

ILLINOIS POLLUTION CONTROL BOARD
April 21, 2016

IN THE MATTER OF:)
)
PROCEDURAL RULE AMENDMENTS:) R16-17
PROPOSED AMENDMENTS TO 35 ILL.) (Rulemaking - Procedural)
ADM. CODE 101 THROUGH 125)

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by J.A. Burke):

The Board proposes procedural rule amendments that will decrease the costs of conducting adjudicatory cases and rulemakings—an especially worthy purpose due to the State’s on-going budget crisis. At the same time, the amendments will increase opportunities for citizens to participate in these proceedings, which is fundamental to the Environmental Protection Act (Act) (415 ILCS 5 (2014)). The Board will achieve these objectives primarily by adding uses of digital technology, without leaving behind those lacking computer access or proficiency.

Specifically, the Board will hold more videoconference hearings, but not far from affected members of the public or without regard for the parties’ preferences. The Board will require some documents to be filed electronically, but not without exceptions when filing in paper is necessary. The Board will enable more documents to be served by e-mail, but only when the recipient has clearly agreed to accept e-mail service in lieu of receiving paper. The Board will provide hearing notices in the *Illinois Register* instead of in newspapers, but only for a few types of rulemakings—for them, the Act does not require newspaper notice and using the *Illinois Register* will save the Board thousands of dollars per notice.

Many of these measures will cut costs for the public, the parties, and the Board. The technological steps are a natural extension of the Board’s initiatives over the years—like creating the Clerk’s Office On-Line (COOL). Each digital advance has increased participation, eased access, and improved efficiency for many people. The Board expects the same from this proposal, which amends nine of the ten Parts of its procedural rules.¹ The amendments are proposed today for second-notice review by the Joint Committee on Administrative Rules (JCAR) under the Illinois Administrative Procedure Act (IAPA) (5 ILCS 100/5-40(c) (2014)).

¹ The nine Parts are located in Title 35 of the Illinois Administrative Code: Part 101 (General Rules); Part 102 (Regulatory and Informational Hearings and Proceedings); Part 103 (Enforcement); Part 104 (Regulatory Relief Mechanisms); Part 105 (Appeals of Final Decisions of State Agencies); Part 106 (Proceedings Pursuant to Specific Rules or Statutory Provisions); Part 107 (Petition to Review Pollution Control Facility Siting Decisions); Part 108 (Administrative Citations); and Part 125 (Tax Certifications).

In this opinion, the Board first provides the rulemaking's brief procedural history. Then, the Board discusses, in order, the following subjects raised since the Board adopted its first-notice decision:

- Videoconference and “In-Person” Hearings
- Electronic Filing
- E-Mail Service
- Notice of Hearing
- Timing for Appeals
- “Recycled Paper” and “Notice of Filing”

The second-notice rule amendments appear in the order following this opinion.

PROCEDURAL HISTORY

The Board adopted a first-notice opinion and order on December 17, 2015. *See Procedural Rule Amendments: Proposed Amendments to 35 Ill. Adm. Code 101 through 125, R16-17 (Dec. 17, 2015) (First Notice, slip op. at __)*. The first-notice amendments were published in the *Illinois Register* on January 4, 2016 (40 Ill. Reg. 52-151).

During the ensuing 45-day public comment period, the Board received four comments. None of the commenters oppose any significant aspect of the first-notice proposal. Two commenters, the Illinois Environmental Regulatory Group (IERG) (PC 2) and the Illinois Environmental Protection Agency (IEPA) (PC 3) generally support the proposal. They request minor language changes, as does the law firm of Podlewski & Hanson P.C. (P&H) (PC 4). IERG and P&H would like more information about how videoconference hearings will work. David A. Joens, Director of the Illinois State Archives and Chairman of the State Records Commission (PC 1), raises a concern about storing electronic records. Additionally, the Board's hearing officer received an e-mail message from Jonathan C. Eastvold, Ph.D., Rules Analyst II of JCAR, posing questions about the first-notice proposal (JCAR Corr.). A hearing is not required for this procedural rulemaking and none was requested.

DISCUSSION

This discussion has six parts:

- First, the Board addresses videoconference and “in-person” hearings. The list of proposed factors to consider—when selecting hearing locations and deciding whether to hold a hearing by videoconference—is expanded at second notice.

- Second, the Board analyzes the proposed changes to the electronic filing provisions. Here, the Board points out that only a few types of documents must be filed electronically and, for those few, relief from mandatory electronic filing will be available.
- Third, the Board discusses the additional proposed options for consenting to receipt of e-mail service. To remove any doubt about whether that consent is given knowingly, the proposed rules are amended.
- Fourth, the Board explains why it proposes revising its approach to giving hearing notices by newspaper, and describes how limited that revision is.
- Fifth, the Board discusses the proposed amendments on calculating the timing for appealing Board orders (to the appellate court) and hearing officer orders (to the Board) and clarifies the language of the former.
- Sixth, the Board briefly addresses but declines to propose P&H's suggested changes to the current rules on using recycled paper and notices of filing.²

Videoconference and “In-Person” Hearings

The first-notice amendments to Section 101.600(a) stated that all Board hearings will be held at locations that meet “any geographic requirements imposed by applicable law” and are “consistent with the Board’s resources.” This provision would apply not only for videoconference hearings, but also for traditional “in-person” hearings. Further, under Section 101.600(b), any type of Board hearing would be eligible to be held by videoconference upon motion of the Board, the hearing officer, or a party. The proposed rule also specified a non-exhaustive list of factors that the Board or the hearing officer would consider in deciding whether to hold a hearing by videoconference: “cost-effectiveness, efficiency, facility accommodations, witness availability, and public interest.”

No commenters oppose having the option to hold any Board hearing by videoconference. IEPA welcomes the use of videoconferencing for hearings. PC 3 at 4. Other commenters, however, question (1) how the Board and its hearing officers will decide whether to hold a hearing by videoconference; (2) who will have to arrange for videoconferencing facilities; (3) why a hearing—videoconference or in person—would not be held within the county of the site at issue; and (4) how videoconference hearings will be conducted. The Board answers these questions in turn.

Deciding Whether to Hold a Hearing by Videoconference

IEPA agrees with the Board that videoconference hearings will “substantially cut costs to the State for travel associated with its hearings,” as well as save staff time. PC 3 at 4. IERG wants the rule to specify additional factors—subject matter, tenor of the proceeding, preferences

² Those interested in the Board’s discussion of other aspects of the proposed amendments should refer to the Board’s first-notice opinion.

of the parties—that the Board and hearing officers will consider when deciding whether to hold the hearing by videoconference. IERG is troubled that the proposed factors concentrate primarily on logistics and cost-effectiveness. PC 2 at 3. At second notice, the Board adds the following factors to what remains a non-exhaustive list: “the parties’ preferences, and the proceeding’s complexity and contentiousness.” Proposed Section 101.600(b).

IERG also urges the Board and hearing officers to order videoconference hearings cautiously until everyone better understands how the technology affects the “tone and presentation of hearings.” PC 2 at 3. The Board appreciates IERG’s concern. In the initial stages of implementing the amendments, videoconferencing will surely be ordered only for hearings that are expected to be relatively straightforward and where the parties do not oppose using the technology.

Arranging for Videoconferencing Facilities

IERG asks who must find the videoconferencing facilities for holding a hearing (PC 2 at 6) and P&H asks who must pay for them (PC 4 at 2). The Board’s hearing officers will locate and arrange for the videoconferencing facilities, much as they reserve rooms for in-person hearings. P&H asks if parties will be able to “Skype” from their offices to participate in a hearing. PC 4 at 1. Given the rapid pace of technological change, the Board wishes to avoid adopting an overly-prescriptive rule that limits the technology that can be used for videoconference hearings. However, at least initially, the Board anticipates that only the State’s videoconferencing equipment will be used.

Selecting Locations for Videoconference and In-Person Hearings

JCAR staff, IERG, and P&H express concerns about removing the procedural rules’ presumption or requirement that a hearing be held within the county of the site at issue in the proceeding. JCAR Corr. at 1; PC 2 at 6; PC 4 at 2. JCAR staff asks why the Board would not hold a hearing in the county affected. JCAR Corr. at 1. IERG laments the rule’s lack of geographic guidance and is worried that the rule may merely shift travel expenses from the State to the parties. PC 2 at 4-6, 8. IERG wonders whether videoconference hearings will be held only between the Board’s Chicago and Springfield offices. *Id.* at 6. P&H claims that holding a hearing in a county other than the county in which the source is located will harm the affected public’s ability to attend. PC 4 at 2.

Legal and practical considerations go into selecting locations for hearings, whether videoconference hearings or in-person hearings. For example, neither the Act nor the IAPA (5 ILCS 100 (2014)) require holding an adjudicatory hearing in the county in which the site at issue is located. Some cases benefit from having hearings held locally, but others do not. Currently, when the law allows, hearings are sometimes held at locations that are not close to the sites at issue. For example, Board hearings in underground storage tank (UST) appeals are often held in Springfield because that area is where IEPA’s headquarters and many environmental consultants and private lawyers are located. Additionally, in appeals of UST Fund “eligibility and deductibility” determinations of the Office of the State Fire Marshal (OSFM), the current procedural rules establish a preference for holding hearings in either Springfield or Chicago. *See*

35 Ill. Adm. Code 105.510. These UST adjudicatory hearings usually do not generate much if any public interest. The appeals tend to present issues of highly localized contamination or petitioner reimbursement claims.

For selecting hearing locations, with its first-notice rule language, the Board sought to give its hearing officers maximum flexibility within the law, but without abandoning the considerations that have always gone into this selection. The first thing that the hearing officer must do is ensure compliance with any legal requirement that the hearing take place in a particular region. For instance, a public hearing on a Resource Conservation and Recovery Act (RCRA) permit must be held, whenever possible, at a location convenient to the population center that is closest to the facility. *See* 40 C.F.R. § 124.12(a)(3). That location may or may not be within the county in which the facility is located.

For general rulemaking, the Board must hold a hearing “within the area of the State concerned”; and when the proposed rules would apply Statewide, the Board must hold hearings “in at least two areas” of the State. 415 ILCS 5/28(a) (2014). What constitutes the “area of the State concerned” (a JCAR staff question, JCAR Corr. at 1) varies from rulemaking to rulemaking. It depends primarily upon the location of the facility or facilities that would be subject to the rules, as well as the location of the public that would be affected by the regulated activities, taking into account factors like the nature of the pollutants and the media at issue.

Once the hearing officer has ensured that the hearing location will meet any legal geographic requirements, he can select a hearing location that, among other things, conserves the Board’s resources (*e.g.*, hearing officer travel and lodging expenses). This financial concern is heightened by the State’s budgetary duress. But, the Board did not mean to suggest at first notice that the hearing officer—in selecting a hearing location—would disregard the parties’ wishes or the distance that interested citizens would have to travel. On the contrary, the Board recognized that “[g]enerally, holding a hearing in the affected area is sound public policy for obvious reasons.” *First Notice*, slip op. at 6. The Board is not departing from this longtime practice.

With that practice in mind, the Board clarifies the rule at second notice to make it explicit that all hearings—whether in-person or by videoconference—will be held at locations that, “to the extent feasible, promote the attendance of interested members of the public, the convenience of the parties, and the conservation of ~~consistent with~~ the Board’s resources.” Proposed Section 101.600(a). The State of Illinois’ videoconference network has over 125 sites throughout the State.³ For example, with a videoconference hearing, at least one location of the hearing will be reasonably close to the site at issue, often in the same county as the site. IERG poses a hypothetical in which a representative and witnesses from a facility in Southern Illinois would have an “onerous” drive to a videoconference hearing in the Board’s Springfield office (PC 2 at 6). If that facility were seeking a variance, for instance, it might be appropriate for a videoconference hearing to take place between (1) the Board’s Springfield office and (2) a

³ A list of sites in Illinois’ videoconference network is located here: <http://www.illinois.gov/bccs/services/catalog/network/IVN/SitePages/IVNDirectory.aspx> (last accessed Apr. 18, 2016).

videoconferencing facility located near the Southern Illinois facility. Videoconferencing would then provide two locations to attend the hearing. The Southern Illinois location would be convenient for petitioner and the affected public, while the Springfield location would conserve the Board's resources. These goals are not mutually exclusive.

Finally, the added rule language is consistent with the public hearing rules of the United States Environmental Protection Agency (USEPA) for hearings under the Clean Water Act, RCRA, and the Safe Drinking Water Act. *See* 40 C.F.R. § 25.5(c). As IEPA notes, these federal rules provide that hearings must be held at places that, to the extent feasible, facilitate public attendance. PC 3 at 3. IEPA is unaware of any additional requirements in federal laws, authorizations, or agreements that would “mandate the Board to include hearing location requirements in its procedural rules.” *Id.* The Board shares IEPA's confidence in the Board's hearing officers—they will choose hearing locations that, to the extent feasible, accommodate the parties and foster public participation. *Id.* at 4.

