

ILLINOIS POLLUTION CONTROL BOARD  
May 10, 1990

IN THE MATTER OF: )  
 )  
PROCEDURAL RULES REVISION ) R88-5(B)  
35 ILL. ADM. CODE 102 AND ) (Rulemaking)  
106 (Subparts D, E, and F) )

ADOPTED RULE. FINAL ORDER.

OPINION AND ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board for final adoption of new procedural rules for rulemaking proceedings. On September 8, 1988, the Board proposed for first notice revisions to Parts 101, 102, 106, and 107 of its procedural rules, found at Title 35 of the Illinois Administrative Code. After two public hearings and consideration of written comments, the Board split the docket. Docket R88-5(A) contained new rules in Part 101 (general provisions) and Subpart G of Part 106 (adjusted standard proceedings), and the repeal of Part 107 (sanctions, which are now covered in Part 101). The rules in docket R88-5(A) were adopted by the Board and became effective on July 10, 1989. This docket (R88-5(B)) contains new rules for regulatory proceedings (Part 102), the repeal of the existing Part 102 rules, and revisions to Subparts D, E, and F of Part 106. (Please note that these Subparts are being revised only to update references to Part 102.) On August 31, 1989, the Board adopted a second first notice order, after revising the rules in response to comment. First notice of the rules was published on September 22, 1989, beginning at 13 Ill. Reg. 14693. A public hearing was held on November 9, 1989.

The Board received fifteen written public comments during the 1988 first notice period (Public Comments (P.C.) # 11-25), and ten written comments during the 1989 comment period (P.C. # 41-50). On February 8, 1990, after consideration of all testimony and comments, the Board proposed these rules for second notice. The rules were then submitted to the Joint Committee on Administrative Rules (JCAR) for second notice review. On April 3, 1990, JCAR issued its Certification of No Objection to the amendments to Part 106 and to the repeal of the existing Part 102 (rulemaking rules). JCAR issued its Certification of Objection to the rules in new Part 102 on April 3, 1990. The Board's response to that objection is discussed below.

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The Board wishes to acknowledge the contributions of attorney assistant Elizabeth Schroer Harvey and the rest of the Board's legal staff to the drafting of these rules and the supporting opinion.

Please note that this opinion contains only the Board's comments on the rules as they are adopted. The Board's responses to comments are contained in the opinions adopted on August 31, 1989 and February 8, 1990, and will not be repeated here. Substantive changes to the rules made at JCAR's request will be discussed below.

These rules will become effective immediately upon filing with the Secretary of State's Administrative Code Unit. The Board expects that this filing will be completed this month. Once the rules are filed and effective, the Board will begin to implement the rules immediately. The rules will be applied to all pending rulemakings to the extent reasonably practicable, as well as to all rulemakings filed with the Board after the effective date of these rules.

#### JCAR OBJECTION

On April 3, 1990, JCAR issued its Certification and Statement of Objection to new Part 102 (rulemaking rules). JCAR specifically objects to Section 102.240, which covers the initiation and scheduling of pre-hearing conferences. JCAR contends that the Board has failed to provide standards governing how a hearing officer will determine who are potentially affected persons to be included in pre-hearing conferences. The objection states that "[i]n one instance particular categories of individuals could be deemed to be potentially affected persons and invited to attend a pre-hearing conference, while the absence of standards in the Board's rules could work to deny an opportunity to participate to similarly positioned individuals in a setting in which the same regulatory issues are considered."

The Board will modify Section 102.240(a) in response to JCAR's objection. An additional sentence will be added to subsection (a), stating, "A 'potentially affected person' is any person, defined by the Act and Section 102.101, who demonstrates any nexus to a source of the pollutant to be controlled by the proposal or who shows an impact from the pollutant to be controlled by the proposal." The Board believes that this additional sentence will remedy JCAR's concern that the rule does not contain standards for determining who is a "potentially affected person". However, the Board must point out that this definition will not be used in any way to exclude persons from participation in that pre-hearing conference. The Board believes that in the normal course of events, there will be no need to make any determination as to whether a particular person is "potentially affected." Only if the issue specifically arises will there be any type of inquiry into whether a person is "potentially affected." Finally, the Board notes that this definition does not require an environmental group to prove that it has a specific member who is "potentially affected."

PART 102--REGULATORY AND INFORMATIONAL HEARINGS  
AND PROCEEDINGS

Subpart A: General Provisions

This Subpart contains introductory provisions for these new Part 102 rules. Section 102.100 states that this Part applies to all regulatory and informational hearings and proceedings, and that the rules shall be read in conjunction with 35 Ill. Adm. Code 101. (Part 101 contains general procedural rules for all Board proceedings.) Hearings conducted pursuant to Part 102 are quasi-legislative in nature, and all persons taking part in such hearings are termed "participants", rather than "parties", as in contested cases.

Section 102.101 contains definitions of terms used in this Part. The Board has added a definition of "quasi-legislative proceeding" to satisfy JCAR concerns. Section 102.102 "Types of Regulatory Proposals" is a "roadmap" of the types of regulatory proposals and the ways in which a regulatory proposal may be adopted. Section 102.103 provides for a waiver of any of the non-statutory requirements of this Part upon a showing that a particular requirement would create an undue burden on that person. In response to JCAR questions, the Board has added two examples of situations where the Board may find an "undue burden": where the burden of compliance with a requirement would impose financial costs which would preclude further participation in the rulemaking, or where compliance would result in the provision of information already provided in that proceeding. The Board notes that these examples are illustrations and in no way preclude the Board from finding an "undue burden" in other situations.

Finally, Section 102.104 "Other Proceedings" states that the Board may conduct other noncontested hearings as are necessary to accomplish the purposes of the Environmental Protection Act (Act), Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1001 et seq. At JCAR's request, the Board has added a sentence which illustrates the type of noncontested hearing contemplated by this section. The new sentence states "[s]uch hearings may include, but are not limited to, inquiry hearings to gather information on any subject the Board is authorized to regulate."

Subpart B: Regulations of General Applicability

Subpart B is a guide to the filing of a sufficient proposal of regulations of general applicability. Section 102.120 provides that any person may file a regulatory proposal. The original and nine copies of each proposal shall be filed with the Clerk of the Board, and one copy each with the Attorney General, the Illinois Environmental Protection Agency (Agency), and the Department of Energy and Natural Resources (ENR). Section 102.121 sets forth the

required contents of all regulatory proposals. Among other things, all proposals must include a synopsis of all testimony to be presented by the proponent at hearing. As the Board stated in its August 31, 1989 second first notice opinion, the synopsis need not identify specific witnesses, but must provide a summary of information which will be presented at hearing. For example, if the proponent plans to present two witnesses on technical issues and one witness on economic considerations, the proposal should include summaries of the information which will be presented by those witnesses. This requirement will enable the Board and interested persons to more fully understand the scope and impact of the proposal, while allowing the proponent to identify specific witnesses and update testimony just before hearing.<sup>1</sup>

As the Board has repeatedly stated throughout the course of this proceeding, the Board believes that these content requirements are reasonable expectations of the vast majority of proponents, and that the requirements are necessary to focus and expedite the regulatory process. The requirements simply mandate that a proponent provide basic information "up front". Because the proponent ordinarily controls when a proposal is filed, the support for a particular proposal should be in place before the proposal is filed. The Board recognizes that proposals are subject to change during the course of a proceeding, and believes that these rules allow for that change.

Section 102.122 "Dismissal" states a proponent's failure to satisfy content requirements, respond to Board requests for additional information, or pursue timely disposition of the proposal will render the proposal subject to dismissal. Several additions have been made to this section to satisfy JCAR concerns. A sentence has been added to subsection (b), which states that in determining whether to dismiss a proposal for failure to pursue timely disposition, the Board will consider factors including, but not limited to, the history of the proceeding and the proponent's compliance with Board and hearing officer orders. A new subsection (d) states that if the Board is unable to determine the jurisdictional basis for a proposal, the Board will dismiss the proposal. Such dismissal will not bar the proponent from re-submitting a proposal in the absence of any deadline imposed by the Act or Board regulations. Finally, Section 102.123 contains additional rules for any proposal to amend the regulations implementing the Resource Conservation and Recovery Act (RCRA). 42 U.S.C. 6901 et seq.

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<sup>1</sup> The Board points out that Section 102.280(a), discussed below, requires the proponent to submit actual testimony and exhibits 21 days prior to hearing.

### Subpart C: Site-Specific Regulations

Subpart C is a guide to filing a complete proposal of site-specific regulations, and thus is the counterpart to Subpart B. As with the proposal of general regulations, the proponent must file the original and 9 copies with the Clerk, and serve one copy each upon the Attorney General, the Agency, and ENR. (Section 102.140.) Section 102.141 contains the content requirements for proposals of site-specific regulations. At JCAR's request, the Board has added a phrase to subsection (f) which clarifies that the proposal must demonstrate that the requested relief is consistent with federal law governing the subject of the proposal, such as RCRA or the Underground Injection Control program.

Section 102.142 "Dismissal" is identical to Section 102.122, but governs dismissal of proposals of site-specific rules. The Board has added the language discussed above in connection with Section 102.122 in order to satisfy JCAR concerns.

