

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

PART 2175  
ORGANIZATION, PUBLIC INFORMATION, AND TYPES OF PROCEEDINGS

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

SOURCE: Administrative rules adopted at 3 Ill. Reg. 23, p. 96, effective May 29, 1983; repealed by operation of law effective October 1, 1984; new rules adopted at 9 Ill. Reg. 107, effective December 21, 1984; old Part repealed at 20 Ill. Reg. 4796 and new Part adopted at 20 Ill. Reg. 4798, effective March 5, 1996; amended in R04-9 at 30 Ill. Reg. 14990, effective August 29, 2006; amended in R11-21 at 35 Ill. Reg. 4549, effective March 4, 2011; amended in R15-10 at 38 Ill. Reg. 22834, effective November 24, 2014; amended in R21-17, at 44 Ill. Reg. 14166, effective August 21, 2020.

#### SUBPART A: INTRODUCTION AND ORGANIZATION

#### **Section 2175.100 Summary and Purpose**

As required by Section 5-15 of the Illinois Administrative Procedure Act (IAPA) [5 ILCS 100/5-15] and Section 140/4 of the Freedom of Information Act (FOIA) [5 ILCS 140/4], this Part specifies the administrative rules that apply to the Illinois Pollution Control Board (Board). These rules generally explain what the Board is, how the Board is organized and operates, and how the public can get information from the Board. These rules do not explain the Board's procedural requirements for processing rulemakings, adjudicatory cases, and other proceedings. Those procedural rules are found at 35 Ill. Adm. Code 101-130. If there is a conflict between the Board's procedural rules (35 Ill. Adm. Code 101-130) and this Part, the procedural rules will control.

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

### **Section 2175.105 Board Membership**

- a) The Board was created under Section 5 of the Environmental Protection Act (Act) [415 ILCS 5/5]. The Board is a quasi-legislative and quasi-judicial administrative agency responsible for adopting environmental regulations and deciding certain environmental disputes and cases brought under the Act. The Board determines, defines, and implements environmental control standards in compliance with the Act.
- b) The Board is comprised of five technically qualified members. The members are appointed by the Governor with the advice and consent of the Senate, for a term of three years.
- c) The Governor designates one member to serve as Chair. The Chair serves at the pleasure of the Governor and is responsible for the administration of the Board.
- d) Under Section 3.1 of the Executive Reorganization Implementation Act [15 ILCS 15/3.1], the Board is an agency of State government that is *created by law with the primary responsibility of exercising regulatory or adjudicatory functions independently of the Governor*. As such, the Board is excluded from the term "*Agency directly responsible to the Governor*" or "*agency*" as defined in the Executive Reorganization Implementation Act [15 ILCS 15/3.1].

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

### **Section 2175.110 Organization Relationships**

- a) Each member of the Board is aided by a confidential advisor who may be an attorney or who may have an advanced technical degree. The Chair may have two confidential advisors.

- b) To carry out its functions, the Board is comprised of the following offices and units: Clerk's Office, Legal Unit, Technical Unit, and Fiscal Unit. The function of each is as follows:
- 1) Clerk's Office. This office is responsible for processing, maintaining, and distributing all Board regulatory and adjudicatory case-related materials. The Clerk's Office is located in Chicago.
  - 2) Legal Unit. This unit is responsible for general legal functions of the Board and case or rule-related legal responsibilities.
  - 3) Technical Unit. This unit is responsible for gathering technical and scientific data required by the Board in the performance of its duties and for advising the Board on technical issues related to pending adjudicatory cases and rulemakings.
  - 4) Fiscal, Personnel, and Information Technology Unit. This unit is responsible for budgeting, expenditures, procurement, computer operations, personnel, and related duties.
- c) The Board may also employ other professional staff to carry out its functions and mandates, including an Executive Director, a General Counsel, a Human Resources Manager, an Information Systems Analyst, and a Rulemaking Coordinator.
- d) Organizational relationships are shown in the organizational chart in Appendix A. Detailed descriptions of the specific responsibilities and duties of each of the job titles are maintained in the Board's Springfield office.

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

### **Section 2175.115 Location of Offices**

- a) The Board maintains two central offices, one in Chicago and one in Springfield.
- b) The Clerk's Office is located in the Chicago office. The address and general telephone number of the Chicago office is:

Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St.  
Suite 11-500  
Chicago, Illinois 60601  
(312)-814-3620

(312) 814-3669 (Fax)

- c) The address and general telephone number of the Springfield office is:

Illinois Pollution Control Board  
1021 North Grand Ave. East  
Springfield, Illinois 62702  
(217)-524-8500  
(217) 524-8508 (Fax)

(Source: Amended at 30 Ill. Reg. 14990, effective August 29, 2006)

### **Section 2175.120 Board Meetings**

- a) The Board makes all decisions on adjudicatory cases and regulatory matters at open meetings of the Board noticed and held in compliance with the Open Meetings Act [5 ILCS 120]. The Board may also hold meetings that are closed to the public under Section 2(c) of the Open Meetings Act [5 ILCS 120/2(c)], including closed deliberative sessions under Section 2(c)(4) of the Open Meetings Act [5 ILCS 120/2(c)(4)].
- b) Open Board meetings may be held when a quorum of Board members is present. *Three members of the Board shall constitute a quorum to transact business; and the affirmative vote of 3 members is necessary to adopt any order.* [415 ILCS 5/5(a)]
- c) The Board may hold a closed meeting upon a majority vote of a quorum present taken at an open meeting for which notice has been given as required by the Open Meetings Act [5 ILCS 120/2a]. Closed meetings may be held when a majority of a quorum is present. (See 5 ILCS 120/1.02).
- d) Board members may attend meetings in the following ways:
- 1) Meetings, whether open or closed, may be held with Board members present physically or by videoconference. Closed meetings may also be held with Board members present telephonically. (See 5 ILCS 120).
  - 2) If a quorum of Board members is present physically or by videoconference at an open meeting, a majority of the Board may allow a Board member to attend the meeting telephonically if the member cannot otherwise attend because of personal illness or disability, the business of the Board, or a family or other emergency. (See 5 ILCS 120/7(a)). In these instances, the Board member who wishes to attend telephonically will notify the Clerk

of the Board before the meeting unless advance notice is impractical.