Conducting a Videoconference Hearing

P&H and IERG have potential misgivings about holding hearings by videoconference. P&H inquires whether there will be a Board employee available at a videoconference site “where there are a large number of parties involved.” PC 4 at 2. P&H also asks how the Board can prevent “off-camera” influences on a witness. *Id.* IERG is concerned that videoconference hearings may be “less engaging and potentially less effective” than in-person hearings. PC 2 at 2-3. Because IERG has not participated in an “evidentiary hearing” by videoconference, it is unsure how questioning witnesses or assessing witness credibility might be affected. *Id.* at 3.

For many of these concerns, “[u]sing pre-hearing conferences should help to ensure that videoconference hearings run smoothly, regardless of the type of proceeding.” First Notice, slip op. at 6. Before hearing, the parties and the hearing officer should discuss all of their concerns and logistical questions, such as how exhibits will be admitted into evidence. If they cannot resolve these sorts of issues, then the hearing is probably not a good candidate for being held by videoconference. Some hearings may be too technically complicated to conduct effectively by videoconference. The Board anticipates that videoconference hearings initially will be used more frequently in rulemakings, as they are quasi-legislative in nature and therefore less formal.

When a hearing is held using State videoconferencing equipment, at least one State employee will be at each location to operate the equipment. In addition, the hearing officer will be present in person or through videoconference at all locations to answer questions about the proceeding. The Board expects that its hearing officers will conduct videoconference hearings in much the same way they conduct in-person hearings.

Electronic Filing

Below, the Board discusses the eight “electronic filing” topics raised about the first-notice proposal:

- First, the Board will *require* electronic filing only for State agency records, local government records of “pollution control facility” siting decisions, and Part 104 and Part 106 petitions (35 Ill. Adm. Code 104, 106).
- Second, when electronic filing is not reasonably practicable, relief from mandatory electronic filing will be available.
- Third, when it is not reasonably practicable to file a variance or adjusted standard petition electronically, the petitioner can instead file the original paper petition (and two paper copies) stating so. This accommodation is necessary because of the legal import attached to the filing date of variance and adjusted standard petitions.
- Fourth, problems with electronic filing on COOL have not been many, but the Board is upgrading COOL and expects it to reliably handle the increased electronic filing.
- Fifth, in rulemakings, those who prefile testimony or other documents will still have to bring paper copies of the prefilings—not compact disks (CDs)—to the hearing, as directed by the hearing officer.
- Sixth, the Board discusses but leaves unchanged its proposal to reduce the burden of and increase the options for filing copyrighted documents that are proposed to be “incorporated by reference” into rules.
- Seventh, to better reflect the actual make-up of State agency and local siting records, the Board proposes allowing the documents within the electronic record to be (1) arranged chronologically *within categories of material* and (2) filed, *to the extent technically feasible*, in “text-searchable” Adobe PDF.
- Eighth, in response to concerns over electronic file storage, the Board explains that it is not using portable electronic data storage devices to comply with the State Records Act (5 ILCS 160 (2014)).

Limited Mandatory Electronic Filing

Currently, nearly all documents filed with the Board are allowed to be filed electronically. Roughly 75% of all filings received over the last six months were filed electronically. The clear trend in Illinois courts is toward requiring that all documents be filed electronically. On January 22, 2016, Chief Justice Rita B. Garman and the Illinois Supreme Court announced a timeline for statewide, mandatory “e-filing” in civil cases: electronic filing will be required as of July 1, 2017, in the Supreme Court and the five districts of the appellate court, and as of January 1, 2018, in all 24 circuit courts. In short, “[f]iling paper court documents in civil cases will soon be a thing of the past in Illinois.” http://www.illinoiscourts.gov/Media/PressRel/2016/012216_2.pdf (last accessed Apr. 1, 2016). Several states already require electronic filing, as do the federal courts. *Id.*

At this time, however, the Board is not proposing to require that all documents be filed in electronic format. Instead, at first notice, the Board proposed only that a relatively small number of documents must be filed electronically: State agency records; local government records of “pollution control facility” siting decisions; and Part 104 and Part 106 petitions. These items, particularly siting records, are almost always quite large. A primary benefit of having them filed electronically is that the Clerk’s Office will be able to readily post them on COOL, making them promptly internet accessible for parties and the public. The paper also takes up significant amounts of Board office space that could be used more efficiently. And, when these papers need to be destroyed to make room for other papers, the Board must expend substantial resources to ensure compliance with the State Records Act (5 ILCS 160 (2014)).

Presently, the Board does not require any document to be electronically filed. Under the current procedural rules, the general requirement for filing a document is as follows: the document must be filed in paper or through COOL; either way is acceptable. If filed through COOL, no paper original or paper copy of the document is required. If filed in paper, the paper original and three paper copies of the document (four total) are required (the Board proposes changing this to an original and *two* copies, *i.e.*, *three* total).⁴ See 35 Ill. Adm. 101.302(h)(1).

This general filing requirement (*i.e.*, file either way, paper or COOL) would have additional *exceptions* (*i.e.*, file only *one* way), as proposed at first notice. This prompted JCAR staff to ask: “what is left that *can* be filed either in paper or electronically”? JCAR Corr. at 1 (emphasis in original). There would be four exceptions, two of which are in the current rules and two of which are proposed. First, documents containing trade secrets or other non-disclosable information must be filed in paper only. This is currently required. Second, the originals of oversized exhibits must be filed. This too is a current requirement. Third, the Board proposes that some documents must be filed electronically only, *i.e.*, filed through COOL or on a portable electronic data storage device such as a CD. This refers to the mentioned State agency records (IEPA, OSFM), local siting records, and Part 104 and Part 106 petitions. Fourth, the Board proposes that when a rulemaking proponent wants a copyrighted document to be incorporated by reference into a rule, the copyrighted document cannot be filed electronically. Instead, generally, the proponent would have to file either a paper original of the copyrighted document (with Board access to two more) or an electronic seat license (with Board rights to print three).

Not falling within any of these four exceptions—and therefore remaining *able* to be filed either in paper or through COOL—would be a vast array of documents, including complaints; answers to complaints; petitions for review; petitions to contest; recommendations; motions; responses to motions; briefs; rulemaking proposals; public comments; transcripts; appearances; and discovery documents. Accordingly, even with the proposed exceptions, most documents, by far, could still be filed either way.

⁴ When it is able, the Clerk’s Office has and will continue to let consistent paper filers know about the availability of COOL as a filing option.

Relief from Electronically Filing Records

IEPA supports the proposed requirement to electronically file all of its administrative records on appeal (PC 3 at 4-5), as does IERG (PC 2 at 7). JCAR staff inquires whether “all siting authorities have the resources to format and convey [their pollution control facility siting records] electronically.” JCAR Corr. at 2. Further, JCAR staff asks: “Is there a reason that [the Board] can’t accept paper copies [of siting records] and then scan and post them?” *Id.* As to the latter question, the Clerk’s Office, which must handle all filings made in all Board proceedings, lacks the staffing to do so. Answering the former question requires more elaboration.

There may be local governments that are unable to electronically file their pollution control facility siting records.⁵ As noted, local siting records are in almost every case quite large. A single siting record may fill ten or more large boxes. The Board believes, however, that scanning a siting record one time and mailing a CD of that record to the Board will often prove less burdensome for the local government than filing in paper. Under the current procedural rules, to file with the Board only in paper, the local government must deliver the original paper siting record, plus three paper copies. *See* 35 Ill. Adm. Code 101.302(h)(1)(B). Yet, in many cases, the physical act of *scanning* the original siting record is essentially identical to *photocopying* it. Even if a local government lacks this equipment, it may be economical to have an office service store scan the record. IEPA explains the benefits of filing a record on CD: “minimize the hours required to make copies of records, particularly voluminous records, and have the added benefit of conserving paper resources and curtailing postage costs.” PC 3 at 5.

Nevertheless, if it is not reasonably practicable for a local government to electronically file a siting record, it may ask for relief. Specifically, the local government may file a motion explaining why electronic filing presents a problem and asking for permission to file the record in paper. This relief is contemplated at the beginning of the filing requirements at Section 101.302(h). As proposed, all of subsection (h) is subject to the phrase “[u]nless the Board, the hearing officer, or the its-procedural rules provide otherwise, . . .” The Board or a hearing officer could rule upon the motion. And, at least while initially implementing these rules, whenever a siting petition for review is filed, the Board will instruct the hearing officer to promptly alert the local siting authority about the new record-filing requirement and the availability of the Clerk’s Office to answer questions about electronic filing.

Ensuring Timely Filing Dates for Variance and Adjusted Standard Petitions

IERG supports the proposed requirement to electronically file all petitions under 35 Ill. Adm. Code 104 (Regulatory Relief Mechanisms) and 106 (Proceedings Pursuant to Specific

⁵ The Board gave notice of these proposed rules (and the opportunity for comment) in the customary ways, including through *Illinois Register* publication. In addition, on January 13, 2016, the Board sent an e-mail message about this rulemaking to over 2600 e-mail addresses. The e-mail addresses were culled from COOL and supplemented. Despite this unprecedented outreach, the Board received no public comments from local governments or representatives of local governments.

Rules or Statutory Provisions). PC 2 at 7. P&H, however, would prefer that paper petitions for variances and adjusted standards remain a filing option. PC 4 at 1-2. P&H is concerned about those who lack a computer or are not computer literate. *Id.* at 1. P&H cites a 2013 census report for the proposition that 11% of Illinois residents live in a household without a computer. P&H believes that allowing these petitions to be filed only electronically would “effectively disenfranchise” many Illinoisans and may lead to “due process issues.” *Id.* P&H asserts that variance and adjusted standard petitions are not “always” voluminous. *Id.* As an alternative to its suggested paper-filing option, P&H proposes a 100-page threshold for requiring an electronic petition. PC 4 at 1-2.

The Board appreciates P&H’s serious concerns and agrees that the procedural rules must avoid any such unintended consequences. But, variance and adjusted standard petitions, in particular, tend to be highly technical and are filed almost exclusively on behalf of legal entities, like corporations and municipalities, not by individuals. Such an entity must be represented by—and have its petition filed by—a licensed attorney. *See* 35 Ill. Adm. Code 101.400(a). It seems unlikely that this legal representation would come without computers. The Board recognizes that, as with most technological change, there will be some discomfort with any mandatory electronic filing, but the long-term benefits in efficiency, access, and conserved resources will far outweigh transitional difficulties.

The Board concedes, however, that an individual could be interested in seeking a variance or adjusted standard but lack the computer access or proficiency to file the petition electronically. And, despite the Clerk’s Office’s renown for assisting those having difficulty executing a particular electronic filing, the Board lacks the resources of the courts to provide Statewide computer access and technical support for all such individuals. These limitations are magnified in the context of variance and adjusted standard petitions because the date on which either petition is filed can have critical legal significance.

Under the Act, filing a petition for a variance from a rule—within 20 days after the rule’s effective date—stays the operation of the rule as to that petitioner, pending disposition of the petition (unless the rule implements a specified federal program). *See* 415 ILCS 5/38(b) (2014). The Act contains similar provisions for filing an adjusted standard petition. *See* 415 ILCS 5/28.1(e), (f) (2014). In addition, the Act requires that an adjusted standard petitioner must—within 14 days after filing the petition—publish newspaper notice of the petition’s filing. *See* 415 ILCS 5/28.1(d)(1) (2014). This publishing requirement, imposed by the Act, must be timely met for the Board to acquire jurisdiction over the case. *See, e.g.,* Petition of SCA Tissue North American, L.L.C. for an Adjusted Standard from 35 Ill. Adm. Code 218.301 and 218.302(c), AS 05-1 (Jan. 6, 2005) (dismissing petition for lack of jurisdiction when publication of notice occurred after statutory 14-day period).

As discussed above, relief from mandatory electronic filing could be sought by motion. However, when such relief is sought for variance and adjusted standard petitions, questions would arise. One question is whether the filing date of the petition would relate back to the filing date of the motion for leave to file in paper. The answer to that question might depend upon whether the original paper petition and two paper copies are attached to the motion and whether the motion is granted. The Board proposes to accommodate these unanticipated

complexities for variance and adjusted standard petitions by amending the first-notice language, which lists Part 104 and Part 106 petitions as subject to mandatory electronic filing:

A petition filed under 35 Ill. Adm. Code 104 (regulatory relief mechanisms) or 106 (proceedings pursuant to specific rules or statutory provisions) (see 35 Ill. Adm. Code 104.106 and 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) An original oversized exhibit (see subsection (j)). Proposed Section 101.302(h)(2)(D).

This approach maintains the electronic filing requirement—which the Board expects the overwhelming majority of filers will satisfy—but provides an automatic exception because of the significant legal rights attached to the date of a variance or adjusted standard petition’s filing.

Upgraded COOL Should Reliably Handle Increased Electronic Filing

IERG is concerned that COOL might be unable to accommodate the increased electronic filing required by the first-notice proposal, and recounts past problems with trying to file documents on COOL. PC 2 at 7 (“can be difficult to upload documents without error messages and multiple attempts”). As long as the Board remedies any technical deficiencies with COOL, IERG believes that the Board’s proposal will be “positive for parties and the public, as they will be able to access [IEPA] records and filed documents faster and easier than before.” *Id.* at 8. P&H applauds the Board’s “modernity and efficiency” and notes that it is “particularly pleased with the ease of use of the COOL system.” PC 4 at 1.