### Subpart D: Authorization, Scheduling, and Notice of Hearings

Section 102.160 "Authorization of Hearing" sets forth the initial steps taken by the Board after a regulatory proposal is filed. All proposals are reviewed by the Board for a determination of adequacy under the Act and Sections 102.121 and 102.141. Hearing will be authorized only if the proposal meets those criteria.<sup>2</sup> If the Board determines that a proposal meets all requirements, and if any filing fee required by the Act and 35 Ill. Adm. Code 101.120 has been paid,<sup>3</sup> the Board will issue an order accepting the proposal for hearing. Such an order will start the timeclock for purposes of any applicable economic impact study (EcIS) and first notice publication deadlines pursuant to Sections 27 and 28.2 of the Act.

Section 102.161 "Scheduling Of Hearings" contains information

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<sup>2</sup> The Board notes that the language of Section 102.160(a) may imply that the Agency, ENR, and the Department of Nuclear Safety (DNS) need not comply with the requirements of Part 102 before a proposal will proceed to hearing. The Board specifically states that this is not the case. As the last sentence of that subsection states, "[t]he proponent must cure any inadequacy identified by Board order before the proposal will proceed to hearing." This provision applies to all proponents, including the Agency, ENR, and DNS.

<sup>3</sup> Please note that the Clerk will refuse to accept for filing any proposal which is not accompanied by any required filing fee. Pursuant to Section 7.2 of the Act, all petitions for site-specific regulation must include a \$75 filing fee.

on the number and location of hearings on regulatory proposals, and also provides for the issuance of an order preliminarily specifying the number of hearings which will be held on a given proposal. The hearing officer will issue that order, after considering the number and complexity of issues involved in the proposal. If the proponent or any participant wishes to request a hearing beyond that number, that person must demonstrate that failing to hold an additional hearing would result in material prejudice to the movant. The movant must also show that he or she exercised due diligence in its participation in the proceeding, and that an additional hearing, as opposed to the opportunity to present written comments, is necessary. Additionally, the Board or the hearing officer will schedule an additional hearing or hearings if it finds that additional hearing will aid the Board on its decision on the proposal. Section 102.162 establishes provisions for notice of public hearings on regulatory proposals, and Section 102.163 contains notice requirements for site-specific RCRA proposals.

#### Subpart E: Economic Impact Study Determinations

This Subpart implements the EcIS determination provisions of Sections 27(a) and 28.2 of the Act. Section 102.180 "Board Determinations" requires that the Board determine, within 60 days of accepting a proposal for hearing, whether an EcIS should be prepared. In all proceedings except a required rulemaking pursuant to Section 28.2 of the Act, the Board may also, at any time before the close of the record, determine that an EcIS should be prepared. Section 102.181 "Request For Determination" sets forth the procedure for any person to file a statement that an EcIS should or should not be prepared. At JCAR's request, a sentence has been added to subsection (b) which states that a description of the economic impact of the proposed rule may include, but is not limited to, the projected cost of compliance, the number of affected persons, and the impact of compliance costs on affected persons. No hearing will be held on any request for or against the preparation of an EcIS.

Section 102.181 sets forth the issues which the Board will consider when making its EcIS determination. Subsection (e) has been revised to satisfy JCAR concerns. A new sentence states that among the other considerations before the Board in making its determination are any statutory deadline for promulgation of rules and possible impact of the proposal on natural and cultural resources. Finally, Section 102.183 "Notice Of Board Determination" states that the Board will issue a written interlocutory order giving the reasons for its determination. EcIS determination orders may be appealed only pursuant to 35 Ill. Adm. Code 101.304, which provides for Board certification of interlocutory orders for appeal.

### Subpart F: Certification Of Required Rules

This Subpart establishes a procedure for challenging an Agency certification that a proposed rule is a federally required rule pursuant to Section 28.2 of the Act. Section 102.200 requires the Agency, when it proposes a rule which it believes to be federally required, to so certify in its proposal. The certification must include citation to the specific section of the specific federal law to which the proposed rule will respond. Section 102.201 "Challenge To Agency Certification" allows any person to file an objection to an Agency certification within 21 days of the Board's order accepting the proposal for hearing. The objection shall state the reasons for the objection, and include all arguments which the objector wishes the Board to consider. The Agency may file a response within 10 days of the service of the objection. No hearing will be held on any objection.

Pursuant to Section 102.202, the Board will rule upon any objection within 60 days of its order accepting the proposal for hearing. The Board's ruling will be made in its order determining whether an EcIS will be prepared. Like EcIS determinations, a Board ruling on an objection to an Agency certification may be appealed only pursuant to 35 Ill. Adm. Code 101.304.

Please note that the timeframes in this procedure track the timeframes for EcIS determinations. The Board recognizes that these timeframes are very tight. However, the strict time periods are necessary because Section 28.2(e) of the Act requires the Board to publish first notice of required rules in the Illinois Register no later than six months from the date the Board determines whether an EcIS should be prepared. Additionally, Section 28.2(d) allows the Board to adopt a required rule without an EcIS if the EcIS is not submitted within six months of the Board's determination that an EcIS should be prepared. Therefore, it is very important to resolve any question as to whether a proposed rule is a required rule at the beginning of the proceeding. The Board will not look kindly upon any request for extension of these time periods.

The Board notes that it must refer to any Agency certification that a proposed rule is a required rule in the first notice publication of the proposal. (Section 28.2(e) of the Act.) In the event that the Board is to find, upon objection, that a proposed rule is not a required rule, at first notice it will simply state that the Agency had certified the rule, but that the Board has found that the proposed rule was not federally required.

### Subpart G: Authority Of Hearing Officer

Section 102.220 establishes the duties and powers of hearing officers in regulatory proceedings. Section 102.221 "Notice And Service Lists" states that the hearing officer shall maintain a

notice list for each regulatory proceeding. Notice of all Board action and hearing officer orders will be given to all persons on the notice list. Additionally, the hearing officer may establish a separate service list. The hearing officer may direct participants to serve copies of all documents upon persons listed on the service list. The Board stresses that every regulatory proceeding has a notice list, and that any person may be included on that list simply by giving his or her name and address to the hearing officer. The option of establishing a service list in addition to the notice list allows the hearing officer to draw a distinction between those who simply wish to be notified of Board action on a specific proposal and those who wish to participate more fully in the proceeding. This option is especially helpful in proceedings which have a large notice list but a relatively small number of actual participants.

Section 102.282 concerns the effect of a hearing officer ruling. All decisions, orders, and rulings made by a hearing officer shall remain in effect during the pendency of any appeal to the Board of that decision, order, or ruling. This provision will cut down on any delay during any appeal of a hearing officer ruling on, for example, a motion to continue a hearing or a motion for sanctions.

#### Subpart H: Pre-Hearing Conferences

Subpart H establishes procedures for pre-hearing conferences, which are authorized by Section 27(e) of the Act. Section 102.240 contains the procedures for initiating and scheduling a pre-hearing conference. To the extent consistent with any deadline for adoption of regulations, the hearing officer may schedule a pre-hearing conference on any regulatory proposal. The pre-hearing conference may be scheduled on the hearing officer's own motion, or upon the motion of the proponent or any potentially affected person. The usual notice requirements for notice of hearings do not apply to pre-hearing conferences, but the hearing officer will give notice to all persons on the notice list for that proceeding. That notice may be either written or oral, in order to retain flexibility in the scheduling of pre-hearing conferences. This is the section to which JCAR objected. As discussed above, the Board has modified the rule in response to that objection.

Section 102.141 sets forth the purposes of a pre-hearing conference. These purposes are statutorily articulated in Section 27(e) of the Act. Section 102.242 "Pre-hearing Order" provides that discussions at the pre-hearing conference are not binding upon any participant in the conference or upon the Board. However, with the consent of all participants in the conference, the hearing officer may enter an order delineating issues in the proceeding, agreed facts, and other matters. If the participants in the pre-hearing conference agree to the entering of a pre-hearing order, the hearing officer may require that those participants furnish an



proposed order setting forth the substance of the agreements reached at the pre-hearing conference. The order shall identify which participants have agreed to the order. This provision is intended to address the possibility that all participants in a pre-hearing conference agree that an order should be entered, but not all of those participants agree to all aspects of the order. The Board points out that as stated in Section 27(e) of the Act and in subsection (d) of Section 102.242, a pre-hearing order is not binding on nonparticipants in the pre-hearing conference.

#### Subpart I: Motions And Discovery

The sections in this Subpart cover motion practice, production of information, and subpoenas in regulatory proceedings. The sections contain references to the appropriate sections of Part 101 of the Board's procedural rules.

