS 5/39.5]

"Clean Water Act" means the federal Clean Water Act, 33 USC 1251 et seq.

"Clerk" means the Clerk of the Board.

"Clerk's Office On-Line" or "COOL" means the Board's web-based file management system that allows electronic filing of and access to electronic documents in the records of the Board's adjudicatory and regulatory proceedings. COOL is located on the Board's website at [http://www.ipcb.state.il.us/COOL/ external/](http://www.ipcb.state.il.us/COOL/external/).

"Complaint" means the initial filing that begins an enforcement proceeding under ~~pursuant to~~ Section 31 of the Act and 35 Ill. Adm. Code 103.

"Compliance plan" means a detailed description of a program designed to achieve compliance with the Act and Board regulations.

"Copy" means any facsimile, replica, photograph or other reproduction of an article, and any note, drawing or sketch made of or from an article [415 ILCS 5/7.1].

"Counter-complaint" means a pleading that a respondent files setting forth a claim against a complainant. (See 35 Ill. Adm. Code 103.206.)

"Cross-complaint" means a pleading that a party files setting forth a claim against a co-party. (See 35 Ill. Adm. Code 103.206.)

"Cross-media impacts" means impacts that concern multiple environmental areas, such as air, land and/or water.

"Decision date" means the date of the Board meeting immediately preceding the decision deadline.

"Decision deadline" means the last day of any decision period, as established by law, within which the Board is required to render a decision in an adjudicatory proceeding. (See Subpart ~~C-of-this-Part~~.) (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions respectively.)

"Decision period" means the period of time established by the Act within which the Board is required to make a Board decision in certain adjudicatory proceedings. (See Subpart C ~~of this Part~~.) (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions, respectively.)

"Deinked stock" means paper that has been processed to remove inks, clays, coatings, binders and other contaminants [415 ILCS 20/2.1].

"Delegated unit" means the unit of local government to which the Agency has delegated its administrative citation or other function under ~~pursuant to~~ Section 4(r) of the Act.

"Digital signature" means a type of electronic signature created by transforming an electronic document using a message digest function and encrypting the resulting transformation with an asymmetric cryptosystem using the signer's private key such that any person having the initial untransformed electronic document, the encrypted transformation, and the signer's corresponding public key can accurately determine whether the transformation was created using the private key that corresponds to the signer's public key and whether the initial electronic document has been altered since the transformation was made. A digital signature is a security device. [5 ILCS 175/5-105]

"Discovery" means a pre-hearing process that can be used to obtain facts and information about the adjudicatory proceeding in order to prepare for hearing. The discovery tools include depositions upon oral and written questions, written interrogatories, production of documents or things, and requests for admission.

"DNR" means the Illinois Department of Natural Resources.

"DOA" means the Illinois Department of Agriculture.

"Duplicative" means the matter is identical or substantially similar to one brought before the Board or another forum.

"Electronic" includes electrical, digital, magnetic, optical, electromagnetic, or any other form of technology that entails capabilities similar to these technologies [5 ILCS 175/5-105].

"Electronic document" means any notice, information, or filing generated, communicated, received or stored by electronic means to use in an information system or to transmit from one information system to another. (See 5 ILCS 175/5-105.)

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic document [5 ILCS 175/5-105].

"Environmental Management System Agreement" or "EMSA" means the agreement between the Agency and a sponsor, entered into under Section

52.3 of the Act and 35 Ill. Adm. Code 187, that describes the innovative environmental measures to be implemented, schedules to attain goals, and mechanisms for accountability.

"Enforcement proceeding" means an adjudicatory proceeding brought upon a complaint filed under ~~pursuant to~~ Section 31 of the Act by the Attorney General, State's Attorney, or other persons, in which the complaint alleges violation of the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order.

"EPRR Act" means the Electronic Products Recycling and Reuse Act [415 ILCS 150].

"Ex parte communication" means any written or oral communication by any person that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi-adjudicatory, investment, or licensing matters pending before or under consideration by the Board. "Ex parte communication" does not include the following:

statements by a person publicly made in a public forum, including pleadings, transcripts, public comments, and public remarks made part of the proceeding's record [5 ILCS 430/5-50(b)(i)];

statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter [5 ILCS 430/5-50(b)(ii)]; and

statements made by a State employee of the Board to Board members or other employees of the Board [5 ILCS 430/5-50(b)(iii)]. For purposes of this definition, "Board employee" means a person the Board employs on a full-time, part-time, contract or intern basis. (See Section ~~101.114 of this Part. 101.114.~~)

"Fast Track rulemaking" means a Clean Air Act rulemaking conducted under ~~pursuant to~~ Section 28.5 of the Act.

"Federally required rule" means a rule that is needed to meet the requirements of the federal Clean Water Act, Safe Drinking Water Act, Clean Air Act (including required submission of a State Implementation Plan), or Resource Conservation and Recovery Act, other than a rule required to be adopted under subsection (c) of Section 13, Section 13.3, Section 17.5, subsection (a) or (d) of Section 22.4, or subsection (a) of Section 22.40 [415 ILCS 5/28.2].

"Filing" means the act of delivering a document or article into the custody of the Clerk with the intention of incorporating that document or article into the record of a proceeding before the Board. The Clerk's Office is located at 100 West Randolph Street, Suite 11-500, Chicago IL 60601. Electronic filing is done through COOL on the Board's website.

"Final order" means an order of the Board that terminates the proceeding leaving nothing further to litigate or decide and that is subject to judicial review. (See Subpart I ~~of this Part.~~)

"Frivolous" means a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.

"Hearing" means a public proceeding conducted by a hearing officer where the parties and other interested persons, as provided for by law and the Board's procedural rules, present evidence and argument regarding their positions.

"Hearing officer" means a person licensed to practice law in the State of Illinois who presides over hearings and otherwise carries out record development responsibilities as directed by the Board.

"IAPA" means the Illinois Administrative Procedure Act [5 ILCS 100].

"Identical-in-substance rules" or "identical-in-substance regulations" means State regulations which require the same actions with respect to protection of the environment, by the same group of affected persons, as would federal regulations if USEPA administered the subject program in Illinois [415 ILCS 5/7.2].

"Initial filing" means the filing that initiates a Board proceeding and opens a docket. For instance, the initial filing in an enforcement proceeding is the complaint; in a permit appeal it is a petition for review; and in a regulatory proceeding it is the proposal.

"Innovative environmental measures" means any procedures, practices, technologies or systems that pertain to environmental management and are expected to improve environmental performance when applied. (See 35 Ill. Adm. Code 106.Subpart G.)

"Inquiry hearing" means a hearing conducted by the Board for the purpose of seeking input and comment from the public regarding the need for a rulemaking proceeding in a specific area.

"Interlocutory appeal" means an appeal of a Board decision to the appellate court that is not dispositive of all the contested issues in the proceeding. (See Section ~~101.908 of this Part.~~ 101.908.) An interlocutory appeal may also be the appeal of a hearing officer ruling to the Board. (See Section ~~101.518 of this Part.~~ 101.518.)

"Intervenor" means a person, not originally a party to an adjudicatory proceeding, who voluntarily participates as a party in the proceeding with the permission ~~leave~~ of the Board. (See Section ~~101.402 of this Part.~~ 101.402.)

"Intervention" means the procedure by which a person, not originally a party to an adjudicatory proceeding, voluntarily comes into the

proceeding as a party with the permission ~~leave~~ of the Board. (See Section ~~101.402 of this Part.~~101.402.)

"JCAR" means the Illinois General Assembly's Joint Committee on Administrative Rules established by the IAPA (see 5 ILCS 100/5-90).

"Joinder" means the procedure by which the Board adds a person, not originally a party to an adjudicatory proceeding, as a party to the proceeding. (See Section ~~101.403 of this Part~~ and 35 Ill. Adm. Code 103.206.)

"Misnomer" means a mistake in name, giving an incorrect name in a complaint or other document with respect to any properly included party.

"Motion" means a request made to the Board or the hearing officer for the purposes of obtaining a ruling or order directing or allowing some act to be done in favor of the movant. (See definition of "movant" in this Section.)

"Movant" means the person who files a motion.

"New pollution control facility" means a pollution control facility initially permitted for development or construction after July 1, 1981; or the area of expansion beyond the boundary of a currently permitted pollution control facility; or a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste [415 ILCS 5/3.330(b)].

"Non-disclosable information" means information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; information concerning secret manufacturing processes or confidential data submitted by any person under the Act [415 ILCS 5/7(a)].

"Notice list" means the list of persons in a regulatory proceeding who will receive all Board opinions and orders and all hearing officer orders. Persons on a notice list generally do not receive copies of motions, public comments, or testimony. (See definition of "service list" in this Section.) (See also 35 Ill. Adm. Code 102.422.)

"Notice to reinstate" means a document filed that recommences the decision period after a decision deadline waiver has been filed. The notice will give the Board a full decision period in which to make a decision. (See Section ~~101.308 of this Part.~~101.308.)

"Oral argument" means a formal verbal statement of advocacy on a proceeding's legal questions made at a Board meeting with the Board's permission. (See Section ~~101.700 of this Part.~~101.700.)

"OSFM" means Office of the State Fire Marshal.

"OSFM appeal" means an appeal of an OSFM final decision concerning eligibility and deductibility made under ~~pursuant to~~ Title XVI of the Act.

"Participant" means any person, not including the Board or its staff, who takes part in an adjudicatory proceeding who is not a party, or a person who takes part in a regulatory or other quasi-legislative proceeding before the Board. A person becomes a participant in any of several ways, including filing a comment, being added to the notice list of a particular proceeding, testifying at hearing, or making public remarks at a Board meeting.

"Participant in a CAAPP Comment Process" means a person who takes part in a Clean Air Act Permit Program (CAAPP) permit hearing before the Agency or comments on a draft CAAPP permit.

"Party" means the person by or against whom an adjudicatory proceeding is brought or who is granted party status by the Board through intervention or joinder.

"Party in interest" means the Agency when asked to conduct an investigation under ~~pursuant to~~ Section 30 of the Act during an ongoing proceeding. (See Section ~~101.404 of this Part.~~ 101.404.)

"Peremptory rulemaking" means any rulemaking that is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions that preclude compliance with the general rulemaking requirements of Section 5-40 of the IAPA and that preclude the exercise by the Board as to the content of the rule it is required to adopt. [5 ILCS 100/5-50]

"Permit appeal" means an adjudicatory proceeding brought before the Board under ~~pursuant to~~ Title X of the Act.

"Person" means any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns. [415 ILCS 5/3.315]

"Petition" means the initial filing in an adjudicatory proceeding other than an enforcement proceeding, including permit appeals, OSFM appeals, UST appeals, appeals of pollution control facility siting decisions, variances and adjusted standards.

"Pilot project" means an innovative environmental project that covers one or more designated facilities, designed and implemented in the form of an EMSA. (See Section 52.3 of the Act.)

"Pollution control facility" is defined at Section 3.330(a) of the Act for purposes of this Part and 35 Ill. Adm. Code 107.

"Pollution control facility siting appeal" means an appeal of a decision made by a unit of local government filed with the Board under ~~pursuant to~~ Section 40.1 of the Act.

"Postconsumer material" means paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after the waste has been passed through its end usage as a consumer item, including used corrugated boxes, old newspapers, mixed waste paper, tabulating cards, and used cordage. Additionally, it includes all paper, paperboard, and other fibrous wastes that are diverted or separated from the municipal solid waste stream [415 ILCS 20/3(f)(2)(i) and (ii)]. (See also definition of "recycled paper" in this Section.)

"Prehearing conference" means a meeting held in an adjudicatory case to determine the status of the proceedings. A prehearing conference may also be a meeting held in a regulatory proceeding prior to the hearing, the purposes of which shall be to maximize understanding of the intent and application of the proposal, if possible, and to attempt to identify and limit the issues of disagreement among participants to promote efficient use of time at hearing [415 ILCS 5/27(d)]. (See 35 Ill. Adm. Code 102.404 and 102.406.)

"Proceeding" means an action conducted before the Board under ~~pursuant to~~ authority granted under Section 5 of the Act or as otherwise provided by law. Board proceedings are of two types: quasi-legislative (rulemaking and inquiry proceedings) and quasi-judicial (adjudicatory proceedings).

"Proponent" means any person, not including the Board or its staff, who submits a regulatory proposal to the Board for the adoption, amendment, or repeal of a regulation.

"Provisional variance" means a short term variance sought by an applicant and issued by the Agency under ~~pursuant to~~ Section 35(b) of the Act. (See 35 Ill. Adm. Code 104.Subpart C.)

"Public comment" means information submitted to the Board during a pending proceeding either by oral statement made at hearing or written statement filed with the Board.

"Public remarks" mean an oral statement that is publicly made at a Board meeting and directed to the Board concerning a proceeding listed on that meeting's agenda. (See Section 101.110(d) ~~of this Subpart.~~)

"PWSO Act" means the Public Water Supply Operations Act [415 ILCS 45].

"Qualitative description" means a narrative description pertaining to attributes and characteristics.

"Quantitative description" means a numerically based description pertaining to attributes and characteristics.

"RCRA variance" means a variance from a RCRA rule or a RCRA permit required under ~~pursuant to~~ Section 21(f) of the Act.

"Record" means the official collection, as kept by the Clerk, of all documents and exhibits including pleadings, transcripts, and orders filed during the course of a proceeding.

"Recycled paper" means paper which contains at least 50% recovered paper material. The recovered paper material must contain at least 45% deinked stock or postconsumer material. (See also "postconsumer material" in this Section.)

"Regulatory hearing" or "proceeding" means a hearing or proceeding held under ~~pursuant to~~ Title VII of the Act or other applicable law with respect to regulations.

"Regulatory relief mechanisms" means variances, provisional variances, and adjusted standards. (See 35 Ill. Adm. Code 104.)

"Representing" means, for purposes of Part 130, describing, depicting, containing, constituting, reflecting or recording [415 ILCS 5/7.1].

"Requester" means, for purposes of Part 130, the person seeking from the agency the material claimed or determined to be a trade secret (see 415 ILCS 5/7.1).

"Resource Conservation and Recovery Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.).

"Responsible Operator in Charge" means an individual who is designated as a Responsible Operator in Charge of a community water supply under Section 1 of the PWSO Act.

"Rulemaking" or "rulemaking proceeding" means a proceeding brought under Title VII of the Act or other applicable law for the purpose of adoption, amendment, or repeal of a regulation.

"Sanction" means a penalty or other mechanism used by the Board to provide incentives for compliance with the Board's procedural rules, Board orders or hearing officer orders. (See also Subpart H ~~of this Part.~~)

"SDWA" means the federal Safe Drinking Water Act (42 USC 300f et seq.).

"Service" means delivery of a document upon a person. (See Sections 101.300(c) and ~~101.304 of this Part.~~ 101.304.)

"Service list" means the list of persons designated by the hearing officer or Clerk in a regulatory or adjudicatory proceeding upon whom parties or participants must serve motions, prefiled questions and prefiled testimony and any other documents that the parties or

participants file with the Clerk unless the hearing officer otherwise directs. (See definition of "notice list" in this Section.) (See also 35 Ill. Adm. Code 102.422.)

"Severance" means the separation of a proceeding into two or more independent proceedings, each of which terminates in a separate, final judgment.

"Site-specific rule or regulation" means a proposed or adopted regulation, not of general applicability, that applies only to a specific facility, geographic site, or activity. (See 35 Ill. Adm. Code 102.208.)

"Sponsor" means the proponent of a pilot project that enters into an EMSA with the Agency.

"State enforcement proceeding" means an enforcement proceeding, other than a citizen's enforcement proceeding, that is brought under ~~pursuant to~~ Section 31 of the Act.

"Stay" means a temporary suspension of the regular progress of a proceeding under ~~pursuant to~~ an order of the Board or by operation of law. (See Section ~~101.514 of this Part. 101.514.~~)

"Subpoena" means a command to appear at a certain time and place to give testimony upon a certain matter.

"Subpoena duces tecum" means a document that compels the production of specific documents and other items at a specified time and place.

"Summary judgment" means the disposition of an adjudicatory proceeding without hearing when the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (See Section ~~101.516 of this Part. 101.516.~~)

"Third party complaint" means a pleading that a respondent files setting forth a claim against a person who is not already a party to the proceeding. (See 35 Ill. Adm. Code 103.206.)

"Trade secret" means the whole or any portion or phase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes. [415 ILCS 5/3.490]

"Transcript" means the official recorded testimony from a hearing or public remarks from a Board meeting.

"USEPA" means the United States Environmental Protection Agency.

"Underground storage tank appeal" or "UST appeal" means an appeal of an Agency final decision made under ~~pursuant to~~ Title XVI of the Act.

"UST" means underground storage tank.

"Variance" means a temporary exemption from any specified regulation, requirement or order of the Board granted to a petitioner by the Board under ~~pursuant to~~ Title IX of the Act upon presentation of adequate proof that compliance with the rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship [415 ILCS 5/35(a)].

"Waiver" means the intentional relinquishing of a known right, usually with respect to a hearing before the Board or entry of a Board decision within the decision period. (See also Section ~~101.308 of this Part. 101.308.~~)

"Website" means the Board's computer-based informational and filing service accessed on the Internet at <http://www.ipcb.state.il.us>.

(Source: Amended at 41 Ill. Reg. ~~—~~, effective ~~_____~~)

SUBPART C: COMPUTATION OF TIME, FILING, SERVICE OF DOCUMENTS, AND STATUTORY DECISION DEADLINES

Section 101.300 Computation of Time

a) Computation of Time. Computation of any period of time prescribed in the Act, other applicable law, or this Subpart will begin with the first calendar day following the day on which the act, event or development occurs and will run until the close of business on the last day, or the next business day if the last day is a Saturday, Sunday or national or State legal holiday.

b) Date of Filing. Documents will be considered filed with the Clerk only if they are filed in compliance with Section 101.302 and any other filing requirements specified elsewhere in the Board's procedural rules (see 35 Ill. Adm. Code 101 through 130). Subpart J sets forth when electronic documents submitted to COOL will be considered filed.

1) If a document is submitted to the Clerk for filing in person, by U.S. Mail, by e-mail or facsimile under ~~pursuant to~~ Section 101.302(d), or by third-party commercial carrier, the document is considered filed on the date it is received by the Clerk. However, a document received by the Clerk after 4:30 p.m. is considered filed on the next business day. The Clerk will mark the filing date on each filed document.

2) Notwithstanding subsection (b)(1), if the Clerk receives a document by U.S. Mail or third-party commercial carrier after a filing deadline date, the document will be deemed filed on:

A) The date the document was provided to the U.S. Postal Service; or

B) The date the document was provided to the third-party commercial carrier for delivery to the Clerk within three business days.

3) For purposes of subsection (b)(2), documentation of when the document being filed was provided to the U.S. Postal Service or the third-party commercial carrier consists of the affidavit or certificate required by Section 101.304(d)(2)(A) or (d)(4) and must accompany the document being filed. In addition, for delivery by a third-party commercial carrier, the affidavit or certificate must contain the filing party's representation that the charge for delivery to the Clerk within three business days was prepaid.

4) For purposes of Board decision deadlines, the decision period does not begin until the date marked by the Clerk on the initial filing.

c) Date of Service. Documents will be considered served upon another party only if they are served in compliance with Section 101.304 and any other service requirements specified elsewhere in the Board's procedural rules. The date of service is determined as follows:

1) Personal Service. Personal service of a document is complete on the date the document was delivered, as specified in either the affidavit or certificate of service signed by the person who made personal delivery or the declaration of service signed by the process server who made personal delivery.

2) Service by U.S. Mail or Third-Party Commercial Carrier with Recipient Signature. If a recipient's signature is recorded by the U.S. Postal Service or a third-party commercial carrier upon delivery of a document, service ~~by U.S. Mail or a third party commercial carrier~~ is complete on the date the document was delivered, as specified in the signed delivery confirmation ~~signed by the recipient of service~~.

3) Service by E-Mail or Facsimile. Service of a document by e-mail or facsimile is complete on the date the document was successfully transmitted, as specified in the affidavit or certificate of service, signed by the party to the proceeding who is serving the document. However, a document successfully e-mailed or faxed on a Saturday or Sunday, on a national or State legal holiday, or after 5:00 p.m. on a weekday is deemed served on the next business day.

4) Service by U.S. Mail or Third-Party Commercial Carrier without Recipient Signature. If a recipient's signature is not recorded by the U.S. Postal Service or a third-party commercial carrier upon delivery of a document, service ~~by U.S. Mail or a third party commercial carrier~~ is

presumed complete four days after the date the document was provided to the U.S. Postal Service or the third-party commercial carrier.

A) The presumption applies only if an affidavit or certificate of service, signed by the party to the proceeding who is serving the document, states the following: the date, the time by when, and the place ~~where~~ the document was provided to the U.S. Postal Service or the third-party commercial carrier; the address appearing on the envelope or package containing the document; and that proper postage or the delivery charge was prepaid.

B) The presumption can be rebutted by proper proof, which may include delivery tracking information from the website of the U.S. Postal Service or the website of the third-party commercial carrier.

d) Date of Board Decision and Date of Service of Final Board Decision.

1) For purposes of statutory decision deadline proceedings, the date of the Board decision is the date of the Board meeting at which a final Board order was adopted ~~by the vote of at least three Board members~~.

2) For purposes of appealing a final adjudicatory decision of the Board, the date of service of the final decision is the date on which the party receives the Board's certified mailing of the decision. ~~In-
Or, in~~ the event of a timely filed motion for reconsideration filed under ~~pursuant to~~ Section 101.520, the date of service of the final decision is the date on which the party receives the Board's certified mailing of the Board order ruling upon the motion.

3) For purposes of appealing a final rulemaking decision of the Board in which a rule is adopted, amended, or repealed, a person is deemed to have been served with the final decision on the date on which the new rule, the amendment, or the repealer becomes effective under the IAPA. For purposes of appealing a final rulemaking decision in which no rule is adopted, amended, or repealed, the date of service of the final decision is the date on which the participant receives the Board's mailing of the decision. Or, in the event of a timely filed motion for reconsideration filed under ~~pursuant to~~ the Board's procedural rules (35 Ill. Adm. Code 102.700 and 102.702), the date of service of the final decision is the date on which the participant receives the Board's mailing of the Board order ruling upon the motion.

(Source: Amended at 41 Ill. Reg. ~~—~~_____, effective _____)

Section 101.302 Filing of Documents

a) This Section contains the Board's general filing requirements. Additional requirements may exist for specific proceedings elsewhere in the Board's procedural rules (see 35 Ill. Adm. Code 101 through 130).

The Clerk will refuse for filing any document that does not comply with the minimum requirements of this Section.

b) All documents to be filed with the Board must be filed with the Clerk.

1) If allowed by the Board, the hearing officer, the Clerk, or the procedural rules to be filed in paper under subsection (h), ~~Documents may be filed~~ documents must be filed at the following address:

Pollution Control Board, Attn: Clerk
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218

2) All documents filed with the Clerk must provide the name and signature of the person seeking to file the document and identify the name of the person on whose behalf the document is being filed. If a paper document is submitted for filing, the original must bear the original pen-and-ink signature of the person seeking to file the document. Signatures for purposes of electronic filings through COOL are addressed in Section 101.1010.

3) Each document being filed with the Clerk ~~(e.g., enforcement complaint, petition for review)~~ must be accompanied by a notice of filing (see Appendix D) and documentation of service (see Section 101.304(d)).

4) The date on which a document is considered to have been filed is determined under ~~pursuant to~~ Section 101.300(b).

5) Service of a document upon a hearing officer does not constitute filing with the Clerk unless the document is submitted to the hearing officer during the course of a hearing.

c) Electronic documents may be filed through COOL under Subpart J. Paper ~~Documents~~ documents may be filed with the Clerk by U.S. Mail, ~~by electronic means in accordance with Subpart J,~~ in person, or by third-party commercial carrier.

d) A filing by e-mail or facsimile will only be allowed with the prior approval of the Clerk of the Board or the hearing officer assigned to the proceeding. Any prior approval by the Clerk or hearing officer applies only to the specified filing.

e) The initial filings listed in this subsection require filing fees and will only be considered filed when accompanied by the appropriate fee. The fee may be paid in the form of government voucher, money order, or check made payable to the Illinois Pollution Control Board, or electronically through COOL in accordance with Section 101.1040(b)(1), but cannot be paid in cash.

- 1) Petition for Site-Specific Regulation, \$75;
- 2) Petition for Variance, \$75;
- 3) Petition for Review of Agency Permit Decision, UST Decision, or any other appeal filed under ~~pursuant to~~ Section 40 of the Act, \$75;
- 4) Petition to Review Pollution Control Facility Siting Decisions, under ~~pursuant to~~ Section 40.1 of the Act, \$75; and
- 5) Petition for Adjusted Standard, under ~~pursuant to~~ Section 28.1 of the Act, \$75.
- f) For each document filed with the Clerk, the filing party must serve a copy of the document upon the other parties and, if a hearing officer has been assigned, upon the hearing officer in accordance with Section 101.304.
- g) All documents filed with the Board must contain the relevant proceeding caption and docket number. All documents must be submitted on or formatted to print on 8 1/2 x 11 inch paper, except as provided in subsection (j). Paper documents must be submitted on recycled paper as defined in Subpart B ~~of this Part~~, and, ~~if feasible~~, double sided. All pages in a document must be sequentially numbered. All documents created by word processing programs must be formatted as follows:
 - 1) The margins must each be a minimum one inch on the top, bottom, and both sides of the page; and
 - 2) The size of the type in the body of the text must be no less than 12 point font, and in footnotes no less than 10 point font.
- h) Unless the Board, the hearing officer, the Clerk, or the procedural rules provide otherwise, all documents must be filed ~~in paper or through COOL electronically pursuant to this subsection (h)~~.
 - 1) ~~Except as provided in subsection (h) (2), (h) (3), (h) (4), or (j):~~
~~A) Any type of document may be filed in paper or through COOL. B)~~ If a document is filed in paper, the original and two copies of the document (three total) are required. ~~C)~~ If a document is filed through COOL in accordance with Subpart J, no paper original or copy of the document is required.
 - 2) The following documents must be filed through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF and meet the requirements of Section 101.1030(g):
 - A) The Agency record required by 35 Ill. Adm. Code ~~105.212 (permit decision or other final decision), 105.302 (CAAPP permit application), 105.410 (leaking UST decision), or 125.208 (recommendation on tax~~

~~certification~~ 105.212, 105.302, or 105.410, or 35 Ill. Adm. Code 125.208
(see 35 Ill. Adm. Code 105.116);

B) The OSFM record required by 35 Ill. Adm. Code 105.508 ~~(UST Fund eligibility and deductibility)~~ (see 35 Ill. Adm. Code 105.116);

C) The local siting authority record required by 35 Ill. Adm. Code 107.302 ~~(pollution control facility siting)~~ (see 35 Ill. Adm. Code 107.304); and

D) A petition filed under 35 Ill. Adm. Code 104 ~~(regulatory relief mechanisms)~~ or 35 Ill. Adm. Code 106 ~~(proceedings pursuant to specific rules or statutory provisions)~~ (see 35 Ill. Adm. Code 104.106 and 35 Ill. Adm. Code 106.106), ~~unless the petition is for a variance or adjusted standard and the petition states that it is not reasonably practicable for petitioner to file the petition electronically, in which case the petition must be filed in paper pursuant to subsection (h)(1)(B).~~

3) A document containing information claimed or determined to be a trade secret, or other non-disclosable information under ~~pursuant to~~ 35 Ill. Adm. Code 130, is prohibited from being filed electronically and must instead be filed only in paper. The version of the document that is redacted under ~~pursuant to~~ 35 Ill. Adm. Code 130 must ~~may~~ be filed through COOL.

4) When filing a rulemaking proposal, if any document protected by copyright law (17 USC 101 et seq.) is proposed under ~~pursuant to~~ Section 5-75 of the IAPA [5 ILCS 100/5-75] to be incorporated by reference, the copyrighted document is prohibited from being filed electronically, but the remainder of the rulemaking proposal may be filed through COOL. In addition, the rulemaking proponent must: ~~comply with subsection (h)(4)(A) or (h)(4)(B).~~

A) File a paper original of the copyrighted document. The rulemaking proposal also must include:

i) The copyright owner's written authorization for the Board to make, at no charge to the Board, no more than a total of two paper copies of the copyrighted document if the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public during or after the rulemaking; or

ii) The proponent's representation that it will, at its own expense, promptly acquire and deliver to the Clerk's Office no more than a total of two paper originals of the copyrighted document if the Clerk's Office notifies the proponent in writing that the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public during or after the rulemaking; or

B) File a license or similar documentation of access that, at no charge to the Board, gives the Board the rights, during and after the

rulemaking, to do the following: electronically access the copyrighted document from the sole designated computer at the Board's Chicago office; print a single copy of the copyrighted document to maintain at the Board's Chicago office; and print no more than a total of two copies of the copyrighted document if the Board is required by State law to furnish a copy to JCAR, a court, or a member of the public.

i) No written discovery, including interrogatories, requests to produce, and requests for admission, or any response to written discovery, may be filed with the Clerk of the Board except with permission ~~upon leave~~ or direction of the Board or hearing officer. Any discovery request under these rules to any nonparty must be filed with the Clerk of the Board in accordance with subsection (h).

j) Oversized Exhibits. When reasonably practicable, oversized exhibits must be reduced to conform to or be formatted to print on 8 1/2 x 11 inch paper for filing with the Clerk's Office. However, even when an oversized exhibit is so reduced or formatted, the original oversized exhibit still must be filed with the Clerk's Office. In accordance with 2 Ill. Adm. Code 2175.300, the original oversized exhibit may be returned to the person who filed it.

k) Page Limitation. No motion, brief in support of a motion, or brief may exceed 50 pages, and no amicus curiae brief may exceed 20 pages, without prior approval of the Board or hearing officer. These limits do not include appendices containing relevant material; however, materials ~~which that~~ may be readily available to the Board, such as prior Board opinions and orders, federal regulations, and statutes, need not be included in appendices.

l) Documents filed that do not meet the requirements of 35 Ill. Adm. Code. Subtitle A, may be rejected by the Clerk or the hearing officer. Any rejection of a filing must include a description of the Board's rules that have not been met.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 101.304 Service of Documents

a) Service Requirements. This Section contains the Board's general service requirements. However, the more specific Part for a proceeding type may contain additional requirements.

b) Duty to Serve and When to Initiate Service. A party filing a document with the Clerk under ~~pursuant to~~ Section 101.302 must also serve one copy of the document upon each of the other parties to the adjudicatory proceeding and, if a hearing officer has been assigned, upon the assigned hearing officer. Service of a document must be initiated concurrently with submitting the document to the Clerk for filing.

1) Service of a document upon a party must be made upon a person authorized by law to receive service on behalf of the party. If a party is represented by an attorney who has filed an appearance, service upon the party is made by serving the document upon the party's attorney. If more than one attorney appears for a party, service upon one of the party's attorneys is sufficient.

2) Each document being served (e.g., enforcement complaint, petition for review) must be accompanied by a notice of filing (see Appendix D) and a copy of the documentation of service (see subsection (d)).

3) The date on which service of a document is considered to have been completed is determined under ~~pursuant to~~ Section 101.300(c).

4) A proceeding is subject to dismissal, and the filing party is subject to sanctions, if service is not timely initiated or completed.

5) Whether service of a document was proper may be challenged by the party allegedly served. To avoid waiving the right to contest personal jurisdiction, any challenge to service must be made under ~~pursuant to~~ Section 101.400(a)(5).

c) Methods of Service. A document must be served in one of the following ways:

1) Except as provided in subsection (c)(2), service of documents may be made by any of the following methods:

- A) Personal service;
- B) U.S. Mail;
- C) Third-party commercial carrier;
- D) E-mail in accordance with Subpart J; and

E) Facsimile, but only if the party being served has filed a notice consenting to receipt of facsimile service and not filed a notice revoking that consent.

2) Service of enforcement complaints and EMSA statements of deficiency upon respondents must be made by ~~as follows~~:

- A) Personal ~~By personal~~ service;
- B) ~~By~~ U.S. Mail with a recipient's signature recorded by the U.S. Postal Service upon delivery; or
- C) ~~By a~~ third-party commercial carrier with a recipient's signature recorded by the third-party commercial carrier upon delivery.

3) Service of administrative citations must be made as required under 35 Ill. Adm. Code ~~Part~~ 108.

d) Documentation of Service and When to File Documentation of Service. A party serving a document upon another party must also file documentation of that service. A proceeding is subject to dismissal, and the filing party is subject to sanctions, if documentation of service is not timely filed with the Clerk. Documenting service and filing that documentation must be done as follows:

1) For personal service of a document, either an affidavit or certificate of service signed by the person who made personal delivery or a declaration of service signed by the process server who made personal delivery must accompany the document being filed with the Clerk. However, if the signed affidavit, certificate, or declaration is not available to the filing party when the document ~~(e.g., enforcement complaint, petition for review)~~ is filed with the Clerk, the filing must include ~~submitted for filing~~:

A) An affidavit or certificate of service, signed by the filing party, stating ~~must accompany the document being filed with the Clerk. The affidavit or certificate of service must state~~ that service has been initiated, but not yet completed., ~~and The the following: the~~ date, the time by when, and the place ~~where,~~ the document was provided to the person making personal delivery; the address appearing on the envelope or package containing the document; and that the delivery charge was prepaid must also be included; and

B) Within seven days after it becomes available to the filing party, the affidavit or certificate of service containing the signature of the person who made personal delivery or the declaration of service containing the signature of the process server ~~must be filed with the Clerk,~~ accompanied by a notice identifying the filed document ~~(e.g., enforcement complaint, petition for review)~~ to which the signed affidavit, certificate, or declaration corresponds. A copy of the signed affidavit, certificate, or declaration and the notice must be served under ~~pursuant to~~ subsection (a).

2) For service of a document by U.S. Mail or third-party commercial carrier with a recipient's signature recorded by the U.S. Postal Service or the third-party commercial carrier upon delivery, the delivery confirmation containing the recipient's signature must accompany the document being filed with the Clerk. However, if the delivery confirmation containing the recipient's signature is not available to the filing party when the document ~~(e.g., enforcement complaint, petition for review) is submitted for filing~~ is filed with the Clerk, the filing must include:

A) An affidavit or certificate of service, signed by the filing party, stating ~~must accompany the document being filed with the Clerk. The affidavit or certificate of service must state~~ that service has been initiated, but not yet completed., ~~and the following: tThe The~~ date,

the time by when, and the place ~~where~~, the document was provided to the U.S. Postal Service or the third-party commercial carrier; the address appearing on the envelope or package containing the document; and that proper postage or the delivery charge was prepaid must also be included; and

B) Within seven days after it becomes available to the filing party, the delivery confirmation containing the recipient's signature ~~must be filed with the Clerk~~, accompanied by a notice identifying the filed document ~~(e.g., enforcement complaint, petition for review)~~ to which the signed delivery confirmation corresponds. A copy of the delivery confirmation and the notice must be served under ~~pursuant to~~ subsection (a).

3) For service of a document by e-mail or facsimile, an affidavit or certificate of service must accompany the document being filed with the Clerk. An affidavit or certificate of e-mail service must comply with Section 101.1060. An affidavit or certificate of facsimile service must include the date and time of the facsimile transmission, the telephone number to which the transmission was sent, the number of pages transmitted, and a statement that the document was served by facsimile.

4) For service of a document by U.S. Mail or a third-party commercial carrier without a recipient's signature recorded by the U.S. Postal Service or the third-party commercial carrier upon delivery, an affidavit or certificate of service must accompany the document being filed with the Clerk. The affidavit or certificate must state the following: the date, the time by when, and the place ~~where~~ the document was provided to the U.S. Postal Service or the third-party commercial carrier; the address appearing on the envelope or package containing the document; and that proper postage or the delivery charge was prepaid.

5) An affidavit of service must be notarized and is for use by a non-attorney. A certificate of service is for use by an attorney. Sample forms of an affidavit of service and a certificate of service are available in Appendices E and H.

6) A certificate of service must bear an attorney's ~~handwritten or typographical~~ signature. Signatures in affidavits of service, declarations of service, and delivery confirmations must be written by hand. A handwritten signature in documentation of service filed with the Clerk may be a facsimile or digitized electronic signature.

e) Service of Amicus Curiae Briefs. Any person who files an amicus curiae brief with the Board in any proceeding must serve copies of that brief on all parties in accordance with this Section.

f) Service of Comments of Participants in an Adjudicatory Proceeding. Participants are required to serve ~~their~~ comments upon the parties to the proceeding. The Board will consider the comments as time and the Act or other applicable law allow.

g) Service on Agencies. Service must be at the addresses listed below unless a specific person has an appearance on file with the Board or has, in accordance with Section 101.1070, consented to e-mail service.

1) Service on the Illinois Environmental Protection Agency. The Agency must be served at ~~the following address~~:

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield IL 62794-9276

2) Service on Office of State Fire Marshal. The OSFM must be served at ~~the following address~~:

Division of Petroleum and Chemical Safety
Office of the State Fire Marshal
1035 Stevenson Dr.
Springfield IL 62703

3) Service on the Illinois Attorney General. The Office of the Attorney General must be served at ~~the following address~~:

Division Chief of Environmental Enforcement
Office of the Attorney General
100 West Randolph St., Suite 1200
Chicago IL 60601

4) Service on the Illinois Department of Natural Resources. DNR must be served at ~~the following address~~:

Office of Legal Services
Illinois Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271

5) Service on the Illinois Department of Transportation. IDOT must be served at ~~the following address~~:

Office of Chief Counsel
DOT Administration Building
2300 S. Dirksen Parkway, Room 300
Springfield IL 62764

6) Service on Region V of the United States Environmental Protection Agency. USEPA Region V must be served at ~~the following address~~:

USEPA, Region V
77 West Jackson
Chicago IL 60604

(Source: Amended at 41 Ill. Reg. ~~_____~~, effective ~~_____~~)

Section 101.306 Incorporation of Documents from Another Proceeding

a) Upon the separate written request of any person or on its own initiative, the Board or hearing officer may incorporate materials from the record of another Board docket into any proceeding. The person seeking incorporation must file the material to be incorporated with the Board in accordance with Section 101.302(h) ~~of this Subpart~~. The person seeking incorporation must demonstrate to the Board or the hearing officer that the material to be incorporated is authentic, credible, and relevant to the proceeding. Notice of the request must be given to all identified participants or parties by the person seeking incorporation.

b) The Board will give the incorporated matter the appropriate weight in light of the following factors: the standard of evidence under which the material was previously presented to the Board; the present purpose for incorporating the material; and the past and current opportunity for cross-examination of the matters asserted within the incorporated material.

(Source: Amended at 41 Ill. Reg. ~~_____~~, effective ~~_____~~)

Section 101.308 Statutory Decision Deadlines and Waiver of Deadlines

a) Petitions in the following proceedings each have a 120-day statutory decision deadline: Variances (Section 38 of the Act), Permit Appeals and UST appeals (Section 40 of the Act), and Pollution Control Facility Siting Review (Section 40.1 of the Act). Other adjudicatory proceedings may be subject to decision deadlines as provided by law.

b) Where the petitioner does not waive the decision deadline, the Board will proceed expeditiously to establish all hearing and filing requirements. Willful or unexcused failure to follow Board requirements on the deadlines will subject the party to sanctions under ~~pursuant to Subpart H of this Part.~~ This Section will be strictly construed where there is a decision deadline unless the Board receives a waiver as set out in subsection (c).

c) All waivers of a deadline for Board action must be filed as a separate document. Waivers must be ~~clearly~~ titled and state which type of waiver it is, identify the proceeding by name and docket number, and be signed by the party or by an ~~his~~ authorized representative or attorney. A waiver of a statutory deadline does not preclude the Board from issuing an opinion or order prior to any decision deadline, nor does it preclude the filing of a motion seeking a decision on the matter.

1) An open waiver waives ~~Open Waiver. Waives~~ the decision deadline completely and unequivocally until the petitioner elects to reinstate the 120-day decision period by filing a notice to reinstate. Upon proper filing of the notice, the decision period is reinstated. In accordance with Section 101.300(b)(4) ~~of this Part~~, the decision period recommences as of the date the notice to reinstate is filed with the Board.

2) A time certain waiver must ~~Time Certain Waiver. Waives the decision deadline until a time certain. The time certain may~~ be expressed in length of days or to a specific calendar date. If expressed in length of days, day one will be the first day after the date upon which the current time clock expires. If the petitioner files a time certain waiver before the hearing date, the waiver must be for at least 40 days. If the extension is not renewed for at least 40 days prior to the decision deadline, the Board will set the matter for hearing.

(Source: Amended at 41 Ill. Reg. _____ ~~—~~, effective _____)

SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

Section 101.400 Appearances, Withdrawals, and Substitutions of Attorneys in Adjudicatory Proceedings

a) Appearances. A person who is a party in a Board adjudicatory proceeding may appear as follows:

1) Individuals may appear on their own behalf or through an attorney-at-law licensed and registered to practice law. (See Section 1 of the Attorney Act [705 ILCS 205/1].)

2) When appearing before the Board, any person other than individuals must appear through an attorney-at-law licensed and registered to practice law. (See Section 1 of the Corporation Practice of Law Prohibition Act [705 ILCS 220/1] and Section 1 of the Attorney Act [705 ILCS 205/1].)

3) An out-of-state attorney may appear as counsel and provide legal services in a particular proceeding before the Board only if the attorney has permission to do so under ~~pursuant to~~ Illinois Supreme Court Rule 707. No Board order is required for an out-of-state attorney to appear and no motions to appear pro hac vice is necessary ~~need be filed with the Board~~. The out-of-state attorney's appearance must include the following:

A) A representation that the out-of-state attorney is in, and will maintain throughout the proceeding, compliance with Supreme Court Rule 707; and

B) Identification of the active status Illinois attorney associated with the out-of- state attorney under ~~pursuant to~~ Supreme Court Rule 707

and the date on which the active status Illinois attorney filed an appearance in the proceeding.

4) Any attorney appearing in a representative capacity must file a separate written appearance with the Clerk, together with documentation of service of the appearance under ~~pursuant to~~ Section 101.304(d) and notice of filing of the appearance under ~~pursuant to~~ Section 101.304(b)(2). The appearance must include:

A) For law firms, the Agency, and the Attorney General's Office ~~when appearing before the Board must designate~~, a lead attorney must be designated for purposes of phone and mail contact pertaining to the proceeding. Absent written notice, the Board will designate the attorney whose signature appears first on the party's first filing as the lead attorney.

B) The attorney's business address and designation of a primary e-mail address for service by e-mail.

5) Any person seeking to contest personal jurisdiction must do so by filing a motion with the Board in accordance with Section 2-301 of the Code of Civil Procedure [735 ILCS 5/2-301].

b) Withdrawals. An attorney who has appeared in a representative capacity and who wishes to withdraw from that representation must file a notice of withdrawal with the Clerk, together with documentation of service and notice of filing on all parties or their representatives.

c) Substitution. Any attorney who substitutes for an attorney of record must file a written appearance under ~~pursuant to~~ subsection (a). That appearance must identify the attorney for whom the substitution is made. However, no attorney will be considered withdrawn from a proceeding until a formal withdrawal is filed in accordance with subsection (b).

d) Any person may appear on behalf of himself or others in a rulemaking proceeding in accordance with 35 Ill. Adm. Code 102.100(b).

(Source: Amended at 41 Ill. Reg. ~~==~~, effective ~~_____~~)

Section 101.402 Intervention of Parties

a) The Board may permit any person to intervene in any adjudicatory proceeding. If a person seeks to intervene in an adjudicatory proceeding, the person must file a motion to do so with the Clerk and serve a copy of the motion on all parties to the proceeding. The motion must set forth the grounds for intervention.

b) In determining whether to grant a motion to intervene, the Board will consider the timeliness of the motion and whether intervention will unduly delay, ~~or~~ materially prejudice, ~~the proceeding~~ or otherwise interfere with an orderly or efficient proceeding.

c) Subject to subsection (b) ~~of this Section~~, the Board will permit any person to intervene in any adjudicatory proceeding if:

1) The person has an unconditional statutory right to intervene in the proceeding; or

2) It may be necessary for the Board to impose a condition on the person.

d) Subject to subsection (b) ~~of this Section~~, the Board may permit any person to intervene in any adjudicatory proceeding if:

1) The person has a conditional statutory right to intervene in the proceeding;

2) The person may be materially prejudiced absent intervention; or

3) The person is so situated that the person may be adversely affected by a final Board order.

e) An intervenor will have all the rights of an original party to the adjudicatory proceeding, except that the Board may limit the rights of the intervenor as justice may require. The limits may include providing that: the intervenor is bound by Board and hearing officer orders already issued or by evidence already admitted; that the intervenor does not control any decision deadline; and that the intervenor cannot raise issues that were raised or might more properly have been raised at an earlier stage of the proceeding.

(Source: Amended at 41 Ill. Reg. ~~—~~, effective ~~—~~)

Section 101.404 Agency as a Party in Interest

~~Under pursuant to~~ Section 30 of the Act, the Board may request that the Agency investigate any alleged violation of the Act, the regulations, any permit granted by the Agency, or any term or condition of any such permit and any such other investigations as the Board may deem advisable. Upon such request, the Board may designate the Agency as a party in interest in any ongoing proceeding in that matter. The designation of the Agency as a party in interest does not require the Agency to take a position on the merits of the proceeding.

(Source: Amended at 41 Ill. Reg. ~~—~~, effective ~~—~~)

SUBPART E: MOTIONS

Section 101.500 Filing of Motions and Responses

a) The Board may entertain any motion the parties wish to file that is permissible under the Act or other applicable law, these rules, or the Illinois Code of Civil Procedure.

b) All motions must be in writing, unless made orally on the record during a hearing or during a status conference, and must state whether directed to the Board or to the hearing officer. Oral motion to the Board made at hearing must be filed in writing within 14 days after the hearing or the motion is deemed waived. Motions that should be directed to the hearing officer are set out in Section ~~101.502 of this Part. 101.502.~~ All motions must ~~should~~ be filed and served in conformance with ~~Subpart~~Subparts C and J ~~of this Part.~~

c) Motions may be filed at any time unless otherwise specifically provided.

d) Within 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion. Unless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before expiration of the 14 day response period except in deadline driven proceedings where no waiver has been filed. Parties may request that the Board grant more time to respond by filing a motion for extension of time.

e) The moving person will not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice. A motion for permission ~~leave~~ to file a reply must be filed with the Board within 14 days after service of the response.

(Source: Amended at 41 Ill. Reg. ~~---~~, effective)

Section 101.502 Motions Directed to the Hearing Officer

a) The hearing officer has the authority to rule on all motions that are not dispositive of the proceeding. ~~Examples of Dispositive motions that hearing officers may not rule upon are~~ include motions to dismiss, motions to decide a proceeding on the merits, motions to strike any claim or defense for insufficiency or want of proof, motions claiming lack of jurisdiction, motions for consolidation, motions for summary judgment, and motions for reconsideration. Oral motions directed to a hearing officer at a status conference will be summarized in a written hearing officer order. The duties and authorities of the hearing officer are further set out in Section ~~g of this Part.~~101.610.

b) An objection to a hearing officer ruling made at hearing ~~or any oral motion to the Board made at hearing~~ will be deemed waived if not filed within 14 days after the Board receives the hearing transcript.

c) Unless otherwise ordered by the Board, neither the filing of a motion, nor any appeal to the Board of a hearing officer order will stay the proceeding or extend the time for the performance of any act.

Unless otherwise provided, all hearing officer orders will remain in effect during the pendency of any appeal to the Board.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 101.504 Contents of Motions and Responses

All motions and responses must ~~clearly~~ state the grounds upon which the motion is made and must contain a concise statement of the position or relief sought. Facts asserted that are not of record in the proceeding must be supported by oath, affidavit, or certification in accordance with Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109]. A brief or memorandum in support of the motion or response may be included.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 101.510 Motions to Cancel Hearing

a) Time to File. Unless the Board or the hearing officer orders otherwise the hearing officer may grant motions to cancel hearings that are filed no fewer than 10 days or, if all parties agree to the motion, 5 days before the scheduled hearing date. The hearing officer may grant a motion filed after the prescribed time only if the movant demonstrates that the movant will suffer material prejudice if the hearing is not canceled.

b) Contents. All motions to cancel a hearing must set forth a proposed date to reschedule the hearing and must be supported by an affidavit of the person or persons with knowledge of the facts that support the motion. The affidavit must include the factual basis for the request to cancel and a complete status report that describes the progress of the proceeding and sets forth the number of cancellation requests previously granted to the movant. The hearing officer will grant the motion only if the movant demonstrates that the request to cancel is not the result of the movant's lack of diligence.

c) In a proceeding for which there is a decision deadline, the hearing officer will deny a motion to cancel a hearing if the decision deadline does not allow enough time for the Board to reschedule the hearing, provide the required notice of the rescheduled hearing, complete the hearing, and deliberate and decide the matter.

d) If the hearing officer grants a motion to cancel a hearing, the hearing officer will revise the schedule to complete the record in accordance with Section ~~101.612 of this Part.~~ 101.612. The hearing officer also will file the revised schedule with the Clerk and serve a copy of the revised schedule on all parties in accordance with Subpart C-~~of this Part.~~

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 101.514 Motions to Stay Proceedings

a) Motions to stay a proceeding must be directed to the Board and must be accompanied by sufficient information detailing why a stay is needed, and in decision deadline proceedings, by a waiver of any decision deadline. A status report detailing the progress of the proceeding must be included in the motion. (See also Section ~~101.308 of this Part.~~ 101.308.)

b) If the motion to stay is granted, at the close of the stay, the parties must file a status report in accordance with Subpart C ~~of this Part.~~ Additional requests for stay of the proceedings must be directed to the hearing officer.

(Source: Amended at 41 Ill. Reg. ~~—~~_____, effective _____)

Section 101.516 Motions for Summary Judgment

a) Any time after the opposing party has appeared (or after the expiration of time within which any party is required to appear), but no fewer than 30 days prior to the regularly scheduled Board meeting before the noticed hearing date, a party may move the Board for summary judgment for all or any part of the relief sought. Any response to a motion for summary judgment must be filed within 14 days after service of the motion for summary judgment. The hearing officer may extend the filing and response deadlines contained in this subsection upon written motion by a party, consistent with any statutory deadlines.

b) If the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment.

c) Any party wishing to cancel a hearing pending decision on a motion for summary judgment must file a motion to cancel hearing under ~~pursuant to Section 101.510 of this Part.~~ 101.510.

(Source: Amended at 41 Ill. Reg. ~~—~~_____, effective _____)

Section 101.518 Motions for Interlocutory Appeal from Hearing Officer Orders

Interlocutory appeals from a ruling of the hearing officer may be taken to the Board by filing a motion within 14 days after receipt of the hearing officer's written order. However, if the hearing officer's ruling is rendered on the record at hearing, any motion for interlocutory appeal must be filed within 14 days after the hearing-~~Board receives the hearing transcript setting forth the ruling.~~ Filing a motion for interlocutory appeal will not postpone a scheduled hearing, stay the effect of the hearing officer's ruling, or otherwise stay the proceeding. Failure of a party to timely file a motion for

interlocutory appeal constitutes a waiver of any objection to the hearing officer's ruling.

(Source: Amended at 41 Ill. Reg. , effective)

Section 101.520 Motions for Reconsideration

a) Any motion for reconsideration or modification of a ~~final~~ Board order must be filed within 35 days after the receipt of the order. (See Section ~~101.902 of this Part.~~ 101.902.)

b) Any response to a motion for reconsideration or modification must be filed within 14 days after the filing of the motion.

c) A timely-filed motion for reconsideration or modification stays the effect of the ~~final~~ order until final disposition of the motion in accordance with Section 101.300(d)(2) ~~of this Part.~~

(Source: Amended at 41 Ill. Reg. , effective)

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

Section 101.610 Duties and Authority of the Hearing Officer

The hearing officer has the duty to manage proceedings assigned, to set hearings, to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear, complete, and concise record for timely transmission to the Board. The hearing officer has all powers necessary to these ends, including the authority to:

a) Require parties to proceed to hearing and establish a schedule for, and notice and service of, any prefiled submission of testimony and written exhibits;

b) Administer oaths and affirmations;

c) Allow for the examination of or examine witnesses to ensure a clear and complete record;

d) Regulate the course of the hearing, including controlling the order of proceedings;

e) Establish reasonable limits on the duration of the testimony and questioning of any witness, and limit repetitive or cumulative testimony and questioning;

f) Determine that a witness is adverse, hostile, or unwilling under-~~pursuant to~~ Section 101.624 ~~of this Part~~;

g) Issue an order compelling the answers to interrogatories or responses to other discovery requests;

- h) Order the production of evidence under ~~pursuant to~~ Section 101.614-
~~of this Part~~;
- i) Order the filing of any required record or recommendation in a manner which provides for a timely review and development of issues prior to the hearing and consistent with any statutory decision deadline;
- j) Initiate, schedule, and conduct a pre-hearing conference;
- k) Order a briefing and comment schedule and exclude late-filed briefs and comments from the record;
- l) Rule upon objections and evidentiary questions;
- m) Order discovery under ~~pursuant to~~ Sections 101.614 and 101.616-
~~of this Part~~;
- n) Rule on any motion directed to the hearing officer or deferred to the hearing officer by the Board in accordance with Section 101.502-
~~of this Part~~;
- o) Set status report schedules;
- p) Require all participants in a rulemaking proceeding to state their positions with respect to the proposal; and
- q) Rule upon offers of proof and receive evidence and rule upon objections to the introduction of evidence.

(Source: Amended at 41 Ill. Reg. ~~—~~, effective ~~_____~~)

Section 101.612 Schedule to Complete the Record

- a) The hearing officer must establish a schedule to complete the record by hearing officer order. The schedule may provide dates and deadlines for pre-hearing conferences, discovery completion, and hearing and post-hearing submissions (including public comments). The schedule must provide for a completed record at least 30 days before the decision date, unless the hearing officer orders otherwise to prevent material prejudice. ~~The schedule must be in the form of a hearing officer order.~~ The hearing officer must file the schedule with the Clerk and serve a copy of the schedule on all parties in accordance with Subpart C-
~~of this Part~~.
- b) The hearing officer may rule upon any motion to revise the schedule to complete the record. The hearing officer may grant the motion to the extent that the revised schedule provides for a completed record at least 30 days before the decision date or to prevent material prejudice. If the hearing officer grants a motion to revise the schedule, the hearing officer must file the revised schedule with the

Clerk and serve a copy of the revised schedule on all parties in accordance with Subpart C ~~of this Part~~. (See also Section 101.510(d) ~~of this Part~~.)

(Source: Amended at 41 Ill. Reg. , effective)

Section 101.616 Discovery

The assigned hearing officer will set all time deadlines for discovery not already provided for in this Subpart consistent with Board deadlines. For purposes of discovery, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent (see Section 101.100(b)). All discovery disputes will be handled by the assigned hearing officer.

- a) All relevant information and information calculated to lead to relevant information is discoverable, excluding those materials that would be protected from disclosure in the courts of this State under ~~pursuant to~~ statute, Supreme Court Rules or common law, and materials protected from disclosure under 35 Ill. Adm. Code 130.
- b) If the parties cannot agree on the scope of discovery or the time or location of any deposition, the hearing officer has the authority to order discovery or to deny requests for discovery.
- c) All discovery must be completed at least 10 days prior to the scheduled hearing in the proceeding unless the hearing officer orders otherwise.
- d) The hearing officer may, on his or her own motion or on the motion of any party or witness, issue protective orders that deny, limit, condition or regulate discovery to prevent unreasonable expense, or harassment, to expedite resolution of the proceeding, 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) Unless a claim of privilege is asserted, it is not a ground for objection that the testimony of a deponent or person interrogated will be inadmissible at hearing, if the information sought is reasonably calculated to lead to relevant information. Any appeals of rulings by the hearing officer regarding discovery must be in writing and filed with the Board prior to hearing.
- f) Failure to comply with any order regarding discovery may subject the offending persons to sanctions under ~~pursuant to~~ Subpart H ~~of this Part~~.
- g) If any person serves any request for discovery or answers to discovery for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, or knowingly gives a false answer to discovery questions, the Board, on its

own motion or the motion of a party, may impose sanctions under ~~pursuant to~~ Subpart H ~~of this Part~~.

h) A party must amend any prior responses to interrogatories, requests for production, or requests for admission if the party learns that the response is in some material respect incomplete or incorrect, and the additional or corrected information has not otherwise been made known to the other parties during the discovery process or in writing.

(Source: Amended at 41 Ill. Reg. , effective)

Section 101.618 Admissions

a) General. All requests to admit must be served upon a party no later than 35 days before hearing. All answers or objections to requests to admit must be served upon the party requesting the admission within 28 days after the service of the request.

b) Extension of Time. In accordance with Sections 101.522 and ~~101.610 of this Part~~, 101.610, the hearing officer may extend the time for filing any request, answer, or objection either before or after the expiration of time.

c) Request to Admit. Any party serving a request to admit in accordance with subsection (d) or (e) must include the following language in the first paragraph of the request. "Failure to respond to the following requests to admit within 28 days may have severe consequences. Failure to respond to the following requests will result in all the facts requested being deemed admitted as true for this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding or an attorney."

d) Request for Admission of Fact. A party may serve a written request for admission of the truth of specific statements of fact on any other party.

e) Request for Admission of Genuineness of Document. A party may serve a written request for admission of the genuineness of documents on any other party. Copies of the document must be served unless the document has already been furnished in the present proceeding.

f) Admission in the Absence of Denial. Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 28 days after service ~~thereof~~, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement denying specifically the matters of which admission is requested or setting 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 written objections to a part of the request are made, the remainder of the request must be answered within the period

designated in the request. A denial must fairly address the substance of the requested admission.

g) Partial Denial or Qualification. If good faith requires that a party deny a part of a matter for which an admission is requested, or if a part requires qualification, the party must specify the part which is denied or qualified and admit only the remainder.

h) Objection. Any objection to a request or to any answer must be stated with specificity, and will be heard by the hearing officer upon notice and motion of the party making the request.

i) Effect of Admission. Any admission made by a party under ~~pursuant to~~ a request 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 him in any other proceeding.

(Source: Amended at 41 Ill. Reg. , effective)

Section 101.620 Interrogatories

a) Unless ordered otherwise by the hearing officer, a party may serve a maximum of 30 written interrogatories, including subparts, on any other party, no later than 35 days before hearing.

b) Within 28 days after service ~~thereof~~, the party to whom the interrogatory is directed must serve the answers and objections, if any, upon the party submitting the interrogatories. Each interrogatory must be answered separately and fully in writing under oath, unless it is objected to. Answers must be signed by the person making them and objections must be signed by the attorney making them or, in the event of an individual representing himself or herself, the individual making them.

c) Grounds for an objection to an interrogatory must be stated with specificity, and be accompanied by a copy of the interrogatory. Any ground that is not stated in a timely objection is waived unless it results in material prejudice or good cause for the delay is shown.

(Source: Amended at 41 Ill. Reg. , effective)

Section 101.622 Subpoenas and Depositions

a) Upon request by any party to a contested proceeding, the Clerk will issue subpoenas for the attendance of witnesses at a hearing or deposition. Subpoena forms are available at the Board's Chicago office. The person requesting the subpoena is responsible for completing the subpoena and serving it upon the witness.

b) Service of the subpoena on the witness must be completed no later than 10 days before the date of the required appearance. A copy of the

subpoena must be filed with the Clerk and served upon the hearing officer within 7 days after service upon the witness. Failure to serve both the Clerk and the hearing officer will render the subpoena null and void. Service and filing must be in accordance with Subpart C ~~of this Part.~~

c) Subpoenas may include a command to produce books, papers, documents, or other tangible things designated therein and relevant to the matter under consideration.

d) The hearing officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance, may quash or modify the subpoena if it is unreasonable or irrelevant. The hearing officer will rule upon motions to quash or modify material requested in the subpoena under ~~pursuant to~~ subsection (c) ~~of this Section~~ in accordance with the standards articulated in Section ~~101.614 of this Part.~~ 101.614.

e) Each witness subpoenaed by a party under this Section is entitled to receive witness fees from that party as provided in Section 4.3 of the Circuit Courts Act [705 ILCS 35/4.3].

f) Unless the hearing officer orders otherwise, any witness subpoenaed for a deposition may be required to attend only in the county in which he resides or maintains an office address. In accordance with Supreme Court Rule 206(d), all depositions must be limited to 3 hours in length unless the parties and the non-party deponent by stipulation agree to a longer time frame or unless the hearing officer orders otherwise after a showing of good cause. (See Ill. S. Ct. Amended Rule 206(d).)

g) Failure of any witness to comply with a subpoena will subject the witness to sanctions under this Part, or the judicial enforcement of the subpoena. The Board may, upon proper motion by the party requesting the subpoena, request the Attorney General to pursue judicial enforcement of the subpoena on behalf of the Board.

(Source: Amended at 41 Ill. Reg. , effective)

Section 101.626 Information Produced at Hearing

In accordance with Section 10-40 of the IAPA, the hearing officer will admit evidence that is admissible under the rules of evidence as applied in the civil courts of Illinois, except as otherwise provided in this Part.

a) Evidence. The hearing officer may admit evidence that is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged.

b) Admissibility of Evidence. When the admissibility of evidence depends upon a good faith argument as to the interpretation of substantive law, the hearing officer will admit the evidence.

c) Scientific Articles and Treatises. Relevant scientific or technical articles, treatises, or materials may be introduced into evidence by a party. The materials are subject to refutation or disputation through introduction of documentary evidence or expert testimony.

d) Written Testimony. Written testimony may be introduced by a party in a hearing only if provided to all other parties of record prior to the date of the hearing and only after the opposing parties have had an opportunity to object to the written testimony and to obtain a ruling on the objections prior to its introduction. Written testimony may be introduced by a party only if the persons whose written testimony is introduced are available for cross-examination at hearing.

e) Admission of Business Records. A writing or record, whether in the form of any entry in a book or otherwise made as a memorandum or record of any act, transaction, occurrence, or event, may be admissible as evidence of the act, transaction, occurrence, or event. To be admissible, the writing or record must ~~will~~ have been made in the regular course of business, provided it was the regular course of business to make the memorandum or record at the time of the act, transaction, occurrence, or event, or within a reasonable time afterwards ~~thereafter~~. All other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be admitted to affect the weight of the evidence, but will not affect admissibility. The term "business," as used in this subsection (e), includes businesses, professions, occupations, and callings of every kind.

f) Prior Inconsistent Statements. Prior statements made under oath may be admitted to impeach a witness if the statement is inconsistent with the witness' testimony at hearing.

g) Oral and Written Statements. Oral and written statements from participants may be taken at hearing in accordance with Section ~~101.628 of this Part.~~ 101.628.

(Source: Amended at 41 Ill. Reg. ~~—~~, effective)

Section 101.628 Statements from Participants

a) Oral Statements. The hearing officer may permit a participant to make oral statements on the record when time, facilities, and concerns for a clear and concise hearing record so allow. The oral statements must be made under oath and are subject to cross-examination. (See Sections 101.110 and ~~101.114 of this Part.~~ 101.114.)

b) Written Statements. Any participant may submit written statements relevant to the subject matter at any time prior to hearing or at hearing. Participants submitting such a statement will be subject to cross-examination by any party. Written statements submitted without the availability of cross-examination will be treated as public comment in accordance with subsection (c) ~~of this Section~~ and will be afforded lesser weight than evidence subject to cross-examination.

c) Public Comments or Amicus Curiae Briefs. Oral public comment may be made on the record at a hearing and is not subject to cross-examination. Additionally, ~~Participants~~ participants may file written public comments subject to the requirements of this Section and the hearing officer's schedule for completion of the record. The Board also allows for the filing of amicus curiae briefs by non-party participants. Amicus curiae briefs will be allowed in accordance with Section ~~101.110 of this Part.~~ 101.110.

1) Written public ~~Public~~ comments must be filed within 14 days after the close of the last hearing unless the hearing officer specifies a different date for submission of post-hearing comments. However, all public comments must be filed with the Board no later than 30 days before the decision date, unless the hearing officer orders otherwise to prevent material prejudice. Consistent with the burden of proof in a proceeding, the hearing officer may provide for differing filing deadlines with respect to post-hearing comments by different persons. Under ~~pursuant to~~ hearing officer order, rebuttal public comments may be submitted.

2) All public comments must present arguments or comments based on evidence contained in the record. The comments may also present legal argument citing legal authorities.

3) Comments must be filed with the Board. Comments will be distributed to parties and the hearing officer by the Clerk's office.

(Source: Amended at 41 Ill. Reg. ~~—~~_____, effective _____)

SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

Section 101.902 Motions for Reconsideration

In ruling upon a motion for reconsideration, the Board will consider factors including new evidence, or a change in the law, to conclude that the Board's decision was in error. (See also Section ~~101.520 of this Part.~~ 101.520.) A motion for reconsideration of a final Board order is not a prerequisite for the appeal of the final Board order.

(Source: Amended at 41 Ill. Reg. ~~—~~_____, effective _____)

Section 101.904 Relief from Final Opinions and Orders

a) Upon its own motion or motion of any party, the Board may correct clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission. ~~The mistakes may be so corrected by the Board~~ before the appeal is docketed in the appellate court. After ~~Thereafter, while~~ the appeal is pending, the mistakes may be corrected only with permission ~~leave~~ of the appellate court. Any corrected order will be mailed to all parties and participants in that proceeding.

b) On written motion, the Board may relieve a party from a final order entered in a contested proceeding, for the following:

1) Newly discovered evidence that existed at the time of hearing and that by due diligence could not have been timely discovered;

2) Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or

3) Void order, such as an order based upon jurisdictional defects.

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 order was entered but is not a continuation of the proceeding. The motion must be supported by oath or affidavit or other appropriate showing as to matters not of record. All parties or participants in the proceeding must be notified by the movant as provided by Section ~~101.304 of this Part.~~ 101.304.

d) A motion under subsection (b) ~~of this Section~~ must be filed with the Board within one year after entry of the order, except that a motion under ~~pursuant to~~ subsection (b) (3) ~~of this Section~~ must be filed within a reasonable time after entry of the order.

e) Any response to a motion under this Section must be filed within 14 days after the filing of the motion.

(Source: Amended at 41 Ill. Reg. ~~---~~, effective
)

Section 101.906 Judicial Review of Board Orders

a) Under ~~pursuant to~~ Sections 29 and 41 of the Act [415 ILCS 5/29 and 41] and Supreme Court Rule 335, judicial review of final Board orders is available from the appellate court. However, under ~~pursuant to~~ Section 11-60 of the Property Tax Code [35 ILCS 200/11-60], judicial review of final Board orders in tax certification proceedings is available from the circuit court.

b) For purposes of judicial review, a final Board order is appealable as of the date of service of the final order upon the appealing person (see Section 101.300(d)).

c) The procedure for stay of any final Board order during appeal will be as provided in Rule 335 of the Rules of the Supreme Court of Illinois (Ill. S. Ct. Rule 335).

(Source: Amended at 41 Ill. Reg. , effective)

SUBPART J: ELECTRONIC FILING AND E-MAIL SERVICE

Section 101.1000 Electronic Filing and E-Mail Service

a) The Board provides the opportunity to file and access documents electronically through its Clerk's Office On-Line (COOL). COOL is located on the Board's website (www.ipcb.state.il.us). The Board has taken steps designed to ensure the integrity and security of COOL in accordance with State policies developed under the Electronic Commerce Security Act [5 ILCS 175].

b) To file an electronic document with the Board, a person must upload the document on COOL. Electronic filing is not accomplished by sending a document to the e-mail address of the Clerk or hearing officer.

c) Except as provided in Section 101.302(h)(2), (h)(3), (h)(4), and (j) ~~of this Part~~ and Section ~~101.1050 of this Subpart, 101.1050~~, all documents may be filed through COOL. However, if filing through COOL is not reasonably practicable, the Board, the hearing officer, or the Clerk may grant permission to file in paper. ~~If a person files an electronic document in accordance with this Subpart, the person is not required to file a paper original or copy of that document.~~

d) Generally, the Clerk's Office will not accept paper documents for filing; however, the Clerk's Office will convert paper-filed documents into electronic documents and place them on COOL, when permission to file a paper document is granted under subsection (c).

e) All documents filed with the Board may be served by e-mail except for enforcement complaints, administrative citations, and EMSA statements of deficiency. (See Section 101.304(c) ~~of this Part~~ and Section ~~101.1060 of this Subpart.~~ 101.1060.)

(Source: Amended at 41 Ill. Reg. , effective)

Section 101.1010 Electronic Filing Authorization and Signatures

a) A person seeking to upload a document on COOL for filing must have been issued a State of Illinois digital signature certificate under ~~pursuant to~~ Section 15-310 of the Electronic Commerce Security Act. (See 5 ILCS 175/15-310.) A link to the subscriber agreement and application for a State of Illinois digital signature certificate is available through COOL.

1) Maintaining digital signature confidentiality is the responsibility of the holder of the digital signature certificate. The certificate holder is responsible for any document electronically filed by anyone using his or her digital signature certificate.

2) The digital signature certificate holder is responsible for keeping his or her contact information current.

b) Each electronic document uploaded on COOL for filing must bear a facsimile electronic signature (i.e., scanned image of original pen-and-ink signature) or typographical electronic signature (i.e., "/s/ typed name") of the person authorizing the filing (e.g., attorney, participant, pro se party). However, if this electronic signature is absent, the document will be deemed to have been signed by the holder of the digital signature certificate used to upload the document and the certificate holder will be deemed to have authorized the filing. (See 5 ILCS 175/5-120.) To file an electronic document on behalf of another person in an adjudicatory proceeding, an electronic signature of a licensed and registered attorney is required. (See Section 101.400(a)-~~of this Part.~~)

c) If an electronic document or portion thereof requires the signatures of any persons in addition to those specified in subsection (b)-~~of this Section~~ (e.g., settlement agreement, witness' affidavit), the person authorizing the filing must:

1) Confirm that the additional persons have approved the document or corresponding portion thereof and obtain their original pen-and-ink signatures before the document is uploaded on COOL for filing;

2) Ensure that the document or corresponding portion thereof bears the facsimile electronic signatures of, and indicates the identity of, the additional persons;

3) Upload the document on COOL as a scanned image containing the necessary signatures; and

4) Retain the paper original of the document, including the original pen-and-ink signatures of the additional persons, for one year after the later of the following:

A) The date on which the time period expires for appealing the final order of the Board; or

B) If the final order of the Board is appealed, the date on which the time period expires for seeking any further review in the courts.

~~d) In lieu of complying with subsection (c) of this Section, the person authorizing the filing may file the paper original of the document, including the original pen and ink signatures of the additional persons, and separately file the document through COOL-~~

~~without the facsimile electronic signatures of the additional persons (see Section 101.1020(e)(2) of this Subpart).~~

(Source: Amended at 41 Ill. Reg. , effective)

Section 101.1020 Filing Electronic Documents

a) COOL. To file an electronic document through COOL, the document must first be uploaded on COOL.

b) Digital Signature Certificate. Uploading a document on COOL requires a valid State of Illinois digital signature certificate.

c) Uploading Hours. Electronic documents may be uploaded on COOL 24 hours per day, every day.

d) E-Mail Receipt. Uploading a document on COOL will generate an e-mail receipt for the digital signature certificate holder. The receipt will verify the date and time when the document was uploaded on COOL.

e) Time of Filing. Subject to subsection (f) ~~of this Section~~, an electronic document uploaded on COOL will be considered filed as of the date and time specified on the e-mail receipt generated under ~~pursuant to~~ subsection (d) ~~of this Section~~, except that:

1) A document uploaded on a Saturday or Sunday, on a national or State legal holiday, or after 4:30 p.m. on a weekday is deemed filed the next business day.

2) A document uploaded without one or more portions of the filing (e.g., oversized exhibit; trade secret or non-disclosable information; copyrighted document proposed for incorporation by reference in a rule) or without a required oath, affidavit, notarization, signature, or filing fee is considered filed:

A) On the date that the Clerk receives the document's last missing item; or

B) On the postmark date of the document's last missing item if that item was sent by U.S. Mail, was received after the date of a filing deadline, and has a postmark date that precedes or is the same as the deadline date.

3) A document consisting of multiple electronic files is considered filed as of the date and time specified on the e-mail receipt generated under ~~pursuant to~~ subsection (d) ~~of this Section~~ for the last file uploaded to complete the document.

f) Review by the Clerk. The Clerk will review electronically each document uploaded on COOL, validate the proceeding information provided, and accept or reject the document for filing.

1) If the Clerk accepts an uploaded document, the Clerk's Office will e-mail a notice of acceptance to the digital signature certificate holder, indicating that the filed document may be viewed on COOL.

2) If the Clerk rejects an uploaded document, the Clerk's Office will e-mail a notice of rejection to the digital signature certificate holder. The Clerk may reject an uploaded document because the document is prohibited from being filed electronically under ~~pursuant to~~ Section 101.302(h)(3) or (h)(4) ~~of this Part~~, the document fails to comply with file size or naming requirements of Section 101.1030(c) ~~of this Subpart~~, or the document is corrupted or otherwise cannot be readily opened. If an uploaded document is rejected by the Clerk, the Board may, upon good cause shown, enter an order deeming the document filed as of the date and time specified when the document was uploaded on COOL, subject to subsections (e)(1) through (e)(3) ~~of this Section.~~

g) Technical Failure. If an electronic document is not uploaded, or is materially delayed in uploading, on COOL due to a technical failure, the Board may, upon good cause shown, enter an order deeming the document uploaded under ~~pursuant to~~ subsection (d) ~~of this Section~~ as of the date and time of the first attempted uploading. "Technical failure" as used in this subsection is limited to a system outage of COOL or other malfunction of the hardware, software, or telecommunications facilities of the Board or the Board's electronic filing provider. "Technical failure", therefore, does not include any malfunction of the equipment used by the person authorizing the filing or the digital signature certificate holder.

h) Clerk's Electronic Stamp. An electronic document uploaded on COOL and accepted by the Clerk for filing will be endorsed by the Clerk with a file stamp setting forth the date of filing. This file stamp will be merged with the electronic document and visible when the document is viewed on COOL. Electronically filed documents so endorsed have the same legal effect as paper documents file-stamped by the Clerk conventionally in accordance with Section 101.300(b) ~~of this Part.~~

i) Decision Deadlines. For purposes of Board decision deadlines, the decision period does not begin until the date on which the electronic document constituting the initial filing is considered filed under this Section.

j) Filing Deadlines. The electronic filing of a document does not alter any applicable filing deadlines.

(Source: Amended at 41 Ill. Reg. ~~---~~, effective ~~---~~)

a) In addition to complying with the formatting requirements of Section 101.302(g) and (j) ~~of this Part~~, electronic documents uploaded on COOL for filing must be in one of the following electronic formats:

- 1) Adobe Portable Document Format (PDF), version 2.0 or greater;
- 2) Microsoft Word for Windows, version 6.0 or greater;
- 3) Corel WordPerfect for Windows, version 6.0 or greater; or
- 4) Microsoft Excel for Windows, version 4.0 or greater.

b) Generally, electronic documents filed in accordance with this Subpart will be posted to COOL by the Clerk's Office in text-searchable Adobe PDF. When practicable, persons should:

- 1) Upload their electronic documents on COOL in text-searchable Adobe PDF; and
- 2) Convert their electronic documents to a text-searchable Adobe PDF directly from the program used to create the document, rather than from a scanned image of the paper document.

c) No single electronic file uploaded on COOL, whether constituting all or part of an electronic document, may contain more than 10 megabytes (MB) of data. To comply with this requirement, an electronic document may be divided into parts and submitted as multiple electronic files, each file being 10 MB or less. The person authorizing the filing is responsible for dividing the document into appropriately-sized files and naming each file to reflect its place within the electronic document.

d) Multiple electronic documents, whether for the same proceeding or different proceedings, must be uploaded separately on COOL and, therefore, must not be combined into a single electronic file for filing through COOL.

e) Electronic documents may contain links to material external to the filed document. However, links to external material are for convenience purposes only. The external material behind the link is not considered part of the filing or the record of the proceeding in which the document was filed.

f) All documents uploaded on COOL must be free of viruses or other harmful processes. If an electronic document containing a virus or other harmful process is uploaded on COOL, the Board may, consistent with Section 101.800(b) and (c) ~~of this Part~~, impose sanctions, including barring the document from being filed in any manner and barring the person authorizing the filing or the digital signature certificate holder from any further electronic filing through COOL.

g) Documents filed under Section 101.302(h) (2) must:

1) Include bookmarks, immediately viewable when the document is opened, to individual documents in the same order as they appear in the corresponding Table of Contents to facilitate navigation and location of specific contents within the record; and

2) Pagination must be displayed on each document in the bottom right-corner.

(Source: Amended at 41 Ill. Reg. ~~_____~~, effective
~~_____~~)

Section 101.1040 Filing Fees

a) Filing fees are specified in Section 101.302(e) ~~of this Part~~. The Clerk's Office imposes no additional fee to file a document electronically.

b) A person seeking to file an electronic document that requires a filing fee must either:

1) Pay the fee with a valid credit card through COOL when the document is uploaded on COOL; or

2) Deliver payment to the Clerk's Office in the form of government voucher, money order, or check made payable to the Illinois Pollution Control Board.

(Source: Amended at 41 Ill. Reg. ~~_____~~, effective
~~_____~~)

Section 101.1050 Documents Required in Paper or Excluded from Electronic Filing

a) A document containing information claimed or determined to be a trade secret, or other non-disclosable information under ~~pursuant to~~ 35 Ill. Adm. Code 130, is prohibited from being filed electronically and must instead be filed only in paper under ~~pursuant to~~ Section 101.302(h)(3) ~~of this Part~~. The version of the document that is redacted under ~~pursuant to~~ 35 Ill. Adm. Code 130 may be filed through COOL.

b) If a rulemaking proposal contains a document that is protected by copyright law (17 USC 101 et seq.) and proposed under ~~pursuant to~~ Section 5-75 of the IAPA [5 ILCS 100/5-75] to be incorporated by reference, that copyrighted document is prohibited from being filed electronically and must instead be filed only in paper under ~~pursuant to~~ Section 101.302(h)(4) ~~of this Part~~. The remainder of the rulemaking proposal may be filed through COOL.

(Source: Amended at 41 Ill. Reg. , effective
)

Section 101.1060 E-Mail Service

a) Except as provided in subsections (b) and (c), a person required to serve a document may serve the document by e-mail, in lieu of serving a paper document, if the recipient has consented to e-mail service in the proceeding and has not revoked the consent. (See Section 101.1070.) To serve a document by e-mail, it is not necessary to electronically file the document or to obtain a State of Illinois digital signature certificate.

b) Service of enforcement complaints and EMSA statements of deficiency on a respondent must be made 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 Section 101.304(c)(2).)

c) Service of administrative citations must be made as required under 35 Ill. Adm. Code 108.

d) A person required to serve a document on the hearing officer must serve the hearing officer by sending the document to the hearing officer's e-mail address in lieu of serving a paper document upon the hearing officer if the person has the capability of serving the document by e-mail.

e) When a document is served by e-mail, documentation of service must be filed with the Clerk and served on all persons entitled to service in that proceeding. A sample form of affidavit or certificate of e-mail service is available in Appendix H. An affidavit or certificate of e-mail service must include the following:

- 1) The e-mail address of the recipient and the person authorizing the filing;
- 2) The number of pages in the e-mail transmission;
- 3) A statement that the document was served by e-mail; and
- 4) The date of the e-mail transmission and the time by when it took place.

f) If any computer malfunction precludes the e-mail service of a document, the person authorizing the filing must promptly serve the document in paper under ~~pursuant to~~ Section 101.304(c).

g) Except for final adjudicatory orders of the Board, which the Clerk's Office serves in paper by certified mail, the Clerk's Office will serve Board orders and hearing officer orders by e-mail, in lieu of serving paper documents, if the recipient has consented to e-mail

service in the proceeding and has not revoked the consent. (See Section 101.1070.) The Clerk will record the date and time of e-mail service, consistent with subsection (e) ~~of this Section.~~

(Source: Amended at 41 Ill. Reg. , effective)

Section 101.1070 Consenting to Receipt of E-Mail Service

a) In any proceeding, a person consents to e-mail service of documents in lieu of receiving paper documents by:

1) Filing a "Consent to Receipt of E-Mail Service" (see sample form of consent in Appendix I);

2) Providing the hearing officer, during a hearing or conference, with an e-mail address that is designated for receiving service;

3) Filing an attorney's appearance ~~containing an e-mail address that is designated for receiving service; or~~ ;

4) Appearing on a notice list or service list and providing the Clerk's Office with an e-mail address that is designated for receiving service.

b) At any time during a proceeding, consent to e-mail service may be provided as set forth in subsection (a). To accept e-mail service, it is not necessary to obtain a State of Illinois digital signature certificate.

c) A person's consent to receiving e-mail service may be revoked by that person at any time during the proceeding upon the person's filing of a notice of the revocation with the Clerk's Office. However, an attorney who filed an appearance may not revoke consent unless the appearance is withdrawn.

d) Upon a change in the e-mail address of a recipient of e-mail service, the recipient must notify the Clerk's Office of the e-mail address change for each pending proceeding in which the person has consented to e-mail service.

(Source: Amended at 41 Ill. Reg. , effective)

Section 101.APPENDIX A Captions

Section 101.ILLUSTRATION L Site-specific Rulemaking

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)

)
 PROPOSED SITE SPECIFIC WATER) Rxx-xxx
 POLLUTION REGULATIONS) (Site-Specific Rulemaking-X)
 APPLICABLE TO XYZ)
 UTILITIES COMPANY OF ILLINOIS)
 DISCHARGE TO XYZ CREEK:)
 35 Ill. Adm. Code)

BOARD NOTE: The Board notes that all docket numbers consist of letter(s) followed by two numbers. The first two digit number is the fiscal year the matter was filed. Then the second number is the sequential number for that type of filing the Board has received that year. Persons making filings are not responsible for the Board docket number on the original filing. The Clerk of the Board will assign the appropriate docket number when the matter is filed. All filings in a matter that has been assigned a docket number must ~~should~~ contain a docket number located as indicated on the examples above. The Board will also be designating its opinion and orders with the type of case and media involved in the matter. Where the above examples have the type of case followed by "X", the Board will, for example if the case is dealing with a variance from certain water regulations, put the media, water, after variance to become "Variance-Water". Again, persons making filings need not place this on original filings. However, all filings in a matter that has been assigned the media must ~~should~~ indicate that media in the location as in the above examples. Where there are specific procedural rules developed for specific types of cases, as in a "UST Appeal", persons making filings must ~~should~~ follow those examples.

(Source: Amended at 41 Ill. Reg. , effective)

~~ILLINOIS REGISTER~~

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	96
Deletions	298
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	394

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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

PART 102
REGULATORY AND INFORMATIONAL HEARINGS AND PROCEEDINGS

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~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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PRODUCTION OF INFORMATION, SUBPOENAS, PREHEARING
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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 102.608 Notice of Board Final Action
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SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL

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Section

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102.APPENDIX A Comparison of Former and Current Rules (Repealed)

AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 28.6, 29, and 41 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 28.6, 29, and 41] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part II: Regulatory and Other Nonadjudicative Hearings and Proceedings, in R70-4, 1 PCB 43, October 8, ~~197-1970~~; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1398, effective January 16, ~~1984~~1985; Part repealed, new Part adopted in R88-5(B) at 14 Ill. Reg. 9210, effective May 24, 1990; amended in R90-16 at 14 Ill. Reg. ~~20471~~20472, effective December 11, 1990; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 587, effective January 1, 2001; amended in R01-13 at 26 Ill. Reg. 3498, effective February 22, 2002; amended in R04-24 at 29 Ill. Reg. 8776, effective June 8, 2005; amended in R10-18 at 34 Ill. Reg. ~~34~~12193, effective August 9, 2010; amended in R14-21 at 39 Ill. Reg. 2333, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. 7955, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. ~~_____~~, effective ~~_____~~.

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SUBPART A: GENERAL PROVISIONS

Section 102.100 Applicability

- a) This Part applies to all regulatory and informational hearings and proceedings, and must be read in conjunction with 35 Ill. Adm. Code 101. Hearings conducted under pursuant to this Part are quasi-legislative in nature and the purpose of the hearings is to gather information and comments to guide the Board in its rulemaking process. All testimony must be sworn.
- b) All persons taking part in these hearings are participants, rather than parties as in contested cases. Non-attorneys may represent themselves and others at regulatory hearings and may ask questions of witnesses or give testimony or comment as allowed by the hearing officer.

(Source: Amended at 41 Ill. Reg. ———, effective ———)

Section 102.106 Types of Regulatory Proposals

- a) The Act provides for 5 types of regulatory proposals:
 - 1) Identical-in-substance rulemakings, as defined in Sections 7.2, 13.3, 28.2 and 28.4 of the Act [415 ILCS 5/7.2, 13.3, 28.2, and 28.4];
 - 2) Federally required rules, as defined in Section 28.2 of the Act [415 ILCS 5/28.2];
 - 3) Other regulatory proposals, both of general applicability and not of general applicability as allowed by Sections 26, 27 and 28 of the Act [415 ILCS 5/26, 27, and 28];
 - 4) Clean Air Act fast track rulemakings as defined by Section 28.5 of the Act [415 ILCS 5/28.5]; and
 - 5) Rulemakings to update incorporations by reference, as allowed by Section 28.6 of the Act [415 ILCS 5/28.6].
- b) The IAPA provides for three types of rulemakings:

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- 1) General rulemaking under pursuant to Section 5-40 of the IAPA [5 ILCS 100/5-40];
- 2) Emergency rulemaking under pursuant to Section 5-45 of the IAPA [5 ILCS 100/5-45]; and
- 3) Peremptory rulemaking under pursuant to Section 5-50 of the IAPA [5 ILCS 100/5-50].