The Board appreciates the reviews of COOL’s performance. Over the years, when the Board’s information technology specialist has been called upon to tackle constituent problems with COOL, the difficulties were invariably traced to issues with JAVA, which runs on the end user’s device and is currently necessary to use COOL. The Board is now upgrading COOL, however, and expects the improved system to reliably handle the extra electronic filings that will result from these rule amendments.

Bringing Paper Copies of Prefilings to the Rulemaking Hearing Room

At first notice, the Board proposed changing a rule that allows the rulemaking hearing officer to direct filers of prefiled materials to bring a specified number of paper copies of their prefiled materials to the hearing. The existing rule reads as follows:

The proponent and each participant who has filed testimony, questions, answers, responses, or exhibits before hearing must bring the number of copies designated by the hearing officer of that material and exhibits to the hearing. 35 Ill. Adm. Code 102.424(e).

The rule applies whether the participant prefiles with the Clerk in paper or through COOL. It does not *automatically* require prefilers to bring paper copies of their prefiled materials to the rulemaking hearing; only if the hearing officer so directs them.

Especially when prefilers brought paper copies to a hearing *before COOL*, even Board Members and staff attending the hearing would avail themselves of the prefiling copies. Since COOL, however, the rule has been little used by hearing officers. At first notice, the Board sought to renew the rule's vitality:

The proponent and each participant who has filed testimony, questions, ~~answers,~~ responses, or any related exhibits before hearing in paper only must bring ~~the number of copies designated by the hearing officer of that material and exhibits~~ to the hearing a compact disk or other portable electronic storage device containing their respective prehearing documents in text-searchable Adobe PDF for the record. Proposed first-notice Section 102.424(e).

The Board had two objectives with this proposed amendment. First, the Board sought to encourage electronic filing by eliminating the burden—on the *electronic* prefiler—of bringing paper copies to the hearing. Second, the Board sought to enable its Clerk's Office to post on COOL especially voluminous, multi-exhibit materials that are often prefiled in paper. The Board lacks the staffing to convert to PDF a prefiled binder with numerous attachments, for example. Requiring that the prefiler bring a copy on a CD would allow the Clerk' Office to readily post the document on COOL, albeit after the hearing.

P&H believes that having paper copies of prefiled materials available at the hearing allows members of the public to better follow what is happening, although it does “often result in paper being thrown away afterward.” PC 4 at 2. P&H warns that the Board should not “assume that everyone attending the hearing will have copied all of the relevant documents off the Board's website or will come armed with electronic devices.” *Id.* These devices and the ability to use them, continues P&H, are not “universal.” *Id.* P&H asserts that eliminating “paper courtesy copies” is likely to result in “angry” participants who feel that they are being “discriminated against and denied the ability to fully participate in the hearing.” *Id.*

Prefilers often bring paper copies of their prefilings to the hearing without any prompting by hearing officer order. The Board's proposed rule change was not designed to end this voluntary practice, though the Board is troubled by the stacks of prefiled documents frequently being discarded after the hearing. PC 4 at 2. Further, many interested citizens—admittedly, not necessarily all—who plan to attend a hearing will be on the rulemaking's service list. Generally, a person on the service list would be served—by the prefiler—with a copy of the prefiling before the hearing, meaning that the person could come to the hearing with his own copy.

Nevertheless, P&H's point about citizen participation is well taken. The Board does not wish to—even indirectly—curtail the ability of the public to participate at the hearing. The Board also recognizes that individuals who prefile in paper may have difficulty putting a copy on a CD. And, as the practice has remained common, bringing paper copies to the hearing is presumably not too great a burden on prefilers. Further, the sorts of savings and efficiencies

discussed above will promote the pre-filing of large documents electronically, without the need for this further incentive. For these reasons, the Board at second notice removes the first-notice changes to Section 102.424(e), with the exception of minor clarifications.

Copyrighted Documents Being Proposed for Incorporation by Reference

The Board at first notice proposed amendments that will reduce a rulemaking proponent's expenses when it files a proposal that includes copyrighted documents for incorporation by reference. The amendments will do so without sacrificing the Board's interests in complying with the IAPA, controlling costs, and avoiding copyright infringement. The Board detailed its reasoning in its first-notice opinion. *See First Notice*, slip op. at 6-8.

When filing a rulemaking proposal, if a copyrighted document is proposed to be incorporated by reference, the copyrighted document cannot be filed electronically, though the remainder of the proposal can be. This is unchanged from the current rule. As for filing the copyrighted document, the rulemaking proponent would have two options under the proposed amendments, and would have to satisfy one option or the other.

Under the first option, the proponent must file a single paper original of the copyrighted document *and* include either one of the following in the proposal:

- The copyright owner's written authorization for the Board to make, without 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 of the copyrighted document to JCAR, a court, or a member of the public during or after the rulemaking; *or*
- 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 of the copyrighted document to JCAR, a court, or a member of the public during or after the rulemaking.⁶

Under the second option, the rulemaking proponent must file an "electronic seat license" or similar documentation of access that, at no charge to the Board, grants the Board the rights, during and after the rulemaking, to do all of the following:

- Electronically access the copyrighted document;
- Print a single copy of the copyrighted document to maintain at the Board's Chicago office; *and*

⁶ To answer IEPA's question (PC 3 at 4), under the first option, the proposal is required to include either the copyright owner's written authorization or the proponent's representation, not both. The "or" from the Board's first-notice order failed to appear in the *Illinois Register*.

- 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.

IEPA supports the Board's proposed revisions, which will save resources. PC 3 at 1, 4. JCAR staff suggests clarifying two parts of the new rule language. First, the Board agrees that “*up to no more than a total of two paper copies*” can simply read “no more than a total of two paper copies.” JCAR Corr. at 1. Second, JCAR staff asks whether, by “*electronic seat license*,” the Board means “*single seat license*.” *Id.* The Board understands a “*single seat license*” as providing access to the copyrighted document on only one computer, as opposed to a “*multi-seat license*,” which would provide access on two or more computers.

The Board chose the flexible phrasing of “*electronic seat license or similar documentation of access*” to cover licensing terminology that may vary from copyright owner to copyright owner. The Board's objective here remains only to have a practical arrangement that “*gives the Board the rights, during and after the rulemaking, to . . . electronically access the copyrighted document . . . and print . . .*” no more than the needed and permitted number of copies. The Board agrees that an “*electronic seat license*” for “*the Board*” could beg the question of whether the proponent must provide the rights for one Board computer or multiple Board computers. For reasons of copy control, Clerk's Office function, and overall economy, the Board believes that one computer will suffice. The Board at second notice changes the general “*electronic seat license*” to the more specific “*single seat license*.”

State Agency and Local Siting Records—Chronological and “Text-Searchable” Adobe PDF

As discussed, the Board is proposing to require that State agency records and local siting records be filed in electronic format only. These records must be arranged chronologically and filed in “text-searchable” Adobe PDF. IEPA makes two good points about its records, which also apply to OSFM records and local siting records. Both points lead to rule changes at second notice.

First, IEPA explains that not all records of its determinations are maintained in “simple chronological order.” PC 3 at 6. Instead, especially in permitting records, which can be over 10,000 pages long, IEPA organizes the record first by category of document (*e.g.*, application materials; modeling files; correspondence) and then chronologically within each category. *Id.* According to IEPA, it would first have to make a paper copy of the entire record just to reorganize it chronologically from start to finish. *Id.* And, it would be difficult to locate an “isolated document by date” in the resulting record. *Id.* at 7. IEPA proposes that it be allowed to file a record that is organized “chronologically by category of material.” *Id.* at 6.

The Board agrees that it would be too burdensome—and just unnecessary—to reshuffle an entire record for a “start-to-finish” chronology, when the record is already organized, first, in logical categories of documents and, second, chronologically within each category. The Board never intended the rule language to preclude filing records arranged that way. This reasoning applies to OSFM records and local siting records as well. Consistent with IEPA's recommendation, the Board amends Sections 105.116(b) and 107.304(b) to require that the

record be “arranged in chronological sequence; or by category of material and chronologically within each category”

Second, IEPA correctly points out that some documents (*e.g.*, photos, drawings, diagrams, handwritten notes) received or produced by IEPA are either not text or not recognized as text and therefore are incapable of being “text-searchable.” PC 3 at 5. And, other documents, like air modeling data files, cannot be filed in Adobe PDF. *Id.* The Board agrees that the rules must accommodate these realities. IEPA proposes preceding the “text-searchable Adobe PDF” requirement with the modifying phrase “to the extent technically feasible.” PC 3 at 6. The Board agrees with IEPA’s suggestion, but makes a few edits for clarity. The Board also accepts IEPA’s proposed addition of the word “data” to “portable electronic storage device” (PC 3 at 6), *i.e.*, portable electronic data storage device:

Pursuant to 35 Ill. Adm. Code 101.302(h)(2), the State agency must file the original record in text-searchable Adobe PDF through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF in paper pursuant to 35 Ill. Adm. Code 101.302(h)(2). Proposed Section 105.116(a).

The Board also proposes corresponding changes to Sections 101.302(h)(2), 107.302, and 125.208.

Not Using Portable Storage Devices for State Records Act Compliance

Director Joens of the Illinois State Archives raises concerns over using portable electronic data storage devices for storing—especially on a long-term or permanent basis—documents filed on the devices. PC 1 at 2. Director Joens notes, for example, that CDs, properly maintained, have a life expectancy of only ten years or less. *Id.* The Director makes other helpful observations about properly retaining records. *Id.*

To fulfill its record-storage obligations, the Board will not use portable electronic data storage devices, which, as proposed, would be allowed for filing specified documents. Once filed, the Clerk’s Office will promptly transfer the electronic document from the device to COOL, which will provide the desired internet access to the public during the proceeding. The Board greatly appreciates the Director’s advice and, in continuing to meet the requirements of the State Records Act (5 ILCS 160 (2014)), will further take his remarks into account.

E-Mail Service

The Board seeks to take advantage of the efficiencies, reliability, and widespread use of e-mail. The proposed amendments will allow the Board to greatly expand the number of orders that it serves by e-mail in lieu of paper. Only final adjudicatory orders of the Board must be served in paper, as the IAPA requires that they be served personally or by registered or certified mail. *See* 5 ILCS 100/10-50(a) (2014); 35 Ill. Adm. Code 101.1060(g). With these amendments, every other Board order, and every hearing officer order, issued in an adjudicatory

proceeding could be lawfully served by e-mail alone; in a rulemaking, every order could be lawfully served by e-mail alone.

Taking these measures will result in significant benefits: savings in postage; decreased paper use; reduced staff time dedicated to serving orders; and immediate delivery of orders to parties. Under the current procedural rules, however, the only way for someone to authorize being served by e-mail instead of in paper is for that person to file a written consent with the Clerk's Office. The Board believes that requiring this separate step deters broader use of e-mail service.

At first notice, the ability to file this written consent was retained, but as only one of *four* ways to authorize receipt of e-mail service in a proceeding. Three additional ways were proposed for consenting to e-mail service: (1) provide the hearing officer with an e-mail address during a hearing or status conference; (2) file an attorney's appearance containing an e-mail address; and (3) appear on a notice list or service list and provide the Clerk's Office with an e-mail address. And, by whatever means consent to e-mail service is given, it would authorize not only e-mail receipt of Board and hearing officer orders, but also e-mail receipt of filings from other parties to the proceeding. Most documents that parties serve can be served by e-mail; exceptions include complaints and administrative citations. *See* 35 Ill. Adm. Code 101.1060(b), (c). Finally, as proposed, if a party has e-mail capability, the party must serve its filings upon the hearing officer by e-mail rather than in paper.

IEPA supports expanding e-mail service and believes it will save resources and staff time. PC 3 at 4. P&H supports having the option of e-mail service, but is concerned about parties inadvertently "consenting" to the receipt of e-mail service: if simply providing an e-mail address on a conference call or in an appearance is enough, parties may end up getting e-mail service when they still want paper service. PC 4 at 1. In P&H's view, consent to receiving e-mail service should be given only explicitly in a filing. *Id.*

The Board declines to eliminate any of the first-notice options for consenting to receipt of e-mail service, but will add clarifying language that addresses P&H's concern. Before turning to the clarification, the Board offers four observations for perspective. First, the Board believes that the risk of parties unwittingly authorizing e-mail service, even with the first-notice language, is slight. And, the potential harm—that someone will receive a document by e-mail despite having preferred paper—seems a fairly small one. Second, all of these types of concerns taken together are still outweighed by the benefits to the Board and the parties that will flow from greater use of e-mail service. P&H does not argue otherwise. Third, the Board anticipates that the parties will cooperate in good faith when serving each other by e-mail and will communicate any service-related misunderstandings to the hearing officer.