#### Subpart J: Regulatory Hearings

This Subpart deals with the conduct of hearings on regulatory proposals. Section 102.280 "Pre-hearing Submission Of Testimony And Exhibits" sets forth the requirements and procedures for the filing of testimony and exhibits before hearing. The proponent must submit all written testimony and any related exhibits 21 days before the hearing at which the witness is to testify, unless the hearing officer directs otherwise. (Please note that the provision allowing the hearing officer to "direct otherwise" is intended to allow the hearing officer to modify the timing of the submission of testimony, not, in most cases, to dispense with the requirement that the proponent pre-file his supporting testimony.) The hearing officer may require participants other than the proponent to pre-submit testimony and exhibits if the hearing officer finds that pre-submission will provide for a more efficient hearing. The Board believes that in combination with the requirement that the proponent provide a synopsis of supporting testimony when the proposal is filed (see Section 102.121), requiring the proponent to pre-submit testimony 21 days before hearing will give the Board and the participants sufficient time to prepare for hearing, while allowing the proponent to update his supporting testimony in response to events after the filing of the proposal. Again, because the proponent controls when a proposal is filed, the Board believes that requiring a synopsis of testimony at filing, with actual testimony submitted 21 days prior to hearing, imposes little burden on the proponent. The Board continues to believe that pre-submission of testimony and exhibits by all participants is important, and expects that pre-submission by participants will generally be required. However, by giving the hearing officer the authority to decide when pre-submission should be required, proceedings can be conducted in response to the circumstances of the individual proceeding.

Subsection (f) addresses the issue of modifications to pre-

submitted testimony. The subsection, which is based on 35 Ill. Adm. Code 106.803, permits the hearing officer to allow modifications if the changes are either non-substantive or would not materially prejudice another person's participation at hearing.<sup>4</sup> This provision will allow unavoidable modifications to pre-submitted testimony to be made at hearing, while providing a level of scrutiny to protect the reliability of pre-submitted testimony. Note that objections to modifications are waived unless raised at hearing.

Section 102.281 "Transcript" requires that all testimony be recorded stenographically. The section provides that the hearing officer will rule on typographical corrections submitted by any person. If any witness does not correct the transcript within 14 days of its receipt in Board offices constitutes a waiver of the witness' right to correct. Section 102.282 "Admissible Information" states that all information which is relevant and not repetitious or privileged is admissible. The hearing officer will rule on objections. As the Board has repeatedly stated, because of the broad standard of admissible evidence, some objections which may be appropriate in an adjudicatory hearing are not appropriate in regulatory proceedings. Sections 102.283, 102.284, and 102.285 contain information on the presentation of testimony, the questioning of witnesses, and the record for decision.

#### Subpart K: Economic Impact Hearings

Section 102.300 contains rules for hearings on any EcIS submitted by ENR. Unless otherwise provided by the Act, the Board must hold at least one hearing on any EcIS. An exception to this is in the case of a federally required rule. Pursuant to Section 28.2 of the Act, if a requested EcIS is not submitted to the Board within six months, the Board may proceed to adopt the required rule without the EcIS. However, to the extent possible, the Board shall hold a hearing on the economic impact of the proposed required rule. This requirement may be fulfilled by considering economic impact at any merit hearing. EcIS hearings may be consolidated with any other hearings held pursuant to Part 102. Section 102.301 establishes the procedures for hearings on any EcIS on an existing rule.

#### Subpart L: Public Comments

Section 102.320 "Public Comments" provides that any person may submit written public comments on any proposal within 14 days after the receipt of the transcript in Board offices, unless otherwise specified by the hearing officer or the Board. The Board points

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<sup>4</sup> The Board points out that this rule does not limit rebuttal testimony in any way. The rule merely refers to modifications to testimony pre-submitted for direct presentation at hearing.

out that while no formal notification of the filing of the transcript is done, it is quite easy to determine when the transcript has been filed. Because the Board's contract with its court reporting service specifies when the transcript is due, the hearing officer will always be able to give participants a good idea of when the transcript will be received by the Board. Participants can then easily verify that the transcript actually was received by calling the Clerk's office. As a practical matter, the hearing officer almost always sets a date certain as the deadline for comments, so the situation will rarely arise. Comments which are not timely filed will not be considered, except as allowed by the hearing officer or the Board to prevent material prejudice. The Board specifically points out that motions for extension of time to file comments are not favored. Finally, the Board is aware that 14 days is a short period of time in which to prepare and file comments. Ordinarily more time will be allowed, but in order to retain flexibility for the proceedings in which only a short comment period is possible, the rule itself will specify the short period. This enables that hearing officer or the Board to enforce the shorter period when necessary, but extend the time period when circumstances allow.

#### Subpart M: Board Action

This Subpart explains the various ways that the Board may adopt regulations. Section 102.340 allows the Board to revise proposed regulations before adoption, under some circumstances. Section 102.341 "Adoption Of Regulations" requires the Board to consider the elements of any EcIS performed by ENR on a particular proposal, except in a rulemaking for a federally required rule. In the case of a required rule, the Board must consider any EcIS submitted within the six month period established by Section 28.2 of the Act and Section 102.300(b). Sections 102.342, 102.343, and 102.344 provide for first and second notice of proposed regulations, as required by the Illinois Administrative Procedure Act (APA), and for notice of Board final action on a proposal. Finally, Sections 102.345 through 102.348 establish procedures for the adoption of identical in substance, emergency, peremptory, and temporary rules. The great majority of the language in these sections tracks the statutory language applicable to each type of rule.

#### Subpart N: Motions For Reconsideration And Appeal

Subpart N contains procedures for motions for reconsideration, correction of publication errors, and appeal. Section 102.360 "Filing Of Motion For Reconsideration" states that motions for reconsideration or modification of any Board order taking substantive action on a regulatory proposal shall be filed in accordance with 35 Ill. Adm. Code 101.242 and 101.246. Section 102.361 "Disposition Of Motions For Reconsideration" addresses the Board's disposition of motions for reconsideration at second notice

and after final adoption. Section 102.362 notes that the Board may make technical corrections to rules published in the Illinois Register or filed with the Secretary of State only in accordance with 1 Ill. Adm. Code 100.240. No hearing will be held on such corrections. Finally, Section 102.363 provides that appeal of any final Board order is directly to the appellate court, and is conducted pursuant to Sections 29 and 41 of the Act.

PART 106--HEARINGS PURSUANT TO SPECIFIC RULES

The Board has made non-substantive changes to Sections 106.415, 106.506, 106.602, and 106.604. These changes merely update references to the "old" Part 102 rules so that the references are to the correct section of the "new" Part 102 rules. Additionally, a reference in Section 106.602 to Part 103 (enforcement rules) has been updated to refer to the Board's new general procedural rules in Part 101.

ORDER

For the reasons set forth in the opinion, the Board hereby to modifies its rules in response to the objection of the Joint Committee on Administrative Rules. A notice of this response will be published in the Illinois Register.

The Board hereby adopts, as final, the following rules to be filed with the Secretary of State and published in the Illinois Register. These amendments include the repeal of current 35 Ill. Adm. Code 102.

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

PART 102  
REGULATORY AND INFORMATIONAL  
HEARINGS AND PROCEEDINGS

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SUBPART N: MOTIONS FOR RECONSIDERATION AND APPEAL

Section  
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AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, and 41 of the Environmental Protection Act (Ill. Rev. Stat. 1987 and 1988 Supp., ch. 111½, pars. 1005, 1007.2, 1013(c), 1013.3, 1017.5, 1022.4(a), 1022.4(d), 1022.7(d), 1027, 1028, 1028.2, 1029, and 1041) and Section 4 of "AN ACT in relation to natural resources, research,

data collection and environmental studies" (Ill. Rev. Stat. 1987 and 1988 Supp., ch. 96½, par. 7404) and authorized by Section 26 of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111½, par. 1026).

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. \_\_\_\_\_, effective \_\_\_\_\_.

NOTE: Capitalization denotes statutory language.

#### SUBPART A: GENERAL PROVISIONS

##### Section 102.100 Applicability

This Part applies to all regulatory and informational hearings and proceedings, and shall be read in conjunction with 35 Ill. Adm. Code 101. Hearings conducted pursuant to this Part shall be quasi-legislative in nature. All testimony shall be sworn. All persons taking part in these hearings are participants, rather than parties as in contested cases.

##### Section 102.101 Definitions

The following definitions shall apply to this Part:

"Act" means the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1001 et seq.).

"Agency" means the Illinois Environmental Protection Agency.

"APA" means the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1987, ch. 127, par. 1001 et seq.).

"Attorney General" means the Office of the Attorney General of the State of Illinois.

"Board" means the Illinois Pollution Control Board.

"Chairman" means the Chairman of the Board.

"Clerk" means the Clerk of the Board.

"Document" means pleading, notice, motion, affidavit, memorandum, brief, petition, or other paper required or permitted to be filed.

"DNS" means the Illinois Department of Nuclear Safety.

"Economic impact study" means the economic impact study performed by ENR pursuant to Board determination under Section 27 of the Act.

"ENR" means the Illinois Department of Energy and Natural Resources.

"Fire Marshal" means the Office of the State Fire Marshal.

"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 THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ADMINISTERED THE SUBJECT PROGRAM IN ILLINOIS. (Section 7.2 of the Act.)

"Identical in substance rulemakings" are those proceedings conducted pursuant to specific authorization of the Act, including but not limited to Sections 13(c), 13.3, 17.5, 22.4(a), 22.4(d) and 22.7(d).

"JCAR" means the Joint Committee on Administrative Rules.

"Material" means relating to any substantive issue that is of consequence to the determination of a proceeding.

"Participant" means any person, not including the Board or its staff but including the proponent, 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, but not limited to, filing a comment, being added to the notice list of a particular proceeding or testifying at hearing.