(Source: Amended at 41 Ill. Reg. =_____, effective _____)

Section 102.108 Public Comments

- a) The Board will accept written comments from any person concerning a regulatory proposal during the first notice period as defined in Section 102.604 of this Part. However, when adopting identical-in-substance regulations, the Board will accept written comments from USEPA and other persons for at least 45 days after the date of publication of the proposed regulations or amendments in the Illinois Register in accordance with Section 102.610 of this Part.
- b) Any person may submit written comments on any proposal within 14 days after the receipt of the hearing transcript in Board offices unless otherwise specified by the hearing officer or the Board.
- c) Comments must be filed with the Clerk and served in accordance with 35 Ill. Adm. Code 101.Subpart C, upon the Environmental Protection Agency (Agency), Department of Natural Resources (DNR), the Attorney General (if a participant), the proponent, and the participants on any service list established by the hearing officer under pursuant to Section 102.422 of this Part unless otherwise specified by the hearing officer or the Board.
- d) Comments that are not timely filed or properly served will not be considered, except as allowed by the hearing officer or the Board to prevent material prejudice.

(Source: Amended at 41 Ill. Reg. =_____, effective _____)

Section 102.110 Waiver of Requirements (Repealed)

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The Board may waive any of the non-statutory requirements of this Part upon a showing by a person that a particular requirement would create an undue burden on that person such as where the burden of compliance imposes financial costs that would preclude further participation, or where compliance would result in the provision of information already provided in that proceeding.

(Source: Repealed at 41 Ill. Reg. _____, effective _____)

Section 102.112 Other Proceedings

Under ~~pursuant~~Pursuant to Section 5(d) of the Act or other applicable law, the Board may conduct such other noncontested or informational hearings as may be necessary to accomplish the purposes of the Act or other applicable law. The hearings may include inquiry hearings to gather information on any subject the Board is authorized to regulate.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.114 Hearings

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

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART B: REGULATIONS OF GENERAL APPLICABILITY, RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AMENDMENTS, AND SITE-SPECIFIC REGULATIONS

Section 102.202 Proposal Contents for Regulations of General Applicability

~~A~~Each proponent must set forth the following in its ~~A~~proposal must include:

- a) The language of the proposed rule, including any existing regulatory language proposed to be amended or repealed. Language being added must be indicated by underscoring, and language being deleted must be indicated by strike-outs. The proposed rule must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
- b) A statement of the reasons supporting the proposal, including a statement of the facts that support the proposal, and a statement of the purpose and effect of the

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proposal, including environmental, technical, and economic justification. The statement must discuss the applicable factors listed in Section 27(a) of the Act. The statement must include, to the extent reasonably practicable, all affected sources and facilities and the economic impact of the proposed rule;

- ~~e)~~ c) A synopsis of all testimony to be presented by the proponent at hearing;
- ~~d)~~ d) Any material to be incorporated by reference within the proposed rule under pursuant to Section 5-75 of the IAPA [5 ILCS 100/5-75];
- e) *A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act [5 ILCS 140]. [5 ILCS 100/5-40(3.5)];*
- f) Documentation of service upon all persons required to be served under pursuant to Section 102.422 of this Part;
- g) Unless the proponent is the Agency or DNR, a petition signed by at least 200 persons, under pursuant to Section 28 of the Act and Section 102.410(b) of this Part;
- h) When the Agency proposes a rule it believes is federally required, a certification in accordance with Section 102.500 of this Part;
- i) For a proposed rule that amends an existing Board rule, a written statement or certification that the proposal amends the most recent version of the rule as published on the Board's Web site or as obtained from the Clerk;
- j) ~~An When~~ An When the proponent is a State agency, an electronic version of the proposed rule language information required under subsection (a) of this Section in the format specified in Section 35 Ill. Adm. Code 101.1030_Microsoft Word for Windows, version 6.0 or greater; and
- k) When any information required under this Section is inapplicable or unavailable, a

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complete justification for the inapplicability or unavailability.

(Source: Amended at 41 Ill. Reg. ~~—~~_____, effective _____)

Section 102.204 Proposal of RCRA Amendments

In addition to satisfying the requirements of Section 102.202 of this Part, any proposal to amend the RCRA regulations must:

- a) Indicate whether it is made under pursuant to the provisions of Section 22.4(a), 22.4(b) or 22.4(c) of the Act;
- b) Include a listing of all amendments to the corresponding federal regulations since the period encompassed by the last amendment of the Board's RCRA rules; and
- c) Include a certificate of service indicating that a copy of the proposal has been served on the USEPA. Service must be made at the following address:

Director, Waste Management Division
USEPA, Region V
77 W. Jackson Street
Chicago, Illinois 60604

(Source: Amended at 41 Ill. Reg. _____~~—~~, effective _____)

Section 102.206 Notice of Site-Specific RCRA Proposals

- a) Public notice of hearings on site-specific RCRA proposals will be given at least 30 days before the date of the hearing.
- b) In addition to the requirements of Section 28 of the Act, the Board, at a minimum, will give notice of hearings on a site-specific RCRA proposal to the following persons:
 - 1) Federal agencies as designated by the USEPA;
 - 2) Illinois Department of Transportation;
 - 3) DNR Illinois Department of Natural Resources;

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- 4) Illinois Department of Public Health;
 - 5) The Governor of any other state adjacent to the county in which the facility is located; and
 - 6) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility.
- c) In addition to the methods of notice by publication of Section 28 of the Act and Section 102.416 of this Part, the Board will give notice by broadcast over at least one radio station in the area of the facility containing the information required by [Section 102.416](#) subsections ~~102.416~~(d)(2) and (d)(4) through (d)(8) of this Section.
- d) A hearing notice on a site-specific RCRA proposal will include the following information:
- 1) The address of the Board office;
 - 2) Name and address of the proponent and, if different, of the facility for which the site-specific rule is sought;
 - 3) A brief description of the business conducted at the facility and the activity described in the proposal;
 - 4) A description of the relief requested in the proposal;
 - 5) Name, address, e-mail address, and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the proposal;
 - 6) The name, address, e-mail address, and telephone number of the Agency's representative in the rulemaking;
 - 7) A description of any written comment period or a statement that a comment period will be established in the future;

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- 8) A statement that the record in the rulemaking is available at the Board office for inspection, except those portions that are claimed or determined to be trade secrets, and that procedures are available whereby disclosure may be sought by the public. Any such claim must be made in accordance with 35 Ill. Adm. Code 130;
- 9) A statement that site-specific rules may be adopted under pursuant to 415 ILCS 5/27 and Section 102.202 of this Part, and a citation to the Board regulations sought to be modified; and
- 10) Any additional information considered necessary or proper.

(Source: Amended at 41 Ill. Reg. = _____, effective _____)

Section 102.210 Proposal Contents for Site-Specific Regulations

Proponents of site-specific regulations other than those relating to RCRA must comply with the requirements of Section 102.202 of this Part in addition to the following requirements:

- a) The proposal must set forth the language of the proposed site-specific rule, including any existing regulatory language proposed to be amended or repealed. Language being added must be indicated by underscoring and language being deleted must be indicated by strike-outs. If the proposed site-specific rule seeks an exemption from or modification of a rule of general applicability, the proposed site-specific rule may not be proposed as an amendment to the general rule. Instead, the site-specific rule must be proposed as its own Section;
- b) In the event that the proposed rule would replace the applicability of a general rule to the pollution source, the proposal must specify, with supporting documentation, the reasons why the general rule is not technically feasible or economically reasonable for the person or site. The documentation must include relevant information on other similar persons' or sites' ability to comply with the general rule. Where relevant to the Board's consideration, the proposal must also include information pertaining to *existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, and the nature of the existing air quality or receiving body of water* [415 ILCS 5/27(a)];
- c) *A descriptive title or other description of any published study or research report*

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used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act [5 ILCS 140]. [5 ILCS 100/5-40(3.5)];

- d) The proposal must describe the person or site for which regulatory change is sought and the area affected by the proposed change. The proposal must also include a detailed assessment of the environmental impact of the proposed change, and include a description of available treatment or control options;
- e) The proposal must demonstrate that the Board may grant the requested relief consistent with federal law governing the subject of the proposal (e.g., Underground Injection Control program, Resource Conservation and Recovery Act, etc.); and
- f) When the proponent is a State agency, the proponent also must provide an electronic version of the information required under subsection (a) of this Section in Microsoft Word for Windows, version 6.0 or greater; and
- fg) When any information required under this Section is inapplicable or unavailable, the proposal must provide a complete justification for the inapplicability or unavailability.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.211 Proposal to Update Incorporations by Reference

- a) *Any person may file a proposal with the Board to update an incorporation by reference included in a Board rule. The Board or the Agency may also make such a proposal on its own initiative. [415 ILCS 5/28.6(a)] The proposal must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h) and served on the Agency, DNR, and the Attorney General in accordance with 35 Ill. Adm. Code 101.304(c).*
- b) *A rulemaking to update an incorporation by reference under this Section must:*

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- 1) *Be for the sole purpose of replacing a reference to an older or obsolete version of a document with a reference to the current version of that document or its successor document; and*
- 2) *Comply with Sections 5-40 and 5-75 of the IAPA [5 ILCS 100/5-40, 5-75]. [415 ILCS 5/28.6(b), (c)]*
- c) *Sections 27 and 28 of the Act [415 ILCS 5/27, 28] do not apply to rulemaking under this Section. [415 ILCS 5/28.6(c)] Accordingly, for rulemaking under this Section, the Board will not hold any public hearings nor request that the Department of Commerce and Economic Opportunity conduct a study of the economic impact of the proposed amendment.*
- d) A proposal to update an incorporation by reference under this Section must:
 - 1) Include a statement of the reasons supporting the proposal, including a statement of the facts that support the proposal, and a statement of the purpose and effect of the proposal;
 - 2) Comply with subsections (a), (d), (e), (f), (i), and (j) of Section 102.202 of this Part; and
 - 3) When any information required under this subsection (d) is inapplicable or unavailable, the proposal must provide a complete justification for the inapplicability or unavailability.
- e) *If an objection to the proposed amendment is filed during the public comment period required under Section 5-40 of the IAPA [5 ILCS 100/5-40], then the proposed amendment cannot be adopted pursuant to this Section. [415 ILCS 5/28.6(d)]*
- f) *Nothing in this Section precludes the adoption of a change to an incorporation by reference through other lawful rulemaking procedures. [415 ILCS 5/28.6(d)]*

(Source: Amended at 41 Ill. Reg. = _____, effective _____)

Section 102.212 Dismissal

- a) Failure of the proponent to satisfy the content requirements for proposals under

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this Subpart or failure to respond to Board requests for additional information will render a proposal subject to dismissal for inadequacy.

- b) Failure of the proponent to pursue disposition of the proposal in a timely manner will render a proposal subject to dismissal. In making this determination, the Board will consider factors including the history of the proceeding and the proponent's compliance with any Board or hearing officer orders.
- c) A proposal will be dismissed for inadequacy in cases in which the Board, after evaluating the proposal, cannot determine the statutory authority on which the proposal is made. In all such cases, a statement informing the proponent of the Board's basis for dismissal will be made. Dismissal of a proposal will not bar a proponent from re-submitting a proposal in the absence of any deadline imposed by applicable law or Board regulations.
- d) Any person may file a motion challenging the statutory authority or sufficiency of the proposal under pursuant to 35 Ill. Adm. Code 101.Subpart E.

(Source: Amended at 41 Ill. Reg. = _____, effective _____)

**SUBPART C: CLEAN AIR ACT AMENDMENTS (CAAA)
FAST TRACK RULEMAKING**

Section 102.300 Applicability

This Subpart applies to *the adoption of rules proposed by the Agency and required to be adopted by the State under the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (CAAA). A "fast-track" rulemaking proceeding is a proceeding to promulgate a rule that the CAAA requires to be adopted. For purposes of this Section, "requires to be adopted" refers only to those regulations or parts of regulations for which the United States Environmental Protection Agency is empowered to impose sanctions against the State for failure to adopt such rules.* [415 ILCS 5/28.5(a), (c)]

(Source: Amended at 41 Ill. Reg. = _____, effective _____)

Section 102.302 Agency Proposal

- a) When proposing a regulation required by the CAAA, the Agency proposal must meet the following requirements:

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- 1) Set The proposal must set forth the proposed rule, which must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
- 2) Include The proposal must have a cover sheet that prominently states that the Agency proposes the rule under Section 28.5 of the Act, *unless another provision of the Act specifies the method for adopting a specific rule* [415 ILCS 5/28.5(c)];
- 3) *Clearly* The proposal must *clearly identify the provisions and portions of the federal statute, regulations, guidance, policy statement, or other documents upon which the rule is based* [415 ILCS 5/28.5(e)(3)];
- 4) Include The proposal must include *supporting documentation for the rule that summarizes the basis of the rule* [415 ILCS 5/28.5(e)(4)];
- 5) *Describe* The proposal must *describe in general the alternative selected and the basis for the alternative* [415 ILCS 5/28.5(e)(5)];
- 6) Summarize The proposal must summarize the economic and technical data that the Agency relied upon in drafting the proposed rule;
- 7) Include The proposal must include a list of any documents that the Agency directly relied upon in drafting the proposed rule or that the Agency intends to rely upon at hearing, and copies of the documents;
- 8) Set The proposal must set forth *a description of the geographical area to which the rule is intended to apply, a description of the process or processes affected, and identification by classes of the entities expected to be affected, and a list of sources expected to be affected by the rule to the extent known to the Agency* [415 ILCS 5/28.5(e)(8)];
- 9) Include ~~a~~4 *descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if*

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the data are not protected from disclosure under the Freedom of Information Act [5 ILCS 140]. [5 ILCS 100/5-40(3.5)]; and

- 10) Include The proposal must include an electronic version of the information required under subsection (a)(1) of this Section in Microsoft Word for Windows, version 6.0 or greater.
- b) If the proposal fails to meet any of the requirements of subsection (a) of this Section, the Board may decide not to accept the proposal for filing.

(Source: Amended at 41 Ill. Reg. = _____, effective _____)

Section 102.306 Prefiled Testimony

- a) The hearing officer will close the service list for purposes of prefiled testimony at 4:30 p.m. 16 days before the date of hearing.
- b) Ten days before the hearing, copies of prefiled testimony must be filed with the Clerk and served upon all people who are on the service list as closed under pursuant to subsection (a) of this Section.
- c) The Board may grant a waiver of the prefiling deadline or service requirement for good cause.
- d) Participants who do not pre-file their testimony will only be allowed to testify if time remains in that hearing day. The hearing will not be continued from day to day to accommodate participants who do not prefile.

(Source: Amended at 41 Ill. Reg. = _____, effective _____)

**SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS,
PRODUCTION OF INFORMATION, SUBPOENAS, PREHEARING
CONFERENCES, AND HEARINGS**

Section 102.400 Service and Filing of Documents

All documents must be served and filed in accordance with 35 Ill. Adm. Code 101. ~~Subpart~~ Subparts ~~Subpart~~ C and J.

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(Source: Amended at 41 Ill. Reg. = _____, effective _____)

Section 102.402 Motions, Production of Information, and Subpoenas

Motion practice, production of information and the issuance of subpoenas in regulatory proceedings is governed by 35 Ill. Adm. Code 101. All motions and responses must be filed with the Board and served upon the hearing officer, the proponent, the Agency, and all persons on any service list established under pursuant to Section 102.422(b) of this Part.

(Source: Amended at 41 Ill. Reg. = _____, effective _____)

Section 102.408 Prehearing Order

- a) *No record need be kept of the prehearing conference, nor shall any participant or the Board be bound by any discussions conducted at the prehearing conference [415 ILCS 5/27(d)].*
- b) *Notwithstanding subsection (a) of this Section, with the consent of all participants in the prehearing conference, the hearing officer may enter a prehearing order delineating issues to be heard, agreed facts, and other matters [415 ILCS 5/27(d)].*
- c) *If the participants in the prehearing conference agree to have a prehearing order entered under pursuant to subsection (b) of this Section, the hearing officer may require that those participants furnish a draft of a proposed order setting forth the substance of the agreements reached at the prehearing conference. The hearing officer will enter that order if he agrees that it sets forth the substance of the agreement. The order will identify which participants have agreed to the substance of the order.*
- d) *A prehearing order will not be binding on non-participants in the prehearing conference [415 ILCS 5/27(d)].*

(Source: Amended at 41 Ill. Reg. = _____, effective _____)

Section 102.410 Authorization of Hearing

- a) *The Clerk will assign a docket number to any proposal. All regulatory proposals will be placed on the Board agenda for determination of adequacy under the*

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applicable law and this Part. The proponent must cure any inadequacy identified by Board order before the proposal will proceed to hearing.

- b) The Board will schedule a hearing on a proposal if it finds that the proposal is *supported by an adequate statement of reasons, is accompanied by a petition signed by at least 200 persons, is not plainly devoid of merit and does not deal with a subject on which a hearing has been held within the preceding six months* [415 ILCS 5/28(a)].
- c) In accordance with Section 28(a) of the Act, if a proposal is made by the Agency, or DNR, *the Board shall schedule a public hearing without regard to the above conditions* in subsection (b) of this Section as soon as practicable [415 ILCS 5/28(a)].
- d) Under ~~pursuant~~Pursuant to Section 28 of the Act, *the Board may also in its discretion schedule a public hearing upon any proposal without regard to the above conditions* in subsection (b) of this Section [415 ILCS 5/28(a)].
- e) If the Board determines that a proposal meets the requirements of subsection (b) of this Section or is otherwise adequate under applicable law, and if any required filing fee has been paid, the Board will issue an order accepting the proposal for hearing. Such an order will be construed as starting the time clock for purposes of any first notice publication deadlines ~~under pursuant~~underpursuant to Sections 28.2 and 28.5 of the Act.
- f) When the Board authorizes a hearing, the Chairman will designate one or more attending Board members and a qualified hearing officer. A member of the Board may serve as hearing officer if otherwise qualified.
- g) The Board may consolidate proposals for hearing or decision.

(Source: Amended at 41 Ill. Reg. _____, effective _____.)

Section 102.412 Scheduling of Hearings

- a) Except as otherwise provided by applicable law, *no substantive regulation shall be adopted, amended, or repealed until after a public hearing within the area of the State concerned.* In the case of site-specific rules, a public hearing will be held in the affected area. Except as otherwise provided by applicable law, *in the*

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case of state-wide regulations, hearings shall be held in at least two areas. [415 ILCS 5/28(a)]

- b) If the proponent or any participant wishes to request a hearing beyond the number of hearings specified by the hearing officer, that person must demonstrate, in a motion to the hearing officer, that failing to hold an additional hearing would result in material prejudice to the movant. The motion may be oral, if made at hearing, or written. The movant must show that he exercised due diligence in his participation in the proceeding and why an additional hearing, as opposed to the submission of written comments under pursuant to Section 102.108, is necessary.

(Source: Amended at 41 Ill. Reg. = _____, effective = _____)

Section 102.414 Hearings on the Economic Impact of New Proposals

- a) In accordance with Section 27(b) of the Act, except as otherwise provided by applicable law, before the adoption of any proposed rules, *the Board shall request that the Department of Commerce and Economic Opportunity Economic Opportunity ~~Economic Opportunity~~ conduct a study of the economic impact of the proposed rules. The Board shall conduct at least one public hearing on the economic impact of those new rules. At least 20 days before the hearing, the Board shall notify the public of the hearing and make the economic impact study, or the Department of Commerce and Economic Opportunity's Economic Opportunity's explanation for not producing an economic impact study, available to the public. Such public hearing may be held simultaneously or as a part of any Board hearing considering such new rules. In adopting any such new rule, the Board shall, in its written opinion, make a determination, based upon the evidence in the public hearing record, including, but not limited to, the economic impact study, as to whether the proposed rule has any adverse economic impact on the people of the State of Illinois. [415 ILCS 5/27(b)]*
- b) If information of the economic impact of a proposed regulation is given at a general hearing on the proposal, the Board need not hold a special hearing on only the economic impact.

(Source: Amended at 41 Ill. Reg. = _____, effective = _____)

Section 102.416 Notice of Hearing

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- a) The hearing officer will set a time and place for hearing. The Clerk will give notice of the hearing as follows or as otherwise required by applicable law:
 - 1) By notice in the Board's Environmental Register and on the Board's website;
 - 2) *At least 20 days prior to the scheduled date of the hearing the Board shall give notice of such hearing by public advertisement in a newspaper of general circulation in the area of the State concerned. The notice will include, the date, time, place and purpose of such hearing [415 ILCS 5/28(a)]; and*
 - 3) Where required by federal law, including air pollution and RCRA proposals, newspaper notice will be published at least 30 days before the hearing date.
- b) In accordance with Section 28(a) of the Act or as otherwise required by applicable law, the Clerk will give notice to the proponent and to all persons who are on the notice list in accordance with Section 102.422 of this Part.
- c) Unless otherwise required by applicable law, when a hearing is to be held to satisfy the public hearing requirement of the Clean Air Act (42 USC 7401 et seq.) for State Implementation Plan revisions, the Clerk will give notice of the hearing by publication in the Illinois Register in lieu of newspaper notice.
- d) Hearings that are continued on the hearing record for a period of 45 days or less do not require notice that complies with subsection (a), (b), or (c) of this Section.

(Source: Amended at 41 Ill. Reg. = _____, effective _____)

Section 102.418 Record

All oral testimony will be recorded stenographically. The proposal and all attachments, the transcript, all written testimony, all exhibits admitted in connection with the hearing, and all written submissions filed with the Clerk under Section 102.108 of this Part before or after the close of the hearing will constitute the record.

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(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.422 Notice and Service Lists

- a) The Clerk's Office will maintain a notice list for each regulatory proceeding. The notice list will consist of those persons who have furnished their names and addresses to the Clerk's Office concerning the proposal. The Clerk will serve a copy of all Board orders and hearing officer orders upon the persons appearing on the notice list.
- b) The hearing officer may establish a service list for any regulatory proceeding, in addition to the notice list. Unless ordered otherwise by the hearing officer, participants must serve copies of all their respective filings upon the persons appearing on the service list. In deciding whether to establish a service list, factors that the hearing officer will consider include the complexity of the proceeding and the number of participants. For purposes of fast-track rulemakings under Section 28.5 of the Act, participants of record will be the individuals on the service list.
- c) The Board will not accept general requests to appear on all notice lists. Interested persons must submit their names and addresses for each proceeding in accordance with subsection (a) of this Section.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.424 Prehearing ~~Submission~~ Filings of Testimony, Questions, Responses, and Exhibits

- a) The proponent must file all written testimony and any related exhibits 21 days before the hearing at which the witness testifies, unless the hearing officer directs otherwise to prevent material prejudice or undue delay.
- b) The hearing officer may require the prehearing filing of testimony, questions, responses, and any related exhibits by the proponent or participants other than the proponent if the hearing officer determines that the procedure will provide for a more efficient hearing.
- c) All prehearing testimony, questions, responses, and any related exhibits must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h). Persons

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filing these prehearing documents must serve them in accordance with 35 Ill. Adm. Code 101.304(c) upon the hearing officer, the Agency, the Attorney General's Office, DNR, the proponent, and each participant appearing on any service list, unless otherwise specified by the hearing officer. The service must be initiated on or before the date that the prehearing documents are filed with the Clerk.

- d) All prehearing testimony, questions, responses, and any related exhibits must be labeled with the docket number of the proceeding, the name of the witness corresponding to the material, and the title of the material.
- e) The proponent and each participant who has filed testimony, questions, responses, or any related exhibits before hearing must bring to the hearing the number of paper copies of the material that the hearing officer designates.

~~f)~~ d Testimony, questions, and responses that are timely filed before the hearing will be entered into the record as if read, unless the hearing officer determines that it will aid public understanding to have the material read at the hearing. All persons testifying will be sworn and subject to cross-examination. Modifications to prehearing documents may be allowed by the hearing officer at the hearing if the modifications are either nonsubstantive in nature or would not materially prejudice another person's participation at the hearing. Objections to hearing officer rulings allowing or disallowing the modifications are waived unless raised at the hearing.

~~g)~~ g When prehearing filing of testimony, questions, responses, and any related exhibits is required under pursuant to subsection (a) or (b), material that is not timely filed will be allowed at the hearing only if time permits and the hearing officer determines that allowing the material will not materially prejudice the proponent or any other participant. Any of these documents that is not allowed at the hearing because it was not timely filed before the hearing can be filed after the hearing as a public comment.

- h) For a videoconference hearing under Section 102.114, in addition to the other requirements of this Section, all written testimony, questions, responses, and any related exhibits, as well as any other document to be offered as a hearing exhibit, must be received by the Clerk's Office at least 24 hours before the scheduled start of the hearing. Any of these documents that is not filed at least 24 hours before the scheduled start of the videoconference hearing will not be allowed at the

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hearing, but can be filed after the hearing as a public comment.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART E: CERTIFICATION OF REQUIRED RULES

Section 102.502 Challenge to Agency Certification

- a) If any person wishes to challenge the Agency's certification that a proposed rule is a required rule, that person must file an objection to that certification within 21 days after the date of the Board's order accepting a proposal for hearing. The objection must state the reasons that the objector believes that the proposed rule is not a required rule, and must include all arguments that the objector wishes the Board to consider. A copy of the objection must be served upon the Agency, the Attorney General's Office, and DNR.
- b) The Agency may file a response to any objection within 14 days after the service of that objection. No reply by the objector will be allowed, unless the Board orders otherwise to avoid material prejudice.
- c) No hearing will be held on any objection filed under pursuant to this Section.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.504 Board Determination

- a) The Board will rule upon any objection filed under pursuant to this Subpart within 60 days after the date that the Board accepts a proposal for hearing.
- b) In ruling upon an objection to an Agency certification, the Board will consider all information in the record of that proceeding, including the proposal, the objection, and the Agency response to the objection. The burden of proof is on the objector.
- c) The Board will give notice of its determination to the objector, the Agency, DNR, and any person who has asked to be placed on the notice list pursuant to Section 102.422 of this Part for that proposal.
- d) Orders entered pursuant to this Section are interlocutory in nature and may be appealed only pursuant to 35 Ill. Adm. Code 101.308.

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(Source: Amended at 41 Ill. Reg. ~~_____~~, effective ~~_____~~)

SUBPART F: BOARD ACTION

Section 102.604 First Notice of Proposed Regulations

Except when otherwise directed by applicable law, the Board will give first notice of its proposed adoption, amendment, or repeal of regulations under pursuant to Section 5-40 of the IAPA [5 ILCS 100/5-40]. The first notice period will be at least 45 days, and will begin on the day that first notice is published in the Illinois Register. The Board will accept written comments from any person concerning the proposed regulations during the first notice period.

(Source: Amended at 41 Ill. Reg. ~~_____~~, effective ~~_____~~)

Section 102.606 Second Notice of Proposed Regulations

- a) Except when otherwise directed by applicable law, the Board will give second notice of its proposed adoption, amendment, or repeal of regulations to JCAR. The second notice period will begin on the date written notice is received by JCAR, and will expire 45 days after that date, except as provided by Section 5-40 of the IAPA [5 ILCS 100/5-40]. The Board will accept comments only from JCAR during the second notice period.
- b) After the beginning of the second notice period, no substantive changes will be made to the proposed regulation, except in response to objections or suggestions from JCAR. Those changes will be made under pursuant to Section 102.600 of this Part.

(Source: Amended at 41 Ill. Reg. ~~_____~~, effective ~~_____~~)

Section 102.608 Notice of Board Final Action

The Board will give notice of its final action on a proposal to the proponent, the Agency, DNR, the Attorney General, and all persons on the notice list. The Board will publish notice of its final action in the Environmental Register and on its ~~Web~~website~~Web~~ site, and will enter a written opinion stating the reasons in support of its final action.

(Source: Amended at 41 Ill. Reg. ~~_____~~, effective ~~_____~~)

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Section 102.614 Adoption of Peremptory Regulations

- a) When the Board finds that a peremptory rulemaking is necessary under pursuant to Section 5-50 of the IAPA, and states in writing its reasons for that finding, the Board will adopt that peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State under pursuant to Section 5-70 of the IAPA.
- b) Notice of the peremptory rulemaking will be published in the Illinois Register in accordance with Section 5-50 of the IAPA.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL

Section 102.706 Appeal

Any final Board order may be appealed to the appellate court within 35 days after the service of that order (see 35 Ill. Adm. Code 101.300(d)), under pursuant to Sections 29 and 41 of the Act [415 ILCS 5/29 and 41].

(Source: Amended at 41 Ill. Reg. = _____, effective = _____)

SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION

Section 102.820 Petition Contents

Each proponent must set forth the following information in its proposal:

- a) The language of the proposed rule, amendment, or repealer identifying the surface water body or water body segment being proposed for designation, amendment, or repeal as an ORW. Language being added must be indicated by underscoring, and language being deleted must be indicated by strike-outs. The proposed rule must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
- b) A statement describing the specific surface water body or water body segment for which the ORW designation, amendment, or repeal is requested and the present designation of the surface water body or water body segment;

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- c) A statement describing the area in which the specific surface water body or water body segment exists, including:
 - 1) The existence of wetlands or natural areas;
 - 2) The living organisms in that area, including endangered or threatened species of plants, aquatic life or wildlife listed under pursuant to the Endangered Species Act (16 USC 1531 et seq.) or the Illinois Endangered Species Protection Act [41 ILCS 10];
- d) A statement supporting the designation, the amendment, or the repeal, including the health, environmental, recreational, aesthetic or economic benefits of the designation, the amendment, or the repeal thereof;
- e) A statement identifying the anticipated impact on economic and social development of the ORW designation, amendment, or repeal. This statement must should include:
 - 1) Impacts on the regional economy;
 - 2) Impacts on regional employment;
 - 3) Impacts on the community;
 - 4) A comparison of the health and environmental impacts to the economic impact of an ORW designation;
- f) A statement describing the existing and anticipated uses of the specific surface water body or water body segment for which the ORW designation, amendment, or repeal is requested;
- g) A statement describing the existing water quality of the specific surface water body or water body segment warranting the ORW designation, amendment, or repeal;
- h) A synopsis of all testimony to be presented by the proponent at hearing;
- i) Any material to be incorporated by reference within the proposed designation under pursuant to Section 5-75 of the Administrative Procedure Act [5 ILCS

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100/5-75];

- j) *A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act [5 ILCS 140]. [5 ILCS 100/5-40(3.5)];*
- k) Documentation of service upon all persons required to be served under pursuant to Section 102.810 of this Part;
- l) Unless the proponent is the Agency or DNR Illinois Department of Natural Resources or receives a waiver by the Board, a petition signed by at least 200 persons, under pursuant to Section 28 of the Act and Section 102.160(a); and
- m) Where any information required by this Section is inapplicable or unavailable, a complete justification for such inapplicability or unavailability.

(Source: Amended at 41 Ill. Reg. = _____, effective _____)

Section 102.830 Board Action

- a) Dismissal
 - 1) Failure of the proponent to satisfy the content requirements for proposals under this Subpart or failure to respond to Board requests for additional information will render a proposal subject to dismissal for inadequacy.
 - 2) Failure of the proponent to pursue disposition of the petition in a timely manner will render a petition subject to dismissal. In making this determination, the Board may consider factors, including the history of the proceeding and the proponent's compliance with any Board or hearing officer orders.
 - 3) Any person may file a motion challenging the sufficiency of the petition under pursuant to 35 Ill. Adm. Code 101.Subpart E.

~~ILLINOIS REGISTER~~ JCAR350102-1701364r01

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- b) Designation of ORW. The Board must designate a surface water body or water body segment as an ORW and list it in 35 Ill. Adm. Code 303.206 if it finds:
- 1) The surface water body or water body segment is of exceptional ecological or recreational significance; and
 - 2) The benefits of protection of the surface water body or water body segment from future degradation outweigh the benefits of economic or social opportunities that will be lost if the surface water body or water body segment is designated as an ORW.

(Source: Amended at 41 Ill. Reg. = _____, effective _____.)

Document comparison by Workshare Compare on Friday, February 03, 2017
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Legend:	
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Statistics:	
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Insertions	66
Deletions	64
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	130

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE A: GENERAL PROVISIONS
3 CHAPTER I: POLLUTION CONTROL BOARD
4

5 PART 101
6 GENERAL RULES
7

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12	101.102	Severability
13	101.104	Repeals
14	101.106	Board Authority
15	101.108	Board Proceedings
16	101.110	Public Participation
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18	101.112	Bias and Conflict of Interest
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22

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26
27 SUBPART C: COMPUTATION OF TIME, FILING, SERVICE
28 OF DOCUMENTS, AND STATUTORY DECISION DEADLINES
29

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37 SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION
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- 58 101.514 Motions to Stay Proceedings
- 59 101.516 Motions for Summary Judgment
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65

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- 79 101.624 Examination of Adverse, Hostile or Unwilling Witnesses
- 80 101.626 Information Produced at Hearing
- 81 101.628 Statements from Participants
- 82 101.630 Official Notice
- 83 101.632 Viewing of Premises

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89		
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91		
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102	101.906	Judicial Review of Board Orders
103	101.908	Interlocutory Appeal
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123	101.ILLUSTRATION F	Permit Appeal
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- 137 101.APPENDIX F Notice of Withdrawal (Repealed)
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- 139 101.APPENDIX H Affidavit or Certificate of E-Mail Service
- 140 101.ILLUSTRATION A E-Mail Service by Non-Attorney
- 141 101.ILLUSTRATION B E-Mail Service by Attorney
- 142 101.APPENDIX I Consent to Receipt of E-Mail Service

143
 144 AUTHORITY: Implementing Sections 5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40,
 145 40.1, 40.2, 41, and 58.7 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.1, 7.2, 26,
 146 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7] and authorized by Sections 26
 147 and 27 of the Act [415 ILCS 5/26 and 27] and Section 25-101 of the Electronic Commerce
 148 Security Act [5 ILCS 175/25-101].

149
 150 SOURCE: Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; Part
 151 repealed, new Part adopted in R88-5A at 13 Ill. Reg. 12055, effective July 10, 1989; amended in
 152 R90-24 at 15 Ill. Reg. 18677, effective December 12, 1991; amended in R92-7 at 16 Ill. Reg.
 153 18078, effective November 17, 1992; old Part repealed, new Part adopted in R00-20 at 25 Ill.
 154 Reg. 446, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8743, effective June 8,
 155 2005; amended in R06-9 at 29 Ill. Reg. 19666, effective November 21, 2005; amended in R07-
 156 17 at 31 Ill. Reg. 16110, effective November 21, 2007; amended in R10-22 at 34 Ill. Reg. 19566,
 157 effective December 3, 2010; amended in R12-22 at 36 Ill. Reg. 9211, effective June 7, 2012;
 158 amended in R13-9 at 37 Ill. Reg. 1655, effective January 28, 2013; amended in R14-21 at 39 Ill.
 159 Reg. 2276, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12848, effective
 160 September 8, 2015; amended in R16-17 at 40 Ill. Reg. 7912, effective May 20, 2016; amended in
 161 R17-18 at 41 Ill. Reg. _____, effective _____.

162
 163 SUBPART A: GENERAL PROVISIONS

164
 165 **Section 101.106 Board Authority**

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- 167 a) The Board has the authority to *determine, define and implement the*
- 168 *environmental control standards applicable in the State of Illinois and may adopt*
- 169 *rules and regulations in accordance with Title VII of the Act [415 ILCS 5/5(b)].*
- 170
- 171 b) The Board has the *authority to conduct proceedings upon complaints charging*
- 172 *violations of the Act, any rule or regulation adopted under the Act, any permit or*

173 *term or condition of a permit, or any Board order; upon administrative citations;*
 174 *upon petitions for variances or adjusted standards; upon petitions for review of*
 175 *the Agency's final determinations on permit applications in accordance with Title*
 176 *X of the Act; upon petitions to remove seals under Section 34 of the Act; upon*
 177 *other petitions for review of final determination which are made pursuant to the*
 178 *Act or Board rules and which involve a subject which the Board is authorized to*
 179 *regulate. The Board may also conduct other proceedings as may be provided by*
 180 *the Act or any other statute or rule. [415 ILCS 5/5(d)]*

- 181
 182 c) In addition to subsections (a) and (b) ~~of this Section~~, the Board has the authority
 183 to act as otherwise provided by law.

184
 185 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 186

187 **Section 101.108 Board Proceedings**

- 188
 189 a) Board proceedings can generally be divided into two categories: rulemaking
 190 proceedings and adjudicatory proceedings.
 191
 192 b) The following are examples of Board rulemaking proceedings:
 193 Identical-in-Substance, Clean Air Act/Fast Track, Federally Required
 194 Rulemaking, General Rulemaking, and Site-Specific Rulemaking. Procedural
 195 rules for these types of proceedings can be found at 35 Ill. Adm. Code 102.
 196
 197 c) The following are examples of Board adjudicatory proceedings: Enforcement
 198 Proceedings (35 Ill. Adm. Code 103), Variance Petitions (35 Ill. Adm. Code 104),
 199 Adjusted Standard Petitions (35 Ill. Adm. Code 104), Permit Appeals (35 Ill.
 200 Adm. Code 105), Leaking Underground Storage Tank Appeals (35 Ill. Adm.
 201 Code 105), Pollution Control Facility Siting Appeals (35 Ill. Adm. Code 107), and
 202 Administrative Citations (35 Ill. Adm. Code 108).
 203
 204 d) Board decisions will be made at meetings open to the public. Except as provided
 205 in subsection (e) ~~of this Section~~, 34 members of the Board constitute a quorum,
 206 and 3 affirmative votes are required to adopt a Board decision.
 207
 208 e) At a hearing ~~underpursuant to~~ Section 34(d) of the Act to determine whether a
 209 seal should be removed, *at least one Board Member shall be present, and those*
 210 *Board Members present may render a final decision without regard to the*
 211 *requirements of Section 5(a) of the Act [415 ILCS 5/34(d)].*
 212

213 (Source: Amended at 41 Ill. Reg. _____, effective _____)
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215 **Section 101.110 Public Participation**

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- a) General. The Board encourages public participation in all of its proceedings. The extent to which the law allows for the participation varies, depending on the type of Board proceeding involved, the party status of the person or persons seeking to participate, and the rules governing that type of proceeding. Public participation in particular proceedings may be more specifically delineated by Board or hearing officer order consistent with the provisions of applicable law and the Board's procedural rules. (See Sections 101.114 and 101.628 ~~of this Part.~~)
 - b) Party/Non-Party Status. The issue of who constitutes a proper party in each type of adjudicatory proceeding before the Board is addressed in the rules. A person who wishes to participate in a Board adjudicatory proceeding and is not a party will be deemed a participant and will have only those rights specifically provided in these rules. A person who wishes to participate in a Board regulatory proceeding will be deemed a participant and will have only those rights specifically provided in these rules.
 - c) Amicus Curiae Briefs. Amicus curiae briefs may be filed in any adjudicatory proceeding by any interested person, provided permission is granted by the Board. Response briefs may be allowed by permission of the Board, but not as of right. The briefs must consist of argument only and may not raise facts that are not in evidence in the relevant proceeding. Amicus curiae briefs, and any responses, will be considered by the Board only as time allows. The briefs will not delay decision-making of the Board. (See also Section 101.302(k) ~~of this Part.~~)
 - d) Public Remarks at a Board Meeting. During the time period designated for public remarks ~~at a Board meeting~~, any person physically present ~~at the meeting~~, once recognized by the Chairman, may make public remarks to the Board concerning a proceeding listed on that meeting's agenda.
 - 1) Sign-In Sheet. Beginning at least 15 minutes before the scheduled start of each Board meeting, a public remarks sign-in sheet will be available to the public at the meeting. Anyone who wishes to make public remarks at the meeting must provide the following information on the sign-in sheet:
 - A) Full name;
 - B) Any person he or she is representing; and
 - C) The docket number of the proceeding on which he or she would like to make public remarks.

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- 2) Time Limits. A time period of up to 30 minutes at the beginning of each Board meeting, as designated on the meeting agenda, is reserved for public remarks. The Chairman may extend the duration of the public remarks portion of the meeting as necessary to accommodate persons who signed in under pursuant to subsection (d)(1) ~~of this Section~~. A person's public remarks on a given proceeding must not exceed five minutes in length, but this time period may be extended with the Chairman's permission.

 - 3) Nature of Public Remarks. Public remarks are not made under oath or affirmation and are not subject to cross-examination. Public remarks that are relevant to the proceeding for which they are made may be considered by the Board, but factual statements made during public remarks do not constitute evidence in the proceeding. The public remarks portion of a Board meeting is not a hearing and cannot be used to offer documentary or other physical evidence to the Board. The Chairman may direct persons to cease public remarks that are irrelevant, repetitious, or disruptive. Persons engaging in disorderly conduct may be asked by the Chairman to leave the meeting.

 - 4) Transcription. The Board will arrange for public remarks to be transcribed. Transcripts of public remarks will be made a part of the record of the proceeding to which the remarks correspond. (See 5 ILCS 120/2.06(g).)

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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285 **Section 101.112 Bias and Conflict of Interest**
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- a) No Board Member or Board employee may represent any other person in any Board proceeding.

 - b) No former Board Member or Board employee may represent any other person in any Board proceeding in which he or she participated personally and substantially as a Board Member or Board employee, unless the Board and, as applicable, all parties or proponents in the proceeding consent in writing after disclosure of the participation. For purposes of subsections (a) and (b) ~~of this Section~~, representation includes consulting on legal or technical matters, and Board employee means a person the Board employs on a full-time, part-time, contract, or intern basis.

 - c) The Board, on its own motion or the motion of any party, may disqualify a hearing officer for bias or conflict of interest as provided by Section 10-30(b) of

the IAPA [5 ILCS 100/10-30(b)].

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 101.114 Ex Parte Communications

- a) For the purposes of this Section, "interested person or party" *means a person or entity whose rights, privileges, or interests are the subject of or are directly affected by a regulatory, quasi-adjudicatory, investment, or licensing matter* [5 ILCS 430/5-50(d)].
- b) For the purposes of this Section, "Executive Ethics Commission" means the commission created by the State Officials and Employees Ethics Act [5 ILCS 430].
- c) **Adjudicatory and Regulatory Proceedings.** Board Members and Board employees ~~must~~should not engage in an ex parte communication designed to influence their action with respect to an adjudicatory or regulatory proceeding pending before or under consideration by the Board. (See definition of "ex parte communication" in Section 101.202 ~~of this Part.~~) Whenever practicable, an interested person or party or his or her official representative or attorney should make all communications with respect to an adjudicatory or regulatory proceeding pending before or under consideration by the Board in writing and address them to the Clerk rather than to individual Board Members or Board employees. (See Sections 101.110 and 101.628 ~~of this Part.~~)
- d) Nothing in this Section precludes Board Members or Board employees from receiving informal complaints about individual pollution sources, or forbids the administrative contacts as would be appropriate for judges and other judicial officers. Information about a pollution source included in the record of a regulatory proceeding is not an ex parte communication with respect to any adjudicatory proceeding concerning the pollution source.
- e) When the Clerk on behalf of the Board, a Board member, or a Board employee receives an ex parte communication from an interested person or party or his or her official representative or attorney, the recipient, in consultation with the Board's ethics officer or his or her designee, must promptly memorialize the communication and make it part of the record of the proceeding. To make an oral ex parte communication part of the record, the substance of the oral communication, along with the identity of each person involved in the communication, will be either set forth in a memorandum and placed in the record or announced on the record at a public hearing.

- 344 f) When the Clerk on behalf of the Board, a Board member, or a Board employee
 345 receives an ex parte communication, other than an ex parte communication
 346 received from an interested person or party or his or her official representative or
 347 attorney, that communication must be promptly reported to the Board's ethics
 348 officer or his or her designee *by the recipient of the communication and by any*
 349 *other employee of the Board who responds to the communication* [5 ILCS 430/5-
 350 50(c)].
 351
- 352 1) *The ethics officer* or his or her designee, in consultation with the recipient
 353 of the ex parte communication, must ensure *that the ex parte*
 354 *communication is promptly made part of the record of the proceeding* [5
 355 ILCS 430/5-50(c)].
 356
- 357 2) *The ethics officer* or his or her designee, in consultation with the recipient
 358 of the ex parte communication, must *promptly file the ex parte*
 359 *communication with the Executive Ethics Commission, including:*
 360
- 361 A) *All written communications;*
 362
- 363 B) *All written responses to the communications;*
 364
- 365 C) *A memorandum prepared by the ethics officer stating the nature*
 366 *and substance of all oral communications;*
 367
- 368 D) *The identity and job title of the person to whom each*
 369 *communication was made;*
 370
- 371 E) *All responses made;*
 372
- 373 F) *The identity and job title of the person making each response;*
 374
- 375 G) *The identity of each person from whom the written or oral ex parte*
 376 *communication was received;*
 377
- 378 H) *The individual or entity represented by that person;*
 379
- 380 I) *Any action the person requested or recommended; and*
 381
- 382 J) *Any other pertinent information.*
 383
- 384 3) *The disclosure shall also contain the date of any ex parte communication.*
 385 [5 ILCS 430/5-50(c)]
 386

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART B: DEFINITIONS

Section 101.202 Definitions for Board's Procedural Rules

Unless otherwise provided in 35 Ill. Adm. Code 101-130, or unless a different meaning of a word or term is clear from the context, the following definitions also apply to the Board's procedural rules, found in 35 Ill. Adm. Code 101 through 130:

"Act" means the Environmental Protection Act [415 ILCS 5].

"Adjudicatory proceeding" means an action of a quasi-judicial nature brought before the Board ~~under~~pursuant to authority granted to the Board under Section 5(d) of the Act or as otherwise provided by law. Adjudicatory proceedings include enforcement, variance, permit appeal, pollution control facility siting appeal, Underground Storage Tank (UST) Fund determination, water well set back exception, adjusted standard, and administrative citation proceedings. Adjudicatory proceedings do not include regulatory, quasi-legislative, or informational proceedings.

"Adjusted standard" or "AS" means an alternative standard granted by the Board in an adjudicatory proceeding ~~under~~pursuant to Section 28.1 of the Act and 35 Ill. Adm. Code 104.Subpart D. The adjusted standard applies instead of the rule or regulation of general applicability.

"Administrative citation" or "AC" means a citation issued by the Agency or by a unit of local government acting as the Agency's delegate. (See 35 Ill. Adm. Code 108.)

"Administrative citation review" or "administrative citation appeal" means a petition for review of an administrative citation. (See 35 Ill. Adm. Code 108.)

"Affidavit" means a sworn, signed statement witnessed by a notary public.

"Agency" means the Illinois Environmental Protection Agency as established by Section 4 of the Act.

"Agency recommendation" means the document filed by the Agency ~~under~~pursuant to Sections 37(a) and 28.1(d)(3) of the Act in which the Agency provides its recommended disposition of a petition for variance or an adjusted standard. This includes a recommendation to deny, or a recommendation to grant with or without conditions. (See 35 Ill. Adm. Code 104.218 and 104.416.)

430
431 "Amicus curiae brief" means a brief filed in a proceeding by any interested person
432 who is not a party. (See Sections 101.110 and 101.628 of this Part.)
433
434 "Applicant" means any person who submits, or has submitted, an application for a
435 permit or for local siting approval ~~underpursuant to~~ any of the authorities to issue
436 permits or granting of siting approval identified in Sections 39, 39.1, and 39.5 of
437 the Act.
438
439 "Article" means *any object, material, device or substance, or whole or partial*
440 *copy thereof, including any writing, record, document, recording, drawing,*
441 *sample, specimen, prototype, model, photograph, culture, microorganism,*
442 *blueprint or map* [415 ILCS 5/7.1].
443
444 "Attorney General" means the Attorney General of the State of Illinois or
445 representatives thereof.
446
447 "Authorized representative" means any person who is authorized to act on behalf
448 of another person.
449
450 "Board" means the Illinois Pollution Control Board as created in Section 5 of the
451 Act or, if applicable, its designee.
452
453 "Board decision" means an opinion or an order voted in favor of by at least three
454 members of the Board at an open Board meeting except in a proceeding to remove
455 a seal under Section 34(d) of the Act.
456
457 "Board designee" means an employee of the Board who has been given authority
458 by the Board to carry out a function for the Board (e.g., the Clerk, Assistant Clerk
459 of the Board, or hearing officer).
460
461 "Board meeting" means an open meeting held by the Board ~~underpursuant to~~
462 Section 5(a) of the Act in which the Board makes its decisions and
463 determinations.
464
465 "Board's procedural rules" means the Board's regulations set forth at 35 Ill. Adm.
466 Code 101 through 130.
467
468 "Brief" means a written statement that contains a summary of the facts of a
469 proceeding, the pertinent laws, and an argument of how the law applies to the
470 facts supporting a position.
471
472 "CAAPP" means the Clean Air Act Permit Program, as adopted in Section 39.5 of

473 the Act.
474
475 "Certificate of acceptance" means a certification, executed by a successful
476 petitioner in a variance proceeding, in which the petitioner agrees to be bound by
477 all terms and conditions that the Board has affixed to the grant of variance.
478
479 "Chairman" means the Chairman of the Board designated by the Governor
480 ~~underpursuant to~~ Section 5(a) of the Act.
481
482 "Citizen's enforcement proceeding" means an enforcement action brought before
483 the Board ~~underpursuant to~~ Section 31(d) of the Act by any person who is not
484 authorized to bring the action on behalf of the People of the State of Illinois.
485
486 "Clean Air Act" or "CAA" *means the federal Clean Air Act, as now and hereafter*
487 *amended, 42 USC 7401 et seq. [415 ILCS 5/39.5]*
488
489 "Clean Water Act" means the federal Clean Water Act, 33 USC 1251 et seq.
490
491 "Clerk" means the Clerk of the Board.
492
493 "Clerk's Office On-Line" or "COOL" means the Board's web-based file
494 management system that allows electronic filing of and access to electronic
495 documents in the records of the Board's adjudicatory and regulatory proceedings.
496 COOL is located on the Board's website at [http://www.ipcb.state.il.us/COOL/](http://www.ipcb.state.il.us/COOL/external/)
497 [external/](http://www.ipcb.state.il.us/COOL/external/).
498
499 "Complaint" means the initial filing that begins an enforcement proceeding
500 ~~underpursuant to~~ Section 31 of the Act and 35 Ill. Adm. Code 103.
501
502 "Compliance plan" means a detailed description of a program designed to achieve
503 compliance with the Act and Board regulations.
504
505 "Copy" means *any facsimile, replica, photograph or other reproduction of an*
506 *article, and any note, drawing or sketch made of or from an article [415 ILCS*
507 *5/7.1].*
508
509 "Counter-complaint" means a pleading that a respondent files setting forth a claim
510 against a complainant. (See 35 Ill. Adm. Code 103.206.)
511
512 "Cross-complaint" means a pleading that a party files setting forth a claim against
513 a co-party. (See 35 Ill. Adm. Code 103.206.)
514
515 "Cross-media impacts" means impacts that concern multiple environmental areas,

516 such as air, land and/or water.

517
518 "Decision date" means the date of the Board meeting immediately preceding the
519 decision deadline.

520
521 "Decision deadline" means the last day of any decision period, as established by
522 law, within which the Board is required to render a decision in an adjudicatory
523 proceeding. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1
524 of the Act that establish 120-day decision deadlines for variances, permit appeals,
525 and review of pollution control facility siting decisions respectively.)

526
527 "Decision period" means the period of time established by the Act within which
528 the Board is required to make a Board decision in certain adjudicatory
529 proceedings. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1
530 of the Act that establish 120-day decision deadlines for variances, permit appeals,
531 and review of pollution control facility siting decisions, respectively.)

532
533 "Deinked stock" means paper that has been processed to remove inks, clays,
534 coatings, binders and other contaminants [415 ILCS 20/2.1].

535
536 "Delegated unit" means the unit of local government to which the Agency has
537 delegated its administrative citation or other function under pursuant to Section
538 4(r) of the Act.

539
540 "Digital signature" means a type of electronic signature created by transforming
541 an electronic document using a message digest function and encrypting the
542 resulting transformation with an asymmetric cryptosystem using the signer's
543 private key such that any person having the initial untransformed electronic
544 document, the encrypted transformation, and the signer's corresponding public
545 key can accurately determine whether the transformation was created using the
546 private key that corresponds to the signer's public key and whether the initial
547 electronic document has been altered since the transformation was made. A
548 digital signature is a security device. [5 ILCS 175/5-105]

549
550 "Discovery" means a pre-hearing process that can be used to obtain facts and
551 information about the adjudicatory proceeding in order to prepare for hearing.
552 The discovery tools include depositions upon oral and written questions, written
553 interrogatories, production of documents or things, and requests for admission.

554
555 "DNR" means the Illinois Department of Natural Resources.

556
557 "DOA" means the Illinois Department of Agriculture.

558

559 "Duplicative" means the matter is identical or substantially similar to one brought
560 before the Board or another forum.
561

562 "Electronic" includes *electrical, digital, magnetic, optical, electromagnetic, or*
563 *any other form of technology that entails capabilities similar to these technologies*
564 [5 ILCS 175/5-105].
565

566 "Electronic document" means any notice, information, or filing generated,
567 communicated, received or stored by electronic means to use in an information
568 system or to transmit from one information system to another. (See 5 ILCS
569 175/5-105.)
570

571 "Electronic signature" means *a signature in electronic form attached to or*
572 *logically associated with an electronic document* [5 ILCS 175/5-105].
573

574 "Environmental Management System Agreement" or "EMSA" means the
575 agreement between the Agency and a sponsor, entered into under Section 52.3 of
576 the Act and 35 Ill. Adm. Code 187, that describes the innovative environmental
577 measures to be implemented, schedules to attain goals, and mechanisms for
578 accountability.
579

580 "Enforcement proceeding" means an adjudicatory proceeding brought upon a
581 complaint filed under pursuant to Section 31 of the Act by the Attorney General,
582 State's Attorney, or other persons, in which the complaint alleges violation of the
583 Act, any rule or regulation adopted under the Act, any permit or term or condition
584 of a permit, or any Board order.
585

586 "EPRR Act" means the Electronic Products Recycling and Reuse Act [415 ILCS
587 150].
588

589 "Ex parte communication" means *any written or oral communication by any*
590 *person that imparts or requests material information or makes a material*
591 *argument regarding potential action concerning regulatory, quasi-adjudicatory,*
592 *investment, or licensing matters pending before or under consideration by the*
593 Board. "Ex parte communication" does not include the following:
594

595 *statements by a person publicly made in a public forum, including*
596 *pleadings, transcripts, public comments, and public remarks made part of*
597 *the proceeding's record* [5 ILCS 430/5-50(b)(i)];
598

599 *statements regarding matters of procedure and practice, such as format,*
600 *the number of copies required, the manner of filing, and the status of a*
601 *matter* [5 ILCS 430/5-50(b)(ii)]; and

602
603 *statements made by a State employee of the Board to Board members or*
604 *other employees of the Board [5 ILCS 430/5-50(b)(iii)]. For purposes of*
605 *this definition, "Board employee" means a person the Board employs on a*
606 *full-time, part-time, contract or intern basis. (See Section 101.114 of this*
607 *Part.)*

608
609 "Fast Track rulemaking" means a Clean Air Act rulemaking conducted
610 underpursuant to Section 28.5 of the Act.

611
612 "Federally required rule" means *a rule that is needed to meet the requirements of*
613 *the federal Clean Water Act, Safe Drinking Water Act, Clean Air Act (including*
614 *required submission of a State Implementation Plan), or Resource Conservation*
615 *and Recovery Act, other than a rule required to be adopted under subsection (c)*
616 *of Section 13, Section 13.3, Section 17.5, subsection (a) or (d) of Section 22.4, or*
617 *subsection (a) of Section 22.40 [415 ILCS 5/28.2].*

618
619 "Filing" means the act of delivering a document or article into the custody of the
620 Clerk with the intention of incorporating that document or article into the record
621 of a proceeding before the Board. The Clerk's Office is located at 100 West
622 Randolph Street, Suite 11-500, Chicago IL 60601. Electronic filing is done
623 through COOL on the Board's website.

624
625 "Final order" means an order of the Board that terminates the proceeding leaving
626 nothing further to litigate or decide and that is subject to judicial review. (See
627 Subpart I of this Part.)

628
629 "Frivolous" means a request for relief that the Board does not have the authority
630 to grant, or a complaint that fails to state a cause of action upon which the Board
631 can grant relief.

632
633 "Hearing" means a public proceeding conducted by a hearing officer where the
634 parties and other interested persons, as provided for by law and the Board's
635 procedural rules, present evidence and argument regarding their positions.

636
637 "Hearing officer" means a person licensed to practice law in the State of Illinois
638 who presides over hearings and otherwise carries out record development
639 responsibilities as directed by the Board.

640
641 "IAPA" means the Illinois Administrative Procedure Act [5 ILCS 100].

642
643 "Identical-in-substance rules" or "identical-in-substance regulations" means *State*
644 *regulations which require the same actions with respect to protection of the*

645 *environment, by the same group of affected persons, as would federal regulations*
646 *if USEPA administered the subject program in Illinois [415 ILCS 5/7.2].*
647

648 "Initial filing" means the filing that initiates a Board proceeding and opens a
649 docket. For instance, the initial filing in an enforcement proceeding is the
650 complaint; in a permit appeal it is a petition for review; and in a regulatory
651 proceeding it is the proposal.
652

653 "Innovative environmental measures" means any procedures, practices,
654 technologies or systems that pertain to environmental management and are
655 expected to improve environmental performance when applied. (See 35 Ill. Adm.
656 Code 106.Subpart G.)
657

658 "Inquiry hearing" means a hearing conducted by the Board for the purpose of
659 seeking input and comment from the public regarding the need for a rulemaking
660 proceeding in a specific area.
661

662 "Interlocutory appeal" means an appeal of a Board decision to the appellate court
663 that is not dispositive of all the contested issues in the proceeding. (See Section
664 101.908 ~~of this Part.~~) An interlocutory appeal may also be the appeal of a hearing
665 officer ruling to the Board. (See Section 101.518 ~~of this Part.~~)
666

667 "Intervenor" means a person, not originally a party to an adjudicatory proceeding,
668 who voluntarily participates as a party in the proceeding with the permission~~leave~~
669 of the Board. (See Section 101.402 ~~of this Part.~~)
670

671 "Intervention" means the procedure by which a person, not originally a party to an
672 adjudicatory proceeding, voluntarily comes into the proceeding as a party with the
673 permission~~leave~~ of the Board. (See Section 101.402 ~~of this Part.~~)
674

675 "JCAR" means the Illinois General Assembly's Joint Committee on
676 Administrative Rules established by the IAPA (see 5 ILCS 100/5-90).
677

678 "Joinder" means the procedure by which the Board adds a person, not originally a
679 party to an adjudicatory proceeding, as a party to the proceeding. (See Section
680 101.403 ~~of this Part~~ and 35 Ill. Adm. Code 103.206.)
681

682 "Misnomer" means a mistake in name, giving an incorrect name in a complaint or
683 other document with respect to any properly included party.
684

685 "Motion" means a request made to the Board or the hearing officer for the
686 purposes of obtaining a ruling or order directing or allowing some act to be done
687 in favor of the movant. (See definition of "movant" in this Section.)

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"Movant" means the person who files a motion.

"New pollution control facility" means *a pollution control facility initially permitted for development or construction after July 1, 1981; or the area of expansion beyond the boundary of a currently permitted pollution control facility; or a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste* [415 ILCS 5/3.330(b)].

"Non-disclosable information" means *information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; information concerning secret manufacturing processes or confidential data submitted by any person under the Act* [415 ILCS 5/7(a)].

"Notice list" means the list of persons in a regulatory proceeding who will receive all Board opinions and orders and all hearing officer orders. Persons on a notice list generally do not receive copies of motions, public comments, or testimony. (See definition of "service list" in this Section.) (See also 35 Ill. Adm. Code 102.422.)

"Notice to reinstate" means a document filed that recommences the decision period after a decision deadline waiver has been filed. The notice will give the Board a full decision period in which to make a decision. (See Section 101.308 of this Part.)

"Oral argument" means a formal verbal statement of advocacy on a proceeding's legal questions made at a Board meeting with the Board's permission. (See Section 101.700 of this Part.)

"OSFM" means Office of the State Fire Marshal.

"OSFM appeal" means an appeal of an OSFM final decision concerning eligibility and deductibility made under pursuant to Title XVI of the Act.

"Participant" means any person, not including the Board or its staff, who takes part in an adjudicatory proceeding who is not a party, or a person who takes part in a regulatory or other quasi-legislative proceeding before the Board. A person becomes a participant in any of several ways, including filing a comment, being added to the notice list of a particular proceeding, testifying at hearing, or making public remarks at a Board meeting.

731 "Participant in a CAAPP Comment Process" means a person who takes part in a
732 Clean Air Act Permit Program (CAAPP) permit hearing before the Agency or
733 comments on a draft CAAPP permit.
734

735 "Party" means the person by or against whom an adjudicatory proceeding is
736 brought or who is granted party status by the Board through intervention or
737 joinder.
738

739 "Party in interest" means the Agency when asked to conduct an investigation
740 under pursuant to Section 30 of the Act during an ongoing proceeding. (See
741 Section 101.404 of this Part.)
742

743 "Peremptory rulemaking" means *any rulemaking that is required as a result of*
744 *federal law, federal rules and regulations, or an order of a court, under*
745 *conditions that preclude compliance with the general rulemaking requirements of*
746 *Section 5-40 of the IAPA and that preclude the exercise by the Board as to the*
747 *content of the rule it is required to adopt.* [5 ILCS 100/5-50]
748

749 "Permit appeal" means an adjudicatory proceeding brought before the Board
750 under pursuant to Title X of the Act.
751

752 "Person" means *any individual, partnership, co-partnership, firm, company,*
753 *limited liability company, corporation, association, joint stock company, trust,*
754 *estate, political subdivision, state agency, or any other legal entity, or their legal*
755 *representative, agent or assigns.* [415 ILCS 5/3.315]
756

757 "Petition" means the initial filing in an adjudicatory proceeding other than an
758 enforcement proceeding, including permit appeals, OSFM appeals, UST appeals,
759 appeals of pollution control facility siting decisions, variances and adjusted
760 standards.
761

762 "Pilot project" means an innovative environmental project that covers one or more
763 designated facilities, designed and implemented in the form of an EMSA. (See
764 Section 52.3 of the Act.)
765

766 "Pollution control facility" is defined at Section 3.330(a) of the Act for purposes
767 of this Part and 35 Ill. Adm. Code 107.
768

769 "Pollution control facility siting appeal" means an appeal of a decision made by a
770 unit of local government filed with the Board under pursuant to Section 40.1 of the
771 Act.
772

773 "Postconsumer material" means *paper, paperboard, and fibrous wastes from*

774 *retail stores, office buildings, homes, and so forth, after the waste has been*
775 *passed through its end usage as a consumer item, including used corrugated*
776 *boxes, old newspapers, mixed waste paper, tabulating cards, and used cordage.*
777 *Additionally, it includes all paper, paperboard, and other fibrous wastes that are*
778 *diverted or separated from the municipal solid waste stream [415 ILCS*
779 *20/3(f)(2)(i) and (ii)]. (See also definition of "recycled paper" in this Section.)*
780

781 "Prehearing conference" means a meeting held in an adjudicatory case to
782 determine the status of the proceedings. A prehearing conference may also be a
783 meeting held in a regulatory proceeding prior to the hearing, the purposes of
784 which *shall be to maximize understanding of the intent and application of the*
785 *proposal, if possible, and to attempt to identify and limit the issues of*
786 *disagreement among participants to promote efficient use of time at hearing [415*
787 *ILCS 5/27(d)]. (See 35 Ill. Adm. Code 102.404 and 102.406.)*
788

789 "Proceeding" means an action conducted before the Board ~~underpursuant to~~
790 authority granted under Section 5 of the Act or as otherwise provided by law.
791 Board proceedings are of two types: quasi-legislative (rulemaking and inquiry
792 proceedings) and quasi-judicial (adjudicatory proceedings).
793

794 "Proponent" means any person, not including the Board or its staff, who submits a
795 regulatory proposal to the Board for the adoption, amendment, or repeal of a
796 regulation.
797

798 "Provisional variance" means a short term variance sought by an applicant and
799 issued by the Agency ~~underpursuant to~~ Section 35(b) of the Act. (See 35 Ill.
800 Adm. Code 104.Subpart C.)
801

802 "Public comment" means information submitted to the Board during a pending
803 proceeding either by oral statement made at hearing or written statement filed
804 with the Board.
805

806 "Public remarks" mean an oral statement that is publicly made at a Board meeting
807 and directed to the Board concerning a proceeding listed on that meeting's agenda.
808 (See Section 101.110(d) ~~of this Subpart.~~)
809

810 "PWSO Act" means the Public Water Supply Operations Act [415 ILCS 45].
811

812 "Qualitative description" means a narrative description pertaining to attributes and
813 characteristics.
814

815 "Quantitative description" means a numerically based description pertaining to
816 attributes and characteristics.

817
818 "RCRA variance" means a variance from a RCRA rule or a RCRA permit
819 required underpursuant to Section 21(f) of the Act.
820
821 "Record" means the official collection, as kept by the Clerk, of all documents and
822 exhibits including pleadings, transcripts, and orders filed during the course of a
823 proceeding.
824
825 "Recycled paper" means paper which contains at least 50% recovered paper
826 material. The recovered paper material must contain at least 45% deinked stock
827 or postconsumer material. (See also "postconsumer material" in this Section.)
828
829 "Regulatory hearing" or "proceeding" means a hearing or proceeding held
830 underpursuant to Title VII of the Act or other applicable law with respect to
831 regulations.
832
833 "Regulatory relief mechanisms" means variances, provisional variances, and
834 adjusted standards. (See 35 Ill. Adm. Code 104.)
835
836 "Representing" means, for purposes of Part 130, *describing, depicting,*
837 *containing, constituting, reflecting or recording* [415 ILCS 5/7.1].
838
839 "Requester" means, for purposes of Part 130, the person seeking from the agency
840 the material claimed or determined to be a trade secret (see 415 ILCS 5/7.1).
841
842 "Resource Conservation and Recovery Act" or "RCRA" means the Solid Waste
843 Disposal Act, as amended by the Resource Conservation and Recovery Act of
844 1976 (42 USC 6901 et seq.).
845
846 "Responsible Operator in Charge" means an individual who is designated as a
847 Responsible Operator in Charge of a community water supply under Section 1 of
848 the PWSO Act.
849
850 "Rulemaking" or "rulemaking proceeding" means a proceeding brought under
851 Title VII of the Act or other applicable law for the purpose of adoption,
852 amendment, or repeal of a regulation.
853
854 "Sanction" means a penalty or other mechanism used by the Board to provide
855 incentives for compliance with the Board's procedural rules, Board orders or
856 hearing officer orders. (See also Subpart H ~~of this Part.~~)
857
858 "SDWA" means the federal Safe Drinking Water Act (42 USC 300f et seq.).
859

860 "Service" means delivery of a document upon a person. (See Sections 101.300(c)
861 and 101.304 of this Part.)
862

863 "Service list" means the list of persons designated by the hearing officer or Clerk
864 in a regulatory or adjudicatory proceeding upon whom parties or participants must
865 serve motions, prefiled questions and prefiled testimony and any other documents
866 that the parties or participants file with the Clerk unless the hearing officer
867 otherwise directs. (See definition of "notice list" in this Section.) (See also 35 Ill.
868 Adm. Code 102.422.)
869

870 "Severance" means the separation of a proceeding into two or more independent
871 proceedings, each of which terminates in a separate, final judgment.
872

873 "Site-specific rule or regulation" means a proposed or adopted regulation, not of
874 general applicability, that applies only to a specific facility, geographic site, or
875 activity. (See 35 Ill. Adm. Code 102.208.)
876

877 "Sponsor" means the proponent of a pilot project that enters into an EMSA with
878 the Agency.
879

880 "State enforcement proceeding" means an enforcement proceeding, other than a
881 citizen's enforcement proceeding, that is brought underpursuant to Section 31 of
882 the Act.
883

884 "Stay" means a temporary suspension of the regular progress of a proceeding
885 underpursuant to an order of the Board or by operation of law. (See Section
886 101.514 of this Part.)
887

888 "Subpoena" means a command to appear at a certain time and place to give
889 testimony upon a certain matter.
890

891 "Subpoena duces tecum" means a document that compels the production of
892 specific documents and other items at a specified time and place.
893

894 "Summary judgment" means the disposition of an adjudicatory proceeding
895 without hearing when the record, including pleadings, depositions and admissions
896 on file, together with any affidavits, shows that there is no genuine issue of
897 material fact, and that the moving party is entitled to judgment as a matter of law.
898 (See Section 101.516 of this Part.)
899

900 "Third party complaint" means a pleading that a respondent files setting forth a
901 claim against a person who is not already a party to the proceeding. (See 35 Ill.
902 Adm. Code 103.206.)

903
904 "Trade secret" means *the whole or any portion or phase of any scientific or*
905 *technical information, design, process (including a manufacturing process),*
906 *procedure, formula or improvement, or business plan which is secret in that it has*
907 *not been published or disseminated or otherwise become a matter of general*
908 *public knowledge, and which has competitive value. A trade secret is presumed*
909 *to be secret when the owner thereof takes reasonable measures to prevent it from*
910 *becoming available to persons other than those selected by the owner to have*
911 *access thereto for limited purposes. [415 ILCS 5/3.490]*
912

913 "Transcript" means the official recorded testimony from a hearing or public
914 remarks from a Board meeting.

915
916 "USEPA" means the United States Environmental Protection Agency.

917
918 "Underground storage tank appeal" or "UST appeal" means an appeal of an
919 Agency final decision made underpursuant to Title XVI of the Act.

920
921 "UST" means underground storage tank.

922
923 "Variance" means a temporary exemption from any specified regulation,
924 requirement or order of the Board granted to a petitioner by the Board
925 underpursuant to Title IX of the Act *upon presentation of adequate proof that*
926 *compliance with the rule or regulation, requirement or order of the Board would*
927 *impose an arbitrary or unreasonable hardship [415 ILCS 5/35(a)].*
928

929 "Waiver" means the intentional relinquishing of a known right, usually with
930 respect to a hearing before the Board or entry of a Board decision within the
931 decision period. (See also Section 101.308 ~~of this Part.~~)
932

933 "Website" means the Board's computer-based informational and filing service
934 accessed on the Internet at <http://www.ipcb.state.il.us>.

935
936 (Source: Amended at 41 Ill. Reg. _____, effective _____)
937

938 SUBPART C: COMPUTATION OF TIME, FILING, SERVICE
939 OF DOCUMENTS, AND STATUTORY DECISION DEADLINES
940

941 **Section 101.300 Computation of Time**
942

- 943 a) Computation of Time. Computation of any period of time prescribed in the Act,
944 other applicable law, or this Subpart will begin with the first calendar day
945 following the day on which the act, event or development occurs and will run

946 until the close of business on the last day, or the next business day if the last day
947 is a Saturday, Sunday or national or State legal holiday.
948

949 b) Date of Filing. Documents will be considered filed with the Clerk only if they are
950 filed in compliance with Section 101.302 and any other filing requirements
951 specified elsewhere in the Board's procedural rules (see 35 Ill. Adm. Code 101
952 through 130). Subpart J sets forth when electronic documents submitted to
953 COOL will be considered filed.
954

955 1) If a document is submitted to the Clerk for filing in person, by U.S. Mail,
956 by e-mail or facsimile ~~underpursuant to~~ Section 101.302(d), or by third-
957 party commercial carrier, the document is considered filed on the date it is
958 received by the Clerk. However, a document received by the Clerk after
959 4:30 p.m. is considered filed on the next business day. The Clerk will
960 mark the filing date on each filed document.
961

962 2) Notwithstanding subsection (b)(1), if the Clerk receives a document by
963 U.S. Mail or third-party commercial carrier after a filing deadline date, the
964 document will be deemed filed on:
965

966 A) The date the document was provided to the U.S. Postal Service; or
967

968 B) The date the document was provided to the third-party commercial
969 carrier for delivery to the Clerk within three business days.
970

971 3) For purposes of subsection (b)(2), documentation of when the document
972 being filed was provided to the U.S. Postal Service or the third-party
973 commercial carrier consists of the affidavit or certificate required by
974 Section 101.304(d)(2)(A) or (d)(4) and must accompany the document
975 being filed. In addition, for delivery by a third-party commercial carrier,
976 the affidavit or certificate must contain the filing party's representation
977 that the charge for delivery to the Clerk within three business days was
978 prepaid.
979

980 4) For purposes of Board decision deadlines, the decision period does not
981 begin until the date marked by the Clerk on the initial filing.
982

983 c) Date of Service. Documents will be considered served upon another party only if
984 they are served in compliance with Section 101.304 and any other service
985 requirements specified elsewhere in the Board's procedural rules. The date of
986 service is determined as follows:
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- 1) Personal Service. Personal service of a document is complete on the date the document was delivered, as specified in either the affidavit or certificate of service signed by the person who made personal delivery or the declaration of service signed by the process server who made personal delivery.
 - 2) Service by U.S. Mail or Third-Party Commercial Carrier with Recipient Signature. If a recipient's signature is recorded by the U.S. Postal Service or a third-party commercial carrier upon delivery of a document, service ~~by U.S. Mail or a third-party commercial carrier~~ is complete on the date the document was delivered, as specified in the signed delivery confirmation ~~signed by the recipient of service~~.
 - 3) Service by E-Mail or Facsimile. Service of a document by e-mail or facsimile is complete on the date the document was successfully transmitted, as specified in the affidavit or certificate of service, signed by the party to the proceeding who is serving the document. However, a document successfully e-mailed or faxed on a Saturday or Sunday, on a national or State legal holiday, or after 5:00 p.m. on a weekday is deemed served on the next business day.
 - 4) Service by U.S. Mail or Third-Party Commercial Carrier without Recipient Signature. If a recipient's signature is not recorded by the U.S. Postal Service or a third-party commercial carrier upon delivery of a document, service ~~by U.S. Mail or a third-party commercial carrier~~ is presumed complete four days after the date the document was provided to the U.S. Postal Service or the third-party commercial carrier.
 - A) The presumption applies only if an affidavit or certificate of service, signed by the party to the proceeding who is serving the document, states the following: the date, the time by when, and the place ~~where~~ the document was provided to the U.S. Postal Service or the third-party commercial carrier; the address appearing on the envelope or package containing the document; and that proper postage or the delivery charge was prepaid.
 - B) The presumption can be rebutted by proper proof, which may include delivery tracking information from the website of the U.S. Postal Service or the website of the third-party commercial carrier.
- d) Date of Board Decision and Date of Service of Final Board Decision.

- 1030 1) For purposes of statutory decision deadline proceedings, the date of the
1031 Board decision is the date of the Board meeting at which a final Board
1032 order was adopted by the vote of at least three Board members.
1033
- 1034 2) For purposes of appealing a final adjudicatory decision of the Board, the
1035 date of service of the final decision is the date on which the party receives
1036 the Board's certified mailing of the decision. ~~In~~Or, in the event of a timely
1037 filed motion for reconsideration filed underpursuant to Section 101.520,
1038 the date of service of the final decision is the date on which the party
1039 receives the Board's certified mailing of the Board order ruling upon the
1040 motion.
1041
- 1042 3) For purposes of appealing a final rulemaking decision of the Board in
1043 which a rule is adopted, amended, or repealed, a person is deemed to have
1044 been served with the final decision on the date on which the new rule, the
1045 amendment, or the repealer becomes effective under the IAPA. For
1046 purposes of appealing a final rulemaking decision in which no rule is
1047 adopted, amended, or repealed, the date of service of the final decision is
1048 the date on which the participant receives the Board's mailing of the
1049 decision. Or, in the event of a timely filed motion for reconsideration filed
1050 underpursuant to the Board's procedural rules (35 Ill. Adm. Code 102.700
1051 and 102.702), the date of service of the final decision is the date on which
1052 the participant receives the Board's mailing of the Board order ruling upon
1053 the motion.
1054

1055 (Source: Amended at 41 Ill. Reg. _____, effective _____)
1056

1057 **Section 101.302 Filing of Documents**
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- 1059 a) This Section contains the Board's general filing requirements. Additional
1060 requirements may exist for specific proceedings elsewhere in the Board's
1061 procedural rules (see 35 Ill. Adm. Code 101 through 130). The Clerk will refuse
1062 for filing any document that does not comply with the minimum requirements of
1063 this Section.
1064
- 1065 b) All documents to be filed with the Board must be filed with the Clerk.
1066
- 1067 1) If allowed by the Board, the hearing officer, the Clerk, or the procedural
1068 rules to be filed in paper under subsection (h), documents must be
1069 filedDocuments may be filed at the following address:
1070
1071 Pollution Control Board, Attn: Clerk
1072 100 West Randolph Street

- 1073 James R. Thompson Center, Suite 11-500
1074 Chicago, Illinois 60601-3218
1075
- 1076 2) All documents filed with the Clerk must provide the name and signature of
1077 the person seeking to file the document and identify the name of the
1078 person on whose behalf the document is being filed. If a paper document
1079 is submitted for filing, the original must bear the original pen-and-ink
1080 signature of the person seeking to file the document. Signatures for
1081 purposes of electronic filings through COOL are addressed in Section
1082 101.1010.
1083
- 1084 3) Each document being filed with the Clerk (~~e.g., enforcement complaint,~~
1085 ~~petition for review~~) must be accompanied by a notice of filing (see
1086 Appendix D) and documentation of service (see Section 101.304(d)).
1087
- 1088 4) The date on which a document is considered to have been filed is
1089 determined under~~pursuant to~~ Section 101.300(b).
1090
- 1091 5) Service of a document upon a hearing officer does not constitute filing
1092 with the Clerk unless the document is submitted to the hearing officer
1093 during the course of a hearing.
1094
- 1095 c) Electronic documents may be filed through COOL under Subpart J. Paper
1096 documents~~Documents may be filed with the Clerk by U.S. Mail, by electronic~~
1097 ~~means in accordance with Subpart J,~~ in person, or by third-party commercial
1098 carrier.
1099
- 1100 d) A filing by e-mail or facsimile will only be allowed with the prior approval of the
1101 Clerk of the Board or the hearing officer assigned to the proceeding. Any prior
1102 approval by the Clerk or hearing officer applies only to the specified filing.
1103
- 1104 e) The initial filings listed in this subsection require filing fees and will only be
1105 considered filed when accompanied by the appropriate fee. The fee may be paid
1106 in the form of government voucher, money order, or check made payable to the
1107 Illinois Pollution Control Board, or electronically through COOL in accordance
1108 with Section 101.1040(b)(1), but cannot be paid in cash.
1109
- 1110 1) Petition for Site-Specific Regulation, \$75;
1111
- 1112 2) Petition for Variance, \$75;
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- 1114 3) Petition for Review of Agency Permit Decision, UST Decision, or any
1115 other appeal filed under~~pursuant to~~ Section 40 of the Act, \$75;

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- 4) Petition to Review Pollution Control Facility Siting Decisions, underpursuant to Section 40.1 of the Act, \$75; and
 - 5) Petition for Adjusted Standard, underpursuant to Section 28.1 of the Act, \$75.
- f) For each document filed with the Clerk, the filing party must serve a copy of the document upon the other parties and, if a hearing officer has been assigned, upon the hearing officer in accordance with Section 101.304.
- g) All documents filed with the Board must contain the relevant proceeding caption and docket number. All documents must be submitted on or formatted to print on 8½ x 11 inch paper, except as provided in subsection (j). Paper documents must be submitted on recycled paper as defined in Subpart B of this Part, and, if feasible, double sided. All pages in a document must be sequentially numbered. All documents created by word processing programs must be formatted as follows:
- 1) The margins must each be a minimum one inch on the top, bottom, and both sides of the page; and
 - 2) The size of the type in the body of the text must be no less than 12 point font, and in footnotes no less than 10 point font.
- h) Unless the Board, the hearing officer, the Clerk, or the procedural rules provide otherwise, all documents must be filed ~~in paper or~~ through COOL electronically ~~pursuant to this subsection (h)~~.
- 1) ~~Except as provided in subsection (h)(2), (h)(3), (h)(4), or (j):A)Any type of document may be filed in paper or through COOL.B)If a document is filed in paper, the original and two copies of the document (three total) are required.C) If a document is filed through COOL in accordance with Subpart J, no paper original or copy of the document is required.~~
 - 2) The following documents must be filed through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF and meet the requirements of Section 101.1030(g):
 - A) The Agency record required by 35 Ill. Adm. Code 105.212 (~~permit decision or other final decision~~), 105.302 (~~CAAPP permit application~~), or 105.410 (~~leaking UST decision~~), or 35 Ill. Adm.

- 1159 Code 125.208 (recommendation on tax certification) (see 35 Ill.
1160 Adm. Code 105.116);
- 1161
- 1162 B) The OSFM record required by 35 Ill. Adm. Code 105.508 (~~UST~~
1163 ~~Fund eligibility and deductibility~~) (see 35 Ill. Adm. Code 105.116);
- 1164
- 1165 C) The local siting authority record required by 35 Ill. Adm. Code
1166 107.302 (~~pollution control facility siting~~) (see 35 Ill. Adm. Code
1167 107.304); and
- 1168
- 1169 D) A petition filed under 35 Ill. Adm. Code 104 (~~regulatory relief~~
1170 ~~mechanisms~~) or 35 Ill. Adm. Code 106 (~~proceedings pursuant to~~
1171 ~~specific rules or statutory provisions~~) (see 35 Ill. Adm. Code
1172 104.106 and 35 Ill. Adm. Code 106.106), ~~unless the petition is for~~
1173 ~~a variance or adjusted standard and the petition states that it is not~~
1174 ~~reasonably practicable for petitioner to file the petition~~
1175 ~~electronically, in which case the petition must be filed in paper~~
1176 ~~pursuant to subsection (h)(1)(B).~~
- 1177
- 1178 3) A document containing information claimed or determined to be a trade
1179 secret, or other non-disclosable information ~~under~~ pursuant to 35 Ill. Adm.
1180 Code 130, is prohibited from being filed electronically and must instead be
1181 filed only in paper. The version of the document that is redacted
1182 ~~under~~ pursuant to 35 Ill. Adm. Code 130 ~~must~~ may be filed through COOL.
- 1183
- 1184 4) When filing a rulemaking proposal, if any document protected by
1185 copyright law (17 USC 101 et seq.) is proposed ~~under~~ pursuant to Section
1186 5-75 of the IAPA [5 ILCS 100/5-75] to be incorporated by reference, the
1187 copyrighted document is prohibited from being filed electronically, but the
1188 remainder of the rulemaking proposal may be filed through COOL. In
1189 addition, the rulemaking proponent must: ~~comply with subsection~~
1190 ~~(h)(4)(A) or (h)(4)(B).~~
- 1191
- 1192 A) File a paper original of the copyrighted document. The rulemaking
1193 proposal also must include:
- 1194
- 1195 i) The copyright owner's written authorization for the Board
1196 to make, at no charge to the Board, no more than a total of
1197 two paper copies of the copyrighted document if the Board
1198 is required by State law to furnish a copy to JCAR, a court,
1199 or a member of the public during or after the rulemaking;
1200 or
- 1201

- 1202 ii) The proponent's representation that it will, at its own
1203 expense, promptly acquire and deliver to the Clerk's Office
1204 no more than a total of two paper originals of the
1205 copyrighted document if the Clerk's Office notifies the
1206 proponent in writing that the Board is required by State law
1207 to furnish a copy to JCAR, a court, or a member of the
1208 public during or after the rulemaking; or-
1209
- 1210 B) File a license or similar documentation of access that, at no charge
1211 to the Board, gives the Board the rights, during and after the
1212 rulemaking, to do the following: electronically access the
1213 copyrighted document from the sole designated computer at the
1214 Board's Chicago office; print a single copy of the copyrighted
1215 document to maintain at the Board's Chicago office; and print no
1216 more than a total of two copies of the copyrighted document if the
1217 Board is required by State law to furnish a copy to JCAR, a court,
1218 or a member of the public.
1219
- 1220 i) No written discovery, including interrogatories, requests to produce, and requests
1221 for admission, or any response to written discovery, may be filed with the Clerk
1222 of the Board except with permission ~~upon leave~~ or direction of the Board or
1223 hearing officer. Any discovery request under these rules to any nonparty must be
1224 filed with the Clerk of the Board in accordance with subsection (h).
1225
- 1226 j) Oversized Exhibits. When reasonably practicable, oversized exhibits must be
1227 reduced to conform to or be formatted to print on 8½ x 11 inch paper for filing
1228 with the Clerk's Office. However, even when an oversized exhibit is so reduced
1229 or formatted, the original oversized exhibit still must be filed with the Clerk's
1230 Office. In accordance with 2 Ill. Adm. Code 2175.300, the original oversized
1231 exhibit may be returned to the person who filed it.
1232
- 1233 k) Page Limitation. No motion, brief in support of a motion, or brief may exceed 50
1234 pages, and no amicus curiae brief may exceed 20 pages, without prior approval of
1235 the Board or hearing officer. These limits do not include appendices containing
1236 relevant material; however, materials that may be readily available to the Board,
1237 such as prior Board opinions and orders, federal regulations, and statutes, need
1238 not be included in appendices.
1239
- 1240 l) Documents filed that do not meet the requirements of 35 Ill. Adm. Code.Subtitle
1241 A may be rejected by the Clerk or the hearing officer. Any rejection of a filing
1242 must include a description of the Board's rules that have not been met.
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1244 (Source: Amended at 41 Ill. Reg. _____, effective _____)

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Section 101.304 Service of Documents

- a) Service Requirements. This Section contains the Board's general service requirements. However, the more specific Part for a proceeding type may contain additional requirements.