Fourth and finally, the Board emphasizes that it is not proposing to make the receipt of e-mail service mandatory at this time, but is instead simply making it easier for parties to authorize its receipt. The Board's proposed approach therefore does not go as far as the Illinois Supreme Court's new rules do. As of January 1, 2016, the Illinois Supreme Court *requires* attorneys to accept e-mail service. Under those rules, each attorney must designate—on his appearance and all pleadings filed in court—his e-mail address to which documents may be served. *See* Ill. Sup.

Ct. R. 11(b)(6), 11(d), 131(d)(1). Unrepresented parties, under the new Supreme Court rules, are not required to accept e-mail service, but can consent to it (Ill. Sup. Ct. R. 131(d)(2)), which is how the Board's rules will work not only for unrepresented parties, but also for attorneys.

For added certainty against the risk of inadvertently authorizing the receipt of e-mail service, the Board at second notice borrows the word "designate" from the Supreme Court rules. *See* Ill. Sup. Ct. R. 131(d)(1), (d)(2). To consent, the person must not only provide an e-mail address, but also designate it for purposes of receiving e-mail. *See* proposed Section 101.1070(a)(2)-(4).

Notice of Hearing

Since the Board issued its first-notice decision, three issues have been posed about providing "notice of hearing." Here, the Board addresses the issues in the following order:

- First, the Board plans to use the *Illinois Register*—instead of newspapers—to provide notice of a hearing only for (1) "identical-in-substance" (IIS) rulemaking hearings regarding the federal Clean Air Act and (2) Clean Air Act "fast-track" rulemaking hearings.
- Second, the Board adopted procedural rules for RCRA hearings over 30 years ago when USEPA was authorizing the State to implement the RCRA hazardous waste program in Illinois. The Board's rules are consistent with the federal rules on public notice for hearings.
- Third, the Board discusses why its adjudicatory and regulatory hearings are not "meetings" under the Open Meetings Act (5 ILCS 120 (2014)).

Clean Air Act "SIP" Hearings

When final Board action is expected to trigger an IEPA submittal to USEPA proposing to revise Illinois' State Implementation Plan (SIP), the hearing held by the Board may be used to meet the Clean Air Act's public hearing requirement for SIP revisions.⁷ IEPA generally relies upon Board hearings to satisfy SIP submittal hearing requirements. PC 3 at 1. IEPA states that these Board hearings occur in (1) rulemakings to amend or repeal rules that are part of the Illinois SIP, (2) rulemakings that seek to add regulations that will be submitted as SIP revisions,

⁷ "[US]EPA must designate areas as meeting (attainment) or not meeting (nonattainment) the [the National Ambient Air Quality Standards (NAAQS)]. The Clean Air Act (CAA) requires states to develop a general plan to attain and maintain the NAAQS in all areas of the country and a specific plan to attain the standards for each area designated nonattainment for a NAAQS. These plans, known as State Implementation Plans or SIPs, are developed by state and local air quality management agencies and submitted to [US]EPA for approval."

<https://www3.epa.gov/airquality/urbanair/sipstatus/overview.html> (last accessed Apr. 8, 2016).

and (3) variance and adjusted standard proceedings to obtain regulatory relief from rules that are part of the SIP. PC 3 at 1-2.

As IEPA observes (PC 3 at 2), sometimes the Act requires that hearing notice be given by newspaper, such as “in a newspaper of general circulation in the area of the state concerned” (general rulemaking) or “in a newspaper of general circulation in the area likely to be affected” (adjusted standard) (415 ILCS 5/28(a), 28.1(d)(2) (2014)). *See also, e.g.*, 415 ILCS 5/31(c) (2014). If a hearing is intended to comply with the SIP submittal requirement, the Board will provide hearing notice by newspaper notice when newspaper notice is required and by *Illinois Register* when newspaper notice is not required. *See* proposed Sections 101.602(b), 102.416(c) (“Unless otherwise required by applicable law,” notice will be by *Illinois Register* instead of newspaper); *see also* 35 Ill. Adm. Code 102.416(a)(2), 104.424. For example, with a general rulemaking of statewide applicability, the Board would provide the SIP hearing notice in a newspaper within each of the State’s 11 air regions.

Presently, the Board anticipates just two scenarios for giving hearing notice in the *Illinois Register* instead of in any newspapers. First, the Board plans to use the *Illinois Register* for notice of IIS rulemaking hearings on proposed amendments to the Board’s rules concerning either the National Ambient Air Quality Standards (NAAQS) or the definition of “volatile organic material” (VOM) (415 ILCS 5/9.1(e), 10(H) (2014)). Second, if the Board is able to use the *Illinois Register* for hearing notice within the statutory time constraints of a Clean Air Act “fast-track” rulemaking (415 ILCS 5/28.5 (2014)), the Board plans to do so. *See* proposed Section 102.304(a). Accordingly, the Board proposed these amendments in Section 101.602(b):

The Clerk will provide notice of all hearings, except for administrative citation hearings, in a newspaper of general circulation in the county in which the facility or pollution source is located, or where the activity in question occurred. 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. Notice must be published at least 21 days ~~before~~^{prior to} the hearing. If the proceeding involves federal rules ~~that~~^{which} the State has been given delegated authority to administer, notice must be published at least 30 days ~~before~~^{prior to} the hearing. Proposed Section 101.602(b); *see also* proposed Section 102.416(c).

IEPA suggests adding language to the last sentence of Section 101.602(b), so that it would read: “If the proceeding involves federal rules that the State has been given delegated authority to administer, or if the proceeding involves amending, repealing, or seeking regulatory relief from regulations that are part of Illinois’ State Implementation Plan or involves adding regulations that will be submitted as revisions to Illinois’ State Implementation Plan, notice must be published at least 30 days before the hearing.” PC 3 at 3. Implicit in IEPA’s suggestion is the position that a hearing on revising Illinois’ SIP under the Clean Air Act does not “involve” federal rules that the State has been “given delegated authority to administer.” The Board does not interpret this existing rule language so narrowly. The language refers broadly to any mechanism by which USEPA assigns responsibility for operating a federal regulatory program to

the State. Based upon this language, Board hearing officers have consistently provided notice of a SIP hearing at least 30 days beforehand. In any given proceeding, it would behoove IEPA to alert the hearing officer that IEPA intends to use the Board hearing for SIP purposes. The Board finds that IEPA's proposed language change is unnecessary, but does propose striking the redundant word "given" from the phrase "given delegated."

JCAR staff asks why the Board would put SIP hearing notices in the *Illinois Register* rather than in newspapers. JCAR Corr. at 1. The Board has four reasons. First, the IAPA explicitly provides that the Secretary of State will accept for publication in the *Illinois Register* "all Pollution Control Board . . . hearing notices . . ." See 5 ILCS 100/5-70(b) (2014). Second, newspaper notices for a SIP hearing are very expensive. Last year for a rulemaking, Amendments to 35 Ill. Adm. Code Part 214, Sulfur Limitations, Part 217, Nitrogen Oxides Emissions, and Part 225, Control of Emissions from Large Combustion Sources, R15-21, to have a single notice of hearings published in a newspaper within each of the State's 11 air regions, the Board spent over \$3,100. Third, IEPA experience with publishing SIP hearing notices in the *Illinois Register* has been good. Only rarely has an IEPA hearing notice not appeared in the expected issue of the *Illinois Register*. PC 3 at 2.

The fourth reason is that an *Illinois Register* notice of hearing complies with federal law. USEPA's rule on public hearings for SIP submittals requires that hearing notice be given by "prominent advertisement in the area affected" (40 C.F.R. § 51.102(d)(1)), which USEPA has interpreted to be "media neutral," *i.e.*, publication of *newspaper* notice is not necessarily required. Janet McCabe April 6, 2011 Memo to Regional Administrators, "Regional Consistency for the Administrative Requirements of State Implementation Plan Submittals and the Use of 'Letter Notices,'" (McCabe Memo), Attachment B at 1, available at <http://www3.epa.gov/airquality/urbanair/sipstatus/docs/mccabeLtrRAs.pdf> (last accessed Apr. 8, 2016); compare 40 C.F.R. § 124.10(c)(2)(ii) (hearing requiring newspaper notice). The public has "routine and ready access" to the *Illinois Register*. See McCabe Memo, Attachment B at 1. Further, for minor permitting actions, USEPA found that publication in the *Pennsylvania Bulletin* satisfied the "prominent advertisement" requirements of 40 C.F.R. § 51.161(b)(3). USEPA agreed to the Pennsylvania Department of Environmental Protection's elimination of the newspaper notice requirement in favor of publication in the *Pennsylvania Bulletin*:

[US]EPA has repeatedly recognized that the prominent advertisement requirements of section 51.161(b)(3) are media neutral, and that state programs may meet the requirement with alternative methods, provided that it is reasonable to conclude that the public would have "ready and routine access to any alternative publishing venues," (See, April 17, 2012, Janet McCabe Memo to Regional Administrators entitled, "Minor New Source Review Public Notice Requirements under 40 CFR 51.161(b)(3)", available at <http://www.epa.gov/region07/air/nsr/nsrmemos/pubnot.pdf>). 77 Fed. Reg. 60910, 60911 (Oct. 5, 2012).

The *Pennsylvania Bulletin*, described as “the Commonwealth’s official gazette for information and rulemaking” (<http://www.pabulletin.com/index.asp>) (last accessed Apr. 8, 2016), appears to be analogous to the *Illinois Register*.

Finally, USEPA recently proposed rule amendments that would make newspaper notices of hearing merely optional and add the option of satisfying notice requirements through website notices or “e-notices” of hearing. *See* 80 Fed. Reg. 81234 (Dec. 29, 2015). USEPA’s proposal would amend rules for the New Source Review and Title V programs of the Clean Air Act, among others. *Id.* at 81235. The Board points this out not because it is proposing to replace newspaper notices with website notices, but rather as more evidence of a movement for alternatives to expensive newspaper notices. The Board does provide, however, *supplemental* notice of all of its hearings through its website (www.ipcb.state.il.us).

RCRA Hearings

JCAR staff inquired as to how “the public notice requirements in Parts 103 [enforcement] & 104 [regulatory relief mechanisms] square with the ones under RCRA.” JCAR Corr. at 1. RCRA’s public notice requirements were addressed by the Board through rulemaking in the mid-’80s, RCRA Procedural Rules, R84-10 (Dec. 20, 1984; Jan. 10, 1985). In that rulemaking, the Board crafted procedural rules to satisfy not only State requirements, but also federal requirements, including 40 C.F.R. § 124.10, USEPA’s public notice rule for RCRA permits. Both IEPA and USEPA were among the rulemaking’s participants. The Board adopted the rules in part to facilitate USEPA’s authorization of the State to implement the RCRA Subtitle C (hazardous waste) program in Illinois. The procedural rules remain substantively unchanged. *See, e.g.*, 35 Ill. Adm. Code 101.602, 103.410, 103.414, 104.214, 104.236.

Open Meetings Act

JCAR staff asked whether a Board hearing is a “meeting” under the Open Meetings Act (OMA) (5 ILCS 120 (2014)). JCAR Corr. at 1. The Board finds that its adjudicatory and regulatory hearings are not “meetings” under the OMA. A Board hearing does not fit within the OMA’s definition of “meeting.” To have a “meeting” of a five-member public body, like the Board, the definition requires a gathering of a “quorum” of the members of a public body held “for the purpose of discussing public business.” 5 ILCS 120/1.02 (2014).

When the Board has no vacancy, four Board Members constitute a “quorum” to hold a *meeting* under the Act. *See* 415 ILCS 5/5(a) (2014). On the other hand, no Board Members are required to attend a *hearing*, except for a general rulemaking hearing, which only one Board Member is required to attend. *See* 415 ILCS 5/28(a) (2014). Even if four Board Members attend a hearing, they do not do so “for the purpose of discussing public business.” 5 ILCS 120/1.02 (2014). A Board hearing, unlike a Board meeting, is held so that parties and participants can have their evidence admitted into the record. It is that evidence on which the Board must base its

decision. *See* 415 ILCS 5/41(b) (2014). And, that decision or “final action” can be taken at a meeting, but not at a hearing. *See* 5 ILCS 120/2(e) (2014); 415 ILCS 5/5(a) (2014).⁸

This distinction between “meetings” and “hearings” is borne out in statutory usage. The OMA and the Act clearly distinguish between the two. *See, e.g.*, 5 ILCS 120/2(a), (c)(4), (d) (2014); 415 ILCS 5/5(a) (2014). Moreover, the public would enjoy no extra benefit in terms of additional transparency from re-characterizing a Board hearing as a Board meeting. Both are open to the public and afford the opportunity for the public to provide comment. But, a Board hearing requires anywhere from 20 to 30 days of prior public notice, while a Board meeting requires only 48 hours of prior public notice. *See, e.g.*, 415 ILCS 5/28(a) (2014); 5 ILCS 120/2.02(a) (2014).