"Peremptory rulemaking" means ANY RULEMAKING WHICH IS REQUIRED AS A RESULT OF FEDERAL LAW, FEDERAL RULES AND REGULATIONS, OR AN ORDER OF A COURT, UNDER CONDITIONS WHICH PRECLUDE COMPLIANCE WITH THE GENERAL RULEMAKING REQUIREMENTS OF SECTION 5.01 OF THE APA AND WHICH PRECLUDE THE EXERCISE BY THE BOARD AS TO THE CONTENT OF THE RULE. (Section 5.03 of the APA.)

"Person" means any entity defined in Section 3.26 of the Act, including but not limited to any individual, partnership, company, corporation, political subdivision, or state agency.

"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.

"Quasi-legislative proceeding" means any hearing or receipt of information on any subject the Board is authorized to regulate, i.e., public information or inquiry hearings, or rulemaking hearings.

"RCRA" means the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.).

"RCRA rules" means 35 Ill. Adm. Code 702, 703, 720, 721, 722, 723, 724, 725, 726, and 728.

"Relevant" means having any tendency to make the existence of any act that is of consequence to the determination of the proceeding more probable or less probable that it would be without the information.

"Required rule" means a rule that is NEEDED TO FULFILL THE REQUIREMENTS OF THE FEDERAL CLEAN WATER ACT (33 U.S.C. 1251 ET SEQ.), SAFE DRINKING WATER ACT, (42 U.S.C. 300f ET SEQ.), CLEAN AIR ACT (42 U.S.C. 7401 ET SEQ.), OR RESOURCE CONSERVATION AND RECOVERY ACT (42 U.S.C. 6901 ET SEQ.) OTHER THAN A RULE TO BE ADOPTED UNDER SECTION 13(c), 13.3, 17.5, 22.4(a), 22.4(d), OR 22.7 OF THE ACT. (Section 28.2 of the Act.)

"Site-specific regulation" means a proposed or adopted regulation SPECIFIC TO INDIVIDUAL PERSONS OR SITES. (Section 27(a) of the Act.)

"Undue delay" means delay which is unwarranted, unjustified, or improper.

"USEPA" means the United States Environmental Protection Agency.

#### Section 102.102      Types Of Regulatory Proposals

- a) The Act provides for three types of regulatory proposals:
  - 1) Identical in substance rulemakings, as defined in Section 102.101;
  - 2) Federally required rules, as defined in Section 102.101; and
  - 3) Other regulatory proposals, both of general applicability and not of general applicability.
- b) Regulations arising from these types of proposals may be

adopted through four types of rulemaking:

- 1) General rulemaking pursuant to Section 5.01 of the APA and Sections 26 and 27 of the Act;
  - 2) Emergency rulemaking pursuant to Section 5.02 of the APA and Section 27 of the Act;
  - 3) Peremptory rulemaking pursuant to Section 5.03 of the APA; and
  - 4) Temporary rulemaking pursuant to Section 27(b) of the Act.
- c) The provisions of Subpart B of this Part apply to all types of regulatory proposals except identical in substance proposals.

Section 102.103 Waiver Of Requirements

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

Section 102.104 Other Proceedings

The Board may conduct such other noncontested or informational hearings as may be necessary to accomplish the purposes of the Act. Such hearings may include, but are not limited to, inquiry hearings to gather information on any subject the Board is authorized to regulate.

SUBPART B: REGULATIONS OF GENERAL APPLICABILITY

Section 102.120 Proposal

Any person may submit a regulatory proposal for the adoption, amendment, or repeal of a regulation. The original and nine (9) copies of each proposal shall be filed with the Clerk and one copy each with the Attorney General, the Agency and ENR.

Section 102.121 Contents

Each proponent shall provide:

- a) The language of the proposed regulation or amendment, including an identification of the existing regulatory language proposed to be amended or deleted. Language being added shall be indicated by underscoring and

language being deleted shall be indicated by strike-outs. The proposed rule shall be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;

- b) A statement of the reasons supporting the proposal, including a statement of the facts which support the proposal, and a statement of the purpose and effect of the proposal. The statement shall discuss the applicable factors listed in Section 27(a) of the Act. Where the proposal covers more than one substantive point, the statement of reasons shall include statements in support of each point. The statement of reasons shall include a technical and economic justification for the proposal;
- c) Pursuant to Section 27 of the Act, A RECOMMENDATION OF WHETHER AN ECONOMIC IMPACT STUDY IS ADVISABLE. The recommendation shall describe, TO THE EXTENT REASONABLY PRACTICABLE, THE UNIVERSE OF AFFECTED SOURCES AND FACILITIES AND THE ECONOMIC IMPACT OF THE PROPOSED RULE. The recommendation shall also address the questions contained in the Analysis of Economic and Budgetary Effects of Proposed Rulemaking, set forth at 1 Ill. Adm. Code 220.Exhibit B, and identify issues to be addressed by any economic impact study;
- d) A synopsis of all testimony to be presented by the proponent at hearing;
- e) If the Agency is the proponent, and if the Agency believes that the proposed rule is a required rule pursuant to Section 28.2 of the Act, citation to the specific section of the specific federal act;
- f) Copies of any material to be incorporated by reference within the proposed regulation pursuant to Section 6.02 of the APA;
- g) Proof of service upon all persons required to be served pursuant to Section 102.120;
- h) Unless the proponent is the Agency, ENR, or DNS, a petition signed by at least 200 persons, pursuant to Section 28 of the Act and Section 102.160(a); and
- i) Where any information required by this Subpart is inapplicable or unavailable, a complete justification for such inapplicability or unavailability.

Section 102.122 Dismissal

- a) Failure of the proponent to satisfy the content requirements of Section 102.121 or failure to respond to

Board requests for additional information will render a proposal subject to dismissal for inadequacy.

- b) Failure of the proponent to pursue disposition of the proposal in a timely manner will render a proposal subject to dismissal. In making this determination, the Board shall consider factors including, but not limited to, the history of the proceeding and the proponent's compliance with any Board or hearing officer orders.
- c) Any person may file a motion challenging the sufficiency of a proposal pursuant to 35 Ill. Adm. Code 101.243.
- d) A proposal shall be dismissed for inadequacy in cases in which the Board, after evaluating the proposal, cannot determine the jurisdictional basis upon which the proposal is made. In all such cases, a statement informing the proponent of the Board's basis for dismissal shall be made. Dismissal of a proposal shall not bar a proponent from re-submitting a proposal in the absence of any deadline imposed by the Act or Board regulations.

#### Section 102.123 Proposal Of RCRA Amendments

In addition to satisfying the requirements of Section 102.121, any proposal to amend the RCRA regulations shall:

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

Director, Waste Management Division  
USEPA, Region V  
230 South Dearborn Street  
Chicago, Illinois 60604

#### SUBPART C: SITE-SPECIFIC REGULATIONS

#### Section 102.140 Proposal

Any person may submit a written proposal for the adoption, amendment or repeal of a substantive site-specific regulation. The original and nine (9) copies of each proposal shall be filed

with the Clerk and one copy each served upon the Agency, ENR, and the Attorney General.

Section 102.141 Contents

- a) The proponent shall identify the regulations which are to be addressed by the proposed amendment and the language to be added, deleted, or repealed. Language being added shall be indicated by underscoring and language being deleted shall be indicated by strike-outs. If the proposed site-specific rule seeks an exemption from or modification of a rule of general applicability, the proposed site-specific rule may not be proposed as an amendment to the general rule. Instead, the site-specific rule must be proposed as its own section.
- b) The proponent shall provide a statement of reasons and facts supporting the proposal, and a statement of the purpose and effect of the proposal.
- c) The proposal shall also comply with all requirements set forth in Section 102.121.
- d) In the event that the proposed rule would replace the applicability of a general rule to the pollution source, the proposal shall specify, with supporting documentation, the reasons why the general rule is not technically feasible or economically reasonable for the person or site. Such documentation shall include relevant information on other similar persons' or sites' ability to comply with the general rule.
- e) The proposal shall describe the person or site for which regulatory change is sought and the area affected by the proposed change. The proposal shall also include a detailed assessment of the environmental impact of the proposed change, and include a description of all available treatment or control options.
- f) The proposal shall demonstrate that the Board may grant the requested relief consistent with federal law governing the subject of the proposal (e.g. the Underground Injection Control program, the Resource Conservation and Recovery Act, etc.).
- g) Where any information required by this Subpart is inapplicable or unavailable, the proposal shall include a complete justification for such inapplicability or unavailability.

## Section 102.142 Dismissal

- a) Failure of the proponent to satisfy the content requirements for proposals under this Subpart or failure to respond to Board requests for additional information will render a proposal subject to dismissal for inadequacy.
- b) Failure of the proponent to pursue disposition of the proposal in a timely manner will render a proposal subject to dismissal. In making this determination, the Board shall consider factors including, but not limited to, the history of the proceeding and the proponent's compliance with any Board or hearing officer orders.
- c) Any person may file a motion challenging the sufficiency of the proposal pursuant to 35 Ill. Adm. Code 101.243.
- d) A proposal shall be dismissed for inadequacy in cases in which the Board, after evaluating the proposal, cannot determine the jurisdictional basis upon which the proposal is made. In all such cases, a statement informing the proponent of the Board's basis for dismissal shall be made. Dismissal of a proposal shall not bar a proponent from re-submitting a proposal in the absence of any deadline imposed by the Act or Board regulations.