- b) Duty to Serve and When to Initiate Service. A party filing a document with the Clerk ~~underpursuant to~~ Section 101.302 must also serve one copy of the document upon each of the other parties to the adjudicatory proceeding and, if a hearing officer has been assigned, upon the assigned hearing officer. Service of a document must be initiated concurrently with submitting the document to the Clerk for filing.
 - 1) Service of a document upon a party must be made upon a person authorized by law to receive service on behalf of the party. If a party is represented by an attorney who has filed an appearance, service upon the party is made by serving the document upon the party's attorney. If more than one attorney appears for a party, service upon one of the party's attorneys is sufficient.
 - 2) Each document being served (e.g., enforcement complaint, petition for review) must be accompanied by a notice of filing (see Appendix D) and a copy of the documentation of service (see subsection (d)).
 - 3) The date on which service of a document is considered to have been completed is determined ~~underpursuant to~~ Section 101.300(c).
 - 4) A proceeding is subject to dismissal, and the filing party is subject to sanctions, if service is not timely initiated or completed.
 - 5) Whether service of a document was proper may be challenged by the party allegedly served. To avoid waiving the right to contest personal jurisdiction, any challenge to service must be made ~~underpursuant to~~ Section 101.400(a)(5).

- c) Methods of Service. A document must be served in one of the following ways:
 - 1) Except as provided in subsection (c)(2), service of documents may be made by any of the following methods:
 - A) Personal service;

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- B) U.S. Mail;
- C) Third-party commercial carrier;
- D) E-mail in accordance with Subpart J; and
- E) Facsimile, but only if the party being served has filed a notice consenting to receipt of facsimile service and not filed a notice revoking that consent.

2) Service of enforcement complaints and EMSA statements of deficiency upon respondents must be made ~~by~~as follows:

- A) ~~Personal~~By personal service;
- B) ~~By~~U.S. Mail with a recipient's signature recorded by the U.S. Postal Service upon delivery; or
- C) ~~A~~By a third-party commercial carrier with a recipient's signature recorded by the third-party commercial carrier upon delivery.

3) Service of administrative citations must be made as required under 35 Ill. Adm. Code~~Part~~ 108.

d) Documentation of Service and When to File Documentation of Service. A party serving a document upon another party must also file documentation of that service. A proceeding is subject to dismissal, and the filing party is subject to sanctions, if documentation of service is not timely filed with the Clerk. Documenting service and filing that documentation must be done as follows:

1) For personal service of a document, either an affidavit or certificate of service signed by the person who made personal delivery or a declaration of service signed by the process server who made personal delivery must accompany the document being filed with the Clerk. However, if the signed affidavit, certificate, or declaration is not available to the filing party when the document (e.g., enforcement complaint, petition for review) is filed with the Clerk, the filing must include~~submitted for filing~~:

- A) An affidavit or certificate of service, signed by the filing party, ~~stating must accompany the document being filed with the Clerk. The affidavit or certificate of service must state that service has been initiated, but not yet completed. The, and the following: the~~ date, the time by when, and the place ~~where~~, the document was

1331 provided to the person making personal delivery; the address
1332 appearing on the envelope or package containing the document;
1333 and that the delivery charge was prepaid must also be included;
1334 and

1335
1336 B) Within seven days after it becomes available to the filing party, the
1337 affidavit or certificate of service containing the signature of the
1338 person who made personal delivery or the declaration of service
1339 containing the signature of the process server ~~must be filed with~~
1340 ~~the Clerk~~, accompanied by a notice identifying the filed document
1341 (e.g., enforcement complaint, petition for review) to which the
1342 signed affidavit, certificate, or declaration corresponds. A copy of
1343 the signed affidavit, certificate, or declaration and the notice must
1344 be served underpursuant to subsection (a).

1345
1346 2) For service of a document by U.S. Mail or third-party commercial carrier
1347 with a recipient's signature recorded by the U.S. Postal Service or the
1348 third-party commercial carrier upon delivery, the delivery confirmation
1349 containing the recipient's signature must accompany the document being
1350 filed with the Clerk. However, if the delivery confirmation containing the
1351 recipient's signature is not available to the filing party when the document
1352 is filed with the Clerk, the filing must include(e.g., enforcement
1353 complaint, petition for review) ~~is submitted for filing~~:

1354
1355 A) An affidavit or certificate of service, signed by the filing party,
1356 ~~stating must accompany the document being filed with the Clerk.~~
1357 ~~The affidavit or certificate of service must state that service has~~
1358 ~~been initiated, but not yet completed. The, and the following: the~~
1359 ~~date, the time by when, and the place where, the document was~~
1360 ~~provided to the U.S. Postal Service or the third-party commercial~~
1361 ~~carrier; the address appearing on the envelope or package~~
1362 ~~containing the document; and that proper postage or the delivery~~
1363 ~~charge was prepaid must also be included; and~~

1364
1365 B) Within seven days after it becomes available to the filing party, the
1366 delivery confirmation containing the recipient's signature ~~must be~~
1367 ~~filed with the Clerk~~, accompanied by a notice identifying the filed
1368 document (e.g., enforcement complaint, petition for review) to
1369 which the signed delivery confirmation corresponds. A copy of
1370 the delivery confirmation and the notice must be served
1371 underpursuant to subsection (a).

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- 3) For service of a document by e-mail or facsimile, an affidavit or certificate of service must accompany the document being filed with the Clerk. An affidavit or certificate of e-mail service must comply with Section 101.1060. An affidavit or certificate of facsimile service must include the date and time of the facsimile transmission, the telephone number to which the transmission was sent, the number of pages transmitted, and a statement that the document was served by facsimile.
 - 4) For service of a document by U.S. Mail or a third-party commercial carrier without a recipient's signature recorded by the U.S. Postal Service or the third-party commercial carrier upon delivery, an affidavit or certificate of service must accompany the document being filed with the Clerk. The affidavit or certificate must state the following: the date, the time by when, and the place where the document was provided to the U.S. Postal Service or the third-party commercial carrier; the address appearing on the envelope or package containing the document; and that proper postage or the delivery charge was prepaid.
 - 5) An affidavit of service must be notarized and is for use by a non-attorney. A certificate of service is for use by an attorney. Sample forms of an affidavit of service and a certificate of service are available in Appendices E and H.
 - 6) A certificate of service must bear an attorney's ~~handwritten or typographical~~ signature. Signatures in affidavits of service, declarations of service, and delivery confirmations must be written by hand. A handwritten signature in documentation of service filed with the Clerk may be a facsimile or digitized electronic signature.
- e) Service of Amicus Curiae Briefs. Any person who files an amicus curiae brief with the Board in any proceeding must serve copies of that brief on all parties in accordance with this Section.
 - f) Service of Comments of Participants in an Adjudicatory Proceeding. Participants are required to serve ~~their~~ comments upon the parties to the proceeding. The Board will consider the comments as time and the Act or other applicable law allow.
 - g) Service on Agencies. Service must be at the addresses listed below unless a specific person has an appearance on file with the Board or has, in accordance with Section 101.1070, consented to e-mail service.

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- 1) Service on the Illinois Environmental Protection Agency. The Agency must be served at the following address:

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield IL 62794-9276
 - 2) Service on Office of State Fire Marshal. The OSFM must be served at the following address:

Division of Petroleum and Chemical Safety
Office of the State Fire Marshal
1035 Stevenson Dr.
Springfield IL 62703
 - 3) Service on the Illinois Attorney General. The Office of the Attorney General must be served at the following address:

Division Chief of Environmental Enforcement
Office of the Attorney General
100 West Randolph St., Suite 1200
Chicago IL 60601
 - 4) Service on the Illinois Department of Natural Resources. DNR must be served at the following address:

Office of Legal Services
Illinois Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271
 - 5) Service on the Illinois Department of Transportation. IDOT must be served at the following address:

Office of Chief Counsel
DOT Administration Building
2300 S. Dirksen Parkway, Room 300
Springfield IL 62764
 - 6) Service on Region V of the United States Environmental Protection Agency. USEPA Region V must be served at the following address:

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USEPA, Region V
77 West Jackson
Chicago IL 60604

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 101.306 Incorporation of Documents from Another Proceeding

- a) Upon the separate written request of any person or on its own initiative, the Board or hearing officer may incorporate materials from the record of another Board docket into any proceeding. The person seeking incorporation must file the material to be incorporated with the Board in accordance with Section 101.302(h) of this Subpart. The person seeking incorporation must demonstrate to the Board or the hearing officer that the material to be incorporated is authentic, credible, and relevant to the proceeding. Notice of the request must be given to all identified participants or parties by the person seeking incorporation.
- b) The Board will give the incorporated matter the appropriate weight in light of the following factors: the standard of evidence under which the material was previously presented to the Board; the present purpose for incorporating the material; and the past and current opportunity for cross-examination of the matters asserted within the incorporated material.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 101.308 Statutory Decision Deadlines and Waiver of Deadlines

- a) Petitions in the following proceedings each have a 120-day statutory decision deadline: Variances (Section 38 of the Act), Permit Appeals and UST appeals (Section 40 of the Act), and Pollution Control Facility Siting Review (Section 40.1 of the Act). Other adjudicatory proceedings may be subject to decision deadlines as provided by law.
- b) Where the petitioner does not waive the decision deadline, the Board will proceed expeditiously to establish all hearing and filing requirements. Willful or unexcused failure to follow Board requirements on the deadlines will subject the party to sanctions under pursuant to Subpart H of this Part. This Section will be strictly construed where there is a decision deadline unless the Board receives a waiver as set out in subsection (c).
- c) All waivers of a deadline for Board action must be filed as a separate document. Waivers must be clearly titled and state which type of waiver it is, identify the

proceeding by name and docket number, and be signed by the party or by anhis authorized representative or attorney. A waiver of a statutory deadline does not preclude the Board from issuing an opinion or order prior to any decision deadline, nor does it preclude the filing of a motion seeking a decision on the matter.

- 1) ~~An open waiver waives~~Open Waiver. Waives the decision deadline completely and unequivocally until the petitioner elects to reinstate the 120-day decision period by filing a notice to reinstate. Upon proper filing of the notice, the decision period is reinstated. In accordance with Section 101.300(b)(4)~~of this Part~~, the decision period recommences as of the date the notice to reinstate is filed with the Board.
- 2) ~~A time certain waiver must~~Time Certain Waiver. Waives the decision deadline until a time certain. The time certain may be expressed in length of days or to a specific calendar date. If expressed in length of days, day one will be the first day after the date upon which the current time clock expires. If the petitioner files a time certain waiver before the hearing date, the waiver must be for at least 40 days. If the extension is not renewed for at least 40 days prior to the decision deadline, the Board will set the matter for hearing.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

Section 101.400 Appearances, Withdrawals, and Substitutions of Attorneys in Adjudicatory Proceedings

- a) Appearances. A person who is a party in a Board adjudicatory proceeding may appear as follows:
 - 1) Individuals may appear on their own behalf or through an attorney-at-law licensed and registered to practice law. (See Section 1 of the Attorney Act [705 ILCS 205/1].)
 - 2) When appearing before the Board, any person other than individuals must appear through an attorney-at-law licensed and registered to practice law. (See Section 1 of the Corporation Practice of Law Prohibition Act [705 ILCS 220/1] and Section 1 of the Attorney Act [705 ILCS 205/1].)
 - 3) An out-of-state attorney may appear as counsel and provide legal services in a particular proceeding before the Board only if the attorney has

- 1544 permission to do so ~~underpursuant to~~ Illinois Supreme Court Rule 707.
 1545 No Board order is required for an out-of-state attorney to appear and no
 1546 motions to appear pro hac vice ~~is necessary~~ need be filed with the Board.
 1547 The out-of-state attorney's appearance must include the following:
 1548
 1549 A) A representation that the out-of-state attorney is in, and will
 1550 maintain throughout the proceeding, compliance with Supreme
 1551 Court Rule 707; and
 1552
 1553 B) Identification of the active status Illinois attorney associated with
 1554 the out-of state attorney ~~underpursuant to~~ Supreme Court Rule 707
 1555 and the date on which the active status Illinois attorney filed an
 1556 appearance in the proceeding.
 1557
 1558 4) Any attorney appearing in a representative capacity must file a separate
 1559 written appearance with the Clerk, together with documentation of service
 1560 of the appearance ~~underpursuant to~~ Section 101.304(d) and notice of filing
 1561 of the appearance ~~underpursuant to~~ Section 101.304(b)(2). The
 1562 appearance must include:
 1563
 1564 A) For law~~Law~~ firms, the Agency, and the Attorney General's Office,
 1565 when appearing before the Board must designate a lead attorney
 1566 must be designated for purposes of phone and mail contact
 1567 pertaining to the proceeding. Absent written notice, the Board will
 1568 designate the attorney whose signature appears first on the party's
 1569 first filing as the lead attorney.
 1570
 1571 B) The attorney's business address and designation of a primary e-
 1572 mail address for service by e-mail.
 1573
 1574 5) Any person seeking to contest personal jurisdiction must do so by filing a
 1575 motion with the Board in accordance with Section 2-301 of the Code of
 1576 Civil Procedure [735 ILCS 5/2-301].
 1577
 1578 b) Withdrawals. An attorney who has appeared in a representative capacity and who
 1579 wishes to withdraw from that representation must file a notice of withdrawal with
 1580 the Clerk, together with documentation of service and notice of filing on all
 1581 parties or their representatives.
 1582
 1583 c) Substitution. Any attorney who substitutes for an attorney of record must file a
 1584 written appearance ~~underpursuant to~~ subsection (a). That appearance must
 1585 identify the attorney for whom the substitution is made. However, no attorney
 1586 will be considered withdrawn from a proceeding until a formal withdrawal is filed

1587 in accordance with subsection (b).
 1588

- 1589 d) Any person may appear on behalf of himself or others in a rulemaking proceeding
 1590 in accordance with 35 Ill. Adm. Code 102.100(b).
 1591

1592 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 1593

1594 **Section 101.402 Intervention of Parties**
 1595

- 1596 a) The Board may permit any person to intervene in any adjudicatory proceeding. If
 1597 a person seeks to intervene in an adjudicatory proceeding, the person must file a
 1598 motion to do so with the Clerk and serve a copy of the motion on all parties to the
 1599 proceeding. The motion must set forth the grounds for intervention.
 1600

- 1601 b) In determining whether to grant a motion to intervene, the Board will consider the
 1602 timeliness of the motion and whether intervention will unduly delay, or materially
 1603 prejudice, the proceeding or otherwise interfere with an orderly or efficient
 1604 proceeding.
 1605

- 1606 c) Subject to subsection (b) of this Section, the Board will permit any person to
 1607 intervene in any adjudicatory proceeding if:
 1608

- 1609 1) The person has an unconditional statutory right to intervene in the
 1610 proceeding; or
 1611
 1612 2) It may be necessary for the Board to impose a condition on the person.
 1613

- 1614 d) Subject to subsection (b) of this Section, the Board may permit any person to
 1615 intervene in any adjudicatory proceeding if:
 1616

- 1617 1) The person has a conditional statutory right to intervene in the proceeding;
 1618
 1619 2) The person may be materially prejudiced absent intervention; or
 1620
 1621 3) The person is so situated that the person may be adversely affected by a
 1622 final Board order.
 1623

- 1624 e) An intervenor will have all the rights of an original party to the adjudicatory
 1625 proceeding, except that the Board may limit the rights of the intervenor as justice
 1626 may require. The limits may include providing that: the intervenor is bound by
 1627 Board and hearing officer orders already issued or by evidence already admitted;
 1628 that the intervenor does not control any decision deadline; and that the intervenor
 1629 cannot raise issues that were raised or might more properly have been raised at an

1630 earlier stage of the proceeding.

1631
1632 (Source: Amended at 41 Ill. Reg. _____, effective _____)
1633

1634 **Section 101.404 Agency as a Party in Interest**
1635

1636 ~~Under~~Pursuant to Section 30 of the Act, the Board may request that the Agency investigate any
1637 alleged violation of the Act, the regulations, any permit granted by the Agency, or any term or
1638 condition of any such permit and any such other investigations as the Board may deem advisable.
1639 Upon such request, the Board may designate the Agency as a party in interest in any ongoing
1640 proceeding in that matter. The designation of the Agency as a party in interest does not require
1641 the Agency to take a position on the merits of the proceeding.
1642

1643 (Source: Amended at 41 Ill. Reg. _____, effective _____)
1644

1645 SUBPART E: MOTIONS
1646

1647 **Section 101.500 Filing of Motions and Responses**
1648

- 1649 a) The Board may entertain any motion the parties wish to file that is permissible
1650 under the Act or other applicable law, these rules, or the Illinois Code of Civil
1651 Procedure.
1652
- 1653 b) All motions must be in writing, unless made orally on the record during a hearing
1654 or during a status conference, and must state whether directed to the Board or to
1655 the hearing officer. Oral motion to the Board made at hearing must be filed in
1656 writing within 14 days after the hearing or the motion is deemed waived. Motions
1657 that should be directed to the hearing officer are set out in Section 101.502 ~~of this~~
1658 ~~Part.~~ All motions ~~must~~should be filed and served in conformance with
1659 Subparts~~Subpart~~ C ~~and J~~ ~~of this Part.~~
1660
- 1661 c) Motions may be filed at any time unless otherwise specifically provided.
1662
- 1663 d) Within 14 days after service of a motion, a party may file a response to the
1664 motion. If no response is filed, the party will be deemed to have waived objection
1665 to the granting of the motion, but the waiver of objection does not bind the Board
1666 or the hearing officer in its disposition of the motion. Unless undue delay or
1667 material prejudice would result, neither the Board nor the hearing officer will
1668 grant any motion before expiration of the 14 day response period except in
1669 deadline driven proceedings where no waiver has been filed. Parties may request
1670 that the Board grant more time to respond by filing a motion for extension of
1671 time.
1672

1673 e) The moving person will not have the right to reply, except as permitted by the
1674 Board or the hearing officer to prevent material prejudice. A motion for
1675 permissionleave to file a reply must be filed with the Board within 14 days after
1676 service of the response.
1677

1678 (Source: Amended at 41 Ill. Reg. _____, effective _____)
1679

1680 **Section 101.502 Motions Directed to the Hearing Officer**
1681

1682 a) The hearing officer has the authority to rule on all motions that are not dispositive
1683 of the proceeding. ~~Dispositive~~Examples of motions includethat hearing officers
1684 ~~may not rule upon~~are motions to dismiss, motions to decide a proceeding on the
1685 merits, motions to strike any claim or defense for insufficiency or want of proof,
1686 motions claiming lack of jurisdiction, motions for consolidation, motions for
1687 summary judgment, and motions for reconsideration. Oral motions directed to a
1688 hearing officer at a status conference will be summarized in a written hearing
1689 officer order. The duties and authorities of the hearing officer are further set out in
1690 Section 101.610 of this Part.
1691

1692 b) An objection to a hearing officer ruling made at hearing ~~or any oral motion to the~~
1693 ~~Board made at hearing~~ will be deemed waived if not filed within 14 days after the
1694 Board receives the hearing transcript.
1695

1696 c) Unless otherwise ordered by the Board, neither the filing of a motion, nor any
1697 appeal to the Board of a hearing officer order will stay the proceeding or extend
1698 the time for the performance of any act. Unless otherwise provided, all hearing
1699 officer orders will remain in effect during the pendency of any appeal to the
1700 Board.
1701

1702 (Source: Amended at 41 Ill. Reg. _____, effective _____)
1703

1704 **Section 101.504 Contents of Motions and Responses**
1705

1706 All motions and responses must ~~clearly~~state the grounds upon which the motion is made and
1707 must contain a concise statement of the position or relief sought. Facts asserted that are not of
1708 record in the proceeding must be supported by oath, affidavit, or certification in accordance with
1709 Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109]. A brief or memorandum in
1710 support of the motion or response may be included.
1711

1712 (Source: Amended at 41 Ill. Reg. _____, effective _____)
1713

1714 **Section 101.510 Motions to Cancel Hearing**
1715

- 1716 a) Time to File. Unless the Board or the hearing officer orders otherwise the hearing
1717 officer may grant motions to cancel hearings that are filed no fewer than 10 days
1718 or, if all parties agree to the motion, 5 days before the scheduled hearing date.
1719 The hearing officer may grant a motion filed after the prescribed time only if the
1720 movant demonstrates that the movant will suffer material prejudice if the hearing
1721 is not canceled.
1722
- 1723 b) Contents. All motions to cancel a hearing must set forth a proposed date to
1724 reschedule the hearing and must be supported by an affidavit of the person or
1725 persons with knowledge of the facts that support the motion. The affidavit must
1726 include the factual basis for the request to cancel and a complete status report that
1727 describes the progress of the proceeding and sets forth the number of cancellation
1728 requests previously granted to the movant. The hearing officer will grant the
1729 motion only if the movant demonstrates that the request to cancel is not the result
1730 of the movant's lack of diligence.
1731
- 1732 c) In a proceeding for which there is a decision deadline, the hearing officer will
1733 deny a motion to cancel a hearing if the decision deadline does not allow enough
1734 time for the Board to reschedule the hearing, provide the required notice of the
1735 rescheduled hearing, complete the hearing, and deliberate and decide the matter.
1736
- 1737 d) If the hearing officer grants a motion to cancel a hearing, the hearing officer will
1738 revise the schedule to complete the record in accordance with Section 101.612-of
1739 this Part. The hearing officer also will file the revised schedule with the Clerk
1740 and serve a copy of the revised schedule on all parties in accordance with Subpart
1741 C-of this Part.
1742

1743 (Source: Amended at 41 Ill. Reg. _____, effective _____)
1744

1745 **Section 101.514 Motions to Stay Proceedings**
1746

- 1747 a) Motions to stay a proceeding must be directed to the Board and must be
1748 accompanied by sufficient information detailing why a stay is needed, and in
1749 decision deadline proceedings, by a waiver of any decision deadline. A status
1750 report detailing the progress of the proceeding must be included in the motion.
1751 (See also Section 101.308-of this Part.)
1752
- 1753 b) If the motion to stay is granted, at the close of the stay, the parties must file a
1754 status report in accordance with Subpart C-of this Part. Additional requests for
1755 stay of the proceedings must be directed to the hearing officer.
1756

1757 (Source: Amended at 41 Ill. Reg. _____, effective _____)
1758

1759 **Section 101.516 Motions for Summary Judgment**

- 1760
- 1761 a) Any time after the opposing party has appeared (or after the expiration of time
- 1762 within which any party is required to appear), but no fewer than 30 days prior to
- 1763 the regularly scheduled Board meeting before the noticed hearing date, a party
- 1764 may move the Board for summary judgment for all or any part of the relief
- 1765 sought. Any response to a motion for summary judgment must be filed within 14
- 1766 days after service of the motion for summary judgment. The hearing officer may
- 1767 extend the filing and response deadlines contained in this subsection upon written
- 1768 motion by a party, consistent with any statutory deadlines.
- 1769
- 1770 b) If the record, including pleadings, depositions and admissions on file, together
- 1771 with any affidavits, shows that there is no genuine issue of material fact, and that
- 1772 the moving party is entitled to judgment as a matter of law, the Board will enter
- 1773 summary judgment.
- 1774
- 1775 c) Any party wishing to cancel a hearing pending decision on a motion for summary
- 1776 judgment must file a motion to cancel hearing ~~underpursuant to~~ Section 101.510
- 1777 of this Part.
- 1778

1779 (Source: Amended at 41 Ill. Reg. _____, effective _____)

1780

1781 **Section 101.518 Motions for Interlocutory Appeal from Hearing Officer Orders**

1782

1783 Interlocutory appeals from a ruling of the hearing officer may be taken to the Board by filing a

1784 motion within 14 days after receipt of the hearing officer's written order. However, if the hearing

1785 officer's ruling is rendered on the record at hearing, any motion for interlocutory appeal must be

1786 filed within 14 days after the ~~hearing~~Board receives the hearing transcript setting forth the ruling.

1787 Filing a motion for interlocutory appeal will not postpone a scheduled hearing, stay the effect of

1788 the hearing officer's ruling, or otherwise stay the proceeding. Failure of a party to timely file a

1789 motion for interlocutory appeal constitutes a waiver of any objection to the hearing officer's

1790 ruling.

1791

1792 (Source: Amended at 41 Ill. Reg. _____, effective _____)

1793

1794 **Section 101.520 Motions for Reconsideration**

- 1795
- 1796 a) Any motion for reconsideration or modification of a ~~final~~ Board order must be
- 1797 filed within 35 days after the receipt of the order. (See Section 101.902 of this
- 1798 Part.)
- 1799
- 1800 b) Any response to a motion for reconsideration or modification must be filed within
- 1801 14 days after the filing of the motion.

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- c) A timely-filed motion for reconsideration or modification stays the effect of the final order until final disposition of the motion in accordance with Section 101.300(d)(2) of this Part.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

Section 101.610 Duties and Authority of the Hearing Officer

The hearing officer has the duty to manage proceedings assigned, to set hearings, to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear, complete, and concise record for timely transmission to the Board. The hearing officer has all powers necessary to these ends, including the authority to:

- a) Require parties to proceed to hearing and establish a schedule for, and notice and service of, any prefiled submission of testimony and written exhibits;
- b) Administer oaths and affirmations;
- c) Allow for the examination of or examine witnesses to ensure a clear and complete record;
- d) Regulate the course of the hearing, including controlling the order of proceedings;
- e) Establish reasonable limits on the duration of the testimony and questioning of any witness, and limit repetitive or cumulative testimony and questioning;
- f) Determine that a witness is adverse, hostile, or unwilling underpursuant to Section 101.624 of this Part;
- g) Issue an order compelling the answers to interrogatories or responses to other discovery requests;
- h) Order the production of evidence underpursuant to Section 101.614 of this Part;
- i) Order the filing of any required record or recommendation in a manner which provides for a timely review and development of issues prior to the hearing and consistent with any statutory decision deadline;
- j) Initiate, schedule, and conduct a pre-hearing conference;

- 1845 k) Order a briefing and comment schedule and exclude late-filed briefs and
1846 comments from the record;
- 1847
- 1848 l) Rule upon objections and evidentiary questions;
- 1849
- 1850 m) Order discovery under pursuant to Sections 101.614 and 101.616 ~~of this Part~~;
- 1851
- 1852 n) Rule on any motion directed to the hearing officer or deferred to the hearing
1853 officer by the Board in accordance with Section 101.502 ~~of this Part~~;
- 1854
- 1855 o) Set status report schedules;
- 1856
- 1857 p) Require all participants in a rulemaking proceeding to state their positions with
1858 respect to the proposal; and
- 1859
- 1860 q) Rule upon offers of proof and receive evidence and rule upon objections to the
1861 introduction of evidence.
- 1862

1863 (Source: Amended at 41 Ill. Reg. _____, effective _____)

1864

1865 **Section 101.612 Schedule to Complete the Record**

1866

- 1867 a) The hearing officer must establish a schedule to complete the record by hearing
1868 officer order. The schedule may provide dates and deadlines for pre-hearing
1869 conferences, discovery completion, and hearing and post-hearing submissions
1870 (including public comments). The schedule must provide for a completed record
1871 at least 30 days before the decision date, unless the hearing officer orders
1872 otherwise to prevent material prejudice. ~~The schedule must be in the form of a~~
1873 ~~hearing officer order.~~ The hearing officer must file the schedule with the Clerk
1874 and serve a copy of the schedule on all parties in accordance with Subpart C ~~of~~
1875 ~~this Part~~.
- 1876
- 1877 b) The hearing officer may rule upon any motion to revise the schedule to complete
1878 the record. The hearing officer may grant the motion to the extent that the revised
1879 schedule provides for a completed record at least 30 days before the decision date
1880 or to prevent material prejudice. If the hearing officer grants a motion to revise
1881 the schedule, the hearing officer must file the revised schedule with the Clerk and
1882 serve a copy of the revised schedule on all parties in accordance with Subpart C
1883 ~~of this Part~~. (See also Section 101.510(d) ~~of this Part~~.)
- 1884

1885 (Source: Amended at 41 Ill. Reg. _____, effective _____)

1886

1887 **Section 101.616 Discovery**

- 1888
1889 The assigned hearing officer will set all time deadlines for discovery not already provided for in
1890 this Subpart consistent with Board deadlines. For purposes of discovery, the Board may look to
1891 the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's
1892 procedural rules are silent (see Section 101.100(b)). All discovery disputes will be handled by
1893 the assigned hearing officer.
1894
- 1895 a) All relevant information and information calculated to lead to relevant
1896 information is discoverable, excluding those materials that would be protected
1897 from disclosure in the courts of this State ~~underpursuant to~~ statute, Supreme Court
1898 Rules or common law, and materials protected from disclosure under 35 Ill. Adm.
1899 Code 130.
1900
 - 1901 b) If the parties cannot agree on the scope of discovery or the time or location of any
1902 deposition, the hearing officer has the authority to order discovery or to deny
1903 requests for discovery.
1904
 - 1905 c) All discovery must be completed at least 10 days prior to the scheduled hearing in
1906 the proceeding unless the hearing officer orders otherwise.
1907
 - 1908 d) The hearing officer may, on his or her own motion or on the motion of any party
1909 or witness, issue protective orders that deny, limit, condition or regulate discovery
1910 to prevent unreasonable expense, or harassment, to expedite resolution of the
1911 proceeding, or to protect non-disclosable materials from disclosure consistent
1912 with Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 130.
1913
 - 1914 e) Unless a claim of privilege is asserted, it is not a ground for objection that the
1915 testimony of a deponent or person interrogated will be inadmissible at hearing, if
1916 the information sought is reasonably calculated to lead to relevant information.
1917 Any appeals of rulings by the hearing officer regarding discovery must be in
1918 writing and filed with the Board prior to hearing.
1919
 - 1920 f) Failure to comply with any order regarding discovery may subject the offending
1921 persons to sanctions ~~underpursuant to Subpart H of this Part~~.
1922
 - 1923 g) If any person serves any request for discovery or answers to discovery for any
1924 improper purpose, such as to harass or to cause unnecessary delay or needless
1925 increase in the cost of litigation, or knowingly gives a false answer to discovery
1926 questions, the Board, on its own motion or the motion of a party, may impose
1927 sanctions ~~underpursuant to Subpart H of this Part~~.
1928
 - 1929 h) A party must amend any prior responses to interrogatories, requests for
1930 production, or requests for admission if the party learns that the response is in

1931 some material respect incomplete or incorrect, and the additional or corrected
1932 information has not otherwise been made known to the other parties during the
1933 discovery process or in writing.
1934

1935 (Source: Amended at 41 Ill. Reg. _____, effective _____)
1936

1937 **Section 101.618 Admissions**
1938

- 1939 a) General. All requests to admit must be served upon a party no later than 35 days
1940 before hearing. All answers or objections to requests to admit must be served
1941 upon the party requesting the admission within 28 days after the service of the
1942 request.
- 1943 b) Extension of Time. In accordance with Sections 101.522 and 101.610 ~~of this~~
1944 ~~Part,~~ the hearing officer may extend the time for filing any request, answer, or
1945 objection either before or after the expiration of time.
- 1946 c) Request to Admit. Any party serving a request to admit in accordance with
1947 subsection (d) or (e) must include the following language in the first paragraph of
1948 the request. "Failure to respond to the following requests to admit within 28 days
1949 may have severe consequences. Failure to respond to the following requests will
1950 result in all the facts requested being deemed admitted as true for this proceeding.
1951 If you have any questions about this procedure, you should contact the hearing
1952 officer assigned to this proceeding or an attorney."
1953
- 1954 d) Request for Admission of Fact. A party may serve a written request for
1955 admission of the truth of specific statements of fact on any other party.
1956
- 1957 e) Request for Admission of Genuineness of Document. A party may serve a
1958 written request for admission of the genuineness of documents on any other party.
1959 Copies of the document must be served unless the document has already been
1960 furnished in the present proceeding.
1961
- 1962 f) Admission in the Absence of Denial. Each of the matters of fact and the
1963 genuineness of each document of which admission is requested is admitted unless,
1964 within 28 days after service thereof, the party to whom the request is directed
1965 serves upon the party requesting the admission either a sworn statement denying
1966 specifically the matters of which admission is requested or setting forth in detail
1967 the reasons why the party cannot truthfully admit or deny those matters, or written
1968 objections on the ground that some or all of the requested admissions are
1969 privileged or irrelevant or that the request is otherwise improper in whole or in
1970 part. If written objections to a part of the request are made, the remainder of the
1971 request must be answered within the period designated in the request. A denial
1972
1973

- 1974 must fairly address the substance of the requested admission.
- 1975
- 1976 g) Partial Denial or Qualification. If good faith requires that a party deny a part of a
- 1977 matter for which an admission is requested, or if a part requires qualification, the
- 1978 party must specify the part which is denied or qualified and admit only the
- 1979 remainder.
- 1980
- 1981 h) Objection. Any objection to a request or to any answer must be stated with
- 1982 specificity, and will be heard by the hearing officer upon notice and motion of the
- 1983 party making the request.
- 1984
- 1985 i) Effect of Admission. Any admission made by a party ~~under~~ pursuant to a request
- 1986 under this Section is for the purpose of the pending proceeding only. It does not
- 1987 constitute an admission by the party for any other purpose and may not be used
- 1988 against him in any other proceeding.
- 1989

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 101.620 Interrogatories

- 1993
- 1994 a) Unless ordered otherwise by the hearing officer, a party may serve a maximum of
- 1995 30 written interrogatories, including subparts, on any other party, no later than 35
- 1996 days before hearing.
- 1997
- 1998 b) Within 28 days after service thereof, the party to whom the interrogatory is
- 1999 directed must serve the answers and objections, if any, upon the party submitting
- 2000 the interrogatories. Each interrogatory must be answered separately and fully in
- 2001 writing under oath, unless it is objected to. Answers must be signed by the person
- 2002 making them and objections must be signed by the attorney making them or, in
- 2003 the event of an individual representing himself or herself, the individual making
- 2004 them.
- 2005
- 2006 c) Grounds for an objection to an interrogatory must be stated with specificity, and
- 2007 be accompanied by a copy of the interrogatory. Any ground that is not stated in a
- 2008 timely objection is waived unless it results in material prejudice or good cause for
- 2009 the delay is shown.
- 2010

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 101.622 Subpoenas and Depositions

- 2011
- 2012
- 2013
- 2014
- 2015 a) Upon request by any party to a contested proceeding, the Clerk will issue
- 2016 subpoenas for the attendance of witnesses at a hearing or deposition. Subpoena

- 2017 forms are available at the Board's Chicago office. The person requesting the
2018 subpoena is responsible for completing the subpoena and serving it upon the
2019 witness.
2020
- 2021 b) Service of the subpoena on the witness must be completed no later than 10 days
2022 before the date of the required appearance. A copy of the subpoena must be filed
2023 with the Clerk and served upon the hearing officer within 7 days after service
2024 upon the witness. Failure to serve both the Clerk and the hearing officer will
2025 render the subpoena null and void. Service and filing must be in accordance with
2026 Subpart C ~~of this Part~~.
2027
- 2028 c) Subpoenas may include a command to produce books, papers, documents, or
2029 other tangible things designated therein and relevant to the matter under
2030 consideration.
2031
- 2032 d) The hearing officer, upon motion made promptly and in any event at or before the
2033 time specified in the subpoena for compliance, may quash or modify the subpoena
2034 if it is unreasonable or irrelevant. The hearing officer will rule upon motions to
2035 quash or modify material requested in the subpoena underpursuant to subsection
2036 (c) ~~of this Section~~ in accordance with the standards articulated in Section 101.614
2037 ~~of this Part~~.
2038
- 2039 e) Each witness subpoenaed by a party under this Section is entitled to receive
2040 witness fees from that party as provided in Section 4.3 of the Circuit Courts Act
2041 [705 ILCS 35/4.3].
2042
- 2043 f) Unless the hearing officer orders otherwise, any witness subpoenaed for a
2044 deposition may be required to attend only in the county in which he resides or
2045 maintains an office address. In accordance with Supreme Court Rule 206(d), all
2046 depositions must be limited to 3 hours in length unless the parties and the non-
2047 party deponent by stipulation agree to a longer time frame or unless the hearing
2048 officer orders otherwise after a showing of good cause. (See Ill. S. Ct. Amended
2049 Rule 206(d).)
2050
- 2051 g) Failure of any witness to comply with a subpoena will subject the witness to
2052 sanctions under this Part, or the judicial enforcement of the subpoena. The Board
2053 may, upon proper motion by the party requesting the subpoena, request the
2054 Attorney General to pursue judicial enforcement of the subpoena on behalf of the
2055 Board.
2056

2057 (Source: Amended at 41 Ill. Reg. _____, effective _____)
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2059 **Section 101.626 Information Produced at Hearing**

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In accordance with Section 10-40 of the IAPA, the hearing officer will admit evidence that is admissible under the rules of evidence as applied in the civil courts of Illinois, except as otherwise provided in this Part.

- a) Evidence. The hearing officer may admit evidence that is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged.
- b) Admissibility of Evidence. When the admissibility of evidence depends upon a good faith argument as to the interpretation of substantive law, the hearing officer will admit the evidence.
- c) Scientific Articles and Treatises. Relevant scientific or technical articles, treatises, or materials may be introduced into evidence by a party. The materials are subject to refutation or disputation through introduction of documentary evidence or expert testimony.
- d) Written Testimony. Written testimony may be introduced by a party in a hearing only if provided to all other parties of record prior to the date of the hearing and only after the opposing parties have had an opportunity to object to the written testimony and to obtain a ruling on the objections prior to its introduction. Written testimony may be introduced by a party only if the persons whose written testimony is introduced are available for cross-examination at hearing.
- e) Admission of Business Records. A writing or record, whether in the form of any entry in a book or otherwise made as a memorandum or record of any act, transaction, occurrence, or event, may be admissible as evidence of the act, transaction, occurrence, or event. To be admissible, the writing or record ~~must~~ will have been made in the regular course of business, provided it was the regular course of business to make the memorandum or record at the time of the act, transaction, occurrence, or event, or within a reasonable time ~~afterwardsthereafter~~. All other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be admitted to affect the weight of the evidence, but will not affect admissibility. The term "business," as used in this subsection (e), includes businesses, professions, occupations, and callings of every kind.
- f) Prior Inconsistent Statements. Prior statements made under oath may be admitted to impeach a witness if the statement is inconsistent with the witness' testimony at hearing.
- g) Oral and Written Statements. Oral and written statements from participants may

be taken at hearing in accordance with Section 101.628 of this Part.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 101.628 Statements from Participants

- a) Oral Statements. The hearing officer may permit a participant to make oral statements on the record when time, facilities, and concerns for a clear and concise hearing record so allow. The oral statements must be made under oath and are subject to cross-examination. (See Sections 101.110 and 101.114 of this Part.)
- b) Written Statements. Any participant may submit written statements relevant to the subject matter at any time prior to hearing or at hearing. Participants submitting such a statement will be subject to cross-examination by any party. Written statements submitted without the availability of cross-examination will be treated as public comment in accordance with subsection (c) of this Section and will be afforded lesser weight than evidence subject to cross-examination.
- c) Public Comments or Amicus Curiae Briefs. Oral public comment may be made on the record at a hearing and is not subject to cross-examination. Additionally, participantsParticipants may file written public comments subject to the requirements of this Section and the hearing officer's schedule for completion of the record. The Board also allows for the filing of amicus curiae briefs by non-party participants. Amicus curiae briefs will be allowed in accordance with Section 101.110 of this Part.
 - 1) Written publicPublic comments must be filed within 14 days after the close of the last hearing unless the hearing officer specifies a different date for submission of post-hearing comments. However, all public comments must be filed with the Board no later than 30 days before the decision date, unless the hearing officer orders otherwise to prevent material prejudice. Consistent with the burden of proof in a proceeding, the hearing officer may provide for differing filing deadlines with respect to post-hearing comments by different persons. UnderPursuant to hearing officer order, rebuttal public comments may be submitted.
 - 2) All public comments must present arguments or comments based on evidence contained in the record. The comments may also present legal argument citing legal authorities.
 - 3) Comments must be filed with the Board. Comments will be distributed to parties and the hearing officer by the Clerk's office.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

Section 101.902 Motions for Reconsideration

In ruling upon a motion for reconsideration, the Board will consider factors including new evidence, or a change in the law, to conclude that the Board's decision was in error. (See also Section 101.520 of this Part.) A motion for reconsideration of a final Board order is not a prerequisite for the appeal of the final Board order.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 101.904 Relief from Final Opinions and Orders

- a) Upon its own motion or motion of any party, the Board may correct clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission. ~~The mistakes may be so corrected by the Board before the appeal is docketed in the appellate court. After~~ Thereafter, while the appeal is pending, the mistakes may be corrected only with permission leave of the appellate court. Any corrected order will be mailed to all parties and participants in that proceeding.
- b) On written motion, the Board may relieve a party from a final order entered in a contested proceeding, for the following:
 - 1) Newly discovered evidence that existed at the time of hearing and that by due diligence could not have been timely discovered;
 - 2) Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or
 - 3) Void order, such as an order based upon jurisdictional defects.
- 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 order was entered but is not a continuation of the proceeding. The motion must be supported by oath or affidavit or other appropriate showing as to matters not of record. All parties or participants in the proceeding must be notified by the movant as provided by Section 101.304 of this Part.

- 2189 d) A motion under subsection (b) ~~of this Section~~ must be filed with the Board within
 2190 one year after entry of the order, except that a motion under ~~pursuant to~~ subsection
 2191 (b)(3) ~~of this Section~~ must be filed within a reasonable time after entry of the
 2192 order.
- 2193
- 2194 e) Any response to a motion under this Section must be filed within 14 days after the
 2195 filing of the motion.
- 2196

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 101.906 Judicial Review of Board Orders

- 2201 a) ~~Under~~ Pursuant to Sections 29 and 41 of the Act [415 ILCS 5/29 and 41] and
 2202 Supreme Court Rule 335, judicial review of final Board orders is available from
 2203 the appellate court. However, under ~~pursuant to~~ Section 11-60 of the Property Tax
 2204 Code [35 ILCS 200/11-60], judicial review of final Board orders in tax
 2205 certification proceedings is available from the circuit court.
- 2206
- 2207 b) For purposes of judicial review, a final Board order is appealable as of the date of
 2208 service of the final order upon the appealing person (see Section 101.300(d)).
- 2209
- 2210 c) The procedure for stay of any final Board order during appeal will be as provided
 2211 in Rule 335 of the Rules of the Supreme Court of Illinois (Ill. S. Ct. Rule 335).
- 2212

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART J: ELECTRONIC FILING AND E-MAIL SERVICE

Section 101.1000 Electronic Filing and E-Mail Service

- 2218
- 2219 a) The Board provides the opportunity to file and access documents electronically
 2220 through its Clerk's Office On-Line (COOL). COOL is located on the Board's
 2221 website (www.ipcb.state.il.us). The Board has taken steps designed to ensure the
 2222 integrity and security of COOL in accordance with State policies developed under
 2223 the Electronic Commerce Security Act [5 ILCS 175].
- 2224
- 2225 b) To file an electronic document with the Board, a person must upload the
 2226 document on COOL. Electronic filing is not accomplished by sending a
 2227 document to the e-mail address of the Clerk or hearing officer.
- 2228
- 2229 c) Except as provided in Section 101.302(h)(2), (h)(3), (h)(4), and (j) ~~of this Part and~~
 2230 Section 101.1050 ~~of this Subpart~~, all documents may be filed through COOL.
 2231 However, if filing through COOL is not reasonably practicable, the Board, the

2232 hearing officer, or the Clerk may grant permission to file in paper. If a person files
2233 an electronic document in accordance with this Subpart, the person is not required
2234 to file a paper original or copy of that document.
2235

2236 d) Generally, the Clerk's Office will not accept paper documents for filing; however,
2237 the Clerk's Office will convert paper-filed documents into electronic documents
2238 and place them on COOL, when permission to file a paper document is granted
2239 under subsection (c).
2240

2241 e) All documents filed with the Board may be served by e-mail except for
2242 enforcement complaints, administrative citations, and EMSA statements of
2243 deficiency. (See Section 101.304(c) of this Part and Section 101.1060 of this
2244 Subpart.)
2245

2246 (Source: Amended at 41 Ill. Reg. _____, effective _____)
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2248 **Section 101.1010 Electronic Filing Authorization and Signatures**

2249
2250 a) A person seeking to upload a document on COOL for filing must have been
2251 issued a State of Illinois digital signature certificate ~~underpursuant to~~ Section 15-
2252 310 of the Electronic Commerce Security Act. (See 5 ILCS 175/15-310.) A link
2253 to the subscriber agreement and application for a State of Illinois digital signature
2254 certificate is available through COOL.
2255

2256 1) Maintaining digital signature confidentiality is the responsibility of the
2257 holder of the digital signature certificate. The certificate holder is
2258 responsible for any document electronically filed by anyone using his or
2259 her digital signature certificate.
2260

2261 2) The digital signature certificate holder is responsible for keeping his or her
2262 contact information current.
2263

2264 b) Each electronic document uploaded on COOL for filing must bear a facsimile
2265 electronic signature (i.e., scanned image of original pen-and-ink signature) or
2266 typographical electronic signature (i.e., "/s/ typed name") of the person
2267 authorizing the filing (e.g., attorney, participant, pro se party). However, if this
2268 electronic signature is absent, the document will be deemed to have been signed
2269 by the holder of the digital signature certificate used to upload the document and
2270 the certificate holder will be deemed to have authorized the filing. (See 5 ILCS
2271 175/5-120.) To file an electronic document on behalf of another person in an
2272 adjudicatory proceeding, an electronic signature of a licensed and registered
2273 attorney is required. (See Section 101.400(a) of this Part.)
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- c) If an electronic document or portion thereof requires the signatures of any persons in addition to those specified in subsection (b) of this Section (e.g., settlement agreement, witness' affidavit), the person authorizing the filing must:
 - 1) Confirm that the additional persons have approved the document or corresponding portion thereof and obtain their original pen-and-ink signatures before the document is uploaded on COOL for filing;
 - 2) Ensure that the document or corresponding portion thereof bears the facsimile electronic signatures of, and indicates the identity of, the additional persons;
 - 3) Upload the document on COOL as a scanned image containing the necessary signatures; and
 - 4) Retain the paper original of the document, including the original pen-and-ink signatures of the additional persons, for one year after the later of the following:
 - A) The date on which the time period expires for appealing the final order of the Board; or
 - B) If the final order of the Board is appealed, the date on which the time period expires for seeking any further review in the courts.
- d) ~~In lieu of complying with subsection (c) of this Section, the person authorizing the filing may file the paper original of the document, including the original pen-and-ink signatures of the additional persons, and separately file the document through COOL without the facsimile electronic signatures of the additional persons (see Section 101.1020(e)(2) of this Subpart).~~

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 101.1020 Filing Electronic Documents

- a) COOL. To file an electronic document through COOL, the document must first be uploaded on COOL.
- b) Digital Signature Certificate. Uploading a document on COOL requires a valid State of Illinois digital signature certificate.
- c) Uploading Hours. Electronic documents may be uploaded on COOL 24 hours per day, every day.

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- d) E-Mail Receipt. Uploading a document on COOL will generate an e-mail receipt for the digital signature certificate holder. The receipt will verify the date and time when the document was uploaded on COOL.

- e) Time of Filing. Subject to subsection (f) ~~of this Section~~, an electronic document uploaded on COOL will be considered filed as of the date and time specified on the e-mail receipt generated under ~~pursuant to~~ subsection (d) ~~of this Section~~, except that:
 - 1) A document uploaded on a Saturday or Sunday, on a national or State legal holiday, or after 4:30 p.m. on a weekday is deemed filed the next business day.

 - 2) A document uploaded without one or more portions of the filing (e.g., oversized exhibit; trade secret or non-disclosable information; copyrighted document proposed for incorporation by reference in a rule) or without a required oath, affidavit, notarization, signature, or filing fee is considered filed:
 - A) On the date that the Clerk receives the document's last missing item; or

 - B) On the postmark date of the document's last missing item if that item was sent by U.S. Mail, was received after the date of a filing deadline, and has a postmark date that precedes or is the same as the deadline date.

 - 3) A document consisting of multiple electronic files is considered filed as of the date and time specified on the e-mail receipt generated under ~~pursuant to~~ subsection (d) ~~of this Section~~ for the last file uploaded to complete the document.

- f) Review by the Clerk. The Clerk will review electronically each document uploaded on COOL, validate the proceeding information provided, and accept or reject the document for filing.
 - 1) If the Clerk accepts an uploaded document, the Clerk's Office will e-mail a notice of acceptance to the digital signature certificate holder, indicating that the filed document may be viewed on COOL.

 - 2) If the Clerk rejects an uploaded document, the Clerk's Office will e-mail a notice of rejection to the digital signature certificate holder. The Clerk

2361 may reject an uploaded document because the document is prohibited
2362 from being filed electronically ~~underpursuant to~~ Section 101.302(h)(3) or
2363 (h)(4) ~~of this Part~~, the document fails to comply with file size or naming
2364 requirements of Section 101.1030(c) ~~of this Subpart~~, or the document is
2365 corrupted or otherwise cannot be readily opened. If an uploaded
2366 document is rejected by the Clerk, the Board may, upon good cause
2367 shown, enter an order deeming the document filed as of the date and time
2368 specified when the document was uploaded on COOL, subject to
2369 subsections (e)(1) through (e)(3) ~~of this Section~~.

2370
2371 g) Technical Failure. If an electronic document is not uploaded, or is materially
2372 delayed in uploading, on COOL due to a technical failure, the Board may, upon
2373 good cause shown, enter an order deeming the document uploaded ~~underpursuant~~
2374 ~~to subsection (d) of this Section~~ as of the date and time of the first attempted
2375 uploading. "Technical failure" as used in this subsection is limited to a system
2376 outage of COOL or other malfunction of the hardware, software, or
2377 telecommunications facilities of the Board or the Board's electronic filing
2378 provider. "Technical failure", therefore, does not include any malfunction of the
2379 equipment used by the person authorizing the filing or the digital signature
2380 certificate holder.

2381
2382 h) Clerk's Electronic Stamp. An electronic document uploaded on COOL and
2383 accepted by the Clerk for filing will be endorsed by the Clerk with a file stamp
2384 setting forth the date of filing. This file stamp will be merged with the electronic
2385 document and visible when the document is viewed on COOL. Electronically
2386 filed documents so endorsed have the same legal effect as paper documents file-
2387 stamped by the Clerk conventionally in accordance with Section 101.300(b) ~~of~~
2388 ~~this Part~~.

2389
2390 i) Decision Deadlines. For purposes of Board decision deadlines, the decision
2391 period does not begin until the date on which the electronic document constituting
2392 the initial filing is considered filed under this Section.

2393
2394 j) Filing Deadlines. The electronic filing of a document does not alter any
2395 applicable filing deadlines.

2396 (Source: Amended at 41 Ill. Reg. _____, effective _____)

2397
2398
2399 **Section 101.1030 Form of Electronic Documents for Filing**

2400
2401 a) In addition to complying with the formatting requirements of Section 101.302(g)
2402 and (j) ~~of this Part~~, electronic documents uploaded on COOL for filing must be in
2403 one of the following electronic formats:

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- 1) Adobe Portable Document Format (PDF), version 2.0 or greater;
 - 2) Microsoft Word for Windows, version 6.0 or greater;
 - 3) Corel WordPerfect for Windows, version 6.0 or greater; or
 - 4) Microsoft Excel for Windows, version 4.0 or greater.
- b) Generally, electronic documents filed in accordance with this Subpart will be posted to COOL by the Clerk's Office in text-searchable Adobe PDF. When practicable, persons should:
- 1) Upload their electronic documents on COOL in text-searchable Adobe PDF; and
 - 2) Convert their electronic documents to a text-searchable Adobe PDF directly from the program used to create the document, rather than from a scanned image of the paper document.
- c) No single electronic file uploaded on COOL, whether constituting all or part of an electronic document, may contain more than 10 megabytes (MB) of data. To comply with this requirement, an electronic document may be divided into parts and submitted as multiple electronic files, each file being 10 MB or less. The person authorizing the filing is responsible for dividing the document into appropriately-sized files and naming each file to reflect its place within the electronic document.
- d) Multiple electronic documents, whether for the same proceeding or different proceedings, must be uploaded separately on COOL and, therefore, must not be combined into a single electronic file for filing through COOL.
- e) Electronic documents may contain links to material external to the filed document. However, links to external material are for convenience purposes only. The external material behind the link is not considered part of the filing or the record of the proceeding in which the document was filed.
- f) All documents uploaded on COOL must be free of viruses or other harmful processes. If an electronic document containing a virus or other harmful process is uploaded on COOL, the Board may, consistent with Section 101.800(b) and (c) of this Part, impose sanctions, including barring the document from being filed in any manner and barring the person authorizing the filing or the digital signature certificate holder from any further electronic filing through COOL.

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- g) Documents filed under Section 101.302(h)(2) must:
 - 1) Include bookmarks, immediately viewable when the document is opened, to individual documents in the same order as they appear in the corresponding Table of Contents to facilitate navigation and location of specific contents within the record; and
 - 2) Pagination must be displayed on each document in the bottom right-corner.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 101.1040 Filing Fees

- a) Filing fees are specified in Section 101.302(e) ~~of this Part~~. The Clerk's Office imposes no additional fee to file a document electronically.
- b) A person seeking to file an electronic document that requires a filing fee must either:
 - 1) Pay the fee with a valid credit card through COOL when the document is uploaded on COOL; or
 - 2) Deliver payment to the Clerk's Office in the form of government voucher, money order, or check made payable to the Illinois Pollution Control Board.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 101.1050 Documents Required in Paper or Excluded from Electronic Filing

- a) A document containing information claimed or determined to be a trade secret, or other non-disclosable information ~~underpursuant to 35 Ill. Adm. Code 130~~, is prohibited from being filed electronically and must instead be filed only in paper ~~underpursuant to Section 101.302(h)(3) of this Part~~. The version of the document that is redacted ~~underpursuant to 35 Ill. Adm. Code 130~~ may be filed through COOL.
- b) If a rulemaking proposal contains a document that is protected by copyright law (17 USC 101 et seq.) and proposed ~~underpursuant to Section 5-75 of the IAPA [5 ILCS 100/5-75]~~ to be incorporated by reference, that copyrighted document is prohibited from being filed electronically and must instead be filed only in paper

2490 ~~underpursuant to~~ Section 101.302(h)(4) ~~of this Part~~. The remainder of the
2491 rulemaking proposal may be filed through COOL.
2492

2493 (Source: Amended at 41 Ill. Reg. _____, effective _____)
2494

2495 **Section 101.1060 E-Mail Service**
2496

2497 a) Except as provided in subsections (b) and (c), a person required to serve a
2498 document may serve the document by e-mail, in lieu of serving a paper document,
2499 if the recipient has consented to e-mail service in the proceeding and has not
2500 revoked the consent. (See Section 101.1070.) To serve a document by e-mail, it
2501 is not necessary to electronically file the document or to obtain a State of Illinois
2502 digital signature certificate.
2503

2504 b) Service of enforcement complaints and EMSA statements of deficiency on a
2505 respondent must be made personally, by U.S. Mail with a recipient's signature
2506 recorded, or by a third-party commercial carrier with a recipient's signature
2507 recorded. (See Section 101.304(c)(2).)
2508

2509 c) Service of administrative citations must be made as required under 35 Ill. Adm.
2510 Code 108.
2511

2512 d) A person required to serve a document on the hearing officer must serve the
2513 hearing officer by sending the document to the hearing officer's e-mail address in
2514 lieu of serving a paper document upon the hearing officer if the person has the
2515 capability of serving the document by e-mail.
2516

2517 e) When a document is served by e-mail, documentation of service must be filed
2518 with the Clerk and served on all persons entitled to service in that proceeding. A
2519 sample form of affidavit or certificate of e-mail service is available in Appendix
2520 H. An affidavit or certificate of e-mail service must include the following:
2521

2522 1) The e-mail address of the recipient and the person authorizing the filing;
2523

2524 2) The number of pages in the e-mail transmission;
2525

2526 3) A statement that the document was served by e-mail; and
2527

2528 4) The date of the e-mail transmission and the time by when it took place.
2529

2530 f) If any computer malfunction precludes the e-mail service of a document, the
2531 person authorizing the filing must promptly serve the document in paper
2532 ~~underpursuant to~~ Section 101.304(c).

2533
2534 g) Except for final adjudicatory orders of the Board, which the Clerk's Office serves
2535 in paper by certified mail, the Clerk's Office will serve Board orders and hearing
2536 officer orders by e-mail, in lieu of serving paper documents, if the recipient has
2537 consented to e-mail service in the proceeding and has not revoked the consent.
2538 (See Section 101.1070.) The Clerk will record the date and time of e-mail
2539 service, consistent with subsection (e) ~~of this Section~~.
2540

2541 (Source: Amended at 41 Ill. Reg. _____, effective _____)
2542

2543 **Section 101.1070 Consenting to Receipt of E-Mail Service**
2544

2545 a) In any proceeding, a person consents to e-mail service of documents in lieu of
2546 receiving paper documents by:

- 2547 1) Filing a "Consent to Receipt of E-Mail Service" (see sample form of
- 2548 consent in Appendix I);
- 2549 2) Providing the hearing officer, during a hearing or conference, with an e-
- 2550 mail address that is designated for receiving service;
- 2551 3) Filing an attorney's appearance ~~containing an e-mail address that is~~
- 2552 ~~designated for receiving service~~; or
- 2553 4) Appearing on a notice list or service list and providing the Clerk's Office
- 2554 with an e-mail address that is designated for receiving service.
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2560 b) At any time during a proceeding, consent to e-mail service may be provided as set
2561 forth in subsection (a). To accept e-mail service, it is not necessary to obtain a
2562 State of Illinois digital signature certificate.
2563

2564 c) A person's consent to receiving e-mail service may be revoked by that person at
2565 any time during the proceeding upon the person's filing of a notice of the
2566 revocation with the Clerk's Office. However, an attorney who filed an appearance
2567 may not revoke consent unless the appearance is withdrawn.
2568

2569 d) Upon a change in the e-mail address of a recipient of e-mail service, the recipient
2570 must notify the Clerk's Office of the e-mail address change for each pending
2571 proceeding in which the person has consented to e-mail service.
2572

2573 (Source: Amended at 41 Ill. Reg. _____, effective _____)

2574 **Section 101.APPENDIX A Captions**

2575

2576 **Section 101.ILLUSTRATION L Site-specific Rulemaking**

2577

2578 **BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

2579

2580 IN THE MATTER OF:)

2581)

2582 PROPOSED SITE SPECIFIC WATER) Rxx-xxx
2583 POLLUTION REGULATIONS) (Site-Specific Rulemaking-X)

2584 APPLICABLE TO XYZ)

2585 UTILITIES COMPANY OF ILLINOIS)

2586 DISCHARGE TO XYZ CREEK:)

2587 35 Ill. Adm. Code)

2588

2589 BOARD NOTE: The Board notes that all docket numbers consist of letter(s) followed by two
2590 numbers. The first two digit number is the fiscal year the matter was filed. Then the second
2591 number is the sequential number for that type of filing the Board has received that year. Persons
2592 making filings are not responsible for the Board docket number on the original filing. The Clerk
2593 of the Board will assign the appropriate docket number when the matter is filed. All filings in a
2594 matter that has been assigned a docket number ~~must~~ contain a docket number located as
2595 indicated on the examples above. The Board will also be designating its opinion and orders with
2596 the type of case and media involved in the matter. Where the above examples have the type of
2597 case followed by "X", the Board will, for example if the case is dealing with a variance from
2598 certain water regulations, put the media, water, after variance to become "Variance-Water".
2599 Again, persons making filings need not place this on original filings. However, all filings in a
2600 matter that has been assigned the media ~~must~~ indicate that media in the location as in the
2601 above examples. Where there are specific procedural rules developed for specific types of cases,
2602 as in a "UST Appeal", persons making filings ~~must~~ follow those examples.

2603

2604 (Source: Amended at 41 Ill. Reg. _____, effective _____)

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Regulatory and Informational Hearings and Proceedings

2) Code Citation: 35 Ill. Adm. Code 102

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
102.100	Amendment
102.106	Amendment
102.108	Amendment
102.110	Repealed
102.112	Amendment
102.114	Amendment
102.202	Amendment
102.204	Amendment
102.206	Amendment
102.210	Amendment
102.211	Amendment
102.212	Amendment
102.300	Amendment
102.302	Amendment
102.306	Amendment
102.400	Amendment
102.402	Amendment
102.408	Amendment
102.410	Amendment
102.412	Amendment
102.414	Amendment
102.416	Amendment
102.418	Amendment
102.422	Amendment
102.424	Amendment
102.502	Amendment
102.504	Amendment
102.604	Amendment
102.606	Amendment
102.608	Amendment
102.614	Amendment
102.706	Amendment
102.820	Amendment
102.830	Amendment

RECEIVED
CLERK'S OFFICE
FEB 10 2017
STATE OF ILLINOIS
Pollution Control Board

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: Prompted by a recognition that some of its rules were no longer current due to changing technology and the passage of time, the Board began planning a broad review of all its rules, with a view of streamlining, updating and overhauling its regulation. Governor Rauner's Executive Order 2016-13 has provided additional impetus to the Board's initiative. The proposal makes technical changes to the rule as well as changes in response to recently passed legislation.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments should reference Docket R17-18 and be addressed to:

Clerk's Office
Illinois Pollution Control Board
JRTC
100 W. Randolph St., Suite 11-500
Chicago IL 60601

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

Interested persons may request copies of the Board's opinion and order in R17-18 by calling the Clerk's office at 312/814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality, or not-for-profit corporation that practices before the Board
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2017

The full text of the Proposed Amendments begins on the next page:

JCAR350102-1701364r01

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE A: GENERAL PROVISIONS
3 CHAPTER I: POLLUTION CONTROL BOARD
4

5 PART 102
6 REGULATORY AND INFORMATIONAL HEARINGS AND PROCEEDINGS
7

8 SUBPART A: GENERAL PROVISIONS
9

10	Section	
11	102.100	Applicability
12	102.102	Severability
13	102.104	Definitions
14	102.106	Types of Regulatory Proposals
15	102.108	Public Comments
16	102.110	Waiver of Requirements (<u>Repealed</u>)
17	102.112	Other Proceedings
18	102.114	Hearings

19
20 SUBPART B: REGULATIONS OF GENERAL APPLICABILITY,
21 RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)
22 AMENDMENTS, AND SITE-SPECIFIC REGULATIONS
23

24	Section	
25	102.200	Proposal for Regulations of General Applicability
26	102.202	Proposal Contents for Regulations of General Applicability
27	102.204	Proposal of RCRA Amendments
28	102.206	Notice of Site-Specific RCRA Proposals
29	102.208	Proposal for Site-Specific Regulations
30	102.210	Proposal Contents for Site-Specific Regulations
31	102.211	Proposal to Update Incorporations by Reference
32	102.212	Dismissal

33
34 SUBPART C: CLEAN AIR ACT AMENDMENTS (CAAA)
35 FAST TRACK RULEMAKING
36

37	Section	
38	102.300	Applicability
39	102.302	Agency Proposal
40	102.304	Hearings
41	102.306	Prefiled Testimony

42
43 SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS,

44 PRODUCTION OF INFORMATION, SUBPOENAS, PREHEARING
45 CONFERENCES, AND HEARINGS
46

47	Section	
48	102.400	Service and Filing of Documents
49	102.402	Motions, Production of Information, and Subpoenas
50	102.404	Initiation and Scheduling of Prehearing Conferences
51	102.406	Purpose of Prehearing Conference
52	102.408	Prehearing Order
53	102.410	Authorization of Hearing
54	102.412	Scheduling of Hearings
55	102.414	Hearings on the Economic Impact of New Proposals
56	102.416	Notice of Hearing
57	102.418	Record
58	102.420	Authority of the Hearing Officer
59	102.422	Notice and Service Lists
60	102.424	Prehearing Filings of Testimony, Questions, Responses, and Exhibits
61	102.426	Admissible Information
62	102.428	Presentation of Testimony and Order of Hearing
63	102.430	Questioning of Witnesses

64
65 SUBPART E: CERTIFICATION OF REQUIRED RULES
66

67	Section	
68	102.500	Agency Certification
69	102.502	Challenge to Agency Certification
70	102.504	Board Determination

71
72 SUBPART F: BOARD ACTION
73

74	Section	
75	102.600	Revision of Proposed Regulations
76	102.602	Adoption of Regulations
77	102.604	First Notice of Proposed Regulations
78	102.606	Second Notice of Proposed Regulations
79	102.608	Notice of Board Final Action
80	102.610	Adoption of Identical-in-Substance Regulation
81	102.612	Adoption of Emergency Regulations
82	102.614	Adoption of Peremptory Regulations

83
84 SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL
85

86	Section	
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- 87 102.700 Filing of Motions for Reconsideration
- 88 102.702 Disposition of Motions for Reconsideration
- 89 102.704 Correction of Publication Errors
- 90 102.706 Appeal

91

92 SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION

93

94 Section

- 95 102.800 Applicability
- 96 102.810 Petition
- 97 102.820 Petition Contents
- 98 102.830 Board Action

99

100 102.APPENDIX A Comparison of Former and Current Rules (Repealed)

101

102 AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28,
103 28.2, 28.6, 29, and 41 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3,
104 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 28.6, 29, and 41] and authorized by Sections 26 and
105 27 of the Act [415 ILCS 5/26 and 27].

106

107 SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part II: Regulatory and Other
108 Nonadjudicative Hearings and Proceedings, in R70-4, 1 PCB 43, October 8, 1970; codified at 6
109 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1398, effective January 16, 1985; Part repealed,
110 new Part adopted in R88-5(B) at 14 Ill. Reg. 9210, effective May 24, 1990; amended in R90-16
111 at 14 Ill. Reg. 20472, effective December 11, 1990; old Part repealed, new Part adopted in R00-
112 20 at 25 Ill. Reg. 587, effective January 1, 2001; amended in R01-13 at 26 Ill. Reg. 3498,
113 effective February 22, 2002; amended in R04-24 at 29 Ill. Reg. 8776, effective June 8, 2005;
114 amended in R10-18 at 34 Ill. Reg. 12193, effective August 9, 2010; amended in R14-21 at 39 Ill.
115 Reg. 2333, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. 7955, effective May
116 20, 2016; amended in R17-18 at 41 Ill. Reg. _____, effective _____.

117

118 SUBPART A: GENERAL PROVISIONS

119

120 **Section 102.100 Applicability**

121

122 a) This Part applies to all regulatory and informational hearings and proceedings,
123 and must be read in conjunction with 35 Ill. Adm. Code 101. Hearings conducted
124 ~~under pursuant to~~ this Part are quasi-legislative in nature and the purpose of the
125 hearings is to gather information and comments to guide the Board in its
126 rulemaking process. All testimony must be sworn.

127

128 b) All persons taking part in these hearings are participants, rather than parties as in
129 contested cases. Non-attorneys may represent themselves and others at regulatory

hearings and may ask questions of witnesses or give testimony or comment as allowed by the hearing officer.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.106 Types of Regulatory Proposals

- a) The Act provides for 5 types of regulatory proposals:
 - 1) Identical-in-substance rulemakings, as defined in Sections 7.2, 13.3, 28.2 and 28.4 of the Act [415 ILCS 5/7.2, 13.3, 28.2, and 28.4];
 - 2) Federally required rules, as defined in Section 28.2 of the Act [415 ILCS 5/28.2];
 - 3) Other regulatory proposals, both of general applicability and not of general applicability as allowed by Sections 26, 27 and 28 of the Act [415 ILCS 5/26, 27, and 28];
 - 4) Clean Air Act fast track rulemakings as defined by Section 28.5 of the Act [415 ILCS 5/28.5]; and
 - 5) Rulemakings to update incorporations by reference, as allowed by Section 28.6 of the Act [415 ILCS 5/28.6].
- b) The IAPA provides for three types of rulemakings:
 - 1) General rulemaking ~~under pursuant to~~ Section 5-40 of the IAPA [5 ILCS 100/5-40];
 - 2) Emergency rulemaking ~~under pursuant to~~ Section 5-45 of the IAPA [5 ILCS 100/5-45]; and
 - 3) Peremptory rulemaking ~~under pursuant to~~ Section 5-50 of the IAPA [5 ILCS 100/5-50].

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.108 Public Comments

- a) The Board will accept written comments from any person concerning a regulatory proposal during the first notice period as defined in Section 102.604 ~~of this Part~~. However, when adopting identical-in-substance regulations, the Board will accept

written comments from USEPA and other persons for at least 45 days after the date of publication of the proposed regulations or amendments in the Illinois Register in accordance with Section 102.610 of this Part.

- b) Any person may submit written comments on any proposal within 14 days after the receipt of the hearing transcript in Board offices unless otherwise specified by the hearing officer or the Board.
- c) Comments must be filed with the Clerk and served in accordance with 35 Ill. Adm. Code 101.Subpart C; upon the ~~Environmental Protection Agency (Agency), Department of Natural Resources (DNR)~~, the Attorney General (if a participant), the proponent, and the participants on any service list established by the hearing officer under pursuant to Section 102.422 of this Part unless otherwise specified by the hearing officer or the Board.
- d) Comments that are not timely filed or properly served will not be considered, except as allowed by the hearing officer or the Board to prevent material prejudice.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.110 Waiver of Requirements (Repealed)

~~The Board may waive any of the non-statutory requirements of this Part upon a showing by a person that a particular requirement would create an undue burden on that person such as where the burden of compliance imposes financial costs that would preclude further participation, or where compliance would result in the provision of information already provided in that proceeding.~~

(Source: Repealed at 41 Ill. Reg. _____, effective _____)

Section 102.112 Other Proceedings

Under Pursuant to Section 5(d) of the Act or other applicable law, the Board may conduct such other noncontested or informational hearings as may be necessary to accomplish the purposes of the Act or other applicable law. The hearings may include inquiry hearings to gather information on any subject the Board is authorized to regulate.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.114 Hearings

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

217

218 (Source: Amended at 41 Ill. Reg. _____, effective _____)

219

220 SUBPART B: REGULATIONS OF GENERAL APPLICABILITY, RESOURCE
221 CONSERVATION AND RECOVERY ACT (RCRA) AMENDMENTS,
222 AND SITE-SPECIFIC REGULATIONS
223

224

Section 102.202 Proposal Contents for Regulations of General Applicability

225

226 A Each proponent must set forth the following in its proposal must include:

227

228 a) The language of the proposed rule, including any existing regulatory language
229 proposed to be amended or repealed. Language being added must be indicated by
230 underscoring, and language being deleted must be indicated by strike-outs. The
231 proposed rule must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart
232 C;

233

234 b) A statement of the reasons supporting the proposal, including a statement of the
235 facts that support the proposal, and a statement of the purpose and effect of the
236 proposal, including environmental, technical, and economic justification. The
237 statement must discuss the applicable factors listed in Section 27(a) of the Act.
238 The statement must include, to the extent reasonably practicable, all affected
239 sources and facilities and the economic impact of the proposed rule;

240

241 c) A synopsis of all testimony to be presented by the proponent at hearing;

242

243 d) Any material to be incorporated by reference within the proposed rule under
244 ~~pursuant to~~ Section 5-75 of the IAPA [5 ILCS 100/5-75];

245

246 e) *A descriptive title or other description of any published study or research report*
247 *used in developing the rule, the identity of the person who performed such study,*
248 *and a description of where the public may obtain a copy of any such study or*
249 *research report. If the study was performed by an agency or by a person or entity*
250 *that contracted with the agency for the performance of the study, the agency shall*
251 *also make copies of the underlying data available to members of the public upon*
252 *request if the data are not protected from disclosure under the Freedom of*
253 *Information Act [5 ILCS 140]. [5 ILCS 100/5-40(3.5)];*

254

255 f) Documentation of service upon all persons required to be served under pursuant
256 ~~to~~ Section 102.422 of this Part;

257

- 258 g) Unless the proponent is the Agency or DNR, a petition signed by at least 200
259 persons, ~~under pursuant to Section 28 of the Act and Section 102.410(b) of this~~
260 ~~Part;~~
- 261
- 262 h) When the Agency proposes a rule it believes is federally required, a certification
263 in accordance with Section 102.500 ~~of this Part;~~
- 264
- 265 i) For a proposed rule that amends an existing Board rule, a written statement or
266 certification that the proposal amends the most recent version of the rule as
267 published on the Board's Web site or as obtained from the Clerk;
- 268
- 269 j) ~~An~~ When the proponent is a State agency, an electronic version of the proposed
270 rule language information required under subsection (a) of this Section in the
271 format specified in 35 Ill. Adm. Code 101.1030 ~~Microsoft Word for Windows,~~
272 ~~version 6.0 or greater; and~~
- 273
- 274 k) When any information required under this Section is inapplicable or unavailable,
275 a complete justification for the inapplicability or unavailability.

276 (Source: Amended at 41 Ill. Reg. _____, effective _____)

277
278
279 **Section 102.204 Proposal of RCRA Amendments**

280
281 In addition to satisfying the requirements of Section 102.202 ~~of this Part~~, any proposal to amend
282 the RCRA regulations must:

- 283
- 284 a) Indicate whether it is made under ~~pursuant to the provisions of~~ Section 22.4(a),
285 22.4(b) or 22.4(c) of the Act;
- 286
- 287 b) Include a listing of all amendments to the corresponding federal regulations since
288 the period encompassed by the last amendment of the Board's RCRA rules; and
- 289
- 290 c) Include a certificate of service indicating that a copy of the proposal has been
291 served on the USEPA. Service must be made at the following address:

292
293 Director, Waste Management Division
294 USEPA, Region V
295 77 W. Jackson Street
296 Chicago, Illinois 60604

297
298 (Source: Amended at 41 Ill. Reg. _____, effective _____)

299
300 **Section 102.206 Notice of Site-Specific RCRA Proposals**

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343

- a) Public notice of hearings on site-specific RCRA proposals will be given at least 30 days before the date of the hearing.

- b) In addition to the requirements of Section 28 of the Act, the Board, at a minimum, will give notice of hearings on a site-specific RCRA proposal to the following persons:
 - 1) Federal agencies as designated by the USEPA;
 - 2) Illinois Department of Transportation;
 - 3) ~~DNR~~ Illinois Department of Natural Resources;
 - 4) Illinois Department of Public Health;
 - 5) The Governor of any other state adjacent to the county in which the facility is located; and
 - 6) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility.

- c) In addition to the methods of notice by publication of Section 28 of the Act and Section 102.416 of this Part, the Board will give notice by broadcast over at least one radio station in the area of the facility containing the information required by Section 102.416 ~~subsections (d)(2) and (d)(4) through (d)(8) of this Section.~~

- d) A hearing notice on a site-specific RCRA proposal will include the following information:
 - 1) The address of the Board office;
 - 2) Name and address of the proponent and, if different, of the facility for which the site-specific rule is sought;
 - 3) A brief description of the business conducted at the facility and the activity described in the proposal;
 - 4) A description of the relief requested in the proposal;
 - 5) Name, address, e-mail address, and telephone number of the Clerk of the ~~Board~~, from whom interested persons may obtain further information,

- 344 including copies of the proposal;
- 345
- 346 6) The name, address, e-mail address, and telephone number of the Agency's
- 347 representative in the rulemaking;
- 348
- 349 7) A description of any written comment period or a statement that a
- 350 comment period will be established in the future;
- 351
- 352 8) A statement that the record in the rulemaking is available at the Board
- 353 office for inspection, except those portions that are claimed or determined
- 354 to be trade secrets, and that procedures are available whereby disclosure
- 355 may be sought by the public. Any such claim must be made in accordance
- 356 with 35 Ill. Adm. Code 130;
- 357
- 358 9) A statement that site-specific rules may be adopted ~~under~~ pursuant to 415
- 359 ILCS 5/27 and Section 102.202 of this Part, and a citation to the Board
- 360 regulations sought to be modified; and
- 361
- 362 10) Any additional information considered necessary or proper.
- 363

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.210 Proposal Contents for Site-Specific Regulations

Proponents of site-specific regulations other than those relating to RCRA must comply with the requirements of Section 102.202 of this Part in addition to the following requirements:

- 371 a) ~~The proposal must set forth the language of the proposed site-specific rule,~~
- 372 ~~including any existing regulatory language proposed to be amended or repealed.~~
- 373 ~~Language being added must be indicated by underlining and language being~~
- 374 ~~deleted must be indicated by strike-outs.~~ If the proposed site-specific rule seeks
- 375 an exemption from or modification of a rule of general applicability, the proposed
- 376 site-specific rule may not be proposed as an amendment to the general rule.
- 377 Instead, the site-specific rule must be proposed as its own Section;
- 378
- 379 b) In the event that the proposed rule would replace the applicability of a general
- 380 rule to the pollution source, the proposal must specify, with supporting
- 381 documentation, the reasons why the general rule is not technically feasible or
- 382 economically reasonable for the person or site. The documentation must include
- 383 relevant information on other similar persons' or sites' ability to comply with the
- 384 general rule. Where relevant to the Board's consideration, the proposal must also
- 385 include information pertaining to *existing physical conditions, the character of the*
- 386 *area involved, including the character of surrounding land uses, zoning*

387 *classifications, and the nature of the existing air quality or receiving body of*
388 *water [415 ILCS 5/27(a)];*

389
390 c) *A descriptive title or other description of any published study or research report*
391 *used in developing the rule, the identity of the person who performed such study,*
392 *and a description of where the public may obtain a copy of any such study or*
393 *research report. If the study was performed by an agency or by a person or entity*
394 *that contracted with the agency for the performance of the study, the agency shall*
395 *also make copies of the underlying data available to members of the public upon*
396 *request if the data are not protected from disclosure under the Freedom of*
397 *Information Act [5 ILCS 140]. [5 ILCS 100/5-40(3.5)];*

398
399 d) The proposal must describe the person or site for which regulatory change is
400 sought and the area affected by the proposed change. The proposal must also
401 include a detailed assessment of the environmental impact of the proposed
402 change, and include a description of available treatment or control options;

403
404 e) The proposal must demonstrate that the Board may grant the requested relief
405 consistent with federal law governing the subject of the proposal (e.g.,
406 Underground Injection Control program, Resource Conservation and Recovery
407 Act, etc.); and

408
409 ~~f) When the proponent is a State agency, the proponent also must provide an~~
410 ~~electronic version of the information required under subsection (a) of this Section~~
411 ~~in Microsoft Word for Windows, version 6.0 or greater; and~~

412
413 ~~f)g~~) When any information required under this Section is inapplicable or unavailable,
414 the proposal must provide a complete justification for the inapplicability or
415 unavailability.

416
417 (Source: Amended at 41 Ill. Reg. _____, effective _____)

418
419 **Section 102.211 Proposal to Update Incorporations by Reference**

420
421 a) *Any person may file a proposal with the Board to update an incorporation by*
422 *reference included in a Board rule. The Board or the Agency may also make such*
423 *a proposal on its own initiative. [415 ILCS 5/28.6(a)] The proposal must be filed*
424 *with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h) and served on the*
425 *Agency, DNR, and the Attorney General in accordance with 35 Ill. Adm. Code*
426 *101.304(c).*

427
428 b) *A rulemaking to update an incorporation by reference under this Section must:*
429

- 430 1) *Be for the sole purpose of replacing a reference to an older or obsolete*
431 *version of a document with a reference to the current version of that*
432 *document or its successor document; and*
433
- 434 2) *Comply with Sections 5-40 and 5-75 of the IAPA [5 ILCS 100/5-40, 5-75].*
435 *[415 ILCS 5/28.6(b), (c)]*
436
- 437 c) *Sections 27 and 28 of the Act [415 ILCS 5/27, 28] do not apply to rulemaking*
438 *under this Section. [415 ILCS 5/28.6(c)] Accordingly, for rulemaking under this*
439 *Section, the Board will not hold any public hearings nor request that the*
440 *Department of Commerce and Economic Opportunity conduct a study of the*
441 *economic impact of the proposed amendment.*
442
- 443 d) A proposal to update an incorporation by reference under this Section must:
444
- 445 1) Include a statement of the reasons supporting the proposal, including a
446 statement of the facts that support the proposal, and a statement of the
447 purpose and effect of the proposal;
448
- 449 2) Comply with subsections (a), (d), (e), (f), (i), and (j) of Section 102.202-~~of~~
450 *this Part; and*
451
- 452 3) When any information required under this subsection (d) is inapplicable or
453 unavailable, the proposal must provide a complete justification for the
454 inapplicability or unavailability.
455
- 456 e) *If an objection to the proposed amendment is filed during the public comment*
457 *period required under Section 5-40 of the IAPA [5 ILCS 100/5-40], then the*
458 *proposed amendment cannot be adopted pursuant to this Section. [415 ILCS*
459 *5/28.6(d)]*
460
- 461 f) *Nothing in this Section precludes the adoption of a change to an incorporation by*
462 *reference through other lawful rulemaking procedures. [415 ILCS 5/28.6(d)]*
463

464 (Source: Amended at 41 Ill. Reg. _____, effective _____)
465

466 **Section 102.212 Dismissal**
467

- 468 a) Failure of the proponent to satisfy the content requirements for proposals under
469 this Subpart or failure to respond to Board requests for additional information will
470 render a proposal subject to dismissal for inadequacy.
471
- 472 b) Failure of the proponent to pursue disposition of the proposal in a timely manner

will render a proposal subject to dismissal. In making this determination, the Board will consider factors including the history of the proceeding and the proponent's compliance with any Board or hearing officer orders.

c) A proposal will be dismissed for inadequacy in cases in which the Board, after evaluating the proposal, cannot determine the statutory authority on which the proposal is made. ~~In all such cases, a statement informing the proponent of the Board's basis for dismissal will be made.~~ Dismissal of a proposal will not bar a proponent from re-submitting a proposal in the absence of any deadline imposed by applicable law or Board regulations.

d) Any person may file a motion challenging the statutory authority or sufficiency of the proposal under pursuant to 35 Ill. Adm. Code 101.Subpart E.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART C: CLEAN AIR ACT AMENDMENTS (CAAA)
FAST TRACK RULEMAKING

Section 102.300 Applicability

This Subpart applies to ~~the adoption of rules proposed by the Agency and required to be adopted by the State under the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (CAAA). A "fast-track" rulemaking proceeding is a proceeding to promulgate a rule that the CAAA requires to be adopted. For purposes of this Section, "requires to be adopted" refers only to those regulations or parts of regulations for which the United States Environmental Protection Agency is empowered to impose sanctions against the State for failure to adopt such rules.~~ [415 ILCS 5/28.5(a), (c)]

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.302 Agency Proposal

a) When proposing a regulation required by the CAAA, the Agency proposal must meet the following requirements:

1) Set ~~The proposal~~ must set forth the proposed rule, which must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;

2) Include ~~The proposal~~ must have a cover sheet that prominently states that the Agency proposes the rule under Section 28.5 of the Act, *unless another provision of the Act specifies the method for adopting a specific rule* [415 ILCS 5/28.5(c)];

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- 3) ~~Clearly~~ *The proposal must clearly identify the provisions and portions of the federal statute, regulations, guidance, policy statement, or other documents upon which the rule is based [415 ILCS 5/28.5(e)(3)];*
- 4) ~~Include~~ *The proposal must include supporting documentation for the rule that summarizes the basis of the rule [415 ILCS 5/28.5(e)(4)];*
- 5) ~~Describe~~ *The proposal must describe in general the alternative selected and the basis for the alternative [415 ILCS 5/28.5(e)(5)];*
- 6) ~~Summarize~~ *The proposal must summarize the economic and technical data that the Agency relied upon in drafting the proposed rule;*
- 7) ~~Include~~ *The proposal must include a list of any documents that the Agency directly relied upon in drafting the proposed rule or that the Agency intends to rely upon at hearing, and copies of the documents;*
- 8) ~~Set~~ *The proposal must set forth a description of the geographical area to which the rule is intended to apply, a description of the process or processes affected, and identification by classes of the entities expected to be affected, and a list of sources expected to be affected by the rule to the extent known to the Agency [415 ILCS 5/28.5(e)(8)];*
- 9) ~~Include a~~ *A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act [5 ILCS 140]. [5 ILCS 100/5-40(3.5)]; and*
- 10) ~~Include~~ *The proposal must include an electronic version of the information required under subsection (a)(1) of this Section in Microsoft Word for Windows, version 6.0 or greater.*

b) ~~If the proposal fails to meet any of the requirements of subsection (a) of this Section,~~ the Board may decide not to accept the proposal for filing.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

559 **Section 102.306 Prefiled Testimony**

- 560
- 561 a) The hearing officer will close the service list for purposes of prefiled testimony at
- 562 4:30 p.m. 16 days before the date of hearing.
- 563
- 564 b) Ten days before the hearing, copies of prefiled testimony must be filed with the
- 565 Clerk and served upon all people who are on the service list as closed under
- 566 ~~pursuant to subsection (a) of this Section.~~
- 567
- 568 c) The Board may grant a waiver of the prefiling deadline or service requirement for
- 569 good cause.
- 570
- 571 d) Participants who do not pre-file their testimony will only be allowed to testify if
- 572 time remains in that hearing day. The hearing will not be continued from day to
- 573 day to accommodate participants who do not prefile.
- 574

575 (Source: Amended at 41 Ill. Reg. _____, effective _____)

576

577 **SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS,**

578 **PRODUCTION OF INFORMATION, SUBPOENAS, PREHEARING**

579 **CONFERENCES, AND HEARINGS**

580

581 **Section 102.400 Service and Filing of Documents**

582

583 All documents must be served and filed in accordance with 35 Ill. Adm. Code

584 101.~~Subparts~~Subpart C and J.