- 3) Meetings, whether open or closed, may be conducted by audio or video conference, without the physical presence of a quorum of the members, so long as the meeting meets the conditions of Section 7(e) of the Open Meetings Act [ 5 ILCS 120/7(e)].
- e) Section 5 of the Act requires the Board to hold at least one open meeting each month and allows the Board to hold special and emergency meetings. (See 415 ILCS 5/5). The Chair or two Board members may call a special or emergency meeting of the Board that is open to the public.

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

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

- a) Public Notice of Regular Open Board Meetings and Closed Deliberative Sessions.
  - 1) The Board adopts annual schedules of open meetings. Regular open Board meetings are generally held twice a month, generally every first and third Thursday of the month at the James R. Thompson Center (JRTC) in Chicago, at the Board's Springfield office, or by video conference between the two offices. The dates, times and locations are subject to change.
  - 2) Notification of regular open Board meetings is given in the Board's *Environmental Register*, a quarterly publication available in hard copy and on the Board's Website (see Section 2175.310). Notification of all regular open Board meetings and closed deliberative sessions is also provided under Sections 2.02 and 2.03 of the Open Meetings Act [5 ILCS 120/2.02 and 2.03].
    - A) At least 48 hours before each regular open Board meeting and closed deliberative session, an agenda for the meeting or session is posted at the Board's Chicago office and at any other location where the meeting or session is to be held. Each agenda is also posted on the Board's Website and remains so posted at least until the conclusion of the regular meeting or session.
    - B) Notification of the annual schedule of regular open Board meetings is given at the beginning of each calendar year by posting a copy of the schedule at the Board's Chicago

office. In addition, the annual schedule is posted on the Board's Website and remains so posted at least until a new public notice of the schedule of regular meetings and sessions is approved and posted.

- b) Public Notice of Special or Emergency Meetings.
  - 1) Whether a special or emergency meeting is an open Board meeting or a closed deliberative session, notice of a special or emergency meeting will generally be given to all Board members and the public at least 48 hours prior to the meeting. If, however, a majority of the Board certifies that an emergency exists and exigencies of time are such that the 48-hour notice must be dispensed with, notice to the public of an emergency meeting will be given as soon as is reasonably practicable, but prior to holding the meeting.
  - 2) Notice of a special or emergency meeting will include a copy of the meeting agenda and will be posted at the Board's Chicago office, at any other location where the meeting is to be held, and on the Board's Website (see Section 2175.310), under Section 2.02 of the Open Meetings Act [5 ILCS 120/2.02].
  - 3) Despite subsections (b)(1) and (2), at any open Board meeting for which notice has been given as required by the Open Meetings Act, the Board may, without additional notice under Section 2.02 of the Open Meetings Act [5 ILCS 120/2.02], hold a special or emergency closed deliberative session. Only topics specified in the vote to close the meeting may be considered during the closed deliberative session [5 ILCS 120/2a] (see Section 2175.120(c)).
- c) Notice to Media. The Board gives notice of regular, special, or emergency meetings, whether the meeting is an open Board meeting or a closed deliberative session, to any news medium that has filed an annual request for such notice under Section 2.02(b) of the Open Meetings Act [5 ILCS 120/2.02(b)].
- d) Videoconference and Teleconference. Whether the meeting is a regular, special, or emergency meeting, the Board may hold its open meetings and closed deliberative sessions by videoconference between Chicago and Springfield locations. Open Board meetings may be attended by the public at both locations.
  - 1) A Board member may attend an open Board meeting telephonically under Section 2175.120(d)(2) and (3) and the Open Meetings Act [5 ILCS 120/7(a), (e)].

- 2) The Board may hold its closed deliberative sessions by teleconference.

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

### **Section 2175.130 Agenda of Open Board Meetings and Closed Deliberative Sessions**

- a) The Board maintains an agenda for each of its open Board meetings and closed deliberative sessions in compliance with Section 2.02 of the Open Meetings Act [5 ILCS 120/2.02]. Open Board meeting agendas contain the list of rulemakings, adjudicatory cases, and motions that may be decided by the Board at that meeting. Closed deliberative session agendas contain the list of adjudicatory cases on which the Board may deliberate at that session. Agendas are posted at the Board's Chicago office, at any other location where the meeting or session is to be held, and on the Board's Website (see Section 2175.310).
- b) The Board does not generally place any item on an open Board meeting agenda that has been filed less than two full days before the meeting.
- c) The Board may also issue an addendum to the agenda of an open Board meeting or closed deliberative session and, as provided for in Section 2.02(a) of the Open Meetings Act [5 ILCS 120/2.02(a)], may consider items not specifically on the agenda.

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

### **Section 2175.135 Minutes of Open Board Meetings; Minutes and Verbatim Record of Closed Deliberative Sessions**

- a) The Board will keep minutes of all open Board meetings in compliance with Section 2.06(a) of the Open Meetings Act [5 ILCS 120/2.06(a)]. Minutes of all open meetings will be available to the public at the Clerk's Office and on the Board's Website (see Section 2175.310) within seven days of approval of the minutes. The minutes will remain posted on the Board's Website for at least 60 days after their initial posting [5 ILCS 120/2.06(b)]. The minutes will include the time, date, and place of the meeting, the items decided and the numeric decision vote, the Board members recorded as present or absent.
- b) The Board will keep a verbatim record of open meetings held under Section 7(e) of the Open Meetings Act [5 ILCS 120/7(e)], either in the form of audio or video recording. Verbatim records will be made available to the public, and are otherwise subject to the provisions of Section 2.06 of the Open Meetings Act [5 ILCS 120/2.06].