SUBPART D: AUTHORIZATION, SCHEDULING, AND  
NOTICE OF HEARINGS

## Section 102.160 Authorization Of Hearing

- a) The Clerk shall assign a docket number to any proposal. All regulatory proposals will be placed on the Board agenda for determination of adequacy under the Act and Sections 102.121 and 102.141. IF THE BOARD FINDS THAT ANY SUCH PROPOSAL IS NOT PLAINLY DEVOID OF MERIT, DOES NOT DEAL WITH A SUBJECT ON WHICH A HEARING HAS BEEN HELD WITHIN THE PRECEDING 6 MONTHS, IS ACCOMPANIED BY AN ADEQUATE STATEMENT OF SUPPORTING REASONS AND A PETITION SIGNED BY AT LEAST 200 PERSONS, and meets the requirements of this Part, THE BOARD WILL SCHEDULE A PUBLIC HEARING FOR CONSIDERATION OF THE PROPOSAL. IF A PROPOSAL IS MADE BY THE AGENCY, ENR, OR DNS, THE BOARD SHALL SCHEDULE A PUBLIC HEARING WITHOUT REGARD TO THE ABOVE CONDITIONS. Pursuant to Section 28 of the Act, THE BOARD MAY ALSO IN ITS DISCRETION SCHEDULE A PUBLIC HEARING UPON ANY PROPOSAL WITHOUT REGARD TO THE ABOVE CONDITIONS. (Section 28 of the Act.) The proponent must cure any inadequacy identified by Board order before the

proposal will proceed to hearing.

- b) If the Board determines that a proposal meets the requirements of subsection (a), and if any filing fee required by the Act and 35 Ill. Adm. Code 101.120 has been paid, the Board will issue an order accepting the proposal for hearing. Such an order will be construed as starting the timeclock for purposes of any applicable economic impact study and first notice publication deadlines pursuant to Sections 27 and 28.2 of the Act.
- c) When the Board authorizes a hearing, the Chairman will designate an attending Board member. A member of the Board may serve as hearing officer if otherwise qualified, and such hearing need not be attended by another Board member.
- d) In the case of a proposed regulatory change under the provisions of 35 Ill. Adm. Code 302.211(j) or 304.141(c), the requirement of subsection (a) relating to a requirement of 200 signatures shall not apply. In such case only a single hearing shall be required, to be held in the affected county.
- e) The Board may consolidate proposals for hearing or decision.

#### Section 102.161 Scheduling Of Hearings

- a) Except as otherwise provided by the Act, no substantive regulation shall be adopted, amended or repealed by the Board until after at least one public hearing. In the case of site-specific rules, a public hearing shall be held in the affected county. In the case of state-wide regulations, public hearings shall be held in at least two counties of the state.
- b) The Board need not hold a hearing on a procedural regulation, except as provided by Section 5.01 of the APA.
- c) After consideration of the number and complexity of issues involved in a regulatory proposal, the hearing officer will issue an order preliminarily specifying the number of hearings to be held on that proposal.
- d) If the proponent or any participant wishes to request a hearing beyond the number of hearings specified by the hearing officer pursuant to subsection (c), that person must demonstrate, in a motion to the Board, 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 or she exercised due diligence in its participation in the proceeding, and why an additional hearing, as opposed to the opportunity to submit written comments pursuant to Section 102.320, is necessary.

- e) Notwithstanding subsection (d), the Board or the hearing officer will schedule an additional hearing or hearings on its own motion, if it finds that additional hearing would aid the Board in its decision on the proposal.

Section 102.162 Notice Of Hearing

- a) The hearing officer will set a time and place for hearing. The Clerk shall give notice of the date of the hearing as follows:
  - 1) By notice in the Board's Environmental Register; and
  - 2) At least 20 days prior to the hearing date, by public advertisement in a newspaper of general circulation in the county in which the hearing is to be held. Where required by federal law, including but not limited to air pollution and RCRA proposals, newspaper notice shall be published at least 30 days prior to the hearing date.
- b) The hearing officer will give notice by mail to the proponent and to all persons who have submitted their names and addresses to the Clerk concerning the proposal.
- c) Hearings which are continued on the hearing record for a period of 45 days or less do not require notice that complies with subsections (a) and (b).

Section 102.163 Notice Of Site-Specific RCRA Proposals

- a) Public notice of hearings on site-specific RCRA proposals shall be given at least 30 days before the date of the hearing.
- b) In addition to the requirements of Section 28 of the Act and Section 102.211, the Board, at a minimum, will give notice of hearings on a site-specific RCRA proposal to the following persons:
  - 1) Federal agencies as designated by USEPA;
  - 2) Illinois Department of Transportation;
  - 3) Illinois Department of Conservation;



- 4) Illinois Department of Energy and Natural Resources;
  - 5) Illinois Department of Public Health;
  - 6) The governor of any other state adjacent to the county in which the facility is located; and
  - 7) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility.
- c) In addition to the methods of notice by publication of Section 28 of the Act and Section 102.241, the Board will give notice by radio broadcast in the area of the facility. That notice will include the information required by subsections (d)(2) and (d)(4) through (d)(8) below.
- d) A hearing notice on a site-specific RCRA proposal will include the following information:
- 1) The address of the Board office;
  - 2) Name and address of the proponent and, if different, of the facility for which the site-specific rule is sought;
  - 3) A brief description of the business conducted at the facility and the activity described in the petition;
  - 4) A description of the relief requested in the petition and the Board's docket number of the proceeding;
  - 5) Name, address and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the proposal;
  - 6) The name, address and telephone number of the Agency's representative in the rulemaking;
  - 7) A description of any written comment period or a statement that a comment period will be established in the future;
  - 8) A statement that the record in the rulemaking is available at the Board office for inspection, except those portions which are claimed or determined to be trade secrets, and that procedures are available

whereby disclosure may be sought by the public pursuant to 35 Ill. Adm. Code 120.

- 9) A statement that site-specific rules may be adopted pursuant to Title VII of the Act and 35 Ill. Adm. Code 102, and a reference to the Board regulations sought to be modified; and
- 10) Any additional information considered necessary or proper.

#### SUBPART E: ECONOMIC IMPACT STUDY DETERMINATIONS

##### Section 102.180 Board Determinations

- a) Within 60 days of the date that the Board accepts a proposal for hearing pursuant to Section 28 of the Act and Section 102.160, the Board shall determine whether an economic impact study should be prepared.
- b) Notwithstanding subsection (a), AT ANY TIME PRIOR TO THE CLOSE OF THE RECORD DURING THE RULEMAKING PROCEEDING, THE BOARD MAY DETERMINE THAT AN ECONOMIC IMPACT STUDY SHOULD BE PREPARED, IF THE PROPOSAL HAS BEEN SUBSTANTIALLY MODIFIED OR IF INFORMATION IN THE RECORD INDICATES THAT AN ECONOMIC IMPACT STUDY WOULD BE ADVISABLE. (Section 27 of the Act.) However, this subsection is not applicable to proceedings involving required rules pursuant to Section 28.2 of the Act.
- c) IF THE BOARD DETERMINES THAT AN ECONOMIC IMPACT STUDY SHOULD BE CONDUCTED, ENR SHALL CONDUCT SUCH A STUDY IN ACCORDANCE WITH "AN ACT IN RELATION TO NATURAL RESOURCES, RESEARCH, DATA COLLECTION AND ENVIRONMENTAL STUDIES" (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7401 et seq.). THE BOARD MAY IDENTIFY SPECIFIC ISSUES TO BE ADDRESSED IN THE STUDY. (Section 27 of the Act.)

##### Section 102.181 Request For Determination

- a) WITHIN 21 DAYS OF THE DATE THAT THE BOARD ACCEPTS A PROPOSAL FOR HEARING PURSUANT TO SECTION 28 OF THE ACT AND SECTION 102.160, ANY PERSON MAY REQUEST THAT THE BOARD DETERMINE THAT AN ECONOMIC IMPACT STUDY SHOULD OR SHOULD NOT BE PREPARED. (Section 27 of the Act.)
- b) Such request shall be made in writing, and shall detail the reasons for the request. The request SHALL DESCRIBE, TO THE EXTENT REASONABLY PRACTICABLE, THE ECONOMIC IMPACT OF THE PROPOSED RULE. (Section 27 of the Act.) The description may include, but is not limited to, the projected cost of compliance, the number of affected

persons, and the impact of compliance costs on affected persons. All material facts asserted in the request shall be verified by affidavit.

- c) The person filing the request shall file the original and nine (9) copies with the Clerk, and one copy each with the Agency, ENR, the Attorney General, and the proponent.
- d) No hearing will be held on any request filed pursuant to this Section.