585

586 (Source: Amended at 41 Ill. Reg. _____, effective _____)

587

588 **Section 102.402 Motions, Production of Information, and Subpoenas**

589

590 Motion practice, production of information and the issuance of subpoenas in regulatory

591 proceedings is governed by 35 Ill. Adm. Code 101. All motions and responses must be filed

592 with the Board and served upon the hearing officer, the proponent, the Agency, and all persons

593 on any service list established under ~~pursuant to Section 102.422(b) of this Part.~~

594

595 (Source: Amended at 41 Ill. Reg. _____, effective _____)

596

597 **Section 102.408 Prehearing Order**

598

- 599 a) *No record need be kept of the prehearing conference, nor shall any participant or*
- 600 *the Board be bound by any discussions conducted at the prehearing conference*
- 601 *[415 ILCS 5/27(d)].*

- 602
- 603 b) Notwithstanding subsection (a) ~~of this Section~~, *with the consent of all participants*
- 604 *in the prehearing conference, the hearing officer may enter a prehearing order*
- 605 *delineating issues to be heard, agreed facts, and other matters* [415 ILCS
- 606 5/27(d)].
- 607
- 608 c) If the participants in the prehearing conference agree to have a prehearing order
- 609 entered ~~under pursuant to subsection (b) of this Section~~, the hearing officer may
- 610 require that those participants furnish a draft of a proposed order setting forth the
- 611 substance of the agreements reached at the prehearing conference. The hearing
- 612 officer will enter that order if he agrees that it sets forth the substance of the
- 613 agreement. The order will identify which participants have agreed to the
- 614 substance of the order.
- 615
- 616 d) A prehearing order *will not be binding on non-participants in the prehearing*
- 617 *conference* [415 ILCS 5/27(d)].
- 618

619 (Source: Amended at 41 Ill. Reg. _____, effective _____)

620

621 **Section 102.410 Authorization of Hearing**

622

- 623 a) ~~The Clerk will assign a docket number to any proposal.~~ All regulatory proposals
- 624 will be placed on the Board agenda for determination of adequacy under the
- 625 applicable law and this Part. The proponent must cure any inadequacy identified
- 626 by Board order before the proposal will proceed to hearing.
- 627
- 628 b) The Board will schedule a hearing on a proposal if it finds that the proposal is
- 629 *supported by an adequate statement of reasons, is accompanied by a petition*
- 630 *signed by at least 200 persons, is not plainly devoid of merit and does not deal*
- 631 *with a subject on which a hearing has been held within the preceding six months*
- 632 [415 ILCS 5/28(a)].
- 633
- 634 c) In accordance with Section 28(a) of the Act, if a proposal is made by the Agency,
- 635 or DNR, *the Board shall schedule a public hearing without regard to the above*
- 636 *conditions* in subsection (b) ~~of this Section~~ as soon as practicable [415 ILCS
- 637 5/28(a)].
- 638
- 639 d) ~~Under Pursuant to~~ Section 28 of the Act, *the Board may also in its discretion*
- 640 *schedule a public hearing upon any proposal without regard to the above*
- 641 *conditions* in subsection (b) ~~of this Section~~ [415 ILCS 5/28(a)].
- 642
- 643 e) If the Board determines that a proposal meets the requirements of subsection (b)
- 644 ~~of this Section~~ or is otherwise adequate under applicable law, and if any required

645 filing fee has been paid, the Board will issue an order accepting the proposal for
646 hearing. Such an order will be construed as starting the time clock for purposes of
647 any first notice publication deadlines ~~under~~ pursuant to Sections 28.2 and 28.5 of
648 the Act.

649
650 f) When the Board authorizes a hearing, the Chairman will designate one or more
651 attending Board members and a qualified hearing officer. A member of the Board
652 may serve as hearing officer if otherwise qualified.

653
654 g) The Board may consolidate proposals for hearing or decision.

655 (Source: Amended at 41 Ill. Reg. _____, effective _____)
656
657

658 **Section 102.412 Scheduling of Hearings**
659

660 a) Except as otherwise provided by applicable law, *no substantive regulation shall*
661 *be adopted, amended, or repealed until after a public hearing within the area of*
662 *the State concerned.* In the case of site-specific rules, a public hearing will be
663 held in the affected area. Except as otherwise provided by applicable law, *in the*
664 *case of state-wide regulations, hearings shall be held in at least two areas.* [415
665 ILCS 5/28(a)]
666

667 b) If the proponent or any participant wishes to request a hearing beyond the number
668 of hearings specified by the hearing officer, that person must demonstrate, in a
669 motion to the hearing officer, that failing to hold an additional hearing would
670 result in material prejudice to the movant. The motion may be oral, if made at
671 hearing, or written. The movant must show that he exercised due diligence in his
672 participation in the proceeding and why an additional hearing, as opposed to the
673 submission of written comments ~~under~~ pursuant to Section 102.108, is necessary.
674

675 (Source: Amended at 41 Ill. Reg. _____, effective _____)
676

677 **Section 102.414 Hearings on the Economic Impact of New Proposals**
678

679 a) In accordance with Section 27(b) of the Act, except as otherwise provided by
680 applicable law, before the adoption of any proposed rules, *the Board shall request*
681 *that the Department of Commerce and ~~Economic Opportunity~~ Economic*
682 *Opportunity conduct a study of the economic impact of the proposed rules. The*
683 *Board shall conduct at least one public hearing on the economic impact of those*
684 *new rules. At least 20 days before the hearing, the Board shall notify the public*
685 *of the hearing and make the economic impact study, or the Department of*
686 *Commerce and ~~Economic Opportunity's~~ Economic Opportunity's explanation for*
687 *not producing an economic impact study, available to the public. Such public*

688 *hearing may be held simultaneously or as a part of any Board hearing*
 689 *considering such new rules. In adopting any such new rule, the Board shall, in its*
 690 *written opinion, make a determination, based upon the evidence in the public*
 691 *hearing record, including, but not limited to, the economic impact study, as to*
 692 *whether the proposed rule has any adverse economic impact on the people of the*
 693 *State of Illinois. [415 ILCS 5/27(b)]*
 694

- 695 b) If information of the economic impact of a proposed regulation is given at a
 696 general hearing on the proposal, the Board need not hold a special hearing on only
 697 the economic impact.
 698

699 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 700

701 **Section 102.416 Notice of Hearing**
 702

- 703 a) The hearing officer will set a time and place for hearing. The Clerk will give
 704 notice of the hearing as follows or as otherwise required by applicable law:
 705
- 706 1) By notice ~~in the Board's Environmental Register and on the Board's~~
 707 website;
 - 708
 - 709 2) *At least 20 days prior to the scheduled date of the hearing the Board shall*
 710 *give notice of such hearing by public advertisement in a newspaper of*
 711 *general circulation in the area of the State concerned. The notice will*
 712 *include, the date, time, place and purpose of such hearing [415 ILCS*
 713 *5/28(a)]; and*
 714
 - 715 3) Where required by federal law, including air pollution and RCRA
 716 proposals, newspaper notice will be published at least 30 days before the
 717 hearing date.
 718
- 719 b) In accordance with Section 28(a) of the Act or as otherwise required by applicable
 720 law, the Clerk will give notice to the proponent and to all persons who are on the
 721 notice list in accordance with Section 102.422 ~~of this Part.~~
 722
- 723 c) Unless otherwise required by applicable law, when a hearing is to be held to
 724 satisfy the public hearing requirement of the Clean Air Act (42 USC 7401 et seq.)
 725 for State Implementation Plan revisions, the Clerk will give notice of the hearing
 726 by publication in the Illinois Register in lieu of newspaper notice.
 727
- 728 d) Hearings that are continued on the hearing record for a period of 45 days or less
 729 do not require notice that complies with subsection (a), (b), or (c) ~~of this Section.~~
 730

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.418 Record

All oral testimony will be recorded stenographically. The proposal and all attachments, the transcript, all written testimony, all exhibits admitted in connection with the hearing, and all written submissions filed with the Clerk under Section 102.108 of this Part before or after the close of the hearing will constitute the record.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.422 Notice and Service Lists

- a) The Clerk's Office will maintain a notice list for each regulatory proceeding. The notice list will consist of those persons who have furnished their names and addresses to the Clerk's Office concerning the proposal. The Clerk will serve a copy of all Board orders and hearing officer orders upon the persons appearing on the notice list.
- b) The hearing officer may establish a service list for any regulatory proceeding, in addition to the notice list. Unless ordered otherwise by the hearing officer, participants must serve copies of all their respective filings upon the persons appearing on the service list. In deciding whether to establish a service list, factors that the hearing officer will consider include the complexity of the proceeding and the number of participants. For purposes of fast-track rulemakings under Section 28.5 of the Act, participants of record will be the individuals on the service list.
- c) The Board will not accept general requests to appear on all notice lists. Interested persons must submit their names and addresses for each proceeding in accordance with subsection (a) of this Section.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.424 Prehearing Filings of Testimony, Questions, Responses, and Exhibits

- a) The proponent must file all written testimony and any related exhibits 21 days before the hearing at which the witness testifies, unless the hearing officer directs otherwise to prevent material prejudice or undue delay.
- b) The hearing officer may require the prehearing filing of testimony, questions, responses, and any related exhibits by the proponent or participants other than the proponent if the hearing officer determines that the procedure will provide for a

- 774 more efficient hearing.
 775
 776 c) All prehearing testimony, questions, responses, and any related exhibits must be
 777 filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h). Persons
 778 filing these prehearing documents must serve them in accordance with 35 Ill.
 779 Adm. Code 101.304(c) upon the hearing officer, the Agency, the Attorney
 780 General's Office, DNR, the proponent, and each participant appearing on any
 781 service list, unless otherwise specified by the hearing officer. The service must be
 782 initiated on or before the date that the prehearing documents are filed with the
 783 Clerk.
 784
 785 d) All prehearing testimony, questions, responses, and any related exhibits must be
 786 labeled with the docket number of the proceeding, the name of the witness
 787 corresponding to the material, and the title of the material.
 788
 789 e) The proponent and each participant who has filed testimony, questions, responses,
 790 or any related exhibits before hearing must bring to the hearing the number of
 791 paper copies of the material that the hearing officer designates.
 792
 793 f) Testimony, questions, and responses that are timely filed before the hearing will
 794 be entered into the record as if read, unless the hearing officer determines that it
 795 will aid public understanding to have the material read at the hearing. All persons
 796 testifying will be sworn and subject to cross-examination. Modifications to
 797 prehearing documents may be allowed by the hearing officer at the hearing if the
 798 modifications are either nonsubstantive in nature or would not materially
 799 prejudice another person's participation at the hearing. Objections to hearing
 800 officer rulings allowing or disallowing the modifications are waived unless raised
 801 at the hearing.
 802
 803 g) When prehearing filing of testimony, questions, responses, and any related
 804 exhibits is required ~~under pursuant to~~ subsection (a) or (b), material that is not
 805 timely filed will be allowed at the hearing only if time permits and the hearing
 806 officer determines that allowing the material will not materially prejudice the
 807 proponent or any other participant. Any of these documents that is not allowed at
 808 the hearing because it was not timely filed before the hearing can be filed after the
 809 hearing as a public comment.
 810
 811 h) For a videoconference hearing under Section 102.114, in addition to the other
 812 requirements of this Section, all written testimony, questions, responses, and any
 813 related exhibits, as well as any other document to be offered as a hearing exhibit,
 814 must be received by the Clerk's Office at least 24 hours before the scheduled start
 815 of the hearing. Any of these documents that is not filed at least 24 hours before
 816 the scheduled start of the videoconference hearing will not be allowed at the

817 hearing, but can be filed after the hearing as a public comment.

818
819 (Source: Amended at 41 Ill. Reg. _____, effective _____)
820

821 SUBPART E: CERTIFICATION OF REQUIRED RULES
822

823 **Section 102.502 Challenge to Agency Certification**
824

- 825 a) If any person wishes to challenge the Agency's certification that a proposed rule is
826 a required rule, that person must file an objection to that certification within 21
827 days after the date of the Board's order accepting a proposal for hearing. The
828 objection must state the reasons that the objector believes that the proposed rule is
829 not a required rule, and must include all arguments that the objector wishes the
830 Board to consider. A copy of the objection must be served upon the Agency, the
831 Attorney General's Office, and DNR.
832
- 833 b) The Agency may file a response to any objection within 14 days after the service
834 of that objection. No reply by the objector will be allowed, unless the Board
835 orders otherwise to avoid material prejudice.
836
- 837 c) No hearing will be held on any objection filed under pursuant to this Section.
838

839 (Source: Amended at 41 Ill. Reg. _____, effective _____)
840

841 **Section 102.504 Board Determination**
842

- 843 a) The Board will rule upon any objection filed under pursuant to this Subpart within
844 60 days after the date that the Board accepts a proposal for hearing.
845
- 846 b) In ruling upon an objection to an Agency certification, the Board will consider all
847 information in the record of that proceeding, including the proposal, the objection,
848 and the Agency response to the objection. The burden of proof is on the objector.
849
- 850 ~~The Board will give notice of its determination to the objector, the Agency, DNR,~~
851 ~~and any person who has asked to be placed on the notice list pursuant to Section~~
852 ~~102.422 of this Part for that proposal.~~
853
- 854 ~~d) Orders entered pursuant to this Section are interlocutory in nature and may be~~
855 ~~appealed only pursuant to 35 Ill. Adm. Code 101.308.~~
856

857 (Source: Amended at 41 Ill. Reg. _____, effective _____)
858

859 SUBPART F: BOARD ACTION

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Section 102.604 First Notice of Proposed Regulations

Except when otherwise directed by applicable law, the Board will give first notice of its proposed adoption, amendment, or repeal of regulations ~~under pursuant to~~ Section 5-40 of the IAPA [5 ILCS 100/5-40]. The first notice period will be at least 45 days, and will begin on the day that first notice is published in the Illinois Register. The Board will accept written comments from any person concerning the proposed regulations during the first notice period.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.606 Second Notice of Proposed Regulations

- a) Except when otherwise directed by applicable law, the Board will give second notice of its proposed adoption, amendment, or repeal of regulations to JCAR. The second notice period will begin on the date written notice is received by JCAR, and will expire 45 days after that date, except as provided by Section 5-40 of the IAPA [5 ILCS 100/5-40]. The Board will accept comments only from JCAR during the second notice period.
- b) After the beginning of the second notice period, no substantive changes will be made to the proposed regulation, except in response to objections or suggestions from JCAR. Those changes will be made under ~~pursuant to~~ Section 102.600 of ~~this Part~~.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.608 Notice of Board Final Action

The Board will give notice of its final action on a proposal to the proponent, the Agency, DNR, the Attorney General, and all persons on the notice list. The Board will publish notice of its final ~~action in the Environmental Register and on its website~~ Web site, and will enter a written opinion stating the reasons in support of its final action.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.614 Adoption of Peremptory Regulations

- a) When the Board finds that a peremptory rulemaking is necessary under ~~pursuant to~~ Section 5-50 of the IAPA, and states in writing its reasons for that finding, the Board will adopt that peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State under ~~pursuant to~~ Section 5-70 of the IAPA.

- 903 b) Notice of the preemptory rulemaking will be published in the Illinois Register in
904 accordance with Section 5-50 of the IAPA.

905
906 (Source: Amended at 41 Ill. Reg. _____, effective _____)
907

908 SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL
909

910 **Section 102.706 Appeal**

911
912 Any final Board order may be appealed to the appellate court within 35 days after the service of
913 that order (see 35 Ill. Adm. Code 101.300(d)), under pursuant to Sections 29 and 41 of the Act
914 [415 ILCS 5/29 and 41].

915
916 (Source: Amended at 41 Ill. Reg. _____, effective _____)
917

918 SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION
919

920 **Section 102.820 Petition Contents**

921
922 Each proponent must set forth the following information in its proposal:
923

- 924 a) The language of the proposed rule, amendment, or repealer identifying the surface
925 water body or water body segment being proposed for designation, amendment,
926 or repeal as an ORW. Language being added must be indicated by underscoring,
927 and language being deleted must be indicated by strike-outs. The proposed rule
928 must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
929
- 930 b) A statement describing the specific surface water body or water body segment for
931 which the ORW designation, amendment, or repeal is requested and the present
932 designation of the surface water body or water body segment;
933
- 934 c) A statement describing the area in which the specific surface water body or water
935 body segment exists, including:
936
- 937 1) The existence of wetlands or natural areas;
938
- 939 2) The living organisms in that area, including endangered or threatened
940 species of plants, aquatic life or wildlife listed under pursuant to the
941 Endangered Species Act (16 USC 1531 et seq.) or the Illinois Endangered
942 Species Protection Act [41 ILCS 10];
943
- 944 d) A statement supporting the designation, the amendment, or the repeal, including
945 the health, environmental, recreational, aesthetic or economic benefits of the

- 946 designation, the amendment, or the repeal thereof;
- 947
- 948 e) A statement identifying the anticipated impact on economic and social
- 949 development of the ORW designation, amendment, or repeal. This statement
- 950 must ~~should~~ include:
- 951
- 952 1) Impacts on the regional economy;
- 953
- 954 2) Impacts on regional employment;
- 955
- 956 3) Impacts on the community;
- 957
- 958 4) A comparison of the health and environmental impacts to the economic
- 959 impact of an ORW designation;
- 960
- 961 f) A statement describing the existing and anticipated uses of the specific surface
- 962 water body or water body segment for which the ORW designation, amendment,
- 963 or repeal is requested;
- 964
- 965 g) A statement describing the existing water quality of the specific surface water
- 966 body or water body segment warranting the ORW designation, amendment, or
- 967 repeal;
- 968
- 969 h) A synopsis of all testimony to be presented by the proponent at hearing;
- 970
- 971 i) Any material to be incorporated by reference within the proposed designation
- 972 under ~~pursuant to~~ Section 5-75 of the Administrative Procedure Act [5 ILCS
- 973 100/5-75];
- 974
- 975 j) *A descriptive title or other description of any published study or research report*
- 976 *used in developing the rule, the identity of the person who performed such study,*
- 977 *and a description of where the public may obtain a copy of any such study or*
- 978 *research report. If the study was performed by an agency or by a person or entity*
- 979 *that contracted with the agency for the performance of the study, the agency shall*
- 980 *also make copies of the underlying data available to members of the public upon*
- 981 *request if the data are not protected from disclosure under the Freedom of*
- 982 *Information Act [5 ILCS 140]. [5 ILCS 100/5-40(3.5)];*
- 983
- 984 k) Documentation of service upon all persons required to be served under ~~pursuant~~
- 985 ~~to~~ Section 102.810 of this Part;
- 986
- 987 l) Unless the proponent is the Agency or DNR Illinois Department of Natural
- 988 Resources or receives a waiver by the Board, a petition signed by at least 200

989 persons, ~~under pursuant to~~ Section 28 of the Act and Section 102.160(a); and

- 990
991 m) Where any information required by this Section is inapplicable or unavailable, a
992 complete justification for such inapplicability or unavailability.
993

994 (Source: Amended at 41 Ill. Reg. _____, effective _____)
995

996 **Section 102.830 Board Action**
997

- 998 a) Dismissal
999

1000 1) Failure of the proponent to satisfy the content requirements for proposals
1001 under this Subpart or failure to respond to Board requests for additional
1002 information will render a proposal subject to dismissal for inadequacy.
1003

1004 2) Failure of the proponent to pursue disposition of the petition in a timely
1005 manner will render a petition subject to dismissal. In making this
1006 determination, the Board may consider factors, including the history of the
1007 proceeding and the proponent's compliance with any Board or hearing
1008 officer orders.
1009

1010 3) Any person may file a motion challenging the sufficiency of the petition
1011 under pursuant to 35 Ill. Adm. Code 101.Subpart E.
1012

- 1013 b) Designation of ORW. The Board must designate a surface water body or water
1014 body segment as an ORW and list it in 35 Ill. Adm. Code 303.206 if it finds:
1015

1016 1) The surface water body or water body segment is of exceptional
1017 ecological or recreational significance; and
1018

1019 2) The benefits of protection of the surface water body or water body
1020 segment from future degradation outweigh the benefits of economic or
1021 social opportunities that will be lost if the surface water body or water
1022 body segment is designated as an ORW.
1023

1024 (Source: Amended at 41 Ill. Reg. _____, effective _____)

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

PART 102
REGULATORY AND INFORMATIONAL HEARINGS AND PROCEEDINGS

SUBPART A: GENERAL PROVISIONS

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AMENDMENTS, AND SITE-SPECIFIC REGULATIONS

Section
102.200 Proposal for Regulations of General Applicability
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SUBPART C: CLEAN AIR ACT AMENDMENTS (CAAA)
FAST TRACK RULEMAKING

Section
102.300 Applicability
102.302 Agency Proposal
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SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS,
PRODUCTION OF INFORMATION, SUBPOENAS, PREHEARING
CONFERENCES, AND HEARINGS

Section
102.400 Service and Filing of Documents
102.402 Motions, Production of Information, and Subpoenas
102.404 Initiation and Scheduling of Prehearing Conferences
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AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 28.6, 29, and 41 of the Environmental

Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 28.6, 29, and 41] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part II: Regulatory and Other Nonadjudicative Hearings and Proceedings, in R70-4, 1 PCB 43, October 8, ~~197-1970~~; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1398, effective January 16, ~~1984~~1985; Part repealed, new Part adopted in R88-5(B) at 14 Ill. Reg. 9210, effective May 24, 1990; amended in R90-16 at 14 Ill. Reg. ~~20471~~,20472, effective December 11, 1990; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 587, effective January 1, 2001; amended in R01-13 at 26 Ill. Reg. 3498, effective February 22, 2002; amended in R04-24 at 29 Ill. Reg. 8776, effective June 8, 2005; amended in R10-18 at 34 Ill. Reg. ~~34~~,12193, effective August 9, 2010; amended in R14-21 at 39 Ill. Reg. 2333, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. 7955, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 102.100 Applicability

a) This Part applies to all regulatory and informational hearings and proceedings, and must be read in conjunction with 35 Ill. Adm. Code 101. Hearings conducted under ~~pursuant to~~ this Part are quasi-legislative in nature and the purpose of the hearings is to gather information and comments to guide the Board in its rulemaking process. All testimony must be sworn.

b) All persons taking part in these hearings are participants, rather than parties as in contested cases. Non-attorneys may represent themselves and others at regulatory hearings and may ask questions of witnesses or give testimony or comment as allowed by the hearing officer.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.106 Types of Regulatory Proposals

a) The Act provides for 5 types of regulatory proposals:

1) Identical-in-substance rulemakings, as defined in Sections 7.2, 13.3, 28.2 and 28.4 of the Act [415 ILCS 5/7.2, 13.3, 28.2, and 28.4];

2) Federally required rules, as defined in Section 28.2 of the Act [415 ILCS 5/28.2];

3) Other regulatory proposals, both of general applicability and not of general applicability as allowed by Sections 26, 27 and 28 of the Act [415 ILCS 5/26, 27, and 28];

4) Clean Air Act fast track rulemakings as defined by Section 28.5 of the Act [415 ILCS 5/28.5]; and

5) Rulemakings to update incorporations by reference, as allowed by Section 28.6 of the Act [415 ILCS 5/28.6].

b) The IAPA provides for three types of rulemakings:

1) General rulemaking under ~~pursuant to~~ Section 5-40 of the IAPA [5 ILCS 100/5-40];

2) Emergency rulemaking under ~~pursuant to~~ Section 5-45 of the IAPA [5 ILCS 100/5-45]; and

3) Peremptory rulemaking under ~~pursuant to~~ Section 5-50 of the IAPA [5 ILCS 100/5-50].

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

Section 102.108 Public Comments

a) The Board will accept written comments from any person concerning a regulatory proposal during the first notice period as defined in Section ~~102.604 of this Part.~~ 102.604. However, when adopting identical-in-substance regulations, the Board will accept written comments from USEPA and other persons for at least 45 days after the date of publication of the proposed regulations or amendments in the Illinois Register in accordance with Section ~~102.610 of this Part.~~ 102.610.

b) Any person may submit written comments on any proposal within 14 days after the receipt of the hearing transcript in Board offices unless otherwise specified by the hearing officer or the Board.

c) Comments must be filed with the Clerk and served in accordance with 35 Ill. Adm. Code 101.Subpart C, upon the ~~Environmental Protection Agency (Agency), Department of Natural Resources (DNR).~~ DNR, the Attorney General (if a participant), the proponent, and the participants on any service list established by the hearing officer under ~~pursuant to~~ Section 102.422 ~~of this Part~~ unless otherwise specified by the hearing officer or the Board.

d) Comments that are not timely filed or properly served will not be considered, except as allowed by the hearing officer or the Board to prevent material prejudice.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

Section 102.110 Waiver of Requirements (Repealed)

~~The Board may waive any of the non-statutory requirements of this Part upon a showing by a person that a particular requirement would create an~~

~~undue burden on that person such as where the burden of compliance imposes financial costs that would preclude further participation, or where compliance would result in the provision of information already provided in that proceeding.~~

(Source: Repealed at 41 Ill. Reg. _____, effective _____)

Section 102.112 Other Proceedings

~~Under pursuant to~~ Section 5(d) of the Act or other applicable law, the Board may conduct such other noncontested or informational hearings as may be necessary to accomplish the purposes of the Act or other applicable law. The hearings may include inquiry hearings to gather information on any subject the Board is authorized to regulate.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.114 Hearings

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

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART B: REGULATIONS OF GENERAL APPLICABILITY, RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AMENDMENTS, AND SITE-SPECIFIC REGULATIONS

Section 102.202 Proposal Contents for Regulations of General Applicability

~~Each proponent must set forth the following in its~~ A proposal must include:

- a) The language of the proposed rule, including any existing regulatory language proposed to be amended or repealed. Language being added must be indicated by underscoring, and language being deleted must be indicated by strike-outs. The proposed rule must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;
- b) A statement of the reasons supporting the proposal, including a statement of the facts that support the proposal, and a statement of the purpose and effect of the proposal, including environmental, technical, and economic justification. The statement must discuss the applicable factors listed in Section 27(a) of the Act. The statement must include, to the extent reasonably practicable, all affected sources and facilities and the economic impact of the proposed rule;
- c) A synopsis of all testimony to be presented by the proponent at hearing;

d) Any material to be incorporated by reference within the proposed rule under ~~pursuant to~~ Section 5-75 of the IAPA [5 ILCS 100/5-75];

e) A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act [5 ILCS 140]. [5 ILCS 100/5-40(3.5)];

f) Documentation of service upon all persons required to be served under ~~pursuant to~~ Section 102.422 ~~of this Part~~;

g) Unless the proponent is the Agency or DNR, a petition signed by at least 200 persons, under ~~pursuant to~~ Section 28 of the Act and Section 102.410(b) ~~of this Part~~;

h) When the Agency proposes a rule it believes is federally required, a certification in accordance with Section 102.500 ~~of this Part~~;

i) For a proposed rule that amends an existing Board rule, a written statement or certification that the proposal amends the most recent version of the rule as published on the Board's Web site or as obtained from the Clerk;

j) ~~An~~When the proponent is a State agency, ~~an~~An electronic version of the proposed rule language ~~information~~ required under subsection (a) ~~of this Section~~ in the format specified in Section 35 Ill. Adm. Code 101.1030 ~~Microsoft Word for Windows, version 6.0 or greater~~; and

k) When any information required under this Section is inapplicable or unavailable, a complete justification for the inapplicability or unavailability.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

Section 102.204 Proposal of RCRA Amendments

In addition to satisfying the requirements of Section ~~102.202 of this Part~~, 102.202, any proposal to amend the RCRA regulations must:

a) Indicate whether it is made under ~~pursuant to the provisions of~~ Section 22.4(a), 22.4(b) or 22.4(c) of the Act;

b) Include a listing of all amendments to the corresponding federal regulations since the period encompassed by the last amendment of the Board's RCRA rules; and

c) Include a certificate of service indicating that a copy of the proposal has been served on the USEPA. Service must be made at the following address:

Director, Waste Management Division
USEPA, Region V
77 W. Jackson Street
Chicago, Illinois 60604

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.206 Notice of Site-Specific RCRA Proposals

a) Public notice of hearings on site-specific RCRA proposals will be given at least 30 days before the date of the hearing.

b) In addition to the requirements of Section 28 of the Act, the Board, at a minimum, will give notice of hearings on a site-specific RCRA proposal to the following persons:

- 1) Federal agencies as designated by the USEPA;
- 2) Illinois Department of Transportation;
- 3) ~~DNR Illinois Department of Natural Resources~~; DNR;
- 4) Illinois Department of Public Health;
- 5) The Governor of any other state adjacent to the county in which the facility is located; and
- 6) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility.

c) In addition to the methods of notice by publication of Section 28 of the Act and Section ~~102.416 of this Part~~, 102.416, the Board will give notice by broadcast over at least one radio station in the area of the facility containing the information required by ~~subsections~~ Section 102.416(d)(2) and (d)(4) through (d)(8) ~~of this Section~~.

d) A hearing notice on a site-specific RCRA proposal will include the following information:

- 1) The address of the Board office;
- 2) Name and address of the proponent and, if different, of the facility for which the site-specific rule is sought;
- 3) A brief description of the business conducted at the facility and the activity described in the proposal;

- 4) A description of the relief requested in the proposal;
- 5) Name, address, e-mail address, and telephone number of the Clerk-~~of the Board~~, from whom interested persons may obtain further information, including copies of the proposal;
- 6) The name, address, e-mail address, and telephone number of the Agency's representative in the rulemaking;
- 7) A description of any written comment period or a statement that a comment period will be established in the future;
- 8) A statement that the record in the rulemaking is available at the Board office for inspection, except those portions that are claimed or determined to be trade secrets, and that procedures are available whereby disclosure may be sought by the public. Any such claim must be made in accordance with 35 Ill. Adm. Code 130;
- 9) A statement that site-specific rules may be adopted under ~~pursuant to~~ 415 ILCS 5/27 and Section ~~102.202 of this Part, 102.202~~, and a citation to the Board regulations sought to be modified; and
- 10) Any additional information considered necessary or proper.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

Section 102.210 Proposal Contents for Site-Specific Regulations

Proponents of site-specific regulations other than those relating to RCRA must comply with the requirements of Section 102.202 ~~of this Part~~ in addition to the following requirements:

a) ~~The proposal must set forth the language of the proposed site specific rule, including any existing regulatory language proposed to be amended or repealed. Language being added must be indicated by underscoring and language being deleted must be indicated by strike outs.~~ If the proposed site-specific rule seeks an exemption from or modification of a rule of general applicability, the proposed site-specific rule may not be proposed as an amendment to the general rule. Instead, the site-specific rule must be proposed as its own Section;

b) In the event that the proposed rule would replace the applicability of a general rule to the pollution source, the proposal must specify, with supporting documentation, the reasons why the general rule is not technically feasible or economically reasonable for the person or site. The documentation must include relevant information on other similar persons' or sites' ability to comply with the general rule. Where relevant to the Board's consideration, the proposal must also include information pertaining to existing physical conditions, the character of the area involved, including the character of surrounding

land uses, zoning classifications, and the nature of the existing air quality or receiving body of water [415 ILCS 5/27(a)];

c) A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act [5 ILCS 140]. [5 ILCS 100/5-40(3.5)];

d) The proposal must describe the person or site for which regulatory change is sought and the area affected by the proposed change. The proposal must also include a detailed assessment of the environmental impact of the proposed change, and include a description of available treatment or control options;

e) The proposal must demonstrate that the Board may grant the requested relief consistent with federal law governing the subject of the proposal (e.g., Underground Injection Control program, Resource Conservation and Recovery Act, etc.); ~~f) When the proponent is a State agency, the proponent also must provide an electronic version of the information required under subsection (a) of this Section in Microsoft Word for Windows, version 6.0 or greater;~~ and

~~fg~~ f) When any information required under this Section is inapplicable or unavailable, the proposal must provide a complete justification for the inapplicability or unavailability.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.211 Proposal to Update Incorporations by Reference

a) Any person may file a proposal with the Board to update an incorporation by reference included in a Board rule. The Board or the Agency may also make such a proposal on its own initiative. [415 ILCS 5/28.6(a)] The proposal must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h) and served on the Agency, DNR, and the Attorney General in accordance with 35 Ill. Adm. Code 101.304(c).

b) A rulemaking to update an incorporation by reference under this Section must:

1) Be for the sole purpose of replacing a reference to an older or obsolete version of a document with a reference to the current version of that document or its successor document; and

2) Comply with Sections 5-40 and 5-75 of the IAPA [5 ILCS 100/5-40, 5-75]. [415 ILCS 5/28.6(b), (c)]

c) Sections 27 and 28 of the Act [415 ILCS 5/27, 28] do not apply to rulemaking under this Section. [415 ILCS 5/28.6(c)] Accordingly, for rulemaking under this Section, the Board will not hold any public hearings nor request that the Department of Commerce and Economic Opportunity conduct a study of the economic impact of the proposed amendment.

d) A proposal to update an incorporation by reference under this Section must:

1) Include a statement of the reasons supporting the proposal, including a statement of the facts that support the proposal, and a statement of the purpose and effect of the proposal;

2) Comply with subsections (a), (d), (e), (f), (i), and (j) of Section 102.202 ~~of this Part~~; and

3) When any information required under this subsection (d) is inapplicable or unavailable, the proposal must provide a complete justification for the inapplicability or unavailability.

e) If an objection to the proposed amendment is filed during the public comment period required under Section 5-40 of the IAPA [5 ILCS 100/5-40], then the proposed amendment cannot be adopted pursuant to this Section. [415 ILCS 5/28.6(d)]

f) Nothing in this Section precludes the adoption of a change to an incorporation by reference through other lawful rulemaking procedures. [415 ILCS 5/28.6(d)]

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.212 Dismissal

a) Failure of the proponent to satisfy the content requirements for proposals under this Subpart or failure to respond to Board requests for additional information will render a proposal subject to dismissal for inadequacy.

b) Failure of the proponent to pursue disposition of the proposal in a timely manner will render a proposal subject to dismissal. In making this determination, the Board will consider factors including the history of the proceeding and the proponent's compliance with any Board or hearing officer orders.

c) A proposal will be dismissed for inadequacy in cases in which the Board, after evaluating the proposal, cannot determine the statutory authority on which the proposal is made. ~~In all such cases, a statement informing the proponent of the Board's basis for dismissal will be made.~~

Dismissal of a proposal will not bar a proponent from re-submitting a proposal in the absence of any deadline imposed by applicable law or Board regulations.

d) Any person may file a motion challenging the statutory authority or sufficiency of the proposal under ~~pursuant to~~ 35 Ill. Adm. Code 101.Subpart E.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

SUBPART C: CLEAN AIR ACT AMENDMENTS (CAAA)
FAST TRACK RULEMAKING

Section 102.300 Applicability

This Subpart applies to ~~the adoption of~~ rules proposed by the Agency and required to be adopted by the State under the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (CAAA). A "fast-track" rulemaking proceeding is a proceeding to promulgate a rule that the CAAA requires to be adopted. For purposes of this Section, "requires to be adopted" refers only to those regulations or parts of regulations for which the United States Environmental Protection Agency is empowered to impose sanctions against the State for failure to adopt such rules.
[415 ILCS 5/28.5(a), (c)]

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

Section 102.302 Agency Proposal

a) When proposing a regulation required by the CAAA, the Agency proposal must meet the following requirements:

1) Set ~~The proposal must set~~ forth the proposed rule, which must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;

2) Include ~~The proposal must have~~ a cover sheet that prominently states that the Agency proposes the rule under Section 28.5 of the Act, unless another provision of the Act specifies the method for adopting a specific rule [415 ILCS 5/28.5(c)];

3) Clearly ~~The proposal must clearly~~ identify the provisions and portions of the federal statute, regulations, guidance, policy statement, or other documents upon which the rule is based [415 ILCS 5/28.5(e)(3)];

4) Include ~~The proposal must include~~ supporting documentation for the rule that summarizes the basis of the rule [415 ILCS 5/28.5(e)(4)];

5) Describe ~~The proposal must describe~~ in general the alternative selected and the basis for the alternative [415 ILCS 5/28.5(e)(5)];

6) Summarize ~~The proposal must summarize~~ the economic and technical data that the Agency relied upon in drafting the proposed rule;

7) Include ~~The proposal must include~~ a list of any documents that the Agency directly relied upon in drafting the proposed rule or that the Agency intends to rely upon at hearing, and copies of the documents;

8) Set ~~The proposal must set~~ forth a description of the geographical area to which the rule is intended to apply, a description of the process or processes affected, and identification by classes of the entities expected to be affected, and a list of sources expected to be affected by the rule to the extent known to the Agency [415 ILCS 5/28.5(e)(8)];

9) Include ~~aAa~~ descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act [5 ILCS 140]. [5 ILCS 100/5-40(3.5)]; and

10) Include ~~The proposal must include~~ an electronic version of the information required under subsection (a)(1) ~~of this Section~~ in Microsoft Word for Windows, version 6.0 or greater.

b) If the proposal fails to meet any of the requirements of subsection (a) ~~of this Section~~, the Board may decide not to accept the proposal for filing.

(Source: Amended at 41 Ill. Reg. ~~_____~~, effective ~~_____~~)

Section 102.306 Prefiled Testimony

a) The hearing officer will close the service list for purposes of prefiled testimony at 4:30 p.m. 16 days before the date of hearing.

b) Ten days before the hearing, copies of prefiled testimony must be filed with the Clerk and served upon all people who are on the service list as closed under ~~pursuant to~~ subsection (a) ~~of this Section~~.

c) The Board may grant a waiver of the prefiling deadline or service requirement for good cause.

d) Participants who do not pre-file their testimony will only be allowed to testify if time remains in that hearing day. The hearing will not be continued from day to day to accommodate participants who do not prefile.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS,
PRODUCTION OF INFORMATION, SUBPOENAS, PREHEARING
CONFERENCES, AND HEARINGS

Section 102.400 Service and Filing of Documents

All documents must be served and filed in accordance with 35 Ill. Adm.
Code 101. ~~Subpart~~ Subparts C and J.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

Section 102.402 Motions, Production of Information, and Subpoenas

Motion practice, production of information and the issuance of subpoenas
in regulatory proceedings is governed by 35 Ill. Adm. Code 101. All
motions and responses must be filed with the Board and served upon the
hearing officer, the proponent, the Agency, and all persons on any
service list established under ~~pursuant to~~ Section 102.422(b) ~~of this~~
~~Part~~.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

Section 102.408 Prehearing Order

a) No record need be kept of the prehearing conference, nor shall any
participant or the Board be bound by any discussions conducted at the
prehearing conference [415 ILCS 5/27(d)].

b) Notwithstanding subsection (a) ~~of this Section~~, with the consent
of all participants in the prehearing conference, the hearing officer
may enter a prehearing order delineating issues to be heard, agreed
facts, and other matters [415 ILCS 5/27(d)].

c) If the participants in the prehearing conference agree to have a
prehearing order entered under ~~pursuant to~~ subsection (b) ~~of this~~
~~Section~~, the hearing officer may require that those participants furnish
a draft of a proposed order setting forth the substance of the
agreements reached at the prehearing conference. The hearing officer
will enter that order if he agrees that it sets forth the substance of
the agreement. The order will identify which participants have agreed
to the substance of the order.

d) A prehearing order will not be binding on non-participants in the
prehearing conference [415 ILCS 5/27(d)].

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.410 Authorization of Hearing

- a) ~~The Clerk will assign a docket number to any proposal.~~ All regulatory proposals will be placed on the Board agenda for determination of adequacy under the applicable law and this Part. The proponent must cure any inadequacy identified by Board order before the proposal will proceed to hearing.
- b) The Board will schedule a hearing on a proposal if it finds that the proposal is supported by an adequate statement of reasons, is accompanied by a petition signed by at least 200 persons, is not plainly devoid of merit and does not deal with a subject on which a hearing has been held within the preceding six months [415 ILCS 5/28(a)].
- c) In accordance with Section 28(a) of the Act, if a proposal is made by the Agency, or DNR, the Board shall schedule a public hearing without regard to the above conditions in subsection (b) ~~of this Section~~ as soon as practicable [415 ILCS 5/28(a)].
- d) Under ~~pursuant to~~ Section 28 of the Act, the Board may also in its discretion schedule a public hearing upon any proposal without regard to the above conditions in subsection (b) ~~of this Section~~ [415 ILCS 5/28(a)].
- e) If the Board determines that a proposal meets the requirements of subsection (b) ~~of this Section~~ or is otherwise adequate under applicable law, and if any required filing fee has been paid, the Board will issue an order accepting the proposal for hearing. Such an order will be construed as starting the time clock for purposes of any first notice publication deadlines under ~~pursuant to~~ Sections 28.2 and 28.5 of the Act.
- f) When the Board authorizes a hearing, the Chairman will designate one or more attending Board members and a qualified hearing officer. A member of the Board may serve as hearing officer if otherwise qualified.
- g) The Board may consolidate proposals for hearing or decision.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.412 Scheduling of Hearings

- a) Except as otherwise provided by applicable law, no substantive regulation shall be adopted, amended, or repealed until after a public hearing within the area of the State concerned. In the case of site-specific rules, a public hearing will be held in the affected area. Except as otherwise provided by applicable law, in the case of state-wide regulations, hearings shall be held in at least two areas. [415 ILCS 5/28(a)]
- b) If the proponent or any participant wishes to request a hearing beyond the number of hearings specified by the hearing officer, that person must demonstrate, in a motion to the hearing officer, that failing to hold an additional hearing would result in material prejudice

to the movant. The motion may be oral, if made at hearing, or written. The movant must show that he exercised due diligence in his participation in the proceeding and why an additional hearing, as opposed to the submission of written comments under ~~pursuant to~~ Section 102.108, is necessary.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

Section 102.414 Hearings on the Economic Impact of New Proposals

a) In accordance with Section 27(b) of the Act, except as otherwise provided by applicable law, before the adoption of any proposed rules, the Board shall request that the Department of Commerce and Economic Opportunity ~~Economic Opportunity~~ conduct a study of the economic impact of the proposed rules. The Board shall conduct at least one public hearing on the economic impact of those new rules. At least 20 days before the hearing, the Board shall notify the public of the hearing and make the economic impact study, or the Department of Commerce and ~~Economic Opportunity's~~ Economic Opportunity's explanation for not producing an economic impact study, available to the public. Such public hearing may be held simultaneously or as a part of any Board hearing considering such new rules. In adopting any such new rule, the Board shall, in its written opinion, make a determination, based upon the evidence in the public hearing record, including, but not limited to, the economic impact study, as to whether the proposed rule has any adverse economic impact on the people of the State of Illinois. [415 ILCS 5/27(b)]

b) If information of the economic impact of a proposed regulation is given at a general hearing on the proposal, the Board need not hold a special hearing on only the economic impact.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

Section 102.416 Notice of Hearing

a) The hearing officer will set a time and place for hearing. The Clerk will give notice of the hearing as follows or as otherwise required by applicable law:

1) By notice ~~in the Board's Environmental Register and~~ on the Board's website;

2) At least 20 days prior to the scheduled date of the hearing the Board shall give notice of such hearing by public advertisement in a newspaper of general circulation in the area of the State concerned. The notice will include, the date, time, place and purpose of such hearing [415 ILCS 5/28(a)]; and

3) Where required by federal law, including air pollution and RCRA proposals, newspaper notice will be published at least 30 days before the hearing date.

b) In accordance with Section 28(a) of the Act or as otherwise required by applicable law, the Clerk will give notice to the proponent and to all persons who are on the notice list in accordance with Section ~~102.422 of this Part.~~ 102.422.

c) Unless otherwise required by applicable law, when a hearing is to be held to satisfy the public hearing requirement of the Clean Air Act (42 USC 7401 et seq.) for State Implementation Plan revisions, the Clerk will give notice of the hearing by publication in the Illinois Register in lieu of newspaper notice.

d) Hearings that are continued on the hearing record for a period of 45 days or less do not require notice that complies with subsection (a), (b), or (c) ~~of this Section.~~

(Source: Amended at 41 Ill. Reg. , effective)

Section 102.418 Record

All oral testimony will be recorded stenographically. The proposal and all attachments, the transcript, all written testimony, all exhibits admitted in connection with the hearing, and all written submissions filed with the Clerk under Section 102.108 ~~of this Part~~ before or after the close of the hearing will constitute the record.

(Source: Amended at 41 Ill. Reg. , effective)

Section 102.422 Notice and Service Lists

a) The Clerk's Office will maintain a notice list for each regulatory proceeding. The notice list will consist of those persons who have furnished their names and addresses to the Clerk's Office concerning the proposal. The Clerk will serve a copy of all Board orders and hearing officer orders upon the persons appearing on the notice list.

b) The hearing officer may establish a service list for any regulatory proceeding, in addition to the notice list. Unless ordered otherwise by the hearing officer, participants must serve copies of all their respective filings upon the persons appearing on the service list. In deciding whether to establish a service list, factors that the hearing officer will consider include the complexity of the proceeding and the number of participants. For purposes of fast-track rulemakings under Section 28.5 of the Act, participants of record will be the individuals on the service list.

c) The Board will not accept general requests to appear on all notice lists. Interested persons must submit their names and addresses for each proceeding in accordance with subsection (a) ~~of this Section.~~

(Source: Amended at 41 Ill. Reg. ~~_____~~, effective ~~_____~~)

Section 102.424 Prehearing ~~Submission~~Filings of Testimony, Questions, Responses, and Exhibits

a) The proponent must file all written testimony and any related exhibits 21 days before the hearing at which the witness testifies, unless the hearing officer directs otherwise ~~to prevent material prejudice or undue delay.~~

b) The hearing officer may require the prehearing filing of testimony, questions, responses, and any related exhibits by the proponent or participants other than the proponent if the hearing officer determines that the procedure will provide for a more efficient hearing.

c) All prehearing testimony, questions, responses, and any related exhibits must be filed with the Clerk in accordance with 35 Ill. Adm. Code 101.302(h). Persons filing these prehearing documents must serve them in accordance with 35 Ill. Adm. Code 101.304(c) upon the hearing officer, the Agency, the Attorney General's Office, DNR, the proponent, and each participant appearing on any service list, unless otherwise specified by the hearing officer. The service must be initiated on or before the date that the prehearing documents are filed with the Clerk.

d) All prehearing testimony, questions, responses, and any related exhibits must be labeled with the docket number of the proceeding, the name of the witness corresponding to the material, and the title of the material.

e) The proponent and each participant who has filed testimony, questions, responses, or any related exhibits before hearing must bring to the hearing the number of paper copies of the material that the hearing officer designates.

f) Testimony, questions, and responses that are timely filed before the hearing will be entered into the record as if read, unless the hearing officer determines that it will aid public understanding to have the material read at the hearing. All persons testifying will be sworn and subject to cross-examination. Modifications to prehearing documents may be allowed by the hearing officer at the hearing if the modifications are either nonsubstantive in nature or would not materially prejudice another person's participation at the hearing. Objections to hearing officer rulings allowing or disallowing the modifications are waived unless raised at the hearing.

g) When prehearing filing of testimony, questions, responses, and any related exhibits is required under ~~pursuant to~~ subsection (a) or (b),

material that is not timely filed will be allowed at the hearing only if time permits and the hearing officer determines that allowing the material will not materially prejudice the proponent or any other participant. Any of these documents that is not allowed at the hearing because it was not timely filed before the hearing can be filed after the hearing as a public comment.

h) For a videoconference hearing under Section 102.114, in addition to the other requirements of this Section, all written testimony, questions, responses, and any related exhibits, as well as any other document to be offered as a hearing exhibit, must be received by the Clerk's Office at least 24 hours before the scheduled start of the hearing. Any of these documents that is not filed at least 24 hours before the scheduled start of the videoconference hearing will not be allowed at the hearing, but can be filed after the hearing as a public comment.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART E: CERTIFICATION OF REQUIRED RULES

Section 102.502 Challenge to Agency Certification

a) If any person wishes to challenge the Agency's certification that a proposed rule is a required rule, that person must file an objection to that certification within 21 days after the date of the Board's order accepting a proposal for hearing. The objection must state the reasons that the objector believes that the proposed rule is not a required rule, and must include all arguments that the objector wishes the Board to consider. A copy of the objection must be served upon the Agency, the Attorney General's Office, and DNR.

b) The Agency may file a response to any objection within 14 days after the service of that objection. No reply by the objector will be allowed, unless the Board orders otherwise to avoid material prejudice.

c) No hearing will be held on any objection filed under ~~pursuant to~~ this Section.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.504 Board Determination

a) The Board will rule upon any objection filed under ~~pursuant to~~ this Subpart within 60 days after the date that the Board accepts a proposal for hearing.

b) In ruling upon an objection to an Agency certification, the Board will consider all information in the record of that proceeding, including the proposal, the objection, and the Agency response to the objection. The burden of proof is on the objector.

~~e) The Board will give notice of its determination to the objector, the Agency, DNR, and any person who has asked to be placed on the notice list pursuant to Section 102.422 of this Part for that proposal.~~

~~d) Orders entered pursuant to this Section are interlocutory in nature and may be appealed only pursuant to 35 Ill. Adm. Code 101.308.~~

(Source: Amended at 41 Ill. Reg. ~~_____~~, effective ~~_____~~)

SUBPART F: BOARD ACTION

Section 102.604 First Notice of Proposed Regulations

Except when otherwise directed by applicable law, the Board will give first notice of its proposed adoption, amendment, or repeal of regulations under ~~pursuant to~~ Section 5-40 of the IAPA [5 ILCS 100/5-40]. The first notice period will be at least 45 days, and will begin on the day that first notice is published in the Illinois Register. The Board will accept written comments from any person concerning the proposed regulations during the first notice period.

(Source: Amended at 41 Ill. Reg. ~~_____~~, effective ~~_____~~)

Section 102.606 Second Notice of Proposed Regulations

a) Except when otherwise directed by applicable law, the Board will give second notice of its proposed adoption, amendment, or repeal of regulations to JCAR. The second notice period will begin on the date written notice is received by JCAR, and will expire 45 days after that date, except as provided by Section 5-40 of the IAPA [5 ILCS 100/5-40]. The Board will accept comments only from JCAR during the second notice period.

b) After the beginning of the second notice period, no substantive changes will be made to the proposed regulation, except in response to objections or suggestions from JCAR. Those changes will be made under ~~pursuant to~~ Section ~~102.600 of this Part~~ 102.600.

(Source: Amended at 41 Ill. Reg. ~~_____~~, effective ~~_____~~)

Section 102.608 Notice of Board Final Action

The Board will give notice of its final action on a proposal to the proponent, the Agency, DNR, the Attorney General, and all persons on the notice list. The Board will publish notice of its final action ~~in the Environmental Register and~~ on its ~~Web site~~ website, and will enter a written opinion stating the reasons in support of its final action.

(Source: Amended at 41 Ill. Reg. ~~_____~~, effective ~~_____~~)

Section 102.614 Adoption of Peremptory Regulations

a) When the Board finds that a peremptory rulemaking is necessary under ~~pursuant to~~ Section 5-50 of the IAPA, and states in writing its reasons for that finding, the Board will adopt that peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State under ~~pursuant to~~ Section 5-70 of the IAPA.

b) Notice of the peremptory rulemaking will be published in the Illinois Register in accordance with Section 5-50 of the IAPA.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL

Section 102.706 Appeal

Any final Board order may be appealed to the appellate court within 35 days after the service of that order (see 35 Ill. Adm. Code 101.300(d)), under ~~pursuant to~~ Sections 29 and 41 of the Act [415 ILCS 5/29 and 41].

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION

Section 102.820 Petition Contents

Each proponent must set forth the following information in its proposal:

a) The language of the proposed rule, amendment, or repealer identifying the surface water body or water body segment being proposed for designation, amendment, or repeal as an ORW. Language being added must be indicated by underscoring, and language being deleted must be indicated by strike-outs. The proposed rule must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;

b) A statement describing the specific surface water body or water body segment for which the ORW designation, amendment, or repeal is requested and the present designation of the surface water body or water body segment;

c) A statement describing the area in which the specific surface water body or water body segment exists, including:

1) The existence of wetlands or natural areas;

2) The living organisms in that area, including endangered or threatened species of plants, aquatic life or wildlife listed under ~~pursuant to~~ the Endangered Species Act (16 USC 1531 et seq.) or the Illinois Endangered Species Protection Act [41 ILCS 10];

d) A statement supporting the designation, the amendment, or the repeal, including the health, environmental, recreational, aesthetic or

economic benefits of the designation, the amendment, or the repeal-
~~thereof~~;

e) A statement identifying the anticipated impact on economic and social development of the ORW designation, amendment, or repeal. This statement must ~~should~~-include:

1) Impacts on the regional economy;

2) Impacts on regional employment;

3) Impacts on the community;

4) A comparison of the health and environmental impacts to the economic impact of an ORW designation;

f) A statement describing the existing and anticipated uses of the specific surface water body or water body segment for which the ORW designation, amendment, or repeal is requested;

g) A statement describing the existing water quality of the specific surface water body or water body segment warranting the ORW designation, amendment, or repeal;

h) A synopsis of all testimony to be presented by the proponent at hearing;

i) Any material to be incorporated by reference within the proposed designation under ~~pursuant to~~ Section 5-75 of the Administrative Procedure Act [5 ILCS 100/5-75];

j) A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act [5 ILCS 140]. [5 ILCS 100/5-40(3.5)];

k) Documentation of service upon all persons required to be served under ~~pursuant to~~ Section 102.810 ~~of this Part~~;

l) Unless the proponent is the Agency or DNR ~~Illinois Department of Natural Resources~~ or receives a waiver by the Board, a petition signed by at least 200 persons, under ~~pursuant to~~ Section 28 of the Act and Section 102.160(a); and

m) Where any information required by this Section is inapplicable or unavailable, a complete justification for such inapplicability or unavailability.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 102.830 Board Action

a) Dismissal

1) Failure of the proponent to satisfy the content requirements for proposals under this Subpart or failure to respond to Board requests for additional information will render a proposal subject to dismissal for inadequacy.

2) Failure of the proponent to pursue disposition of the petition in a timely manner will render a petition subject to dismissal. In making this determination, the Board may consider factors, including the history of the proceeding and the proponent's compliance with any Board or hearing officer orders.

3) Any person may file a motion challenging the sufficiency of the petition under ~~pursuant to~~ 35 Ill. Adm. Code 101.Subpart E.

b) Designation of ORW. The Board must designate a surface water body or water body segment as an ORW and list it in 35 Ill. Adm. Code 303.206 if it finds:

1) The surface water body or water body segment is of exceptional ecological or recreational significance; and

2) The benefits of protection of the surface water body or water body segment from future degradation outweigh the benefits of economic or social opportunities that will be lost if the surface water body or water body segment is designated as an ORW.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

~~ILLINOIS REGISTER~~

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

JCAR350102-1701364r01

Document comparison by Workshare Compare on Tuesday, February 07, 2017
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Input:	
Document 1 ID	file:///I:/Input/Agency Rulemakings - Files Received\2017\February 2017\35-102-Agency Proposed-(issue 6).docx
Description	35-102-Agency Proposed-(issue 6)
Document 2 ID	file:///I:/Input/Agency Rulemakings - Files Received\2017\February 2017\35-102-r01(issue 6).docx
Description	35-102-r01(issue 6)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
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Style change	
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Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	60
Deletions	144
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	204

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Enforcement
- 2) Code Citation: 35 Ill. Adm. Code 103
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
103.100	Amendment
103.106	Amendment
103.108	Amendment
103.200	Amendment
103.202	Amendment
103.204	Amendment
103.206	Amendment
103.208	Amendment
103.210	Amendment
103.212	Amendment
103.300	Amendment
103.301	Amendment
103.304	Amendment
103.306	Amendment
103.402	Amendment
103.408	Amendment
103.410	Amendment
103.412	Amendment
103.502	Amendment
103.504	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: Prompted by a recognition that some of its rules were no longer current due to changing technology and the passage of time, the Board began planning a broad review of all its rules, with a view of streamlining, updating and overhauling its regulation. Governor Rauner's Executive Order 2016-13 has provided additional impetus to the Board's initiative. The proposal makes technical changes to the rule as well as changes in response to recently passed legislation.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 7) Will this rulemaking replace an emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of 45 days after the date of publication in the *Illinois Register*. Public comments should reference Docket R17-18 and be addressed to:

Clerk's Office
Illinois Pollution Control Board
JRTC
100 W. Randolph St., Suite 11-500
Chicago IL 60601

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R17-18 by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality, or not-for-profit corporation that practices before the Board.
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 14) Regulatory Agenda on which this rulemaking was summarized: January 2017

The full text of the Proposed Amendments begins on the next page:

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE A: GENERAL PROVISIONS
3 CHAPTER I: POLLUTION CONTROL BOARD
4

5 PART 103
6 ENFORCEMENT
7

8 SUBPART A: GENERAL PROVISIONS
9

10 Section

- 11 103.100 Applicability
12 103.102 Severability
13 103.104 Definitions
14 103.106 General
15 103.108 Hearings
16

17 SUBPART B: COMPLAINT, REQUEST FOR INFORMAL AGENCY
18 INVESTIGATION, SERVICE, AND AUTHORIZATION OF HEARING
19

20 Section

- 21 103.200 Who May File
22 103.202 Parties
23 103.204 Notice, Complaint, and Answer
24 103.206 Adding Parties; Filing Counter-, Cross-, or Third-Party Complaints; Filing New
25 or Modified Claims
26 103.208 Request for Informal Agency Investigation
27 103.210 Notice of Complaint
28 103.212 Hearing on Complaint
29

30 SUBPART C: SETTLEMENT PROCEDURE
31

32 Section

- 33 103.300 Request for Relief from Hearing Requirement in State Enforcement Proceeding
34 103.301 Request for Relief from Hearing Requirement in Citizen's Enforcement
35 Proceeding
36 103.302 Contents of Proposed Stipulation and Settlement Agreement
37 103.304 Hearing on Proposed Stipulation and Settlement Agreement
38 103.306 Board Order on Proposed Stipulation and Settlement Agreement
39

40 SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS
41

42 Section

- 43 103.400 Purpose, Scope, and Applicability

- 44 103.402 Interim Order
- 45 103.404 Joinder of the Agency
- 46 103.406 Draft Permit or Statement
- 47 103.408 Stipulated Draft Remedy
- 48 103.410 Contents of Public Notice
- 49 103.412 Public Comment
- 50 103.414 Hearing
- 51 103.416 Contents of Board Order

52
53 SUBPART E: IMPOSITION OF PENALTIES

- 54
- 55 Section
- 56 103.500 Default
- 57 103.502 Civil Penalties
- 58 103.504 Civil Penalties Method of Payment

59
60 SUBPART F: ENFORCING BOARD ORDERS

- 61 Section
- 62 103.600 Civil Action

63
64 103.APPENDIX A Comparison of Former and Current Rules (Repealed)

65
66 AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28,
67 28.2, 29, 30, 31, 41, and 42 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c),
68 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, 30, 31, 41, and 42] and authorized by
69 Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

70
71 SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part III, Enforcement
72 Proceedings, in R70-4, at 1 PCB 43, October 8, 1970; amended in R80-2, at 39 PCB 456, at 4 Ill.
73 Reg. 39, p. 285, effective September 12, 1980; amended in R80-18, at 44 PCB 125, at 5 Ill. Reg.
74 14146, effective December 3, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill.
75 Reg. 1383, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill.
76 Reg. 425, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8793, effective June 8,
77 2005; amended in R14-21 at 39 Ill. Reg. 2349, effective January 27, 2015; amended in R15-20 at
78 39 Ill. Reg. 12898, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. 7966,
79 effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. _____, effective _____.

80
81 SUBPART A: GENERAL PROVISIONS

82
83 **Section 103.100 Applicability**

- 84
- 85 a) This Part applies to proceedings before the ~~Illinois Pollution Control Board~~
- 86 (~~Board~~) concerning complaints alleging violations of the ~~Environmental~~

Protection Act (~~Act~~), regulations, and orders of the Board underpursuant to Section 31 of the Act [415 ILCS 5/31].

- 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 41 Ill. Reg. _____, effective _____)

Section 103.106 General

Enforcement proceedings may be initiated by any person against any person allegedly violating the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order [415 ILCS 5/31(d)(1)]. Complaints filed by persons other than the Attorney General or a State's Attorney will be known as citizen's complaints.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 103.108 Hearings

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

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART B: COMPLAINT, REQUEST FOR INFORMAL AGENCY INVESTIGATION, SERVICE, AND AUTHORIZATION OF HEARING

Section 103.200 Who May File

UnderPursuant to Section 31 of the Act, an enforcement proceeding may be commenced by any person.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 103.202 Parties

- a) The person initiating an enforcement proceeding must be named the complainant. Any adverse party must be named the respondent. If the Agency is requested by the Board to conduct an investigation underpursuant to Section 30 of the Act, the Board will name the Agency as a "party in interest" underpursuant to 35 Ill. Adm. Code 101.404. Upon motion of the Agency, the Board may align the Agency

with any other party or parties as appropriate.

- b) With permission leave of the Board and in accordance with Section 103.206 of this Part, cross-complainants, counter-complainants, and third-party complainants may be named as parties.
- c) Misnomer of a party is not a ground for dismissal; the name of any party may be corrected at any time.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 103.204 Notice, Complaint, and Answer

- a) An enforcement proceeding will be commenced by the service of a notice and complaint by U.S. Mail with a recipient's signature recorded, a third-party commercial carrier with a recipient's signature recorded, or personal service upon all respondents and the filing of the notice and complaint with the Clerk. (See 35 Ill. Adm. Code 101.300(b) and (c), 101.302(h) and 101.304(c)(2).)
- b) The notice must be directed to the respondents notifying them of the filing of the accompanying complaint and that they may be required to attend a hearing at a date set by the Board.
- c) The complaint must be captioned in accordance with 35 Ill. Adm. Code 101.Appendix A, Illustration A and contain:
 - 1) A reference to the provision of the Act and regulations that the respondents are alleged to be violating;
 - 2) The dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations. The complaint must advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense; and
 - 3) A concise statement of the relief that the complainant seeks.
- d) Except as provided in subsection (e), the respondent ~~must~~ may file an answer within 60 days after receipt of the complaint if respondent wants to deny any allegations in the complaint. All material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer, unless respondent asserts a lack of knowledge sufficient to form a belief. Any facts constituting an affirmative defense must be plainly set forth before hearing

173 in the answer or in a supplemental answer, unless the affirmative defense could
174 not have been known before hearing.

175
176 e) If the respondent timely files a motion under Section 103.212(b) or 35 Ill. Adm.
177 Code 101.506, the 60-day period to file an answer described in subsection (d) of
178 this Section will be stayed. The stay will begin when the motion is filed and end
179 when the Board disposes of the motion.

180
181 f) Any party serving a complaint upon another party must include the following
182 language in the notice: "Failure to file an answer to this complaint within 60 days
183 may have severe consequences. Failure to answer will mean that all allegations in
184 the complaint will be taken as if admitted for purposes of this proceeding. If you
185 have any questions about this procedure, you should contact the hearing officer
186 assigned to this proceeding, the Clerk's Office or an attorney."

187
188 (Source: Amended at 41 Ill. Reg. _____, effective _____)

189
190 **Section 103.206 Adding Parties; Filing Counter-, Cross-, or Third-Party Complaints;**
191 **Filing New or Modified Claims**

192
193 a) The Board, on its own motion or the motion of a respondent, may order a person
194 to be added as a respondent if a complete determination of a controversy cannot
195 be had without the presence of the person who is not already a party to the
196 proceeding.

197
198 b) If the Board orders a person to be added as a respondent ~~underpursuant to~~
199 subsection (a), the Board will grant the complainant permission ~~leave~~ to file an
200 amended complaint that sets forth a claim against the added respondent. The
201 amended complaint must meet the requirements of Section 103.204.

202
203 c) Misjoinder and nonjoinder of parties with respect to enforcement proceedings are
204 governed by 35 Ill. Adm. Code 101.403(b).

205
206 d) If a party wishes to file a counter-complaint, cross-complaint, or third-party
207 complaint, the party must move the Board for permission ~~leave~~ to file the
208 pleading. If a party wishes to file an amendment to a complaint, counter-
209 complaint, cross-complaint, or third-party complaint that sets forth a new or
210 modified claim against another person, the party who wishes to file the pleading
211 must move the Board for permission ~~leave~~ to file the pleading.

212
213 e) The pleading sought to be filed ~~underpursuant to~~ subsection (d) must:

214
215 1) Set forth a claim that arises out of the occurrence or occurrences that are

216 the subject of the proceeding; and

- 217
- 218 2) Meet the requirements of Section 103.204 of this Subpart, including the
- 219 requirement to serve the pleading by U.S. Mail with a recipient's signature
- 220 recorded, a third-party commercial carrier with a recipient's signature
- 221 recorded, or personal service upon the respondent, counter-respondent,
- 222 cross-respondent, or third-party respondent.
- 223

224 (Source: Amended at 41 Ill. Reg. _____, effective _____)

225
226 **Section 103.208 Request for Informal Agency Investigation**

- 227
- 228 a) Any person may request an informal Agency investigation by submitting a
- 229 request to the Board.
- 230
- 231 b) The Board will forward the request to the Agency with a copy to the person
- 232 requesting the investigation. The Agency must send an acknowledgment of
- 233 receipt of the informal investigation request to the Board.
- 234
- 235 c) The Board will take no further action upon the request for informal investigation
- 236 beyond the action described in subsection (b) of this Section.
- 237

238 (Source: Amended at 41 Ill. Reg. _____, effective _____)

239
240 **Section 103.210 Notice of Complaint**

- 241
- 242 a) In addition to the notice of hearing requirements set forth in 35 Ill. Adm. Code
- 243 101, if the complainant is the Office of the Attorney General or the State's
- 244 Attorney of the county in which the alleged violation occurred, ~~the~~when
- 245 complainant, must give notice of each complaint and hearing at least 21 days
- 246 before the hearing to:
- 247
- 248 1) ~~Any~~*any person that has complained to the Agency respecting the*
- 249 *respondent within the six months preceding the date of the complaint; and*
- 250
- 251 2) ~~Any~~*to any person in the county in which the offending activity occurred*
- 252 *that has requested notice of enforcement proceedings [415 ILCS*
- 253 *5/31(c)(1)].*
- 254
- 255 b) Failure to comply with the provisions of this Section may not be used as a defense
- 256 to an enforcement proceeding, but any person adversely affected by the failure of
- 257 compliance may upon motion to the hearing officer have the hearing postponed if
- 258 prejudice is shown.

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(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 103.212 Hearing on Complaint

- a) *Any person may file with the Board a complaint against any person allegedly violating the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order. When the Board receives a citizen's complaint, unless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing. [415 ILCS 5/31(d)(1)] The ~~definitions~~definition for duplicative and frivolous can be found at 35 Ill. Adm. Code 101.Subpart B.*
- b) Motions made by respondents alleging that a citizen's complaint is duplicative or frivolous must be filed no later than 30 days following the date of service of the complaint upon the respondent. Motions under this subsection may be made only with respect to citizen's enforcement proceedings. Timely filing the motion will, underpursuant to Section 103.204(e) ~~of this Subpart~~, stay the 60 day period for filing an answer to the complaint.
- c) The Board will automatically set for hearing all complaints filed by the Attorney General or a State's Attorney on behalf of the People of the State of Illinois.
- d) The Board in its discretion may hold a hearing on the violation and a separate hearing on the remedy.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART C: SETTLEMENT PROCEDURE

Section 103.300 Request for Relief from Hearing Requirement in State Enforcement Proceeding

- a) *Whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a proposed stipulation and settlement accompanied by a request for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act [415 ILCS 5/31(c)(2)]. The proposed stipulation and settlement agreement must conform to the statement required for settlement submissions at hearing in Section 103.302 ~~of this Part~~.*
- b) Unless the Board, ~~in its discretion~~, concludes that a hearing will be held, the Board will cause notice of the proposed stipulation and settlement, and request for relief, to be published and sent, as is required for hearing, by the Clerk's office.

The notice will include a statement that any person may file with the Clerk of the Board a written demand for a hearing within 21 days after publication of the notice. The written demand for hearing must clearly state that a public hearing is requested and ~~must~~ should indicate the assigned Board Docket number and respondent's name in the matter.

- c) *If any person files a timely written demand for a hearing, the Board will deny the request for relief from a hearing and will hold a hearing in accordance with the notice provisions of Section 31(c)(1) of the Act. [415 ILCS 5/31(c)(2)] A copy of the proposed stipulation and settlement will be entered into and presented for the record.*

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 103.301 Request for Relief from Hearing Requirement in Citizen’s Enforcement Proceeding

- a) *Whenever a complaint has been filed by a person other than the Attorney General or State's Attorney, the parties may file with the Board a stipulation and proposed settlement accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act [415 ILCS 5/31(c)(1)]. [415 ILCS 5/31(d)(2)] The stipulation and proposed settlement agreement must conform to the statement required for settlement submissions at hearing in Section 103.302 of this Part.*
- b) *Unless the Board, in its discretion, concludes that a hearing should be held, no hearing on the stipulation and proposal for settlement is required. [415 ILCS 5/31(d)(2)]*

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 103.304 Hearing on Proposed Stipulation and Settlement Agreement

When the parties submit a proposed stipulation and settlement agreement to the hearing officer at hearing, or when the Board orders that a hearing be held in accordance with Section 103.300(c) or 103.301(b) of this Part, the hearing officer will conduct a hearing in which interested persons may make statements with respect to the nature of the alleged violation and its impact on the environment, together with their views on the proposed stipulation and settlement agreement. The statements must be in accordance with 35 Ill. Adm. Code 101.628.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 103.306 Board Order on Proposed Stipulation and Settlement Agreement

- 345 a) The Board will consider the proposed settlement and stipulation agreement and
- 346 the hearing record, if any. The Board may accept, suggest revisions in, or reject
- 347 the proposed settlement and stipulation agreement, or direct initial or further
- 348 hearings as it deems appropriate. ~~Where a National Pollutant Discharge~~
- 349 ~~Elimination System (NPDES) permit is involved in the settlement, notice of~~
- 350 ~~settlement must be published in the Environmental Register at least 30 days prior~~
- 351 ~~to the settlement.~~
- 352
- 353 b) If the Board determines that a settlement involves or may involve the issuance or
- 354 modification of a Resource Conservation Recovery Act (RCRA) permit, it will
- 355 enter an interim order underpursuant to Section 103.402 of this Part.
- 356

357 (Source: Amended at 41 Ill. Reg. _____, effective _____)

358
359 **SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS**

360
361 **Section 103.402 Interim Order**

- 362
- 363 a) The Board will enter an interim order invoking the procedures of this Subpart on
- 364 its own motion or on the motion of any party. Before the Board enters an interim
- 365 order the parties must develop, through hearings or admissions underpursuant to
- 366 35 Ill. Adm. Code 101.Subpart F, a sufficient record to support the findings that
- 367 the Board must make in subsection (b) ~~of this Section.~~
- 368
- 369 b) An interim order invoking the procedures of this Subpart will include:
- 370
- 371 1) A finding or proposed finding of violation and any penalty or proposed
- 372 monetary penalty;
- 373
- 374 2) A finding that the proceeding is an enforcement action that involves or
- 375 may involve the issuance or modification of a RCRA permit;
- 376
- 377 3) Joinder of the Agency if it is not already a party; and
- 378
- 379 4) A time schedule for filing by the Agency of a partial draft permit.
- 380
- 381 c) The interim order is not a final order and may be appealed only with
- 382 permissionleave of the Board.
- 383

384 (Source: Amended at 41 Ill. Reg. _____, effective _____)

385
386 **Section 103.408 Stipulated Draft Remedy**

387

- 388 a) The parties may agree to a stipulated draft remedy.
389
390 b) A stipulated draft remedy must include the following:
391
392 1) Proposed mandatory orders that the parties agree should be included in the
393 Board's final order, which may include one or more of the following:
394
395 A) An order to cease and desist conducting regulated activities;
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397 B) An order to close a facility or unit;
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399 C) An order to execute a post-closure care plan;
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401 D) A compliance plan, including a time schedule to assure compliance
402 with regulations in the shortest possible time;
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404 E) An order to provide a performance bond or other financial
405 assurance;
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407 F) An order to apply for a permit or permit modification; and
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409 G) An order revoking a permit.
410
411 2) A partial draft permit or statement as provided by Section 103.406 of this
412 Part.
413
414 3) A statement as to whether or not the stipulation is divisible for purposes of
415 Board determinations.
416
417 c) All parties, including the Agency, must sign the stipulated draft remedy before
418 notice is given underpursuant to Section 103.410 of this Part.
419

420 (Source: Amended at 41 Ill. Reg. _____, effective _____)
421

422 **Section 103.410 Contents of Public Notice**
423

- 424 a) In addition to serving all parties, the Agency must serve a copy of any partial draft
425 permit on USEPA in accordance with 35 Ill. Adm. Code 101.304(c).
426
427 b) In addition to the requirements of the Act and Section 103.210, the Agency must,
428 at a minimum, give notice of the filing of a partial draft permit to the following
429 persons:
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- 1) Federal agencies as designated by USEPA;
 - 2) Illinois Department of Transportation;
 - 3) ~~DNR~~ Illinois Department of Natural Resources;
 - 4) Illinois Department of Public Health;
 - 5) The Governor of any other state adjacent to the county in which the facility is located; and
 - 6) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the population center that is closest to the facility.
- c) The Agency must give notice by broadcast over at least one radio station in the area of the facility containing the information required by subsections (d)(2), (d)(4) and (d)(6) through (d)(8).
- d) A notice of a partial draft permit must include the following information:
- 1) The addresses of the Board offices and the Board website;
 - 2) Name and address of the respondent and, if different, of the facility subject to the enforcement proceeding;
 - 3) A brief description of the business conducted at the facility and the activity that is the subject of the enforcement proceeding;
 - 4) A statement of the violations the Board has found or has proposed to find;
 - 5) A statement that the Agency has filed a partial draft permit;
 - 6) Name, address, e-mail address, and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the partial draft permit or stipulated remedy;
 - 7) A notice of a hearing, the address of the Board, a statement that a hearing will be held and that the record will remain open for 45 days after the filing of the partial draft or stipulated remedy for written comments;
 - 8) A statement that the record in the proceeding is available to be inspected at the Board office and may also be available through the Clerk's Office

474 On-Line (COOL), located on the Board website, except those portions of
475 the record that are claimed or determined to be trade secrets or other non-
476 disclosable information, and that procedures are available whereby
477 disclosure may be sought by the public in accordance with 35 Ill. Adm.
478 Code 130;

479
480 9) A statement that enforcement proceedings are considered underpursuant to
481 415 ILCS 5/30; and

482
483 10) Any additional information considered necessary or proper.

484
485 (Source: Amended at 41 Ill. Reg. _____, effective _____)
486

487 **Section 103.412 Public Comment**

488
489 Any person, including USEPA, may comment on the partial draft permit or stipulated draft
490 remedy within 45 days after it has been filed with the Board and notice given underpursuant to
491 Section 103.410 of this Part. Parties will receive distributions from the Clerk's Office in
492 accordance with 35 Ill. Adm. Code 101.628(c)(3).

493
494 (Source: Amended at 41 Ill. Reg. _____, effective _____)
495

496 **SUBPART E: IMPOSITION OF PENALTIES**

497
498 **Section 103.502 Civil Penalties**

499
500 Civil penalties will be determined underpursuant to Sections 33(c) and 42 of the Act. [415 ILCS
501 5/33(c) and 42].

502
503 (Source: Amended at 41 Ill. Reg. _____, effective _____)
504

505 **Section 103.504 Civil Penalties Method of Payment**

506
507 a) Payment of the penalty must be made by certified or cashier's check, money
508 order, electronic funds transfer, or in installments by the foregoing means after
509 execution of a promissory note containing an agreement for judgment.

510
511 b) All remittances must be made payable to the Environmental Protection Trust
512 Fund or such other fund as specified by the Board.

513
514 c) Any such penalty not paid within the time prescribed in the Board order will incur
515 interest at the rate set forth in Section 1003(a) of the Illinois Income Tax Act [35
516 ILCS 5/1003(a)].

517

518

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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

PART 103
ENFORCEMENT

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103.102 Severability
103.104 Definitions
103.106 General
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INVESTIGATION, SERVICE, AND AUTHORIZATION OF HEARING

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103.404 Joinder of the Agency
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103.408 Stipulated Draft Remedy
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OFFICE

SUBPART E: IMPOSITION OF PENALTIES

Section
103.500 Default
103.502 Civil Penalties
103.504 Civil Penalties Method of Payment

SUBPART F: ENFORCING BOARD ORDERS

Section
103.600 Civil Action

103.APPENDIX A Comparison of Former and Current Rules (Repealed)

AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, 30, 31, 41, and 42 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, 30, 31, 41, and 42] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part III, Enforcement Proceedings, in R70-4, at 1 PCB 43, October 8, 1970; amended in R80-2, at 39 PCB 456, at 4 Ill. Reg. 39, p. 285, effective September 12, 1980; amended in R80-18, at 44 PCB 125, at 5 Ill. Reg. 14146, effective December 3, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1383, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 425, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8793, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2349, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12898, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. 7966, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 103.100 Applicability

a) This Part applies to proceedings before the ~~Illinois Pollution Control Board (Board)~~ concerning complaints alleging violations of the ~~Environmental Protection Act (Act)~~, regulations, and orders of the Board under ~~pursuant to~~ Section 31 of the Act. — [415 ILCS 5/31].

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 41 Ill. Reg. _____, effective _____)

Section 103.106 General

Enforcement proceedings may be initiated by any person against any person allegedly violating the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order [415 ILCS 5/31(d)(1)]. Complaints filed by persons other than the Attorney General or a State's Attorney will be known as citizen's complaints.

(Source: Amended at 41 Ill. Reg. , effective)

Section 103.108 Hearings

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

(Source: Amended at 41 Ill. Reg. , effective)

SUBPART B: COMPLAINT, REQUEST FOR INFORMAL AGENCY INVESTIGATION, SERVICE, AND AUTHORIZATION OF HEARING

Section 103.200 Who May File

Under ~~pursuant to~~ Section 31 of the Act, an enforcement proceeding may be commenced by any person.

(Source: Amended at 41 Ill. Reg. , effective)

Section 103.202 Parties

a) The person initiating an enforcement proceeding must be named the complainant. Any adverse party must be named the respondent. If the Agency is requested by the Board to conduct an investigation under ~~pursuant to~~ Section 30 of the Act, the Board will name the Agency as a "party in interest" under ~~pursuant to~~ 35 Ill. Adm. Code 101.404. Upon motion of the Agency, the Board may align the Agency with any other party or parties as appropriate.

b) With permission ~~leave~~ of the Board and in accordance with Section 103.206 of this Part, cross-complainants, counter-complainants, and third-party complainants may be named as parties.

c) Misnomer of a party is not a ground for dismissal; the name of any party may be corrected at any time.

(Source: Amended at 41 Ill. Reg. , effective)

Section 103.204 Notice, Complaint, and Answer

a) An enforcement proceeding will be commenced by the service of a notice and complaint by U.S. Mail with a recipient's signature recorded,

a third-party commercial carrier with a recipient's signature recorded, or personal service upon all respondents and the filing of the notice and complaint with the Clerk. (See 35 Ill. Adm. Code 101.300(b) and (c), 101.302(h) and 101.304(c)(2).)

b) The notice must be directed to the respondents notifying them of the filing of the accompanying complaint and that they may be required to attend a hearing at a date set by the Board.

c) The complaint must be captioned in accordance with 35 Ill. Adm. Code 101.Appendix A, Illustration A and contain:

1) A reference to the provision of the Act and regulations that the respondents are alleged to be violating;

2) The dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations. The complaint must advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense; and

3) A concise statement of the relief that the complainant seeks.

d) Except as provided in subsection (e), the respondent must ~~may~~ file an answer within 60 days after receipt of the complaint if respondent wants to deny any allegations in the complaint. All material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer, unless respondent asserts a lack of knowledge sufficient to form a belief. Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing.

e) If the respondent timely files a motion under Section 103.212(b) or 35 Ill. Adm. Code 101.506, the 60-day period to file an answer described in subsection (d) ~~of this Section~~ will be stayed. The stay will begin when the motion is filed and end when the Board disposes of the motion.

f) Any party serving a complaint upon another party must include the following language in the notice: "Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney."

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

Section 103.206 Adding Parties; Filing Counter-, Cross-, or Third-Party Complaints; Filing New or Modified Claims

a) The Board, on its own motion or the motion of a respondent, may order a person to be added as a respondent if a complete determination of a controversy cannot be had without the presence of the person who is not already a party to the proceeding.

b) If the Board orders a person to be added as a respondent under ~~pursuant to~~ subsection (a), the Board will grant the complainant permission ~~leave~~ to file an amended complaint that sets forth a claim against the added respondent. The amended complaint must meet the requirements of Section 103.204.

c) Misjoinder and nonjoinder of parties with respect to enforcement proceedings are governed by 35 Ill. Adm. Code 101.403(b).

d) If a party wishes to file a counter-complaint, cross-complaint, or third-party complaint, the party must move the Board for permission ~~leave~~ to file the pleading. If a party wishes to file an amendment to a complaint, counter-complaint, cross-complaint, or third-party complaint that sets forth a new or modified claim against another person, the party who wishes to file the pleading must move the Board for permission ~~leave~~ to file the pleading.

e) The pleading sought to be filed under ~~pursuant to~~ subsection (d) must:

1) Set forth a claim that arises out of the occurrence or occurrences that are the subject of the proceeding; and

2) Meet the requirements of Section 103.204 of this Subpart, including the requirement to serve the pleading by U.S. Mail with a recipient's signature recorded, a third-party commercial carrier with a recipient's signature recorded, or personal service upon the respondent, counter-respondent, cross-respondent, or third-party respondent.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 103.208 Request for Informal Agency Investigation

a) Any person may request an informal Agency investigation by submitting a request to the Board.

b) The Board will forward the request to the Agency with a copy to the person requesting the investigation. The Agency must send an acknowledgment of receipt of the informal investigation request to the Board.

c) The Board will take no further action upon the request for informal investigation beyond the action described in subsection (b) ~~of this Section~~.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 103.210 Notice of Complaint

a) In addition to the notice of hearing requirements set forth in 35 Ill. Adm. Code 101, if the complainant is the Office of the Attorney General or the State's Attorney of the county in which the alleged violation occurred, ~~when complainant, the complainant~~thecomplainant must give notice of each complaint and hearing at least 21 days before the hearing to:

1) Any ~~any~~ person that has complained to the Agency respecting the respondent within the six months preceding the date of the complaint; and

2) Any ~~to any~~ person in the county in which the offending activity occurred that has requested notice of enforcement proceedings [415 ILCS 5/31(c)(1)].

b) Failure to comply with the provisions of this Section may not be used as a defense to an enforcement proceeding, but any person adversely affected by the failure of compliance may upon motion to the hearing officer have the hearing postponed if prejudice is shown.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

Section 103.212 Hearing on Complaint

a) Any person may file with the Board a complaint against any person allegedly violating the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order. When the Board receives a citizen's complaint, unless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing. [415 ILCS 5/31(d)(1)] The definitions ~~definition~~ for duplicative and frivolous can be found at 35 Ill. Adm. Code 101.Subpart B.

b) Motions made by respondents alleging that a citizen's complaint is duplicative or frivolous must be filed no later than 30 days following the date of service of the complaint upon the respondent. Motions under this subsection may be made only with respect to citizen's enforcement proceedings. Timely filing the motion will, under ~~pursuant to~~ Section 103.204(e) ~~of this Subpart~~, stay the 60 day period for filing an answer to the complaint.

c) The Board will automatically set for hearing all complaints filed by the Attorney General or a State's Attorney on behalf of the People of the State of Illinois.

d) The Board in its discretion may hold a hearing on the violation and a separate hearing on the remedy.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

SUBPART C: SETTLEMENT PROCEDURE

Section 103.300 Request for Relief from Hearing Requirement in State Enforcement Proceeding

a) Whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a proposed stipulation and settlement accompanied by a request for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act [415 ILCS 5/31(c)(2)]. The proposed stipulation and settlement agreement must conform to the statement required for settlement submissions at hearing in Section ~~103.302 of this Part~~. 103.302.

b) Unless the Board, ~~in its discretion~~, concludes that a hearing will be held, the Board will cause notice of the proposed stipulation and settlement, and request for relief, to be published and sent, as is required for hearing, by the Clerk's office. The notice will include a statement that any person may file with the Clerk ~~of the Board~~ a written demand for a hearing within 21 days after publication of the notice. The written demand for hearing must ~~clearly~~ state that a public hearing is requested and must ~~should~~ indicate the assigned Board Docket number and respondent's name in the matter.

c) If any person files a timely written demand for a hearing, the Board will deny the request for relief from a hearing and will hold a hearing in accordance with the notice provisions of Section 31(c)(1) of the Act. [415 ILCS 5/31(c)(2)] A copy of the proposed stipulation and settlement will be entered into and presented for the record.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

Section 103.301 Request for Relief from Hearing Requirement in Citizen's Enforcement Proceeding

a) Whenever a complaint has been filed by a person other than the Attorney General or State's Attorney, the parties may file with the Board a stipulation and proposed settlement accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act [415 ILCS 5/31(c)(1)]. [415 ILCS 5/31(d)(2)] The stipulation and proposed settlement agreement must conform to the statement required for settlement submissions at hearing in Section ~~103.302 of this Part~~. 103.302.

b) Unless the Board, in its discretion, concludes that a hearing should be held, no hearing on the stipulation and proposal for settlement is required. [415 ILCS 5/31(d)(2)]

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

Section 103.304 Hearing on Proposed Stipulation and Settlement Agreement

When the parties submit a proposed stipulation and settlement agreement to the hearing officer at hearing, or when the Board orders that a hearing be held in accordance with Section 103.300(c) or 103.301(b) ~~of this Part~~, the hearing officer will conduct a hearing in which interested persons may make statements with respect to the nature of the alleged violation and its impact on the environment, together with their views on the proposed stipulation and settlement agreement. The statements must be in accordance with 35 Ill. Adm. Code 101.628.