Timing for Appeals

Below, the Board discusses comments about the first-notice rules on the timing for bringing appeals, specifically: appealing to the appellate court for review of final Board orders; and appealing to the Board for review of hearing officer orders. For the latter, the Board makes no changes to the proposed amendments. For the former, the Board clarifies the proposed rule language, which addresses four circumstances: (1) appeals of final adjudicatory orders; (2) appeals of final rulemaking orders adopting rules; (3) appeals of final rulemaking orders not adopting rules; and (4) the effect of motions to reconsider on the appeal periods for final Board adjudicatory and rulemaking orders.

Appealing to the Appellate Court for Review of Final Board Orders

The Board explains and further clarifies the first-notice language at Section 101.300(d), which specifies how to calculate the 35-day period during which the Board’s final orders may be appealed to the appellate court. Judicial review of final Board orders is available through Sections 29(a) and 41(a) of the Act (415 ILCS 5/29(a), 41(a) (2014)). Section 29(a), which concerns appealing Board rules, cross-references Section 41(a). In turn, Section 41(a) provides for judicial review “by filing a petition for review within 35 days from the date that a copy of the order or other final action sought to be reviewed was *served upon* the party affected by the order or other final Board action complained of.” 415 ILCS 5/41(a) (2014) (emphasis added). Accordingly, the date of *service* starts the 35-day period for appealing. The Board below describes how the date of service may differ depending on the type of order.

Appealing a Final Adjudicatory Order. Subsection (d)(2) of Section 101.300 addresses final decisions rendered in adjudicatory proceedings. It uses the term “party” because a “party” to the adjudicatory proceeding may appeal the Board’s final decision. 415 ILCS 5/41(a) (2014). The Board makes only minor clarifying changes to subsection (d)(2) at second notice. The date of service of the final decision remains the date on which the party *receives* the Board’s certified mailing of the decision. This ensures that parties have the full 35-day period to

⁸ The slim exception to these statements occurs when a hearing is held on an owner or operator’s appeal to remove IEPA’s seal of equipment or facilities. *See* 415 ILCS 5/34(d) (2014).

consider whether to appeal, as opposed to counting the 35 days from, for example, when the Board places its final order in the U.S. Mail. *See* 735 ILCS 5/3-113(a) (2014).⁹

Appealing a Final Regulatory Order That Adopts Rules. Subsections (d)(3) and (d)(4) of Section 101.300 address when appeals may be taken of final Board decisions made in regulatory proceedings. Subsection (d)(3) continues to do so, with clarifications, but subsection (d)(4)—on rebutting the presumed service date—is deleted as unnecessary.

For subsection (d)(3), the Board agrees with P&H (PC 4 at 2) that it is clearer to say “the date of service” is deemed to be “the effective date of the new rule,” rather than *vice versa*, as it read at first notice. The second-notice language therefore states:

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 ~~the effective date of the new rule, the amendment, or the repealer~~ under the IAPA participant's receipt of the Board decision is presumed to be the date of service of the decision ~~final opinion and order by the Board upon the appealing person~~ participant. Proposed Section 101.300(d)(3).

This provision—to answer a question posed by JCAR staff (JCAR Corr. at 1)—uses the term “person” rather than “participant.” The courts may decide that someone has standing to appeal a rule because he is “adversely affected or threatened” by the rule (415 ILCS 5/29(a) (2014)), even if he did not participate in the Board rulemaking. This person, of course, would not actually be served with the Board’s final order because, not being a “participant” in the rulemaking, he would not be on the proceeding’s notice list or service list.

Subsection (d)(3), as proposed for second notice, continues to start the 35-day appeal period on the effective date of the rule. Under Section 5-40(d) of the IAPA, a new rule’s effective date is the date on which the rule is received by the Secretary of State, “unless a later effective date is required by statute or is specified in the rulemaking.” 5 ILCS 100/5-40(d) (2014). Normally, Board rules take effect upon the Secretary of State’s receipt of them.¹⁰ To account for the “later effective date” possibility, P&H suggests that the service date should be the “effective date as published in the *Illinois Register*” (PC 4 at 2), but the *Illinois Register*

⁹ This “receipt” language is in accord with pending Senate Bill 2950, sponsored by Senator Heather A. Steans. SB 2950 would amend Section 41(a), adding: “For purposes of this subsection (a), the date of service of the Board’s final order is the date on which the party received a copy of the order from the Board.” <http://www.ipcb.state.il.us/SLR/TheIllinoisAdministrativeProcedureAct.asp> (last accessed Apr. 8, 2016).

¹⁰ In the COOL docket for the rulemaking, the Clerk’s Office posts the documentation received from the Secretary of State concerning *Illinois Register* publication, including the rule’s effective date.

publishes a rule's effective date, regardless of how that date is fixed under Section 5-40(d). Having a "later effective date" is uncommon for Board rules, but if a rule were to have one, this would simply push back the 35-day appeal period.

The proposed rule language quoted above also specifies that the date of service is *deemed*, not merely presumed, to be the effective date of the newly-adopted rule. At first notice, service was *presumed* on the rule's effective date; under subsection (d)(4), the presumption could be rebutted—by those on the rulemaking's notice list or service list—with proof of *later* receipt of the Board's mailing.

The Board deletes subsection (d)(4) at second notice. Even if a participant were to receive the Board's mailing of the final order after the rule's effective date, persons who are particularly interested in a rulemaking often closely monitor its progress. For example, they might check the Board's meeting agendas and minutes on the website; contact the hearing officer for status updates; or receive "E-Notify" e-mail messages when documents are added to the rulemaking docket. These participants tend to quickly find out when the Board has taken final action. The Board believes that it would be very unusual for such a participant—one who might appeal the final rule—to first learn of the rule's final adoption *after* the 35-day period following the rule's effective date.

Finally, the "presumed served" approach of first notice—as opposed to the "deemed served" approach of second notice—risks putting a cloud over each final rule adoption. Unlike an adjudicatory case, which has a handful of parties to be served with the final order, a rulemaking may have hundreds of participants to be served with the final order. The mere possibility of a court challenge—from a single participant whose mail was lost—coming, conceivably, months after the rule took effect would leave the regulated, the regulators, and the public in limbo. The "deemed served" approach, on the other hand, with a uniform date to begin the 35-day appeal period, provides certainty.¹¹

Appealing a Final Regulatory Order That Does Not Adopt Rules. Subsection (d)(3) of Section 101.300 also recognizes that a final order in a regulatory proceeding may be issued in which the Board decides to adopt *no rule at all*. If the Board adopts no rule, of course, there would be no final rule to file with the Secretary of State or to have an "effective date" under the IAPA. For those instances, the proposed amendments provide that the date on which the participant receives the decision from the Board is the date of service:

¹¹ This change also enjoys the advantage of tracking the wording of pending Senate Bill 2950. That legislation would amend Section 29(a), adding: "For purposes of the 35-day appeal period of subsection (a) of Section 41, a person is deemed to have been served with the Board's final order on the date on which the rule or regulation becomes effective pursuant to the Illinois Administrative Procedure Act."

<http://www.ipcb.state.il.us/SLR/TheIllinoisAdministrativeProcedureAct.asp> (last accessed Apr. 8, 2016).

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 from the Board is the date of service of the decision upon the appealing participant. Proposed Section 101.300(d)(3).

The Board uses “participant” here because the Board would mail its final order only to those on the notice list or service list for the rulemaking. In addition, this appeal could not be brought under Section 29(a), which only gives standing for an appeal to a person adversely affected or threatened by “any rule or regulation” of the Board. 415 ILCS 5/29(a) (2014). Accordingly, any viable appeal—of a final regulatory order adopting no rules—would have to fall within Section 41(a), which gives standing to appeal only to a “party” served with the final order. 415 ILCS 5/41(a) (2014). The Board uses “participant” rather than “party” because there is no “party” to a rulemaking. *See* 35 Ill. Adm. Code 102.100(b).

Motion to Reconsider a Final Adjudicatory or Regulatory Order. In both adjudicatory and regulatory proceedings, the Board’s procedural rules allow for the filing of motions to reconsider final orders. *See* 35 Ill. Adm. Code 101.520, 101.902, 102.700, 102.702. Subsection (d)(2) of Section 101.300 accounts for the effect that the motion would have on the time period for appealing a final *adjudicatory* order. Subsection (d)(3) of Section 101.300 accounts for the effect that the motion would have on the time period for appealing a final *regulatory* order. In either scenario, the 35-day appeal period would start when the party (adjudicatory) or participant (regulatory) receives the order from the Board ruling upon the motion. In other words, the timely filing of a motion for reconsideration automatically stays the effect of the final order until disposition of the motion.

However, the Board is “precluded from allowing a motion for reconsideration of a final order adopting a rule, if that rule has been filed with the Secretary of State.” 35 Ill. Adm. Code 102.702. In that circumstance, the 35-day period to appeal the final rule would start on its effective date.

Appealing to the Board for Review of Hearing Officer Orders

The current procedural rules do not specify a timeframe within which any motion for interlocutory appeal of a hearing officer’s ruling must be filed. *See* 35 Ill. Adm. Code 101.518. Raising an objection with the Board to a hearing officer order in an untimely manner can disrupt a case. Besides the potential for unfair surprise to the opposing party, the Board’s options for remedying any error by the hearing officer can be constrained at the end of a proceeding, particularly when there is a statutory decision deadline. And, failing to raise the objection with the Board at all can result in the party forfeiting the issue before the appellate court.

The proposed amendments address these concerns by requiring that any motion for interlocutory appeal be filed within 14 days after the party receives the hearing officer’s written order or, if the hearing officer’s ruling is rendered at the hearing, within 14 days after the Board receives the hearing transcript. JCAR staff asked why the Board proposed a 14-day deadline for filing any motion for interlocutory appeal, “as opposed to 7 or 30 or 60” days. JCAR Corr. at 1.

The Board proposed a 14-day deadline because it is consistent with Section 101.502(b), which provides that any objection to a hearing officer ruling made at hearing, or any oral motion to the Board made at hearing, is deemed waived if not filed within 14 days after the Board receives the hearing transcript. *See* 35 Ill. Adm. Code 101.502(b). The Board also finds that the 14-day period strikes the proper balance between (1) avoiding material prejudice to a proceeding with a late challenge to a hearing officer ruling and (2) allowing enough time to thoughtfully consider whether to challenge a hearing officer ruling.

“Recycled Paper” and “Notice of Filing”

P&H argues that the current requirement to file on “recycled paper” has little remaining value and asks the Board to eliminate it and related definitions from the procedural rules. PC 4 at 2. P&H also maintains that a “Notice of Filing” is just “an archaic cover letter,” and the existing requirement to include one with each filing should be removed from the procedural rules, at least after the initial filing in a proceeding. *Id.* at 3. Whatever merit these suggested rule changes might have, which the Board does not reach now, the subjects were not raised at all in the Board’s first-notice opinion. Further, the changes would implicate one or more sections of the rules that are not open. Considering these proposals will be better undertaken in a future rulemaking.

CONCLUSION

The Board proposes the procedural rule amendments for JCAR’s second-notice review. The amendments should reduce travel, printing, copying, and paper mailing in rulemakings and adjudicatory cases, while making it easier to attend Board hearings and review filings. These benefits, which will inure to the Board and its constituents, will flow largely from expanded use of electronic filing, e-mail service, and videoconference hearings.

The rule changes since first notice include:

- Adding to the factors that will be considered when selecting locations for an in-person or videoconference hearing and when deciding whether to hold a hearing by videoconference;
- Providing greater specificity in how parties can avail themselves of the new ways for consenting to receipt of e-mail service in lieu of paper service;
- Ensuring that a petitioner—when electronic filing is not reasonably practicable—can file a variance or adjusted standard petition in paper (because of the legal significance attached by the Act to timely filing those petitions); and
- Clarifying how to calculate the timeframe for appealing Board orders to the appellate court.

The Board at second notice makes other amendments to clarify the rules.

ORDER

The Board directs that the Clerk submit these proposed amendments to JCAR for its second-notice review. For convenience, the Board reflects the rule changes (in 35 Ill. Adm. Code 101, 102, 103, 104, 105, 106, 107, 108, and 125) as follows:

- For changes—to the current rules—made at first notice and being retained at second notice, additions appear *single-underlined* and deletions appear with *single-strikethroughs*.
- For changes being made at second notice—either to the rule language added at first notice or to the current rules—additions appear *double-underlined* and deletions appear with *double-strikethroughs*.

The Board indicates by footnote where it proposed a change to current rules at first notice but, at second notice, is no longer proposing that change, *i.e.*, where current rule language will remain unchanged.

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

PART 101
GENERAL RULES

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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
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SUBPART J: ELECTRONIC FILING AND E-MAIL SERVICE

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101.1000	Electronic Filing and E-Mail Service
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101.1020	Filing Electronic Documents
101.1030	Form of Electronic Documents for Filing
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	101.ILLUSTRATION A	Enforcement Case
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101.ILLUSTRATION G	Underground Storage Tank Appeal
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
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101.APPENDIX E	Affidavit or Certificate of Service
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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; amended in R16-17 at 40 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 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 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 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.)

"Applicant" means any person who submits, or has submitted, an application for a permit or for local siting approval 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 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 pursuant to Section 5(a) of the Act.