- c) The Board will keep minutes of all its closed deliberative sessions in compliance with Section 2.06(a) of the Open Meetings Act [5 ILCS 120/2.06(a)]. Minutes of all these sessions will be available to the public only as required by Sections 2.06(d) and (f) of the Open Meetings Act [5 ILCS 120/2.06(d) and (f)]. The minutes will include the time, date, and place of the session, the items on which the Board deliberated, the Board members recorded as present or absent, and whether the members were present physically, by videoconference, or telephonically.
- d) The Board will keep a verbatim record of all its closed deliberative sessions in the form of an audio or video recording in compliance with Section 2.06(a) of the Open Meetings Act (5 ILCS 120/2.06(a)). Verbatim recordings of all closed sessions will be available to the public only as required by Sections 2.06(c) and (e) of the Open Meetings Act [5 ILCS 120/2.06(c) and (e)].

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

### **Section 2175.140 Accessibility of Open Board Meetings and Hearings**

In compliance with the Americans with Disabilities Act and other applicable federal and State laws, the Board will make every effort to hold public meetings and hearings in facilities that are accessible to people with disabilities. Persons requiring these services should contact the Clerk of the Board at 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601 or at 312/814-3620 at least five days prior to a Board meeting or hearing.

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

#### **SUBPART B: FEES AND FORMS OF PAYMENT**

### **Section 2175.200 Filing Fees**

- a) A person filing an action for which a filing fee is prescribed by Section 7.5 of the Act [415 ILCS 5/7.5] must pay that fee at the time the petition is presented to the Clerk for filing.
- b) The following initial filings require filing fees and will only be considered filed when accompanied by the appropriate fee:
  - 1) Petition for Site-Specific Regulation, \$75;
  - 2) Petition for Variance, \$75;
  - 3) Petition for Review of Illinois Environmental Protection Agency (Agency) Permit Decision, Underground Storage Tank (UST)

Decision, or any other final determination under Section 40 of the Act [415 ILCS 5/40], \$75;

- 4) Petition to Contest Local Government Pollution Control Facility Siting Decision, under Section 40.1 of the Act [415 ILCS 5/40.1], \$75;
  - 5) Petition for Adjusted Standard, under Section 28.1 of the Act [415 ILCS 5/28.1], \$75; and
  - 6) Petition for a time-limited water quality standard, \$75.
- c) The Clerk will refuse to file any petition that is not accompanied by the required fee. The fee must be paid in the form specified in Section 2175.215.

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

### **Section 2175.205 Copying Fees**

- a) Most files, records, and data are available on the Board's Website (see Section 2175.310), where they may be viewed, searched, and downloaded free of charge. Copies may also be made at the Board office in Chicago upon payment of reasonable reproduction fees as prescribed by Section 6 of FOIA [5 ILCS 140/6]. When reasonably practicable, materials may be provided electronically in the form of compact disk, or other appropriate portable electronic storage device. The fee for this material will be based on actual costs incurred by the Board.-
- b) State agencies are, upon request, provided a hard copy of opinions and orders and transcripts free of charge.
- c) Fees will be waived or reduced if:
  - 1) The requestor is a constitutional officer or a member of the General Assembly; or
  - 2) *The requestor states the specific purpose for the request and indicates that a waiver or reduction of the fee is in the public interest. Waiver or reduction of the fee is in the public interest if the principal purpose of the request is to access and disseminate information regarding the health, safety, and welfare or the legal rights of the general public and is not for the purpose of personal or commercial benefit [5 ILCS 140/6(c)].*

- d) No fee will be charged to inspect records. Inspection of records can only take place in Chicago at the Clerk's Office.

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

### **Section 2175.210 Copying Procedures**

- a) All files, records, and data may be copied at the Board's Chicago office upon payment, except for information exempted under Section 7 of FOIA [5 ILCS 140/7]. (See Section 2175.300)
- b) The Board will contract for any copying that would impose a substantial administrative burden on the Board. The person requesting those copies will be charged the reproduction charges incurred by the Board.
- c) Requests for copies will be honored in as timely a manner as is reasonably practicable. Requests to receive copies by mail will be honored. However, the Board reserves the right to charge the requesting party for the mailing costs incurred by the Board.

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

### **Section 2175.215 Forms of Payment**

- a) Any amount over \$10 must be paid by check or money order made payable to the Illinois Pollution Control Board, except as provided in subsection (b).
- b) Filing fees may be paid:
  - 1) In the form of a check or money order made payable to the Illinois Pollution Control Board;
  - 2) Cash, but cash payment is strongly discouraged;
  - 3) Electronic Payment using Illinois ePAY; or
  - 4) A State agency may use an Office of the Comptroller voucher to remit payment for filing fees (see Section 2175.200) and copy fees (see Section 2175.205).
- c) If a check for filing fees is not honored by petitioner's bank, the Fiscal Officer may require that payment be made within 48 hours by certified check or money order. Failure to make payment may subject petitioner to sanctions as provided in the Board's procedural rules. (See 35 Ill. Adm. Code 101.800)

- d) If a check for copying fees is not honored by the remitter's bank, the Fiscal Officer may require that payment be made within 48 hours by certified check or money order. The Fiscal Officer may also require that copy fees be paid only by certified check or money order prior to the conveyance of material for any entity or individual who remits to the Board a check that subsequently is not honored by the remitter's bank.

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

### **Section 2175.220 Other Fees/Costs**

The Board may, in its procedural rules (see 35 Ill. Adm. Code 101-130), provide for the payment of certain types of its costs where appropriate.