(Source: Amended at 41 Ill. Reg. ~~_____~~, effective ~~_____~~ _____)

Section 103.306 Board Order on Proposed Stipulation and Settlement Agreement

a) The Board will consider the proposed settlement and stipulation agreement and the hearing record, if any. The Board may accept, suggest revisions in, or reject the proposed settlement and stipulation agreement, or direct initial or further hearings as it deems appropriate. ~~Where a National Pollutant Discharge Elimination System (NPDES) permit is involved in the settlement, notice of settlement must be published in the Environmental Register at least 30 days prior to the settlement.~~

b) If the Board determines that a settlement involves or may involve the issuance or modification of a Resource Conservation Recovery Act (RCRA) permit, it will enter an interim order under ~~pursuant to~~ Section ~~103.402 of this Part.~~ 103.402.

(Source: Amended at 41 Ill. Reg. ~~_____~~, effective ~~_____~~ _____)

SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

Section 103.402 Interim Order

a) The Board will enter an interim order invoking the procedures of this Subpart on its own motion or on the motion of any party. Before the Board enters an interim order the parties must develop, through hearings or admissions under ~~pursuant to~~ 35 Ill. Adm. Code 101.Subpart F, a sufficient record to support the findings that the Board must make in subsection (b) ~~of this Section.~~

b) An interim order invoking the procedures of this Subpart will include:

- 1) A finding or proposed finding of violation and any penalty or proposed monetary penalty;
- 2) A finding that the proceeding is an enforcement action that involves or may involve the issuance or modification of a RCRA permit;
- 3) Joinder of the Agency if it is not already a party; and

4) A time schedule for filing by the Agency of a partial draft permit.

c) The interim order is not a final order and may be appealed only with permission-leave of the Board.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 103.408 Stipulated Draft Remedy

a) The parties may agree to a stipulated draft remedy.

b) A stipulated draft remedy must include the following:

1) Proposed mandatory orders that the parties agree should be included in the Board's final order, which may include one or more of the following:

A) An order to cease and desist conducting regulated activities;

B) An order to close a facility or unit;

C) An order to execute a post-closure care plan;

D) A compliance plan, including a time schedule to assure compliance with regulations in the shortest possible time;

E) An order to provide a performance bond or other financial assurance;

F) An order to apply for a permit or permit modification; and

G) An order revoking a permit.

2) A partial draft permit or statement as provided by Section ~~103.406~~ of this Part. 103.406.

3) A statement as to whether or not the stipulation is divisible for purposes of Board determinations.

c) All parties, including the Agency, must sign the stipulated draft remedy before notice is given under ~~pursuant to~~ Section ~~103.410~~ of this Part. 103.410.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 103.410 Contents of Public Notice

a) In addition to serving all parties, the Agency must serve a copy of any partial draft permit on USEPA in accordance with 35 Ill. Adm. Code 101.304(c).

b) In addition to the requirements of the Act and Section 103.210, the Agency must, at a minimum, give notice of the filing of a partial draft permit to the following persons:

- 1) Federal agencies as designated by USEPA;
- 2) Illinois Department of Transportation;
- 3) ~~Illinois Department of Natural Resources~~DNR, DNR;
- 4) Illinois Department of Public Health;
- 5) The Governor of any other state adjacent to the county in which the facility is located; and
- 6) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the population center that is closest to the facility.

c) The Agency must give notice by broadcast over at least one radio station in the area of the facility containing the information required by subsections (d)(2), (d)(4) and (d)(6) through (d)(8).

d) A notice of a partial draft permit must include the following information:

- 1) The addresses of the Board offices and the Board website;
- 2) Name and address of the respondent and, if different, of the facility subject to the enforcement proceeding;
- 3) A brief description of the business conducted at the facility and the activity that is the subject of the enforcement proceeding;
- 4) A statement of the violations the Board has found or has proposed to find;
- 5) A statement that the Agency has filed a partial draft permit;
- 6) Name, address, e-mail address, and telephone number of the Clerk-~~of the Board~~, from whom interested persons may obtain further information, including copies of the partial draft permit or stipulated remedy;
- 7) A notice of a hearing, the address of the Board, a statement that a hearing will be held and that the record will remain open for 45 days after the filing of the partial draft or stipulated remedy for written comments;

8) A statement that the record in the proceeding is available to be inspected at the Board office and may also be available through the Clerk's Office On-Line (COOL), located on the Board website, except those portions of the record that are claimed or determined to be trade secrets or other non-disclosable information, and that procedures are available whereby disclosure may be sought by the public in accordance with 35 Ill. Adm. Code 130;

9) A statement that enforcement proceedings are considered under ~~pursuant to~~ 415 ILCS 5/30; and

10) Any additional information considered necessary or proper.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 103.412 Public Comment

Any person, including USEPA, may comment on the partial draft permit or stipulated draft remedy within 45 days after it has been filed with the Board and notice given under ~~pursuant to~~ Section ~~103.410 of this Part-103.410.~~ Parties will receive distributions from the Clerk's Office in accordance with 35 Ill. Adm. Code 101.628(c)(3).

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART E: IMPOSITION OF PENALTIES

Section 103.502 Civil Penalties

Civil penalties will be determined under ~~pursuant to~~ Sections 33(c) and 42 of the Act. ~~—~~ [415 ILCS 5/33(c) and 42].

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 103.504 Civil Penalties Method of Payment

a) Payment of the penalty must be made by certified or cashier's check, money order, electronic funds transfer, or in installments by the foregoing means after execution of a promissory note containing an agreement for judgment.

b) All remittances must be made payable to the Environmental Protection Trust Fund or ~~such~~ other fund as specified by the Board.

c) Any such penalty not paid within the time prescribed in the Board order will incur interest at the rate set forth in Section 1003(a) of the Illinois Income Tax Act [35 ILCS 5/1003(a)].

(Source: Amended at 41 Ill. Reg. _____, effective _____)

~~ILLINOIS REGISTER~~

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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Insertions	32
Deletions	74
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Style change	0
Format changed	0
Total changes	106

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Enforcement

2) Code Citation: 35 Ill. Adm. Code 103

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
103.100	Amendment
103.106	Amendment
103.108	Amendment
103.200	Amendment
103.202	Amendment
103.204	Amendment
103.206	Amendment
103.208	Amendment
103.210	Amendment
103.212	Amendment
103.300	Amendment
103.301	Amendment
103.304	Amendment
103.306	Amendment
103.402	Amendment
103.408	Amendment
103.410	Amendment
103.412	Amendment
103.502	Amendment
103.504	Amendment

OK
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2/1

4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]

5) A Complete Description of the Subjects and Issues Involved: Prompted by a recognition that some of its rules were no longer current due to changing technology and the passage of time, the Board began planning a broad review of all its rules, with a view of streamlining, updating and overhauling its regulation. Governor Rauner's Executive Order 2016-13 has provided additional impetus to the Board's initiative. The proposal makes technical changes to the rule as well as changes in response to recently passed legislation.

6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 7) Will this rulemaking replace an emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of 45 days after the date of publication in the *Illinois Register*. Public comments should reference Docket R17-18 and be addressed to:

Clerk's Office
Illinois Pollution Control Board
JRTC
100 W. Randolph St., Suite 11-500
Chicago IL 60601

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R17-18 by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality, or not-for-profit corporation that practices before the Board.
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 14) Regulatory Agenda on which this rulemaking was summarized: January 2017

The full text of the Proposed Amendments begins on the next page:

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Regulatory Relief Mechanisms

2) Code Citation: 35 Ill. Adm. Code 104

3) Section Numbers: Proposed Actions:

104.100	Amendment
104.106	Amendment
104.200	Amendment
104.202	Amendment
104.204	Amendment
104.206	Amendment
104.208	Amendment
104.210	Amendment
104.212	Amendment
104.214	Amendment
104.216	Amendment
104.218	Amendment
104.220	Amendment
104.224	Amendment
104.226	Amendment
104.228	Amendment
104.230	Amendment
104.232	Amendment
104.234	Amendment
104.236	Amendment
104.238	Amendment
104.240	Amendment
104.248	Amendment
104.300	Amendment
104.304	Amendment
104.400	Amendment
104.402	Amendment
104.404	Amendment
104.406	Amendment
104.408	Amendment
104.414	Amendment
104.416	Amendment
104.418	Amendment
104.419	New Section
104.420	Amendment

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Pollution Control Board

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- | | |
|---------|-----------|
| 104.422 | Amendment |
| 104.424 | Amendment |
| 104.426 | Amendment |
| 104.428 | Amendment |
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: Prompted by a recognition that some of its rules were no longer current due to changing technology and the passage of time, the Board began planning a broad review of all its rules, with a view of streamlining, updating and overhauling its regulation. Governor Rauner's Executive Order 2016-13 has provided additional impetus to the Board's initiative. The proposal makes technical changes to the Part as well as changes in response to recently passed legislation.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

Chicago IL 60601

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- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality, or not-for-profit corporation that practices before the Board
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2017

The full text of the Proposed Amendments begins on the next page:

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE A: GENERAL PROVISIONS
3 CHAPTER I: POLLUTION CONTROL BOARD
4

5 PART 104
6 REGULATORY RELIEF MECHANISMS
7

8 SUBPART A: GENERAL PROVISIONS
9

10	Section	
11	104.100	Applicability
12	104.102	Severability
13	104.104	Definitions
14	104.106	Petitions and Hearings

15
16 SUBPART B: VARIANCES
17

18	Section	
19	104.200	General
20	104.202	Filing Requirements
21	104.204	Petition Content Requirements
22	104.206	Resource Conservation and Recovery Act (RCRA) Variance Petition Contents
23	104.208	Consistency with Federal Law
24	104.210	Petition for Extension of Variance
25	104.212	Motion for Modification of Internal Variance Compliance Dates
26	104.214	Notice of Petition
27	104.216	Agency Investigation and Recommendation
28	104.218	Agency Recommendation to RCRA Variance
29	104.220	Response to Agency Recommendation
30	104.222	Stipulations
31	104.224	Objections to Petition, Written Comments and Request for Hearing
32	104.226	Amended Petition and Amended Recommendation
33	104.228	Insufficient Petition
34	104.230	Dismissal of Petition
35	104.232	Calculation of Decision Deadline
36	104.234	Hearing
37	104.236	Hearing Procedures
38	104.238	Standard of Review
39	104.240	Certificate of Acceptance
40	104.242	Term of Variance
41	104.244	Variance Conditions
42	104.246	Performance Bonds
43	104.248	Objection to Conditions

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SUBPART C: PROVISIONAL VARIANCES

- Section
- 104.300 Applicability
- 104.302 Agency Action
- 104.304 Initiating a Request
- 104.306 Filing and Notice
- 104.308 Term
- 104.310 Simultaneous Variance Prohibition (Repealed)

SUBPART D: ADJUSTED STANDARDS

- Section
- 104.400 General
- 104.402 Initiation of Proceeding
- 104.404 Request to Agency to Join as Co-Petitioner
- 104.406 Petition Content Requirements
- 104.408 Petition Notice Requirements
- 104.410 Proof of Petition Notice Requirements
- 104.412 Effect of Filing a Petition: Stay
- 104.414 Dismissal of Petition
- 104.416 Agency Recommendation and Petitioner Response
- 104.418 Amended Petition, Amended Recommendation, and Amended Response
- 104.419 Insufficient Petition
- 104.420 Request for Public Hearing
- 104.422 Public Hearing
- 104.424 Hearing Notice
- 104.426 Burden of Proof
- 104.428 Board Action

104.APPENDIX A Comparison of Former and Current Rules (Repealed)

AUTHORITY: Subparts B and C: Implementing Sections 5, 35, 36, 37 and 38 of the Environmental Protection Act (Act) [415 ILCS 5/5, 35, 36, 37, and 38] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27]. Subpart D: Implementing Sections 5, 14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5 of the Act [415 ILCS 5/5, 14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Subpart B: Originally adopted as Chapter I: Procedural Rules, Part IV: Variances, in R70-4, at 1 PCB 43, October 8, 1970; amended in R77-16, 29 PCB 503, at 2 Ill. Reg. 16, p. 3, effective May 1974; amended in R79-9, 35 PCB 433, at 3 Ill. Reg. 51, p. 128, effective December 7, 1979; amended in R80-12, 40 PCB 451, at 5 Ill. Reg. 2763, effective March 2,

87 1981; codified at 6 Ill. Reg. 8357; amended in R84-10, 62 PCB 87, at 9 Ill. Reg. 1409, effective
88 January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 613, effective
89 January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8803, effective June 8, 2005; amended in
90 R14-21 at 39 Ill. Reg. 2357, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg.
91 12905, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. 7973, effective May 20,
92 2016; amended in R17-18 at 41 Ill. Reg. _____, effective _____.

93
94 **SUBPART A: GENERAL PROVISIONS**

95
96 **Section 104.100 Applicability**

- 97
98 a) This Part applies to mechanisms for obtaining relief from environmental
99 regulations under ~~certain circumstances as set forth in Titles VII and IX of the~~
100 ~~Act, such as.~~ Specifically, this Part applies to regulatory relief mechanisms,
101 ~~meaning~~ variances, provisional variances and adjusted standards.
102
103 b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains
104 procedures generally applicable to all of the Board's adjudicatory proceedings. In
105 the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and
106 those of this Part, the provisions of this Part apply.

107
108 (Source: Amended at 41 Ill. Reg. _____, effective _____)

109
110 **Section 104.106 Petitions and Hearings**

- 111
112 a) Each petition must contain an index that lists the documents comprising the
113 petition, including any exhibits, attachments, and supporting documents. All
114 pages of the petition must be sequentially numbered with the letter "P" placed
115 before the number of each page. The index must show the page numbers upon
116 which each document comprising the petition starts and ends.
117
118 b) Hearings will be conducted ~~underpursuant to~~ 35 Ill. Adm. Code 101.Subpart F,
119 including any hearing held by videoconference (see 35 Ill. Adm. Code
120 101.600(b)).

121
122 (Source: Amended at 41 Ill. Reg. _____, effective _____)

123
124 **SUBPART B: VARIANCES**

125
126 **Section 104.200 General**

- 127
128 a) Description:
129

- 130 1) General Variance. A variance is a temporary exemption from any
131 specified rule, regulation, requirement or order of the Board, which may
132 be granted by the Board with or without conditions for a period of time not
133 to exceed five years, *upon presentation of adequate proof*, by the
134 petitioner *that compliance with any rule, regulation, requirement or order*
135 *of the Board would impose an arbitrary or unreasonable hardship* [415
136 ILCS 5/35(a)].
137
138 2) Resource Conservation and Recovery Act (RCRA) Variance. A RCRA
139 variance is an exemption from 35 Ill. Adm. Code 703, 720, 721, 722, 723,
140 724 or 725 or which allows the Illinois Environmental Protection Agency
141 (Agency) to issue or modify any provision of a RCRA permit required
142 underpursuant to Section 21(f) of the Act.
143
144 b) Effect of Filing:
145
146 1) The filing of a petition for a variance does not stay enforcement of a
147 regulation except as provided in subsection (b)(2) ~~of this Section~~.
148
149 2) *If any person files a petition for variance from a rule or regulation within*
150 *20 days after the effective date of such rule or regulation, the operation of*
151 *such rule or regulation shall be stayed as to such person pending the*
152 *disposition of the petition; provided, however, that the operation of any*
153 *rule or regulation adopted by the Board which implements, in whole or in*
154 *part, a State RCRA, Underground Injection Control (UIC), or National*
155 *Pollutant Discharge Elimination System (NPDES) program shall not be*
156 *stayed. The Board may hold a hearing upon said petition 5 days from the*
157 *date of notice of such hearing or thereafter.* [415 ILCS 5/38(b)]
158

159 (Source: Amended at 41 Ill. Reg. _____, effective _____)
160

161 **Section 104.202 Filing Requirements**
162

- 163 a) Who May File. Any person seeking a variance from any rule or regulation,
164 requirement or order of the Board that would otherwise be applicable to that
165 person may file a variance petition.
166
167 b) General Filing and Service Requirements. All general filing and service
168 requirements for Board filings, including the form of filing and the fee
169 requirements for filing, apply to the filing of a petition for variance. These
170 general requirements are found at 35 Ill. Adm. Code 101. Subparts C and
171 J.
172

173 c) Special Filing and Service Requirements. In addition to the general requirements
 174 found at 35 Ill. Adm. Code 101.Subpart C, a person filing a petition for variance
 175 must meet the following requirements:
 176

177 1) One copy of the petition and all related documents must be served on the
 178 Agency. The service on the Agency must be initiated on or before the
 179 date the petition is filed with the Board. Additionally, all RCRA variance
 180 petitions must be served on the ~~United States Environmental Protection~~
 181 ~~Agency (USEPA)~~ Region V Director of Waste Management. An affidavit
 182 of service of the petition and related documents must accompany the filing
 183 with the Board; and
 184

185 2) The petition must contain all information or documents necessary to
 186 satisfy the petition content requirements found in Sections 104.204,
 187 104.206, and 104.208 ~~of this Part.~~
 188

189 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 190

191 **Section 104.204 Petition Content Requirements**
 192

193 The petition must include the information required by subsections (a) through (n) ~~of this Section.~~
 194 Additionally, there are specific content requirements set forth at Section 104.206 ~~of this Part~~ for
 195 RCRA variance petitions. If the petitioner believes that any of these requirements are not
 196 applicable to the specific variance requested, the petitioner must so state and explain the
 197 reasoning.
 198

199 a) A statement describing the regulation, requirement, or order of the Board from
 200 which a variance is sought. If variance from a regulation is sought, the statement
 201 must include the Illinois Administrative Code citation to the regulation as well as
 202 the effective date of that regulation. If variance from a requirement or order of
 203 the Board is sought, the statement must include the citation to that requirement or
 204 order of the Board promulgating that requirement, including docket number;
 205

206 b) A complete and concise description of the nature of petitioner's activity that is the
 207 subject of the proposed variance, including:
 208

209 1) The location of, and area affected by, the petitioner's activity;
 210

211 2) The location of points of discharge, and, as applicable, the identification of
 212 the receiving waterway or land, or, if known, the location of the nearest air
 213 monitoring station maintained by the Agency;
 214

215 3) An identification, including docket number, of any prior variance issued to

- 216 the petitioner and, if known, the petitioner's predecessors, concerning
217 similar relief;
218
- 219 4) An identification, including number, of the environmental permits held by
220 petitioner for the activity which may be affected by grant of variance;
221
- 222 5) The number of persons employed by the petitioner's facility at issue and
223 the age of that facility;
224
- 225 6) The nature and amount of the materials used in the process or activity for
226 which the variance is sought and a full description of the particular process
227 or activity in which the materials are used;
228
- 229 7) A description of the relevant pollution control equipment already in use;
230 and
231
- 232 8) The nature and amount of emissions, discharges or releases of the
233 constituent in question currently generated by the petitioner's activity;
234
- 235 c) Data describing the nature and extent of the present or anticipated failure to meet
236 the regulation, requirement, or order of the Board from which variance is sought
237 and facts that support petitioner's argument that compliance with the regulation,
238 requirement, or order of the Board was not or cannot be achieved by any required
239 compliance date;
240
- 241 d) A description of the efforts that would be necessary for the petitioner to achieve
242 immediate compliance with the regulation, requirement, or Board order at issue.
243 All possible compliance alternatives, with the corresponding costs for each
244 alternative, must be set forth and discussed. The discussion of compliance
245 alternatives must include the availability of alternate methods of compliance, the
246 extent that the methods were studied, and the comparative factors leading to the
247 selection of the control program proposed for compliance. The discussion of the
248 costs of immediate compliance may include the overall capital costs and the
249 annualized capital and operating costs;
250
- 251 e) Facts that set forth the reasons the petitioner believes that immediate compliance
252 with the regulation, requirement, or order of the Board would impose an arbitrary
253 or unreasonable hardship;
254
- 255 f) A detailed description of the compliance plan, including:
256
- 257 1) A discussion of the proposed equipment or proposed method of control to
258 be undertaken to achieve full compliance with the regulation, requirement,

- 259 or order of the Board;
- 260
- 261 2) A time schedule for the implementation of all phases of the control
- 262 program from initiation of design to program completion; and
- 263
- 264 3) The estimated costs involved for each phase and the total cost to achieve
- 265 compliance;
- 266
- 267 g) A description of the environmental impact of the petitioner's activity including:
- 268
- 269 1) The nature and amount of emissions, discharges, or releases of the
- 270 constituent in question if the requested variance is granted, compared to
- 271 that which would result if immediate compliance is required;
- 272
- 273 2) The qualitative and quantitative description of the impact of petitioner's
- 274 activity on human health and the environment if the requested variance is
- 275 granted, compared to the impact of petitioner's activity if immediate
- 276 compliance is required. Cross-media impacts, if any, must be discussed;
- 277 and
- 278
- 279 3) A statement of the measures to be undertaken during the period of the
- 280 variance to minimize the impact of the discharge of contaminants on
- 281 human, plant, and animal life in the affected area, including the numerical
- 282 interim discharge limitations that can be achieved during the period of the
- 283 variance;
- 284
- 285 h) Citation to supporting documents or legal authorities whenever they are used as a
- 286 basis for the petition. Relevant portions of the documents and legal authorities
- 287 other than Board decisions, reported state and federal court decisions, or state and
- 288 federal regulations and statutes must be appended to the petition;
- 289
- 290 i) If the requested variance involves an existing permit or a pending permit
- 291 application, a copy of the material portion of the permit or permit application
- 292 must be appended to the petition;
- 293
- 294 j) Any conditions petitioner suggests for the requested variance;
- 295
- 296 k) A proposed beginning and ending date for the variance. If the petitioner requests
- 297 that the term of the variance begin on any date other than the date on which the
- 298 Board takes final action on the petition, a detailed explanation and justification for
- 299 the alternative beginning date;
- 300
- 301 l) A discussion of consistency with federal law, including an analysis of applicable

302 federal law and facts that may be necessary to show compliance with federal law
303 as set forth in Section 104.208 ~~of this Part~~;

- 304
305 m) An affidavit verifying any facts submitted in the petition; and
306
307 n) A statement requesting or denying that a hearing should be held in this matter.
308

309 (Source: Amended at 41 Ill. Reg. _____, effective _____)
310

311 **Section 104.206 Resource Conservation and Recovery Act (RCRA) Variance Petition**
312 **Contents**
313

314 In addition to the requirements of Sections 104.204 and 104.208 ~~of this Part~~, a petition for a
315 RCRA variance must meet the following requirements:
316

- 317 a) All petitions for RCRA variances must include a showing that the Board can grant
318 the requested relief consistent with, and establish RCRA permit conditions no less
319 stringent than, those that would be required by RCRA and the regulations
320 ~~thereunder~~ promulgated by USEPA (40 CFR 260, 261, 262, 263, 264, 265, 266,
321 267, 268 and 270). Petitions must indicate whether any federal provisions
322 authorize the relief requested, and must include any facts necessary to show that
323 the petitioner would be entitled to the requested relief under ~~pursuant to~~ federal
324 law;
325
326 b) Persons who have, or are required to have, a RCRA permit and who seek a RCRA
327 variance that could result in modification or issuance of the RCRA permit must
328 have on file with the Agency a RCRA permit application reflecting the requested
329 variance prior to filing the variance petition;
330
331 c) Petitioner must attach to the variance petition a copy of the RCRA permit
332 application, or such portion as may be relevant to the variance request; and
333
334 d) Petitioner must attach to the variance petition documentation of service on
335 USEPA as required by Section 104.202 ~~of this Part~~.
336

337 (Source: Amended at 41 Ill. Reg. _____, effective _____)
338

339 **Section 104.208 Consistency with Federal Law**
340

- 341 a) All petitions for variances from Title II of the Act or from 35 Ill. Adm.
342 Code.Subtitle B, Ch. I "Air Pollution", must indicate whether the Board may grant
343 the requested relief consistent with the Clean Air Act (CAA) (42 USC 7401 et
344 seq.) and the federal regulations adopted under the CAA ~~pursuant thereto~~. If

345 granting a variance would require revision of the State Implementation Plan, the
 346 petition must indicate whether the requirements of Section 110(a) of the CAA (42
 347 USC 7410(a)) and 40 CFR 51 will be satisfied.
 348

- 349 b) All petitions for variances from Title III of the Act, from 35 Ill. Adm.
 350 Code.Subtitle C, Ch. I "Water Pollution", or from water pollution related
 351 requirements of any other Title of the Act or Chapter of the Board's regulations,
 352 must indicate whether the Board may grant the relief consistent with the Clean
 353 Water Act (CWA) (33 USC 1251 et seq.), USEPA effluent guidelines and
 354 standards, any other federal regulations, or any area-wide waste treatment
 355 management plan approved by the Administrator of USEPA ~~under~~pursuant to
 356 Section 208 of the CWA (33 USC 1288).
 357
- 358 c) All petitions for variances from Title IV of the Act or from 35 Ill. Adm.
 359 Code.Subtitle F, Ch. I "Public Water Supplies", and to the extent applicable, from
 360 Title V of the Act or from 35 Ill. Adm. Code.Subtitle D, Ch. I "Mine Related
 361 Water Pollution", must indicate whether the Board may grant the relief consistent
 362 with the Safe Drinking Water Act (42 USC 300(f) et seq.), the federal National
 363 Primary Drinking Water Regulations (40 CFR 141) and Underground Injection
 364 Control Program and other federal regulations adopted pursuant thereto.
 365
- 366 d) All petitions for variances from Title V of the Act or from 35 Ill. Adm.
 367 Code.Subtitle G, Ch. I "Waste Disposal" must indicate whether the Board may
 368 grant the requested relief consistent with RCRA, and the federal regulations
 369 adopted ~~under RCRA~~pursuant thereto.
 370
- 371 e) For all petitions for RCRA variances, petitioner ~~must~~should consult the federal
 372 RCRA rules ~~that~~which contain procedures that are referred to as "Variances" (40
 373 CFR 260, 261, 262, 263, 264, 265, 266, 267, 268 and 270). The petitioner
 374 ~~must~~should consult the comparable Board regulations to decide whether the
 375 variance procedures of this Part need to be followed.
 376

377 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 378

379 **Section 104.210 Petition for Extension of Variance**
 380

- 381 a) A variance extension pursuant to ~~Section 36(b) of the Act~~ *may be extended from*
 382 *year to year by affirmative action of the Board, but only if satisfactory progress*
 383 *has been shown* by the petitioner [415 ILCS 5/36(b)].
 384
- 385 b) A petition to extend a variance ~~is considered granted by the Board~~ is a new
 386 petition for variance before the Board, and must be filed in accordance with this
 387 Subpart and 35 Ill. Adm. Code 101.Subpart C, including payment of the filing fee

~~underpursuant to~~ Section 104.202(b) ~~of this Part~~ and 35 Ill. Adm. Code 101.302(e)(2).

- c) If the petitioner desires to have the term of the variance extension be sequential with the term of the prior variance, the petition to extend the variance must be filed with the Board no later than 120 days prior to the termination of the variance, unless the petitioner can demonstrate that the petition for variance extension was filed as soon as practicable after the petitioner learned that it could not meet the compliance time frame under the existing variance.
- d) In addition to the requirements of this Subpart, the petition for extension of variance must contain:
 - 1) A detailed statement showing that *satisfactory progress* toward compliance has been or will have been achieved during the term of the prior variance [415 ILCS 5/36(b)];
 - 2) A statement that the conditions of the prior variance have been fully met, or, if any condition or conditions have not been fully met, a detailed explanation of the reason or reasons that the condition or conditions have not been fully met; and
 - 3) A motion to incorporate any material from the record of the prior variance proceeding in accordance with 35 Ill. Adm. Code 101.306.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 104.212 Motion for Modification of Internal Variance Compliance Dates

- a) The petitioner may request, by written motion modification of internal dates within a compliance schedule of an existing variance, so long as the modification does not extend the length of the existing variance period. The written motion will not be considered to be an extension of the prior variance. The motion must be filed under the docket number of the existing variance, and must be filed with the Clerk and served upon the Agency, and any joined parties ~~underpursuance to~~ 35 Ill. Adm. Code 101.Subpart D. The Agency must, and any joined parties may, file a response to that motion. Any response must be filed within 14 days after receipt of the motion.
- b) A motion for modification that would extend the length of the existing variance period constitutes a Petition for Extension of Variance and must be filed in accordance with Section 104.210 ~~of this Part~~.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 104.214 Notice of Petition

- a) Within 14 days after the petition is filed, the petitioner must *publish a single notice of such petition in a newspaper of general circulation in the county where the facility or pollution source is located* [415 ILCS 5/37(a)].
- b) Upon filing a petition for variance, the petitioner *shall promptly give written notice of such petition to:*
 - 1) *Any person in the county in which the installation or property for which variance is sought is located who has filed with the Board a written request for notice of variance petitions;*
 - 2) *The State's attorney of such county;*
 - 3) *The Chairman of the County Board of such county; and*
 - 4) *Each member of the General Assembly from the legislative district in which that installation or property is located. [415 ILCS 5/37(a)]*
- c) Upon receipt of a petition for RCRA variance, the Agency must promptly give notice of the petition to:
 - 1) Federal agencies as designated by USEPA;
 - 2) Illinois Department of Transportation;
 - 3) ~~DNR~~Department of Natural Resources;
 - 4) Illinois Department of Public Health;
 - 5) The Governor of any other state adjacent to the county in which the facility or pollution source is located; and
 - 6) Elected officials of any counties, in other states, adjacent to the county in which the facility or pollution source is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility or pollution source.
 - 7)d) ~~The general public~~In addition to the methods of notice stated in subsection (c) of this Section, in a RCRA variance the Agency must also give notice

474 by broadcast over at least one local radio station in the area of the facility
 475 or pollution source containing the information required by subsections
 476 (de) and (ef) of this Section.
 477

478 de) All notices required by this Section must include the following:
 479

- 480 1) *The street address of the facility or pollution source, and if there is no*
 481 *street address, then the legal description or the location with reference to*
 482 *any well-known landmark, highway, road, thoroughfare or intersection*
 483 *[415 ILCS 5/37(a)];*
 484
- 485 2) A description of the requested relief;
 486
- 487 3) An indication that any person may request a hearing by filing with the
 488 Board a written objection to the grant of the variance within 21 days after
 489 the publication of the petitioner's notice, together with a written request
 490 for hearing;
 491
- 492 4) The ~~Clerk's~~Clerk of the Board's address and phone number, the Board's
 493 website address, and a statement that a copy of the variance petition may
 494 be obtained through the Clerk's Office or COOL, located on the Board's
 495 website;
 496
- 497 5) A statement that the Agency is preparing a recommendation and seeking
 498 the views of persons who may be adversely affected by the variance. All
 499 comments and inquiries should be addressed to the Agency employee
 500 responsible for the recommendation within 21 days after publication of the
 501 petitioner's notice. The notice must include the date on which the
 502 recommendation is to be filed, and the name, address, email address, and
 503 telephone number of the Agency employee responsible for the
 504 recommendation;
 505
- 506 6) A statement that a hearing may be held after the filing of the
 507 recommendation and that the record will remain open for written
 508 comments for 45 days after filing of the recommendation. The notice will
 509 include the address of the Board to which the comments must be mailed;
 510
- 511 7) A statement that the record in the variance proceeding is available at the
 512 Board office for inspection, except those portions that are protected from
 513 disclosure under 35 Ill. Adm. Code 130, and that procedures are available
 514 whereby disclosure may be sought by the public;
 515
- 516 8) A statement that variances may be granted underpursuant to Section 35 of

517 the Act [415 ILCS 5/35] and 35 Ill. Adm. Code 104, and a reference to the
518 Board regulations or order from which a variance is sought; and

519
520 9) Any additional information considered necessary or proper.

521
522 e) Within 21 days after the publication of notice, the petitioner must file with the
523 Board a certification of publication that states the date on which the notice was
524 published and must attach a copy of the published notice.

525
526 (Source: Amended at 41 Ill. Reg. _____, effective _____)

527
528 **Section 104.216 Agency Investigation and Recommendation**

529
530 a) Upon receipt of a petition for variance, *the Agency shall promptly investigate such*
531 *petition and consider the views of persons who might be adversely affected by the*
532 *grant of a variance* [415 ILCS 5/37(a)].

533
534 b) *The Agency shall make a recommendation to the Board as to the disposition of the*
535 *petition* [415 ILCS 5/37(a)]. Unless otherwise ordered by the hearing officer or
536 the Board, the recommendation must be filed with the Board within 45 days after
537 the filing of the petition or amended petition, or where there has been a hearing
538 scheduled, at least 30 days before hearing, whichever is earlier. The Agency must
539 serve a copy of its recommendation, in accordance with 35 Ill. Adm. Code
540 101.304(c), on the petitioner, joined parties, and assigned hearing officer, if
541 applicable. At a minimum, the recommendation must include:

542
543 1) A description of the efforts made by the Agency to investigate the facts as
544 alleged and to ascertain the views of persons who might be affected, and a
545 summary of the views so ascertained;

546
547 2) The location of the nearest air monitoring station maintained by the
548 Agency where applicable;

549
550 3) A statement of the degree to which, if at all, the Agency disagrees with the
551 facts as alleged in the petition, including facts refuting any allegations in
552 the petition for variance;

553
554 4) Allegations of any other facts the Agency believes relevant to the
555 disposition of the petition, including any past or pending enforcement
556 actions against petitioner;

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558 5) The Agency's estimate of the costs that compliance would impose on the
559 petitioner and on others;

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- 6) The Agency's estimate of the injury that the grant of the variance would impose on the public, including the effect that continued discharge of contaminants will have upon the environment;
 - 7) The Agency's analysis of applicable federal laws and regulations and an opinion concerning the consistency of the petition with ~~thosesueh~~ federal laws and regulations;
 - 8) The status of any permits or pending permit applications that are associated with or affected by the requested variance;
 - 9) Allegation of any facts that the Agency believes are relevant to whether the Board should condition a grant of variance on the posting of a performance bond ~~underpursuant to~~ Section 104.246 of this Part;
 - 10) Citation to supporting documents or legal authorities whenever they are used as a basis for the Agency's recommendation. Relevant portions of the documents and legal authorities, other than Board decisions, reported state and federal court decisions, state and federal regulations and statutes, must be appended to the recommendation if not already in the record of the proceeding;
 - 11) The Agency's recommendation of what disposition should be made of the petition, deny or grant, and suggested conditions. If the Agency recommends that variance be granted, a recommended beginning and end date of the requested variance, and any recommended conditions on the variance; and
 - 12) An affidavit verifying any facts outside the record referenced in the recommendation.

592 (Source: Amended at 41 Ill. Reg. _____, effective _____)
593

594 **Section 104.218 Agency Recommendation to RCRA Variance**
595

596 In addition to the recommendation requirements stated in Section 104.216 of this Part, the
597 Agency recommendation on petitions for RCRA variances must also include the following and,
598 in addition to the service requirements of Section 104.216 of this Part, the Agency must serve its
599 recommendation on USEPA and all persons who have notified the Agency that they intend to
600 comment or have otherwise asked to be served a copy of the recommendation.
601

- 602 a) The recommendation must include a fact sheet or statement of basis as provided

603 in 35 Ill. Adm. Code 705.141 through 705.143, whenwhere relevant.

- 604
- 605 b) If the Agency recommends that the variance be granted, a partial draft permit
- 606 reflecting the variance and recommended conditions must be included with the
- 607 recommendation.
- 608

609 (Source: Amended at 41 Ill. Reg. _____, effective _____)

610

611 **Section 104.220 Response to Agency Recommendation**

612

- 613 a) Within 14 days after service of the Agency recommendation the petitioner may
- 614 file a response to the Agency recommendation or an amended petition. The
- 615 petitioner must serve a copy of the response or amended petition upon the hearing
- 616 officer, the Agency, and any other parties to the proceeding.
- 617
- 618 b) The response or amended petition may include a request for hearing. New
- 619 information in a response or amended petition must be verified by oath or
- 620 affidavit.
- 621
- 622 c) Any amended petition or request for hearing under this Section recommences the
- 623 decision period underpursuant to Section 104.232 ~~of this Subpart~~.
- 624

625 (Source: Amended at 41 Ill. Reg. _____, effective _____)

626

627 **Section 104.224 Objections to Petition, Written Comments and Request for Hearing**

628

- 629 a) A person who files an objection, request for hearing, or comment is a
- 630 "participant" as defined in 35 Ill. Adm. Code 101.Subpart B.
- 631
- 632 b) Except as provided in subsection (e) of this Section for RCRA variances, any
- 633 person may file with the Clerk, within 21 days after the publication of the
- 634 ~~petitioner's~~Petitioner's notice underpursuant to Section 104.214 ~~of this Part~~, a
- 635 written objection to the grant of variance. The Clerk will serve a copy of the
- 636 objection on the petitioner, the Agency, the hearing officer, and any joined parties
- 637 in accordance with 35 Ill. Adm. Code 101.304(c).
- 638
- 639 c) Any person may also file a written request for hearing. The written request must
- 640 be filed within 21 days after the publication of the ~~petitioner's~~Petitioner's notice
- 641 underpursuant to Section 104.214 ~~of this Part~~ in order for a hearing to be held in
- 642 accordance with Section 104.236 ~~of this Part~~ and 35 Ill. Adm. Code 101.Subpart
- 643 F, including any hearing held by videoconference (see 35 Ill. Adm. Code
- 644 101.600(b)).
- 645

646 d) Any person may file written comments in a variance proceeding. If a hearing is
 647 held, public comments must be filed within 14 days after the close of the hearing
 648 unless the hearing officer specifies a different date. If there is no hearing,
 649 comments must be filed no later than 30 days before the decision date, unless the
 650 hearing officer orders otherwise to prevent material prejudice. (See 35 Ill. Adm.
 651 Code 101.628(c)(1).)

652
 653 e) In RCRA variances, subsections (b) and (c) of this Section do not apply.
 654 However, persons may file written comments within 45 days after the Agency
 655 files its recommendation.

656
 657 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 658

659 **Section 104.226 Amended Petition and Amended Recommendation**

660
 661 a) The petitioner may amend the petition prior to the close of the hearing, if a
 662 hearing is held, or prior to the Board's decision, if a hearing is not held, by filing a
 663 motion ~~underpursuant to~~ 35 Ill. Adm. Code 101.Subpart E. Amended petitions
 664 subsequent to hearing will be accepted only with permission leave of the Board.
 665 Amended petitions must be in writing and filed with the Board and served in
 666 accordance with 35 Ill. Adm. Code 101.Subpart C. If the petitioner substantively
 667 amends the petition, the filing of the amended petition recommences the decision
 668 period, ~~underpursuant to~~ Section 104.232 of this Part.

669
 670 b) If the petitioner amends the petition, the Agency must file or give an amended
 671 recommendation in writing or orally at hearing, but in any event not later than 45
 672 days after the filing of an amended petition. The Agency may amend its
 673 recommendation even if the petitioner has not amended its petition. In such an
 674 instance, a recommendation may be amended prior to close of the hearing, if a
 675 hearing is held, or 40 days prior to the Board's decision date if a hearing is not
 676 held. The petitioner may file a response to an Agency recommendation
 677 ~~underpursuant to~~ Section 104.220 of this Part.

678
 679 c) Written amendments to the petition or recommendation need not repeat the entire
 680 unchanged portion of the original filing provided that a sufficient portion of the
 681 original filing is repeated so that the context of the amendment is made clear.

682
 683 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 684

685 **Section 104.228 Insufficient Petition**

686
 687 If the Board finds the petition fails to contain information as required by Sections 104.204,
 688 104.206, and 104.208 ~~of this Part~~, the Board may order the petitioner to supplement the

689 information contained in the petition. Filings made in response to ~~thesue~~ order constitute an
 690 amended petition for the purposes of calculating the decision deadline ~~underpursuant to~~ Section
 691 104.232 ~~of this Part~~. Alternatively, ~~underpursuant to~~ Section 104.230 ~~of this Part~~, the Board may
 692 dismiss the petition for lack of sufficient information. Failure of the Board to require
 693 supplemental information does not preclude a later finding that the information provided is
 694 insufficient to support grant of variance, or constitute a Board decision on the merits of the
 695 petition.

696
 697 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 698

699 **Section 104.230 Dismissal of Petition**
 700

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

- 702
- 703 a) The petition requests relief that the Board is not empowered to grant;
- 704
- 705 b) The petition fails to comply with the requirements of 35 Ill. Adm. Code
 706 101.Subpart C and Sections 104.202, 104.204, 104.206 and 104.208 ~~of this Part~~;
- 707
- 708 c) The petitioner fails to timely comply with any order issued by the Board or the
 709 hearing officer, including an order requiring additional information ~~underpursuant~~
 710 ~~to~~ Section 104.228 ~~of this Part~~; or
- 711
- 712 d) The petitioner is not subject to the rule or regulation, requirement, or order of the
 713 Board at issue.
- 714

715 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 716

717 **Section 104.232 Calculation of Decision Deadline**
 718

- 719 a) ~~UnderPursuant to~~ Section 38(a) of the Act, the Board will render its final decision
 720 on the petition within 120 days after the date of filing of the petition or the receipt
 721 of a request for hearing ~~underpursuant to~~ Section 37(a) of the Act, whichever is
 722 later, except:
- 723
- 724 1) When the petitioner waives its right to a decision within the prescribed
 725 decision period in accordance with 35 Ill. Adm. Code 101.Subpart C;
- 726
- 727 2) When the petitioner files an amended petition for variance ~~underpursuant~~
 728 ~~to~~ this Subpart, the decision period recommences from the date of filing of
 729 the amended petition; or
- 730
- 731 3) When a hearing is canceled ~~underpursuant to~~ 35 Ill. Adm. Code 101.510.

- 732
733 b) Time will be computed in accordance with 35 Ill. Adm. Code 101.Subpart C.
734

735 (Source: Amended at 41 Ill. Reg. _____, effective _____)
736

737 **Section 104.234 Hearing**

738
739 The Board will order a hearing on a variance petition if:
740

- 741 a) A hearing is requested by the petitioner at the time of initial filing on the
742 associated form or in writing, which is filed and served in accordance with 35 Ill.
743 Adm. Code 101.Subpart C;
744
745 b) A hearing is requested in a response or amended petition;
746
747 c) *The Board, in its discretion, concludes that a hearing would be advisable* [415
748 ILCS 5/37(a)];
749
750 d) *The Agency or any other person files a written objection to the grant of such*
751 *variance within 21 days after the publication of the ~~petitioner's~~Petitioner's notice*
752 *~~underpursuant to~~ Section 104.214 of this Part, together with a written request for*
753 *hearing* [415 ILCS 5/37(a)]; or
754
755 e) The request concerns a RCRA variance.
756

757 (Source: Amended at 41 Ill. Reg. _____, effective _____)
758

759 **Section 104.236 Hearing Procedures**

760
761 Hearings will be conducted ~~underpursuant to~~ 35 Ill. Adm. Code 101.Subpart F, except that:
762

- 763 a) Hearings may be canceled ~~by~~pursuant to a motion filed in accordance with 35 Ill.
764 Adm. Code 101.510 at the discretion of the hearing officer.
765
766 b) If all parties and participants who have requested a hearing ~~underpursuant to~~ this
767 Subpart have withdrawn their requests for a hearing, the hearing will not be held
768 unless the Board in its discretion deems it advisable.
769
770 c) The hearing on a RCRA variance petition will be held, whenever possible, at a
771 location convenient to the population center that is closest to the facility.
772
773 d) The hearing officer will give notice of RCRA hearings to the following persons:
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- 1) Any person in the county in which the installation or property for which variance is sought is located who has in writing requested notice of variance petitions and the State's attorney of the county;
 - 2) The Chairman of the county board of the county;
 - 3) Each member of the General Assembly from the legislative district in which that installation or property is located;
 - 4) Federal agencies as designated by USEPA;
 - 5) Illinois Department of Transportation;
 - 6) ~~DNR~~Department of Natural Resources;
 - 7) Illinois Department of Public Health;
 - 8) The Governor of any other state adjacent to the county in which the facility or pollution source is located;
 - 9) Elected officials of any counties, in other states, adjacent to the county in which the facility or pollution source is located, and elected officials in any municipality, in another state, if it is the population center that is closest to the facility or pollution source; and
 - 10) USEPA's Region V Director of Waste, Pesticides and Toxics Division.

802 (Source: Amended at 41 Ill. Reg. _____, effective _____)

803
804 **Section 104.238 Standard of Review**

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817
- a) *The Board may grant individual variances beyond the limitations prescribed by the Act, whenever it is found, upon presentation of adequate proof, that compliance with any rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship. [415 ILCS 5/35(a)]* The burden of proof in a variance proceeding is on the petitioner.
 - b) In addition to subsection (a) ~~of this Section~~ the Board may grant a RCRA variance only to the extent consistent with, and with conditions no less stringent than, those that would be required by RCRA and 40 CFR 260, 261, 262, 263, 264, 265, 266, 267, 268, and 270. Variances must require compliance with the regulations in the shortest practicable time.

818 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 819

820 **Section 104.240 Certificate of Acceptance**
 821

822 The Board's order granting a variance will include a certificate of acceptance. The certificate
 823 constitutes acceptance of the variance and its conditions by the petitioner. A variance and its
 824 conditions are not binding upon the petitioner until the executed certificate is filed with the
 825 Board and served on the Agency. Failure to timely file the executed certificate with the Board
 826 and serve ~~the~~ on the Agency renders the variance void. However, execution of the certificate is
 827 not necessary prior to seeking reconsideration ~~underpursuant to~~ 35 Ill. Adm. Code 101.Subpart I,
 828 or appeal ~~underpursuant to~~ Section 104.244 of this Part.
 829

830 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 831

832 **Section 104.248 Objection to Conditions**
 833

834 *The Board may include such conditions in granting a variance and may adopt such rules and*
 835 *regulations as the policies of the Act may require. If an objection is made to a variance*
 836 *condition, the Board shall reconsider the condition within not more than 75 days from the date*
 837 *of the objection. [415 ILCS 5/41(b)] An objection to a specific variance condition may be made*
 838 *by filing a motion ~~underpursuant to~~ 35 Ill. Adm. Code 101.Subpart E within 35 days after the*
 839 *receipt of the Board's opinion and order containing the objectionable condition.*
 840

841 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 842

843 SUBPART C: PROVISIONAL VARIANCES
 844

845 **Section 104.300 Applicability**
 846

847 This Subpart applies to any person seeking a provisional variance from the Agency
 848 ~~underpursuant to~~ Title IX of the Act. This Subpart must be read in conjunction with 35 Ill. Adm.
 849 Code 101 and this Part. In the event of conflict between this Subpart and the requirements of 35
 850 Ill. Adm. Code 101, the requirements of this Subpart apply.
 851

852 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 853

854 **Section 104.304 Initiating a Request**
 855

856 *Any person seeking a provisional variance pursuant to Section 35(b) of the Act and 35 Ill. Adm.*
 857 *Code 180 shall make a request to the Agency. The Agency shall promptly investigate and*
 858 *consider the merits of the request. If the Agency fails to take final action within 30 days after*
 859 *receipt of the request for a provisional variance, or if the Agency denies the request, the person*

860 *may initiate a variance proceeding with the Board ~~underpursuant to~~ Subpart B of this Part. [415*
 861 *ILCS 5/37(b)]*

862
 863 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 864

865 SUBPART D: ADJUSTED STANDARDS

866
 867 **Section 104.400 General**
 868

- 869 a) Description. An adjusted standard has the effect of an environmental regulation
 870 that would apply to petitioner, if granted, in lieu of the general regulation that
 871 would otherwise be applicable to a petitioner and the regulated community.
 872
 873 b) Applicability. This Subpart will apply to any person seeking an adjusted standard
 874 ~~underpursuant to~~ Section 28.1 of the Act. This includes an adjusted standard
 875 sought ~~underpursuant to~~ 35 Ill. Adm. Code 212.126 (~~CAA~~) and 35 Ill. Adm. Code
 876 ~~720700 through 750 (RCRA)~~. This Subpart must be read in conjunction with 35
 877 Ill. Adm. Code Part 101 which contains procedures generally applicable to all
 878 adjudicatory proceedings before the Board. In the event of a conflict between the
 879 requirements of 35 Ill. Adm. Code 101 and those of this Subpart, the provisions of
 880 this Subpart apply.

881
 882 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 883

884 **Section 104.402 Initiation of Proceeding**
 885

886 A person may initiate an adjusted standard proceeding by filing a petition that meets the
 887 requirements of Section 104.406 of this Part. A petition for an adjusted standard (petition) may
 888 be filed either jointly with the Agency or singly ~~underpursuant to~~ the filing requirements of 35
 889 Ill. Adm. Code 101. If filed singly, the petitioner ~~must~~shall also serve the petition upon the
 890 Agency in accordance with 35 Ill. Adm. Code 101. Additionally, a person may file a petition
 891 and request the Agency to join as a co-petitioner as set forth in Section 104.404 ~~of this Part~~.

892
 893 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 894

895 **Section 104.404 Request to Agency to Join as Co-Petitioner**
 896

- 897 a) The Agency may, in its discretion, act as a co-petitioner in any adjusted standard
 898 proceeding.
 899
 900 b) Any person may request Agency assistance in initiating a petition for adjusted
 901 standard. The Agency may require the person to submit to the Agency any
 902 background information in the person's possession relevant to the adjusted

903 standard that is sought.

904
 905 c) Discretionary decisions made by the Agency ~~under~~pursuant to this Section are not
 906 appealable to the Board.

907
 908 d) Subsequent to the filing of the petition and prior to hearing, the Board will grant
 909 the Agency co-petitioner status upon joint motion of the Agency and the
 910 petitioner who originally filed the petition.

911
 912 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 913

914 **Section 104.406 Petition Content Requirements**

915
 916 If the Agency is a co-petitioner, the petition must so state. The petition must contain headings
 917 corresponding to the informational requirements of each subsection of this Section. If the
 918 petitioner believes that any of the informational requirements are not applicable to the specific
 919 adjusted standard requested, the petitioner must so state and explain his reasoning. The
 920 following information must be contained in the petition:

921
 922 a) A statement describing the standard from which an adjusted standard is sought.
 923 This must include the Illinois Administrative Code citation to the regulation of
 924 general applicability imposing the standard as well as the effective date of that
 925 regulation;

926
 927 b) A statement that indicates whether the regulation of general applicability was
 928 promulgated to implement, in whole or in part, the requirements of the CWA (33
 929 USC 1251 et seq.), Safe Drinking Water Act (42 USC 300(f) et seq.),
 930 Comprehensive Environmental Response, Compensation and Liability Act (42
 931 USC 9601 et seq.), CAA (42 USC 7401 et seq.), or the State programs concerning
 932 RCRA, UIC, or NPDES (see [415 ILCS 5/28.1]);

933
 934 c) The level of justification as well as other information or requirements necessary
 935 for an adjusted standard as specified by the regulation of general applicability or a
 936 statement that the regulation of general applicability does not specify a level of
 937 justification or other requirements (see [415 ILCS 5/28.1]) (see See Section
 938 104.426);

939
 940 d) A description of the nature of the petitioner's activity that is the subject of the
 941 proposed adjusted standard. The description must include the location of, and
 942 area affected by, the petitioner's activity. This description must also include the
 943 number of persons employed by the petitioner's facility at issue, age of that
 944 facility, relevant pollution control equipment already in use, and the qualitative
 945 and quantitative description of the nature of emissions, discharges or releases

- 946 currently generated by the petitioner's activity;
 947
- 948 e) A description of the efforts that would be necessary if the petitioner was to
 949 comply with the regulation of general applicability. All compliance alternatives,
 950 with the corresponding costs for each alternative, must be discussed. The
 951 discussion of costs must include the overall capital costs as well as the annualized
 952 capital and operating costs;
 953
- 954 f) A narrative description of the proposed adjusted standard as well as proposed
 955 language for a Board order that would impose the standard. Efforts necessary to
 956 achieve this proposed standard and the corresponding costs must also be
 957 presented;
 958
- 959 g) The quantitative and qualitative description of the impact of the petitioner's
 960 activity on the environment if the petitioner were to comply with the regulation of
 961 general applicability as compared to the quantitative and qualitative impact on the
 962 environment if the petitioner were to comply only with the proposed adjusted
 963 standard. To the extent applicable, cross-media impacts must be discussed. Also,
 964 the petitioner must compare the qualitative and quantitative nature of emissions,
 965 discharges or releases that would be expected from compliance with the
 966 regulation of general applicability as opposed to that which would be expected
 967 from compliance with the proposed adjusted standard;
 968
- 969 h) A statement which explains how the petitioner seeks to justify, ~~underpursuant to~~
 970 the applicable level of justification, the proposed adjusted standard;
 971
- 972 i) A statement with supporting reasons that the Board may grant the proposed
 973 adjusted standard consistent with federal law. The petitioner must also inform the
 974 Board of all procedural requirements applicable to the Board's decision on the
 975 petition that are imposed by federal law and not required by this Subpart.
 976 Relevant regulatory and statutory authorities must be cited;
 977
- 978 j) A statement requesting or waiving a hearing on the petition (~~underpursuant to~~
 979 Section 104.422(a)(4) of this Part a hearing will be held on all petitions for
 980 adjusted standards filed ~~underpursuant to~~ 35 Ill. Adm. Code 212.126-(CAA));
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- 982 k) The petition must cite to supporting documents or legal authorities whenever they
 983 are used as a basis for the petitioner's proof. Relevant portions of the documents
 984 and legal authorities other than Board decisions, State regulations, statutes, and
 985 reported cases must be appended to the petition;
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- 987 l) Any additional information ~~that which~~ may be required in the regulation of general
 988 applicability.

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(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 104.408 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 adjusted standard proceeding [415 ILCS 5/28.1].*

- b) The title of the notice must be in the form as follows: "Notice of Petition by ~~{~~petitioner's name~~}~~ for an Adjusted Standard before the Illinois Pollution Control Board." The information in the notice must be presented so as to be understood in accordance with the context of this Section's requirements. The notice must contain:
 - 1) ~~The~~the name and address of the petitioner and the statement that the petitioner has filed with the Board a petition for an adjusted standard;
 - 2) ~~The notice must also provide the date upon which the petition was filed;~~
 - 3) ~~The~~the Board docket number;
 - 4) ~~The~~the regulatory standard (with appropriate Administrative Code citation) from which an adjusted standard is sought;
 - 5) ~~The~~the proposed adjusted standard; ~~and~~
 - 6) ~~A~~a general description of the petitioner's activity that is the subject of the adjusted standard proceeding, and the location of that activity; ~~and. This information must be presented so as to be understood in accordance with the context of this Section's requirements.~~
 - 7) ~~In the~~The concluding portion of the notice ~~must read as follows:~~

"Any person may cause a public hearing to be held in the above-described adjusted standard 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. The hearing request must be mailed to the Clerk ~~of the Board,~~ Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois

60601, or filed electronically through COOL, located on the Board's website (www.ipcb.state.il.us)."

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 104.414 Dismissal of Petition

The Board may at any time dismiss a petition for any of the following reasons:

- a) The Board determines that the petition is frivolous, duplicative, or deficient with respect to the requirements of Sections 104.406, 104.408, and 104.410 ~~of this Part~~; or
- b) The Board determines that the petitioner is not pursuing disposition of the petition in a timely manner.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 104.416 Agency Recommendation and Petitioner Response

- a) Unless otherwise ordered by the hearing officer or the Board, the recommendation must be filed with the Board within 45 days after the filing of the petition or amended petition, or where a hearing has been scheduled, at least 30 days before hearing, whichever is earlier. The recommendation must set forth the rationale for the Agency's position and may present any information which the Agency believes is relevant to the Board's consideration of the proposed adjusted standard. If the Agency recommends a denial of the petition due to informational deficiencies within the petition, the recommendation must identify the types of information needed to correct the deficiencies.
- b) At a minimum, the Agency must address and respond to the petition with respect to each issue raised by the requirements of ~~subsections (a) through (j) of Section 104.406(a) through (j) of this Part.~~
- c) The recommendation must cite to supporting documents or legal authorities whenever ~~they~~ such are used as a basis for the Agency's conclusion. Relevant portions of the documents and legal authorities other than Board decisions, State regulations, statutes and reported cases must be appended to the recommendation if not already in the record of the proceeding.
- d) The petitioner may file a response to the recommendation within 14 days after the date of service of the recommendation.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 104.418 Amended Petition, Amended Recommendation, and Amended Response

- a) Amended Petition. The petitioner may amend its petition at any time. The amendment must be in writing and filed with the Board unless made orally at hearing. If the petitioner amends the petition ~~such~~ that the amendment is a substantive change to the requested relief in that it requests additional or alternative relief, petitioner must re-notice the amended petition underpursuant to Section 104.408 ~~of this Part~~.
- b) Amended Recommendation. The Agency may amend its recommendation at any time, even if the petitioner has not amended its petition, if the amendment does not cause material prejudice. The amendment must be in writing and filed with the Board unless made orally at hearing.
- c) Amended Response. The petitioner may file a reply to a written amended recommendation within 14 days after the date of receipt of the amended recommendation or within 14 days after the hearing when the Agency orally amended its recommendation.
- d) Written amendments to the petition or recommendations need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 104.419 Insufficient Petition

If the Board finds the petition fails to contain information required by Section 104.406, the Board may order the petitioner to supplement the information contained in the petition through its own order or through a hearing officer order. Filings made in response to the order constitute an amended petition and will be subject to requirements of Section 104.418. Alternatively, under Section 104.414, the Board may dismiss the petition for lack of sufficient information. Failure of the Board to require supplemental information does not preclude a later finding that the information provided is insufficient to support grant of an adjusted standard, or constitute a Board decision on the merits of the petition.

(Source: Added at 41 Ill. Reg. _____, effective _____)

Section 104.420 Request for Public Hearing

- a) Any person can request that a public hearing be held in an adjusted standard

1118 proceeding. The requests must be filed not later than 21 days after the date of the
1119 publication of the petition notice in accordance with Section 104.408 of this Part.
1120 Requests for hearing ~~must~~ should make reference to the Board docket number
1121 assigned to the proceeding. A copy of each timely hearing request will be served
1122 upon the petitioner and Agency by the Clerk of the Board in accordance with 35
1123 Ill. Adm. Code 101.304(c). Public participation Participation by the public at the
1124 hearing must be in accordance with 35 Ill. Adm. Code 101.110 and 101.628.
1125

- 1126 b) Where all parties and participants who have requested a hearing under pursuant to
1127 this Subpart have withdrawn their requests for a hearing, the hearing will not be
1128 held unless the Board in its discretion deems it advisable.
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1130 (Source: Amended at 41 Ill. Reg. _____, effective _____)
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1132 **Section 104.422 Public Hearing**
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- 1134 a) A public hearing will be held and the Board will assign a hearing officer to an
1135 adjusted standard proceeding when:
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1137 1) The petitioner requests a hearing be held; or
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1139 2) The Board receives a hearing request by any person under pursuant to
1140 Section 104.420, not later than 21 days after the date of the publication of
1141 the petition notice in accordance with Section 104.408; or
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1143 3) The Board *in its discretion determines that a hearing would be advisable*
1144 [415 ILCS 5/28.1]; or
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1146 4) The adjusted standard is sought under pursuant to 35 Ill. Adm. Code
1147 212.126 (CAA).
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1149 b) ~~The hearing officer will set a time and place for the hearing.~~ The hearing officer
1150 will attempt to consult with the petitioner and the Agency before setting a time
1151 and place for ~~scheduling~~ a hearing.
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1153 (Source: Amended at 41 Ill. Reg. _____, effective _____)
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1155 **Section 104.424 Hearing Notice**
1156

1157 After receiving notification from the hearing officer of the scheduled hearing date ~~made pursuant~~
1158 ~~to Section 104.422 of this Part~~, the Clerk will cause the publication of a hearing in accordance
1159 with Section 28.1 of the Act [415 ILCS 5/28.1] and 35 Ill. Adm. Code 101.
1160

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 104.426 Burden of Proof

The burden of proof in an adjusted standard proceeding is on the petitioner. ~~A petitioner must justify an adjusted standard consistent with Section 27(a) of the Act.~~

- a) *If the regulation of general applicability does not specify a level of justification required of a petitioner to qualify for an adjusted standard, the Board may grant individual adjusted standards whenever the Board determines, upon adequate proof by petitioner, that:*
 - 1) *factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;*
 - 2) *the existence of those factors justifies an adjusted standard;*
 - 3) *the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and*
 - 4) *the adjusted standard is consistent with any applicable federal law. [415 ILCS 5/28.1(c)]*
- b) If the regulation of general applicability specifies a level of justification for an adjusted standard, the Board may adopt the proposed adjusted standard, if the petitioner proves the level of justification specified by the regulation of general applicability.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 104.428 Board Action

- a) The Board may grant an adjusted standard for persons who can justify such an adjustment consistent with Section 27(a) of the Act. [415 ILCS 5/28.1(a)] In adopting adjusted standards, the Board may impose such conditions as may be necessary to accomplish the purposes of the Act.
- b) Subsequent to the Board's adoption of an adjusted standard, the Board will publish, in the Environmental Register, the name of the petitioner, date of the Order that adopted the adjusted standard, and a brief narrative description of the adopted adjusted standard.

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- c) *Board orders and opinions shall be maintained for public inspection by the Clerk of the Board and a listing of all determinations made pursuant to Section 28.1 of the Act shall be published in the Illinois Register and the Environmental Register at the end of each fiscal year. [415 ILCS 5/28.1(d)] Board opinions and orders will also be available from the Board's websiteWeb site.*

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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

PART 104
REGULATORY RELIEF MECHANISMS

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104.102 Severability
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104.204 Petition Content Requirements
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104.210 Petition for Extension of Variance
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104.222 Stipulations
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104.304 Initiating a Request

- 104.306 Filing and Notice
- 104.308 Term
- 104.310 Simultaneous Variance Prohibition (Repealed)

SUBPART D: ADJUSTED STANDARDS

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- 104.404 Request to Agency to Join as Co-Petitioner
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- 104.410 Proof of Petition Notice Requirements
- 104.412 Effect of Filing a Petition: Stay
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- 104.416 Agency Recommendation and Petitioner Response
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- 104.419 Insufficient Petition
- 104.420 Request for Public Hearing
- 104.422 Public Hearing
- 104.424 Hearing Notice
- 104.426 Burden of Proof
- 104.428 Board Action

104.APPENDIX A Comparison of Former and Current Rules (Repealed)

AUTHORITY: Subparts B and C: Implementing Sections 5, 35, 36, 37 and 38 of the Environmental Protection Act (Act) [415 ILCS 5/5, 35, 36, 37, and 38] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27]. Subpart D: Implementing Sections 5, 14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5 of the Act [415 ILCS 5/5, 14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Subpart B: Originally adopted as Chapter I: Procedural Rules, Part IV: Variances, in R70-4, at 1 PCB 43, October 8, 1970; amended in R77-16, 29 PCB 503, at 2 Ill. Reg. 16, p. 3, effective May 1974; amended in R79-9, 35 PCB 433, at 3 Ill. Reg. 51, p. 128, effective December 7, 1979; amended in R80-12, 40 PCB 451, at 5 Ill. Reg. 2763, effective March 2, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10, 62 PCB 87, at 9 Ill. Reg. 1409, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 613, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8803, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2357, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12905, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. 7973, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 104.100 Applicability

a) This Part applies to mechanisms for obtaining relief from environmental regulations under ~~certain circumstances as set forth in~~ Titles VII and IX of the Act, such as ~~Specifically, this Part applies to regulatory relief mechanisms, meaning~~ variances, provisional variances and adjusted standards.

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 41 Ill. Reg. , effective)

Section 104.106 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 under ~~pursuant to~~ 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. , effective)

SUBPART B: VARIANCES

Section 104.200 General

a) Description:

1) General Variance. A variance is a temporary exemption from any specified rule, regulation, requirement or order of the Board, which may be granted by the Board with or without conditions for a period of time not to exceed five years, upon presentation of adequate proof, by the petitioner that compliance with any rule, regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship [415 ILCS 5/35(a)].

2) Resource Conservation and Recovery Act (RCRA) Variance. A RCRA variance is an exemption from 35 Ill. Adm. Code 703, 720, 721, 722, 723, 724 or 725 or which allows the Illinois Environmental Protection Agency (Agency) to issue or modify any provision of a RCRA permit required under ~~pursuant to~~ Section 21(f) of the Act.

b) Effect of Filing:

1) The filing of a petition for a variance does not stay enforcement of a regulation except as provided in subsection (b) (2) ~~of this Section.~~

2) If any person files a petition for variance from a rule or regulation within 20 days after the effective date of such rule or regulation, the operation of such rule or regulation shall be stayed as to such person pending the disposition of the petition; provided, however, that the operation of any rule or regulation adopted by the Board which implements, in whole or in part, a State RCRA, ~~Underground Injection Control~~ (UIC), or ~~National Pollutant Discharge Elimination System~~ (NPDES) program shall not be stayed. The Board may hold a hearing upon said petition 5 days from the date of notice of such hearing or thereafter. [415 ILCS 5/38(b)]

(Source: Amended at 41 Ill. Reg. , effective)

Section 104.202 Filing Requirements

a) Who May File. Any person seeking a variance from any rule or regulation, requirement or order of the Board that would otherwise be applicable to that person may file a variance petition.

b) General Filing and Service Requirements. All general filing and service requirements for Board filings, including the form of filing and the fee requirements for filing, apply to the filing of a petition for variance. These general requirements are found at 35 Ill. Adm. Code 101. ~~Subpart~~ Subparts C and J.

c) Special Filing and Service Requirements. In addition to the general requirements found at 35 Ill. Adm. Code 101. Subpart C, a person filing a petition for variance must meet the following requirements:

1) One copy of the petition and all related documents must be served on the Agency. The service on the Agency must be initiated on or before the date the petition is filed with the Board. Additionally, all RCRA variance petitions must be served on the ~~United States Environmental Protection Agency (USEPA)~~ Region V Director of Waste Management. An affidavit of service of the petition and related documents must accompany the filing with the Board; and

2) The petition must contain all information or documents necessary to satisfy the petition content requirements found in Sections 104.204, 104.206, and ~~104.208 of this Part.~~ 104.208.

(Source: Amended at 41 Ill. Reg. , effective)

Section 104.204 Petition Content Requirements

The petition must include the information required by subsections (a) through (n) ~~of this Section~~. Additionally, there are specific content requirements set forth at Section 104.206 ~~of this Part~~ for RCRA variance petitions. If the petitioner believes that any of these requirements are not applicable to the specific variance requested, the petitioner must so state and explain the reasoning.

a) A statement describing the regulation, requirement, or order of the Board from which a variance is sought. If variance from a regulation is sought, the statement must include the Illinois Administrative Code citation to the regulation as well as the effective date of that regulation. If variance from a requirement or order of the Board is sought, the statement must include the citation to that requirement or order of the Board promulgating that requirement, including docket number;

b) A complete and concise description of the nature of petitioner's activity that is the subject of the proposed variance, including:

1) The location of, and area affected by, the petitioner's activity;

2) The location of points of discharge, and, as applicable, the identification of the receiving waterway or land, or, if known, the location of the nearest air monitoring station maintained by the Agency;

3) An identification, including docket number, of any prior variance issued to the petitioner and, if known, the petitioner's predecessors, concerning similar relief;

4) An identification, including number, of the environmental permits held by petitioner for the activity which may be affected by grant of variance;

5) The number of persons employed by the petitioner's facility at issue and the age of that facility;

6) The nature and amount of the materials used in the process or activity for which the variance is sought and a full description of the particular process or activity in which the materials are used;

7) A description of the relevant pollution control equipment already in use; and

8) The nature and amount of emissions, discharges or releases of the constituent in question currently generated by the petitioner's activity;

c) Data describing the nature and extent of the present or anticipated failure to meet the regulation, requirement, or order of the Board from which variance is sought and facts that support petitioner's argument that compliance with the regulation, requirement, or order of the Board was not or cannot be achieved by any required compliance date;

d) A description of the efforts that would be necessary for the petitioner to achieve immediate compliance with the regulation, requirement, or Board order at issue. All possible compliance alternatives, with the corresponding costs for each alternative, must be set forth and discussed. The discussion of compliance alternatives must include the availability of alternate methods of compliance, the extent that the methods were studied, and the comparative factors leading to the selection of the control program proposed for compliance. The discussion of the costs of immediate compliance may include the overall capital costs and the annualized capital and operating costs;

e) Facts that set forth the reasons the petitioner believes that immediate compliance with the regulation, requirement, or order of the Board would impose an arbitrary or unreasonable hardship;

f) A detailed description of the compliance plan, including:

1) A discussion of the proposed equipment or proposed method of control to be undertaken to achieve full compliance with the regulation, requirement, or order of the Board;

2) A time schedule for the implementation of all phases of the control program from initiation of design to program completion; and

3) The estimated costs involved for each phase and the total cost to achieve compliance;

g) A description of the environmental impact of the petitioner's activity including:

1) The nature and amount of emissions, discharges, or releases of the constituent in question if the requested variance is granted, compared to that which would result if immediate compliance is required;

2) The qualitative and quantitative description of the impact of petitioner's activity on human health and the environment if the requested variance is granted, compared to the impact of petitioner's activity if immediate compliance is required. Cross-media impacts, if any, must be discussed; and

3) A statement of the measures to be undertaken during the period of the variance to minimize the impact of the discharge of contaminants on human, plant, and animal life in the affected area, including the numerical interim discharge limitations that can be achieved during the period of the variance;

h) Citation to supporting documents or legal authorities whenever they are used as a basis for the petition. Relevant portions of the documents and legal authorities other than Board decisions, reported state and federal court decisions, or state and federal regulations and statutes must be appended to the petition;

i) If the requested variance involves an existing permit or a pending permit application, a copy of the material portion of the permit or permit application must be appended to the petition;

j) Any conditions petitioner suggests for the requested variance;

k) A proposed beginning and ending date for the variance. If the petitioner requests that the term of the variance begin on any date other than the date on which the Board takes final action on the petition, a detailed explanation and justification for the alternative beginning date;

l) A discussion of consistency with federal law, including an analysis of applicable federal law and facts that may be necessary to show compliance with federal law as set forth in Section 104.208 ~~of this Part~~;

m) An affidavit verifying any facts submitted in the petition; and

n) A statement requesting or denying that a hearing should be held in this matter.

(Source: Amended at 41 Ill. Reg. , effective)

Section 104.206 ~~Resource Conservation and Recovery Act (RCRA)~~ RCRA
Variance Petition Contents

In addition to the requirements of Sections 104.204 and ~~104.208 of this Part, 104.208~~, a petition for a RCRA variance must meet the following requirements:

a) All petitions for RCRA variances must include a showing that the Board can grant the requested relief consistent with, and establish RCRA permit conditions no less stringent than, those that would be required by RCRA and the regulations ~~thereunder~~ promulgated by USEPA (40 CFR 260, 261, 262, 263, 264, 265, 266, 267, 268 and 270). Petitions must indicate whether any federal provisions authorize the relief requested, and must include any facts necessary to show that the petitioner would be entitled to the requested relief under ~~pursuant to~~ federal law;

b) Persons who have, or are required to have, a RCRA permit and who seek a RCRA variance that could result in modification or issuance of the RCRA permit must have on file with the Agency a RCRA permit application reflecting the requested variance prior to filing the variance petition;

c) Petitioner must attach to the variance petition a copy of the RCRA permit application, or such portion as may be relevant to the variance request; and

d) Petitioner must attach to the variance petition documentation of service on USEPA as required by Section ~~104.202 of this Part.~~ 104.202.

(Source: Amended at 41 Ill. Reg. , effective)

Section 104.208 Consistency with Federal Law

a) All petitions for variances from Title II of the Act or from 35 Ill. Adm. Code.Subtitle B, Ch. I "Air Pollution", must indicate whether the Board may grant the requested relief consistent with the Clean Air Act (CAA) (42 USC 7401 et seq.) and the federal regulations adopted under the CAA ~~pursuant thereto~~. If granting a variance would require revision of the State Implementation Plan, the petition must indicate whether the requirements of Section 110(a) of the CAA (42 USC 7410(a)) and 40 CFR 51 will be satisfied.

b) All petitions for variances from Title III of the Act, from 35 Ill. Adm. Code.Subtitle C, Ch. I "Water Pollution", or from water pollution related requirements of any other Title of the Act or Chapter of the Board's regulations, must indicate whether the Board may grant the relief consistent with the Clean Water Act (CWA) (33 USC 1251 et seq.), USEPA effluent guidelines and standards, any other federal regulations, or any area-wide waste treatment management plan approved by the Administrator of USEPA under ~~pursuant to~~ Section 208 of the CWA (33 USC 1288).

c) All petitions for variances from Title IV of the Act or from 35 Ill. Adm. Code.Subtitle F, Ch. I "Public Water Supplies", and to the extent applicable, from Title V of the Act or from 35 Ill. Adm. Code.Subtitle D, Ch. I "Mine Related Water Pollution", must indicate whether the Board may grant the relief consistent with the Safe Drinking Water Act (42 USC 300(f) et seq.), the federal National Primary Drinking Water Regulations (40 CFR 141) and Underground Injection Control Program and other federal regulations adopted pursuant thereto.

d) All petitions for variances from Title V of the Act or from 35 Ill. Adm. Code.Subtitle G, Ch. I "Waste Disposal" must indicate whether the Board may grant the requested relief consistent with RCRA, and the federal regulations adopted ~~pursuant thereto.~~ under RCRA.

e) For all petitions for RCRA variances, petitioner must ~~should~~ consult the federal RCRA rules ~~which~~ that contain procedures that are referred to as "Variances" (40 CFR 260, 261, 262, 263, 264, 265, 266, 267, 268 and 270). The petitioner must ~~should~~ consult the comparable Board regulations to decide whether the variance procedures of this Part need to be followed.

(Source: Amended at 41 Ill. Reg. , effective)

Section 104.210 Petition for Extension of Variance

a) A variance ~~extension pursuant to Section 36(b) of the Act~~ may be extended from year to year by affirmative action of the Board, but only if satisfactory progress has been shown by the petitioner [415 ILCS 5/36(b)].

b) A petition to extend a variance is considered ~~granted by the Board~~ ~~is~~ a new petition for variance before the Board, and must be filed in accordance with this Subpart and 35 Ill. Adm. Code 101.Subpart C, including payment of the filing fee under ~~pursuant to~~ Section 104.202(b) ~~of this Part~~ and 35 Ill. Adm. Code 101.302(e)(2).

c) If the petitioner desires to have the term of the variance extension be sequential with the term of the prior variance, the petition to extend the variance must be filed with the Board no later than 120 days prior to the termination of the variance, unless the petitioner can demonstrate that the petition for variance extension was filed as soon as practicable after the petitioner learned that it could not meet the compliance time frame under the existing variance.

d) In addition to the requirements of this Subpart, the petition for extension of variance must contain:

1) A detailed statement showing that satisfactory progress toward compliance has been or will have been achieved during the term of the prior variance [415 ILCS 5/36(b)];

2) A statement that the conditions of the prior variance have been fully met, or, if any condition or conditions have not been fully met, a detailed explanation of the reason or reasons that the condition or conditions have not been fully met; and

3) A motion to incorporate any material from the record of the prior variance proceeding in accordance with 35 Ill. Adm. Code 101.306.

(Source: Amended at 41 Ill. Reg. ~~==~~ _____, effective _____)

Section 104.212 Motion for Modification of Internal Variance Compliance Dates

a) The petitioner may request, by written motion, modification of internal dates within a compliance schedule of an existing variance, so long as the modification does not extend the length of the existing variance period. The written motion will not be considered to be an extension of the prior variance. The motion must be filed under the docket number of the existing variance, and must be filed with the Clerk and served upon the Agency, and any joined parties under ~~pursuant to~~ 35 Ill. Adm. Code 101.Subpart D. The Agency must, and any joined parties may, file a response to that motion. Any response must be filed within 14 days after receipt of the motion.

b) A motion for modification that would extend the length of the existing variance period constitutes a Petition for Extension of Variance and must be filed in accordance with Section ~~104.210 of this Part. 104.210.~~

(Source: Amended at 41 Ill. Reg. ~~---~~ _____, effective _____)

Section 104.214 Notice of Petition

a) Within 14 days after the petition is filed, the petitioner must publish a single notice of such petition in a newspaper of general circulation in the county where the facility or pollution source is located [415 ILCS 5/37(a)].

b) Upon filing a petition for variance, the petitioner shall promptly give written notice of such petition to:

1) Any person in the county in which the installation or property for which variance is sought is located who has filed with the Board a written request for notice of variance petitions;

2) The State's attorney of such county;

3) The Chairman of the County Board of such county; and

4) Each member of the General Assembly from the legislative district in which that installation or property is located. [415 ILCS 5/37(a)]

c) Upon receipt of a petition for RCRA variance, the Agency must promptly give notice of the petition to:

1) Federal agencies as designated by USEPA;

2) Illinois Department of Transportation;

3) ~~DNR Department of Natural Resources, DNR;~~

4) Illinois Department of Public Health;

5) The Governor of any other state adjacent to the county in which the facility or pollution source is located; and

6) Elected officials of any counties, in other states, adjacent to the county in which the facility or pollution source is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility or pollution source.

7) ~~d) In addition, to the methods of notice stated in subsection (c) of this Section, in a RCRA variance the the Agency must also give notice~~
The general public by broadcast over at least one local radio

station in the area of the facility or pollution source containing the information required by subsections (~~ded~~) and (~~ef~~) ~~of this Section~~.

~~ded~~) All notices required by this Section must include the following:

- 1) The street address of the facility or pollution source, and if there is no street address, then the legal description or the location with reference to any well-known landmark, highway, road, thoroughfare or intersection [415 ILCS 5/37(a)];
- 2) A description of the requested relief;
- 3) An indication that any person may request a hearing by filing with the Board a written objection to the grant of the variance within 21 days after the publication of the petitioner's notice, together with a written request for hearing;
- 4) The Clerk's ~~Clerk of the Board~~'s address and phone number, the Board's website address, and a statement that a copy of the variance petition may be obtained through the Clerk's Office or COOL, located on the Board's website;
- 5) A statement that the Agency is preparing a recommendation and seeking the views of persons who may be adversely affected by the variance. All comments and inquiries should be addressed to the Agency employee responsible for the recommendation within 21 days after publication of the petitioner's notice. The notice must include the date on which the recommendation is to be filed, and the name, address, email address, and telephone number of the Agency employee responsible for the recommendation;
- 6) A statement that a hearing may be held after the filing of the recommendation and that the record will remain open for written comments for 45 days after filing of the recommendation. The notice will include the address of the Board to which the comments must be mailed;
- 7) A statement that the record in the variance proceeding is available at the Board office for inspection, except those portions that are protected from disclosure under 35 Ill. Adm. Code 130, and that procedures are available whereby disclosure may be sought by the public;
- 8) A statement that variances may be granted under ~~pursuant to~~ Section 35 of the Act [415 ILCS 5/35] and 35 Ill. Adm. Code 104, and a reference to the Board regulations or order from which a variance is sought; and
- 9) Any additional information considered necessary or proper.

~~efe~~) Within 21 days after the publication of notice, the petitioner must file with the Board a certification of publication that states the date on which the notice was published and must attach a copy of the published notice.

(Source: Amended at 41 Ill. Reg. ~~_____~~, effective
~~_____~~)

Section 104.216 Agency Investigation and Recommendation

- a) Upon receipt of a petition for variance, the Agency shall promptly investigate such petition and consider the views of persons who might be adversely affected by the grant of a variance [415 ILCS 5/37(a)].
- b) The Agency shall make a recommendation to the Board as to the disposition of the petition [415 ILCS 5/37(a)]. Unless otherwise ordered by the hearing officer or the Board, the recommendation must be filed with the Board within 45 days after the filing of the petition or amended petition, or where there has been a hearing scheduled, at least 30 days before hearing, whichever is earlier. The Agency must serve a copy of its recommendation, in accordance with 35 Ill. Adm. Code 101.304(c), on the petitioner, joined parties, and assigned hearing officer, if applicable. At a minimum, the recommendation must include:
 - 1) A description of the efforts made by the Agency to investigate the facts as alleged and to ascertain the views of persons who might be affected, and a summary of the views so ascertained;
 - 2) The location of the nearest air monitoring station maintained by the Agency where applicable;
 - 3) A statement of the degree to which, if at all, the Agency disagrees with the facts as alleged in the petition, including facts refuting any allegations in the petition for variance;
 - 4) Allegations of any other facts the Agency believes relevant to the disposition of the petition, including any past or pending enforcement actions against petitioner;
 - 5) The Agency's estimate of the costs that compliance would impose on the petitioner and on others;
 - 6) The Agency's estimate of the injury that the grant of the variance would impose on the public, including the effect that continued discharge of contaminants will have upon the environment;
 - 7) The Agency's analysis of applicable federal laws and regulations and an opinion concerning the consistency of the petition with ~~such~~those federal laws and regulations;
 - 8) The status of any permits or pending permit applications that are associated with or affected by the requested variance;
 - 9) Allegation of any facts that the Agency believes are relevant to whether the Board should condition a grant of variance on the posting of a performance bond under ~~pursuant to~~ Section 104.246 ~~of this Part~~;

10) Citation to supporting documents or legal authorities whenever they are used as a basis for the Agency's recommendation. Relevant portions of the documents and legal authorities, other than Board decisions, reported state and federal court decisions, state and federal regulations and statutes, must be appended to the recommendation if not already in the record of the proceeding;

11) The Agency's recommendation of what disposition should be made of the petition, deny or grant, and suggested conditions. If the Agency recommends that variance be granted, a recommended beginning and end date of the requested variance, and any recommended conditions on the variance; and

12) An affidavit verifying any facts outside the record referenced in the recommendation.

(Source: Amended at 41 Ill. Reg. , effective)

Section 104.218 Agency Recommendation to RCRA Variance

In addition to the recommendation requirements stated in Section ~~104.216 of this Part, 104.216~~, the Agency recommendation on petitions for RCRA variances must also include the following and, in addition to the service requirements of Section ~~104.216 of this Part, 104.216~~, the Agency must serve its recommendation on USEPA and all persons who have notified the Agency that they intend to comment or have otherwise asked to be served a copy of the recommendation.

a) The recommendation must include a fact sheet or statement of basis as provided in 35 Ill. Adm. Code 705.141 through 705.143, ~~where~~when relevant.

b) If the Agency recommends that the variance be granted, a partial draft permit reflecting the variance and recommended conditions must be included with the recommendation.

(Source: Amended at 41 Ill. Reg. , effective)

Section 104.220 Response to Agency Recommendation

a) Within 14 days after service of the Agency recommendation the petitioner may file a response to the Agency recommendation or an amended petition. The petitioner must serve a copy of the response or amended petition upon the hearing officer, the Agency, and any other parties to the proceeding.

b) The response or amended petition may include a request for hearing. New information in a response or amended petition must be verified by oath or affidavit.

c) Any amended petition or request for hearing under this Section recommends the decision period under ~~pursuant to Section 104.232 of this Subpart 104.232.~~

(Source: Amended at 41 Ill. Reg. , effective)

Section 104.224 Objections to Petition, Written Comments and Request for Hearing

a) A person who files an objection, request for hearing, or comment is a "participant" as defined in 35 Ill. Adm. Code 101.Subpart B.

b) Except as provided in subsection (e) of this Section for RCRA variances, any person may file with the Clerk, within 21 days after the publication of the petitioner's ~~Petitioner's~~ notice under ~~pursuant to Section 104.214 of this Part, 104.214.~~ a written objection to the grant of variance. The Clerk will serve a copy of the objection on the petitioner, the Agency, the hearing officer, and any joined parties in accordance with 35 Ill. Adm. Code 101.304(c).

c) Any person may also file a written request for hearing. The written request must be filed within 21 days after the publication of the petitioner's ~~Petitioner's~~ notice under ~~pursuant to Section 104.214 of this Part~~ in order for a hearing to be held in accordance with Section 104.236 ~~of this Part~~ and 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

d) Any person may file written comments in a variance proceeding. If a hearing is held, public comments must be filed within 14 days after the close of the hearing unless the hearing officer specifies a different date. If there is no hearing, comments must be filed no later than 30 days before the decision date, unless the hearing officer orders otherwise to prevent material prejudice. (See 35 Ill. Adm. Code 101.628(c)(1).)

e) In RCRA variances, subsections (b) and (c) ~~of this Section~~ do not apply. However, persons may file written comments within 45 days after the Agency files its recommendation.

(Source: Amended at 41 Ill. Reg. , effective)

Section 104.226 Amended Petition and Amended Recommendation

a) The petitioner may amend the petition prior to the close of the hearing, if a hearing is held, or prior to the Board's decision, if a hearing is not held, by filing a motion under ~~pursuant to~~ 35 Ill. Adm. Code 101.Subpart E. Amended petitions subsequent to hearing will be accepted only with permission ~~leave~~ of the Board. Amended petitions

must be in writing and filed with the Board and served in accordance with 35 Ill. Adm. Code 101.Subpart C. If the petitioner substantively amends the petition, the filing of the amended petition recommences the decision period, under ~~pursuant to~~ Section ~~104.232 of this Part,~~ 104.232.

b) If the petitioner amends the petition, the Agency must file or give an amended recommendation in writing or orally at hearing, but in any event not later than 45 days after the filing of an amended petition. The Agency may amend its recommendation even if the petitioner has not amended its petition. In such an instance, a recommendation may be amended prior to close of the hearing, if a hearing is held, or 40 days prior to the Board's decision date if a hearing is not held. The petitioner may file a response to an Agency recommendation under ~~pursuant to~~ Section ~~104.220 of this Part,~~ 104.220.

c) Written amendments to the petition or recommendation need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear.