"Citizen's enforcement proceeding" means an enforcement action brought before the Board 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/>.

"Complaint" means the initial filing that begins an enforcement proceeding 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 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 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.)

"Fast Track rulemaking" means a Clean Air Act rulemaking conducted 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.) An interlocutory appeal may also be the appeal of a hearing officer ruling to the Board. (See Section 101.518 of this Part.)

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

"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 leave of the Board. (See Section 101.402 of this Part.)

"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.)

"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 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 pursuant to Section 30 of the Act during an ongoing proceeding. (See Section 101.404 of this Part.)

"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 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 ~~[415 ILCS 5/3.330(a)]~~ for purposes of this Part and 35 Ill. Adm. Code 107. means ~~any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act. The following are not pollution control facilities:~~

~~waste storage sites regulated under 40 CFR 761.42;~~

~~sites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person;~~

~~sites or facilities at which the State is performing removal or remedial action pursuant to Section 22.2 or 55.3 of the Act;~~

~~abandoned quarries used solely for the disposal of concrete, earth materials, gravel, or aggregate debris resulting from road construction activities conducted by a unit of government or construction activities due to the construction and installation of underground pipes, lines, conduit or wires off of the premises of a public utility company which are conducted by a public utility;~~

~~sites or facilities used by any person to specifically conduct a landscape composting operation;~~

~~regional facilities as defined in the Central Midwest Interstate Low Level Radioactive Waste Compact;~~

~~the portion of a site or facility where coal combustion wastes are stored or disposed of in accordance with subdivision (r)(2) or (r)(3) of Section 21 of the Act;~~

~~the portion of a site or facility used for the collection, storage or processing of waste tires as defined in Title XIV;~~

~~the portion of a site or facility used for treatment of petroleum contaminated materials by application onto or incorporation into the soil~~

~~surface and any portion of that site or facility used for storage of petroleum contaminated materials before treatment. Only those categories of petroleum listed in Section 57.9(a)(3) of the Act are exempt under this definition;~~

~~the portion of a site or facility where used oil is collected or stored prior to shipment to a recycling or energy recovery facility, provided that the used oil is generated by households or commercial establishments, and the site or facility is a recycling center or a business where oil or gasoline is sold at retail;~~

~~processing sites or facilities that receive only on-specification used oil, as defined in 35 Ill. Adm. Code 739, originating from used oil collectors for processing that is managed under 35 Ill. Adm. Code 739 to produce products for sale to off-site petroleum facilities, if these processing sites or facilities are:~~

~~located within a home rule unit of local government with a population of at least 30,000 according to the 2000 federal census, that home rule unit of local government has been designated as an Urban Round II Empowerment Zone by the United States Department of Housing and Urban Development, and that home rule unit of local government has enacted an ordinance approving the location of the site or facility and provided funding for the site or facility; and~~

~~in compliance with all applicable zoning requirements;~~

~~the portion of a site or facility utilizing coal combustion waste for stabilization and treatment of only waste generated on that site or facility when used in connection with response actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the federal Resource Conservation and Recovery Act of 1976, or the Illinois Environmental Protection Act or as authorized by the Agency;~~

~~the portion of a site or facility that accepts exclusively general construction or demolition debris, is located in a county with a population over 3,000,000 as of January 1, 2000 or in a county that is contiguous to such a county, and is operated and located in accordance with Section 22.38 of the Act;~~

~~the portion of a site or facility, located within a unit of local government that has enacted local zoning requirements, used to accept, separate, and process uncontaminated broken concrete, with or without protruding metal bars, provided that the uncontaminated broken concrete and metal bars are not speculatively accumulated, are at the site or facility no longer~~

~~than one year after their acceptance, and are returned to the economic mainstream in the form of raw materials or products;~~

~~the portion of a site or facility located in a county with a population over 3,000,000 that has obtained local siting approval under Section 39.2 of the Act for a municipal waste incinerator on or before July 1, 2005 and that is used for a non-hazardous waste transfer station;~~

~~effective January 1, 2008, a site or facility that temporarily holds in transit for 10 days or less, non-putrescible solid waste in original containers, no larger in capacity than 500 gallons, provided that such waste is further transferred to a recycling, disposal, treatment, or storage facility on a non-contiguous site and provided such site or facility complies with the applicable 10-day transfer requirements of the federal Resource Conservation and Recovery Act of 1976 and United States Department of Transportation hazardous material requirements. For purposes of this Section only, "non-putrescible solid waste" means waste other than municipal garbage that does not rot or become putrid, including, but not limited to, paints, solvent, filters, and absorbents;~~

~~the portion of a site or facility located in a county with a population greater than 3,000,000 that has obtained local siting approval, under Section 39.2 of the Act, for a municipal waste incinerator on or before July 1, 2005 and that is used for wood combustion facilities for energy recovery that accept and burn only wood material, as included in a fuel specification approved by the Agency;~~

~~a transfer station used exclusively for landscape waste, including a transfer station where landscape waste is ground to reduce its volume, where the landscape waste is held no longer than 24 hours from the time it was received;~~

~~the portion of a site or facility that is used for the composting of food scrap, livestock waste, crop residue, uncontaminated wood waste, or paper waste, including, but not limited to, corrugated paper or cardboard, and meets all of the following requirements:~~

~~there must not be more than a total of 30,000 cubic yards of livestock waste in raw form or in the process of being composted at the site or facility at any one time;~~

~~all food scrap, livestock waste, crop residue, uncontaminated wood waste, and paper waste must, by the end of each operating day, be processed and placed into an enclosed vessel in which air flow and temperature are controlled, or all of the following additional requirements must be met:~~

~~the portion of the site or facility used for the composting operation must include a setback of at least 200 feet from the nearest potable water supply well;~~

~~the portion of the site or facility used for the composting operation must be located outside the boundary of the 10-year floodplain or floodproofed;~~

~~except in municipalities with more than 1,000,000 inhabitants, the portion of the site or facility used for the composting operation must be located at least one-eighth of a mile from the nearest residence, other than a residence located on the same property as the site or facility;~~

~~the portion of the site or facility used for the composting operation must be located at least one-eighth of a mile from the property line of all of the following areas:~~

~~facilities that primarily serve to house or treat people that are immunocompromised or immunosuppressed, such as cancer or AIDS patients; people with asthma, cystic fibrosis, or bioaerosol allergies; or children under the age of one year;~~

~~primary and secondary schools and adjacent areas that the schools use for recreation;~~

~~any facility for child care licensed under Section 3 of the Child Care Act of 1969; preschools; and adjacent areas that the facilities or preschools use for recreation;~~

~~by the end of each operating day, all food scrap, livestock waste, crop residue, uncontaminated wood waste, and paper waste must be processed into windrows or other piles and covered in a manner that prevents scavenging by birds and animals and that prevents other nuisances;~~

~~food scrap, livestock waste, crop residue, uncontaminated wood waste, paper waste, and compost must not be placed within 5 feet of the water table;~~

~~the site or facility must meet all of the requirements of the Wild and Scenic Rivers Act (16 USC 1271 et seq.);~~

~~the site or facility must not restrict the flow of a 100-year flood, result in washout of food scrap, livestock waste, crop residue, uncontaminated wood waste, or paper waste from a 100-year flood, or reduce the temporary water storage capacity of the 100-year floodplain, unless measures are undertaken to provide alternative storage capacity, such as by providing lagoons, holding tanks, or drainage around structures at the facility;~~

~~the site or facility must not be located in any area where it may pose a threat of harm or destruction to the features for which:~~

~~an irreplaceable historic or archaeological site has been listed under the National Historic Preservation Act (16 USC 470 et seq.) or the Illinois Historic Preservation Act [20 ILCS 3410];~~

~~a natural landmark has been designated by the National Park Service or the Illinois State Historic Preservation Office; or~~

~~a natural area has been designated as a Dedicated Illinois Nature Preserve under the Illinois Natural Areas Preservation Act [525 ILCS 30];~~

~~the site or facility must not be located in an area where it may jeopardize the continued existence of any designated endangered species, result in the destruction or adverse modification of the critical habitat for such species, or cause or contribute to the taking of any endangered or threatened species of plant, fish, or wildlife listed under the Endangered Species Act (16 USC 1531 et seq.) or the Illinois Endangered Species Protection Act [520 ILCS 10];~~

~~the portion of a site or facility that is located entirely within a home rule unit having a population no less than 120,000 and no more than 135,000, according to the 2000 federal census, and that meets all of the following requirements:~~

~~the portion of the site or facility is used exclusively to perform testing of a thermochemical conversion technology using only woody biomass, collected as landscape waste within the boundaries of the home rule unit, as the hydrocarbon feedstock for the production of synthetic gas in accordance with Section 39.9 of the Act;~~

~~the portion of the site or facility is in compliance with all applicable zoning requirements; and~~

~~a complete application for a demonstration permit at the portion of the site or facility has been submitted to the Agency in accordance with Section 39.9 of the Act within one year after July 27, 2010 (the effective date of Public Act 96-1314);~~

~~the portion of a site or facility used to perform limited testing of a gasification conversion technology in accordance with Section 39.8 of the Act and for which a complete permit application has been submitted to the Agency prior to one year from April 9, 2010 (the effective date of Public Act 96-887);~~

~~the portion of a site or facility that it used to incinerate only pharmaceuticals from residential sources that are collected and transported by law enforcement agencies under Section 17.9A of the Act; and~~

~~until July 1, 2017, the portion of a site or facility:~~

~~that is used exclusively for the transfer of commingled landscape waste and food scrap held at the site or facility for no longer than 24 hours after their receipt;~~

~~that is located entirely within a home rule unit having a population of either not less than 100,000 and not more than 115,000 according to the 2010 federal census or not less than 5,000 and not more than 10,000 according to the 2010 federal census;~~

~~that is permitted, by the Agency, prior to January 1, 2002, for the transfer of landscape waste; and~~

~~for which a permit application is submitted to the Agency by July 1, 2014 to modify an existing permit for the transfer of landscape waste to also include, on a demonstration basis not to exceed 18 months, the transfer of commingled landscape waste and food scrap. [415 ILCS 5/3.330]~~

"Pollution control facility siting appeal" means an appeal of a decision made by a unit of local government filed with the Board 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 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 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.

"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 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 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.)

"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 pursuant to Section 31 of the Act.

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

"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.)

"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 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 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.)

"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 40 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 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 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 ~~where~~ a final ~~opinion and Board order of the Board~~ 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 ~~of the party receives the Board's party's certified mailing mail receipt of the Board decision is the date of service of the decision~~ final opinion and order by the Board upon the appealing party. Or, in the event of a timely filed motion for reconsideration filed pursuant to Section 101.520, the date of service of the final decision is the date on which ~~of the party receives party's the Board's certified mailingmail receipt of the Board order ruling upon the motion is the date of service of the order~~ by the Board upon the appealing party.
- 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 ~~the effective date of the new rule, the amendment, or the repealer~~ under the IAPA participant's

~~receipt of the Board decision is presumed to be the date of service of the decision final opinion and order by the Board upon the appealing person participant. 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 from the Board is the date of service of the decision upon the appealing participant. Or, in the event of a timely filed motion for reconsideration filed pursuant to the Board's procedural rules (35 Ill. Adm. Code 102.700~~1~~ and 102.702), the date of service of the final decision is the date on which of the participant receives participant's receipt of the Board's mailing of the Board order ruling upon the motion is the date of service of the order by the Board upon the appealing participant.~~

- ~~4) Any person who appears on a regulatory proceeding's notice list or service list on the date of the final decision can rebut the presumption in subsection (d)(3) with proper proof of having received the decision from the Board after the effective date of the new rule, the amendment, or the repealer.~~

(Source: Amended at 40 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) Documents may 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 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) 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 pursuant to Section 40 of the Act, \$75;
 - 4) Petition to Review Pollution Control Facility Siting Decisions, pursuant to Section 40.1 of the Act, \$75; and
 - 5) Petition for Adjusted Standard, 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 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, or the its 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), ~~or (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~~three copies of the document (~~three~~four 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 original documents listed in this subsection (h)(2) must be filed in paper. In lieu of filing three paper copies with the original pursuant to subsection (h)(1)(B), a compact disk of the document in text-searchable Adobe PDF may be filed with the original. The following documents must be filed in text-searchable Adobe PDF through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF in paper:~~
 - A) ~~The~~original 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) (see 35 Ill. Adm. Code 105.116);
 - B) ~~The~~original OSFM record required by 35 Ill. Adm. Code 105.508 (UST Fund eligibility and deductibility) (see 35 Ill. Adm. Code 105.116);
 - C) ~~The~~original 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 106 (proceedings pursuant to specific rules or statutory provisions) (see 35 Ill. Adm. Code 104.106, and 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). An original oversized exhibit (see subsection (j)).

3) A document containing information claimed or determined to be a trade secret, or other non-disclosable information 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 pursuant to 35 Ill. Adm. Code 130 may be filed through COOL.