(Source: Amended at 30 Ill. Reg. 14990, effective August 29, 2006)

## **SUBPART C: PUBLIC INFORMATION**

### **Section 2175.300 Files Open to Reasonable Inspection**

- a) The Clerk will maintain files containing all information submitted to or produced by the Board or any of its members relating to matters within the Board's jurisdiction. The files will include: pleadings, motions, notices, minutes, transcripts, exhibits, orders and opinions, proposed and adopted regulations, the *Environmental Register* and other Board releases, business records, and informal complaints.
- b) Under the Illinois State Records Act, the Clerk will maintain for five years all documents submitted by the parties in adjudicatory cases and participants in rulemakings [5 ILCS 160]. After five years, the documents will be microfilmed and the microfilm will be maintained by the Board. Documents microfilmed for the Board's record are subject to destruction unless the parties or participants request that the documents be returned at the closure of the five-year period. Over-sized exhibits that are not capable of being microfilmed will be returned to the parties or participants at their request or destroyed.
- c) All files, records, and data, other than personnel files, are maintained by the Clerk's Office and are available from the Clerk of the Board, in the Board's Chicago office. Most of these materials are also available through the Board's Website (see Section 2175.310), where they may be viewed, searched, and downloaded. These materials include:

- 1) Documents filed in an adjudicatory case or a rulemaking, including appearances, pleadings, exhibits, motions, transcripts of hearings, and public comments;
  - 2) Opinions and orders of the Board;
  - 3) Documents published by the Board for use by the general public, such as the *Environmental Register*.
- d) The files, records, and data of the Board are open to reasonable public inspection and copying in the Board's Chicago office, except for information exempted under Section 7 of FOIA [5 ILCS 140/7], including information that constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communication between or among the Board and staff; draft orders and opinions and orders; and technical unit memoranda.
- e) The Board has adopted procedural rules at 35 Ill. Adm. Code 130 to establish the procedures to be followed by any person to obtain protection for trade secrets and other non-disclosable information as described in Section 7 of the Act [415 ILCS 5/7]. (See 35 Ill. Adm. Code 130.)

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

### **Section 2175.305 Publications**

- a) *Environmental Register*
- 1) The Board's quarterly publication, the *Environmental Register*, contains reports of the Board's activities and notices of meetings and hearings. Single hard copies are provided free of charge at the Board's Chicago and Springfield offices.
  - 2) The *Environmental Register* is provided free of charge on the Board's Website and by email subscription (see Section 2175.310).
- b) Opinions, Orders, Regulations
- 1) Copies of opinions and orders of the Board are available as provided at Section 2175.205, including through the Board's Website (see Section 2175.310).
  - 2) The Board's opinions and orders are also available through various commercial services including LEXIS and Westlaw.
  - 3) The Board's regulations are published in the Illinois Register (see

Section 2175.305(d)) and by various commercial services. The Board's regulations are provided free of charge on the Board's Website (see Section 2175.310).

c) Annual Report

- 1) The Board publishes an Annual Report. The report includes information regarding the Board's membership, regulatory and case activities for the fiscal year, a summary of legislative activity affecting the Board, a summary of Board decisions reviewed by the courts during the fiscal year, and information on administrative activities.
- 2) When completed and printed, the Annual Report is available in hard copy free of charge in reasonable quantities from the Board's Chicago and Springfield offices. The Annual Report is also available free of charge from the Board's Website (see Section 2175.310).

d) Illinois Register

- 1) Required Filings. The Illinois Register is a publication containing all State regulations and is published by and available from the Office of the Secretary of State and various commercial services. The Board is required to publish the following information in the Illinois Register:
  - A) Notice of all proposed and adopted regulations as required by Section 5-40 of the IAPA [5 ILCS 100/5-40]. The notices describe the rules, contain contact names for questions, and provide directions for participation at public hearings and submission of written comments.
  - B) Notice of all emergency and preemptory regulations as required by Sections 5-45 and 5-50 of the IAPA [5 ILCS 100/5-45 and 5/50]. The notices describe the rules and contain contact names for questions.
  - C) Results of Board determinations in adjusted standards proceedings under Section 28.1 of the Act [415 ILCS 5/28.1]. The Board publishes this list at the close of each fiscal year, in July or August depending upon the Illinois Register publication schedule.
  - D) A regulatory agenda setting forth rules that the Board may be considering during a six-month period. This agenda lists

rules before publication of the notice described in subsection (d)(1). The regulatory agenda appears in January/February or July/August of each year, depending upon the Illinois Register publication schedule. The agenda describes the anticipated rules, contains contact names for questions, and provides directions for public participation.

- 2) Discretionary filings. Section 7.3 of the Act [415 ILCS 5/7.3] and Section 5-70(b) of the IAPA [5 ILCS 100/5-70(b)] allow the Board to publish other documents concerning its activities. These include notices of public hearings, and notices of proposed and adopted identical-in-substance rules as discussed in Section 7.2 of the Act [415 ILCS 5/7.2].

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

### **Section 2175.310 Board Website**

- a) The Board maintains a Website with information that includes the following:
  - 1) Board Members' Profiles and a Citizen's Guide to the Board;
  - 2) *Environmental Register*;
  - 3) Open Board Meeting and Closed Deliberative Session Dates and Agendas;
  - 4) Procedural Rules in Title 35 of the Illinois Administrative Code;
  - 5) Administrative Rules in Title 2 of the Illinois Administrative Code;
  - 6) Annual Reports;
  - 7) Pending Rulemakings;
  - 8) Open Board Meeting Minutes;
  - 9) The Clerk's Office On-Line (COOL); COOL is the Board's searchable electronic docketing system for rulemakings and adjudicatory cases, containing Board opinions and orders, hearing transcripts, and participant and party filings, all of which may be viewed, searched, and downloaded;
  - 10) Environmental Regulations in Title 35 of the Illinois Administrative Code;

- 11) The Act [415 ILCS 5]; and
  - 12) Formal and informal complaint forms.
- b) The information on the Board's Website can be downloaded free of Board charges. The Website can be accessed directly at the following electronic address:
- <http://pcb.illinois.gov/>
- c) The Board's Website can also be accessed through the State of Illinois Web site at the following electronic address:
- <https://www2.illinois.gov/agencies/PCB>

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

### **Section 2175.315 Documents Prepared by the Clerk's Office**

Various documents are routinely prepared by and for the Clerk's Office for internal use by the Board and are also available for inspection and copying.