(Source: Amended at 41 Ill. Reg. , effective)

Section 104.228 Insufficient Petition

If the Board finds the petition fails to contain information as required by Sections 104.204, 104.206, and ~~104.208 of this Part,~~ 104.208, the Board may order the petitioner to supplement the information contained in the petition. Filings made in response to the order constitute an amended petition for the purposes of calculating the decision deadline under ~~pursuant to~~ Section ~~104.232 of this Part,~~ 104.232. Alternatively, under ~~pursuant to~~ Section ~~104.230 of this Part,~~ 104.230, the Board may dismiss the petition for lack of sufficient information. Failure of the Board to require supplemental information does not preclude a later finding that the information provided is insufficient to support grant of variance, or constitute a Board decision on the merits of the petition.

(Source: Amended at 41 Ill. Reg. , effective)

Section 104.230 Dismissal of Petition

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

a) The petition requests relief that the Board is not empowered to grant;

b) The petition fails to comply with the requirements of 35 Ill. Adm. Code 101.Subpart C and Sections 104.202, 104.204, 104.206 and ~~104.208 of this Part;~~

c) The petitioner fails to timely comply with any order issued by the Board or the hearing officer, including an order requiring additional information under ~~pursuant to~~ Section 104.228 ~~of this Part~~; or

d) The petitioner is not subject to the rule or regulation, requirement, or order of the Board at issue.

(Source: Amended at 41 Ill. Reg. , effective)

Section 104.232 Calculation of Decision Deadline

a) Under ~~pursuant to~~ Section 38(a) of the Act, the Board will render its final decision on the petition within 120 days after the date of filing of the petition or the receipt of a request for hearing under ~~pursuant to~~ Section 37(a) of the Act, whichever is later, except:

1) When the petitioner waives its right to a decision within the prescribed decision period in accordance with 35 Ill. Adm. Code 101.Subpart C;

2) When the petitioner files an amended petition for variance under ~~pursuant to~~ this Subpart, the decision period recommences from the date of filing of the amended petition; or

3) When a hearing is canceled under ~~pursuant to~~ 35 Ill. Adm. Code 101.510.

b) Time will be computed in accordance with 35 Ill. Adm. Code 101.Subpart C.

(Source: Amended at 41 Ill. Reg. , effective)

Section 104.234 Hearing

The Board will order a hearing on a variance petition if:

a) A hearing is requested by the petitioner at the time of initial filing on the associated form or in writing, which is filed and served in accordance with 35 Ill. Adm. Code 101.Subpart C;

b) A hearing is requested in a response or amended petition;

c) The Board, in its discretion, concludes that a hearing would be advisable [415 ILCS 5/37(a)];

d) The Agency or any other person files a written objection to the grant of such variance within 21 days after the publication of the petitioner's ~~Petitioner's~~ notice under ~~pursuant to~~ Section ~~104.214 of this Part, 104.214,~~ together with a written request for hearing [415 ILCS 5/37(a)]; or

e) The request concerns a RCRA variance.

(Source: Amended at 41 Ill. Reg. ~~---~~ _____, effective
_____)

Section 104.236 Hearing Procedures

Hearings will be conducted under ~~pursuant to~~ 35 Ill. Adm. Code 101.Subpart F, except that:

a) Hearings may be canceled by ~~pursuant to~~ a motion filed in accordance with 35 Ill. Adm. Code 101.510 at the discretion of the hearing officer.

b) If all parties and participants who have requested a hearing under ~~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 on a RCRA variance petition will be held, whenever possible, at a location convenient to the population center that is closest to the facility.

d) The hearing officer will give notice of RCRA hearings to the following persons:

1) Any person in the county in which the installation or property for which variance is sought is located who has in writing requested notice of variance petitions and the State's attorney of the county;

2) The Chairman of the county board of the county;

3) Each member of the General Assembly from the legislative district in which that installation or property is located;

4) Federal agencies as designated by USEPA;

5) Illinois Department of Transportation;

~~6) DNR Department of Natural Resources;~~

6) DNR;

7) Illinois Department of Public Health;

8) The Governor of any other state adjacent to the county in which the facility or pollution source is located;

9) Elected officials of any counties, in other states, adjacent to the county in which the facility or pollution source is located, and elected officials in any municipality, in another state, if it is the

population center that is closest to the facility or pollution source;
and

10) USEPA's Region V Director of Waste, Pesticides and Toxics
Division.

(Source: Amended at 41 Ill. Reg. ~~---~~ _____, effective
_____)

Section 104.238 Standard of Review

a) The Board may grant individual variances beyond the limitations prescribed by the Act, whenever it is found, upon presentation of adequate proof, that compliance with any rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship. [415 ILCS 5/35(a)] The burden of proof in a variance proceeding is on the petitioner.

b) In addition to subsection (a) ~~of this Section~~ the Board may grant a RCRA variance only to the extent consistent with, and with conditions no less stringent than, those that would be required by RCRA and 40 CFR 260, 261, 262, 263, 264, 265, 266, 267, 268, and 270. Variances must require compliance with the regulations in the shortest practicable time.

(Source: Amended at 41 Ill. Reg. ~~---~~ _____, effective
_____)

Section 104.240 Certificate of Acceptance

The Board's order granting a variance will include a certificate of acceptance. The certificate constitutes acceptance of the variance and its conditions by the petitioner. A variance and its conditions are not binding upon the petitioner until the executed certificate is filed with the Board and served on the Agency. Failure to timely file the executed certificate with the Board and serve the the Agency renders the variance void. However, execution of the certificate is not necessary prior to seeking reconsideration under ~~pursuant to~~ 35 Ill. Adm. Code 101.Subpart I, or appeal under ~~pursuant to~~ Section ~~104.244 of this Part.~~ 104.244.

(Source: Amended at 41 Ill. Reg. ~~---~~ _____, effective
_____)

Section 104.248 Objection to Conditions

The Board may include such conditions in granting a variance and may adopt such rules and regulations as the policies of the Act may require. If an objection is made to a variance condition, the Board shall reconsider the condition within not more than 75 days from the date of the objection. [415 ILCS 5/41(b)] An objection to a specific variance condition may be made by filing a motion under ~~pursuant to~~ 35 Ill. Adm.

Code 101.Subpart E within 35 days after the receipt of the Board's opinion and order containing the objectionable condition.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART C: PROVISIONAL VARIANCES

Section 104.300 Applicability

This Subpart applies to any person seeking a provisional variance from the Agency under ~~pursuant to~~ Title IX of the Act. This Subpart must be read in conjunction with 35 Ill. Adm. Code 101 and this Part. In the event of conflict between this Subpart and the requirements of 35 Ill. Adm. Code 101, the requirements of this Subpart apply.

(Source: Amended at 41 Ill. Reg. == _____, effective _____)

Section 104.304 Initiating a Request

Any person seeking a provisional variance pursuant to Section 35(b) of the Act and 35 Ill. Adm. Code 180 shall make a request to the Agency. The Agency shall promptly investigate and consider the merits of the request. If the Agency fails to take final action within 30 days after receipt of the request for a provisional variance, or if the Agency denies the request, the person may initiate a variance proceeding with the Board under ~~pursuant to~~ Subpart B ~~of this Part~~. [415 ILCS 5/37(b)]

(Source: Amended at 41 Ill. Reg. == _____, effective _____)

SUBPART D: ADJUSTED STANDARDS

Section 104.400 General

a) Description. An adjusted standard has the effect of an environmental regulation that would apply to petitioner, if granted, in lieu of the general regulation that would otherwise be applicable to a petitioner and the regulated community.

b) Applicability. This Subpart will apply to any person seeking an adjusted standard under ~~pursuant to~~ Section 28.1 of the Act. This includes an adjusted standard sought under ~~pursuant to~~ 35 Ill. Adm. Code 212.126 ~~(CAA)~~ and 35 Ill. Adm. Code ~~720-700 through 750 (RCRA)-720~~. This Subpart must be read in conjunction with 35 Ill. Adm. Code Part 101 which contains procedures generally applicable to all adjudicatory proceedings before the Board. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Subpart, the provisions of this Subpart apply.

(Source: Amended at 41 Ill. Reg. == _____, effective _____)

Section 104.402 Initiation of Proceeding

A person may initiate an adjusted standard proceeding by filing a petition that meets the requirements of Section 104.406 of this Part. A petition for an adjusted standard (petition) may be filed either jointly with the Agency or singly under ~~pursuant to~~ the filing requirements of 35 Ill. Adm. Code 101. If filed singly, the petitioner must ~~shall~~ also serve the petition upon the Agency in accordance with 35 Ill. Adm. Code 101. Additionally, a person may file a petition and request the Agency to join as a co-petitioner as set forth in Section ~~104.404 of this Part. 104.404.~~

(Source: Amended at 41 Ill. Reg. ~~==~~ _____, effective _____)

Section 104.404 Request to Agency to Join as Co-Petitioner

- a) The Agency may, in its discretion, act as a co-petitioner in any adjusted standard proceeding.
- b) Any person may request Agency assistance in initiating a petition for adjusted standard. The Agency may require the person to submit to the Agency any background information in the person's possession relevant to the adjusted standard that is sought.
- c) Discretionary decisions made by the Agency under ~~pursuant to~~ this Section are not appealable to the Board.
- d) Subsequent to the filing of the petition and prior to hearing, the Board will grant the Agency co-petitioner status upon joint motion of the Agency and the petitioner who originally filed the petition.

(Source: Amended at 41 Ill. Reg. ~~==~~ _____, effective _____)

Section 104.406 Petition Content Requirements

If the Agency is a co-petitioner, the petition must so state. The petition must contain headings corresponding to the informational requirements of each subsection of this Section. If the petitioner believes that any of the informational requirements are not applicable to the specific adjusted standard requested, the petitioner must so state and explain his reasoning. The following information must be contained in the petition:

- a) A statement describing the standard from which an adjusted standard is sought. This must include the Illinois Administrative Code citation to the regulation of general applicability imposing the standard as well as the effective date of that regulation;

b) A statement that indicates whether the regulation of general applicability was promulgated to implement, in whole or in part, the requirements of the CWA (33 USC 1251 et seq.), Safe Drinking Water Act (42 USC 300(f) et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 USC 9601 et seq.), CAA (42 USC 7401 et seq.), or the State programs concerning RCRA, UIC, or NPDES ~~f(see~~ 415 ILCS 5/28.1~~f);~~;

c) The level of justification as well as other information or requirements necessary for an adjusted standard as specified by the regulation of general applicability or a statement that the regulation of general applicability does not specify a level of justification or other requirements ~~f(see~~ 415 ILCS 5/28.1~~f)~~ (~~See~~ Section 104.426);

d) A description of the nature of the petitioner's activity that is the subject of the proposed adjusted standard. The description must include the location of, and area affected by, the petitioner's activity. This description must also include the number of persons employed by the petitioner's facility at issue, age of that facility, relevant pollution control equipment already in use, and the qualitative and quantitative description of the nature of emissions, discharges or releases currently generated by the petitioner's activity;

e) A description of the efforts that would be necessary if the petitioner was to comply with the regulation of general applicability. All compliance alternatives, with the corresponding costs for each alternative, must be discussed. The discussion of costs must include the overall capital costs as well as the annualized capital and operating costs;

f) A narrative description of the proposed adjusted standard as well as proposed language for a Board order that would impose the standard. Efforts necessary to achieve this proposed standard and the corresponding costs must also be presented;

g) The quantitative and qualitative description of the impact of the petitioner's activity on the environment if the petitioner were to comply with the regulation of general applicability as compared to the quantitative and qualitative impact on the environment if the petitioner were to comply only with the proposed adjusted standard. To the extent applicable, cross-media impacts must be discussed. Also, the petitioner must compare the qualitative and quantitative nature of emissions, discharges or releases that would be expected from compliance with the regulation of general applicability as opposed to that which would be expected from compliance with the proposed adjusted standard;

h) A statement which explains how the petitioner seeks to justify, under ~~pursuant to~~ the applicable level of justification, the proposed adjusted standard;

i) A statement with supporting reasons that the Board may grant the proposed adjusted standard consistent with federal law. The petitioner

must also inform the Board of all procedural requirements applicable to the Board's decision on the petition that are imposed by federal law and not required by this Subpart. Relevant regulatory and statutory authorities must be cited;

j) A statement requesting or waiving a hearing on the petition (under ~~pursuant to~~ Section 104.422(a)(4) ~~of this Part~~ a hearing will be held on all petitions for adjusted standards filed under ~~pursuant to~~ 35 Ill. Adm. Code 212.126 ~~(CAA)~~);

k) The petition must cite to supporting documents or legal authorities whenever they are used as a basis for the petitioner's proof. Relevant portions of the documents and legal authorities other than Board decisions, State regulations, statutes, and reported cases must be appended to the petition;

l) Any additional information ~~which~~that may be required in the regulation of general applicability.

(Source: Amended at 41 Ill. Reg. ~~—~~ _____, effective _____)

Section 104.408 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 adjusted standard proceeding [415 ILCS 5/28.1].

b) The title of the notice must be in the form as follows: "Notice of Petition by ~~f~~(petitioner's name) for an Adjusted Standard before the Illinois Pollution Control Board." The information in the notice must be presented so as to be understood in accordance with the context of this Section's requirements. The notice must contain:

1) ~~The~~The name and address of the petitioner and the statement that the petitioner has filed with the Board a petition for an adjusted standard;~~;~~

2) ~~The notice must also provide the~~ date upon which the petition was filed;~~;~~;

3) ~~The~~The Board docket number;~~;~~

4) ~~The~~The regulatory standard (with appropriate Administrative Code citation) from which an adjusted standard is sought;~~;~~

5) ~~The~~The proposed adjusted standard;~~;~~ ~~and~~ ~~;~~

6) ~~Aa~~ A general description of the petitioner's activity that is the subject of the adjusted standard proceeding, and the location of that activity; and ~~— This information must be presented so as to be understood in accordance with the context of this Section's requirements. —~~

7) ~~The~~ In the concluding portion of the notice ~~must state read as follows:~~

"Any person may cause a public hearing to be held in the above-described adjusted standard 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. The hearing request must be mailed to the Clerk ~~of the Board~~, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601, or filed electronically through COOL, located on the Board's website (www.ipcb.state.il.us)."

(Source: Amended at 41 Ill. Reg. ~~==~~ _____, effective _____)

Section 104.414 Dismissal of Petition

The Board may at any time dismiss a petition for any of the following reasons:

- a) The Board determines that the petition is frivolous, duplicative, or deficient with respect to the requirements of Sections 104.406, 104.408, and 104.410 ~~of this Part~~; or
- b) The Board determines that the petitioner is not pursuing disposition of the petition in a timely manner.

(Source: Amended at 41 Ill. Reg. ~~==~~ _____, effective _____)

Section 104.416 Agency Recommendation and Petitioner Response

a) Unless otherwise ordered by the hearing officer or the Board, the recommendation must be filed with the Board within 45 days after the filing of the petition or amended petition, or where a hearing has been scheduled, at least 30 days before hearing, whichever is earlier. The recommendation must set forth the rationale for the Agency's position and may present any information which the Agency believes is relevant to the Board's consideration of the proposed adjusted standard. If the Agency recommends a denial of the petition due to informational deficiencies within the petition, the recommendation must identify the types of information needed to correct the deficiencies.

b) At a minimum, the Agency must address and respond to the petition with respect to each issue raised by the requirements ~~of subsections (a) through (j)~~ of Section 104.406 ~~of this Part (a) through (j)~~.

c) The recommendation must cite to supporting documents or legal authorities whenever ~~such~~they are used as a basis for the Agency's conclusion. Relevant portions of the documents and legal authorities other than Board decisions, State regulations, statutes and reported cases must be appended to the recommendation if not already in the record of the proceeding.

d) The petitioner may file a response to the recommendation within 14 days after the date of service of the recommendation.

(Source: Amended at 41 Ill. Reg. ~~—~~ _____, effective _____)

Section 104.418 Amended Petition, Amended Recommendation, and Amended Response

a) Amended Petition. The petitioner may amend its petition at any time. The amendment must be in writing and filed with the Board unless made orally at hearing. If the petitioner amends the petition ~~such~~so that the amendment is a substantive change to the requested relief in that it requests additional or alternative relief, petitioner must re-notice the amended petition under ~~pursuant to~~ Section ~~104.408 of this Part~~ 104.408.

b) Amended Recommendation. The Agency may amend its recommendation at any time, even if the petitioner has not amended its petition, if the amendment does not cause material prejudice. The amendment must be in writing and filed with the Board unless made orally at hearing.

c) Amended Response. The petitioner may file a reply to a written amended recommendation within 14 days after the date of receipt of the amended recommendation or within 14 days after the hearing when the Agency orally amended its recommendation.

d) Written amendments to the petition or recommendations need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear.

(Source: Amended at 41 Ill. Reg. ~~—~~ _____, effective _____)

Section 104.419 Insufficient Petition

If the Board finds the petition fails to contain information ~~as~~ required by ~~Sections~~Section 104.406, the Board may order the petitioner to supplement the information contained in the petition through its own order or through a ~~Hearing Officer~~hearing officer order. Filings made

in response to the order constitute an amended petition and will be subject to requirements of Section 104.418. Alternatively, under Section 104.414, the Board may dismiss the petition for lack of sufficient information. Failure of the Board to require supplemental information does not preclude a later finding that the information provided is insufficient to support grant of an adjusted standard, or constitute a Board decision on the merits of the petition.

(Source: Added at 41 Ill. Reg. , effective)

Section 104.420 Request for Public Hearing

a) Any person can request that a public hearing be held in an adjusted standard 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 ~~104.408 of this Part.~~ 104.408. Requests for hearing must ~~should~~ make reference to the Board docket number assigned to the proceeding. A copy of each timely hearing request will be served upon the petitioner and Agency by the Clerk ~~of the Board~~ in accordance with 35 Ill. Adm. Code 101.304(c). Public participation ~~Participation by the public~~ at the hearing must be in accordance with 35 Ill. Adm. Code 101.110 and 101.628.

b) Where all parties and participants who have requested a hearing under ~~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.

(Source: Amended at 41 Ill. Reg. , effective)

Section 104.422 Public Hearing

a) A public hearing will be held and the Board will assign a hearing officer to an adjusted standard proceeding when:

1) The petitioner requests a hearing be held; or

2) The Board receives a hearing request by any person under ~~pursuant to~~ Section 104.420, not later than 21 days after the date of the publication of the petition notice in accordance with Section 104.408; or

3) The Board in its discretion determines that a hearing would be advisable [415 ILCS 5/28.1]; or

4) The adjusted standard is sought under ~~pursuant to~~ 35 Ill. Adm. Code ~~212.126 (CAA).~~ 212.126.

b) 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 setting a time and place for ~~scheduling~~ a hearing.

(Source: Amended at 41 Ill. Reg. , effective
)

Section 104.424 Hearing Notice

After receiving notification from the hearing officer of the scheduled hearing date ~~made pursuant to Section 104.422 of this Part~~, the Clerk will cause the publication of a hearing in accordance with Section 28.1 of the Act [415 ILCS 5/28.1] and 35 Ill. Adm. Code 101.

(Source: Amended at 41 Ill. Reg. , effective
)

Section 104.426 Burden of Proof

The burden of proof in an adjusted standard proceeding is on the petitioner. ~~A petitioner must justify an adjusted standard consistent with Section 27(a) of the Act.~~

a) If the regulation of general applicability does not specify a level of justification required of a petitioner to qualify for an adjusted standard, the Board may grant individual adjusted standards whenever the Board determines, upon adequate proof by petitioner, that:

1) factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;

2) the existence of those factors justifies an adjusted standard;

3) the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and

4) the adjusted standard is consistent with any applicable federal law. [415 ILCS 5/28.1(c)]

b) If the regulation of general applicability specifies a level of justification for an adjusted standard, the Board may adopt the proposed adjusted standard, if the petitioner proves the level of justification specified by the regulation of general applicability.

(Source: Amended at 41 Ill. Reg. , effective
)

Section 104.428 Board Action

a) The Board may grant an adjusted standard for persons who can justify such an adjustment consistent with ~~subsection (a) of~~ Section 27(a) of ~~this~~ the Act. [415 ILCS 5/28.1(a)]. ~~—~~ In adopting adjusted

standards, the Board may impose such conditions as may be necessary to accomplish the purposes of the Act.

b) Subsequent to the Board's adoption of an adjusted standard, the Board will publish, in the Environmental Register, the name of the petitioner, date of the Order that adopted the adjusted standard, and a brief narrative description of the adopted adjusted standard.

c) Board orders and opinions shall be maintained for public inspection by the Clerk of the Board and a listing of all determinations made pursuant to Section 28.1 of the Act shall be published in the Illinois Register and the Environmental Register at the end of each fiscal year. [415 ILCS 5/28.1(d)] Board opinions and orders will also be available from the Board's ~~Website~~[website](#).

(Source: Amended at 41 Ill. Reg. ~~==~~ _____, effective _____)

~~ILLINOIS REGISTER~~

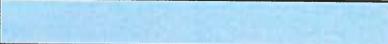
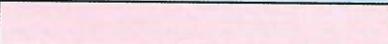
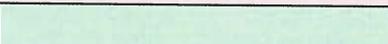
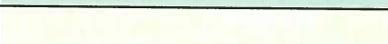
~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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Document comparison by Workshare Compare on Monday, February 06, 2017
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Description	35-104-Agency Proposed-(issue 6)
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Format changed	0
Total changes	304

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Appeals of Final Decisions of State Agencies
- 2) Code Citation: 35 Ill. Adm. Code 105
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
105.108	Amendment
105.110	Amendment
105.116	Amendment
105.118	Amendment
105.202	Amendment
105.206	Amendment
105.208	Amendment
105.210	Amendment
105.212	Amendment
105.214	Amendment
105.300	Amendment
105.302	Amendment
105.304	Amendment
105.400	Amendment
105.402	Amendment
105.404	Amendment
105.406	Amendment
105.410	Amendment
105.412	Amendment
105.500	Amendment
100.502	Amendment
105.508	Amendment
105.510	Amendment
105.Appendix A	Repealed
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: Prompted by a recognition that some of its rules were no longer current due to changing technology and the passage of time, the Board began planning a broad review of all its rules, with a view of streamlining, updating and overhauling its regulation. Governor Rauner's Executive Order 2016-13 has provided additional impetus to the Board's initiative. The proposal makes technical changes to the rule as well as changes in response to recently passed legislation.

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FEB 10 2017
STATE OF ILLINOIS
Pollution Control Board

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments should reference Docket R17-18 and be addressed to:

Clerk's Office
Illinois Pollution Control Board
JRTC
100 W. Randolph St., Suite 11-500
Chicago IL 60601

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R17-18 by calling the Clerk's office at 312/814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality, or not-for-profit corporation that practices before the Board.

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2017

The full text of the Proposed Amendments begins on the next page:

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE A: GENERAL PROVISIONS
3 CHAPTER I: POLLUTION CONTROL BOARD
4

5 PART 105
6 APPEALS OF FINAL DECISIONS OF STATE AGENCIES
7

8 SUBPART A: GENERAL PROVISIONS
9

10 Section

- 11 105.100 Applicability
12 105.102 Severability
13 105.104 Definitions
14 105.106 Computation of Time, Filing and Service Requirements
15 105.108 Dismissal of Petition
16 105.110 Hearings
17 105.112 Burden of Proof
18 105.114 Calculation of Decision Deadline
19 105.116 Record Filing
20 105.118 Sanctions for Untimely Filing of the Record
21

22 SUBPART B: APPEAL OF AGENCY PERMIT DECISIONS AND
23 OTHER FINAL DECISIONS OF THE AGENCY
24

25 Section

- 26 105.200 Applicability
27 105.202 Parties
28 105.204 Who May File a Petition for Review
29 105.206 Time to File the Petition or Request for Extension
30 105.208 Extension of Time to File a Petition for Review
31 105.210 Petition Content Requirements
32 105.212 Agency Record
33 105.214 Board Hearing
34

35 SUBPART C: CAAPP PERMIT APPEALS
36

37 Section

- 38 105.300 Applicability
39 105.302 General Requirements
40 105.304 Petition Content Requirements
41

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

44
45 Section
46 105.400 Parties
47 105.402 Who May File a Petition for Review
48 105.404 Time for Filing the Petition
49 105.406 Extension of Time to File a Petition for Review
50 105.408 Petition Content Requirements
51 105.410 Agency Record
52 105.412 Board Hearing

53
54 SUBPART E: APPEAL OF OSFM LUST DECISIONS

55
56 Section
57 105.500 Applicability
58 105.502 General Overview
59 105.504 General Requirements
60 105.506 Petition Content Requirements
61 105.508 OSFM Record and Appearance
62 105.510 Location of Hearing
63
64 105.APPENDIX A Agency LUST Final Decisions that are Reviewable (Repealed)
65 105.APPENDIX B Comparison of Former and Current Rules (Repealed)
66

67 AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act)
68 [415 ILCS 5/26 and 27] and implementing Sections 5, 39, 39.5, 40, 40.1, 40.2, and 57 of the Act
69 [415 ILCS 5/5, 39, 39.5, 40, 40.1, 40.2 and 57].
70

71 SOURCE: Filed with Secretary of State January 1, 1978; amended 4 Ill. Reg. 52, page 41,
72 effective December 11, 1980; codified 6 Ill. Reg. 8357; amended in R93-24 at 18 Ill. Reg. 4244,
73 effective March 8, 1994; amended in R94-11 at 18 Ill. Reg. 16594, effective November 1, 1994;
74 old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 406, effective January 1, 2001;
75 amended in R04-24 at 29 Ill. Reg. 8811, effective June 8, 2005; amended in R14-21 at 39 Ill.
76 Reg. 2369, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. 7980, effective May
77 20, 2016; ; amended in R17-18 at 41 Ill. Reg. _____, effective _____.
78

79 SUBPART A: GENERAL PROVISIONS

80
81 **Section 105.108 Dismissal of Petition**

82
83 A petition is subject to dismissal if the Board determines that:

- 84
85 a) The petition does not contain the informational requirements set forth in Section
86 105.210, 105.304, 105.408 or 105.506 ~~of this Part~~;

- 87
88 b) The petition is untimely ~~underpursuant to~~ Section 105.206, 105.302, 105.404 or
89 105.504 of this Part;
90
91 c) The petitioner fails to timely comply with any order issued by the Board or the
92 hearing officer, including an order requiring additional information;
93
94 d) The petitioner does not have standing under applicable law to petition the Board
95 for review of the State agency's final decision; or
96
97 e) Other grounds exist that bar the petitioner from proceeding.

98
99 (Source: Amended at 41 Ill. Reg. _____, effective _____)
100

101 **Section 105.110 Hearings**

102
103 Hearings will be conducted ~~underpursuant to~~ 35 Ill. Adm. Code 101.Subpart F, including any
104 hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).
105

106 (Source: Amended at 41 Ill. Reg. _____, effective _____)
107

108 **Section 105.116 Record Filing**

- 109
110 a) The State agency must file with the Board the entire record of its decision within
111 30 days after the filing of the petition for review, unless this Part provides
112 otherwise, or the Board or hearing officer orders a different filing date. If the
113 State agency wishes to seek additional time to file the record, it must file a request
114 for extension before the date on which the record is due to be filed.
115 ~~Under Pursuant to~~ 35 Ill. Adm. Code 101.302(h)(2), the State agency must file the
116 record through COOL or on compact disk or other portable electronic data storage
117 device and, the record must meet the requirements set forth in 35 Ill. Adm. Code
118 101.Subpart J to the extent technically feasible, in text-searchable Adobe PDF.
119
120 b) The record must be arranged in chronological sequence, or by category of
121 material and chronologically within each category, and must be sequentially
122 numbered with the letter "R" placed before the number of each page. The record
123 must be certified by the State agency. The certification must be entitled
124 "Certificate of Record on Appeal". The Certificate must contain an index that
125 lists the documents comprising the record and shows the page numbers upon
126 which each document starts and ends. The Certificate of Record must be served
127 on all parties by the State agency.

128
129 (Source: Amended at 41 Ill. Reg. _____, effective _____)

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Section 105.118 Sanctions for Untimely Filing of the Record

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

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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

Section 105.202 Parties

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

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 105.206 Time to File the Petition or Request for Extension

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

173 the Agency's final decision.
 174

- 175 d) If a person with standing as described in Section 105.204(d), or any third party
 176 who is authorized by law to appeal a final decision of the Agency to the Board,
 177 wishes to request an extension of time to file a petition for review underpursuant
 178 ~~to Section 105.208(b) of this Subpart~~, the person must file the request within 35
 179 days after the date of issuance of the Agency's final decision.
 180

181 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 182

183 **Section 105.208 Extension of Time to File a Petition for Review**
 184

- 185 a) Permit or Other Agency Final Decision. For appeals underpursuant to Section
 186 40(a)(1) of the Act, *the 35-day period* described in Section 105.206(a) of this
 187 Subpart *for petitioning for a hearing may be extended by the applicant for a*
 188 *period of time not to exceed 90 days by written notice provided to the Board from*
 189 *the applicant and the Agency within the initial appeal period* [415 ILCS
 190 5/40(a)(1)].
 191

192 1) The applicant and the Agency must jointly file a request for extension
 193 within 35 days after the date of service of the Agency's final decision.
 194

195 2) ~~The joint request described in subsection (a)(1) of this Section may seek~~
 196 ~~an appeal period not exceeding 125 days from the date of service of the~~
 197 ~~Agency's final decision to file a petition for review under this Subpart.~~
 198

- 199 b) Hazardous Waste Permit. For appeals underpursuant to Section 40(c) of the Act,
 200 *the 35-day period* described in Section 105.206(b) ~~of this Subpart~~ *for petitioning*
 201 *for a hearing may be extended by the applicant for a period of time not to exceed*
 202 *90 days by written notice provided to the Board from the applicant and the*
 203 *Agency within the initial appeal period. If another person with standing to appeal*
 204 *a hazardous waste disposal permit wishes to obtain an extension, there must be a*
 205 *written notice provided to the Board by that person, the Agency, and the*
 206 *applicant, within the initial appeal period.* [415 ILCS 5/40(c)]
 207

208 1) If the applicant is the petitioner, the applicant and the Agency must jointly
 209 file a request for extension within 35 days after the date of issuance of the
 210 Agency's final decision.
 211

212 2) If a person with standing other than the applicant is the petitioner, the
 213 Agency, the applicant and ~~that the other~~ person must jointly file a request
 214 for extension within 35 days after the date of issuance of the Agency's
 215 final decision.

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- 3) The joint request described in subsection (b)(1) or (2) of this Section may seek an appeal period not exceeding 125 days from the date of issuance of the Agency's final decision to file a petition for review under this Subpart.
 - c) Any request for extension of time under this Section must be accompanied by written evidence that the Agency joins in the request, e.g., affidavit of the petitioner or signature of the Agency's representative.
 - d) Extensions of time to file petitions under Section 105.204(b), (c), or (e) of this Subpart are not available.

228 (Source: Amended at 41 Ill. Reg. _____, effective _____)
229

230 **Section 105.210 Petition Content Requirements**

231
232 In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C, the petition must include:

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

248 (Source: Amended at 41 Ill. Reg. _____, effective _____)
249

250 **Section 105.212 Agency Record**

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- a) The Agency must file its entire record of its decision with the Clerk in accordance with Section 105.116 of this Part.
 - b) The record must include:
 - 1) Any permit application or other request that resulted in the Agency's final decision;

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- 2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the permit application;
- 3) The permit denial letter that conforms to the requirements of Section 39(a) of the Act or the issued permit or other Agency final decision;
- 4) The hearing file of any hearing that may have been held before the Agency, including any transcripts and exhibits; and
- 5) Any other information the Agency relied upon in making its final decision.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 105.214 Board Hearing

- a) Except as provided in subsections (b), (c) and (d) ~~of this Section~~, the Board will conduct a public hearing, in accordance with 35 Ill. Adm. Code 101.Subpart F, upon an appropriately filed petition for review ~~under this Subpart~~. The hearing will be based exclusively on the record before the Agency at the time the permit or decision was issued, unless the parties agree to supplement the record underpursuant to Section 40(d) of the Act. If any party desires to introduce evidence before the Board with respect to any disputed issue of fact, the Board will conduct a separate hearing and receive evidence with respect to the issue of fact.
- b) The Board will not hold a hearing on a petition for review under this Subpart if the Board disposes of the petition on a motion for summary judgment brought underpursuant to 35 Ill. Adm. Code 101.516.
- c) The Board will not hold a hearing on a petition for review under Section 105.204(c) ~~of this Subpart~~ if the Board determines that:
 - 1) The petition is duplicative or frivolous; or
 - 2) The petitioner is so located as to not be affected by the permitted facility.
- d) The Board will not hold a hearing on a petition for review under Section 105.204(b) or (d) ~~of this Subpart~~ if the Board determines that the petition is duplicative or frivolous.
- e) If the Board determines to hold a hearing, the Clerk will give notice of the hearing underpursuant to 35 Ill. Adm. Code 101.602.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART C: CAAPP PERMIT APPEALS

Section 105.300 Applicability

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

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 105.302 General Requirements

- a) The definitions of 35 Ill. Adm. Code 101.202 and Section 39.5 of the Act will apply to this Subpart unless otherwise provided, or unless the context clearly indicates otherwise.
- b) If the Agency denies a CAAPP permit, permit modification, or permit renewal it ~~must shall~~ provide to USEPA, the permit applicant and, upon request, affected states, any person who participated in the public comment process and any other person who could obtain judicial review under Section 40.2 and 41 of the Act a copy of each notification of denial pertaining to the permit applicant.
- c) The applicant, any person who participated in the public comment process under Section 39.5(8) of the Act, or any other person who could obtain judicial review under Section 41(a) of the Act may contest the decisions of the Agency enumerated in this subsection (b) by filing with the Clerk a petition for review of the Agency's action in accordance with this Section:
 - 1) ~~In the case of a denial~~ Denial of a CAAPP permit, including a permit revision or permit renewal, or a determination of incompleteness by the Agency regarding a submitted CAAPP application; ~~or~~
 - 2) ~~the issuance~~ Issuance by the Agency of a CAAPP permit with one or more conditions or limitations; ~~;~~
 - 3) ~~or the failure~~ Failure of the Agency to act on an application for a CAAPP permit, permit renewal, administrative permit amendment or significant permit modification within the time frames specified in Section 39.5(5)(j) or Section 39.5(13) of the Act, as applicable; ~~;~~ or
 - 4) ~~the failure~~ Failure of the Agency to take final action within 90 days after

345 receipt of an application requesting minor permit modification procedures
 346 (or 180 days for modifications subject to group processing requirements)
 347 ~~under~~pursuant to Section 39.5(14) of the Act, to which the applicant, any
 348 ~~person who participated in the public comment process pursuant to~~
 349 ~~Section 39.5(8) of the Act, or any other person who could obtain judicial~~
 350 ~~review pursuant to Section 41(a) of the Act objects, such persons may~~
 351 ~~contest the decision of the Agency by filing with the Clerk a petition for~~
 352 ~~review of the Agency's action in accordance with this Section.~~

- 353
- 354 d) For purposes of this Subpart, a person who participated in the public comment
 355 process is someone who, during the public comment period, either commented on
 356 the draft permit, submitted written comments, or requested notice of the final
 357 action on a specific permit application.
 358
- 359 e) The petition filed ~~under~~pursuant to subsection (c) of this Section must be filed
 360 within 35 days after the Agency's final permit action ~~unless~~: Notwithstanding the
 361 above, if
 362
- 363 1) ~~The~~the petition is based solely on grounds arising after the 35 day period
 364 expires, in which case the petition may be filed within 35 days after the
 365 new grounds for review arise.
 366
 - 367 2) ~~The~~if the applicant is challenging the Agency's failure to timely take final
 368 action ~~under~~pursuant to Section 39.5 of the Act, in which case the petition
 369 must be filed before the Agency takes the final action.
 370
 - 371 3) ~~However, under~~Under no circumstances may a petition challenging the
 372 final permit action on a Phase II acid rain permit be filed more than 90
 373 days subsequent to the final permit action.
 374
- 375 f) The Agency must appear as respondent at the hearing, and must file within 30
 376 days after service of the petition, an answer consisting of the entire Agency record
 377 of the CAAPP application including the CAAPP permit application, the hearing
 378 record, the CAAPP permit denial or issuance letter, and correspondence with the
 379 applicant concerning the CAAPP permit application.
 380
- 381 g) The Clerk will give notice of the petition and hearing in accordance with 35 Ill.
 382 Adm. Code 101.
 383
- 384 h) The proceeding will be conducted in accordance with 35 Ill. Adm. Code 101.
 385
- 386 i) *The Agency shall notify USEPA, in writing, of any petition for hearing brought*
 387 *under this Part involving a provision or denial of a Phase II acid rain permit*

388 *within 30 days of the filing of the petition. USEPA may intervene as a matter of*
389 *right in any such hearing. The Agency shall notify USEPA, in writing, of any*
390 *determination or order in a hearing brought under this Section that interprets,*
391 *voids, or otherwise relates to any portion of a Phase II acid rain permit. [415*
392 *ILCS 5/40.2(e)]*

393
394 (Source: Amended at 41 Ill. Reg. _____, effective _____)
395

396 **Section 105.304 Petition Content Requirements**
397

- 398 a) The petition must include:
399
400 1) a concise description of the CAAPP source for which the permit is sought;
401
402 2) a statement of the Agency's decision or part thereof to be reviewed;
403
404 3) a justification as to why the Agency's decision or part thereof was in error;
405 and
406
407 4) the other materials upon which the petitioner relies in its petition.
408
409 b) The petition may include a request to stay the effectiveness of a denial of the
410 CAAPP permit until final action is taken by the Board ~~under~~pursuant to Section
411 40.2 of the Act.
412

413 (Source: Amended at 41 Ill. Reg. _____, effective _____)
414

415 SUBPART D: APPEAL OF AGENCY LEAKING UNDERGROUND
416 STORAGE TANK (LUST) DECISIONS
417

418 **Section 105.400 Parties**
419

- 420 a) Petitioner. The person who files a petition for review of the Agency's final
421 decision made ~~under~~pursuant to Sections 57.1 et seq. of the Act (or under the
422 former Section 22.18b(g) of the Act) must be named as petitioner.
423
424 b) Respondent. The Agency must be named as the respondent.
425

426 (Source: Amended at 41 Ill. Reg. _____, effective _____)
427

428 **Section 105.402 Who May File a Petition for Review**
429

430 Any owner or operator may file a petition for review ~~under~~pursuant to Section 40 of the Act of

431 an Agency final determination made ~~under~~ pursuant to Sections 57.1 et seq. of the Act (or under
 432 the former Section 22.18b(g) of the Act). There are several Agency determinations that may be
 433 appealed ~~under~~ pursuant to Section 40 of the Act. The Agency determinations that may be
 434 appealed are included in Illustration A of this Part.

435
 436 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 437

438 **Section 105.404 Time for Filing the Petition**
 439

440 Petitions must be filed in accordance with this Section or the Board does not have the authority
 441 to review the Agency's decision and will dismiss the proceeding on its own motion or on the
 442 motion of any party. Within 35 days after the date of service of the Agency's final decision the
 443 petitioner may file with the Clerk of the Board:
 444

- 445 a) a petition for review that contains the requirements of Section 105.408 ~~of this~~
 446 ~~Part~~; or
- 447
- 448 b) a request for an extension of time to file a petition for hearing ~~under~~ pursuant to
 449 Section 105.406 ~~of this Part~~.

450
 451 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 452

453 **Section 105.406 Extension of Time to File a Petition for Review**
 454

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

463
 464 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 465

466 **Section 105.410 Agency Record**
 467

- 468 a) The Agency must file the entire record of its decision with the Board in
 469 accordance with Section 105.116 ~~of this Part~~.
- 470
- 471 b) The record must include:
 472
- 473 1) The plan or budget submittal or other request that requires an Agency

- 474 decision;
- 475
- 476 2) Correspondence with the petitioner and any documents or materials
- 477 submitted by the petitioner to the Agency related to the plan or budget
- 478 submittal or other request;
- 479
- 480 3) The final determination letter; and
- 481
- 482 4) Any other information the Agency relied upon in making its
- 483 determination.
- 484

485 (Source: Amended at 41 Ill. Reg. _____, effective _____)

486

487 **Section 105.412 Board Hearing**

488

489 The Board will conduct a public hearing, in accordance with 35 Ill. Adm. Code 101.Subpart F,
490 including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)), upon an
491 appropriately filed petition for review, unless a petition is disposed of by a motion for summary
492 judgment brought underpursuant to 35 Ill. Adm. Code 101.516. The hearing will be based
493 exclusively on the record before the Agency at the time the permit or decision was issued.

494

495 (Source: Amended at 41 Ill. Reg. _____, effective _____)

496

497 SUBPART E: APPEAL OF OSFM LUST DECISIONS

498

499 **Section 105.500 Applicability**

500

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

503

504 (Source: Amended at 41 Ill. Reg. _____, effective _____)

505

506 **Section 105.502 General Overview**

507

508 OSFM final determinations are made either through the issuance of an "Eligibility and
509 Deductibility Determination" letter or by the failure of OSFM to act upon receipt of an
510 "Eligibility and Deductibility Determination" form within 60 days underpursuant to Section
511 57.9(c)(2) of the Act. The process before the Board for review of final determinations by the
512 OSFM includes the following steps. Upon receipt of a petition for review, unless the Board
513 determines that the petition is insufficient, a hearing date and location will be assigned. Hearings
514 will be publicly-noticed in the county where the underground storage tank site is located. If the
515 parties enter into a settlement agreement prior to or during the hearing process, the parties may
516 request that the Board accept and enter a final order adopting a proposed settlement agreement;

517 the order may be requested with or without a hearing.

518 (Source: Amended at 41 Ill. Reg. _____, effective _____)

521 **Section 105.508 OSFM Record and Appearance**

- 522
- 523 a) Within 14 days after a petition for review of an OSFM eligibility or deductibility
- 524 determination, the attorney representing the OSFM must file an appearance with
- 525 the Board.
- 526
- 527 b) The OSFM must file the entire record of its decision with the Board in accordance
- 528 with Section 105.116 of this Part. The record must include:
- 529
- 530 1) The request for OSFM determination of eligibility or deductibility;
- 531
- 532 2) Correspondence with the petitioner;
- 533
- 534 3) The denial letter; and
- 535
- 536 4) Any other information the OSFM relied upon in making its determination.

537 (Source: Amended at 41 Ill. Reg. _____, effective _____)

538

539

540 **Section 105.510 Location of Hearing**

541

542 The hearing will be held in either Springfield, ~~in or~~ Chicago, by videoconference (see 35 Ill.

543 Adm. Code 101.600(b)), or in such other location as the hearing officer or the Board may

544 designate to prevent material prejudice or undue delay. Upon the proceeding being set for

545 hearing, the Clerk will cause notice of the hearing to be published. Public notice will be

546 published at least 21 days before the hearing by public advertisement in a newspaper of general

547 circulation in the county in which the LUST site in question is located. Nothing in this Section

548 precludes holding the hearing by videoconference underpursuant to 35 Ill. Adm. Code

549 101.600(b).

550 (Source: Amended at 41 Ill. Reg. _____, effective _____)

551

552

553 **Section 105.APPENDIX A Agency LUST Final Decisions that are Reviewable (Repealed)**

554
 555 The following table includes Agency final determinations which may be appealed to the Board
 556 pursuant to the Leaking Underground Storage Tank Program, Title XVI of the Act. Appealable
 557 determinations are listed in Title XVI, so the reader should consult the Act for amendments to
 558 Title XVI which may affect this list.
 559

Description of Final Determination	Section of the Act Citation	35 Ill. Adm. Code Citation
Agency's determination concerning the owner's or operator's physical soil classification and groundwater investigation plan.	57.7(a)(1)(A)	732.305(a) and (c) and 732.503(b) and (f)
Agency's determination as to a request for reimbursement for costs associated with early action pursuant to Section 57.6(b) of the Act.	57.7(a)(1)(B)	732.305(b)(1) and (c) and 732.602
Agency's determination concerning the owner's or operator's budget for the physical soil classification and groundwater investigation plan.	57.7(a)(2)	732.305(b)(2) and (c) and 732.503(b) and (f)
Agency's determination concerning the site classification.	57.7(b)	732.309, 732.500(a) and 732.503(b) and (f)
Agency's determination concerning the corrective action plan submitted for a high priority site.	57.7(c)(1)(A)	732.405(a) and 732.503(b) and (f)
Agency's determination concerning the budget associated with a corrective action plan submitted for a high priority site.	57.7(c)(1)(B)	732.405(b) and 732.503(b) and (f)
Agency's determination as to issuance of a no further remediation letter in accordance with Section 57.10 of the Act for a high priority site.	57.7(c)(1)(E)	732.410(a) and (d)

Agency's determination concerning the groundwater monitoring plan and associated budget submitted for a low priority site.	57.7(e)(2)(B)	732.403(b) and (e) and 732.503(b) and (f)
Agency's determination associated with a groundwater monitoring completion report.	57.7(e)(2)(C)	732.403(g)
Agency's determination as to issuance of a no further remediation letter in accordance with Section 57.10 of the Act for a low priority site.	57.7(e)(2)(E)	732.403(f) and 732.410(d)
Agency's determination as to the site classification for a no further action site.	57.7(e)(3)(B)	732.402 and 732.410(d)
Agency's determination as to amount of reimbursement.	57.8(i)	732.602(h)
Agency's determination concerning the completeness of plan or budget submittals by the owner or operator.		732.502(b), 732.503(f)
Agency's determination concerning the completeness of plan or budget submittals by the owner or operator.		732.602(a) and (b)

560
561 BOARD NOTE: The above list was complete at time of adoption. However, the list is subject
562 to subsequent changes in the Act, the Board's regulations and the interpretation of the
563 corresponding law. By no means should this list be interpreted to limit any right to appeal an
564 Agency final determination before the Board. The list should only be used as an aid for
565 interpreting Title XVI and the corresponding law.
566

567 (Source: Repealed at 41 Ill. Reg. _____, effective _____)

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

PART 105
APPEALS OF FINAL DECISIONS OF STATE AGENCIES

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105.102	Severability
105.104	Definitions
105.106	Computation of Time, Filing and Service Requirements
105.108	Dismissal of Petition
105.110	Hearing Process <u>Hearings</u>
105.112	Burden of Proof
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SUBPART B: APPEAL OF AGENCY PERMIT DECISIONS AND
OTHER FINAL DECISIONS OF THE AGENCY

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105.200	Applicability
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105.204	Who May File a Petition for Review
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SUBPART E: APPEAL OF OSFM LUST DECISIONS

Section

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

105.APPENDIX A Agency LUST Final Decisions that are Reviewable (Repealed)

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

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

SOURCE: Filed with Secretary of State January 1, 1978; amended 4 Ill. Reg. 52, page 41, effective December 11, 1980; codified 6 Ill. Reg. 8357; amended in R93-24 at 18 Ill. Reg. 4244, effective March 8, 1994; amended in R94-11 at 18 Ill. Reg. 16594, effective November 1, 1994; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 406, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8811, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2369, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. 7980, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 105.108 Dismissal of Petition

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

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

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 105.110 ~~Hearing Process~~Hearings

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

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 105.116 Record Filing

a) The State agency must file with the Board the entire record of its decision within 30 days after the filing of the petition for review, unless this Part provides otherwise, or the Board or hearing officer orders a different filing date. If the State agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. Under ~~pursuant to~~ 35 Ill. Adm. Code 101.302(h)(2), the State agency must file the record through COOL or on compact disk or other portable electronic data storage device and, the record must meet the requirements set forth in 35 Ill. Adm. Code 101.Subpart J to the extent technically feasible, in text-searchable Adobe PDF.

b) The record must be arranged in chronological sequence, or by category of material and chronologically within each category, and must be sequentially numbered with the letter "R" placed before the number of each page. The record must be certified by the State agency. The certification must be entitled "Certificate of Record on Appeal". The Certificate must contain an index that lists the documents comprising the record and shows the page numbers upon which each document starts and ends. The Certificate of Record must be served on all parties by the State agency.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 105.118 Sanctions for Untimely Filing of the Record

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

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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

Section 105.202 Parties

a) Petitioner. The person who files a petition for review of the Agency's final decision must be named the petitioner.

b) Respondent~~(s)~~. The Agency must be named the respondent. If a petition is filed under ~~pursuant to~~ Section 105.204(b), (c) or (d) by a person other than the permit applicant, the permit applicant must be named as a respondent in addition to the Agency.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 105.206 Time to File the Petition or Request for Extension

a) Except as provided in subsection (b) ~~of this Section~~, if a person who may petition the Board under Section 105.204 ~~of this Subpart~~ wishes to appeal the Agency's final decision ~~to the Board under this Subpart~~, the person must file the petition with the Clerk within 35 days after the date of service of the Agency's final decision.

b) If a person with standing as described in Section 105.204(d) ~~of this Subpart~~, or any third party who is authorized by law to appeal a final decision of the Agency to the Board, wishes to appeal the Agency's final decision ~~to the Board under this Subpart~~, the person must file a petition for review with the Clerk within 35 days after the date of issuance of the Agency's final decision.

c) Except as provided in subsection (d) ~~of this Section~~, if a person who may petition the Board under Section 105.204 of this Subpart wishes to request an extension of time to file a petition for review under ~~pursuant to~~ Section 105.208(a) ~~of this Subpart~~, the person must file the request within 35 days after the date of service of the Agency's final decision.

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

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 105.208 Extension of Time to File a Petition for Review

a) Permit or Other Agency Final Decision. For appeals under ~~pursuant to~~ Section 40(a)(1) of the Act, the 35-day period described in Section 105.206(a) of this Subpart for petitioning for a hearing may be extended by the applicant for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period [415 ILCS 5/40(a)(1)].

1) The applicant and the Agency must jointly file a request for extension within 35 days after the date of service of the Agency's final decision.

2) The joint request ~~described in subsection (a)(1) of this Section~~ may seek an appeal period not exceeding 125 days from the date of service of the Agency's final decision to file a petition for review under this Subpart.

b) Hazardous Waste Permit. For appeals under ~~pursuant to~~ Section 40(c) of the Act, the 35-day period described in Section 105.206(b) ~~of this Subpart~~ for petitioning for a hearing may be extended by the applicant for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period. If another person with standing to appeal a hazardous waste disposal permit wishes to obtain an extension, there must be a written notice provided to the Board by that person, the Agency, and the applicant, within the initial appeal period. [415 ILCS 5/40(c)]

1) If the applicant is the petitioner, the applicant and the Agency must jointly file a request for extension within 35 days after the date of issuance of the Agency's final decision.

2) If a person with standing other than the applicant is the petitioner, the Agency, the applicant and that ~~the other~~ person must jointly file a request for extension within 35 days after the date of issuance of the Agency's final decision.

3) The joint request ~~described in subsection (b)(1) or (2) of this Section~~ may seek an appeal period not exceeding 125 days from the date of issuance of the Agency's final decision to file a petition for review under this Subpart.

c) Any request for extension of time under this Section must be accompanied by written evidence that the Agency joins in the request, e.g., affidavit of the petitioner or signature of the Agency's representative.

d) Extensions of time to file petitions under Section 105.204(b), (c), or (e) ~~of this Subpart~~ are not available.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

Section 105.210 Petition Content Requirements

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

a) The Agency's final decision or issued permit;

b) A statement specifying the date of issuance or service of the Agency's final decision or issued permit, as applicable under ~~pursuant to~~ Section 105.206 ~~of this Subpart~~;

c) A statement specifying the grounds of appeal; and

d) For petitions under Section 105.204(b) ~~of this Subpart~~, a demonstration that the petitioner raised the issues contained within the petition during the public notice period or during the public hearing on the NPDES permit application, if a public hearing was held, and a demonstration that the petitioner is so situated as to be affected by the permitted facility [415 ILCS 5/40(e)(2)].

(Source: Amended at 41 Ill. Reg. ~~_____~~, effective _____)

Section 105.212 Agency Record

a) The Agency must file its entire record of its decision with the Clerk in accordance with Section ~~105.116 of this Part.~~ 105.116.

b) The record must include:

1) Any permit application or other request that resulted in the Agency's final decision;

2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the permit application;

3) The permit denial letter that conforms to the requirements of Section 39(a) of the Act or the issued permit or other Agency final decision;

4) The hearing file of any hearing that may have been held before the Agency, including any transcripts and exhibits; and

5) Any other information the Agency relied upon in making its final decision.

(Source: Amended at 41 Ill. Reg. ~~_____~~, effective _____)

Section 105.214 Board Hearing

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

b) The Board will not hold a hearing on a petition for review under this Subpart if the Board disposes of the petition on a motion for summary judgment brought under ~~pursuant to~~ 35 Ill. Adm. Code 101.516.

c) The Board will not hold a hearing on a petition for review under Section 105.204(c) ~~of this Subpart~~ if the Board determines that:

1) The petition is duplicative or frivolous; or

2) The petitioner is so located as to not be affected by the permitted facility.

d) The Board will not hold a hearing on a petition for review under Section 105.204(b) or (d) ~~of this Subpart~~ if the Board determines that the petition is duplicative or frivolous.

e) If the Board determines to hold a hearing, the Clerk will give notice of the hearing under ~~pursuant to~~ 35 Ill. Adm. Code 101.602.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART C: CAAPP PERMIT APPEALS

Section 105.300 Applicability

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

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 105.302 General Requirements

a) The definitions of 35 Ill. Adm. Code 101.202 and Section 39.5 of the Act will apply to this Subpart unless otherwise provided, or unless the context clearly indicates otherwise.

b) If the Agency denies a CAAPP permit, permit modification, or permit renewal it must ~~shall~~ provide to USEPA, the permit applicant and, upon request, affected states, any person who participated in the public comment process and any other person who could obtain judicial review under Section 40.2 and 41 of the Act a copy of each notification of denial pertaining to the permit applicant.

c) The applicant, any person who participated in the public comment process under Section 39.5(8) of the Act, or any other person who could obtain judicial review under Section 41(a) of the Act may contest the decisions of the Agency enumerated below in this subsection (b) by filing with the Clerk a petition for review of the Agency's action in accordance with this Section:

1) ~~Denial~~In the case of a denial Denial of a CAAPP permit, including a permit revision or permit renewal, or a determination of incompleteness by the Agency regarding a submitted CAAPP application, ~~or~~.

2) Issuance ~~the issuance~~ by the Agency of a CAAPP permit with one or more conditions or limitations.

3) Failure ~~or the failure~~ of the Agency to act on an application for a CAAPP permit, permit renewal, administrative permit amendment or significant permit modification within the time frames specified in Section 39.5(5)(j) or Section 39.5(13) of the Act, as applicable, ~~or~~

4) Failure ~~the failure~~ of the Agency to take final action within 90 days after receipt of an application requesting minor permit modification procedures (or 180 days for modifications subject to group processing requirements) under ~~pursuant to~~ Section 39.5(14) of the Act, ~~to which the applicant, any person who participated in the public comment process pursuant to Section 39.5(8) of the Act, or any other person who could obtain judicial review pursuant to Section 41(a) of the Act objects, such persons may contest the decision of the Agency by filing with the Clerk a petition for review of the Agency's action in accordance with this Section.~~

d) For purposes of this Subpart, a person who participated in the public comment process is someone who, during the public comment period, either commented on the draft permit, submitted written comments, or requested notice of the final action on a specific permit application.

e) The petition filed under ~~pursuant to~~ subsection (c) ~~of this Section~~ must be filed within 35 days after the Agency's final permit action unless: ~~Notwithstanding the above, if~~

1) The ~~the~~ petition is based solely on grounds arising after the 35 day period expires, in which case the petition may be filed within 35 days after the new grounds for review arise.

2) ~~If~~The ~~the~~ applicant is challenging the Agency's failure to timely take final action under ~~pursuant to~~ Section 39.5 of the Act, in which case the petition must be filed before the Agency takes the final action.

3) However, under ~~Under~~ no circumstances may a petition challenging the final permit action on a Phase II acid rain permit be filed more than 90 days subsequent to the final permit action.

f) The Agency must appear as respondent at the hearing, and must file within 30 days after service of the petition, an answer consisting of the entire Agency record of the CAAPP application including the CAAPP permit application, the hearing record, the CAAPP permit denial or issuance letter, and correspondence with the applicant concerning the CAAPP permit application.

g) The Clerk will give notice of the petition and hearing in accordance with 35 Ill. Adm. Code 101.

h) The proceeding will be conducted in accordance with 35 Ill. Adm. Code 101.

i) The Agency shall notify USEPA, in writing, of any petition for hearing brought under this Part involving a provision or denial of a Phase II acid rain permit within 30 days of the filing of the petition. USEPA may intervene as a matter of right in any such hearing. The Agency shall notify USEPA, in writing, of any determination or order in a hearing brought under this Section that interprets, voids, or otherwise relates to any portion of a Phase II acid rain permit. [415 ILCS 5/40.2(e)]

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

Section 105.304 Petition Content Requirements

a) The petition must include:

1) a concise description of the CAAPP source for which the permit is sought;

2) a statement of the Agency's decision or part thereof to be reviewed;

3) a justification as to why the Agency's decision or part thereof was in error; and

4) the other materials upon which the petitioner relies in its petition.

b) The petition may include a request to stay the effectiveness of a denial of the CAAPP permit until final action is taken by the Board under ~~pursuant to~~ Section 40.2 of the Act.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

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

Section 105.400 Parties

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

b) Respondent. The Agency must be named as the respondent.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 105.402 Who May File a Petition for Review

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

(Source: Amended at 41 Ill. Reg. ~~- _____~~, effective ~~_____~~)

Section 105.404 Time for Filing the Petition

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

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

(Source: Amended at 41 Ill. Reg. ~~- _____~~, effective ~~_____~~)

Section 105.406 Extension of Time to File a Petition for Review

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

(Source: Amended at 41 Ill. Reg. ~~- _____~~, effective ~~_____~~)

Section 105.410 Agency Record

- a) The Agency must file the entire record of its decision with the Board in accordance with Section ~~105.116 of this Part.~~ 105.116.
- b) The record must include:

- 1) The plan or budget submittal or other request that requires an Agency decision;
- 2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the plan or budget submittal or other request;
- 3) The final determination letter; and
- 4) Any other information the Agency relied upon in making its determination.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

Section 105.412 Board Hearing

The Board will conduct a public hearing, in accordance with 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)), upon an appropriately filed petition for review, unless a petition is disposed of by a motion for summary judgment brought under ~~pursuant to~~ 35 Ill. Adm. Code 101.516. The hearing will be based exclusively on the record before the Agency at the time the permit or decision was issued.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

SUBPART E: APPEAL OF OSFM LUST DECISIONS

Section 105.500 Applicability

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

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

Section 105.502 General Overview

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

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 105.508 OSFM Record and Appearance

a) Within 14 days after a petition for review of an OSFM eligibility or deductibility determination, the attorney representing the OSFM must file an appearance with the Board.

b) The OSFM must file the entire record of its decision with the Board in accordance with Section ~~105.116 of this Part.~~ 105.116. The record must include:

- 1) The request for OSFM determination of eligibility or deductibility;
- 2) Correspondence with the petitioner;
- 3) The denial letter; and
- 4) Any other information the OSFM relied upon in making its determination.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 105.510 Location of Hearing

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

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 105.APPENDIX A Agency LUST Final Decisions that are Reviewable (Repealed)

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

~~Description of Final Determination~~

~~Section of the Act Citation 35 Ill. Adm. Code Citation~~

~~Agency's determination concerning the owner's or operator's physical soil classification and groundwater investigation plan.~~

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

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

(Source: Repealed at 41 Ill. Reg. _____, effective _____)

~~ILLINOIS REGISTER~~

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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Document comparison by Workshare Compare on Monday, February 06, 2017
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Moved to	0
Style change	0
Format changed	0
Total changes	180

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Proceedings Pursuant to Specific Rules or Statutory Provisions

2) Code Citation: 35 Ill. Adm. Code 106

3) Section Numbers: Proposed Actions:

106.100	Amendment
106.106	Amendment
106.200	Amendment
106.202	Amendment
106.204	Repealed
106.206	Amendment
106.208	Amendment
105.300	Amendment
106.302	Amendment
106.304	Amendment
106.308	Amendment
106.400	Amendment
106.410	Amendment
106.500	Amendment
106.504	Amendment
106.506	Amendment
106.510	Amendment
106.600	Amendment
106.602	Amendment
106.604	Amendment
106.608	Amendment
106.702	Amendment
106.704	Amendment
106.707	Amendment
106.710	Amendment
106.712	Amendment
106.714	Amendment
106.718	Repealed
106.720	Amendment
106.722	Repealed
106.724	Repealed
106.726	Repealed
106.728	Amendment
106.730	Repealed
106.732	Repealed

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NOTICE OF PROPOSED AMENDMENTS

106.734	Repealed
106.736	Repealed
106.738	Repealed
106.740	Repealed
106.800	Amendment
106.804	Amendment
106.806	Amendment
106.810	Amendment
106.900	Amendment
106.902	Amendment
106.904	Amendment
106.906	Amendment
106.912	Amendment
106.1105	Amendment
106.1110	Amendment
106.1115	Amendment
106.1120	Amendment
106.1125	Amendment
106.1130	Amendment
106.1135	Amendment
106.1140	Amendment
106.1145	Amendment
106.1150	Amendment
106.1155	Amendment
106.1160	Amendment
106.1170	Amendment
106.1175	Amendment
106.1180	Amendment

- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: Prompted by a recognition that some of its rules were no longer current due to changing technology and the passage of time, the Board began planning a broad review of all its rules, with a view of streamlining, updating and overhauling its regulation. Governor Rauner's Executive Order 2016-13 has provided additional impetus to the Board's initiative. The proposal makes technical changes to the rule as well as changes in response to recently passed legislation.

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)]
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments should reference Docket R17-18 and be addressed to:

Clerk's Office
Illinois Pollution Control Board
JRTC
100 W. Randolph St., Suite 11-500
Chicago IL 60601

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R17-18 by calling the Clerk's office at 312/814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality, or not-for-profit corporation that practices before the Board
 - B) Reporting, bookkeeping or other procedures required for compliance: None

POLLUTION CONTROL BOARD

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C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: January 2017

The full text of the Proposed Amendments begins on the next page:

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

PART 106
PROCEEDINGS PURSUANT TO SPECIFIC RULES OR STATUTORY PROVISIONS

SUBPART A: GENERAL PROVISIONS

- Section
106.100 Applicability
106.102 Severability
106.104 Definitions
106.106 Petitions and Hearings

SUBPART B: HEATED EFFLUENT, ARTIFICIAL COOLING LAKE,
AND SULFUR DIOXIDE DEMONSTRATIONS

- Section
106.200 General
106.202 Petition Requirements
106.204 Additional Petition Requirements in Sulfur Dioxide
Demonstrations (Repealed)
106.206 Notice
106.208 Recommendation and Response
106.210 Burden of Proof

SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES

- Section
106.300 General
106.302 Initiation of Proceeding
106.304 Petition Content Requirements
106.306 Response and Reply
106.308 Hearing
106.310 Burden of Proof

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

- Section
106.400 General
106.402 Definitions
106.404 Initiation of Proceedings
106.406 Petition Content Requirements
106.408 Response and Reply
106.410 Hearing
106.412 Burden of Proof
106.414 Opinion and Order
106.416 USEPA Review of Proposed Determination

SUBPART E: MAXIMUM ACHIEVABLE CONTROL



TECHNOLOGY DETERMINATIONS

Section	
106.500	General
106.502	Definitions
106.504	Initiation of Proceedings
106.506	Petition Content Requirements
106.508	Response and Reply
106.510	Hearing
106.512	Burden of Proof
106.514	Board Action

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

Section	
106.600	General
106.602	Initiation of Proceedings
106.604	Petition Content Requirements
106.606	Response and Reply
106.608	Hearing
106.610	Burden of Proof

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

Section	
106.700	Purpose
106.702	Applicability
106.704	Termination Under Section 52.3-4(b) or (b-5) of the Act
106.706	Who May Initiate, Parties
106.707	Notice, Statement of Deficiency, Answer
106.708	Service
106.710	Notice of Hearing
106.712	Deficient Performance
106.714	Board Decision
106.716	Burden of Proof
106.718	Motions, Responses (Repealed)
106.720	Intervention
106.722	Continuances (Repealed)
106.724	Discovery, Admissions (Repealed)
106.726	Subpoenas (Repealed)
106.728	Settlement Procedure
106.730	Authority of Hearing Officer, Board Members, and Board Assistants (Repealed)
106.732	Order and Conduct of Hearing (Repealed)
106.734	Evidentiary Matters (Repealed)
106.736	Post-Hearing Procedures (Repealed)
106.738	Motion After Entry of Final Order (Repealed)
106.740	Relief from Final Orders (Repealed)

SUBPART H: AUTHORIZATIONS UNDER THE REGULATION

OF PHOSPHORUS IN DETERGENTS ACT

Section

106.800 General
106.802 Definitions
106.804 Initiation of Proceeding
106.806 Petition Content Requirements
106.808 Response and Reply
106.810 Hearing
106.812 Burden of Proof

SUBPART I: AUTHORIZATIONS FOR CERTAIN LANDSCAPE WASTE AND
COMPOST APPLICATIONS AND ON-FARM COMPOSTING FACILITIES

Section

106.900 General
106.902 Initiation of Proceeding
106.904 Petition Content Requirements
106.906 Petition Notice Requirements
106.908 Proof of Petition Notice Requirements
106.910 Response and Reply
106.912 Hearing
106.914 Burden of Proof

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

Section

106.1000 General (Repealed)
106.1002 Definitions (Repealed)
106.1004 Initiation of Proceeding (Repealed)
106.1006 Petition Content Requirements (Repealed)
106.1008 Response and Reply (Repealed)
106.1010 Burden of Proof (Repealed)
106.1012 Board Decision (Repealed)

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
106.1105 General
106.1110 Definitions
106.1115 Early Screening
106.1120 Detailed Plan of Study
106.1125 Initiation of Proceeding
106.1130 Contents of Petition
106.1135 Petition Notice Requirements
106.1140 Proof of Petition Notice Requirements
106.1145 Recommendation and Response
106.1150 Request for Public Hearing
106.1155 Notice and Conduct of Hearing
106.1160 Burden of Proof

106.1165 Evidentiary Matters
106.1170 Opinion and Order
106.1175 Post-Hearing Procedures
106.1180 Renewal of Alternative Thermal Effluent Limitations

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].

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; amended in R17-18 at 41 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 106.100 Applicability

a) This Part applies to adjudicatory proceedings pursuant to specific rules or statutory provisions. ~~Specifically, the Part applies to heated effluent, artificial cooling lake and sulfur dioxide demonstrations, water well setback exception procedures, revocation and reopening of CAAPP permits, maximum achievable control technology determinations, culpability determinations for particulate matter less than or equal to 10 microns, the involuntary termination of environmental management system agreements, 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(e).~~

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 41 Ill. Reg. - _____, effective _____)

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 under ~~pursuant to~~ 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

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,~~ under ~~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.

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 under ~~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,~~ under ~~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, under ~~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) Under ~~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) Under ~~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 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, under ~~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~~ Subparts C and J.

(Source: Amended at 41 Ill. Reg. , effective)

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

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 ~~303°~~ Fahrenheit (~~170~~1.7° Centigrade) intervals down to ambient temperature indicating three-dimensional effects.

4) A demonstration, ~~that~~which may take any of the forms described in subsection (b)(2), 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

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 under ~~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 under ~~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 under ~~pursuant to~~ 35 Ill. Adm. Code 302.211(f) or (j)(3).

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)~~; or sources;

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~~ that 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)~~ or sources 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)~~ or sources 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.

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)~~ or sources 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;

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.

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.

12) ~~That~~ A statement that the procedural requirements of 40 CFR 51.4 (1977) are met ~~and, at, At~~ least 30 days prior to the date of the hearing, the 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.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 106.204 Additional Petition Requirements in Sulfur Dioxide Demonstrations (Repealed)

~~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;~~
- ~~e) 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.~~

(Source: Repealed at 41 Ill. Reg. - _____, effective _____)

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, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

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, or any person may file a response to the Agency recommendation within 14 days after the filing of the recommendation-
~~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.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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 under ~~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~~ Subparts C and J will apply to the proceedings of this Subpart.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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.

(Source: Amended at 41 Ill. Reg. , effective)

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 41 Ill. Reg. , effective)

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, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. , effective)

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, under ~~pursuant to~~ Section 39.5(15)(b) of the Act; and

2) Any reopening proceeding initiated by the Agency under ~~pursuant to~~ a notice that there are grounds to terminate or revoke and reissue a CAAPP permit for cause, under ~~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 permit 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 permit will be named as respondent.

c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101. ~~Subpart~~ Subparts C and J will apply to the proceedings of this Subpart.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

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, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

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 under ~~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~~ Subparts C and J will apply to the proceedings of this Subpart.

(Source: Amended at 41 Ill. Reg. , effective)

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~~.

(Source: Amended at 41 Ill. Reg. , effective)

Section 106.506 Petition Content Requirements

A petition filed under ~~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 under ~~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 under ~~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.

(Source: Amended at 41 Ill. Reg. , effective)

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, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. , effective)

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 under ~~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 microns (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~~ Subparts C and J will apply to the proceedings of this Subpart.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

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~~.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

Section 106.604 Petition Content Requirements

A petition for review filed under ~~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.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

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, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

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

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 at 41 Ill. Reg. - _____, effective _____)

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 under ~~pursuant to~~ 35 Ill. Adm. Code 105.Subparts A and B.

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

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 41 Ill. Reg. _____, effective _____)

Section 106.710 Notice of Hearing

a) Upon the filing of a statement of deficiency, a hearing officer will be designated and the Clerk will notify the parties of the designation. ~~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 (~~be~~b).

~~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.~~

~~be~~b) 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.

~~edc~~c) The hearing will be held under ~~pursuant to~~ 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

~~ded)~~ After the hearing officer schedules the hearing, the Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code 101. ~~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.~~

efe) 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.

fgf) 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 41 Ill. Reg. _____, effective _____)

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.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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 make a will render its~~ The Board will make a decision as expeditiously as practicable. The Board's ~~will render a decision as an~~ order will ~~that~~:

1) Terminate ~~Terminates~~ the EMSA;

2) ~~Defer-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) Reject ~~Rejects~~ termination of the EMSA.

~~be~~b) The Board may extend the time period under subsection (~~aba~~) (2) ~~of this Section~~ for good cause.

~~ed~~c) 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.

~~ded) The Clerk will serve the final order on the parties under pursuant to 35 Ill. Adm. Code 101. Subpart C and J. 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. Subparts C and J.~~

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 106.718 Motions, Responses (Repealed)

~~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: Repealed at 41 Ill. Reg. _____, effective _____)~~

~~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(e) 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.~~

~~e) 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.~~

~~Amended~~Repealed at 41 Ill. Reg. _____, effective _____ (Source: _____)

Section 106.722 Continuances (Repealed)

~~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.~~

~~(Source: Repealed at 41 Ill. Reg. _____, effective _____)~~

Section 106.724 Discovery, Admissions (Repealed)

~~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.~~

~~e) 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.~~

(Source: Repealed at 41 Ill. Reg. _____, effective _____)

Section 106.726 Subpoenas (Repealed)

~~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.~~

~~e) 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.~~

(Source: Repealed at 41 Ill. Reg. _____, effective _____)

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.

(Source: Amended at 41 Ill. Reg. ~~_____~~, effective ~~_____~~)

Section 106.730 Authority of Hearing Officer, Board Members, and Board Assistants (Repealed)

~~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.~~

Repealed at 41 Ill. Reg. _____, effective _____ (Source: _____)

Section 106.732 Order and Conduct of Hearing (Repealed)

~~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.~~

e) ~~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.~~

(Source: Repealed at 41 Ill. Reg. _____, effective _____)

Section 106.734 Evidentiary Matters (Repealed)

~~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.~~

(Source: Repealed at 41 Ill. Reg. _____, effective _____)

Section 106.736 Post-Hearing Procedures (Repealed)

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

(Source: Repealed at 41 Ill. Reg. _____, effective _____)

Section 106.738 Motion After Entry of Final Order (Repealed)

~~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.~~

(Source: Repealed at 41 Ill. Reg. _____, effective _____)

Section 106.740 Relief from Final Orders (Repealed)

~~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.~~

(Source: Repealed at 41 Ill.

Reg. _____, effective _____)

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~~ Subparts C and J will apply to the proceedings of this Subpart.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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: Amended at 41 Ill. Reg. , effective)

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: Amended at 41 Ill. Reg. , effective)

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, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. , effective)

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 ~~apply~~ landscape waste or composted landscape waste at a rate greater than the agronomic rates of 20 tons per acre per year , under-
~~pursuant to~~ Section 21(q) and (q)(2) of the Act; or

2) Operate~~operate~~ an on-farm composting facility constituting more than 2% of the property's total acreage, under~~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~~Subparts C and J will apply to the proceedings~~under this Subpart~~.

(Source: Amended at 41 Ill. Reg. ~~_____~~, effective _____)

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: Amended at 41 Ill. Reg. ~~_____~~, effective _____)

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~~

1) A ~~a~~-map of the location where land application or composting would take place;

2) A ~~a~~-description of the uses of the surrounding areas; the method for nutrient calculations;

3) The~~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);

- 4) The ~~the~~ intended crop or planting; a description of any additives to the landscape waste;
 - 5) The ~~the~~ method for incorporating the landscape waste or compost into the soil;
 - 6) The ~~the~~ maximum time between acceptance of landscape waste or compost and its incorporation into soil;
 - 7) The ~~the~~ weather conditions under which incorporation will occur; the method of minimizing stormwater/snowmelt runoff;
 - 8) A ~~a~~ screening plan to ensure materials accepted do not contain materials other than landscape waste;
 - 9) ~~AaA~~ 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
 - 10) The ~~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), that includes soil testing and, no less than once every five years, ~~to show~~ shows 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 must ~~shall~~ be collected per 8 acres of application site area to a depth of 12 inches. Each soil sample taken must ~~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 must ~~shall~~ be obtained to a depth of 5 feet using a soil tube or soil auger type implement. Soil cores must ~~shall~~ be divided into 5 ~~one~~ foot subsamples and each subsample must ~~shall~~ be analyzed separately.
 - 3) Soil sample collection under ~~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 must ~~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: Amended at 41 Ill. Reg. _____, effective _____)

Section 106.906 Petition Notice Requirements

a) The petitioner must ~~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) Notice Requirements. The information in the notice must be presented so as to be understood in accordance with the context of this Section's requirements.

1) 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".

2) 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).

3) 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.~~

4) 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: Amended at 41 Ill. Reg. _____, effective _____)

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 must ~~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 under ~~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 41 Ill. Reg. _____, effective _____)

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 106.1105 General

a) Description. This Subpart applies to any point source that discharges pollutants to waters of the United States who seeks to demonstrate, under ~~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~~ Subparts C and J apply to the proceedings of this Subpart.

(Source: Amended at 41 Ill. Reg. , effective)

Section 106.1110 Definitions

In addition to these definitions, all definitions of the Illinois Environmental Protection Act [415 ILCS 5] 7 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 7 (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 under ~~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: Amended at 41 Ill. Reg. , effective)

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 must ~~shall~~ consult with the Agency to discuss the petitioner's early screening information.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 106.1120 Detailed Plan of Study

a) Within 60 days after the early screening information is submitted under ~~pursuant to~~ Section 106.1115, the petitioner must ~~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 must ~~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, the petitioner must give special consideration ~~must shall be given~~ to species mentioned in applicable water quality standards.

d) The petitioner must ~~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 must ~~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 must ~~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 under ~~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 must ~~shall~~ complete the plan of study prior to filing the petition for an alternative thermal effluent limitation with the Board.

(Source: Amended at 41 Ill. Reg. ~~-~~ _____, effective _____)

Section 106.1125 Initiation of Proceeding

After completion of the plan of study under ~~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 ~~DNRthe Illinois Department of Natural Resources~~ DNR.

(Source: Amended at 41 Ill. Reg. ~~-~~ _____, effective _____)

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 under ~~pursuant to~~ Section 106.1120(a) and the Agency's written response under ~~pursuant to~~ Section 106.1120(f);

e) The results of the studies conducted under ~~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: Amended at 41 Ill. Reg. _____, effective _____)

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 include:

1) The ~~notice must contain the~~ name and address of the petitioner and a statement ~~it must state~~ that the petitioner has filed with the Board a petition for an alternative thermal effluent limitation~~;~~.

2) The ~~notice must also provide the~~ date on which the petition was filed, the Board docket number~~;~~.

3) The ~~the~~ regulatory standard (with appropriate Administrative Code citation) from which the alternative thermal effluent limitation is sought~~;~~.

4) The ~~the~~ proposed alternative thermal effluent limitation~~;~~.

5) A ~~a~~ general description of the petitioner's activity that is the subject of the alternative thermal effluent limitation proceeding~~;~~ ~~and~~.

6) The ~~the~~ location of the facility~~;~~ and~~;~~.

7) ~~The~~In 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: Amended at 41 Ill. Reg. _____, effective _____)

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: Amended at 41 Ill. Reg. _____, effective _____)

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 ~~whether~~ the Board should grant the petitioner's requested alternative thermal effluent limitation;

2) The ~~the~~ rationale for the Agency's position;

3) Whether ~~whether~~ the plan of study sufficiently addresses the Agency's response pursuant to Section 106.1120(f) ~~of this Part~~;

4) Whether ~~whether~~ the petition has met the requirements of this Part;

5) Any ~~any~~ information the Agency believes is relevant to the Board's consideration of the proposed alternative thermal effluent limitation; and

6) Whether ~~whether~~ the Agency communicated with or received comments from DNR ~~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: Amended at 41 Ill. Reg. _____, effective _____)

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 must ~~should~~ make reference to the Board docket number assigned to the proceeding.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 106.1155 Notice and Conduct of Hearing

a) The Board will ~~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, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. - _____, effective _____)

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 will ~~shall~~ consider the length of time during which the petitioner has been discharging and the nature of the discharge.

(Source: Amended at 41 Ill. Reg. ~~-~~, effective ~~_____~~)

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 under ~~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 under ~~pursuant to~~ Section 106.1180.

(Source: Amended at 41 Ill. Reg. ~~-~~, effective ~~_____~~)

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 under ~~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 permission ~~leave~~ to file a motion for reconsideration of the Board's order granting the effluent limitation under ~~pursuant to~~ 35 Ill. Adm. Code 101.520 within 35 days after the Agency's receipt of USEPA's objection.

(Source: Amended at 41 Ill. Reg. ~~-~~, effective ~~_____~~)

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 must ~~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 must ~~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 materially changed to cause appreciable harm to the balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is made, 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 permittee's~~ renewed NPDES permit.

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

(Source: Amended at 41 Ill. Reg. ~~-~~ _____, effective _____)

~~ILLINOIS REGISTER~~

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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Style change	0
Format changed	0
Total changes	464

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2 SUBTITLE A: GENERAL PROVISIONS
3 CHAPTER I: POLLUTION CONTROL BOARD
4

5 PART 106
6 PROCEEDINGS PURSUANT TO SPECIFIC RULES OR STATUTORY PROVISIONS
7

8 SUBPART A: GENERAL PROVISIONS
9

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12	106.102	Severability
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18

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63

64 SUBPART F: CULPABILITY DETERMINATIONS FOR PARTICULATE MATTER
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66

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74

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97	106.734	Evidentiary Matters <u>(Repealed)</u>
98	106.736	Post-Hearing Procedures <u>(Repealed)</u>
99	106.738	Motion After Entry of Final Order <u>(Repealed)</u>
100	106.740	Relief from Final Orders <u>(Repealed)</u>

101

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102

103

104

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105

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106

106.802

Definitions

107

106.804

Initiation of Proceeding

108

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109

106.808

Response and Reply

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106.810

Hearing

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106.812

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113

SUBPART I: AUTHORIZATIONS FOR CERTAIN LANDSCAPE WASTE AND
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114

115

116

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117

106.900

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106.902

Initiation of Proceeding

119

106.904

Petition Content Requirements

120

106.906

Petition Notice Requirements

121

106.908

Proof of Petition Notice Requirements

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106.910

Response and Reply

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106.912

Hearing

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106.914

Burden of Proof

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

127

128

129

Section

129

Section

- 130 106.1000 General (Repealed)
- 131 106.1002 Definitions (Repealed)
- 132 106.1004 Initiation of Proceeding (Repealed)
- 133 106.1006 Petition Content Requirements (Repealed)
- 134 106.1008 Response and Reply (Repealed)
- 135 106.1010 Burden of Proof (Repealed)
- 136 106.1012 Board Decision (Repealed)

137
 138 SUBPART K: ALTERNATIVE THERMAL EFFLUENT LIMITATIONS PURSUANT TO
 139 SECTION 316(a) OF THE CLEAN WATER ACT AND 35 ILL. ADM. CODE 304.141(c)
 140

- 141 Section
- 142 106.1100 Purpose
- 143 106.1105 General
- 144 106.1110 Definitions
- 145 106.1115 Early Screening
- 146 106.1120 Detailed Plan of Study
- 147 106.1125 Initiation of Proceeding
- 148 106.1130 Contents of Petition
- 149 106.1135 Petition Notice Requirements
- 150 106.1140 Proof of Petition Notice Requirements
- 151 106.1145 Recommendation and Response
- 152 106.1150 Request for Public Hearing
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- 154 106.1160 Burden of Proof
- 155 106.1165 Evidentiary Matters
- 156 106.1170 Opinion and Order
- 157 106.1175 Post-Hearing Procedures
- 158 106.1180 Renewal of Alternative Thermal Effluent Limitations

159
 160 106.APPENDIX A Comparison of Former and Current Rules (Repealed)
 161

162 AUTHORITY: Implementing and authorized by Sections 5, 14.2(c), 21(q), 22.4, 26, 27, 28,
 163 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3 of the Environmental Protection Act (the Act) [415
 164 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
 165 Section 5 of the Regulation of Phosphorus in Detergents Act [415 ILCS 92/5].
 166

167 SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186,
 168 effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg.
 169 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4,
 170 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12
 171 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective
 172 July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in

173 R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579,
 174 effective July 11, 1994; amended in R99-9 at 23 Ill. Reg. 2697, effective February 16, 1999; old
 175 Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 550, effective January 1, 2001;
 176 amended in R04-24 at 29 Ill. Reg. 8817, effective June 8, 2005; amended in R10-19 at 34 Ill.
 177 Reg. 11486, effective July 23, 2010; amended in R12-21 at 36 Ill. Reg. 9236, effective June 7,
 178 2012; amended in R12-11 at 36 Ill. Reg. 16581, effective November 5, 2012; amended in R13-
 179 20 at 38 Ill. Reg. 6086, effective February 26, 2014; amended in R14-21 at 39 Ill. Reg. 2375,
 180 effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12914, effective September 8,
 181 2015; amended in R16-17 at 40 Ill. Reg. 7986, effective May 20, 2016; amended in R17-18 at 41
 182 Ill. Reg. _____, effective _____.

183
 184 **SUBPART A: GENERAL PROVISIONS**

185
 186 **Section 106.100 Applicability**

- 187
 188 a) This Part applies to adjudicatory proceedings pursuant to specific rules or
 189 statutory provisions. Specifically, the Part applies to heated effluent, artificial
 190 cooling lake and sulfur dioxide demonstrations, water well setback exception
 191 procedures, revocation and reopening of CAAPP permits, maximum achievable
 192 control technology determinations, culpability determinations for particulate
 193 matter less than or equal to 10 microns, the involuntary termination of
 194 environmental management system agreements, authorization of use of cleaning
 195 agents under the Regulation of Phosphorus in Detergents Act [415 ILCS 92],
 196 authorizations for certain landscape waste and compost applications and on farm
 197 composting facilities, and petitions requesting alternative thermal effluent
 198 limitations pursuant to section 316(a) of the Clean Water Act (33 USC 1326(a))
 199 and 35 Ill. Adm. Code 304.141(e).
 200
 201 b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains
 202 procedures generally applicable to all of the Board's adjudicatory proceedings. In
 203 the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and
 204 those of this Part, the provisions of this Part apply.
 205

206 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 207

208 **Section 106.106 Petitions and Hearings**

- 209
 210 a) Each petition must contain an index that lists the documents comprising the
 211 petition, including any exhibits, attachments, and supporting documents. All
 212 pages of the petition must be sequentially numbered with the letter "P" placed
 213 before the number of each page. The index must show the page numbers upon
 214 which each document comprising the petition starts and ends.
 215

216 b) Hearings will be conducted ~~under~~ pursuant to 35 Ill. Adm. Code 101.Subpart F,
217 including any hearing held by videoconference (see 35 Ill. Adm. Code
218 101.600(b)).
219

220 (Source: Amended at 41 Ill. Reg. _____, effective _____)
221

222 SUBPART B: HEATED EFFLUENT, ARTIFICIAL COOLING LAKE,
223 AND SULFUR DIOXIDE DEMONSTRATIONS
224

225 **Section 106.200 General**
226

227 a) Description
228

229 1) Heated Effluent Demonstration
230

- 231 A) The owner or operator of a source of heated effluent that
232 discharges 150 megawatts (0.5 billion British thermal units per
233 hour) or more must demonstrate ~~in an adjudicatory proceeding~~
234 ~~before the Board,~~ pursuant to 35 Ill. Adm. Code 302.211(f),
235 that discharges from that source have not caused and cannot be
236 reasonably expected to cause significant ecological damage to the
237 receiving waters.
238
239 B) The owner or operator must make the demonstration under
240 subsection (a)(1)(A) ~~of this Section~~ not less than 5 years nor more
241 than 6 years after operations commence.
242
243 C) If the Board finds that the proof of the owner or operator under
244 subsection (a)(1)(A) ~~of this Section~~ is inadequate, the Board's
245 order will include a requirement that the owner or operator perform
246 appropriate corrective measures within a reasonable time as
247 determined by the Board.
248

249 2) Artificial Cooling Lake Demonstration
250

- 251 A) If a discharger wishes to have the Board establish specific thermal
252 standards for its discharge to an artificial cooling lake
253 ~~pursuant to~~ 35 Ill. Adm. Code 302.211(j)(5) that would apply
254 to the discharge in lieu of the applicable provisions of the thermal
255 water quality standards set forth in 35 Ill. Adm. Code 302.211 and
256 303, the discharger must demonstrate ~~in an adjudicatory~~
257 ~~proceeding before the Board,~~ pursuant to 35 Ill. Adm. Code
258 302.211(j)(3), that the artificial cooling lake receiving the heated

259 effluent will be environmentally acceptable and within the intent of
 260 the Act.