#### Section 102.182 Basis For Board Determination

In determining whether an economic impact study should be performed, the Board will consider:

- a) Information in the record furnished by the proponent pursuant to Sections 102.121 and 102.141 and by any person filing a request for determination pursuant to Section 102.231;
- b) ITS ASSESSMENT OF THE POTENTIAL ECONOMIC IMPACT OF THE RULE;
- c) THE POTENTIAL FOR CONSIDERATION OF THE ECONOMIC IMPACT ABSENT SUCH A STUDY;
- d) THE EXTENT, IF ANY, TO WHICH THE BOARD IS FREE UNDER THE STATUTE AUTHORIZING THE RULE TO MODIFY THE SUBSTANCE OF THE RULE BASED UPON THE CONCLUSIONS OF AN ECONOMIC IMPACT STUDY; and
- e) ANY OTHER CONSIDERATIONS THE BOARD DEEMS APPROPRIATE. (Sections 27 and 28.2 of the Act.) Those considerations may include, but are not limited to, statutory deadlines for promulgation of rules and possible impact of the proposal on natural and cultural resources (fish, wildlife, endangered species, archeological resources, etc.).

#### Section 102.183 Notice Of Board Determination

The Board will issue a written interlocutory order giving the reasons for its determination. The proponent, the Agency, ENR, the Attorney General and any person who has asked to be placed on the notice list for the proposal will be given notice of the Board's determination. Orders entered pursuant to this Section may be appealed only pursuant to 35 Ill. Adm. Code 101.304.

## SUBPART F: CERTIFICATION OF REQUIRED RULES

## Section 102.200 Agency Certification

WHEN THE AGENCY PROPOSES A RULE WHICH IT BELIEVES TO BE A REQUIRED RULE as defined by Section 28.2(a) of the Act and Section 102.101, THE AGENCY SHALL SO CERTIFY IN ITS PROPOSAL, IDENTIFYING THE FEDERAL LAW TO WHICH THE PROPOSED RULE WILL RESPOND. (Section 28.2(e) of the Act.) Such certification shall include citation to the specific section of the specific federal law to which the proposed rule will respond.

## Section 102.201 Challenge To Agency Certification

- a) If any person wishes to challenge the Agency's certification that a proposed rule is a required rule, that person shall file an objection to that certification within 21 days of the date of the Board's order accepting a proposal for hearing. Such objection shall state the reasons that the objector believes that the proposed rule is not a required rule, and shall include all arguments which the objector wishes the Board to consider. A copy of the objection shall be served upon the Agency and ENR.
- b) The Agency may file a response to any objection within 10 days of the service of that objection. No reply by the objector will be allowed, unless the Board orders otherwise to avoid material prejudice.
- c) No hearing will be held on any objection filed pursuant to this Section.

## Section 102.202 Board Determination

- a) The Board will rule upon any objection filed pursuant to this Subpart within 60 days of the date that the Board accepts a proposal for hearing. The Board's ruling will be made in its order determining whether an economic impact study will be prepared, issued pursuant to Section 102.180.
- b) In ruling upon an objection to an Agency certification, the Board will consider all information in the record of that proceeding, including but not limited to the proposal, the objection, and the Agency response to the objection. The burden of proof is on the objector.
- c) The Board will give notice of its determination to the objector, the Agency, ENR, and any person who has asked to be placed on the notice list for that proposal.

- d) Orders entered pursuant to this Section are interlocutory in nature and may be appealed only pursuant to 35 Ill. Adm. 101.304.

SUBPART G: AUTHORITY OF HEARING OFFICER

Section 102.220 Authority Of Hearing Officer

The hearing officer has the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear, complete, and concise record. He or she will have all powers necessary to these ends, including (but not limited to) the authority to:

- a) Require and establish a schedule for, and notice and distribution of, any pre-hearing submission of testimony and written exhibits;
- b) Require all participants to state their position with respect to the proposal;
- c) Administer oaths and affirmations;
- d) Examine witnesses and direct witnesses to testify;
- e) Regulate the course of the hearing, including but not limited to controlling the order of proceedings;
- f) Establish reasonable limits on the duration of the testimony and questioning of any witness and limit repetitious or cumulative testimony and questioning;
- g) Issue, in the name of the Board, an order compelling the answering of interrogatories or other discovery requests;
- h) Order the production of evidence as specified in Section 102.261 and 35 Ill. Adm. Code 101.261;
- i) Initiate, schedule and conduct a pre-hearing conference as specified in Subpart H;
- j) Issue subpoenas pursuant to Section 102.262 and 35 Ill. Adm. Code 101.260;
- k) Exclude late-filed briefs and comments from inclusion in the record for decision;
- l) Rule upon motions as specified in 35 Ill. Adm. Code 101.247 and this Part;
- m) Rule upon objections and evidentiary questions;

- n) Establish a schedule for discovery, including a date by which discovery must be completed; and
- o) Where pre-hearing submission of hearing testimony or exhibits has been required, allow the admission of testimony or exhibits which were not pre-submitted, if necessary to prevent undue delay or material prejudice.

Section 102.221 Notice And Service Lists

- a) The hearing officer shall maintain a notice list for each regulatory proceeding. The notice list will consist of those persons who have furnished their names and addresses for inclusion on the notice list for a specific proceeding. Notice of all Board action and hearing officer orders will be given to all persons included on the notice list.
- b) The hearing officer may establish a service list for any regulatory proceeding, in addition to the notice list. The hearing officer may direct participants to serve copies of all documents upon the persons listed on the service list. In deciding whether to establish a service list, the hearing officer will consider factors including but not limited to, the complexity of the proceeding and the number of participants.

Section 102.222 Effect Of Hearing Officer Ruling

All decisions, orders, and rulings made by the hearing officer remain in effect during the pendency of any appeal to the Board of that decision, order, or ruling.

SUBPART H: PRE-HEARING CONFERENCES

Section 102.240 Initiation And Scheduling

- a) TO THE EXTENT CONSISTENT WITH ANY DEADLINE FOR ADOPTION OF ANY REGULATIONS MANDATED BY STATE OR FEDERAL LAW, PRIOR TO INITIATING ANY HEARING ON A REGULATORY PROPOSAL, THE BOARD MAY ASSIGN A QUALIFIED HEARING OFFICER WHO MAY SCHEDULE A PRE-HEARING CONFERENCE BETWEEN THE PROPONENT AND ANY OR ALL OF THE POTENTIALLY AFFECTED PERSONS. (Section 27(e) of the Act.) The hearing officer may schedule a pre-hearing conference on his or her own motion, or on the motion of the proponent or any potentially affected person. A "potentially affected person" is any person, as defined by the Act and Section 102.101, who demonstrates any nexus to the source of the pollutant to be controlled by the proposal or who shows some impact from the pollutant to be controlled by the

proposal. A motion to schedule a pre-hearing conference shall be directed to the hearing officer.

- b) THE NOTICE REQUIREMENTS OF SECTION 28 of the Act and Section 102.161 SHALL NOT APPLY TO SUCH PRE-HEARING CONFERENCES. (Section 27(e) of the Act). However, the hearing officer will give notice to any person who has requested inclusion on the notice list of that proposal.

Section 102.241 Purpose

The purpose of a pre-hearing conference shall be:

- a) TO MAXIMIZE UNDERSTANDING OF THE INTENT AND APPLICATION OF THE PROPOSAL;
- b) TO REACH AGREEMENT ON ASPECTS OF THE PROPOSAL, IF POSSIBLE; AND
- c) TO ATTEMPT TO IDENTIFY AND LIMIT THE ISSUES OF DISAGREEMENT AMONG THE PARTICIPANTS TO PROMOTE EFFICIENT USE OF THE TIME AT HEARING. (Section 27(e) of the Act.)

Section 102.242 Pre-hearing Order

- a) NO RECORD OF THE PRE-HEARING CONFERENCE NEED BE KEPT, NOR SHALL ANY PARTICIPANT OR THE BOARD BE BOUND BY ANY DISCUSSIONS CONDUCTED AT THE PRE-HEARING CONFERENCE.
- b) Notwithstanding subsection (a), WITH THE CONSENT OF ALL PARTICIPANTS IN THE PRE-HEARING CONFERENCE, THE HEARING OFFICER MAY ENTER A PRE-HEARING ORDER DELINEATING ISSUES TO BE HEARD, AGREED FACTS, AND OTHER MATTERS.
- c) If the participants in the pre-hearing conference agree to having a pre-hearing order entered pursuant to subsection(b), the hearing officer may require that those participants furnish the text of a proposed order setting forth the substance of the agreements reached at the pre-hearing conference. The hearing officer will enter that order if he or she agrees that it sets forth the substance of the agreement. The order shall identify which participants have agreed to the substance of the order.
- d) A PRE-HEARING ORDER SHALL NOT BE BINDING ON NONPARTICIPANTS IN THE PRE-HEARING CONFERENCE. (Section 27(e) of the Act.)

## SUBPART I: MOTIONS AND DISCOVERY

## Section 102.260 Motion Practice

Motion practice in regulatory proceedings is governed by 35 Ill. Adm. Code 101.Subpart H. All motions and responses shall be served upon the proponent, the Agency, ENR, the Attorney General, and all persons on any service list established pursuant to Section 102.221(b).

## Section 102.261 Production Of Information

The production of information in regulatory proceedings is governed by 35 Ill. Adm. Code 101.261.