(Source: Amended at 38 Ill. Reg. 22834, effective November 24, 2014)

### **Section 2175.320 Requests for Information**

- a) Informal requests for information may be made to any Board office. Informal requests will be filled promptly upon receipt of the request. However, where a request for information maintained by the Clerk's Office is made at a Board office other than the Chicago office, some delay may be necessary to allow for the Clerk's Office to provide the material. Inspection of documents can only take place at the Clerk's Office.
- b) FOIA Requests:
- 1) A formal request for information under FOIA must state that it is a formal request under FOIA. The formal request must be addressed to the Board's FOI officer, who:
    - A) Notes the date the public body receives the written request;
    - B) Computes the day on which the period for response will expire and makes a notation of that date on the written request;



- C) Maintains an electronic or paper copy of a written request, including all documents submitted with the request until the request has been complied with or denied; and
  - D) Provides a copy to the Clerk's Office to create a file for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of other communications.
- 2) The Board will either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended under Section 3(e) of FOIA [5 ILCS 140/3(e)].
  - 3) If denied, the requests will be denied under Section 7 and 7.5 of FOIA [5 ILCS 140/7 and 7.5]. Upon a decision to deny a request, the FOI officer shall notify the requester in writing of the decision and provide:
    - A) The reasons for denial, including a detailed basis for the exemption claimed,
    - B) the names and titles or positions of each person responsible for the denial,
    - C) Information on the right to review by the Public Access Counselor, and include the address and phone number for the Public Access Counselor, and
    - D) Information on the right to judicial review.
  - c) Information that is immediately available on request from the Clerk's Officer, includes, but is not limited to:
    - 1) Board Meeting Agendas,
    - 2) Board Meeting Minutes,
    - 3) Board Opinions and Orders, and
    - 4) Filings in cases available in the Clerk's Office On-Line.

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

#### SUBPART D: ACCESS TO BOARD RULES

## **Section 2175.400 Access to Board Rules in the Illinois Administrative Code**

- a) All Board rules have been codified under Title 35 of the Illinois Administrative Code since October 1983. Each general area of regulation has been assigned a particular Subtitle as set out below:

SUBTITLE	SUBJECT MATTER
A	Procedural Rules
B	Air Rules
C	Water Rules
D	Mine Rules
E	Livestock Waste
F	Public Water Supplies
G	Waste Disposal
H	Noise Rules
I	Nuclear Radiation
M	Biological Materials

- b) The Subtitles listed in subsection (a) also include some rules of the Agency. The Board's rules appear at Chapter I of each of the Subtitles.

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

### SUBPART E: RULEMAKING

## **Section 2175.500 Proposals**

- a) Rulemaking procedures are in the Board's procedural rules at 35 Ill. Adm. Code 102.
- 1) The Act provides for five types of rulemakings:
- A) Identical-in-substance rulemakings, as defined in Sections 7.2, 10(H), 13.3, 13, 17.5, 22.4, 22.7, and 22.40, of the Act (415 ILCS 5/7.2, 10(H), 13.3, 13, 17.5, 22.4, 22.7, and 22.40) (see 35 Ill. Adm. Code 102.610);
  - B) Federally required rules, as defined in Section 28.2 of the Act [415 ILCS 5/28.2] (see 35 Ill. Adm. Code 102.Subpart E);
  - C) Other regulatory proposals, both of general applicability and not of general applicability, as allowed by Sections 26, 27, and 28 of the Act [415 ILCS 5/26, 27, and 28] (see 35 Ill. Adm. Code 102.Subpart B);

- D) Clean Air Act fast-track rulemakings, as defined by Section 28.5 of the Act [415 ILCS 5/28.5] (see 35 Ill. Adm. Code 102.Subpart C); and
  - E) Updating incorporations by reference, as allowed by Section 28.6 of the Act [415 ILCS 5/28.6] (see 35 Ill. Adm. Code 102.211).
- 2) The IAPA provides for three types of rulemakings:
- A) General rulemaking under Section 5-40 of the IAPA [5 ILCS 100/5-40], which includes first notice and second notice (see 35 Ill. Adm. Code 102.600-102.608);
  - B) Emergency rulemaking under Section 5-45 of the IAPA [5 ILCS 100/5-45] (see 35 Ill. Adm. Code 102.612); and
  - C) Peremptory rulemaking under Section 5-50 of the IAPA [5 ILCS 100/5-50] (35 Ill. Adm. Code 102.614).
- b) Proposals for the adoption, amendment, or repeal of a substantive regulation may be made by the Agency, the Illinois Department of Natural Resources (Department), the Board, or any member of the public. Only the Agency may propose a Clean Air Act fast-track rulemaking [415 ILCS 5/28.5]. Proposals made by the Agency, Department, or Board are automatically scheduled for hearings.
- c) In the case of a proposal made by a member of the public, the proposal must be accompanied by a petition signed by 200 persons, specifying home addresses, unless that requirement is waived by the Board. When the proposal is accompanied by a petition, the matter is placed on the agenda for Board decision.

