

ILLINOIS POLLUTION CONTROL BOARD

May 26, 2022

IN THE MATTER OF:)	
)	
AMENDMENTS TO THE BOARD’S)	R22-20
ADMINISTRATIVE RULES)	(Rulemaking – Procedural)
2 ILL. ADM. CODE 2175)	

**ADDENDUM
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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 Reg. 23, p. 96, effective May 29, 1983; repealed by operation of law effective October 1, 1984; new rules adopted at 9 Ill. Reg. 107, effective December 21, 1984; old Part repealed at 20 Ill.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; amended in R22-20, at 46 Ill. Reg. _____, effective _____.

SUBPART A: INTRODUCTION AND ORGANIZATION

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 materials related to Board regulatory, adjudicatory, and time-limited water quality standard (TLWQS) proceedings. 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 46 Ill. Reg. _____, effective _____)

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

60 E. Van Buren St. .
Suite 630
Chicago, Illinois 60605
(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)

- d) Instructions for Accessing the Board's Chicago Office

- 1) The Board's Chicago office is located in a private, non-government building. For ease of access, visitors may pre-register by emailing or calling the Board's offices, a member of the Board's staff, a hearing officer, or the Clerk's Office in advance of their visit.
- 2) Visitors should enter the building at 333 South Wabash.
- 3) Visitors who do not pre-register must contact the Board's offices, a member of the Board's staff, a hearing officer, or the Clerk's Office to register when they arrive at the building.
- 4) Once visitors arrive and are registered, they must check in with the CHA building security desk to receive an access card which grants entry to the elevators.
- 5) If a member of the public does not wish to register but wishes to conduct business with the Board in person, they may contact the Board's office to arrange to have a member of the Board staff meet the member of the public in the lobby of the building for assistance.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

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

- a) Public Notice of Regular Open Board Meetings and Closed Deliberative Sessions.

- 1) The Board adopts annual schedules of open meetings. Regular open Board meetings are generally held twice a month, generally every first and third Thursday of the month at a location in Chicago, at the Board's Springfield office, or by video conference between the two locations . 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 free of charge in hard copy at the Board's Chicago and Springfield offices, on the Board's Website (see Section 2175.310), and by email subscription. 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 46 Ill. Reg. _____, effective _____)

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 60 E. Van Buren St., Suite 630 , Chicago, Illinois 60605 or at 312/814-3620 at least five days prior to a Board meeting or hearing.

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

SUBPART B: FEES AND FORMS OF PAYMENT

Section 2175.215 Forms of Payment

- a) All amounts may be paid:
 - 1) In the form of a check or money order made payable to the Illinois Pollution Control Board;

- 2) Electronic Payment using Illinois ePAY; or
 - 3) 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).
- b) 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)
 - c) 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 46 Ill. Reg. _____, effective _____)

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 archived as directed by the Illinois State Archives and will be maintained by the Board. Documents archived 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 46 Ill. Reg. _____ effective _____)

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) Single hard copies of the Annual Report are provided free of charge at the Board's Chicago and Springfield offices. The Annual Report is also available free of charge on 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 peremptory 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 46 Ill. Reg. _____, effective _____)

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:

<https://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://www.illinois.gov/agencies/agency.ipcb.html>

(Source: Amended at 46 Ill. Reg. _____, effective _____)

Section 2175.320 Requests for Information

- a) Informal requests for information may be made to any Board office. Informal requests will be filled promptly upon receipt of the request. However, where a request for information maintained by the Clerk's Office is made at a Board office other than the Chicago office, some delay may be necessary to allow for the Clerk's Office to provide the material. Inspection of documents can only take place at the Clerk's Office.
- b) FOIA Requests:
- 1) A formal request for information 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 request must be submitted in writing and may be submitted by electronic mail (PCB.FOIA@illinois.gov), fax (312-814-3669), U. S. Mail, or special carrier.

- 3) 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)].
 - 4) 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 46 Ill. Reg. _____, effective _____)

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
J	Clean Construction or Demolition Debris
M	Biological Materials
O	Right-To-Know

- 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 46 Ill. Reg. _____, effective _____)

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) Appeal of Agency Decisions Regarding Drycleaner Environmental Response Trust Fund. Under the Drycleaner Response Trust Fund Act, decisions of the Agency may be reviewed by the Board under Section 40 of the Act [415 ILCS 5/40].
- 9) 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.)
- 10) 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.)

- 11) 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.)
- 12) 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 46 Ill. Reg. _____, effective _____)

SUBPART G: EMERGENCY PROCEDURES

Section 2175.700 Emergency Procedures For Filings

If 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 46 Ill. Reg. _____, effective _____)

Section 2175.710 Emergency Procedures For Hearings

If 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 46 Ill. Reg. _____, effective _____).