## Section 102.262 Subpoenas

The issuance and enforcement of subpoenas in regulatory proceedings is governed by 35 Ill. Adm. Code 101.260(b) through (i).

## SUBPART J: REGULATORY HEARINGS

## Section 102.280 Pre-hearing Submission Of Testimony And Exhibits

- a) The proponent shall submit all written testimony and any related exhibits 21 days 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 pre-hearing submission of testimony and any related exhibits by participants other than the proponent if the hearing officer determines that such a procedure will provide for a more efficient hearing.
- c) The original and four (4) copies of pre-submitted testimony and exhibits shall be filed with the Clerk. The Agency, ENR, and, if a participant, the Attorney General shall each be served with one copy of each testimony and exhibit. One copy shall also be served upon the proponent and each participant on any service list, unless otherwise specified or limited by the hearing officer. Such service shall be initiated on or before the date that copies are filed with the Clerk.
- d) All testimony and exhibits shall be submitted in the form required by 35 Ill. Adm. Code 101.103 and labelled with the docket number of the proceeding, the name of the witness submitting the material or exhibit, and the title of the material or exhibit.



- e) The proponent and each participant who has pre-submitted testimony shall bring copies of that testimony and any exhibits to the hearing.
- f) Testimony 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 testimony read. All persons testifying will be sworn and will be subject to examination. Modifications to previously submitted testimony and exhibits may be allowed by the hearing officer at hearing provided that such modifications are either non-substantive in nature or would not materially prejudice another person's participation at hearing. Objections to such modifications are waived unless raised at hearing.
- g) Where pre-hearing submission of testimony is required pursuant to subsection (a) and (b), any testimony which is not pre-submitted in a timely manner will be allowed only as time permits, pursuant to Section 102.220(o).

#### Section 102.281 Transcript

All testimony shall be recorded stenographically. When the transcript is filed with the Clerk, the hearing officer will receive and rule on typographical corrections and reporting errors from any person who may examine the transcript for accuracy. Failure of any witness to correct the transcript within 14 days after its receipt in Board offices constitutes a waiver of any right to correct.

#### Section 102.282 Admissible Information

All information which is relevant and not repetitious or privileged shall be admitted by the hearing officer. The hearing officer will rule on objections.

#### Section 102.283 Presentation Of Testimony

- a) All witnesses at hearings shall be sworn.
- b) Testimony shall be in narrative form.

#### Section 102.284 Questioning Of Witnesses

All witnesses shall be subject to questioning by any person. Repetitious, irrelevant, harassing, or cumulative questioning will be prohibited by the hearing officer. The Board will not consider as substantive evidence any unsworn information which is presented in the form of a question during questioning of any witness.

## Section 102.285 Record For Decision

The record includes the transcript, all written testimony, all exhibits admitted at hearing, and all public comments, briefs and other information timely filed with the Clerk.

## SUBPART K: ECONOMIC IMPACT HEARINGS

## Section 102.300 Hearings On The Economic Impact Study Of New Proposals

- a) Before the final adoption of any proposal, the Board shall conduct at least one hearing on any economic impact study submitted by ENR on any proposed regulation, or proposed amendment to existing regulation, unless otherwise provided by the Act.
- b) IN THE CASE OF A REQUIRED RULE, IF THE ECONOMIC IMPACT STUDY IS NOT SUBMITTED TO THE BOARD WITHIN SIX (6) MONTHS OF THE BOARD'S DECISION THAT AN ECONOMIC IMPACT STUDY SHOULD BE CONDUCTED, THE BOARD MAY PROCEED TO ADOPT A REQUIRED RULE WITHOUT AN ECONOMIC IMPACT STUDY. However, TO THE EXTENT POSSIBLE CONSISTENT WITH SECTION 28.2(b) OF THE ACT, THE BOARD SHALL CONDUCT A HEARING ON THE ECONOMIC IMPACT OF THE PROPOSED REQUIRED RULE. (Section 28.2 of the Act.) Pursuant to Section 28 of the Act, this requirement may be fulfilled by considering economic impact at any merit hearing on the proposed required rule.
- c) Hearings held pursuant to this Section may be consolidated with any other hearings held pursuant to this Part.

## Section 102.301 Hearings On The Economic Impact Study Of Existing Regulations

- a) WITHIN A REASONABLE TIME, BUT NOT MORE THAN 120 DAYS, AFTER EACH ECONOMIC IMPACT STUDY ON EXISTING REGULATIONS HAS BEEN FILED BY ENR, THE BOARD SHALL CONDUCT PUBLIC HEARINGS ON SUCH STUDY.
- b) AFTER CONCLUSION OF THE HEARINGS, THE BOARD SHALL PUBLISH ITS FINDINGS AND CONCLUSIONS ON THE AREAS COVERED BY THE STUDY AND THE TESTIMONY RECEIVED BY THE BOARD. The Board will satisfy this requirement by entering a written order.
- c) THE BOARD SHALL ALSO SPECIFICALLY DETERMINE WHETHER, AS A RESULT OF ITS FINDINGS AND CONCLUSIONS, ANY REGULATIONS OF THE BOARD SHALL BE MODIFIED OR REPEALED.

- d) IF THE BOARD CONCLUDES THAT MODIFICATION OR REPEAL MAY BE NECESSARY, IT SHALL PROPOSE SUCH MODIFICATION AS REGULATIONS AND CONDUCT FURTHER HEARINGS ON SAID MODIFICATION.
- e) ANY SUCH PROPOSED MODIFICATIONS SHALL NOT REQUIRE ANY ADDITIONAL ECONOMIC IMPACT STUDY. (Section 4(b) of "AN ACT in relation to natural resources, research, data collection and environmental studies.)

SUBPART L: PUBLIC COMMENTS

Section 102.320      Public Comments

Any person may submit written comments on any proposal within 14 days after the receipt of the transcript in Board offices or within 14 days after regulation revision under Section 102.340, unless otherwise specified by the hearing officer or the Board to prevent material prejudice or undue delay. Comments shall be filed with the Clerk and served upon the Agency, ENR, the Attorney General (if a participant), the proponent, and the participants on any service list established by the hearing officer pursuant to Section 102.221. Comments which are not timely filed will not be considered, except as allowed by the hearing officer or the Board to prevent material prejudice.

SUBPART M: BOARD ACTION

Section 102.340      Revision Of Proposed Regulations

- a) The Board may revise the proposed regulations before adoption upon its own motion, or in response to suggestions made at hearing and in written comments made prior to second notice. No additional hearing on the revisions need be held.
- b) THE BOARD MAY MODIFY AND SUBSEQUENTLY ADOPT ANY PROPOSED REGULATIONS, OR AMENDMENTS TO EXISTING REGULATIONS WITHOUT ANY ADDITIONAL ECONOMIC IMPACT STUDY; PROVIDED THAT SUCH MODIFICATION BY THE BOARD DOES NOT SIGNIFICANTLY ALTER THE INTENT AND PURPOSE OF THE PROPOSED REGULATION WHICH WAS THE SUBJECT OF ENR'S ECONOMIC IMPACT STUDY. (Section 27(b) of the Act.)
- c) Unless otherwise provided in the Act, THE BOARD MAY REVISE PROPOSED REGULATIONS AFTER HEARING IN RESPONSE TO OBJECTIONS OR SUGGESTIONS MADE BY JCAR PURSUANT TO SECTIONS 5.01(b) AND 7.06(a) OF THE APA. THE BOARD MAY MAKE SUCH A REVISION WHERE IT FINDS:
  - 1) THAT SUCH OBJECTIONS OR SUGGESTIONS RELATE TO THE STATUTORY AUTHORITY UPON WHICH THE REGULATION IS

BASED, WHETHER THE REGULATION IS IN PROPER FORM, OR WHETHER ADEQUATE NOTICE WAS GIVEN; and

- 2) THAT THE RECORD BEFORE THE BOARD IS SUFFICIENT TO SUPPORT SUCH A CHANGE WITHOUT FURTHER HEARING. (Section 28 of the Act.)

#### Section 102.341 Adoption Of Regulations

- a) IN ADOPTING ANY NEW REGULATION, EXCEPT A REQUIRED RULE OR AN IDENTICAL IN SUBSTANCE REGULATION, THE BOARD SHALL CONSIDER THOSE ELEMENTS DETAILED IN ANY ECONOMIC IMPACT STUDY PERFORMED BY ENR ON THAT REGULATION. THE BOARD SHALL, IN ITS WRITTEN OPINION, MAKE A DETERMINATION, BASED UPON THE ECONOMIC IMPACT STUDY AND OTHER EVIDENCE IN THE RECORD, AS TO WHETHER THE PROPOSED REGULATION HAS ANY ADVERSE ECONOMIC IMPACT ON THE PEOPLE OF THE STATE OF ILLINOIS. (Section 27(b) of the Act.)
- b) In the case of a required rule, the Board will follow the procedures of subsection (a), except as provided in Section 102.300(b).
- c) As provided by Sections 13(c), 13.3, 17.5, 22.4(a), 22.4(d), and 22.7(d) of the Act, the provisions of Title VII of the Act and Section 5 of the APA shall not apply to identical in substance rulemakings.