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

### **Section 2175.505 Hearing**

- a) All hearings on regulatory proposals are conducted according to the Board's procedural rules at 35 Ill. Adm. Code 102. These hearings are open to the public, and at the hearings, the public is permitted to examine the record, examine witnesses, testify, and submit evidence, except as limited by the Hearing Officer or Board procedural rules.
- b) Unless otherwise directed by the Hearing Officer or the Board, the rulemaking record remains open for written public comment for a minimum of 14 days following the Board's receipt of the hearing

transcript. Any person may make a written submission on the proposal within this period or during the first notice period under the IAPA [5 ILCS 100].

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

#### **Section 2175.510 First Notice**

- a) The Board may adopt a proposed rule for first notice under Section 5-40 of the IAPA at any time after a regulatory proceeding is initiated [5 ILCS 100/5-40]. The proposed rules are filed with the Secretary of State for first-notice publication in the *Illinois Register*.
- b) The public has a right to comment on the proposed rules during the first-notice period and retains all other rights set out in Section 5-40 of the IAPA [5 ILCS 100/5-40].
- c) Under Section 28 of the Act, the Board may, after hearing, revise the proposed regulation before adoption without conducting further hearings [415 ILCS 5/28].

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

#### **Section 2175.515 Second Notice**

- a) Upon termination of the first-notice period, the Board may adopt the proposal for second notice under Section 5-40 of the IAPA [5 ILCS 100/5-40], for review by the Joint Committee on Administrative Rules (JCAR).
- b) After the second-notice period has commenced, the proposed rules will only be amended in response to JCAR suggestions, recommendations, or objection.

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

#### **Section 2175.520 Adopted Rules**

- a) At the conclusion of the second-notice period, the Board may adopt a final opinion and order adopting the new or amended rules and setting forth the reasons for adoption.
- b) The adopted rules are then filed with the Secretary of State and are published in the *Illinois Register* along with supporting information.

(Source: Amended at 30 Ill. Reg. 14990, effective August 29, 2006)

### **Section 2175.525 Emergency Rules**

Under the Illinois Emergency Management Agency Act [20 ILCS 3305/7], on proclamation by the Governor that a disaster exists, or when the Board finds that a severe public health emergency is involved in relation to any proposed regulation, then such regulation will take effect without delay and the Board may proceed with the required economic impact hearings while the regulation continues in effect [415 ILCS 5/27(c)]. When such an emergency exists, or when the Board finds another situation exists that reasonably constitutes a threat to the public interest, safety, or welfare, the customary 45-day notice period is waived; however, notice and text of the emergency rule must be published in the *Illinois Register* [5 ILCS 100/5-45(b)]. An emergency rule is effective for a maximum period of 150 days under Section 5-45(c) of the IAPA [5 ILCS 100/5-45(c)], but it may be adopted as a permanent rule by following usual rulemaking procedures.

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

### **Section 2175.530 Peremptory Rules**

When the Board is required by federal law, federal rules and regulations, or by a court order to adopt a certain rule, that rule need not be published in the *Illinois Register* until it has been adopted under Section 5-50 of the IAPA [5 ILCS 100/5-50]. However, notice and text of the adopted rule must be published in the *Illinois Register* under Section 5-70 of the IAPA. [5 ILCS 100/5-70]

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

### **Section 2175.535 Rules Identical-In-Substance to Federal Regulations**

- a) The Board adopts regulations in the following programs under Section 7.2 of the Act [415 ILCS 5/7.2] that are identical-in-substance to federal regulations and which are exempt from Sections 5-35 and 5-40 of the IAPA [5 ILCS 100/5-35 and 5-40]:
  - 1) Exemptions from the definition of volatile organic material: Section 9.1(e) of the Act [415 ILCS 5/9.1(e)];
  - 2) Ambient air quality standards specifying the maximum permissible short-term and long-term concentrations of various contaminants in the atmosphere: [415 ILCS 5/10(H)];
  - 3) Underground injection control (UIC): Section 13(c) of the Act [415 ILCS 5/13(c)];
  - 4) Wastewater pretreatment: Section 13.3 of the Act [415 ILCS 5/13.3)],

- 5) Safe Drinking Water Act (SDWA): Section 17.5 of the Act [415 ILCS 5/17.5];
  - 6) Resource Conservation and Recovery Act (RCRA), Subtitle C, hazardous waste: Section 22.4(a) of the Act [415 ILCS 5/22.4(a)];
  - 7) RCRA, Subtitle I, UST: Section 22.4(d) of the Act [415 ILCS 22.4(d)];
  - 8) RCRA, Subtitle D, municipal solid waste landfills: Section 22.40(a) of the Act [415 ILCS 5/22.40(a)].
- b) Section 7.2(b) of the Act [415 ILCS 5/7.2(b)] provides timetables for rule adoption, but generally the Board must adopt rules within one year after the United States Environmental Protection Agency's (USEPA) adoption of the corresponding federal rule. The Board adopts a proposal for public comment that is published in the Illinois Register. The Board then accepts public comments for 45 days, after which the Board adopts final rules that are published in the Illinois Register.
- c) Because Sections 5-35 and 5-40 of the IAPA [5 ILCS 100/5-35 and 5-40] do not apply to identical-in-substance rulemaking under Section 7.2 of the Act [415 ILCS 5/7.2], the Board does not follow the IAPA's procedure of first notice, second notice, and final adoption.

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

### **Section 2175.540 Federally Required Rules**

Under Section 28.2 of the Act [415 ILCS 5/28.2], the Board may adopt a "required rule." *A "required rule" means a rule that is needed to meet the requirements of the federal Clean Water Act, SDWA, Clean Air Act (including required submission of a State Implementation Plan), or RCRA, other than a rule required to be adopted as an identical-in-substance rule (see Section 2175.535) [415 ILCS 5/28.2(a)].*

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

### **Section 2175.545 Generally Applicable Rules and Site-Specific Rules**

Under Sections 27 and 28 of the Act (415 ILCS 5/27 and 28), the Board may adopt substantive environmental rules of generally applicability and of site-specific applicability. Under Section 26 of the Act (415 ILCS 5/26), the Board may adopt such procedural rules as may be necessary to accomplish the purposes of the Act.