261
 262 B) If the Board finds that the proof of the discharger under subsection
 263 (a)(2)(A) ~~of this Section~~ is adequate, the Board will establish,
 264 ~~underpursuant to~~ 35 Ill. Adm. Code 302.211(j)(5), specific thermal
 265 standards to be applied to the discharge to the artificial cooling
 266 lake in lieu of the applicable provisions of the thermal water
 267 quality standards set forth in 35 Ill. Adm. Code 302.211 and 303.

268
 269 C) A Board order providing alternate thermal standards under
 270 subsection (a)(2)(B) ~~of this Section~~ will include, but not be limited
 271 to, the following conditions:

272
 273 i) ~~Under Pursuant to~~ 35 Ill. Adm. Code 302.211(j)(1), all
 274 discharges from the artificial cooling lake to other waters of
 275 the State must comply with the applicable provisions of 35
 276 Ill. Adm. Code 302.211(b) through (e); and

277
 278 ii) ~~Under Pursuant to~~ 35 Ill. Adm. Code 302.211(j)(2), the
 279 heated effluent discharged to the artificial cooling lake
 280 must comply with all applicable provisions of 35 Ill. Adm.
 281 Code Subtitle C, Chapter I, except 35 Ill. Adm. Code
 282 302.211(b) through (e).

283
 284 3) Sulfur Dioxide Demonstrations. Any owner or operator of a fuel
 285 combustion emission source may petition the Board, ~~underpursuant to~~ 35
 286 Ill. Adm. Code 214.185 and this Subpart, for approval of substitute
 287 standards from those set forth in 35 Ill. Adm. Code 214.183 and 214.184.

288
 289 b) Initiation of Proceeding. The owner or operator may initiate a heated effluent,
 290 artificial cooling lake or sulfur dioxide demonstration by filing with the Clerk a
 291 petition in accordance with this Subpart.

292
 293 c) Parties. The owner or operator must be named the petitioner and the Agency
 294 must be named the respondent.

295
 296 d) Filing and Service. Filing and service must be in accordance with 35 Ill. Adm.
 297 Code 101. ~~Subparts~~ Subpart C and J.

298
 299 (Source: Amended at 41 Ill. Reg. _____, effective _____)

300
 301 **Section 106.202 Petition Requirements**

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- 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
 - 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

- 345 frequency of occurrence and their joint probabilities of occurrence;
346 and
347
348 C) Theoretical plume studies that identify isotherms at 3° Fahrenheit
349 (1.7° Centigrade) intervals down to ambient temperature indicating
350 three-dimensional effects.
351
- 352 4) A demonstration, which may take any of the forms described in subsection
353 (b)(2), that discharges from the source of heated effluent have not caused
354 and cannot be reasonably expected to cause significant ecological damage
355 to the receiving waters, including:
356
- 357 A) Biological studies in the last 5 years on receiving waters, including
358 species studied, location of studies, and conclusions reached,
359 including conclusions as to both the lethal and sublethal effects of
360 the thermal discharge;
361
- 362 B) The impact on other animal life (such as waterfowl and
363 amphibians) in the area as a result of the thermal discharge; and
364
- 365 C) Secondary Considerations
366
- 367 i) Possible and known impact on recreation from thermal
368 discharges; and
369
- 370 ii) Management practices employed or planned in order to
371 limit the effect of any environmental harm established
372 under this subsection (a)(4). ~~The demonstration required~~
373 ~~under this subsection (a)(4) may take any of the forms~~
374 ~~described in subsection (b)(2) of this Section.~~
375
- 376 5) A citation to any prior proceedings, in which the petitioner was a party,
377 brought ~~under~~ pursuant to 35 Ill. Adm. Code 302.211(f) or (j)(3).
378
- 379 b) Artificial Cooling Lake Demonstration. The petition must include, where
380 applicable, the following information but may include additional information that
381 the petitioner believes will be relevant to the proceeding:
382
- 383 1) A demonstration that the artificial cooling lake receiving the heated
384 effluent will be environmentally acceptable and within the intent of the
385 Act, including:
386
- 387 A) Provision of conditions capable of supporting shellfish, fish and

- 388 wildlife, and recreational uses consistent with good management
389 practices; and
390
- 391 B) Control of the thermal component of the discharger's effluent by a
392 technologically feasible and economically reasonable method.
393
- 394 2) The demonstration required under subsection (b)(1) ~~of this Section~~ may
395 take the form of any of the following:
396
- 397 A) A final environmental impact statement;
398
- 399 B) Pertinent provisions of environmental assessments used to prepare
400 the final environmental impact statement; or
401
- 402 C) A showing underpursuant to Section 316(a) of the Clean Water Act
403 (33 USC 1326).
404
- 405 3) A citation to any prior proceedings, in which the petitioner was a party,
406 brought underpursuant to 35 Ill. Adm. Code 302.211(f) or (j)(3).
407
- 408 c) Sulfur Dioxide Demonstration. The petition must include the following
409 information:
410
- 411 1) An explicit statement of the site-specific emission limitation (in pounds of
412 sulfur dioxide per million British thermal units (btu) actual heat input and
413 total pounds of sulfur dioxide per hour) that is proposed for the facility.
414
- 415 2) Emission Sources Description:
416
- 417 A) The diameter, height, exit gas temperature, and exit gas velocity
418 for all stacks or vents through which sulfur dioxide is emitted into
419 the atmosphere;
420
- 421 B) A description of the fuels used including type, ultimate analysis,
422 sulfur content, and heat content;
423
- 424 C) A description of the type of fuel combustion equipment including
425 method of firing and size (in million btu per hour capacity);
426
- 427 D) A topographic map of terrain within 30 miles of the emission
428 source or source(s);
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- 430 E) A specific description of the location of the emission sources,

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including a plot plan; and

F) A specific description of the operating conditions ~~that~~^{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 or sources~~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 or sources~~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.

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

- 474 the specific location and type of source or source(s)
475 in question.
476
- 477 ii) Dispersion models presented in "Guidelines on Air Quality
478 Models" (EPA-450/2-78-027), or those deemed by the
479 Board to be equivalent to these models must be used for
480 detailed air quality studies.
481
- 482 B) Selection of meteorological data and stack parameters:
483
- 484 i) The most recent 5 years of hour-by-hour meteorological
485 data reasonably available, including wind speed, wind
486 direction, atmospheric stability, mixing height and surface
487 temperature must be used, unless the petitioner
488 demonstrates that one of the 5 years causes substantially
489 higher concentrations than the other four, in which case
490 detailed analyses conducted for only that "worst case" year
491 would be acceptable. Notwithstanding the previous
492 sentence, one year of on-site data may be used in lieu of the
493 5-year data requirement;
494
- 495 ii) Data must be from the nearest, representative, quality
496 controlled meteorological collecting site; and
497
- 498 iii) Stack parameters (including emission rate, stack height,
499 stack diameter, exit velocity, and exit temperature) must
500 reflect the maximum operating rate for comparison with the
501 24-hour and 3-hour sulfur dioxide standards.
502
- 503 C) Receptors:
504
- 505 i) Receptors must be located so as to ensure that the source's
506 maximum impact is detected; and
507
- 508 ii) The determination of the receptor grid must be fully
509 documented in the modeling study;
510
- 511 D) Special conditions:
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- 513 i) All special conditions that may affect the dispersion of the
514 effluent plume, including local terrain effects and
515 aerodynamic downwash, must be considered in the
516 modeling study;

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- 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.

- 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.

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- 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.
- 12) A statement that the procedural requirements of 40 CFR 51.4 (1977) are met. At least 30 days prior to the date of the hearing, the 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.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

**Section 106.204 Additional Petition Requirements in Sulfur Dioxide Demonstrations
(Repealed)**

In addition to meeting the petition content requirements of Section 106.202(e) of this Part the petitioner must ensure that the procedural requirements of 40 CFR 51.4 (1977) are met and, at

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603 least 30 days prior to the date of the hearing, petitioner must:

- 604
- 605 a) Give notice to the public by prominent advertisement in the Air Quality Control
606 Region affected announcing the date, time and place of the hearing;
607
- 608 b) Make available a copy of the petition for public inspection in at least one location
609 in the Air Quality Control Region in which the source is located;
610
- 611 e) Notify the Administrator of USEPA (through the Region V Office);
612
- 613 d) Notify each local air pollution control agency located within the affected Air
614 Quality Control Region; and
615
- 616 e) Notify, in the case of an interstate Air Quality Control Region, any air pollution
617 control agencies of other states included, in whole or in part, in the Region.
618

619 (Source: Repealed at 41 Ill. Reg. _____, effective _____)
620

621 **Section 106.206 Notice**
622

623 The Clerk will give notice of the petition and hearing in accordance with 35 Ill. Adm. Code
624 101.602. The proceedings must be in accordance with 35 Ill. Adm. Code 101.Subpart F,
625 including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).
626

627 (Source: Amended at 41 Ill. Reg. _____, effective _____)
628

629 **Section 106.208 Recommendation and Response**
630

631 The Agency must file a recommendation on a petition under this Subpart as prescribed in this
632 Section. The petitioner, ~~or any other party to the proceeding,~~ or any person may file a response to
633 the Agency recommendation within 14 days after the filing of the recommendation ~~service of the~~
634 ~~petition. Any person other than a party to the proceeding may file a response to the Agency~~
635 ~~recommendation within 14 days after the Agency files the recommendation.~~
636

- 637 a) Heated Effluent Demonstration
638 Within 60 days after the owner or operator files the petition, the Agency must
639 make a recommendation to the Board on the petition. The recommendation may
640 include:
641
- 642 1) A description of the Agency's efforts in conducting its review of the
643 petition;
644
- 645 2) The Agency's conclusion as to whether discharges from the source have

646 caused or can reasonably be expected to cause significant ecological
647 damage to the receiving waters;

- 648
- 649 3) The factual basis for the Agency's conclusion;
 - 650
 - 651 4) Any corrective measures that the Agency recommends be taken and the
652 recommended time period to implement the measures; and
 - 653
 - 654 5) The Agency's recommendation on how the Board should dispose of the
655 petition.
 - 656

657 b) Artificial Cooling Lake Demonstration

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

- 661
- 662 1) A description of the Agency's efforts in conducting its review of the
663 petition;
 - 664
 - 665 2) The Agency's conclusion as to whether the artificial cooling lake receiving
666 the heated effluent will be environmentally acceptable and within the
667 intent of the Act;
 - 668
 - 669 3) The factual basis for the Agency's conclusion; and
 - 670
 - 671 4) The Agency's recommendation on how the Board should dispose of the
672 petition.
 - 673

674 c) Sulfur Dioxide Demonstration

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

- 678
- 679 1) A description of the efforts made by the Agency in conducting its review;
 - 680
 - 681 2) The Agency's conclusion as to whether the proposed site-specific emission
682 limitation is adequate to prevent violations of the Primary and Secondary
683 Sulfur Dioxide Ambient Air Quality Standards; and
 - 684
 - 685 3) The Agency's conclusion as to what disposition should be made of the
686 petition.
 - 687

688 (Source: Amended at 41 Ill. Reg. _____, effective _____)

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 ~~underpursuant 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.~~Subparts~~Subpart C and J will apply to the proceedings of this Subpart.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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

732 copy of the petition as required by Section 106.302(b) ~~of this Part~~, 35 Ill. Adm.
733 Code 101, and Section 14.2(c) of the Act; and

- 734
735 d) Any other information which may be required by Section 14.2 of the Act.

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737 (Source: Amended at 41 Ill. Reg. _____, effective _____)

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739 **Section 106.308 Hearing**

740
741 The Board will hold at least one public hearing in an exception proceeding. The hearing officer
742 will schedule the hearing. The Clerk will give notice of hearing in accordance with 35 Ill. Adm.
743 Code 101. The proceedings will be in accordance with 35 Ill. Adm. Code 101.Subpart F,
744 including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

745
746 (Source: Amended at 41 Ill. Reg. _____, effective _____)

747
748 SUBPART D: REVOCATION AND REOPENING OF
749 CLEAN AIR ACT PERMIT PROGRAM (CAAPP) PERMITS

750
751 **Section 106.400 General**

- 752
753 a) Description. The provisions of this Subpart will apply to:

- 754
755 1) Any revocation proceeding initiated by the Agency when it determines
756 that there are grounds to revoke and reissue a Clean Air Act Permit
757 Program (CAAPP) permit for cause, ~~underpursuant to~~ Section 39.5(15)(b)
758 of the Act; and
759
760 2) Any reopening proceeding initiated by the Agency ~~underpursuant to~~ a
761 notice that there are grounds to terminate or revoke and reissue a CAAPP
762 permit for cause, ~~underpursuant to~~ Section 39.5(16) of the Act.

- 763
764 b) Parties.

- 765
766 1) In a revocation proceeding initiated by the Agency, the Agency will be
767 named as petitioner and the holder of the CAAPP permit will be named as
768 respondent.
769
770 2) In a reopening proceeding initiated by the Agency, the Agency will be
771 named as petitioner and the holder of the CAAPP permit will be named as
772 respondent.

- 773
774 c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code

101.~~Subparts~~Subpart C and J will apply to the proceedings of this Subpart.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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~~, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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 underpursuant 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.~~Subparts~~Subpart C and J will apply to the proceedings of this Subpart.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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~~.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 106.506 Petition Content Requirements

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

- 818
819 a) A detailed description of and justification for the emission limitation that is being
820 proposed for the source and an explanation of how the emission limitation
821 provides for the level of control required under Section 112 of the CAA (42 USC
822 7412);
823
824 b) A petition filed ~~underpursuant to~~ Section 39.5(19)(a) of the Act must also include
825 justification for the Board to determine whether the emission limitation proposed
826 by the owner or operator of the CAAPP source provides for the emission
827 limitation equivalent to the emission limitation that would apply to the source if
828 USEPA had promulgated the applicable emission standard ~~underpursuant to~~
829 Section 112(d) of the CAA (42 USC 7412(d)) in a timely manner; and
830
831 c) The Agency's notification of its refusal to adopt the CAAPP source's proposed
832 emission limitation or the CAAPP source's MACT determination.
833
834 (Source: Amended at 41 Ill. Reg. _____, effective _____)
835

836 **Section 106.510 Hearing**
837

838 The Board will hold at least one public hearing. The Clerk of the Board will give notice of the
839 petition and any hearing in accordance with 35 Ill. Adm. Code 101.602. The proceeding will be
840 conducted in accordance with 35 Ill. Adm. Code 101.Subpart F, including any hearing held by
841 videoconference (see 35 Ill. Adm. Code 101.600(b)).
842

843 (Source: Amended at 41 Ill. Reg. _____, effective _____)
844

845 SUBPART F: CULPABILITY DETERMINATIONS FOR PARTICULATE MATTER
846 LESS THAN OR EQUAL TO 10 MICRONS (PM-10)
847

848 **Section 106.600 General**
849

- 850 a) Description. The provisions of this Subpart will apply to any appeal initiated
851 under 35 Ill. Adm. Code 212.702 by an owner or operator of a source
852 ~~underpursuant to~~ a finding by the Agency of culpability for an exceedence of the
853 24-hour ambient air quality standard for particulate matter less than or equal to 10
854 ~~micronsierons~~ (PM-10) at 35 Ill. Adm. Code 243.120.
855
856 b) Parties. The owner or operator of a source who initiated the proceeding will be
857 named as the petitioner and the Agency will be named as respondent.
858
859 c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code
860 101.~~Subparts~~Subpart C and J will apply to the proceedings of this Subpart.

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(Source: Amended at 41 Ill. Reg. _____, effective _____)

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.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 106.604 Petition Content Requirements

A petition for review filed ~~under~~ 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.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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

904 **Section 106.702 Applicability**

- 905
- 906 a) When the Agency terminates an EMSA under Section 52.3-4(b) or (b-5) of the
- 907 Act, only Section 106.704 of this Subpart applies.
- 908
- 909 b) This Subpart, except for Section 106.704, applies to proceedings in which the
- 910 Board will determine whether to terminate an EMSA.

911

912 (Source: Amended at 41 Ill. Reg. _____, effective _____)

913

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

- 915
- 916 a) To terminate an EMSA under Section 52.3-4(b) of the Act, the Agency must
- 917 determine that the sponsor's performance under the EMSA has failed to:
- 918
- 919 1) *Achieve emissions reductions or reductions in discharges of wastes*
- 920 *beyond the otherwise applicable statutory and regulatory requirements*
- 921 *through pollution prevention or other suitable means; or*
- 922
- 923 2) *Achieve real environmental risk reduction or foster environmental*
- 924 *compliance by other persons regulated under the Act in a manner that is*
- 925 *clearly superior to the existing regulatory system. [415 ILCS 5/52.3-1(b)]*
- 926
- 927 b) To terminate an EMSA under Section 52.3-4(b-5) of the Act, the Agency must
- 928 determine that the sponsor's *participation in the Federal Performance Track*
- 929 *Program has ceased. [415 ILCS 5/52.3-4(b-5)]*
- 930
- 931 c) If the Agency terminates an EMSA under Section 52.3-4(b) or (b-5) of the Act,
- 932 the sponsor may file an appeal with the Board. Appeals to the Board will be
- 933 underpursuant to 35 Ill. Adm. Code 105.Subparts A and B.

934

935 (Source: Amended at 41 Ill. Reg. _____, effective _____)

936

937 **Section 106.707 Notice, Statement of Deficiency, Answer**

- 938
- 939 a) A proceeding to terminate an EMSA will be commenced when the Agency serves
- 940 a notice of filing and a statement of deficiency upon the respondent and files the
- 941 notice of filing and statement of deficiency with the Clerk. (See 35 Ill. Adm. Code
- 942 101.300(b) and (c), 101.302(h), and 101.304(c).)
- 943
- 944 b) The statement of deficiency must contain:
- 945
- 946 1) The stated basis for the respondent's alleged deficient performance under

- 947 Section 106.712(a) of this Subpart;
 948
 949 2) The dates, location, nature, extent and duration of any act or omission, and
 950 amount and other characteristics of any discharges or emissions, alleged to
 951 violate provisions of the Act or regulations that apply to the pilot project
 952 that the EMSA does not address;
 953
 954 3) The dates, location, nature, extent and duration of any act or omission, and
 955 amount and other characteristics of any discharges or emissions, alleged to
 956 violate the EMSA; and
 957
 958 4) With respect to subsections (b)(1) through (b)(3) of this Section, the
 959 statement of deficiency must contain sufficient detail to advise the
 960 respondent of the extent and nature of the alleged violations to reasonably
 961 allow the respondent to prepare a defense.
 962
 963 c) The respondent must file an answer within 15 days after receipt of the statement
 964 of deficiency, unless the Board or the hearing officer extends the 15-day period
 965 for good cause. All material allegations of the statement of deficiency will be
 966 taken as admitted if not specifically denied by the answer, or if no answer is filed.
 967 Any facts that constitute an affirmative defense that would be likely to surprise
 968 the complainant must be plainly set forth in the answer before hearing.
 969

970 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 971

972 **Section 106.710 Notice of Hearing**
 973

- 974 a) Upon the filing of a statement of deficiency, a hearing officer will be designated
 975 and the Clerk will notify the parties of the designation. The Clerk will assign a
 976 docket number to each statement of deficiency filed. Any hearing will be held not
 977 later than 60 days after the respondent files the answer, subject to any extensions
 978 ordered under subsection (be).
 979
 980 b) ~~The Chairman of the Board will designate a hearing officer and the Clerk will~~
 981 ~~notify the parties of the designation. The hearing officer may be a Member of the~~
 982 ~~Board if otherwise qualified.~~
 983
 984 be) The hearing officer, after reasonable efforts to consult with the parties, will set a
 985 time and place for hearing. The Board or the hearing officer may extend the time
 986 for hearing if all parties agree or there are extreme and unanticipated or
 987 uncontrollable circumstances that warrant a delay. The Board or the hearing
 988 officer may delay the hearing more than once. In each event, the Board or the
 989 hearing officer will not delay the hearing for more than 30 days.

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- cđ) The hearing will be held ~~under~~ pursuant to 35 Ill. Adm. Code 101. Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

- de) ~~After the hearing officer schedules the hearing, the Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code 101. 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.~~

- eř) 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.

- fğ) 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 41 Ill. Reg. _____, effective _____)

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.

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- 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.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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 make awill render its decision as expeditiously as practicable. The Board's orderBoard will ~~render a decision as an order that:~~
 - 1) TerminateTerminates the EMSA;
 - 2) DeferDefers 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

- 1076 3) ~~Reject~~Rejects termination of the EMSA.
 1077
 1078 be) The Board may extend the time period under subsection (ab)(2) of this Section for
 1079 good cause.
 1080
 1081 cd) The Board may order any or all of the following:
 1082
 1083 1) Direct the respondent to cease and desist from violating the Act, the
 1084 Board's regulations, or the EMSA;
 1085
 1086 2) Require the respondent to provide performance assurance compensation in
 1087 appropriate amounts;
 1088
 1089 3) Require the respondent to post a sufficient performance bond or other
 1090 security to assure that the respondent corrects the violation within the time
 1091 that the Board prescribes;
 1092
 1093 4) Enforce any remedy provision of the EMSA; and
 1094
 1095 5) Order other relief as appropriate.
 1096
 1097 de) The Clerk will serve the final order on the parties under 35 Ill. Adm. Code
 1098 101.Subparts C and J.pursuant to publish the order and opinion with the vote of
 1099 each Board Member recorded and will notify the parties required to be notified of
 1100 the hearing from which the order arose of the order and opinion.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 106.718 Motions, Responses (Repealed)

- 1106 a) ~~All motions before a hearing must be presented to the hearing officer at least 10~~
 1107 ~~days before the date of the hearing.~~
 1108
 1109 b) ~~The complainant's motion to voluntarily dismiss an action as to any or all claims~~
 1110 ~~must be directed to the Board and may be made orally upon the hearing record, or~~
 1111 ~~may be made in writing at any time before the Board issues its decision.~~
 1112
 1113 e) ~~All motions must be served on all parties, including the Agency and its~~
 1114 ~~representative and the hearing officer, with documentation of service.~~
 1115
 1116 d) ~~Unless made orally on the record during a hearing or unless the hearing officer~~
 1117 ~~directs otherwise, a motion must be in writing, must state the reasons for and~~
 1118 ~~grounds upon which the motion is made, and may be accompanied by any~~

- 1119 affidavits or other evidence relied on and, when appropriate, by a proposed order.
1120
1121 e) ~~Within 7 days after a written motion is served, or another period that the Board or~~
1122 ~~hearing officer may prescribe, a party may file a response to the motion,~~
1123 ~~accompanied by affidavits or other evidence. If no response is filed, the parties~~
1124 ~~will be deemed to have waived objection to the motion, but the waiver of~~
1125 ~~objection does not bind the Board. The moving party does not have the right to~~
1126 ~~reply, except as the hearing officer or the Board permits.~~
1127
1128 f) ~~No oral argument will be heard on a motion before the Board unless the Board~~
1129 ~~directs otherwise. A written brief may be filed with a motion or an answer to a~~
1130 ~~motion.~~
1131
1132 g) ~~The hearing officer may rule upon all motions, except that the hearing officer has~~
1133 ~~no authority to dismiss, or rule upon a motion to dismiss or decide a proceeding~~
1134 ~~on the merits, or for failure to state a claim, or for want of jurisdiction, or to strike~~
1135 ~~any claim or defense for insufficiency or want of proof.~~
1136
1137 h) ~~No interlocutory appeal of a motion may be taken to the Board from a ruling of~~
1138 ~~the hearing officer.~~
1139
1140 i) ~~After the hearing, the Board may review the hearing officer's rulings. The Board~~
1141 ~~will set aside the hearing officer's ruling only to avoid material prejudice to the~~
1142 ~~rights of a party. The hearing officer, if a member of the Board, may vote upon~~
1143 ~~motions to review his or her rulings as hearing officer.~~
1144
1145 j) ~~Unless the Board orders or this Subpart provides otherwise, the filing of a motion~~
1146 ~~will not stay the proceeding or extend the time to perform any act.~~
1147

1148 (Source: Repealed at 41 Ill. Reg. _____, effective _____)
1149

1150 **Section 106.722 Continuances (Repealed)**
1151

1152 ~~The hearing officer will grant a motion to continue an involuntary termination proceeding under~~
1153 ~~this Subpart when justice requires. All motions to continue must be supported by an affidavit or~~
1154 ~~written motion before the hearing officer by the person or persons with knowledge of the facts~~
1155 ~~that support the motion. However, if the Board determines that any involuntary termination~~
1156 ~~proceeding under this Subpart is not proceeding expeditiously, the Board may order actions that~~
1157 ~~it deems appropriate to expedite the proceeding.~~
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1159 (Source: Repealed at 41 Ill. Reg. _____, effective _____)
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1161 **Section 106.724 Discovery, Admissions (Repealed)**

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- 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.~~
 - e) ~~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.

(Source: Repealed at 41 Ill. Reg. _____, effective _____)

Section 106.726 Subpoenas (Repealed)

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.

e) 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.

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(Source: Repealed at 41 Ill. Reg. _____, effective _____)

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.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 106.730 Authority of Hearing Officer, Board Members, and Board Assistants
(Repealed)

- 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,~~

- 1291 ~~condition or regulate discovery to prevent unreasonable delay, expense,~~
1292 ~~harassment, or oppression, or to protect materials from disclosure by the~~
1293 ~~party who obtains the materials;~~
1294
1295 4) ~~Administer oaths and affirmations;~~
1296
1297 5) ~~Rule upon offers of proof, receive evidence and rule upon objections to~~
1298 ~~introducing evidence, subject to Section 106.732(b) of this Subpart;~~
1299
1300 6) ~~Regulate the course of the hearings and the conduct of the parties and their~~
1301 ~~counsel;~~
1302
1303 7) ~~Examine witnesses solely to clarify the record of the hearing. When any~~
1304 ~~party is not represented by counsel, the hearing officer may examine and~~
1305 ~~cross-examine any witness to insure a clear and complete record.~~
1306 ~~However, the hearing officer may not exclude exhibits or other testimony~~
1307 ~~because of the examination unless all parties agree; and~~
1308
1309 8) ~~Except as otherwise provided, consider and rule as justice may require~~
1310 ~~upon motions appropriate to an adjudicative proceeding.~~
1311
1312 b) ~~Any Board Member or assistant to a Board Member present at the hearing may~~
1313 ~~advise the hearing officer and may interrogate witnesses, but does not have the~~
1314 ~~authority to rule on objections or motions or to overrule the hearing officer during~~
1315 ~~the hearing.~~
1316

1317 (Source: Repealed at 41 Ill. Reg. _____, effective _____)
1318

1319 **Section 106.732 Order and Conduct of Hearing (Repealed)**
1320

- 1321 a) ~~The following will be the order of all involuntary termination hearings under this~~
1322 ~~Subpart, unless modified by the hearing officer for good cause:~~
1323
1324 1) ~~Present, argue and dispose of preliminary motions on the matters that the~~
1325 ~~statement of deficiency raises;~~
1326
1327 2) ~~Present opening statements;~~
1328
1329 3) ~~Complainant's case in chief;~~
1330
1331 4) ~~Respondent's case in chief;~~
1332
1333 5) ~~Complainant's case in rebuttal;~~

- 1334
1335 6) Statements from interested citizens, as the hearing officer authorizes;
1336
1337 7) Complainant's opening argument, which may include legal argument;
1338
1339 8) Respondent's closing argument, which may include legal argument;
1340
1341 9) Complainant's closing argument, which may include legal argument;
1342
1343 10) Present and argue all motions before submitting the transcript to the
1344 Board; and
1345
1346 11) A schedule to submit briefs to the Board.
1347
1348 b) All hearings under this Subpart will be public, and any person not a party and not
1349 otherwise a witness for a party may submit written statements relevant to the
1350 subject matter of the hearing. Any party may cross-examine any person who
1351 submits a statement. If the person is not available to be cross-examined upon
1352 timely request, the written statement may be stricken from the record. The hearing
1353 officer will permit any person to offer reasonable oral testimony whether or not a
1354 party to the proceedings.
1355
1356 e) All witnesses will be sworn.
1357
1358 d) At the conclusion of the hearing, the hearing officer will make a statement about
1359 the credibility of witnesses. This statement will be based upon the hearing
1360 officer's legal judgment and experience and will indicate whether he or she finds
1361 credibility to be at issue in the proceeding and if so, the reasons why. This
1362 statement will become a part of the official record and will be transmitted by the
1363 hearing officer to each of the parties. No other statement will be made or be
1364 appropriate unless the Board orders otherwise.
1365

1366 (Source: Repealed at 41 Ill. Reg. _____, effective _____)
1367

1368 **Section 106.734 Evidentiary Matters (Repealed)**
1369

1370 The provisions of 35 Ill. Adm. Code 101 regarding admissible evidence, written narrative
1371 testimony, official notice, viewing premises, admitting business records, examining adverse
1372 parties or agents and hostile witnesses and compelling them to appear at hearing, and amendment
1373 and variance of pleadings and proof will apply to proceedings under this Subpart.
1374

1375 (Source: Repealed at 41 Ill. Reg. _____, effective _____)
1376

1377 **Section 106.736 Post-Hearing Procedures (Repealed)**
 1378

1379 The provisions of 35 Ill. Adm. Code 101 regarding default, transcripts, the record, briefs and oral
 1380 arguments will apply to proceedings under this Subpart.

1381
 1382 (Source: Repealed at 41 Ill. Reg. _____, effective _____)
 1383

1384 **Section 106.738 Motion After Entry of Final Order (Repealed)**
 1385

1386 ~~Within 35 days after the Board adopts a final order, any party may file a motion to rehear,~~
 1387 ~~modify or vacate the order or for other relief. Response to the motion must be filed within 14~~
 1388 ~~days after the motion is filed. A motion filed within 35 days stays enforcement of the final order.~~

1389
 1390 (Source: Repealed at 41 Ill. Reg. _____, effective _____)
 1391

1392 **Section 106.740 Relief from Final Orders (Repealed)**
 1393

1394 a) ~~The Board may at any time correct errors in orders or other parts of the record that~~
 1395 ~~arise from oversight or omission or clerical mistakes. The Board may do so on its~~
 1396 ~~own initiative or on the motion of any party and after notice, if any, as the Board~~
 1397 ~~orders. During the pendency of an appeal, the Board may correct the mistakes~~
 1398 ~~before the appeal is docketed in the appellate court. While the appeal is pending,~~
 1399 ~~the Board may correct the mistakes with leave of the appellate court.~~

1400
 1401 b) ~~On motion and upon terms that are just, the Board may relieve a party or a party's~~
 1402 ~~legal representative from a final order, for the following:~~

1403
 1404 1) ~~Newly discovered evidence that by due diligence could not have been~~
 1405 ~~discovered in time under Section 106.714 of this Subpart;~~

1406
 1407 2) ~~Fraud (whether previously denominated intrinsic or extrinsic),~~
 1408 ~~misrepresentation, or other misconduct of an adverse party; or~~

1409
 1410 3) ~~Void order.~~

1411
 1412 e) ~~A motion under this Section does not affect the finality of a Board order or~~
 1413 ~~suspend the operation of a Board order. The motion must be filed in the same~~
 1414 ~~proceeding in which the Board entered the order but the motion is not a~~
 1415 ~~continuation of the proceeding. The motion must be supported by affidavit or~~
 1416 ~~other appropriate showing as to matters not of record. All parties must be notified~~
 1417 ~~under Section 106.708(b) of this Subpart.~~

1418
 1419 d) ~~This motion must be filed with the Board within 60 days after entry of the order.~~

(Source: Repealed at 41 Ill. Reg. _____, effective _____)

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.~~Subparts~~Subpart C and J will apply to the proceedings of this Subpart.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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: Amended at 41 Ill. Reg. _____, effective _____)

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.

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(Source: Amended at 41 Ill. Reg. _____, effective _____)

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, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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~~ apply landscape waste or composted landscape waste at a rate greater than the agronomic rates of 20 tons per acre per year, ~~underpursuant to~~ pursuant to Section 21(q) and (q)(2) of the Act; or
 - 2) ~~Operate~~ operate an on-farm composting facility constituting more than 2% of the property's total acreage, ~~underpursuant to~~ 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.~~Subparts~~ Subpart C and J will apply to the proceedings ~~under this Subpart.~~

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 106.902 Initiation of Proceeding

1506
1507 The petitioner must file the petition for authorization with the Clerk of the Board and must serve
1508 one copy upon the Agency.

1509
1510 (Source: Amended at 41 Ill. Reg. _____, effective _____)

1511
1512 **Section 106.904 Petition Content Requirements**

1513
1514 The petition must contain the following information:

1515
1516 a) A written statement, signed by the petitioner or an authorized representative,
1517 concerning the property for which authorization is sought, outlining a description
1518 of the specific percentage of the property or the specific application rate sought
1519 and the duration of, the reasons for, and the basis for the authorization sought,
1520 consistent with the burden of proof stated in Section 106.914;

1521
1522 b) The nature of the petitioner's operations;

1523
1524 c) Any other applicable information that may be required by Section 21(q) of the
1525 Act, including: ~~but not limited to~~

1526
1527 1) ~~A~~ A map of the location where land application or composting would take
1528 place;

1529
1530 2) ~~A~~ A description of the uses of the surrounding areas; the method for
1531 nutrient calculations;

1532
1533 3) ~~The~~ The the soil sampling analysis for samples taken within one year prior to
1534 the filing of the petition in accordance with the sampling protocols of
1535 subsections (e) and (f);

1536
1537 4) ~~The~~ The the intended crop or planting; a description of any additives to the
1538 landscape waste;

1539
1540 5) ~~The~~ The the method for incorporating the landscape waste or compost into the
1541 soil;

1542
1543 6) ~~The~~ The the maximum time between acceptance of landscape waste or compost
1544 and its incorporation into soil;

1545
1546 7) ~~The~~ The the weather conditions under which incorporation will occur; the
1547 method of minimizing stormwater/snowmelt runoff;

1548

- 1549 8) Aa screening plan to ensure materials accepted do not contain materials
 1550 other than landscape waste;
 1551
- 1552 9) Aa contingency plan that describes methods for dealing with emergency
 1553 situations and methods for the removal of material that is not landscape
 1554 waste from incoming loads; and
 1555
- 1556 10) Thethe method of preventing nuisance conditions such as vectors, odors,
 1557 litter or dust.
 1558
- 1559 d) For demonstrations under Section 106.914(a), a plan, ~~including soil testing,~~ in
 1560 accordance with subsections (e) and (f), that includes soil testing and, no less than
 1561 once every five years, ~~showsto show~~ when application of landscape waste or
 1562 composted landscape waste at rates greater than an agronomic rate of 20 tons per
 1563 acre per year will be, or will continue to be, beneficial to the site's soil
 1564 characteristics or crop needs. Such a plan must specify any soil parameters to be
 1565 analyzed, such as soil organic content and nutrients and any limits on them.
 1566
- 1567 e) Soil samples collected that will represent the entire landscape waste or composted
 1568 landscape waste application site.
- 1569
- 1570 1) Soil Plow Zone – one soil sample ~~mustshall~~ be collected per 8 acres of
 1571 application site area to a depth of 12 inches. Each soil sample taken
 1572 ~~mustshall~~ be a homogeneous mixture composed of at least 10 subsamples
 1573 randomly collected within the 8-acre area.
 1574
- 1575 2) Soil Profiles – one soil core sample per 8 acres of land application site
 1576 ~~mustshall~~ be obtained to a depth of 5 feet using a soil tube or soil auger
 1577 type implement. Soil cores ~~mustshall~~ be divided into 5 one foot
 1578 subsamples and each subsample ~~mustshall~~ be analyzed separately.
 1579
- 1580 3) Soil sample collection ~~underpursuant to~~ subsections (a) and (b) may be
 1581 modified by the Board upon request by the petitioner after considering the
 1582 application rate of the landscape waste or composted landscape waste and
 1583 the continuity of soil types of the application site.
 1584
- 1585 f) Soil analysis performed in accordance with the following references, unless
 1586 equivalent results can be obtained by other methods. The petitioner ~~mustshall~~
 1587 demonstrate that equivalent results are obtainable based on the nature of the test
 1588 methodology, the nature of the parameter, and the level of statistical accuracy.
 1589
- 1590 1) Physical Testing Methods

1591 Methods of Soil Analysis – Part 1, Physical and Mineralogical Properties
1592 (1986), Soil Science Society of America (SSSA) and American Society of
1593 Agronomy, Inc. (ASA), 5585 Guilford Road, Madison, Wisconsin 53711.
1594

1595 2) Chemical Testing Methods
1596 Methods of Soil Analysis – Part 3, Chemical Methods (1996), Soil
1597 Science Society of America (SSSA) and American Society of Agronomy,
1598 Inc. (ASA), 5585 Guilford Road, Madison, Wisconsin 53711.
1599

1600 3) For the purposes of this Subpart I, the Board incorporates by reference the
1601 soil test methods listed in subsections (f)(1) and (f)(2). This incorporation
1602 includes no later amendments or editions.
1603

1604 (Source: Amended at 41 Ill. Reg. _____, effective _____)
1605

1606 **Section 106.906 Petition Notice Requirements**
1607

1608 a) The petitioner ~~must~~shall submit to the Board proof that, within 14 days after the
1609 filing of the petition, it has published notice of the filing of the petition by
1610 advertisement in a newspaper of general circulation in the area likely to be
1611 affected by the petitioner's activity that is the subject of the Section 21(q) petition.
1612

1613 b) Notice Requirements. The information in the notice must be presented so as to be
1614 understood in accordance with the context of this Section's requirements.
1615

1616 1) The title of the notice must be in the following form: "Notice of Petition
1617 For Authorization Under 415 ILCS 5/21(q) by (petitioner's name) before
1618 the Illinois Pollution Control Board".
1619

1620 2) The notice must contain the name and address of the petitioner and the
1621 statement that the petitioner has filed with the Board an authorization
1622 petition under Section 21(q).
1623

1624 3) The notice must ~~also~~provide the date upon which the petition was filed,
1625 the Board docket number, the proposed authorization, a general
1626 description of the petitioner's activity that is the subject of the
1627 authorization proceeding and the location of the petitioner's activity. ~~This~~
1628 ~~information must be presented so as to be understood in accordance with~~
1629 ~~the context of this Section's requirements.~~
1630

1631 4) The concluding portion of the notice must read as follows:
1632

1633 "Any person may cause a public hearing to be held in the above-described

1634 authorization proceeding by filing a hearing request with the Illinois
1635 Pollution Control Board within 21 days after the date of the publication of
1636 this notice. The hearing request should clearly indicate the docket number
1637 for the adjusted standard proceeding, as found in this notice, and must be
1638 mailed to the Clerk of the Board, Illinois Pollution Control Board, 100 W.
1639 Randolph Street, Suite 11-500, Chicago, Illinois 60601."
1640

1641 (Source: Amended at 41 Ill. Reg. _____, effective _____)
1642

1643 **Section 106.912 Hearing**
1644

- 1645 a) Any person can request that a public hearing be held in an authorization
1646 proceeding. The requests must be filed not later than 21 days after the date of the
1647 publication of the petition notice in accordance with Section 106.906. Requests
1648 for hearing ~~must~~ should make reference to the Board docket number assigned to
1649 the proceeding. A copy of each timely hearing request will be mailed to the
1650 petitioner and Agency by the Clerk of the Board. Participation by the public at
1651 the hearing must be in accordance with 35 Ill. Adm. Code 101.110 and 101.628.
1652 The Board may also, in its discretion, hold a public hearing when it determines a
1653 public hearing is advisable.
1654
- 1655 b) When all parties and participants who have requested a hearing ~~under~~ pursuant to
1656 this Subpart have withdrawn their requests for a hearing, the hearing will not be
1657 held unless the Board, in its discretion, deems it advisable.
1658
- 1659 c) The hearing officer will set a time and place for the hearing. The hearing officer
1660 will attempt to consult with the petitioner and the Agency before scheduling a
1661 hearing.
1662

1663 (Source: Amended at 41 Ill. Reg. _____, effective _____)
1664

1665 **SUBPART K: ALTERNATIVE THERMAL EFFLUENT LIMITATIONS PURSUANT TO**
1666 **SECTION 316(a) OF THE CLEAN WATER ACT AND 35 ILL. ADM. CODE 304.141(c)**
1667

1668 **Section 106.1105 General**
1669

- 1670 a) Description. This Subpart applies to any point source that discharges pollutants to
1671 waters of the United States who seeks to demonstrate, ~~under~~ pursuant to 35 Ill.
1672 Adm. Code 304.141(c) and section 316(a) of the Clean Water Act, that any
1673 effluent limitation proposed for the control of a thermal component of any
1674 discharge from such source will require effluent limitations more stringent than
1675 necessary to assure the protection and propagation of a balanced, indigenous

1676 population of shellfish, fish, and wildlife in and on the body of water into which
1677 the discharge is to be made.

1678
1679 b) Parties. The person making the demonstration must be named the petitioner. The
1680 Agency must be named as a respondent. Any interested person may become a
1681 participant in the alternative thermal effluent limitation demonstration proceeding
1682 in accordance with 35 Ill. Adm. Code 101.110 and 101.628.

1683
1684 c) Filing and Service. The filing and service requirements of 35 Ill. Adm. Code
1685 101.SubpartsSubpart C and J apply to the proceedings of this Subpart.

1686
1687 (Source: Amended at 41 Ill. Reg. _____, effective _____)

1688

1689 **Section 106.1110 Definitions**

1690

1691 In addition to these definitions, all definitions of the Illinois Environmental Protection Act [415
1692 ILCS 5]; and 35 Ill. Adm. Code 301, apply to this Subpart. For the purpose of this Subpart:

1693

1694 "Alternative thermal effluent limitations" means all effluent limitations or
1695 standards of performance for the control of the thermal component of any
1696 discharge that are established under 35 Ill. Adm. Code 304.141(c), Section 316(a)
1697 of the CWA and this Subpart.

1698

1699 "CWA" means the Federal Water Pollution Control Act, as amended, (33 USC
1700 1251 et seq., Public Law 92-500 enacted by Congress October 18, 1972, as
1701 amended by the Clean Water Act, Public Law 95-217, enacted December 12,
1702 1977, as amended).

1703

1704 "Representative important species" means species that are representative, in terms
1705 of their biological needs, of a balanced, indigenous community of shellfish, fish,
1706 and wildlife in the body of water into which a discharge of heat is made.

1707

1708 "Balanced, indigenous community" is synonymous with the term "balanced,
1709 indigenous population" in the CWA and means a biotic community typically
1710 characterized by diversity, the capacity to sustain itself through cyclic seasonal
1711 changes, presence of necessary food chain species, and by a lack of domination
1712 by pollution tolerant species. Such a community may include historically non-
1713 native species introduced in connection with a program of wildlife management
1714 and species whose presence or abundance results from substantial, irreversible
1715 environmental modifications. Normally, however, such a community will not
1716 include species whose presence or abundance is attributable to the introduction of
1717 pollutants that will be eliminated by compliance by all sources with section
1718 301(b)(2) of the CWA; and may not include species whose presence or abundance

1719 is attributable to alternative thermal effluent limitations imposed ~~under~~ pursuant to
 1720 this Subpart or through regulatory relief from otherwise applicable thermal
 1721 limitations under Chapter I of Subtitle C or standards granted by the Board.
 1722

1723 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 1724

1725 **Section 106.1115 Early Screening**
 1726

- 1727 a) Prior to filing a petition for an alternative thermal effluent limitation, the
 1728 petitioner must submit the following early screening information to the Agency:
 1729
- 1730 1) A description of the alternative thermal effluent limitation requested;
 1731
 - 1732 2) A general description of the method by which the discharger proposes to
 1733 demonstrate that the otherwise applicable thermal discharge effluent
 1734 limitations are more stringent than necessary;
 1735
 - 1736 3) A general description of the type of data, studies, experiments and other
 1737 information that the discharger intends to submit for the demonstration;
 1738 and
 1739
 - 1740 4) A proposed representative important species list and supporting data and
 1741 information.
 1742
- 1743 b) Within 30 days after the early screening information is submitted under
 1744 subsection (a), the petitioner ~~must~~ shall consult with the Agency to discuss the
 1745 petitioner's early screening information.
 1746

1747 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 1748

1749 **Section 106.1120 Detailed Plan of Study**
 1750

- 1751 a) Within 60 days after the early screening information is submitted ~~under~~ pursuant
 1752 to Section 106.1115, the petitioner ~~must~~ shall submit to the Agency a detailed plan
 1753 of study that the petitioner will undertake to support its alternative thermal
 1754 effluent limitation demonstration.
 1755
- 1756 b) The petitioner ~~must~~ shall specify the nature and extent of the following types of
 1757 information to be included in the plan of study:
 1758
- 1759 1) biological, hydrographical, and meteorological data;
 - 1760 2) physical monitoring data;
 1761

- 1762
- 1763 3) engineering or diffusion models;
- 1764
- 1765 4) laboratory studies;
- 1766
- 1767 5) representative important species; and
- 1768
- 1769 6) other relevant information.
- 1770
- 1771 c) In selecting representative important species, the petitioner must give special
- 1772 consideration ~~shall be given~~ to species mentioned in applicable water quality
- 1773 standards.
- 1774
- 1775 d) The petitioner must~~shall~~ provide any additional information or studies that the
- 1776 Agency subsequently determines necessary to support the alternative thermal
- 1777 effluent limitation demonstration, including such field or other studies as may be
- 1778 necessary to select representative important species.
- 1779
- 1780 e) In making the alternative thermal effluent limitation demonstration, the petitioner
- 1781 must~~shall~~ consider any information or guidance published by USEPA to assist in
- 1782 making such demonstrations.
- 1783
- 1784 f) Within 90 days after petitioner's submittal of its detailed plan of study, the
- 1785 Agency must~~shall~~ respond in writing, either approving the detailed plan of study
- 1786 and representative important species or recommending necessary revisions.
- 1787
- 1788 g) After receiving the Agency's response under~~pursuant to~~ subsection (f), or after 90
- 1789 days have passed with no Agency response, the petitioner may proceed with the
- 1790 plan of study with or without making the Agency's recommended revisions. The
- 1791 petitioner must~~shall~~ complete the plan of study prior to filing the petition for an
- 1792 alternative thermal effluent limitation with the Board.
- 1793

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 106.1125 Initiation of Proceeding

After completion of the plan of study under~~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 DNR~~the Illinois Department of Natural Resources~~.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

1805 **Section 106.1130 Contents of Petition**

1806

1807 A petition for an alternative thermal effluent limitation must include the following:

1808

1809

a) Information providing a general plant description, including, as applicable:

1810

1811

1) Generating capacity;

1812

1813

2) Type of fuel used;

1814

1815

3) Operating characteristics of the condenser cooling system;

1816

1817

4) History of the load factor of the plant for the last 5 years;

1818

1819

5) Projected load factors of the plant for the next 5 years;

1820

1821

6) Estimated date of retirement for each unit at the plant and any plans for additional units at the plant;

1822

1823

1824

7) History of plant shutdowns for the last 5 years;

1825

1826

8) Planned and emergency shutdowns with frequency and duration for the last 5 years; and

1827

1828

1829

9) Planned and projected shutdowns with frequency and duration for the next five years;

1830

1831

1832

b) Description of Method for Heat Dissipation:

1833

1834

1) Type of system used (such as once-through, mechanical, and draft cooling towers) in narrative form; and

1835

1836

1837

2) Summary information on temperature of discharge to receiving waters in narrative form;

1838

1839

1840

c) A summary of compliance or non-compliance with thermal requirements at the facility in the past five years;

1841

1842

1843

d) The detailed plan of study submitted to the Agency ~~underpursuant to~~ Section 106.1120(a) and the Agency's written response ~~underpursuant to~~ Section 106.1120(f);

1844

1845

1846

- 1847 e) The results of the studies conducted ~~underpursuant to~~ the detailed plan of study
1848 submitted under Section 106.1120, including, ~~but not limited to~~:
1849
1850 1) background on the proposed thermal standards;
1851
1852 2) information on data collection program and methodologies;
1853
1854 3) summaries of physical, chemical, biological and technical data supporting
1855 the demonstration, along with a discussion of the data; and
1856
1857 4) criteria or methodology used to assess whether a balanced indigenous
1858 community of shellfish, fish and wildlife will be maintained in the
1859 receiving waters and the protection of threatened and endangered species;
1860
1861 f) Any additional information or studies, including information or guidance
1862 published by USEPA, that the petitioner judges to be appropriate to support the
1863 alternative thermal effluent limitation demonstration; and
1864
1865 g) A statement of the requested relief, including:
1866
1867 1) ~~the~~ the alternative thermal effluent limitation;
1868
1869 2) ~~any~~ any relief from the mixing zone regulations in 35 Ill. Adm. Code 302.102,
1870 if applicable; and
1871
1872 3) any other relief sought.
1873

1874 (Source: Amended at 41 Ill. Reg. _____, effective _____)
1875

1876 **Section 106.1135 Petition Notice Requirements**
1877

- 1878 a) Within 14 days after the filing of the petition, the petitioner must publish notice of
1879 the filing of the petition by advertisement in a newspaper of general circulation in
1880 the county where the facility is located.
1881
1882 b) The notice must include:
1883
1884 1) ~~The notice must contain~~ the name and address of the petitioner and a
1885 statement ~~it must state~~ that the petitioner has filed with the Board a petition
1886 for an alternative thermal effluent limitation;
1887
1888 2) ~~The notice must also provide~~ the date on which the petition was filed, the
1889 Board docket number;

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- 3) ~~The~~the regulatory standard (with appropriate Administrative Code citation) from which the alternative thermal effluent limitation is sought;
- 4) ~~The~~the proposed alternative thermal effluent limitation;
- 5) ~~A~~a general description of the petitioner's activity that is the subject of the alternative thermal effluent limitation proceeding; ~~and~~
- 6) ~~The~~the location of the facility; ~~and~~.
- 7) ~~In the~~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: Amended at 41 Ill. Reg. _____, effective _____)

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: Amended at 41 Ill. Reg. _____, effective _____)

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:

- 1932 1) ~~Whether~~ whether the Board should grant the petitioner's requested
1933 alternative thermal effluent limitation;
- 1934
- 1935 2) ~~The~~ the rationale for the Agency's position;
- 1936
- 1937 3) ~~Whether~~ whether the plan of study sufficiently addresses the Agency's
1938 response pursuant to Section 106.1120(f) ~~of this Part~~;
- 1939
- 1940 4) ~~Whether~~ whether the petition has met the requirements of this Part;
- 1941
- 1942 5) ~~Any~~ any information the Agency believes is relevant to the Board's
1943 consideration of the proposed alternative thermal effluent limitation; and
- 1944
- 1945 6) ~~Whether~~ whether the Agency communicated with or received comments
1946 from ~~DNR~~ the Illinois Department of Natural Resources, the United States
1947 Fish and Wildlife Service, or USEPA, and the content of those
1948 communications.
- 1949
- 1950 c) The petitioner, any party to the proceeding, or any interested person may file a
1951 response to the Agency recommendation within 21 days after the Agency files its
1952 recommendation.
- 1953

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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 ~~must~~ should make reference to the Board docket number assigned to the proceeding.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 106.1155 Notice and Conduct of Hearing

- 1967 a) The Board ~~will~~ shall hold a public hearing on the petition and alternative thermal
1968 effluent limitation demonstration when one is requested in accordance with
1969 Section 106.1150, when requested by the petitioner, or if the Board, in its
1970 discretion, determines that a hearing would be advisable.
- 1971
- 1972 b) The hearing officer will schedule the hearing.
- 1973

- 1974 c) The Clerk will give notice of the hearing in accordance with 35 Ill. Adm. Code
- 1975 101. The proceedings will be conducted in accordance with 35 Ill. Adm.
- 1976 Code 101. Subpart F, including any hearing held by videoconference (see 35 Ill.
- 1977 Adm. Code 101.600(b)).
- 1978

1979 (Source: Amended at 41 Ill. Reg. _____, effective _____)

1980

1981 **Section 106.1160 Burden of Proof**

- 1982
- 1983 a) The burden of proof is on the petitioner.
- 1984
- 1985 b) The petitioner must demonstrate to the satisfaction of the Board that the otherwise
- 1986 applicable effluent limitations under Chapter I of Subtitle C are more stringent
- 1987 than necessary to assure the protection and propagation of a balanced, indigenous
- 1988 community of shellfish, fish, and wildlife in and on the body of water into which
- 1989 the discharge is made.
- 1990
- 1991 c) The demonstration must show that the alternative thermal effluent limitation
- 1992 desired by the petitioner, considering the cumulative impact of its thermal
- 1993 discharge, together with all other significant impacts on the species affected, will
- 1994 assure the protection and propagation of a balanced indigenous community of
- 1995 shellfish, fish, and wildlife in and on the body of water into which the discharge is
- 1996 to be made.
- 1997
- 1998 d) Existing dischargers may base their demonstration upon the absence of prior
- 1999 appreciable harm in lieu of predictive studies.
- 2000
- 2001 1) When the petitioner bases the alternative thermal effluent limitation
- 2002 demonstration upon the absence of prior appreciable harm, the
- 2003 demonstration must show:
- 2004
- 2005 A) That no appreciable harm has resulted from the normal component
- 2006 of the discharge, taking into account the interaction of such
- 2007 thermal component with other pollutants and the additive effect of
- 2008 other thermal sources to a balanced, indigenous community of
- 2009 shellfish, fish, and wildlife in and on the body of water into which
- 2010 the discharge has been made; or
- 2011
- 2012 B) That despite the occurrence of such previous harm, the desired
- 2013 alternative thermal effluent limitation (or appropriate modifications
- 2014 thereof) will nevertheless assure the protection and propagation of
- 2015 a balanced, indigenous community of shellfish, fish, and wildlife in
- 2016 and on the body of water into which the discharge is made.

2017
2018 2) In determining whether prior appreciable harm has occurred, the Board
2019 ~~will~~ shall consider the length of time during which the petitioner has been
2020 discharging and the nature of the discharge.
2021

2022 (Source: Amended at 41 Ill. Reg. _____, effective _____)
2023

2024 **Section 106.1170 Opinion and Order**
2025

2026 a) After an opportunity for a public hearing and upon a satisfactory alternative
2027 thermal effluent limitation demonstration, the Board may order the Agency to
2028 include thermal discharge effluent limitations or standards in the petitioner's
2029 NPDES permit that are less stringent than those required by applicable standards
2030 and limitations if the thermal component of the discharge, taking into account the
2031 interaction of such thermal component with other pollutants, will assure the
2032 protection and propagation of a balanced, indigenous population of shellfish, fish,
2033 and wildlife in and on the body of water.
2034

2035 b) In granting an alternative thermal effluent limitation, the Board may impose such
2036 conditions as may be necessary to accomplish the purposes of the Act.
2037

2038 c) If the petitioner intends for the alternative thermal effluent limitation granted by
2039 the Board ~~underpursuant to~~ this Subpart to continue beyond the expiration of the
2040 petitioner's NPDES permit, the petitioner must apply for renewal of the
2041 alternative thermal effluent limitation ~~underpursuant to~~ Section 106.1180.
2042

2043 (Source: Amended at 41 Ill. Reg. _____, effective _____)
2044

2045 **Section 106.1175 Post-Hearing Procedures**
2046

2047 a) The provisions of 35 Ill. Adm. Code 101 regarding default, transcripts, the record,
2048 motions, briefs, and oral arguments apply to proceedings under this Subpart.
2049

2050 b) In addition to the provisions of 35 Ill. Adm. Code 101.520 and 101.902, if
2051 USEPA objects ~~underpursuant to~~ 40 CFR 123.44 to issuance in the petitioner's
2052 NPDES permit of the alternative thermal effluent limitation ordered by the Board,
2053 the Agency is given ~~permission~~leave to file a motion for reconsideration of the
2054 Board's order granting the effluent limitation ~~underpursuant to~~ 35 Ill. Adm. Code
2055 101.520 within 35 days after the Agency's receipt of USEPA's objection.
2056

2057 (Source: Amended at 41 Ill. Reg. _____, effective _____)
2058

2059 **Section 106.1180 Renewal of Alternative Thermal Effluent Limitations**

- 2060
 2061 a) The permittee may request continuation of an alternative thermal effluent
 2062 limitation granted by the Board, ~~pursuant to this Subpart~~, as part of its NPDES
 2063 permit renewal application.
 2064
 2065 b) Any application for renewal ~~must~~ should include sufficient information for the
 2066 Agency to compare the nature of the permittee's thermal discharge and the
 2067 balanced, indigenous population of shellfish, fish, and wildlife at the time the
 2068 Board granted the alternative thermal effluent limitation and the current nature of
 2069 the petitioner's thermal discharge and the balanced, indigenous population of
 2070 shellfish, fish, and wildlife. The permittee ~~must~~ should be prepared to support this
 2071 comparison with documentation based upon the discharger's actual operation
 2072 experience during the previous permit term.
 2073
 2074 c) If the permittee demonstrates that the nature of the thermal discharge has not
 2075 materially changed to cause appreciable harm to the balanced, indigenous
 2076 population of shellfish, fish, and wildlife in and on the body of water into which
 2077 the discharge is made, and the alternative thermal effluent limitation granted by
 2078 the Board has not caused appreciable harm to a balanced, indigenous population
 2079 of shellfish, fish, and wildlife in and on the body of water into which the
 2080 discharge is made, the Agency may include the alternative thermal effluent
 2081 limitation in the ~~permittee's~~ permittee's renewed NPDES permit.
 2082
 2083 d) If the nature of the thermal discharge has materially changed to cause appreciable
 2084 harm to the balanced, indigenous population of shellfish, fish, and wildlife in and
 2085 on the body of water into which the discharge is made, ~~materially~~ or the alternative
 2086 thermal effluent limitation granted by the Board has caused appreciable harm to a
 2087 balanced, indigenous population of shellfish, fish, and wildlife in and on the body
 2088 of water into which the discharge is made, the Agency ~~must~~ may not include the
 2089 thermal relief granted by the Board in the ~~permittee's~~ permittee's renewed NPDES
 2090 permit. The permittee must file a new petition and make the required
 2091 demonstration ~~under~~ pursuant to this Subpart before the alternative thermal
 2092 effluent limitation may be included in the permittee's renewed NPDES permit.
 2093
 2094

(Source: Amended at 41 Ill. Reg. _____, effective _____)

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Petition to Review Pollution Control Facility Siting Decisions
- 2) Code Citation: 35 Ill. Adm. Code 107
- 3)

<u>Section Numbers</u> :	<u>Proposed Actions</u> :
107.100	Amendment
107.106	Amendment
107.200	Amendment
107.202	Amendment
107.204	Amendment
107.206	Amendment
107.208	Amendment
107.300	Amendment
107.302	Amendment
107.304	Amendment
107.400	Amendment
107.404	Amendment
107.502	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: Prompted by a recognition that some of its rules were no longer current due to changing technology and the passage of time, the Board began planning a broad review of all its rules, with a view of streamlining, updating and overhauling its regulation. Governor Rauner's Executive Order 2016-13 has provided additional impetus to the Board's initiative. The proposal makes technical changes to the rule as well as changes in response to recently passed legislation.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No

RECEIVED
CLERK'S OFFICE
FEB 10 2017
STATE OF ILLINOIS
Pollution Control Board

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments should reference Docket R17-18 and be addressed to:

Clerk's Office
Illinois Pollution Control Board
JRTC
100 W. Randolph St., Suite 11-500
Chicago IL 60601

- Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.
- Interested persons may request copies of the Board's opinion and order in R17-18 by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality, or not-for-profit corporation that practices before the Board.
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2017

The full text of the Proposed Amendments begins on the next page:

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE A: GENERAL PROVISIONS
3 CHAPTER 1: POLLUTION CONTROL BOARD
4

5 PART 107

6 PETITION TO REVIEW POLLUTION CONTROL FACILITY SITING DECISIONS
7

8 SUBPART A: GENERAL PROVISIONS

9 Section
10 107.100 Applicability
11 107.102 Severability
12 107.104 Definitions
13 107.106 Description
14

15 SUBPART B: PETITION FOR REVIEW

16 Section
17 107.200 Who May File Petition
18 107.202 Parties
19 107.204 Time for Filing Petition
20 107.206 Filing and Service Requirements
21 107.208 Petition Content Requirements
22

23 SUBPART C: FILING OF LOCAL RECORD

24 Section
25 107.300 Record
26 107.302 Filing of the Record
27 107.304 Record Contents
28 107.306 Preparing of the Record
29 107.308 Certification of Record
30

31 SUBPART D: HEARING

32 Section
33 107.400 General
34 107.402 Authority and Duties of Hearing Officer
35 107.404 Public Participation
36

37 SUBPART E: BOARD REVIEW AND DECISION

38 Section
39 107.500 Preliminary Board Determination/Set for Hearing
40 107.502 Dismissal of Petition
41 107.504 Decision Deadline
42 107.506 Burden of Proof
43

44 107.APPENDIX A Comparison of Former and Current Rules (Repealed)

45
 46 AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act)
 47 [415 ILCS 5/26 and 27] and implementing Sections 39.2, and 40.1 of the Act [415 ILCS 5/39.2
 48 and 40.1].

49
 50 SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186,
 51 effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg.
 52 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4,
 53 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12
 54 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective
 55 July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in
 56 R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579,
 57 effective July 11, 1994; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 539,
 58 effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8828, effective June 8, 2005;
 59 amended in R14-21 at 39 Ill. Reg. 2391, effective January 27, 2015; amended in R16-17 at 40 Ill.
 60 Reg. 7997, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. _____, effective
 61 _____.

62
 63 SUBPART A: GENERAL PROVISIONS

64
 65 **Section 107.100 Applicability**

- 66
 67 a) This Part applies to adjudicatory proceedings before the Board concerning
 68 petitions to review a pollution control facility siting decision made by local
 69 government ~~underpursuant to~~ Sections 39.2 and 40.1 of the Act [415 ILCS 5/39.2
 70 and 40.1]. "Pollution control facility" is defined at Section 3.330 of the Act [415
 71 ILCS 5/3.330] for purposes of this Part.
 72
 73 b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains
 74 procedures generally applicable to all of the Board's adjudicatory proceedings. In
 75 the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and
 76 those of this Part, the provisions of this Part apply.
 77

78 (Source: Amended at 41 Ill. Reg. _____, effective _____)

79
 80 **Section 107.106 Description**

81
 82 ~~UnderPursuant to~~ Section 39(c) of the Act, any new pollution control facility, prior to receiving a
 83 permit from the Agency to construct and operate, must first receive siting approval from the
 84 *County Board of the county if in an unincorporated area, or the governing body of the*
 85 *municipality when in an incorporated area, in which the facility is to be located* [415 ILCS
 86 5/39(c)]. The siting approval can only be given ~~underpursuant to~~ Section 39.2 of the Act and

87 only after the unit of local government conducts a public hearing that comports with the
88 requirements of Section 39.2(d) and with general standards of fundamental fairness.
89 ~~Under~~Pursuant to Section 40.1 of the Act, a decision of a unit of local government to site or deny
90 siting of a new pollution control facility is reviewable by the Board. The decision of the Board is
91 appealable to the Illinois appellate court.

92
93 (Source: Amended at 41 Ill. Reg. _____, effective _____)
94

95 SUBPART B: PETITION FOR REVIEW
96

97 **Section 107.200 Who May File Petition**
98

99 The following persons may file a petition for review of a decision concerning siting of a new
100 pollution control facility ~~under~~pursuant to Section 40.1 of the Act:
101

- 102 a) Siting applicants. Any person who has properly applied to one or more units of
103 local government, ~~under~~pursuant to Section 39.2 of the Act, for siting approval of
104 a new pollution control facility and has been denied siting approval under Section
105 39.2 of the Act, may file a petition for review of the decision to deny siting. The
106 siting applicant may also appeal conditions imposed in a decision granting siting
107 approval.
108
- 109 b) Other persons. Any person who has participated in the public hearing conducted
110 by the unit of local government and is so located as to be affected by the proposed
111 facility may file a petition for review of the decision to grant siting. Associations
112 that file a petition before the Board must be represented by an attorney in
113 accordance with 35 Ill. Adm. Code 101.400.
114

115 (Source: Amended at 41 Ill. Reg. _____, effective _____)
116

117 **Section 107.202 Parties**
118

- 119 a) In a petition to review a local government's decision concerning a new pollution
120 control facility, the following are parties to the proceeding:
121
- 122 1) The petitioner or petitioners are the persons described in Section 107.200
123 of this Part. If there is more than one petitioner, they must be referred to
124 as co-petitioners; and
125
- 126 2) The unit(s) of local government whose decision is being reviewed must be
127 named the respondent(s). In an appeal ~~under~~pursuant to Section
128 107.200(b), the siting applicant must also be named as a respondent.
129

- 130 b) Where the interests of the public would be served, the Board or hearing officer
131 may allow intervention by the Attorney General or the State's Attorney of the
132 county in which the facility will be located.
133

134 (Source: Amended at 41 Ill. Reg. _____, effective _____)
135

136 **Section 107.204 Time for Filing Petition**
137

138 A petition for review must be filed within 35 days after the local siting authority's action to
139 approve or disapprove siting. Action means the local government's official written decision
140 granting or denying local siting approval. ~~Under~~Pursuant to Section 39.2(e) of the Act, action
141 includes failure of the governing body to act within 180 days after receiving a request for siting
142 approval.
143

144 (Source: Amended at 41 Ill. Reg. _____, effective _____)
145

146 **Section 107.206 Filing and Service Requirements**
147

- 148 a) Filing. The petition for review must be filed with the Clerk ~~of the Board in~~
149 accordance with the filing requirements contained in the Board's general
150 procedural rules, found at 35 Ill. Adm. Code 101.Subpart C and Section 107.208
151 ~~of this Part.~~
152
153 b) Service. The petition for review must be served upon all parties in accordance
154 with the Board's service requirements contained in the Board's general procedural
155 rules, found at 35 Ill. Adm. Code 101.Subpart C.
156

157 (Source: Amended at 41 Ill. Reg. _____, effective _____)
158

159 **Section 107.208 Petition Content Requirements**
160

161 In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C the petition must also
162 include:
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- 164 a) A copy of the local siting authority's written decision or ordinance;
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166 b) A statement as to how the filing party is a proper petitioner under Section 107.200
167 ~~of this Part;~~ and
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169 c) In accordance with Section 39.2 of the Act, a specification of the grounds for the
170 appeal, including any allegations for fundamental unfairness or any manner in
171 which the decision as to particular criteria is against the manifest weight of the
172 evidence.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART C: FILING OF LOCAL RECORD

Section 107.300 Record

Under Pursuant to Sections 39.2 and 40.1 of the Act, the siting authority must compile a complete record of its proceedings.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 107.302 Filing of the Record

The siting authority must file the record of its proceedings with the Board as directed by Board or hearing officer order. Failure to file the entire record on the date directed by the Board or hearing officer may subject the respondent to sanctions as may be ordered by the Board in accordance with 35 Ill. Adm. Code 101.Subpart H. The Pursuant to 35 Ill. Adm. Code 101.302(h)(2), the siting authority must file the record through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. The record must meet the requirements of 35 Ill. Adm. Code 101.Subpart J.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 107.304 Record Contents

- a) The record must contain all information or evidence presented to the local siting authority or relied upon by the local siting authority during its hearing process including:
 - 1) The siting application;
 - 2) Any and all transcripts of local hearings;
 - 3) All briefs and other arguments and statements of parties and participants;
 - 4) All exhibits relied upon by the local siting authority in making its decision;
 - 5) All written public comments relevant to the local government proceeding;
 - 6) Minutes of all relevant open meetings of the siting authority;

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- 7) Notices of hearings or all relevant meetings of the siting authority;
- 8) The written decision of the siting authority made underpursuant to Section 39.2 of the Act;
- 9) Certificate of Record as described in Section 107.308 ~~of this Part~~; and
- 10) *If, prior to making a final local siting decision, a county board or governing body of a municipality has negotiated and entered into a host agreement with the local siting applicant, the terms and conditions of the host agreement, whether written or oral, shall be disclosed and made a part of the hearing record for that local siting proceeding. In the case of an oral agreement, the disclosure shall be made in the form of a written summary jointly prepared and submitted by the county board or governing body of the municipality and the siting applicant and shall describe the terms and conditions of the oral agreement. [415 ILCS 5/39.2(e)]*

b) The record must be arranged in chronological sequence, or by category of material and chronologically within each category, and must be sequentially numbered with the letter "C" placed before the number of each page. In addition, the record must meet the requirements of 35 Ill. Adm. Code 101.Subpart J.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART D: HEARING

Section 107.400 General

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

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 107.404 Public Participation

Parties to the proceeding will have all rights of examination and cross-examination relevant in any judicial proceeding. Persons who are not parties as set forth in Section 107.202 ~~of this Part~~ are considered participants and will have hearing participation rights as determined by the hearing officer in accordance with 35 Ill. Adm. Code 101.628. Participants may offer comment at a specifically determined time in the proceeding, but may not examine or cross-examine witnesses for either party. In accordance with this Section and 35 Ill. Adm. Code 101.628, public comment will not be considered testimony unless sworn and subject to cross-examination.

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(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART E: BOARD REVIEW AND DECISION

Section 107.502 Dismissal of Petition

- a) The Board on its own motion or motion by any party, may dismiss any petition that:
 - 1) is untimely filed ~~underpursuant to~~ Section 107.204 of this Part;
 - 2) fails to name all parties as required by Section 39.2 of the Act;
 - 3) fails to include the required fee and all information as required by Section 107.208 of this Part; or
 - 4) fails to meet the requirements in 35 Ill. Adm. Code 101.Subpart C.
- b) Upon motion by any unit of local government that is required to prepare and certify its record alleging that any petitioner required to pay costs of preparing and certifying the record of the proceedings has failed to pay those costs, the Board may enter a dismissal or other order as allowed by Section 39.2(n) of the Act.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER 1: POLLUTION CONTROL BOARD

PART 107

PETITION TO REVIEW POLLUTION CONTROL FACILITY SITING DECISIONS

SUBPART A: GENERAL PROVISIONS

Section

- 107.100 Applicability
- 107.102 Severability
- 107.104 Definitions
- 107.106 Description

SUBPART B: PETITION FOR REVIEW

Section

- 107.200 Who May File Petition
- 107.202 Parties
- 107.204 Time for Filing Petition
- 107.206 Filing and Service Requirements
- 107.208 Petition Content Requirements

SUBPART C: FILING OF LOCAL RECORD

Section

- 107.300 Record
- 107.302 Filing of the Record
- 107.304 Record Contents
- 107.306 Preparing of the Record
- 107.308 Certification of Record

SUBPART D: HEARING

Section

- 107.400 General
- 107.402 Authority and Duties of Hearing Officer
- 107.404 Public Participation

SUBPART E: BOARD REVIEW AND DECISION

Section

- 107.500 Preliminary Board Determination/Set for Hearing
- 107.502 Dismissal of Petition
- 107.504 Decision Deadline
- 107.506 Burden of Proof

107.APPENDIX A Comparison of Former and Current Rules (Repealed)

AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 39.2, and 40.1 of the Act [415 ILCS 5/39.2 and 40.1].

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; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 539, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8828, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2391, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. 7997, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 107.100 Applicability

a) This Part applies to adjudicatory proceedings before the Board concerning petitions to review a pollution control facility siting decision made by local government under ~~pursuant to~~ Sections 39.2 and 40.1 of the Act [415 ILCS 5/39.2 and 40.1]. "Pollution control facility" is defined at Section 3.330 of the Act [415 ILCS 5/3.330] for purposes of this Part.

b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all of the Board's adjudicatory proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part apply.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 107.106 Description

~~Under pursuant to~~ Section 39(c) of the Act, any new pollution control facility, prior to receiving a permit from the Agency to construct and operate, must first receive siting approval from the County Board of the county if in an unincorporated area, or the governing body of the municipality when in an incorporated area, in which the facility is to be located [415 ILCS 5/39(c)]. The siting approval can only be given under ~~pursuant to~~ Section 39.2 of the Act and only after the unit of local government conducts a public hearing that comports with the requirements of Section 39.2(d) and with general standards of fundamental fairness. Under ~~pursuant to~~ Section 40.1 of the Act, a decision of a unit of local government to site or deny siting of a new pollution control facility is reviewable by the Board. The decision of the Board is appealable to the Illinois appellate court.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART B: PETITION FOR REVIEW

Section 107.200 Who May File Petition

The following persons may file a petition for review of a decision concerning siting of a new pollution control facility under ~~pursuant to~~ Section 40.1 of the Act:

a) Siting applicants. Any person who has properly applied to one or more units of local government, under ~~pursuant to~~ Section 39.2 of the Act, for siting approval of a new pollution control facility and has been denied siting approval under Section 39.2 of the Act, may file a petition for review of the decision to deny siting. The siting applicant may also appeal conditions imposed in a decision granting siting approval.

b) Other persons. Any person who has participated in the public hearing conducted by the unit of local government and is so located as to be affected by the proposed facility may file a petition for review of the decision to grant siting. Associations that file a petition before the Board must be represented by an attorney in accordance with 35 Ill. Adm. Code 101.400.

(Source: Amended at 41 Ill. Reg. , effective)

Section 107.202 Parties

a) In a petition to review a local government's decision concerning a new pollution control facility, the following are parties to the proceeding:

1) The petitioner or petitioners are the persons described in Section 107.200 of this Part. If there is more than one petitioner, they must be referred to as co-petitioners; and

2) The unit(s) of local government whose decision is being reviewed must be named the respondent(s). In an appeal under ~~pursuant to~~ Section 107.200(b), the siting applicant must also be named as a respondent.

b) Where the interests of the public would be served, the Board or hearing officer may allow intervention by the Attorney General or the State's Attorney of the county in which the facility will be located.

(Source: Amended at 41 Ill. Reg. , effective)

Section 107.204 Time for Filing Petition

A petition for review must be filed within 35 days after the local siting authority's action to approve or disapprove siting. Action means the local government's official written decision granting or denying local siting approval. Under ~~pursuant to~~ Section 39.2(e) of the Act, action includes failure of the governing body to act within 180 days after receiving a request for siting approval.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 107.206 Filing and Service Requirements

a) Filing. The petition for review must be filed with the Clerk ~~of the Board~~ in accordance with the filing requirements contained in the Board's general procedural rules, found at 35 Ill. Adm. Code 101.Subpart C and Section ~~107.208 of this Part.~~ 107.208.

b) Service. The petition for review must be served upon all parties in accordance with the Board's service requirements contained in the Board's general procedural rules, found at 35 Ill. Adm. Code 101.Subpart C.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 107.208 Petition Content Requirements

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

a) A copy of the local siting authority's written decision or ordinance;

b) A statement as to how the filing party is a proper petitioner under Section 107.200 ~~of this Part~~; and

c) In accordance with Section 39.2 of the Act, a specification of the grounds for the appeal, including any allegations for fundamental unfairness or any manner in which the decision as to particular criteria is against the manifest weight of the evidence.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART C: FILING OF LOCAL RECORD

Section 107.300 Record

~~Under pursuant to~~ Sections 39.2 and 40.1 of the Act, the siting authority must compile a complete record of its proceedings.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 107.302 Filing of the Record

The siting authority must file the record of its proceedings with the Board as directed by Board or hearing officer order. Failure to file the entire record on the date directed by the Board or hearing officer may subject the respondent to sanctions as may be ordered by the Board in accordance with 35 Ill. Adm. Code 101.Subpart H. ~~Pursuant to 35 Ill. Adm. Code 101.302(h)(2), The the~~ The siting authority must file the record through COOL or on compact disk or other portable electronic data

storage device and, to the extent technically feasible, in text-searchable Adobe PDF. The record must meet the requirements of 35 Ill. Adm. Code 101.Subpart J

(Source: Amended at 41 Ill. Reg. , effective)

Section 107.304 Record Contents

a) The record must contain all information or evidence presented to the local siting authority or relied upon by the local siting authority during its hearing process including:

- 1) The siting application;
- 2) Any and all transcripts of local hearings;
- 3) All briefs and other arguments and statements of parties and participants;
- 4) All exhibits relied upon by the local siting authority in making its decision;
- 5) All written public comments relevant to the local government proceeding;
- 6) Minutes of all relevant open meetings of the siting authority;
- 7) Notices of hearings or all relevant meetings of the siting authority;
- 8) The written decision of the siting authority made under ~~pursuant to~~ Section 39.2 of the Act;
- 9) Certificate of Record as described in Section 107.308 ~~of this Part~~; and
- 10) If, prior to making a final local siting decision, a county board or governing body of a municipality has negotiated and entered into a host agreement with the local siting applicant, the terms and conditions of the host agreement, whether written or oral, shall be disclosed and made a part of the hearing record for that local siting proceeding. In the case of an oral agreement, the disclosure shall be made in the form of a written summary jointly prepared and submitted by the county board or governing body of the municipality and the siting applicant and shall describe the terms and conditions of the oral agreement. [415 ILCS 5/39.2(e)]

b) The record must be arranged in chronological sequence, or by category of material and chronologically within each category, and must be sequentially numbered with the letter "C" placed before the number of each page. In addition, the record must meet the requirements of 35 Ill. Adm. Code 101.Subpart J.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART D: HEARING

Section 107.400 General

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

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 107.404 Public Participation

Parties to the proceeding will have all rights of examination and cross-examination relevant in any judicial proceeding. Persons who are not parties as set forth in Section 107.202 ~~of this Part~~ are considered participants and will have hearing participation rights as determined by the hearing officer in accordance with 35 Ill. Adm. Code 101.628. Participants may offer comment at a specifically determined time in the proceeding, but may not examine or cross-examine witnesses for either party. In accordance with this Section and 35 Ill. Adm. Code 101.628, public comment will not be considered testimony unless sworn and subject to cross-examination.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART E: BOARD REVIEW AND DECISION

Section 107.502 Dismissal of Petition

a) The Board on its own motion or motion by any party, may dismiss any petition that:

- 1) is untimely filed under ~~pursuant to~~ Section 107.204 ~~of this Part~~;
- 2) fails to name all parties as required by Section 39.2 of the Act;
- 3) fails to include the required fee and all information as required by Section 107.208 of this Part; or
- 4) fails to meet the requirements in 35 Ill. Adm. Code 101.Subpart C.

b) Upon motion by any unit of local government that is required to prepare and certify its record alleging that any petitioner required to pay costs of preparing and certifying the record of the proceedings has failed to pay those costs, the Board may enter a dismissal or other order as allowed by Section 39.2(n) of the Act.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

~~ILLINOIS REGISTER~~

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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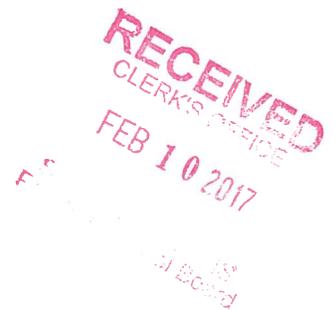
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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Administrative Citations
- 2) Code Citation: 35 Ill. Adm. Code 108
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
108.200	Amendment
108.201	Amendment
108.202	Amendment
108.300	Amendment
108.402	Amendment
108.406	Amendment
108.500	Amendment
108.502	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: Prompted by a recognition that some of its rules were no longer current due to changing technology and the passage of time, the Board began planning a broad review of all its rules, with a view of streamlining, updating and overhauling its regulation. Governor Rauner's Executive Order 2016-13 has provided additional impetus to the Board's initiative. The proposal makes technical changes to the rule as well as changes in response to recently passed legislation.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].



POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments should reference Docket R17-18 and be addressed to:

Clerk's Office
Illinois Pollution Control Board
JRTC
100 W. Randolph St., Suite 11-500
Chicago IL 60601

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R17-18 by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality, or not-for-profit corporation that practices before the Board.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2017

The full text of the Proposed Amendments begins on the next page:

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE A: GENERAL PROVISIONS
3 CHAPTER I: POLLUTION CONTROL BOARD
4

5 PART 108
6 ADMINISTRATIVE CITATIONS
7

8 SUBPART A: GENERAL PROVISIONS
9

10 Section
11 108.100 Applicability
12 108.102 Severability
13 108.104 Definitions
14

15 SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST
16

17 Section
18 108.200 Administrative Citation under the Act
19 108.201 Administrative Citation under the PWSO Act
20 108.202 Administrative Citation under the EPRR Act
21 108.204 Filing Requirements for Petition to Contest
22 108.206 Petition Contents
23 108.208 AC Recipient's Voluntary Withdrawal
24

25 SUBPART C: HEARINGS
26

27 Section
28 108.300 Authorization of Hearing
29

30 SUBPART D: BOARD DECISIONS
31

32 Section
33 108.400 Burden of Proof
34 108.402 Dismissal
35 108.404 Default
36 108.406 Non-Contested Citations
37

38 SUBPART E: ASSESSMENT OF PENALTIES AND COSTS
39

40 Section
41 108.500 Penalties and Costs
42 108.502 Claimed Costs of Agency or Delegated Unit
43 108.504 Board Costs

44 108.506 Response to Claimed Costs and Reply

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46 AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act [415
47 ILCS 5/26 and 27] and implementing Sections 21(o), 21(p), 22.51, 22.51a, 31.1, 42(b)(4),
48 42(b)(4-5), and 55(k) of the Act [415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1, 42(b)(4), 42(b)(4-
49 5), and 55(k)] and Sections 1.1(b)(3) and 23.1 of the Public Water Supply Operations Act [415
50 ILCS 45/1.1(b)(3) and 23.1] and Sections 20 and 80 of the Electronic Products Recycling and
51 Reuse Act [415 ILCS 150/20 and 80].

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53 SOURCE: Adopted in R00-20 at 25 Ill. Reg. 397, effective January 1, 2001; amended in R04-24
54 at 29 Ill. Reg. 8833, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2397, effective
55 January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12921, effective September 8, 2015;
56 amended in R16-17 at 40 Ill. Reg. 8003, effective May 20, 2016; amended in R17-18 at 41 Ill.
57 Reg. _____, effective _____.