#### Section 102.342 First Notice Of Proposed Regulations

Except when otherwise directed by the Act, the Board shall give first notice of its proposed adoption, amendment, or repeal of regulations pursuant to Section 5.01 of the APA. The first notice period shall be at least 45 days, and shall begin on the day that first notice is published in the Illinois Register. The Board will accept written comments from any person concerning the proposed regulations during the first notice period.

#### Section 102.343 Second Notice Of Proposed Regulations

- a) Except when otherwise directed by the Act, the Board shall give second notice of its proposed adoption, amendment, or repeal of regulations to JCAR. The second notice period shall begin on the date written notice is received by JCAR, and shall expire 45 days after that date, except as provided by Section 5.01 of the APA. The Board will accept comments only from JCAR during the second notice period.
- b) After the beginning of the second notice period, no substantive changes will be made to the proposed regulation, except in response to objections or

suggestions from JCAR. Such changes will be made pursuant to Section 102.340(c).

Section 102.344 Notice Of Board Final Action

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

Section 102.345 Adoption Of Identical In Substance Regulation

- a) Prior to adopting identical in substance regulations, the Board will:
  - 1) Make available to the public a proposed Opinion and Order containing the text of the rules;
  - 2) Publish the proposed regulations in the Illinois Register;
  - 3) Serve a copy of the proposed Opinion and Order on the USEPA; and
  - 4) Receive written comments from the USEPA and other persons for at least 45 days after the date of publication in the Illinois Register.
- b) AFTER CONSIDERATION OF COMMENTS FROM THE USEPA, THE AGENCY, THE ATTORNEY GENERAL AND THE PUBLIC, THE BOARD SHALL ADOPT THE VERBATIM TEXT OF SUCH USEPA REGULATIONS AS ARE NECESSARY AND APPROPRIATE FOR AUTHORIZATION OF THE PROGRAM. EXCEPT AS PROVIDED IN SECTION 7.2 OF THE ACT, THE ONLY CHANGES THAT MAY BE MADE BY THE BOARD TO THE FEDERAL REGULATIONS ARE THOSE CHANGES THAT ARE NECESSARY FOR COMPLIANCE WITH THE ILLINOIS ADMINISTRATIVE CODE, AND TECHNICAL CHANGES THAT IN NO WAY CHANGE THE SCOPE OR MEANING OF ANY PORTION OF THE REGULATIONS. (Section 7.2(a) of the Act.)

Section 102.346 Adoption Of Emergency Regulations

- a) WHEN THE BOARD FINDS THAT A SITUATION EXISTS WHICH REASONABLY CONSTITUTES A THREAT TO THE PUBLIC INTEREST, SAFETY, OR WELFARE, THE BOARD MAY ADOPT REGULATIONS IN ACCORDANCE WITH SECTION 5.02 OF THE APA. (Section 27(c) of the Act.)
- b) WHEN THE BOARD FINDS THAT A SEVERE PUBLIC HEALTH EMERGENCY EXISTS, THE BOARD MAY, IN RELATION TO ANY PROPOSED REGULATION, ORDER THAT SUCH REGULATION TAKE

EFFECT WITHOUT DELAY. THE BOARD SHALL PROCEED WITH ANY REQUIRED HEARINGS WHILE THE REGULATION CONTINUES IN EFFECT. (Section 27(c) of the Act.)

Section 102.347 Adoption Of Peremptory Regulations

- a) WHEN THE BOARD FINDS THAT A PEREMPTORY RULEMAKING IS NECESSARY AND STATES IN WRITING ITS REASONS FOR THAT FINDING, THE BOARD WILL ADOPT PEREMPTORY RULEMAKING UPON FILING A NOTICE OF RULEMAKING WITH THE SECRETARY OF STATE PURSUANT TO SECTION 6.01 OF THE APA.
- b) NOTICE OF SUCH PEREMPTORY RULEMAKING WILL BE PUBLISHED IN THE ILLINOIS REGISTER. (Section 5.03 of the APA.)

Section 102.348 Adoption Of Temporary Regulations

- a) THE BOARD MAY ADOPT A PROPOSED REGULATION PRIOR TO ITS CONSIDERATION OF AN ECONOMIC IMPACT STUDY WHEN SUCH STUDY IS FILED WITH THE BOARD LESS THAN 120 DAYS IN ADVANCE OF A DATE ON WHICH A TEMPORARY NON-EMERGENCY REGULATION OR PROVISION THEREOF WOULD LAPSE PRIOR TO ADOPTION OF A PERMANENT REGULATION OR PROVISION THEREOF ON THE SAME SUBJECT, OR LESS THAN 120 DAYS IN ADVANCE OF A DEADLINE FOR ADOPTION OF THE REGULATION WHICH IS ESTABLISHED IN A STATE STATUTE. (Section 27 of the Act.)
- b) SUCH ADOPTED REGULATION SHALL BE EFFECTIVE UNTIL 180 DAYS AFTER THE ECONOMIC IMPACT STUDY REQUIRED PURSUANT TO THIS SECTION IS FILED WITH THE BOARD, AND IN NO EVENT SHALL A REGULATION ADOPTED PURSUANT TO THIS PROCEDURE STAY IN EFFECT FOR MORE THAN ONE YEAR. (Section 27 of the Act.)

SUBPART N: MOTIONS FOR RECONSIDERATION  
AND APPEAL

Section 102.360 Filing Of Motion For Reconsideration

Motions for reconsideration or modification of any Board order taking substantive action on a regulatory proposal shall be filed in accordance with 35 Ill. Adm. Code 101.246. The contents of such motions are governed by 35 Ill. Adm. Code 101.242.

Section 102.361 Disposition Of Motions For Reconsideration

- a) AFTER COMMENCEMENT OF THE SECOND NOTICE PERIOD, NO SUBSTANTIVE CHANGES MAY BE MADE TO A PROPOSED RULEMAKING UNLESS IT IS MADE IN RESPONSE TO AN OBJECTION OR SUGGESTION OF JCAR. (Section 5.01(b) of the APA.) Therefore, submission of second notice of a proposal to JCAR will preclude the Board from revising that proposal

in response to a motion for reconsideration. However, the Board may resubmit a rule for first notice if necessary to prevent material prejudice.

- b) An adopted rule becomes effective upon the filing of that rule with the Secretary of State. Therefore, 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.

Section 102.362 Correction Of Publication Errors

The Board may make technical corrections to proposed or adopted rules, published in the Illinois Register or filed with the Secretary of State, only in accordance with 1 Ill. Adm. Code 100.240. No hearing need be held on such corrections.

Section 102.363 Appeal

Any final Board order may be appealed to the appellate court within 35 days of the entry of that order, pursuant to Sections 29 and 41 of the Act.

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

PART 106  
HEARINGS PURSUANT TO SPECIFIC RULES

SUBPART D : RCRA ADJUSTED STANDARD PROCEDURES

Section 106.415 Notice and Conduct of Hearing

- a) The Board will hold at least one public hearing prior to granting an adjusted standard.
- b) The hearing officer will schedule the hearing. The Clerk will give notice of the hearing in accordance with 35 Ill. Adm. Code 102.162.
- c) The proceeding will be in accordance with 35 Ill. Adm. Code 102.Subpart J.

(Source: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_)

SUBPART E: AIR ADJUSTED STANDARD PROCEDURES

Section 106.506 Notice and Conduct of Hearing

- a) The Board will hold at least one public hearing prior to granting an adjusted standard.

- b) The hearing officer will schedule the hearing. The Clerk will give notice of the hearing in accordance with 35 Ill. Adm. Code 102.162.
- c) The proceeding will be in accordance with 35 Ill. Adm. Code 102.Subpart J.

(Source: Amended at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### SUBPART F: WATER WELL SETBACK EXCEPTION PROCEDURES

##### Section 106.602 Contents of Petition

- a) The petitioner shall file ten copies of the petition for exception with the Clerk of the Pollution Control Board (Board), and shall serve one copy upon the Agency.
- b) The petition shall contain the following information:
  1. A written statement, signed by the petitioner or an authorized representative, outlining the scope of the evaluation, the nature of, the reasons for and the basis of the exception, consistent with the level of justification contained in Section 14.2(c) of the Act.
  2. The nature of the petitioner's operations and control equipment; and
  - 3) Any additional information which may be required in Section 14.2(c) of the Act.
- c) In accordance with 35 Ill. Adm. Code 101.143 the petition shall contain proof of service on owners required to be notified and provided with a copy of the petition as required by Section 14.2(c) of the Act.

(Source: Amended at \_\_\_ Ill.Reg. \_\_\_\_\_, effective \_\_\_\_\_)

##### Section 106.604 Notice and Conduct of Hearing

- a) The Board will hold at least one public hearing prior to granting an exception.
- b) The hearing officer will schedule the hearing. The Clerk will give notice of the hearing in accordance with 35 Ill. Adm. Code 102.162.

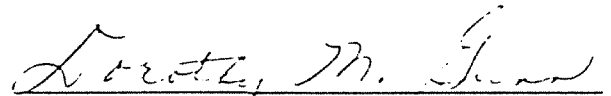


- c) The proceeding will be in accordance with 35 Ill. Adm. Code 102.Subpart J.

(Source: Amended at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 16<sup>th</sup> day of May, 1990, by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board