(Source: Added at 30 Ill. Reg. 14990, effective August 29, 2006)

### **Section 2175.550 Clean Air Act Fast-Track Rulemaking**

Under Section 28.5 of the Act (415 ILCS 5/28.5), the Board may *adopt rules proposed by the Agency that are required to be adopted by the State under the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (CAAA). A “fast-track” rulemaking proceeding is a proceeding to promulgate a rule that the CAAA requires to be adopted. For purposes of this type of rulemaking, “requires to be adopted” refers only to those regulations or parts of regulations for which USEPA is empowered to impose sanctions against the State for failure to adopt such rules* [415 ILCS 5/28.5(a) and (c)].

(Source: Added at 30 Ill. Reg. 14990, effective August 29, 2006)

### **Section 2175.555 Updating Incorporations By Reference**

Under Section 28.6 of the Act [415 ILCS 5/28.6], the Board may update an incorporation by reference included in a Board rule without conducting hearings if no objection is filed or hearing is requested during the first-notice period under Section 5-40 of the IAPA [5 ILCS 100/5-40]. This rulemaking is limited to replacing a reference in a Board rule to an older or obsolete version of an incorporated document with a reference to the current version of that document or its successor document.

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

## **SUBPART F: ADJUDICATORY PROCEEDINGS**

### **Section 2175.600 Adjudicatory Proceedings**

- a) The Board is authorized to hear the following types of adjudicatory cases (See 35 Ill. Adm. Code 101-130 for procedural rules governing the processing of these cases):
  - 1) **Enforcement Action.** The Illinois Attorney General, any State's Attorney, or any person may initiate an enforcement action by filing a complaint under Section 31 of the Act [415 ILCS 5/31]. (See 35 Ill. Adm. Code 103.)
  - 2) **Permit Appeal.** Any person who, under Section 39 of the Act (415 ILCS 5/39), has been denied a permit by the Agency, or issued a permit by the Agency with one or more conditions to which that person objects, may file a petition with the Board for review of the Agency's action. If the Agency grants a RCRA permit for a hazardous waste disposal site or grants or denies a National Pollutant Discharge Elimination System (NPDES) permit, certain third parties may petition the Board for a hearing to contest the decision of the Agency [415 ILCS 5/40(b), (e)(1)]. (See 35 Ill. Adm. Code 105.)

- 3) **Pollution Control Facility Siting Review.** An applicant for local siting approval of a pollution control facility who has been denied this approval or granted conditional approval by a county board or the governing body of a municipality may contest that decision by filing a petition for hearing under Section 40.1(a) of the Act [~~415 ILCS 5/40.1(a)~~]. A third party who participated in the public hearing conducted by a county board or the governing body of a municipality may contest a grant of local siting approval by filing a petition for hearing under Section 40.1(b) of the Act [415 ILCS 5/40.1(b)]. (See 35 Ill. Adm. Code 107.)
- 4) **Variances/Adjusted Standards.** Any person adversely affected by a Board rule or order may file a petition for a variance under Section 37 of the Act [415 ILCS 5/37] or a petition for an adjusted standard under Section 28.1 of the Act [415 ILCS 5/28.1]. (See 35 Ill. Adm. Code 104.)
- 5) **Trade Secret Determination.** Any person who is adversely affected by a trade secret determination made by the Agency or the Department may contest that determination before the Board. (See 35 Ill. Adm. Code 130.)
- 6) **Appeal of Office of the State Fire Marshal (OSFM) UST Fund Eligibility or Deductibility Determination.** Owners or operators of USTs who have been denied eligibility by the OSFM to access the UST reimbursement fund, or who disagree with an OSFM determination of the applicable deductible for UST Fund reimbursement, may petition for review under Section 57.9(c) of the Act [415 ILCS 5/57.9(c)]. (See 35 Ill. Adm. Code 105.)
- 7) **Appeal of Agency Decisions Regarding UST Program.** Owners or operators of USTs who have been denied requested UST Fund reimbursement or UST cleanup approvals by the Agency may petition for review under Section 40 of the Act [415 ILCS 5/40]. (See 35 Ill. Adm. Code 105.)
- 8) **Tax Certifications.** Under the Property Tax Code, the Board may issue a certificate finding that a facility is a "pollution control facility" or that a device is a "low sulfur dioxide emission coal fueled device" for property tax purposes [35 ILCS 200/11-10, 11-40]. A person seeking a tax certificate must first submit an application to the Agency. The Agency is then required to file with the Board a recommendation on whether the Board should issue the certificate. An applicant who wishes to contest an Agency recommendation that the Board deny tax certification may file a petition with the Board. (See 35 Ill. Adm. Code 125.)



- 9) **Administrative Citations.** The Agency or a unit of local government delegated authority by the Agency may issue administrative citations for violations of Sections 21(o), (p), 22.51, 22.51a, 31.1(c), 42(b)(4), 42(b)(4-5), 55(k) of the Act [415 ILCS 5/21(o), (p), 22.51, 22.51a, 31.1(c), 42(b)(4), 42(b)(4-5), 55(k)]. These citations are enforceable by filing copies with the Board under Section 31.1 of the Act [415 ILCS 5/31.1]. The respondent named in the administrative citation may file a petition for review with the Board. (See 35 Ill. Adm. Code 108.)
- 10) **Water Well Setback Exceptions.** A water well owner may petition the Board for an exception from the water well setback requirements of the Act by filing a petition with the Board under Section 14.2 of the Act [415 ILCS 5/14.2.]. (See 35 Ill. Adm. Code 106.)
- 11) **Other.** Any other proceedings authorized by the Act or the Board's procedural rules may be brought before the Board under statutory authority and any Board regulations adopted thereunder.