58
59 SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST

60
61 **Section 108.200 Administrative Citation under the Act**

- 62 a) An administrative citation (AC) under the Act may be issued by either of the
63 following:
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65
 - 66 1) ~~Illinois Environmental Protection Agency. The Agency under may issue~~
67 ~~an AC pursuant to Section 31.1 of the Act; or-~~
 - 68 2) ~~Delegated Unit of Local Government, under.~~ Pursuant to Section 4(r) of
69 the Act. ~~The,~~ the Agency may by agreement delegate its AC authority to a
70 unit of local government, which may then issue an AC. All Delegated
71 Units must submit to the Clerk ~~of the Board~~ a copy of the delegation
72 agreement on or before July 1 of every year.
- 73 b) In accordance with Section 31.1 of the Act, the Agency or Delegated Unit may
74 serve an AC upon any person believed, through direct observation, to have
75 violated Section 21(o), 21(p), 22.51, 22.51a, or 55(k) of the Act.
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 - 78 1) The AC must be issued and served upon the AC Recipient *not more than*
79 *60 days after the date of the observed violation* and must contain *the*
80 *following information:*
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 - 83 A) *A statement specifying the provisions of Section 21(o), 21(p),*
84 *22.51, 22.51a, or 55(k) of the Act that the AC Recipient was*
85 *observed to have violated;*

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- 87 B) *A copy of the inspection report in which the Agency or Delegated*
- 88 *Unit recorded the violation. The report must include the date and*
- 89 *time of inspection and weather conditions prevailing during the*
- 90 *inspection;*
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- 92 C) *The penalty imposed by Section 42(b)(4) or (b)(4-5) of the Act for*
- 93 *the violations;*
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- 95 D) *An affidavit by the personnel observing the violation, attesting to*
- 96 *their material actions and observations; and*
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- 98 E) *Instructions for contesting the AC findings, including notification*
- 99 *that the AC Recipient has 35 days within which to file a petition to*
- 100 *contest the AC and, if an appeal is filed and the Board finds a*
- 101 *violation, the AC Recipient may have to pay hearing costs*
- 102 *underpursuant to Section 108.500. [415 ILCS 5/31.1(b)]*
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- 104 2) The Agency or Delegated Unit must serve the AC upon the AC Recipient
- 105 as follows:
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- 107 A) Personal service;
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- 109 B) U.S. Mail with a recipient's signature recorded by the U.S. Postal
- 110 Service upon delivery; or
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- 112 C) Third-party commercial carrier with a recipient's signature
- 113 recorded by the third-party commercial carrier upon delivery.
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- 115 3) The Agency or Delegated Unit must file the AC with the Board *no later*
- 116 *than 10 days after the date of service* upon the AC Recipient. [415 ILCS
- 117 5/31.1(c)]
- 118

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 108.201 Administrative Citation under the PWSO Act

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- 123 a) An AC under the Public Water Supply Operations Act [415 ILCS 45] may be
- 124 issued by the Illinois Environmental Protection Agency. ~~The Agency may issue~~
- 125 ~~an AC underpursuant to~~ Section 23.1(b) of the PWSO Act.
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- 127 b) In accordance with Section 23.1 of the PWSO Act, *if Agency personnel discover*
- 128 *that a Responsible Operator in Charge has violated Section 1.1(b)(3) of the*
- 129 *PWSO Act, the Agency may serve an AC upon that individual.*

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- 1) The AC must be issued and served upon the AC Recipient *not more than 90 days after the date of the discovery of the violation* and must contain the following information:
 - A) *A statement specifying the report or result that the Responsible Operator in Charge failed to submit in accordance with Board rules and a citation to the Board rules that were violated;*
 - B) *A copy of any report in which the Agency recorded the violation;*
 - C) *The penalty imposed by Section 23.1(f) of the PWSO Act for the violation;*
 - D) *Instructions for contesting the AC findings pursuant to Section 23.1 of the PWSO Act, including notification that the individual has 35 days within which to file a petition for review before the Board to contest the AC and, if an appeal is filed and the Board finds a violation, a statement that the AC Recipient may have to pay hearing costs underpursuant to Section 108.500; and*
 - E) *An affidavit by the personnel recording the violation. [415 ILCS 45/23.1(b)]*
- 2) The Agency must serve the AC upon the AC Recipient by personal service or certified mail.
- 3) The Agency must file the AC with the Board *no later than 15 days after the date of service* upon the AC Recipient. [415 ILCS 45/23.1(c)]

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 108.202 Administrative Citation under the EPRR Act

- a) An AC under the Electronic Products Recycling and Reuse Act [415 ILCS 150] may be issued by either of the following:
 - 1) ~~Illinois Environmental Protection Agency. The Agency may issue an AC underpursuant to Section 20(k) of the EPRR Act; or-~~
 - 2) A Delegated Unit, under- Pursuant to Section 4(r) of the Act. ~~The,~~ the Agency may delegate its AC authority to a unit of local government, which may then issue an AC. Under Section 20(k) of the EPRR Act, a

173 Delegated Unit must be a county. All Delegated Units must submit to the
174 Clerk of the Board a copy of the delegation agreement on or before July 1
175 of every year.
176

177 b) In accordance with Section 20(k) of the EPRR Act, the Agency or Delegated Unit
178 may serve an AC upon any person believed, based on direct observation, to have
179 violated any provision of the EPRR Act or the entity employing that person.
180

181 1) The AC must be issued and served upon the AC Recipient not more than
182 *60 days after the date of the observed violation* and must contain the
183 following information:
184

185 A) *A statement specifying the provisions of the EPRR Act that the*
186 *person or the entity employing the person has violated;*
187

188 B) *A copy of the inspection report in which the Agency or Delegated*
189 *Unit recorded the violation; the report must include the date and*
190 *time of inspection;*
191

192 C) *The penalty imposed by Section 80 of the EPRR Act for the*
193 *violations;*
194

195 D) *An affidavit by the personnel observing the violation, attesting to*
196 *their material actions and observations; and*
197

198 E) *Instructions for contesting the AC findings, including notification*
199 *that the AC Recipient has 35 days within which to file a petition to*
200 *contest the AC. [415 ILCS 150/20(k)]*
201

202 2) The Agency or Delegated Unit must serve the AC upon the AC Recipient
203 as follows:
204

205 A) Personal service;
206

207 B) U.S. Mail with a recipient's signature recorded by the U.S. Postal
208 Service upon delivery; or
209

210 C) Third-party commercial carrier with a recipient's signature
211 recorded by the third-party commercial carrier upon delivery.
212

213 (Source: Amended at 41 Ill. Reg. _____, effective _____)
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Section 108.300 Authorization of Hearing

- a) The hearing date will be set within 60 days after the filing of the petition to contest unless the hearing officer orders otherwise to prevent material prejudice.
- b) The hearing officer will give the parties at least 21 days written notice of the hearing.
- c) The hearing will be held and conducted in accordance with 35 Ill. Adm. Code 101.Subpart F.
- d) ~~Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F,~~ including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART D: BOARD DECISIONS

Section 108.402 Dismissal

The Board may issue an order dismissing the AC and closing the docket upon its own motion or a motion by the AC Recipient, Agency or Delegated Unit if the AC was not timely and properly served underpursuant to the relevant statute and Section 108.200, 108.201 or 108.202.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 108.406 Non-Contested Citations

The Board will consider the AC non-contested if the AC Recipient does not file a petition to contest, fails to timely file a petition to contest, or withdraws its petition to contest underpursuant to Section 108.208.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART E: ASSESSMENT OF PENALTIES AND COSTS

Section 108.500 Penalties and Costs

- a) Unless the AC Recipient has shown that the violations resulted from uncontrollable circumstances, the Board will impose penalties as follows:

- 259 1) For violations of the Act, the Board will impose penalties as set forth in
260 Sections 42(b)(4) and 42(b)(4-5) of the Act.
261
262 2) For violations of the PWSO Act, the Board will impose penalties as set
263 forth in Section 23.1(f) of the PWSO Act.
264
265 3) For violations of the EPRR Act, the Board will impose penalties as set
266 forth in Section 80(j) of the EPRR Act.
267
268 b) When the Board imposes penalties ~~underpursuant to~~ subsection (a) following a
269 finding of violation of the Act or the PWSO Act, the Board will assess the AC
270 Recipient associated hearing costs, if any, ~~underpursuant to~~ Sections 108.502 and
271 108.504.
272

273 (Source: Amended at 41 Ill. Reg. _____, effective _____)
274

275 **Section 108.502 Claimed Costs of Agency or Delegated Unit**
276

277 Within 30 days after the close of the hearing or as otherwise directed by the hearing officer, the
278 Agency or Delegated Unit must submit to the Clerk ~~of the Board~~ and serve on all parties an
279 itemized listing of the costs associated with the hearing. The costs must not include attorney's
280 fees or witness fees for persons employed by the Agency or Delegated Unit.
281

282 (Source: Amended at 41 Ill. Reg. _____, effective _____)

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

PART 108
ADMINISTRATIVE CITATIONS

SUBPART A: GENERAL PROVISIONS

Section
108.100 Applicability
108.102 Severability
108.104 Definitions

SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST

Section
108.200 Administrative Citation under the Act
108.201 Administrative Citation under the PWSO Act
108.202 Administrative Citation under the EPRR Act
108.204 Filing Requirements for Petition to Contest
108.206 Petition Contents
108.208 AC Recipient's Voluntary Withdrawal

SUBPART C: HEARINGS

Section
108.300 Authorization of Hearing

SUBPART D: BOARD DECISIONS

Section
108.400 Burden of Proof
108.402 Dismissal
108.404 Default
108.406 Non-Contested Citations

SUBPART E: ASSESSMENT OF PENALTIES AND COSTS

Section
108.500 Penalties and Costs
108.502 Claimed Costs of Agency or Delegated Unit
108.504 Board Costs
108.506 Response to Claimed Costs and Reply

AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act [415 ILCS 5/26 and 27] and implementing Sections 21(o), 21(p), 22.51, 22.51a, 31.1, 42(b)(4), 42(b)(4-5), and 55(k) of the Act [415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1, 42(b)(4), 42(b)(4-5), and 55(k)] and Sections 1.1(b)(3) and 23.1 of the Public Water Supply Operations Act [415 ILCS 45/1.1(b)(3) and 23.1] and Sections 20 and 80

of the Electronic Products Recycling and Reuse Act [415 ILCS 150/20 and 80].

SOURCE: Adopted in R00-20 at 25 Ill. Reg. 397, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8833, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2397, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12921, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. 8003, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. _____, effective _____.

SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST

Section 108.200 Administrative Citation under the Act

a) An administrative citation (AC) under the Act may be issued by either ~~of the following:~~

1) ~~Illinois Environmental Protection Agency.~~ The Agency ~~may issue an AC~~ under ~~pursuant to~~ Section 31.1 of the Act, ~~;~~ or ~~;~~.

2) Delegated Unit of Local Government, under ~~;~~ ~~Pursuant to~~ Section 4(r) of the Act. ~~;~~ The ~~the~~ Agency may by agreement delegate its AC authority to a unit of local government, which may then issue an AC. All Delegated Units must submit to the Clerk ~~of the Board~~ a copy of the delegation agreement on or before July 1 of every year.

b) In accordance with Section 31.1 of the Act, the Agency or Delegated Unit may serve an AC upon any person believed, through direct observation, to have violated Section 21(o), 21(p), 22.51, 22.51a, or 55(k) of the Act.

1) The AC must be issued and served upon the AC Recipient not more than 60 days after the date of the observed violation and must contain the following information:

A) A statement specifying the provisions of Section 21(o), 21(p), 22.51, 22.51a, or 55(k) of the Act that the AC Recipient was observed to have violated;

B) A copy of the inspection report in which the Agency or Delegated Unit recorded the violation. The report must include the date and time of inspection and weather conditions prevailing during the inspection;

C) The penalty imposed by Section 42(b)(4) or (b)(4-5) of the Act for the violations;

D) An affidavit by the personnel observing the violation, attesting to their material actions and observations; and

E) Instructions for contesting the AC findings, including notification that the AC Recipient has 35 days within which to file a petition to contest the AC and, if an appeal is filed and the Board

finds a violation, the AC Recipient may have to pay hearing costs under-
~~pursuant to~~ Section 108.500. [415 ILCS 5/31.1(b)]

2) The Agency or Delegated Unit must serve the AC upon the AC Recipient as follows:

A) Personal service;

B) U.S. Mail with a recipient's signature recorded by the U.S. Postal Service upon delivery; or

C) Third-party commercial carrier with a recipient's signature recorded by the third-party commercial carrier upon delivery.

3) The Agency or Delegated Unit must file the AC with the Board no later than 10 days after the date of service upon the AC Recipient. [415 ILCS 5/31.1(c)]

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 108.201 Administrative Citation under the PWSO Act

a) An AC under the Public Water Supply Operations Act [415 ILCS 45] may be issued by the ~~Illinois Environmental Protection Agency. The Agency may issue an AC~~ under ~~pursuant to~~ Section 23.1(b) of the PWSO Act.

b) In accordance with Section 23.1 of the PWSO Act, if Agency personnel discover that a Responsible Operator in Charge has violated Section 1.1(b)(3) of the PWSO Act, the Agency may serve an AC upon that individual.

1) The AC must be issued and served upon the AC Recipient not more than 90 days after the date of the discovery of the violation and must contain the following information:

A) A statement specifying the report or result that the Responsible Operator in Charge failed to submit in accordance with Board rules and a citation to the Board rules that were violated;

B) A copy of any report in which the Agency recorded the violation;

C) The penalty imposed by Section 23.1(f) of the PWSO Act for the violation;

D) Instructions for contesting the AC findings pursuant to Section 23.1 of the PWSO Act, including notification that the individual has 35 days within which to file a petition for review before the Board to contest the AC and, if an appeal is filed and the Board finds a violation, a statement that the AC Recipient may have to pay hearing costs under ~~pursuant to~~ Section 108.500; and

E) An affidavit by the personnel recording the violation. [415 ILCS 45/23.1(b)]

2) The Agency must serve the AC upon the AC Recipient by personal service or certified mail.

3) The Agency must file the AC with the Board no later than 15 days after the date of service upon the AC Recipient. [415 ILCS 45/23.1(c)]

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 108.202 Administrative Citation under the EPRR Act

a) An AC under the Electronic Products Recycling and Reuse Act [415 ILCS 150] may be issued by either ~~of the following~~:

1) ~~Illinois Environmental Protection Agency.~~ The Agency ~~may issue an AC under pursuant to~~ Section 20(k) of the EPRR Act; or

2) A Delegated Unit, under ~~Pursuant to~~ Section 4(r) of the Act. ~~The, the~~ Agency may delegate its AC authority to a unit of local government, which may then issue an AC. Under Section 20(k) of the EPRR Act, a Delegated Unit must be a county. All Delegated Units must submit to the Clerk ~~of the Board~~ a copy of the delegation agreement on or before July 1 of every year.

b) In accordance with Section 20(k) of the EPRR Act, the Agency or Delegated Unit may serve an AC upon any person believed, based on direct observation, to have violated any provision of the EPRR Act or the entity employing that person.

1) The AC must be issued and served upon the AC Recipient not more than 60 days after the date of the observed violation and must contain the following information:

A) A statement specifying the provisions of the EPRR Act that the person or the entity employing the person has violated;

B) A copy of the inspection report in which the Agency or Delegated Unit recorded the violation; the report must include the date and time of inspection;

C) The penalty imposed by Section 80 of the EPRR Act for the violations;

D) An affidavit by the personnel observing the violation, attesting to their material actions and observations; and

E) Instructions for contesting the AC findings, including notification that the AC Recipient has 35 days within which to file a petition to contest the AC. [415 ILCS 150/20(k)]

2) The Agency or Delegated Unit must serve the AC upon the AC Recipient as follows:

A) Personal service;

B) U.S. Mail with a recipient's signature recorded by the U.S. Postal Service upon delivery; or

C) Third-party commercial carrier with a recipient's signature recorded by the third-party commercial carrier upon delivery.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART C: HEARINGS

Section 108.300 Authorization of Hearing

a) The hearing date will be set within 60 days after the filing of the petition to contest unless the hearing officer orders otherwise to prevent material prejudice.

b) The hearing officer will give the parties at least 21 days written notice of the hearing.

c) The hearing will be held and conducted in accordance with 35 Ill. Adm. Code 101.Subpart F.

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

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART D: BOARD DECISIONS

Section 108.402 Dismissal

The Board may issue an order dismissing the AC and closing the docket upon its own motion or a motion by the AC Recipient, Agency or Delegated Unit if the AC was not timely and properly served under ~~pursuant to~~ the relevant statute and Section 108.200, 108.201 or 108.202.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 108.406 Non-Contested Citations

The Board will consider the AC non-contested if the AC Recipient does not file a petition to contest, fails to timely file a petition to contest, or withdraws its petition to contest under ~~pursuant to~~ Section 108.208.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART E: ASSESSMENT OF PENALTIES AND COSTS

Section 108.500 Penalties and Costs

a) Unless the AC Recipient has shown that the violations resulted from uncontrollable circumstances, the Board will impose penalties as follows:

1) For violations of the Act, the Board will impose penalties as set forth in Sections 42(b)(4) and 42(b)(4-5) of the Act.

2) For violations of the PWSO Act, the Board will impose penalties as set forth in Section 23.1(f) of the PWSO Act.

3) For violations of the EPRR Act, the Board will impose penalties as set forth in Section 80(j) of the EPRR Act.

b) When the Board imposes penalties under ~~pursuant to~~ subsection (a) following a finding of violation of the Act or the PWSO Act, the Board will assess the AC Recipient associated hearing costs, if any, under ~~pursuant to~~ Sections 108.502 and 108.504.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 108.502 Claimed Costs of Agency or Delegated Unit

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

(Source: Amended at 41 Ill. Reg. _____, effective _____)

~~ILLINOIS REGISTER~~

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

JCAR350108-1701534r01

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Legend:	
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Deletions	40
Moved from	0
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Style change	0
Format changed	0
Total changes	51

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Tax Certifications
- 2) Code Citation: 35 Ill. Adm. Code 125
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
125.100	Amendment
125.204	Amendment
125.206	Amendment
125.208	Amendment
125.210	Amendment
125.212	Amendment
125.214	Amendment
125.216	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: Prompted by a recognition that some of its rules were no longer current due to changing technology and the passage of time, the Board began planning a broad review of all its rules, with a view of streamlining, updating and overhauling its regulation. Governor Rauner's Executive Order 2016-13 has provided additional impetus to the Board's initiative. The proposal makes technical changes to the rule as well as changes in response to recently passed legislation.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

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FEB 10 2017

STATE OF ILLINOIS
Pollution Control Board

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments should reference Docket R17-18 and be addressed to:

Clerk's Office
Illinois Pollution Control Board
JRTC
100 W. Randolph St., Suite 11-500
Chicago IL 60601

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R17-18 by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, small municipality, or not-for-profit corporation that practices before the Board.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2017

The full text of the Proposed Amendments begins on the next page:

JCAR350125-1701544r01

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE A: GENERAL PROVISIONS
3 CHAPTER I: POLLUTION CONTROL BOARD
4

5 PART 125
6 TAX CERTIFICATIONS
7

8 SUBPART A: GENERAL PROVISIONS
9

10 Section

- 11 125.100 Applicability
12 125.102 Severability
13 125.104 Definitions
14

15 SUBPART B: TAX CERTIFICATION OF POLLUTION CONTROL FACILITIES
16 AND LOW SULFUR DIOXIDE EMISSION COAL FUELED DEVICES
17

18 Section

- 19 125.200 General
20 125.202 Tax Certification Application
21 125.204 Agency Recommendation
22 125.206 Petition to Contest
23 125.208 Agency Record
24 125.210 Public Hearing
25 125.212 Hearing Notice
26 125.214 Burden of Proof
27 125.216 Board Action
28

29 AUTHORITY: Implementing and authorized by Sections 11-5, 11-10, 11-20, 11-25, 11-30, 11-
30 35, 11-40, 11-50, and 11-55 of the Property Tax Code [35 ILCS 200/11-5, 11-10, 11-20, 11-25,
31 11-30, 11-35, 11-40, 11-50, and 11-55] and Sections 26 and 27 of the Environmental Protection
32 Act (the Act) [415 ILCS 5/26 and 27].
33

34 SOURCE: Adopted in R00-20 at 25 Ill. Reg. 642, effective January 1, 2001; amended in R04-24
35 at 29 Ill. Reg. 8838, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2402, effective
36 January 27, 2015; amended in R16-17 at 40 Ill. Reg. 8007, effective May 20, 2016; ; amended in
37 R17-18 at 41 Ill. Reg. _____, effective _____.
38

39 SUBPART A: GENERAL PROVISIONS
40

41 **Section 125.100 Applicability**
42

- 43 a) This Part applies to any person seeking, for property tax purposes, a Board

44 certification that a facility or portion thereof is a pollution control facility, as
45 defined in Section 125.200(a)(1) ~~of this Part~~, or that a device is a low sulfur
46 dioxide emission coal fueled device, as defined in Section 125.200(b)(1) ~~of this~~
47 ~~Part~~.

- 48
- 49 b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains
50 procedures generally applicable to all adjudicatory proceedings before the Board.
51 In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and
52 those of this Part, the provisions of this Part apply.

53
54 (Source: Amended at 41 Ill. Reg. _____, effective _____)

55
56 **SUBPART B: TAX CERTIFICATION OF POLLUTION CONTROL FACILITIES**
57 **AND LOW SULFUR DIOXIDE EMISSION COAL FUELED DEVICES**

58
59 **Section 125.204 Agency Recommendation**

- 60
- 61 a) If the Agency receives a tax certification application under Section 125.202 of
62 this Subpart, the Agency must file a recommendation on the application with the
63 Clerk, unless the applicant withdraws the application. The Agency's filing must:
64
- 65 1) Identify the name and address of the applicant;
 - 66
 - 67 2) Identify the location of the facility or portion thereof or the device to
68 which the recommendation applies;
 - 69
 - 70 3) Identify the facility or portion thereof or the device to which the
71 recommendation applies;
 - 72
 - 73 4) Recommend that the Board issue or deny tax certification; and
 - 74
 - 75 5) Set forth the Agency's reasoning for the recommendation.
- 76
- 77 b) If the Agency recommends that the Board deny tax certification, the Agency's
78 filing must state that the applicant has 35 days after ~~the date of service of the~~
79 recommendation thereof to file a petition with the Board to contest the Agency
80 recommendation. If the Agency recommends that the Board deny tax certification
81 due to informational deficiencies in the application, the Agency's filing must
82 identify the types of information needed to correct the deficiencies.
- 83
- 84 c) The Agency must serve the applicant with a copy of the filing under this Section.

85
86 (Source: Amended at 41 Ill. Reg. _____, effective _____)

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Section 125.206 Petition to Contest

- a) If the applicant wishes to contest an Agency recommendation that the Board deny tax certification, the applicant must file a petition to contest with the Clerk within 35 days after the Agency serves the applicant under Section 125.204(c) ~~of this Subpart.~~ The petition must:
 - 1) Specify the grounds for contesting the Agency's recommendation; and
 - 2) Specify the date on which the Agency served the applicant under Section 125.204(c) ~~of this Subpart.~~
- b) The applicant must serve the Agency with a copy of any petition to contest under subsection (a) ~~of this Section.~~

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 125.208 Agency Record

The Agency must file with the Board the entire record on which it based its recommendation within 30 days after the applicant files a petition to contest under Section 125.206 or as the Board or hearing officer orders. If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. ~~Under~~ Pursuant to 35 Ill. Adm. Code 101.302(h)(2), the Agency must file the record through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. The record must comply with 35 Ill. Adm. Code 105.116(b).

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 125.210 Public Hearing

- a) The Board will hold a public hearing in a tax certification proceeding if:
 - 1) The applicant files a petition to contest in accordance with Section 125.206, unless the Board disposes of the petition on a motion for summary judgment brought ~~under~~ pursuant to 35 Ill. Adm. Code 101.516;
 - 2) The applicant or holder timely requests a hearing after the Board provides notice ~~under~~ pursuant to Section 125.216(c); or
 - 3) The Board, in its discretion, determines that a hearing would be advisable.

- 130
 131 b) If a hearing is to be held, the hearing officer will set a time and place for the
 132 hearing. The hearing officer will attempt to consult with the applicant and the
 133 Agency before scheduling a hearing. Hearings will be conducted underpursuant
 134 to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by
 135 videoconference (see 35 Ill. Adm. Code 101.600(b)).
 136

137 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 138

139 **Section 125.212 Hearing Notice**
 140

141 After receiving notification from the hearing officer of the scheduled hearing date made
 142 underpursuant to Section 125.210 of this Subpart, the Clerk will, in accordance with 35 Ill. Adm.
 143 Code 101, cause publication of a notice of hearing in a newspaper of general circulation in the
 144 county where the facility or portion thereof or the device for which the applicant seeks tax
 145 certification is located.
 146

147 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 148

149 **Section 125.214 Burden of Proof**
 150

151 If the applicant files a petition to contest under Section 125.206 of this Subpart or the Board
 152 otherwise directs that a hearing be held underpursuant to Section 125.210 of this Subpart, the
 153 applicant has the burden to prove that the facility or portion thereof for which it seeks tax
 154 certification is a pollution control facility, as defined in Section 125.200(a)(1) of this Subpart, or
 155 that the device for which it seeks tax certification is a low sulfur dioxide emission coal fueled
 156 device, as defined in Section 125.200(b)(1) of this Subpart.
 157

158 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 159

160 **Section 125.216 Board Action**
 161

- 162 a) Pollution Control Facilities. *If it is found that the claimed facility or relevant*
 163 *portion thereof is a pollution control facility as defined in Section 125.200(a)(1)*
 164 *of this Part, the Board shall enter a finding and issue a certificate to that effect.*
 165 *The certificate shall require tax treatment as a pollution control facility, but only*
 166 *for the portion certified if only a portion is certified. The effective date of a*
 167 *certificate shall be the date of the application for the certificate or the date of the*
 168 *construction of the facility, whichever is later. [35 ILCS 200/11-25]*
 169
 170 b) Low Sulfur Dioxide Emission Coal Fueled Devices. *If it is found that the claimed*
 171 *device meets the definition of low sulfur dioxide emission coal fueled device as*
 172 *set forth in Section 125.200(b)(1) of this Part, the Board shall enter a finding and*

173 *issue a certificate that requires tax treatment as a low sulfur dioxide emission*
174 *coal fueled device. The effective date of a certificate shall be on January 1*
175 *preceding the date of certification or preceding the date construction or*
176 *installation of the device commences, whichever is later. [35 ILCS 200/11-55]*
177

178 c) *Before denying any certificate, the Board shall give reasonable notice in writing*
179 *to the applicant and provide the applicant a reasonable opportunity for a fair*
180 *hearing ~~under~~ pursuant to Section 125.210 of this Subpart. [35 ILCS 200/11-30]*
181 *On like notice to the holder and opportunity for hearing, the Board may on its*
182 *own initiative revoke or modify a pollution control certificate or a low sulfur*
183 *dioxide emission coal fueled device certificate whenever any of the following*
184 *appears:*

- 185
- 186 1) *The certificate was obtained by fraud or misrepresentation;*
 - 187
 - 188 2) *The holder of the certificate has failed substantially to proceed with the*
189 *construction, reconstruction, installation, or acquisition of pollution*
190 *control facilities or a low sulfur dioxide emission coal fueled device; or*
191
 - 192 3) *The pollution control facility to which the certificate relates has ceased to*
193 *be used for the primary purpose of pollution control and is being used for*
194 *a different purpose. [35 ILCS 200/11-30]*

195

196 d) *The Clerk will provide the applicant and the Agency with a copy of the Board's*
197 *order setting forth the Board's findings and certificate, if any [35 ILCS 200/11-*
198 *30].*

199

200 e) *Any applicant or holder aggrieved by the issuance, refusal to issue, denial,*
201 *revocation, modification or restriction of a pollution control certificate or a low*
202 *sulfur dioxide emission coal fueled device certificate may appeal the finding and*
203 *order of the Pollution Control Board, under the Administrative Review Law, to*
204 *the circuit court [35 ILCS 200/11-60].*

205
206 (Source: Amended at 41 Ill. Reg. _____, effective _____)

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

PART 125
TAX CERTIFICATIONS

SUBPART A: GENERAL PROVISIONS

Section
125.100 Applicability
125.102 Severability
125.104 Definitions

SUBPART B: TAX CERTIFICATION OF POLLUTION CONTROL FACILITIES
AND LOW SULFUR DIOXIDE EMISSION COAL FUELED DEVICES

Section
125.200 General
125.202 Tax Certification Application
125.204 Agency Recommendation
125.206 Petition to Contest
125.208 Agency Record
125.210 Public Hearing
125.212 Hearing Notice
125.214 Burden of Proof
125.216 Board Action

AUTHORITY: Implementing and authorized by Sections 11-5, 11-10, 11-20, 11-25, 11-30, 11-35, 11-40, 11-50, and 11-55 of the Property Tax Code [35 ILCS 200/11-5, 11-10, 11-20, 11-25, 11-30, 11-35, 11-40, 11-50, and 11-55] and Sections 26 and 27 of the Environmental Protection Act (the Act) [415 ILCS 5/26 and 27].

SOURCE: Adopted in R00-20 at 25 Ill. Reg. 642, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8838, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2402, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. 8007, effective May 20, 2016; ~~;~~ amended in R17-18 at 41 Ill. Reg. ~~_____~~, effective ~~_____~~.

SUBPART A: GENERAL PROVISIONS

Section 125.100 Applicability

a) This Part applies to any person seeking, for property tax purposes, a Board certification that a facility or portion thereof is a pollution control facility, as defined in Section 125.200(a)(1) ~~of this Part~~, or that a device is a low sulfur dioxide emission coal fueled device, as defined in Section 125.200(b)(1) ~~of this Part~~.

b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all adjudicatory

proceedings before the Board. 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 41 Ill. Reg. _____, effective _____)

SUBPART B: TAX CERTIFICATION OF POLLUTION CONTROL FACILITIES
AND LOW SULFUR DIOXIDE EMISSION COAL FUELED DEVICES

Section 125.204 Agency Recommendation

a) If the Agency receives a tax certification application under Section 125.202 of this Subpart, the Agency must file a recommendation on the application with the Clerk, unless the applicant withdraws the application. The Agency's filing must:

- 1) Identify the name and address of the applicant;
- 2) Identify the location of the facility or portion thereof or the device to which the recommendation applies;
- 3) Identify the facility or portion thereof or the device to which the recommendation applies;
- 4) Recommend that the Board issue or deny tax certification; and
- 5) Set forth the Agency's reasoning for the recommendation.

b) If the Agency recommends that the Board deny tax certification, the Agency's filing must state that the applicant has 35 days after ~~the date of~~ service of the recommendation ~~thereof~~ to file a petition with the Board to contest the Agency recommendation. If the Agency recommends that the Board deny tax certification due to informational deficiencies in the application, the Agency's filing must identify the types of information needed to correct the deficiencies.

c) The Agency must serve the applicant with a copy of the filing under this Section.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 125.206 Petition to Contest

a) If the applicant wishes to contest an Agency recommendation that the Board deny tax certification, the applicant must file a petition to contest with the Clerk within 35 days after the Agency serves the applicant under Section 125.204(c) ~~of this Subpart~~. The petition must:

- 1) Specify the grounds for contesting the Agency's recommendation; and

2) Specify the date on which the Agency served the applicant under Section 125.204(c) ~~of this Subpart~~.

b) The applicant must serve the Agency with a copy of any petition to contest under subsection (a) ~~of this Section~~.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 125.208 Agency Record

The Agency must file with the Board the entire record on which it based its recommendation within 30 days after the applicant files a petition to contest under Section 125.206 or as the Board or hearing officer orders. If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. Under ~~pursuant to~~ 35 Ill. Adm. Code 101.302(h)(2), the Agency must file the record through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. The record must comply with 35 Ill. Adm. Code ~~105.116(b)~~. 105.116.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 125.210 Public Hearing

a) The Board will hold a public hearing in a tax certification proceeding if:

1) The applicant files a petition to contest in accordance with Section 125.206, unless the Board disposes of the petition on a motion for summary judgment brought under ~~pursuant to~~ 35 Ill. Adm. Code 101.516;

2) The applicant or holder timely requests a hearing after the Board provides notice under ~~pursuant to~~ Section 125.216(c); or

3) The Board, in its discretion, determines that a hearing would be advisable.

b) If a hearing is to be held, the hearing officer will set a time and place for the hearing. The hearing officer will attempt to consult with the applicant and the Agency before scheduling a hearing. Hearings will be conducted under ~~pursuant to~~ 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 125.212 Hearing Notice

After receiving notification from the hearing officer of the scheduled hearing date made under ~~pursuant to Section 125.210 of this Subpart, 125.210~~, the Clerk will, in accordance with 35 Ill. Adm. Code 101, cause publication of a notice of hearing in a newspaper of general circulation in the county where the facility or portion thereof or the device for which the applicant seeks tax certification is located.

(Source: Amended at 41 Ill. Reg. ~~—~~, effective _____)

Section 125.214 Burden of Proof

If the applicant files a petition to contest under Section 125.206 ~~of this Subpart~~ or the Board otherwise directs that a hearing be held under ~~pursuant to Section 125.210 of this Subpart, 125.210~~, the applicant has the burden to prove that the facility or portion thereof for which it seeks tax certification is a pollution control facility, as defined in Section 125.200(a)(1) ~~of this Subpart~~, or that the device for which it seeks tax certification is a low sulfur dioxide emission coal fueled device, as defined in Section 125.200(b)(1) ~~of this Subpart~~.

(Source: Amended at 41 Ill. Reg. ~~—~~, effective _____)

Section 125.216 Board Action

a) Pollution Control Facilities. If it is found that the claimed facility or relevant portion thereof is a pollution control facility as defined in Section 125.200(a)(1) ~~of this Part~~, the Board shall enter a finding and issue a certificate to that effect. The certificate shall require tax treatment as a pollution control facility, but only for the portion certified if only a portion is certified. The effective date of a certificate shall be the date of the application for the certificate or the date of the construction of the facility, whichever is later. [35 ILCS 200/11-25]

b) Low Sulfur Dioxide Emission Coal Fueled Devices. If it is found that the claimed device meets the definition of low sulfur dioxide emission coal fueled device as set forth in Section 125.200(b)(1) ~~of this Part~~, the Board shall enter a finding and issue a certificate that requires tax treatment as a low sulfur dioxide emission coal fueled device. The effective date of a certificate shall be on January 1 preceding the date of certification or preceding the date construction or installation of the device commences, whichever is later. [35 ILCS 200/11-55]

c) Before denying any certificate, the Board shall give reasonable notice in writing to the applicant and provide the applicant a reasonable opportunity for a fair hearing under ~~pursuant to Section 125.210 of this Subpart, 125.210~~. [35 ILCS 200/11-30] On like notice to the holder and opportunity for hearing, the Board may on its own initiative revoke or modify a pollution control certificate or a low

sulfur dioxide emission coal fueled device certificate whenever any of the following appears:

- 1) The certificate was obtained by fraud or misrepresentation;
- 2) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of pollution control facilities or a low sulfur dioxide emission coal fueled device; or
- 3) The pollution control facility to which the certificate relates has ceased to be used for the primary purpose of pollution control and is being used for a different purpose. [35 ILCS 200/11-30]
- d) The Clerk will provide the applicant and the Agency with a copy of the Board's order setting forth the Board's findings and certificate, if any [35 ILCS 200/11-30].
- e) Any applicant or holder aggrieved by the issuance, refusal to issue, denial, revocation, modification or restriction of a pollution control certificate or a low sulfur dioxide emission coal fueled device certificate may appeal the finding and order of the Pollution Control Board, under the Administrative Review Law, to the circuit court [35 ILCS 200/11-60].

(Source: Amended at 41 Ill. Reg. , effective)

~~ILLINOIS REGISTER~~

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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Insertions	15
Deletions	35
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	50

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Identification and Protection of Trade Secrets and Other Non-Disclosable Information
- 2) Code Citation: 35 Ill. Adm. Code 130
- 3)

<u>Section Numbers</u> :	<u>Proposed Actions</u> :
130.100	Amendment
130.102	Amendment
130.104	Amendment
130.110	Amendment
130.112	Amendment
130.200	Amendment
130.201	Amendment
130.202	Amendment
130.204	Amendment
130.206	Amendment
130.210	Amendment
130.212	Amendment
130.214	Amendment
130.216	Amendment
130.218	Amendment
130.220	Amendment
130.300	Amendment
130.302	Amendment
130.304	Amendment
130.306	Amendment
130.308	Amendment
130.310	Amendment
130.312	Amendment
130.314	Amendment
130.404	Amendment
130.406	Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27]
- 5) A Complete Description of the Subjects and Issues Involved: Prompted by recognition that some of its rules were no longer current due to changing technology and the passage of time, the Board began planning a broad review of all its rules, with a view of streamlining, updating and overhauling its regulation. Governor Rauner's Executive

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

Order 2016-13 has provided additional impetus to the Board's initiative. The proposal makes technical changes to the rule as well as changes in response to recently passed legislation.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments should reference Docket R17-18 and be addressed to:

Clerk's Office
Illinois Pollution Control Board
JRTC
100 W. Randolph St., Suite 11-500
Chicago IL 60601

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R17-18 by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

affected: Any small business, small municipality, or not-for-profit corporation that practices before the Board

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: January 2017

The full text of the Proposed Amendments begins on the next page:

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

PART 130
IDENTIFICATION AND PROTECTION OF TRADE SECRETS AND OTHER
NON-DISCLOSABLE INFORMATION

SUBPART A: GENERAL PROVISIONS

Section
130.100 Purpose and Applicability
130.102 Additional Procedures
130.104 Definitions and Severability
130.106 Segregation of Articles
130.108 Disposal of Articles
130.110 Articles Containing Emission Data
130.112 Filings with the Board

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SUBPART B: PROCEDURES FOR IDENTIFYING ARTICLES
THAT REPRESENT TRADE SECRETS

Section
130.200 Initiation of a Claim that an Article Represents a Trade
Secret
130.201 State Agency Request for Justification of Claims
130.202 Time Limit for Delayed Submission of Justification
130.203 Contents of Statement of Justification
130.204 Waiver of Statutory Deadlines
130.206 Deadline for State Agency Trade Secret Determination
130.208 Standards for State Agency Determination
130.210 State Agency Actions Following a Negative Determination
130.212 State Agency Actions Following a Positive Determination
130.214 Review of State Agency Trade Secret Determination
130.216 Effect of a Determination of Trade Secret Status on Other
State Agencies
130.218 Status of Article Determined or Claimed to Represent a Trade
Secret Before January 1, 2001
130.220 Extension of Deadlines to Participate in Proceedings

SUBPART C: PROCEDURES FOR PROTECTING ARTICLES
THAT REPRESENT TRADE SECRETS

Section
130.300 Applicability
130.302 Owner's Responsibility to Mark Article
130.304 State Agency's Responsibility to Mark Article
130.306 Transmission of Article Between State Agencies
130.308 Public Access to Information Related to Article
130.310 Access to Claimed or Determined Article
130.312 Unauthorized Disclosure or Use of Article
130.314 Limitation on Copying Article

SUBPART D: NON-DISCLOSABLE INFORMATION
OTHER THAN TRADE SECRETS

Section

- 130.400 General
- 130.402 Who May View Non-Disclosable Information
- 130.404 Application for Non-Disclosure
- 130.406 Public Inspection
- 130.408 Board Order

130.APPENDIX A Comparison of Former and Current Rules (Repealed)

AUTHORITY: Implementing Sections 7 and 7.1 of the Environmental Protection Act (Act) [415 ILCS 5/7 and 7.1] and authorized by Sections 7, 7.1, 26, and 27 of the Act [415 ILCS 5/7, 7.1, 26, 27].

SOURCE: Subparts A, B, and C originally adopted in R81-30 at 7 Ill. Reg. 16149, effective November 23, 1983. Subpart D originally adopted in R88-5(A) at 13 Ill. Reg. 12055, effective July 10, 1989; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 516, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8842, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2408, effective January 27, 2015; amended in R17-18 at 41 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 130.100 Purpose and Applicability

a) Section 7(a) of the Act provides that all files, records, and data of the ~~Illinois Environmental Protection~~ Agency, the Board, and DNR shall be open for reasonable public inspection except for information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; and information concerning secret manufacturing processes or confidential data submitted by any person under the Act. [415 ILCS 5/7(a)]

b) This Part establishes procedures to identify and protect trade secrets and other non-disclosable information.

1) Subpart A of this Part sets forth general provisions that apply with respect to both trade secrets and other non-disclosable information. References in this Subpart to non-disclosable information other than trade secrets apply only to proceedings before the Board.

2) Subparts B and C of this Part address only trade secrets. Those Subparts apply to articles submitted ~~to~~ or otherwise obtained by the Board, the ~~Illinois Environmental Protection~~ Agency, or DNR.

3) Subpart D of this Part addresses only non-disclosable information other than trade secrets. That Subpart applies only to filings of articles with the Board.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 130.102 Additional Procedures

The ~~Illinois Environmental Protection~~ Agency and DNR each may adopt additional procedures that are not inconsistent with this Part to protect articles that are claimed or determined to represent a trade secret.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 130.104 Definitions and Severability

a) Definitions. For the purpose of this Part, "State agency" refers to the Board, the ~~Illinois Environmental Protection~~ Agency, or DNR. Other words and terms have the meanings set forth in 35 Ill. Adm. Code 101.Subpart B, unless otherwise provided or unless the context clearly indicates otherwise.

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

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 130.110 Articles Containing Emission Data

a) All emission data reported to or otherwise obtained by the ~~Illinois Environmental Protection~~ Agency, the Board, or DNR in connection with any examination, inspection or proceeding under the Act shall be available to the public to the extent required by the federal Clean Air Act as amended [415 ILCS 5/7(c)].

b) For purposes of this Section, "emission data" means:

1) The identity, amount, frequency, concentration, or other characteristics (related to air quality) of any contaminant that:

A) Has been emitted from an emission unit;

B) Results from any emission by the emission unit;

C) Under an applicable standard or limitation, the emission unit was authorized to emit; or

D) Is a combination of any of the items described in subsection (b) (1) (A), (B), or (C) ~~of this Section.~~

2) The name, address (or description of the location), and the nature of the emission unit necessary to identify the emission unit, including a description of the device, equipment, or operation constituting the emission unit.

c) In addition to subsection (b) ~~of this Section~~, information necessary to determine or calculate emission data, including rate of operation, rate of production, rate of raw material usage, or material balance, will be deemed to represent emission data for the purposes of this Section if the information is contained in a permit to ensure that the permit is practically enforceable.

(Source: Amended at 41 Ill. Reg. , effective)

Section 130.112 Filings with the Board

A document containing information claimed or determined to be a trade secret or other non-disclosable information under ~~pursuant to~~ this Part is prohibited from being filed electronically with the Board and must instead be filed with the Board only in paper under ~~pursuant to~~ 35 Ill. Adm. Code 101.302(h) (3). (See 35 Ill. Adm. Code 101.1010(b).)

(Source: Amended at 41 Ill. Reg. , effective)

SUBPART B: PROCEDURES FOR IDENTIFYING ARTICLES THAT REPRESENT TRADE SECRETS

Section 130.200 Initiation of a Claim that an Article Represents a Trade Secret

a) In order to claim an article is a trade secret, the ~~The~~ owner of the ~~an article may claim that the article represents a trade secret only by submitting~~ article must submit to the State agency the claim letter required by subsection (b) (1) ~~of this Section~~ at the time the ~~owner submits the~~ article is submitted to the State agency. If the owner of the article submits the article to the State agency without simultaneously submitting the claim letter required by subsection (b) (1) ~~of this Section~~, the article will be considered a matter of general public knowledge and cannot be protected as a trade secret.

b) The owner of an article seeking trade secret protection must submit the following information to the State agency at the time the owner submits the article to the State agency:

1) A claim letter that ~~clearly~~ states the name of the article, briefly describes the article, and states that the article is claimed to represent a trade secret, as defined in 35 Ill. Adm. Code 101.Subpart B and the Act; and

2) A copy of the article marked as provided in Section ~~130.302 of this Part.~~ 130.302.

c) The owner of an article seeking trade secret protection must submit to the State agency a statement of justification for the claim meeting the requirements of Section ~~130.203 of this Subpart.~~ 130.203. The owner of the article may submit the statement of justification at the time the owner submits the article, or at a later time, but in no event later than the time limit established under ~~pursuant to Section 130.202 of this Subpart.~~ 130.202.

d) If the State agency is provided with a claim letter required by subsection (b)(1) ~~of this Section,~~ the State agency must consider the article a trade secret and must protect it from disclosure under ~~pursuant to Subpart C of this Part~~ until the State agency makes a final determination and the appeal time has expired.

e) The owner of an article seeking trade secret protection is not required to serve any other persons with the article or the page or portion thereof for which the owner seeks trade secret protection.

(Source: Amended at 41 Ill. Reg. ~~—~~, effective)

Section 130.201 State Agency Request for Justification of Claims

a) The State agency may request that the owner of an article claimed to represent a trade secret submit a statement of justification meeting the requirements of Section ~~130.203 of this Subpart.~~ 130.203. The State agency may make the request when the article is submitted or obtained, or at any later time.

b) The request under subsection (a) ~~of this Section~~ must be in writing. The State agency must set forth in the request the reasoning for the request. Reasons for the request may include the following:

1) The State agency has received or reasonably expects to receive a request from the public to disclose the article;

2) The article is required to be available to the public in a proceeding before the State agency;

3) Information within the article is required to be contained in a permit issued by the State agency;

4) To facilitate public participation in a proceeding before the State agency;

5) A regulation requires that the State agency determine whether the article represents a trade secret at the time that the article is submitted to or obtained by the State agency; or

6) Determining the validity of the claim will facilitate the timely performance of State agency responsibilities.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 130.202 Time Limit for Delayed Submission of Justification

a) Within 10 working days after the date on which the owner of an article claimed to represent a trade secret receives a State agency request for justification under Section ~~130.201 of this Subpart~~, 130.201, the owner must submit to the State agency a statement of justification meeting the requirements of Section ~~130.203 of this Subpart~~. 130.203.

b) The State agency may extend the time period under subsection (a) ~~of this Section~~ for a second period of 10 working days if, within the first 10 day period, the owner of the article requests an extension and demonstrates that the extension is necessary to complete the statement of justification.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 130.204 Waiver of Statutory Deadlines

a) When the owner of an article seeking trade secret protection submits a statement of justification under this Subpart to the State agency, the owner must simultaneously submit to the State agency a waiver of any statutory deadline for the State agency to decide the underlying proceeding or matter, such as a permit application.

b) The waiver under subsection (a) ~~of this Section~~ must extend the statutory deadline for a period equal to the period by which the decision on the underlying proceeding or matter is delayed due to any subsequent trade secret justification and determination process plus 45 days.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 130.206 Deadline for State Agency Trade Secret Determination

a) The State agency must determine whether the article represents a trade secret within 45 days after the date it receives a complete statement of justification as prescribed in Section ~~130.203 of this Subpart~~. 130.203.

b) The owner of an article seeking trade secret protection may extend the time period for the State agency to determine whether the article represents a trade secret by submitting to the State agency a waiver of the deadline for the State agency to determine whether the article represents a trade secret.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 130.210 State Agency Actions Following a Negative Determination

a) If the State agency determines that an article, or any page or portion thereof, does not meet the standards specified in Section 130.208(a)(1) or (2) ~~of this Subpart~~, the State agency must deny the claim for trade secret protection for the article or page or portion thereof, and must give written notice of the determination to the owner of the article and any requester under ~~pursuant to~~ subsection (b) ~~of this Section~~.

b) Written notice that the State agency denied a claim for trade secret protection must be given by certified mail, return receipt requested, and must contain the following information:

1) A statement of the State agency's reasoning for denying the claim;

2) A notification that the State agency determination may be reviewed under ~~pursuant to~~ Section 130.214 ~~of this Subpart~~; and

3) A notification that the State agency will cease protecting the article, or the page or portion thereof, as a trade secret unless the State agency is served with notice of the filing of a petition for review of the State agency's determination within 35 days after service of the notice of denial on the owner and any requester.

c) If the State agency is served with notice of the filing of a petition for review of its determination within 35 days after service of the notice of denial on the owner and any requester, the State agency must notify the requester of the action and must continue to protect the article, or the page or portion thereof, under ~~pursuant to~~ Subpart C ~~of this Part~~ until the State agency receives official notification of a final order by a reviewing body with proper jurisdiction that does not reverse the State agency determination and that is not subject to further appeal.

d) If the State agency does not receive the notification of a petition for review within 35 days after service of the notice of denial on the owner and any requester or does receive official notification of a final, non-appealable action that does not reverse the State agency determination, the article will not be protected under ~~pursuant to~~ Subpart C ~~of this Part~~ and the State agency must so notify the owner and any requester by certified mail, return receipt requested.

(Source: Amended at 41 Ill. Reg. ~~—~~, effective ~~—~~)

Section 130.212 State Agency Actions Following a Positive Determination

a) If the State agency determines that an article, or any page or portion thereof, meets the standards specified in subsection 130.208(a)(1) and (2) ~~of this Subpart~~, the State agency must grant the

claim for trade secret protection for the article or page or portion thereof, and must give written notice of the determination to the owner of the article and any requester under ~~pursuant to~~ subsection (b) ~~of this Section~~.

b) Written notice of the granting of a claim for trade secret protection must be given by certified mail, return receipt requested, and must contain the following information:

1) A statement of the State agency's reasoning for granting the claim;

2) A notification that the State agency determination may be reviewed under ~~pursuant to~~ Section 130.214 ~~of this Subpart~~; and

3) A notification that the article, or the page or portion thereof, will be protected under ~~pursuant to~~ Subpart C ~~of this Part~~ until the State agency receives official notification of a final order by a reviewing body that reverses the State agency determination and that is not subject to further appeal.

c) The State agency must continue to protect an article, or the page or portion thereof, for which trade secret protection has been granted under ~~pursuant to~~ Subpart C ~~of this Part~~ until the State agency receives official notification of a final order by a reviewing body with proper jurisdiction that reverses the State agency determination and that is not subject to further appeal.

(Source: Amended at 41 Ill. Reg. ~~—~~, effective ~~_____~~)

Section 130.214 Review of State Agency Trade Secret Determination

a) An owner or requester who is adversely affected by a final determination of the ~~Illinois Environmental Protection~~ Agency or DNR under ~~pursuant to~~ this Subpart may petition the Board to review the final determination within 35 days after service of the determination. Appeals to the Board will be under ~~pursuant to~~ 35 Ill. Adm. Code 105.Subparts A and B.

b) An owner or requester who is adversely affected by a final determination of the Board under ~~pursuant to~~ this Subpart may obtain judicial review from the appellate court by filing a petition for review under ~~pursuant to~~ Section 41 of the Act [415 ILCS 5/41].

c) If the State agency fails to make a final determination within the time limits prescribed by this Subpart, the State agency must continue to protect the article as set forth in Subpart C ~~of this Part~~ until the State agency issues a final determination under ~~pursuant to~~ this Subpart.

(Source: Amended at 41 Ill. Reg. ~~—~~, effective ~~_____~~)

Section 130.216 Effect of a Determination of Trade Secret Status on Other State Agencies

a) Except as provided in subsection (b) ~~of this Section~~, a claim or determination by one State agency that an article represents a trade secret made under ~~pursuant to~~ this Subpart will apply to that same article when in the possession of either of the other two ~~State~~ agencies.

b) When an article described in subsection (a) of this Section is the subject of a review before the Board under ~~pursuant to~~ Section 130.214(a) ~~of this Subpart~~, the article will be treated as a trade secret only unless or until the Board determines that the article does not ~~represent~~ represent a trade secret.

(Source: Amended at 41 Ill. Reg. ~~—~~, effective)

Section 130.218 Status of Article Determined or Claimed to Represent a Trade Secret Before January 1, 2001

a) Any article that was determined by a State agency before January 1, 2001 to represent a trade secret in accordance with State agency procedures adopted under ~~pursuant to~~ the IAPA will be deemed to have been determined to represent a trade secret for the purposes of this Part. The State agency must protect the article in accordance with Subpart C ~~of this Part~~.

b) If a State agency possesses an article that was claimed before January 1, 2001 to represent a trade secret and the State agency did not determine before January 1, 2001 whether the article represents a trade secret in accordance with procedures adopted under ~~pursuant to~~ the IAPA, the article is deemed to have been claimed to represent a trade secret for the purposes of this Part. These claims are deemed pending with unlimited waivers of any deadlines for decision.

(Source: Amended at 41 Ill. Reg. ~~—~~, effective)

Section 130.220 Extension of Deadlines to Participate in Proceedings

a) Upon the State agency's finding that a person has satisfied the requirements of subsection (b) ~~of this Section~~, the State agency must extend any deadline for the person to participate in the proceeding before the State agency until 10 days after the State agency determines the trade secret status of the article.

b) The person seeking an extension to participate in a proceeding before the State agency has the burden to demonstrate that the person will be adversely affected in the proceeding due to the timing of the State agency's trade secret determination, that the person could not

have avoided the resulting delay by making an earlier request, and that the article is relevant to the proceeding.

(Source: Amended at 41 Ill. Reg. , effective)

SUBPART C: PROCEDURES FOR PROTECTING ARTICLES
THAT REPRESENT TRADE SECRETS

Section 130.300 Applicability

Any article that is claimed or determined to represent a trade secret under ~~pursuant to~~ Subpart B ~~of this Part~~ must be protected from unauthorized disclosure under ~~pursuant to~~ this Subpart.

(Source: Amended at 41 Ill. Reg. , effective)

Section 130.302 Owner's Responsibility to Mark Article

a) When an entire article is claimed to represent a trade secret, the owner must mark the article with the words "Trade Secret" in red ink on the face or front of the article.

b) When less than an entire article is claimed to represent a trade secret, the owner must:

1) Mark the article with the words "Trade Secret" in red ink on the face or front of the article;

2) Indicate on the face or front of the article which page or portion of the article is claimed to represent a trade secret;

3) Mark every page or portion of the article that is claimed to represent a trade secret with the words "Trade Secret"; and

4) Furnish the State agency with a second copy of the article ~~that is marked pursuant to subsections (b)(1) and (2) of this Section and~~ from which the page or portion of the article that is claimed to represent a trade secret is deleted.

(Source: Amended at 41 Ill. Reg. , effective)

Section 130.304 State Agency's Responsibility to Mark Article

a) When an entire article is determined to represent a trade secret under ~~pursuant to~~ Section ~~130.208 of this Part, 130.208~~, the State agency must mark the article with the word "DETERMINED" in red ink on the face or front of the article and must also mark any claim letter submitted for the article.

b) When less than an entire article is determined to represent a trade secret under ~~pursuant to~~ Section ~~130.208 of this Part,~~ 130.208, the State agency must:

- 1) Mark the article with the word "DETERMINED" in red ink on the face or front of the article;
- 2) Indicate on the face or front of the article and any claim letter submitted for the article which page or portion of the article is determined to represent a trade secret; and
- 3) Mark every page or portion of the article that is determined to represent a trade secret with the word "DETERMINED".

(Source: Amended at 41 Ill. Reg. , effective)

Section 130.306 Transmission of Article Between State Agencies

Before transmitting any article that is claimed or determined to represent a trade secret to another State agency, the State agency must ensure that the article is marked under ~~pursuant to~~ Sections 130.302 and 130.304 ~~of this Subpart~~ and is clearly distinguished and segregated from other transmitted materials.

(Source: Amended at 41 Ill. Reg. , effective)

Section 130.308 Public Access to Information Related to Article

- a) A copy of the claim letter submitted under ~~pursuant to~~ Section 130.200(b)(1) ~~of this Part~~ will be open to public inspection.
- b) When an article was determined to represent a trade secret before January 1, ~~2001,~~ 2001 and no claim letter exists, the State agency must prepare a statement that will be open to public inspection, and that names and briefly describes the article.
- c) When a page or portion of an article is claimed or determined to represent a trade secret, a copy of the article must be open to public inspection, with the part or portion of the article that is claimed or determined to represent a trade secret or that would lead to disclosure of the trade secret deleted.

(Source: Amended at 41 Ill. Reg. , effective)

Section 130.310 Access to Claimed or Determined Article

- a) The State agency must designate the State agency employees or officers who are authorized to review articles that are claimed to represent trade secrets for the purpose of making a determination under ~~pursuant to~~ Section ~~130.208 of this Part,~~ 130.208.

b) Access to an article that is claimed or determined to represent a trade secret must be limited to:

1) Employees or officers designated under ~~pursuant to~~ subsection (a) ~~of this Section~~;

2) Other employees, officers, or authorized representatives of the State specifically authorized by the State agency to have access to the article for the purpose of carrying out the Act or regulations promulgated thereunder or when relevant to a proceeding or matter under the Act; or

3) Employees, officers, or authorized representatives of the United States who are specifically authorized by the State agency to have access to the article for the purpose of carrying out federal environmental statutes or regulations.

c) The State agency must maintain the following information with regard to an article that is claimed or determined to represent a trade secret:

1) A record of the number of copies held by the State agency;

2) A log of the location of all copies; and

3) A log of all persons who are authorized to review the article or copies ~~thereof~~ of the article.

(Source: Amended at 41 Ill. Reg. ~~—~~, effective)

Section 130.312 Unauthorized Disclosure or Use of Article

a) The State agency must ensure that all persons who are authorized to have access to an article that is claimed or determined to represent a trade secret are given notice of the restrictions on disclosure and use of the article contained in this Subpart.

b) No State agency officer, employee, or authorized representative may disclose, except as authorized by this Subpart, or use for private gain or advantage, any article that is claimed or determined to represent a trade secret.

c) Each State agency officer, employee, or authorized representative must take reasonable measures to safeguard an article that is claimed or determined to represent a trade secret and to protect against disclosure that is inconsistent with ~~these rules~~ this Part.

d) Each authorized representative of the State agency who is furnished with access to an article that is claimed or determined to represent a trade secret under ~~pursuant to~~ this Part must use or disclose that information only as authorized by the contract or

agreement under which the person is authorized to represent the State agency.

(Source: Amended at 41 Ill. Reg. , effective)

Section 130.314 Limitation on Copying Article

No State agency officer, employee, or authorized representative of the State or the United States may copy an article that is claimed or determined to represent a trade secret under ~~pursuant to~~ this Part except when authorized to do so by the State agency officer or employee designated to review the article under ~~pursuant to~~ Section 130.312(a) ~~of this Subpart~~. All copies must be recorded and logged in accordance with Section 130.312(c) ~~of this Subpart~~.

(Source: Amended at 41 Ill. Reg. , effective)

SUBPART D: NON-DISCLOSABLE INFORMATION OTHER THAN TRADE SECRETS

Section 130.404 Application for Non-Disclosure

a) Except as provided in subsection (c)(4) ~~of this Section~~, the applicant must file a single copy of the following:

- 1) The article that is sought to be protected from disclosure; and
- 2) The application for non-disclosure.

b) When an entire article is sought to be protected from disclosure, the applicant must mark the article with the words "NON-DISCLOSABLE INFORMATION" in red ink on the face or front of the article.

c) When less than an entire article is sought to be protected from disclosure, the applicant must:

- 1) Mark the article with the words "NON-DISCLOSABLE INFORMATION" in red ink on the face or front of the article;
- 2) Indicate on the face or front of the article which page or portion of the article is claimed to be non-disclosable information;
- 3) Mark every page or portion of the article sought to be protected from disclosure with the words "NON-DISCLOSABLE INFORMATION";
- 4) File with the Clerk a second copy of the article ~~that is marked pursuant to subsections (c)(1) and (c)(2) of this Section and~~ from which the page or portion sought to be protected from disclosure is deleted.

d) The applicant is not required to serve any other persons with the article or the page or portion thereof for which the applicant seeks protection from disclosure.

e) The application for non-disclosure must contain the following:

1) Identification of the particular non-disclosure category into which the material that is sought to be protected from disclosure falls (see 35 Ill. Adm. Code 101.202 for the definition of "non-disclosable information");

2) A concise statement of the reasons for requesting non-disclosure;

3) Data and information on the nature of the material that is sought to be protected from disclosure, identification of the number and title of all persons familiar with the data and information, and a statement of how long the material has been protected from disclosure;

4) An affidavit verifying the facts set forth in the application for non-disclosure that are not of record in the proceeding; and

5) A waiver of any decision deadline in accordance with Section ~~130.204 of this Part.~~ 130.204.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 130.406 Public Inspection

a) The public cannot inspect material for which a non-disclosure application is pending before the Board.

b) If the Board determines that the material is not entitled to be protected from disclosure, the public cannot inspect the material:

1) Until the time for appeal of the Board's determination has expired; or

~~ILLINOIS REGISTER~~

2) If an appeal of the Board's determination is filed, until the Board receives official notification of a final order of a court with proper jurisdiction that does not reverse the Board's determination and that is not subject to further appeal.

~~POLLUTION CONTROL BOARD~~

c) If the Board determines that the material is entitled to be protected from disclosure, the Board will protect from public inspection any page or portion of the material that the Board determined to be non-disclosable information until the Board receives official notification of a final order of a court with proper jurisdiction that reverses the Board's determination and that is not subject to further appeal.

~~NOTICE OF PROPOSED AMENDMENTS~~

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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Description	35-130-Agency Proposed-(issue 6)
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Description	35-130-r01(issue 6)
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<u>Insertion</u>	
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Padding cell	

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	Count
Insertions	52
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Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	176

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

PART 130
IDENTIFICATION AND PROTECTION OF TRADE SECRETS AND OTHER
NON-DISCLOSABLE INFORMATION

SUBPART A: GENERAL PROVISIONS

RECEIVED
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STATE OF ILLINOIS
Pollution Control Board

11	Section	
12	130.100	Purpose and Applicability
13	130.102	Additional Procedures
14	130.104	Definitions and Severability
15	130.106	Segregation of Articles
16	130.108	Disposal of Articles
17	130.110	Articles Containing Emission Data
18	130.112	Filings with the Board

SUBPART B: PROCEDURES FOR IDENTIFYING ARTICLES
THAT REPRESENT TRADE SECRETS

23	Section	
24	130.200	Initiation of a Claim that an Article Represents a Trade Secret
25	130.201	State Agency Request for Justification of Claims
26	130.202	Time Limit for Delayed Submission of Justification
27	130.203	Contents of Statement of Justification
28	130.204	Waiver of Statutory Deadlines
29	130.206	Deadline for State Agency Trade Secret Determination
30	130.208	Standards for State Agency Determination
31	130.210	State Agency Actions Following a Negative Determination
32	130.212	State Agency Actions Following a Positive Determination
33	130.214	Review of State Agency Trade Secret Determination
34	130.216	Effect of a Determination of Trade Secret Status on Other State Agencies
35	130.218	Status of Article Determined or Claimed to Represent a Trade Secret Before January 1, 2001
37	130.220	Extension of Deadlines to Participate in Proceedings

SUBPART C: PROCEDURES FOR PROTECTING ARTICLES
THAT REPRESENT TRADE SECRETS

42	Section	
43	130.300	Applicability

- 44 130.302 Owner's Responsibility to Mark Article
- 45 130.304 State Agency's Responsibility to Mark Article
- 46 130.306 Transmission of Article Between State Agencies
- 47 130.308 Public Access to Information Related to Article
- 48 130.310 Access to Claimed or Determined Article
- 49 130.312 Unauthorized Disclosure or Use of Article
- 50 130.314 Limitation on Copying Article

51
52 SUBPART D: NON-DISCLOSABLE INFORMATION
53 OTHER THAN TRADE SECRETS
54

- 55 Section
- 56 130.400 General
- 57 130.402 Who May View Non-Disclosable Information
- 58 130.404 Application for Non-Disclosure
- 59 130.406 Public Inspection
- 60 130.408 Board Order

61
62 130.APPENDIX A Comparison of Former and Current Rules (Repealed)

63
64 AUTHORITY: Implementing Sections 7 and 7.1 of the Environmental Protection Act (Act)
65 [415 ILCS 5/7 and 7.1] and authorized by Sections 7, 7.1, 26, and 27 of the Act [415 ILCS 5/7,
66 7.1, 26, 27].

67
68 SOURCE: Subparts A, B, and C originally adopted in R81-30 at 7 Ill. Reg. 16149, effective
69 November 23, 1983. Subpart D originally adopted in R88-5(A) at 13 Ill. Reg. 12055, effective
70 July 10, 1989; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 516, effective
71 January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8842, effective June 8, 2005; amended in
72 R14-21 at 39 Ill. Reg. 2408, effective January 27, 2015; amended in R17-18 at 41 Ill. Reg.
73 _____, effective _____.

74
75 SUBPART A: GENERAL PROVISIONS
76

77 **Section 130.100 Purpose and Applicability**

- 78
- 79 a) Section 7(a) of the Act provides that *all files, records, and data of the Illinois*
80 *Environmental Protection Agency, the Board, and DNR shall be open for*
81 *reasonable public inspection except for information which constitutes a trade*
82 *secret; information privileged against introduction in judicial proceedings;*
83 *internal communications of the several agencies; and information concerning*
84 *secret manufacturing processes or confidential data submitted by any person*
85 *under the Act.* [415 ILCS 5/7(a)]
86

- 87 b) This Part establishes procedures to identify and protect trade secrets and other
88 non-disclosable information.
89
90 1) Subpart A of this Part sets forth general provisions that apply with respect
91 to both trade secrets and other non-disclosable information. References in
92 this Subpart to non-disclosable information other than trade secrets apply
93 only to proceedings before the Board.
94
95 2) Subparts B and C of this Part address only trade secrets. Those Subparts
96 apply to articles submitted or otherwise obtained by the Board, the ~~Illinois~~
97 ~~Environmental Protection Agency~~, or DNR.
98
99 3) Subpart D of this Part addresses only non-disclosable information other
100 than trade secrets. That Subpart applies only to filings of articles with the
101 Board.
102

103 (Source: Amended at 41 Ill. Reg. _____, effective _____)
104

105 **Section 130.102 Additional Procedures**
106

107 The ~~Illinois Environmental Protection Agency~~ and DNR each may adopt additional procedures
108 that are not inconsistent with this Part to protect articles that are claimed or determined to
109 represent a trade secret.
110

111 (Source: Amended at 41 Ill. Reg. _____, effective _____)
112

113 **Section 130.104 Definitions and Severability**
114

- 115 a) Definitions. For the purpose of this Part, "State agency" refers to the Board, the
116 ~~Illinois Environmental Protection Agency~~, or DNR. Other words and terms have
117 the meanings set forth in 35 Ill. Adm. Code 101.Subpart B, unless otherwise
118 provided or unless the context clearly indicates otherwise.
119
120 b) Severability. If any provision of this Part or its application to any person is
121 adjudged invalid, the adjudication does not affect the validity of this Part as a
122 whole or of any portion not adjudged invalid.
123

124 (Source: Amended at 41 Ill. Reg. _____, effective _____)
125

126 **Section 130.110 Articles Containing Emission Data**
127

- 128 a) *All emission data reported to or otherwise obtained by the ~~Illinois Environmental~~*
129 *~~Protection Agency~~, the Board, or DNR in connection with any examination,*

130 *inspection or proceeding under the Act shall be available to the public to the*
131 *extent required by the federal Clean Air Act as amended [415 ILCS 5/7(c)].*
132

- 133 b) For purposes of this Section, "emission data" means:
134
135 1) The identity, amount, frequency, concentration, or other characteristics
136 (related to air quality) of any contaminant that:
137
138 A) Has been emitted from an emission unit;
139
140 B) Results from any emission by the emission unit;
141
142 C) Under an applicable standard or limitation, the emission unit was
143 authorized to emit; or
144
145 D) Is a combination of any of the items described in subsection
146 (b)(1)(A), (B), or (C) of this Section.
147
148 2) The name, address (or description of the location), and the nature of the
149 emission unit necessary to identify the emission unit, including a
150 description of the device, equipment, or operation constituting the
151 emission unit.
152
153 c) In addition to subsection (b) of this Section, information necessary to determine
154 or calculate emission data, including rate of operation, rate of production, rate of
155 raw material usage, or material balance, will be deemed to represent emission data
156 for the purposes of this Section if the information is contained in a permit to
157 ensure that the permit is practically enforceable.
158

159 (Source: Amended at 41 Ill. Reg. _____, effective _____)
160

161 **Section 130.112 Filings with the Board** 162

163 A document containing information claimed or determined to be a trade secret or other non-
164 disclosable information ~~underpursuant to~~ this Part is prohibited from being filed electronically
165 with the Board and must instead be filed with the Board only in paper ~~underpursuant to~~ 35 Ill.
166 Adm. Code 101.302(h)(3). (See 35 Ill. Adm. Code 101.1010(b).)
167

168 (Source: Amended at 41 Ill. Reg. _____, effective _____)
169

170 **SUBPART B: PROCEDURES FOR IDENTIFYING ARTICLES** 171 **THAT REPRESENT TRADE SECRETS** 172

Section 130.200 Initiation of a Claim that an Article Represents a Trade Secret

- 173 a) In order to claim an article is a trade secret, theThe owner of the an article must
 174 submit ~~may claim that the article represents a trade secret only by submitting to~~
 175 ~~the State agency the claim letter required by subsection (b)(1) of this Section at~~
 176 ~~the time the owner submits the article~~ is submitted to the State agency. If the
 177 owner of the article submits the article to the State agency without simultaneously
 178 submitting the claim letter required by subsection (b)(1) ~~of this Section~~, the article
 179 will be considered a matter of general public knowledge and cannot be protected
 180 as a trade secret.
- 181 b) The owner of an article seeking trade secret protection must submit the following
 182 information to the State agency at the time the owner submits the article to the
 183 State agency:
- 184 1) A claim letter that ~~clearly~~ states the name of the article, briefly describes
 185 the article, and states that the article is claimed to represent a trade secret,
 186 as defined in 35 Ill. Adm. Code 101.Subpart B and the Act; and
- 187 2) A copy of the article marked as provided in Section 130.302 ~~of this Part~~.
- 188 c) The owner of an article seeking trade secret protection must submit to the State
 189 agency a statement of justification for the claim meeting the requirements of
 190 Section 130.203 ~~of this Subpart~~. The owner of the article may submit the
 191 statement of justification at the time the owner submits the article, or at a later
 192 time, but in no event later than the time limit established underpursuant to Section
 193 130.202 ~~of this Subpart~~.
- 194 d) If the State agency is provided with a claim letter required by subsection (b)(1) ~~of~~
 195 ~~this Section~~, the State agency must consider the article a trade secret and must
 196 protect it from disclosure underpursuant to Subpart C ~~of this Part~~ until the State
 197 agency makes a final determination and the appeal time has expired.
- 198 e) The owner of an article seeking trade secret protection is not required to serve any
 199 other persons with the article or the page or portion thereof for which the owner
 200 seeks trade secret protection.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 130.201 State Agency Request for Justification of Claims

- 213 a) The State agency may request that the owner of an article claimed to represent a
 214 trade secret submit a statement of justification meeting the requirements of
 215

216 Section 130.203 ~~of this Subpart~~. The State agency may make the request when
217 the article is submitted or obtained, or at any later time.

218
219 b) The request under subsection (a) ~~of this Section~~ must be in writing. The State
220 agency must set forth in the request the reasoning for the request. Reasons for the
221 request may include the following:

- 222
- 223 1) The State agency has received or reasonably expects to receive a request
224 from the public to disclose the article;
- 225
- 226 2) The article is required to be available to the public in a proceeding before
227 the State agency;
- 228
- 229 3) Information within the article is required to be contained in a permit issued
230 by the State agency;
- 231
- 232 4) To facilitate public participation in a proceeding before the State agency;
- 233
- 234 5) A regulation requires that the State agency determine whether the article
235 represents a trade secret at the time that the article is submitted to or
236 obtained by the State agency; or
- 237
- 238 6) Determining the validity of the claim will facilitate the timely performance
239 of State agency responsibilities.

240
241 (Source: Amended at 41 Ill. Reg. _____, effective _____)
242

243 **Section 130.202 Time Limit for Delayed Submission of Justification**

244
245 a) Within 10 working days after the date on which the owner of an article claimed to
246 represent a trade secret receives a State agency request for justification under
247 Section 130.201 ~~of this Subpart~~, the owner must submit to the State agency a
248 statement of justification meeting the requirements of Section 130.203 ~~of this~~
249 ~~Subpart~~.

250
251 b) The State agency may extend the time period under subsection (a) ~~of this Section~~
252 for a second period of 10 working days if, within the first 10 day period, the
253 owner of the article requests an extension and demonstrates that the extension is
254 necessary to complete the statement of justification.

255
256 (Source: Amended at 41 Ill. Reg. _____, effective _____)
257

258 **Section 130.204 Waiver of Statutory Deadlines**

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- a) When the owner of an article seeking trade secret protection submits a statement of justification under this Subpart to the State agency, the owner must simultaneously submit to the State agency a waiver of any statutory deadline for the State agency to decide the underlying proceeding or matter, such as a permit application.
- b) The waiver under subsection (a) ~~of this Section~~ must extend the statutory deadline for a period equal to the period by which the decision on the underlying proceeding or matter is delayed due to any subsequent trade secret justification and determination process plus 45 days.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 130.206 Deadline for State Agency Trade Secret Determination

- a) The State agency must determine whether the article represents a trade secret within 45 days after the date it receives a complete statement of justification as prescribed in Section 130.203 ~~of this Subpart~~.
- b) The owner of an article seeking trade secret protection may extend the time period for the State agency to determine whether the article represents a trade secret by submitting to the State agency a waiver of the deadline for the State agency to determine whether the article represents a trade secret.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 130.210 State Agency Actions Following a Negative Determination

- a) If the State agency determines that an article, or any page or portion thereof, does not meet the standards specified in Section 130.208(a)(1) or (2) ~~of this Subpart~~, the State agency must deny the claim for trade secret protection for the article or page or portion thereof, and must give written notice of the determination to the owner of the article and any requester underpursuant to subsection (b) ~~of this Section~~.
- b) Written notice that the State agency denied a claim for trade secret protection must be given by certified mail, return receipt requested, and must contain the following information:
 - 1) A statement of the State agency's reasoning for denying the claim;
 - 2) A notification that the State agency determination may be reviewed

~~underpursuant to Section 130.214 of this Subpart; and~~

3) A notification that the State agency will cease protecting the article, or the page or portion thereof, as a trade secret unless the State agency is served with notice of the filing of a petition for review of the State agency's determination within 35 days after service of the notice of denial on the owner and any requester.

c) If the State agency is served with notice of the filing of a petition for review of its determination within 35 days after service of the notice of denial on the owner and any requester, the State agency must notify the requester of the action and must continue to protect the article, or the page or portion thereof, ~~underpursuant to Subpart C of this Part~~ until the State agency receives official notification of a final order by a reviewing body with proper jurisdiction that does not reverse the State agency determination and that is not subject to further appeal.

d) If the State agency does not receive the notification of a petition for review within 35 days after service of the notice of denial on the owner and any requester or does receive official notification of a final, non-appealable action that does not reverse the State agency determination, the article will not be protected ~~underpursuant to Subpart C of this Part~~ and the State agency must so notify the owner and any requester by certified mail, return receipt requested.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 130.212 State Agency Actions Following a Positive Determination

a) If the State agency determines that an article, or any page or portion thereof, meets the standards specified in subsection 130.208(a)(1) and (2) ~~of this Subpart~~, the State agency must grant the claim for trade secret protection for the article or page or portion thereof, and must give written notice of the determination to the owner of the article and any requester ~~underpursuant to subsection (b) of this Section~~.

b) Written notice of the granting of a claim for trade secret protection must be given by certified mail, return receipt requested, and must contain the following information:

1) A statement of the State agency's reasoning for granting the claim;

2) A notification that the State agency determination may be reviewed ~~underpursuant to Section 130.214 of this Subpart; and~~

345 3) A notification that the article, or the page or portion thereof, will be
 346 protected ~~underpursuant to Subpart C of this Part~~ until the State agency
 347 receives official notification of a final order by a reviewing body that
 348 reverses the State agency determination and that is not subject to further
 349 appeal.

350
 351 c) The State agency must continue to protect an article, or the page or portion
 352 thereof, for which trade secret protection has been granted ~~underpursuant to~~
 353 ~~Subpart C of this Part~~ until the State agency receives official notification of a final
 354 order by a reviewing body with proper jurisdiction that reverses the State agency
 355 determination and that is not subject to further appeal.

356
 357 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 358

359 **Section 130.214 Review of State Agency Trade Secret Determination**

360
 361 a) An owner or requester who is adversely affected by a final determination of the
 362 Illinois Environmental Agency or DNR ~~underpursuant to~~ this Subpart may
 363 petition the Board to review the final determination within 35 days after service of
 364 the determination. Appeals to the Board will be ~~underpursuant to~~ 35 Ill. Adm.
 365 Code 105.Subparts A and B.

366
 367 b) An owner or requester who is adversely affected by a final determination of the
 368 Board ~~underpursuant to~~ this Subpart may obtain judicial review from the appellate
 369 court by filing a petition for review ~~underpursuant to~~ Section 41 of the Act [415
 370 ILCS 5/41].

371
 372 c) If the State agency fails to make a final determination within the time limits
 373 prescribed by this Subpart, the State agency must continue to protect the article as
 374 set forth in Subpart C ~~of this Part~~ until the State agency issues a final
 375 determination ~~underpursuant to~~ this Subpart.

376
 377 (Source: Amended at 41 Ill. Reg. _____, effective _____)
 378

379 **Section 130.216 Effect of a Determination of Trade Secret Status on Other State Agencies**

380
 381 a) Except as provided in subsection (b) ~~of this Section~~, a claim or determination by
 382 one State agency that an article represents a trade secret made ~~underpursuant to~~
 383 this Subpart will apply to that same article when in the possession of either of the
 384 other two agencies.

385
 386 b) When an article described in subsection (a) of this Section is the subject of a
 387 review before the Board ~~underpursuant to~~ Section 130.214(a) ~~of this Subpart~~, the

388 article will be treated as a trade secret only unless or until the Board determines
389 that the article does not ~~represent~~ represent a trade secret.

390
391 (Source: Amended at 41 Ill. Reg. _____, effective _____)
392

393 **Section 130.218 Status of Article Determined or Claimed to Represent a Trade Secret**
394 **Before January 1, 2001**

- 395
- 396 a) Any article that was determined by a State agency before January 1, 2001 to
397 represent a trade secret in accordance with State agency procedures adopted
398 ~~underpursuant to~~ the IAPA will be deemed to have been determined to represent a
399 trade secret for the purposes of this Part. The State agency must protect the article
400 in accordance with Subpart C ~~of this Part~~.
 - 401
 - 402 b) If a State agency possesses an article that was claimed before January 1, 2001 to
403 represent a trade secret and the State agency did not determine before January 1,
404 2001 whether the article represents a trade secret in accordance with procedures
405 adopted ~~underpursuant to~~ the IAPA, the article is deemed to have been claimed to
406 represent a trade secret for the purposes of this Part. These claims are deemed
407 pending with unlimited waivers of any deadlines for decision.
408

409 (Source: Amended at 41 Ill. Reg. _____, effective _____)
410

411 **Section 130.220 Extension of Deadlines to Participate in Proceedings**
412

- 413 a) Upon the State agency's finding that a person has satisfied the requirements of
414 subsection (b) ~~of this Section~~, the State agency must extend any deadline for the
415 person to participate in the proceeding before the State agency until 10 days after
416 the State agency determines the trade secret status of the article.
417
- 418 b) The person seeking an extension to participate in a proceeding before the State
419 agency has the burden to demonstrate that the person will be adversely affected in
420 the proceeding due to the timing of the State agency's trade secret determination,
421 that the person could not have avoided the resulting delay by making an earlier
422 request, and that the article is relevant to the proceeding.
423

424 (Source: Amended at 41 Ill. Reg. _____, effective _____)
425

426 SUBPART C: PROCEDURES FOR PROTECTING ARTICLES
427 THAT REPRESENT TRADE SECRETS
428

429 **Section 130.300 Applicability**
430

431 Any article that is claimed or determined to represent a trade secret underpursuant to Subpart B
432 ~~of this Part~~ must be protected from unauthorized disclosure underpursuant to this Subpart.

433
434 (Source: Amended at 41 Ill. Reg. _____, effective _____)
435

436 **Section 130.302 Owner's Responsibility to Mark Article**
437

- 438 a) When an entire article is claimed to represent a trade secret, the owner must mark
439 the article with the words "Trade Secret" in red ink on the face or front of the
440 article.
441
- 442 b) When less than an entire article is claimed to represent a trade secret, the owner
443 must:
444
- 445 1) Mark the article with the words "Trade Secret" in red ink on the face or
446 front of the article;
447
 - 448 2) Indicate on the face or front of the article which page or portion of the
449 article is claimed to represent a trade secret;
450
 - 451 3) Mark every page or portion of the article that is claimed to represent a
452 trade secret with the words "Trade Secret"; and
453
 - 454 4) Furnish the State agency with a second copy of the article ~~that is marked~~
455 ~~pursuant to subsections (b)(1) and (2) of this Section and from which the~~
456 ~~page or portion of the article that is claimed to represent a trade secret is~~
457 ~~deleted.~~

458
459 (Source: Amended at 41 Ill. Reg. _____, effective _____)
460

461 **Section 130.304 State Agency's Responsibility to Mark Article**
462

- 463 a) When an entire article is determined to represent a trade secret underpursuant to
464 ~~Section 130.208 of this Part~~, the State agency must mark the article with the word
465 "DETERMINED" in red ink on the face or front of the article and must also mark
466 any claim letter submitted for the article.
467
- 468 b) When less than an entire article is determined to represent a trade secret
469 underpursuant to ~~Section 130.208 of this Part~~, the State agency must:
470
- 471 1) Mark the article with the word "DETERMINED" in red ink on the face or
472 front of the article;
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- 474 2) Indicate on the face or front of the article and any claim letter submitted
- 475 for the article which page or portion of the article is determined to
- 476 represent a trade secret; and
- 477
- 478 3) Mark every page or portion of the article that is determined to represent a
- 479 trade secret with the word "DETERMINED-".
- 480

481 (Source: Amended at 41 Ill. Reg. _____, effective _____)

482

483 **Section 130.306 Transmission of Article Between State Agencies**

484

485 Before transmitting any article that is claimed or determined to represent a trade secret to another

486 State agency, the State agency must ensure that the article is marked underpursuant to Sections

487 130.302 and 130.304 of this Subpart and is clearly distinguished and segregated from other

488 transmitted materials.

489

490 (Source: Amended at 41 Ill. Reg. _____, effective _____)

491

492 **Section 130.308 Public Access to Information Related to Article**

- 493
- 494 a) A copy of the claim letter submitted underpursuant to Section 130.200(b)(1) of
- 495 this Part will be open to public inspection.
- 496
- 497 b) When an article was determined to represent a trade secret before January 1,
- 498 2001, and no claim letter exists, the State agency must prepare a statement that
- 499 will be open to public inspection, and that names and briefly describes the article.
- 500
- 501 c) When a page or portion of an article is claimed or determined to represent a trade
- 502 secret, a copy of the article must be open to public inspection, with the part or
- 503 portion of the article that is claimed or determined to represent a trade secret or
- 504 that would lead to disclosure of the trade secret deleted.
- 505

506 (Source: Amended at 41 Ill. Reg. _____, effective _____)

507

508 **Section 130.310 Access to Claimed or Determined Article**

- 509
- 510 a) The State agency must designate the State agency employees or officers who are
- 511 authorized to review articles that are claimed to represent trade secrets for the
- 512 purpose of making a determination underpursuant to Section 130.208 of this Part.
- 513
- 514 b) Access to an article that is claimed or determined to represent a trade secret must
- 515 be limited to:
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- 1) Employees or officers designated ~~under~~pursuant to subsection (a) ~~of this Section;~~
 - 2) Other employees, officers, or authorized representatives of the State specifically authorized by the State agency to have access to the article for the purpose of carrying out the Act or regulations promulgated thereunder or when relevant to a proceeding or matter under the Act; or
 - 3) Employees, officers, or authorized representatives of the United States who are specifically authorized by the State agency to have access to the article for the purpose of carrying out federal environmental statutes or regulations.
- c) The State agency must maintain the following information with regard to an article that is claimed or determined to represent a trade secret:
- 1) A record of the number of copies held by the State agency;
 - 2) A log of the location of all copies; and
 - 3) A log of all persons who are authorized to review the article or copies of the article~~thereof~~.

540 (Source: Amended at 41 Ill. Reg. _____, effective _____)

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542 **Section 130.312 Unauthorized Disclosure or Use of Article**
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- a) The State agency must ensure that all persons who are authorized to have access to an article that is claimed or determined to represent a trade secret are given notice of the restrictions on disclosure and use of the article contained in this Subpart.
 - b) No State agency officer, employee, or authorized representative may disclose, except as authorized by this Subpart, or use for private gain or advantage, any article that is claimed or determined to represent a trade secret.
 - c) Each State agency officer, employee, or authorized representative must take reasonable measures to safeguard an article that is claimed or determined to represent a trade secret and to protect against disclosure that is inconsistent with this Part~~these rules~~.
 - d) Each authorized representative of the State agency who is furnished with access to an article that is claimed or determined to represent a trade secret ~~under~~pursuant

to this Part must use or disclose that information only as authorized by the contract or agreement under which the person is authorized to represent the State agency.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 130.314 Limitation on Copying Article

No State agency officer, employee, or authorized representative of the State or the United States may copy an article that is claimed or determined to represent a trade secret ~~underpursuant to this Part~~ except when authorized to do so by the State agency officer or employee designated to review the article ~~underpursuant to Section 130.312(a) of this Subpart~~. All copies must be recorded and logged in accordance with Section 130.312(c) ~~of this Subpart~~.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART D: NON-DISCLOSABLE INFORMATION
OTHER THAN TRADE SECRETS

Section 130.404 Application for Non-Disclosure

- a) Except as provided in subsection (c)(4) ~~of this Section~~, the applicant must file a single copy of the following:
 - 1) The article that is sought to be protected from disclosure; and
 - 2) The application for non-disclosure.
- b) When an entire article is sought to be protected from disclosure, the applicant must mark the article with the words "NON-DISCLOSABLE INFORMATION" in red ink on the face or front of the article.
- c) When less than an entire article is sought to be protected from disclosure, the applicant must:
 - 1) Mark the article with the words "NON-DISCLOSABLE INFORMATION" in red ink on the face or front of the article;
 - 2) Indicate on the face or front of the article which page or portion of the article is claimed to be non-disclosable information;
 - 3) Mark every page or portion of the article sought to be protected from disclosure with the words "NON-DISCLOSABLE INFORMATION";

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- 4) File with the Clerk a second copy of the article ~~that is marked pursuant to subsections (c)(1) and (c)(2) of this Section and from which the page or portion sought to be protected from disclosure is deleted.~~
- d) The applicant is not required to serve any other persons with the article or the page or portion thereof for which the applicant seeks protection from disclosure.
- e) The application for non-disclosure must contain the following:
 - 1) Identification of the particular non-disclosure category into which the material that is sought to be protected from disclosure falls (see 35 Ill. Adm. Code 101.202 for the definition of "non-disclosable information");
 - 2) A concise statement of the reasons for requesting non-disclosure;
 - 3) Data and information on the nature of the material that is sought to be protected from disclosure, identification of the number and title of all persons familiar with the data and information, and a statement of how long the material has been protected from disclosure;
 - 4) An affidavit verifying the facts set forth in the application for non-disclosure that are not of record in the proceeding; and
 - 5) A waiver of any decision deadline in accordance with Section 130.204 of ~~this Part.~~

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 130.406 Public Inspection

- a) The public cannot inspect material for which a non-disclosure application is pending before the Board.
- b) If the Board determines that the material is not entitled to be protected from disclosure, the public cannot inspect the material:
 - 1) Until the time for appeal of the Board's determination has expired; or
 - 2) If an appeal of the Board's determination is filed, until the Board receives official notification of a final order of a court with proper jurisdiction that does not reverse the Board's determination and that is not subject to further appeal.

- 646
647 c) If the Board determines that the material is entitled to be protected from
648 disclosure, the Board will protect from ~~public~~ ^{pubic} inspection any page or portion
649 of the material that the Board determined to be non-disclosable information until
650 the Board receives official notification of a final order of a court with proper
651 jurisdiction that reverses the Board's determination and that is not subject to
652 further appeal.

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654 (Source: Amended at 41 Ill. Reg. _____, effective _____)