4) When filing a rulemaking proposal, ~~if the proponent must file three paper originals of any document that is protected by copyright law (17 USC 101 et seq.) and is proposed 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); provided, however:~~

A) ~~One or two paper copies may be substituted for the corresponding number of required paper originals if the rulemaking proposal includes the copyright owner's written authorization for the rulemaking proponent to create the paper copy or copies.~~

B) ~~The proponent may file no more than two authorized copies in lieu of the corresponding number of required originals.~~

C) ~~Any copyrighted document that is proposed for incorporation by reference is prohibited from being filed electronically and must instead be filed only in paper. The remainder of the rulemaking proposal may be filed through COOL.~~

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, up to 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 up to 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.
- B) File a single ~~an electronic~~ seat 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; print a single copy of the copyrighted document to maintain at the Board's Chicago office; and print up to 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 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 8½ 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 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.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART E: MOTIONS

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. ~~The Board may consider an interlocutory appeal upon the~~ by filing of a written 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 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 40 Ill. Reg. _____, effective _____)

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

Section 101.600 Hearings

- a) All hearings are open to the public and are held in compliance with the Americans with Disabilities Act of 1990 (42 USC 12101 et seq.). The hearings will be generally held at locations in the county in which the source or facility is located unless otherwise ordered by the hearing officer. The hearing officer will select hearing locations that comply, in accordance with any geographic requirements imposed by applicable law and, to the extent feasible, promote the attendance of interested members of the public, the convenience of the parties, and the conservation of consistent with the Board's resources. All hearings are subject to cancellation without notice. Interested persons may contact the Clerk's Office or the hearing officer for information about the hearing. Parties, participants, and members of the public must conduct themselves with decorum at the hearing.
- b) Any Board hearing may be held by videoconference. Upon its own motion or the motion of any party, the Board or the hearing officer may order that a hearing be held by videoconference. In deciding whether a hearing should be held by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, and public interest, the parties' preferences, and the proceeding's complexity and contentiousness.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 101.602 Notice of Board Hearings

- a) The hearing officer will give the parties at least 21 days written notice of a hearing.
- ba) The Clerk will provide notice of all hearings, except for administrative citation hearings, in a newspaper of general circulation in the county in which the facility or pollution source is located, or where the activity in question occurred. 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. Notice must be

published at least 21 days ~~before~~^{prior to} the hearing. If the proceeding involves federal rules ~~that~~^{which} the State has been ~~given~~ delegated authority to administer, notice must be published at least 30 days ~~before~~^{prior to} the hearing.

- cb) *Whenever a proceeding before the Board may affect the right of the public individually or collectively to the use of community sewer or water facilities provided by a municipally owned or publicly regulated company, the Board shall at least 30 days prior to the scheduled date for the first hearing in the proceeding, give notice of the date, time, place, and purpose of the hearing by public advertisement in a newspaper of general circulation in the area of the State concerned [415 ILCS 5/33(c)].*

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

Section 101.906 Judicial Review of Board Orders

- a) 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, 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~~orders are~~ appealable as of the date of service of the final order by the Board upon the appealing person (see Section 101.300(d) of this Part)~~party~~.
- 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 40 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), ~~and (h)(4), and (j)~~ of this Part and Section 101.1050 of this Subpart, all documents may be filed through COOL. 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) ~~Nothing in this Subpart requires a person to file a document electronically.~~ Generally, the Clerk's Office will convert paper-filed documents into electronic documents and place them on COOL.
- 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.) ~~Nothing in this Subpart requires a person to serve a document by e-mail or to accept service of a document by e-mail.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 101.1050 Documents Required in Paper or Excluded from Electronic Filing

- a) ~~The following documents must be filed in paper pursuant to Section 101.302(h)(2) of this Part:~~
 - 1) ~~The original 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);~~
 - 2) ~~The original OSFM record required by 35 Ill. Adm. Code 105.508 (UST Fund eligibility and deductibility);~~
 - 3) ~~The original local siting authority record required by 35 Ill. Adm. Code 107.302 (pollution control facility siting); and~~
 - 4) ~~An original oversized exhibit (see Section 101.302(j) of this Part).~~
- ab) A document containing information claimed or determined to be a trade secret, or other non-disclosable information pursuant to 35 Ill. Adm. Code 130, is prohibited from being filed electronically and must instead be filed only in paper pursuant to Section 101.302(h)(3) of this Part. The version of the document that is redacted pursuant to 35 Ill. Adm. Code 130 may be filed through COOL.
- be) If a rulemaking proposal contains a document that is protected by copyright law (17 USC 101 *et seq.*) and proposed 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

pursuant to Section 101.302(h)(4) of this Part. The remainder of the rulemaking proposal may be filed through COOL.

(Source: Amended at 40 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~~ may 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 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~~ may 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 40 Ill. Reg. _____, effective _____)

Section 101.1070 Consenting to Receipt of E-Mail Service

- a) In any proceeding, a person ~~consents~~~~may consent~~ to e-mail service of documents in lieu of receiving paper documents by:
- 1) ~~Filing~~filing a “Consent to Receipt of E-Mail Service” ~~with the Clerk’s Office. (see A sample form of consent is available in Appendix I of this Part);~~
 - 2) Providing the hearing officer, during a hearing or conference, with an e-mail address that is designated for receiving service ~~during a hearing or conference;~~
 - 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~~Consent~~ to e-mail service may be provided as set forth in subsection (a)~~filed with the Clerk’s Office at any time during the proceeding.~~ 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.
- d) Upon a change in the e-mail address of a recipient of e-mail service, the recipient must ~~notify~~file a notice of the e-mail address change with 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 40 Ill. Reg. _____, effective _____)

PART 102
REGULATORY AND INFORMATIONAL HEARINGS AND PROCEEDINGS

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102.110	Waiver of Requirements
102.112	Other Proceedings
<u>102.114</u>	<u>Hearings</u>

SUBPART B: REGULATIONS OF GENERAL APPLICABILITY, RESOURCE
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REGULATIONS

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102.200	Proposal for Regulations of General Applicability
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102.204	Proposal of RCRA Amendments
102.206	Notice of Site-Specific RCRA Proposals
102.208	Proposal for Site-Specific Regulations
102.210	Proposal Contents for Site-Specific Regulations
102.211	Proposal to Update Incorporations by Reference
102.212	Dismissal

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

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102.300	Applicability
102.302	Agency Proposal
102.304	Hearings
102.306	Prefiled Testimony

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
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102.410	Authorization of Hearing
102.412	Scheduling of Hearings
102.414	Hearings on the Economic Impact of New Proposals
102.416	Notice of Hearing
102.418	Record
102.420	Authority of the Hearing Officer
102.422	Notice and Service Lists
102.424	Prehearing <u>Filings</u> Submission of Testimony, Questions, Responses, and Exhibits
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SUBPART E: CERTIFICATION OF REQUIRED RULES

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SUBPART F: BOARD ACTION

Section	
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102.604	First Notice of Proposed Regulations
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SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL

Section	
102.700	Filing of Motions for Reconsideration
102.702	Disposition of Motions for Reconsideration
102.704	Correction of Publication Errors
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SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION

Section	
102.800	Applicability
102.810	Petition
102.820	Petition Contents
102.830	Board Action

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), 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), 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, 1970; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1398, effective January 16, 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. 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. 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. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 102.114 Hearings

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

(Source: Added at 40 Ill. Reg. _____, effective _____)

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

Section 102.304 Hearings

- a) Within 14 days after the receipt of a rule, the Board will file the proposed rule for first notice and schedule all hearings. Additionally, the Board will send notice to ~~the appropriate newspaper~~ of the scheduled hearing to the appropriate publication. The hearing notice will be published by the newspaper at least 30 days before prior to the date of the hearing. When the Board can cause timely publication of the hearing notice in the Illinois Register, the Board will do so in lieu of newspaper notice.
- b) The first hearing will be held within 55 days after receipt of the rule and is reserved for the Agency's testimony and questions of the Agency's witnesses.
- c) Within 7 days after the first hearing, any person may request a second hearing. The request may be made on the record at the first hearing or in writing. If done in writing it must be filed with the Board and served upon the service list.

- d) A second hearing will be held to hear comments on Department of Commerce and Economic Opportunity's economic impact study of the proposed 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 explanation for not producing an economic impact study, available to the public. Such public hearing may be held simultaneously or as part of any Board hearing considering such new rules* [415 ILCS 5/27(b)]. See also Section 102.414 ~~of this Part~~. The second hearing must also permit the *presentation of testimony, documents, and comments by affected entities and all other interested persons.* [415 ILCS 5/28.5(g)]
- e) *The third hearing shall be scheduled to commence within 14 days after the first day of the second hearing and shall be devoted solely to any Agency response to the material submitted at the second hearing and to any response by other parties* [415 ILCS 5/28.5(g)]. In order to cancel the third hearing, the Agency must state on the record at hearing that it and the affected entities are in agreement or notify the Board and the service list in writing.
- f) In order to meet statutory deadlines, hearing dates may be chosen by the assigned Board member and hearing officer without consultation with the participants. CAAA hearings need only be held in one affected area of the State.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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

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~~ county. 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 ~~addition~~ additional hearing, as opposed to the submission of written comments pursuant to Section 102.108 ~~of this Part~~, is necessary.

- e) ~~If a hearing is scheduled in a rulemaking proposed pursuant to Section 7.2 of the Act [415 ILCS 5/7.2], the hearing may be held by videoconference.~~

(Source: Amended at 40 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 date~~ 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~~^{prior} to 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~~e) Hearings that are continued on the hearing record for a period of 45 days or less do not require notice that complies with subsection ~~subsections~~ (a), and (b), or (c) of this Section.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 102.422 Notice and Service Lists

- a) The ~~Clerk's Office~~ ~~hearing officer~~ 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 hearing officer or the Clerk's Office~~ ~~office~~ concerning the proposal. The Clerk will serve a copy ~~Notice~~ of all Board ~~orders~~ ~~actions~~ and

hearing officer orders will be given to all upon the persons appearing included 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~~The hearing officer ~~may direct~~ participants ~~must~~ to serve copies of all their respective filings documents upon the persons appearing listed on the service list. In deciding whether to establish a service list, factors that the hearing officer will consider include factors including 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 40 Ill. Reg. _____, effective _____)

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

- a) The proponent must file submit all written testimony and any related exhibits 21 days before prior to 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 filings submission of testimony, questions, responses, ~~answers~~, and any related exhibits by the proponent or participants other than the proponent if the hearing officer determines that such a procedure will provide for a more efficient hearing.
- c) All prehearing testimony, questions, ~~answers~~, 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 The hearing officer, the Agency, ~~and, if a participant,~~ the Attorney General's Office, ~~General and DNR,~~ must each be served with all prehearing testimony, questions, ~~answers~~, responses, and exhibits in accordance with 35 Ill. Adm. Code 101.304(e). ~~All prehearing testimony, questions, answers, responses, and exhibits must also be served in accordance with 35 Ill. Adm. Code 101.304(e) upon 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, ~~answers~~, responses, and any related exhibits must be served and submitted in the form required by 35 Ill. Adm. Code ~~101. Subpart C~~ and labeled with the docket number of the proceeding, the name of

the witness corresponding to ~~submitting~~ the material ~~or exhibit~~, and the title of the material ~~or exhibit~~.

- e) The proponent and each participant who has filed testimony, questions, ~~answers~~, responses, or any related exhibits before hearing ~~in paper only~~ must bring, to the hearing, the number of paper copies of the material that designated by the hearing officer ~~designates of that material and exhibits to the hearing~~ a compact disk or other portable electronic storage device containing their respective prehearing documents in text-searchable Adobe PDF for the record.¹²
- f) Testimony, questions, ~~answers~~, and responses, ~~and exhibits that are timely filed before the submitted prior to 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 ~~or exhibit~~ read at the hearing. All persons testifying will be sworn and ~~will be~~ subject to cross-examination. Modifications to prehearing documents ~~previously submitted material and exhibits~~ may be allowed by the hearing officer at the hearing ~~if provided that the modifications are either nonsubstantive non-substantive~~ 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 filings ~~submission~~ of testimony, questions, ~~answers~~, responses, and any related ~~or~~ exhibits, is required pursuant to subsection (a) or (b) ~~of this Section~~, any material or exhibit that is not timely filed in a timely manner will be allowed at the hearing only if a time permits; and only when the hearing officer determines that allowing the material's submission 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 of this Part, 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 40 Ill. Reg. _____, effective _____)

¹² At first notice, subsection (e) read: "The proponent and each participant who has filed testimony, questions, ~~answers~~, responses, or any related exhibits before hearing in paper only must bring the number of copies designated by the hearing officer of that material and exhibits to the hearing a compact disk or other portable electronic storage device containing their respective prehearing documents in text-searchable Adobe PDF for the record."

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)), pursuant to Sections 29 and 41 of the Act [415 ILCS 5/29 and 41].