(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)

### **Section 2175.700 Emergency Procedures For Filings**

In the event that an emergency, such as extreme weather conditions, public safety or other exigency, results in the Governor or other authority directing the closure of the Clerk's office on a day scheduled for regular business, the Board will implement the following procedures:

- a) All non-statutory filing deadlines will be automatically extended until the next business day.
- b) Statutory filing deadlines must be met by following the rules at 35 Ill. Adm. Code 101.Subpart C.
- c) When possible, the Board will place notices on the Board's website of the emergency closures.

(Source: Added at 35 Ill. Reg.4549, effective March 4, 2011)

### **Section 2175.710 Emergency Procedures For Hearings**

In the event that an emergency, such as extreme weather conditions, public safety or other exigency, results in the Governor or other authority directing the closure of a

facility where a Board hearing is scheduled for the day of the closure, the Board will implement the following procedures:

- a) Hearings scheduled for the day of the emergency closure, will be held on the next business day and may be continued on the record to a date certain, when schedules of the participants require such a continuance.
- b) When possible, the Board will place notices on the Board's website of the emergency closures and the date of the continued hearing.

(Source: Added at 35 Ill. Reg.4549, effective March 4, 2011).

#### SUBPART H TIME LIMITED WATER QUALITY STANDARDS

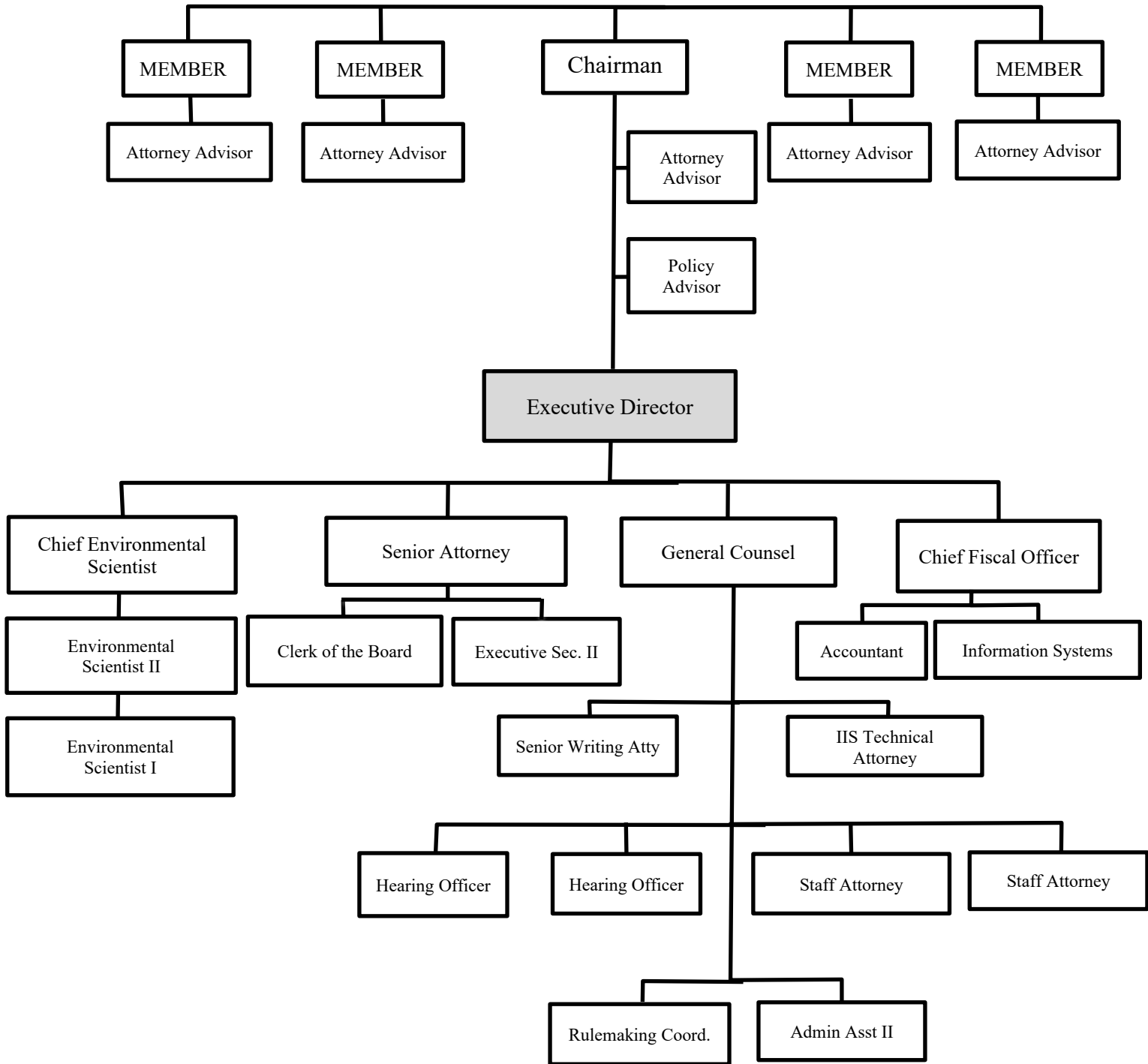
##### **Section 2175.800 Time Limited Water Quality Standards**

A Time-Limited Water Quality Standard (TLWQS) provides temporary relief from water quality standards as set forth in 35 Ill. Adm. Code 302 and 303. A TLWQS proceeding is a non-adjudicatory proceeding. A TLWQS is also not subject to rulemaking requirements. The procedural rules governing a TLWQS proceeding are at 35 Ill. Adm. Code. 104.Subpart E.

(Source: Added at 44 Ill. Reg. 14166, effective August 21, 2020)

Section 2175.APPENDIX A Organizational Chart

ORGANIZATION CHART



(Source: Amended at 44 Ill. Reg. 14166, effective August 21, 2020)