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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

PART 103
 ENFORCEMENT

SUBPART A: GENERAL PROVISIONS

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103.102	Severability
103.104	Definitions
103.106	General
<u>103.108</u>	<u>Hearings</u>

SUBPART B: COMPLAINT, REQUEST FOR INFORMAL AGENCY INVESTIGATION,
 SERVICE, AND AUTHORIZATION OF HEARING

Section	
103.200	Who May File
103.202	Parties
103.204	Notice, Complaint, and Answer
103.206	Adding Parties; Filing Counter-, Cross-, or Third-Party Complaints; Filing New or Modified Claims
103.208	Request for Informal Agency Investigation
103.210	Notice of Complaint
103.212	Hearing on Complaint

SUBPART C: SETTLEMENT PROCEDURE

Section	
103.300	Request for Relief from Hearing Requirement in State Enforcement Proceeding
103.301	Request for Relief from Hearing Requirement in Citizen's Enforcement Proceeding
103.302	Contents of Proposed Stipulation and Settlement Agreement

- 103.304 Hearing on Proposed Stipulation and Settlement Agreement
 103.306 Board Order on Proposed Stipulation and Settlement Agreement

SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

- Section
 103.400 Purpose, Scope, and Applicability
 103.402 Interim Order
 103.404 Joinder of the Agency
 103.406 Draft Permit or Statement
 103.408 Stipulated Draft Remedy
 103.410 Contents of Public Notice
 103.412 Public Comment
 103.414 Hearing
 103.416 Contents of Board Order

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. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 103.108 Hearings

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

(Source: Added at 40 Ill. Reg. _____, effective _____)

SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

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 of this Part, 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;
 - 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 ~~el~~o~~se~~st population center that is closest to the facility.
- c) ~~In addition to the methods of notice by publication of Section 103.208 of this Part, the~~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 pursuant to 415 ILCS 5/30; and
- 10) Any additional information considered necessary or proper.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 103.414 Hearing

- a) The hearing officer, after appropriate consultation with the parties, will set a time and place for the hearing to be held not less than 30 days after the filing of the partial draft permit or stipulated remedy.
- b) The hearing will be held, whenever possible, at a location convenient to~~in the county in which the facility is located, in the population center that is in the county~~ closest to the facility.
- c) The Clerk in consultation with the hearing officer will give notice of the hearing to the persons entitled to notice in Sections 103.210 and 103.410 of this Part, and to any other persons who have commented, requested to comment or requested notice, and to any persons on a mailing list provided by the Agency.

- d) Notice will be mailed not less than 30 days before the hearing.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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

PART 104
REGULATORY RELIEF MECHANISMS

SUBPART A: GENERAL PROVISIONS

Section	
104.100	Applicability
104.102	Severability
104.104	Definitions
<u>104.106</u>	<u>Petitions and Hearings</u>

SUBPART B: VARIANCES

Section	
104.200	General
104.202	Filing Requirements
104.204	Petition Content Requirements
104.206	Resource Conservation and Recovery Act (RCRA) Variance Petition Contents
104.208	Consistency with Federal Law
104.210	Petition for Extension of Variance
104.212	Motion for Modification of Internal Variance Compliance Dates
104.214	Notice of Petition
104.216	Agency Investigation and Recommendation
104.218	Agency Recommendation to RCRA Variance
104.220	Response to Agency Recommendation
104.222	Stipulations
104.224	Objections to Petition, Written Comments and Request for Hearing
104.226	Amended Petition and Amended Recommendation
104.228	Insufficient Petition
104.230	Dismissal of Petition
104.232	Calculation of Decision Deadline
104.234	Hearing
104.236	Hearing Procedures
104.238	Standard of Review
104.240	Certificate of Acceptance
104.242	Term of Variance
104.244	Variance Conditions
104.246	Performance Bonds

104.248 Objection to Conditions

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
104.420	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. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

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

(Source: Added at 40 Ill. Reg. _____, effective _____)

SUBPART B: VARIANCES

Section 104.236 Hearing Procedures

Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, except that:

- a) ~~All hearings are to be held in the county where the petitioner's facility or pollution source is located unless otherwise ordered by the hearing officer (see 35 Ill. Adm. Code 101.600);~~
- a**b**) Hearings may be canceled pursuant to a motion filed in accordance with 35 Ill. Adm. Code 101.510 at the discretion of the hearing officer; ~~and~~
- b**e**) If all parties and participants who have requested a hearing pursuant to this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board in its discretion deems it advisable.
- c) The hearing 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~~shall~~ 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) 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 ~~closest~~ 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 40 Ill. Reg. _____, effective _____)

SUBPART D: ADJUSTED STANDARDS

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 pursuant to Section 104.420 of this Part, not later than 21 days after the date of the publication of the petition notice in accordance with Section 104.408 of this Part; 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 pursuant to 35 Ill. Adm. Code 212.126 (CAA).

- b) The hearing officer will set a time and place for the hearing. The hearing officer will ~~make an~~ attempt to consult with the petitioner and the Agency ~~before prior to~~ the scheduling of a hearing. ~~Hearings are to be held in the county likely to be affected by the petitioner's activity that is the subject of the proposed adjusted standard.~~

(Source: Amended at 40 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

SUBPART A: GENERAL PROVISIONS

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

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

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

SUBPART C: CAAPP PERMIT APPEALS

Section	
105.300	Applicability
105.302	General Requirements

105.304 Petition Content Requirements

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

Section

- 105.400 Parties
- 105.402 Who May File a Petition for Review
- 105.404 Time for Filing the Petition
- 105.406 Extension of Time to File a Petition for Review
- 105.408 Petition Content Requirements
- 105.410 Agency Record
- 105.412 Board Hearing

SUBPART E: APPEAL OF OSFM LUST DECISIONS

Section

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

- 105.APPENDIX A Agency LUST Final Decisions that are Reviewable
- 105.APPENDIX B Comparison of Former and Current Rules (Repealed)

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

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

SUBPART A: GENERAL PROVISIONS

Section 105.110 Hearings ~~Hearing Process~~

Hearings will be conducted~~Unless this Part provides otherwise, proceedings held pursuant to this Part will be in accordance with the rules set forth in 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).~~

(Source: Amended at 40 Ill. Reg. _____, 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. Pursuant to 35 Ill. Adm. Code 101.302(h)(2), the State agency must file the original record in text-searchable Adobe PDF through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF in paper pursuant to 35 Ill. Adm. Code 101.302(h)(2). (See 35 Ill. Adm. Code 101.1050(a).)
- b) The record must ~~contain the originals of all documents~~, be arranged in chronological sequence, or by category of material and chronologically within each category, and 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.¹³

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART E: APPEAL OF OSFM LUST DECISIONS

Section 105.510 Location of Hearing

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

(Source: Amended at 40 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION

SUBTITLE A: GENERAL PROVISIONS

¹³ At first notice, subsection (b)'s first sentence read: "The record must ~~contain the originals of all documents~~, be arranged in chronological sequence, and be sequentially numbered with the letter 'R' placed before the number of each page."

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
<u>106.106</u>	<u>Petitions and Hearings</u>

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
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
106.720 Intervention
106.722 Continuances
106.724 Discovery, Admissions
106.726 Subpoenas
106.728 Settlement Procedure

106.730	Authority of Hearing Officer, Board Members, and Board Assistants
106.732	Order and Conduct of Hearing
106.734	Evidentiary Matters
106.736	Post-Hearing Procedures
106.738	Motion After Entry of Final Order
106.740	Relief from Final Orders

**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. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 106.106 Petitions and Hearings

- a) Each petition must contain an index that lists the documents comprising the petition, including any exhibits, attachments, and supporting documents. All pages of the petition must be sequentially numbered with the letter “P” placed before the number of each page. The index must show the page numbers upon which each document comprising the petition starts and ends.
- b) Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Added at 40 Ill. Reg. _____, effective _____)

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

Section 106.410 Hearing

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

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART E: MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY DETERMINATIONS

Section 106.510 Hearing

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

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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

Section 106.710 Notice of Hearing

- a) The Clerk will assign a docket number to each statement of deficiency filed. Any hearing will be held not later than 60 days after the respondent files the answer, subject to any extensions ordered under subsection (c) of this Section.

- b) The Chairman of the Board will designate a hearing officer and the Clerk will notify the parties of the designation. The hearing officer may be a Member of the Board if otherwise qualified.
- c) The hearing officer, after reasonable efforts to consult with the parties, will set a time and place for hearing. The Board or the hearing officer may extend the time for hearing if all parties agree or there are extreme and unanticipated or uncontrollable circumstances that warrant a delay. The Board or the hearing officer may delay the hearing more than once. In each event, the Board or the hearing officer will not delay the hearing for more than 30 days.
- d) The hearing will be held pursuant to 35 Ill. Adm. Code 101.Subpart F ~~in the county in which the pilot project is located, or in another county that the hearing officer designates for cause.~~
- e) The hearing officer or the Clerk will give notice of the hearing, at least 30 days before the hearing, to the parties under Section 106.708(b) of this Subpart, and to the public by public advertisement in a newspaper of general circulation in the county in which the pilot project is located.
- f) The Agency must give notice of each statement of deficiency and hearing under Section 106.708(b) of this Part at least 10 days before the hearing to:
 - 1) All stakeholders named or listed in the EMSA; and
 - 2) Any person who submitted written comments on the respondent's EMSA or participated in the public hearing on the respondent's EMSA by signing an attendance sheet or signature card under the procedures set forth in 35 Ill. Adm. Code 187.404, if less than 100 persons attended the public hearing on the respondent's EMSA as indicated by signatures on the attendance sheet or signature cards.
- g) Failure to comply with this Section is not a defense to an involuntary termination proceeding under this Subpart, but the hearing officer may postpone the hearing upon the motion of any person prejudiced by a failure to comply with this Section.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART I: AUTHORIZATIONS FOR CERTAIN LANDSCAPE WASTE AND COMPOST APPLICATIONS AND ON-FARM COMPOSTING FACILITIES

Section 106.912 Hearing

- a) Any person can request that a public hearing be held in an authorization proceeding. The requests must be filed not later than 21 days after the date of the publication of the petition notice in accordance with Section 106.906. Requests for hearing should make reference to the Board docket number assigned to the proceeding. A copy of each timely hearing request will be mailed to the petitioner and Agency by the Clerk of the Board. Participation by the public at the hearing must be in accordance with 35 Ill. Adm. Code 101.110 and 101.628. The Board may also, in its discretion, hold a public hearing when it determines a public hearing is advisable.
- b) When all parties and participants who have requested a hearing pursuant to this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board, in its discretion, deems it advisable.
- c) The hearing officer will set a time and place for the hearing. The hearing officer will ~~make an attempt to consult with the petitioner and the Agency before~~ prior to the scheduling of a hearing. ~~Hearings are to be held in the county likely to be affected by the petitioner's activity that is the subject of the proposed authorization proceeding.~~

(Source: Amended at 40 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 106.1155 Notice and Conduct of Hearing

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

(Source: Amended at 40 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER 1: POLLUTION CONTROL BOARD

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)
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AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 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. _____, 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 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 40 Ill. Reg. _____, effective _____)

SUBPART C: FILING OF LOCAL RECORD

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 siting authority must file the original record in text-searchable Adobe PDF through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. (See 35 Ill. Adm. Code 101.1050(a).)

(Source: Amended at 40 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 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 ~~contain the originals of all documents,~~ be arranged in chronological sequence, or by category of material and chronologically within each category, and be sequentially numbered with the letter "C" placed before the number of each page.¹⁴

¹⁴ At first notice, subsection (b) read: "The record must ~~contain the originals of all documents,~~ be arranged in chronological sequence, and be sequentially numbered with the letter 'C' placed before the number of each page."

(Source: Amended at 40 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 pursuant to ~~in accordance with the provisions set forth in the Board's general procedural rules found at 35 Ill. Adm. Code 101.Subpart F.~~

(Source: Amended at 40 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. _____, 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 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)). ~~The hearing will be held at a time and location consistent with the Board's resources as designated by the hearing officer.~~

(Source: Amended at 40 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. _____, effective _____.

SUBPART B: TAX CERTIFICATION OF POLLUTION CONTROL FACILITIES AND LOW
SULFUR DIOXIDE EMISSION COAL FUELED DEVICES

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 of this Subpart 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. Pursuant to 35 Ill. Adm. Code 101.302(h)(2), the ~~The~~ Agency must file the original record ~~in~~ ~~text-searchable Adobe PDF~~ through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF ~~in paper~~.

~~pursuant to 35 Ill. Adm. Code 101.302(h)(2). (See 35 Ill. Adm. Code 101.1050(a).)~~ The record must comply with 35 Ill. Adm. Code 105.116(b).

(Source: Amended at 40 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 of this Subpart, unless the Board disposes of the petition on a motion for summary judgment brought pursuant to 35 Ill. Adm. Code 101.516;
 - 2) The applicant or holder timely requests a hearing after the Board provides notice pursuant to Section 125.216(c) of this Subpart; 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 ~~make an attempt to consult with the applicant and the Agency before scheduling a hearing.~~ 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)). ~~Hearings will be held in the county where the facility or portion thereof or the device for which the applicant seeks tax certification is located, unless the hearing officer orders otherwise.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 21, 2016, by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board