

BOARD PROPOSAL FOR PUBLIC COMMENT OCTOBER 3, 1996

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD
PART 108
ADMINISTRATIVE CITATIONS

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AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 21(o), 21(p), 31.1, and 42(b)(4) of the Act. [415 ILCS 5/21(o), 21(p), 31.1, and 42(b)(4).]

SOURCE: Adopted in R97-8 at 18 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 108.100 Applicability

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- a) This Part applies to proceedings before the Illinois Pollution Control Board (Board) concerning petitions to contest the issuance of an administrative citation pursuant to Section 31.1 of the Environmental Protection Act (Act). [415 ILCS 5/31.1.]
- b) This Part shall be read in conjunction with 35 Ill. Adm. Code 101 which contains procedures generally applicable to all adjudicatory Board proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and this Part, the provisions of this Part shall apply.

Section 108.102 Severability

If any provision of this Part or its application to any person or under any circumstances is adjudged invalid, such adjudication shall not affect the validity of this Part as a whole or of any portion not adjudged invalid.

Section 108.104 Definitions

For the purpose of this Part, words and terms shall have the meaning as defined in 35 Ill. Adm. Code 101.Subpart B, unless otherwise provided.

SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST

Section 108.200 Administrative Citation Issuance

An administrative citation (AC) may be issued by either of the following:

- a) Illinois Environmental Protection Agency (Agency). The Agency may issue an AC pursuant to Section 31.1 of the Act. [415 ILCS 5/31.1.]
- b) Delegated Unit of Local Government (Delegated Unit). Pursuant to Section 4(r) of the Act, the Agency may by agreement delegate its AC authority to a unit of local government which may then issue an AC. [415 ILCS 5/4(r).] All Delegated Units shall submit to the Clerk of the Board a copy of the delegation agreement annually on or before July 1 of every year.

Section 108.202 Service of Citation/ Filing of Citation with the Board

- a) In accordance with Section 31.1 of the Act, the Agency or Delegated Unit may serve an AC upon any person (AC Recipient) believed, through direct observation, to have violated subsection (o) or (p) of Section 21 of the Act. [415 ILCS 5/21.]
- b) Such AC must be issued and served upon the AC Recipient not more than 60 days after the date of the observed violation and must contain the following information:
 - 1) A statement specifying the provisions of subsection (o) or (p) of Section 21 of the Act which the AC Recipient was observed to be in violation [415 ILCS 5/21(o) and(p)];
 - 2) A copy of the inspection report in which the Agency or Delegated Unit recorded the violation, which report shall include the date and time of inspection, and weather conditions prevailing during the inspection;

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- 3) The penalty imposed by Section 42(b)(4) of the Act for such violations [415 ILCS 42(b)(4)];
 - 4) Instructions for contesting the AC findings, including notification that the AC Recipient has 35 days within which to file a petition to contest the AC;
 - 5) An affidavit by the personnel observing the violation, attesting to their material actions and observations; and
 - 6) A copy of the Board's Petition to Contest an Administrative Citation Form or a formal petition in accordance with Section 108.202(c) of this Part.
- c) As required by Section 31.1 of the Act, the Agency or Delegated Unit must file the AC with the Board no later than 10 days after the date of service upon the AC Recipient. [415 ILCS 5/31.1(c).]

Section 108.204 Filing Requirements for Petition to Contest

- a) **Who May File.** The AC Recipient may file with the Board a petition to contest the AC. The AC Recipient shall be named as the respondent and the Agency or Delegated Unit shall be named as the complainant in accordance with Section 31.1(d)(2) of the Act. [415 ILCS 5/31.1(d)(2).]
- b) **Time to File.** The petition to contest must be filed with the Board within 35 days from the date of the service of the AC as required by Section 31.1(d)(1) of the Act. [415 ILCS 55/31.1(d)(1).]
- c) **AC "Petition to Contest" Form.** The AC "Petition to Contest" form supplied to the AC Recipient with the AC may be used to contest the issuance of the AC. The AC Recipient may use Board Form # - or reasonably similar format which contains all information required on the relevant form. Board Form # -- is electronically available on the Board's Home Page or may be obtained at the Board's Chicago or Springfield offices. Additionally, a copy of Board Form #___ appears in 35 Ill. Adm. Code 101.Appendix G, Illustration H.
- d) **Additional Requirements.** Additional filing and service requirements are set forth at 35 Ill. Adm. Code 101.Subpart C.

Section 108.206 Petition Contents

If the form provided by the Board is not used, a formal petition to contest must include:

- a) Identification of counsel or a statement that the AC Recipient wishes to represent himself.
- b) Any reasons why the AC Recipient believes the AC was improperly issued, including but not limited to:
 - 1) The AC Recipient does not own the property or did not cause the alleged violations;
 - 2) The AC Recipient does not own the property or did not allow the alleged violations;

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- 3) The AC was not timely filed or properly served; or
- 4) The alleged violation was the result of uncontrollable circumstances.

Section 108.208 AC Recipient's Voluntary Withdrawal

The AC Recipient, may at any time before entry of the Board decision, withdraw its petition to contest. It must do so in writing or orally on the record at hearing. If an AC Recipient withdraws its petition to contest, the Board will adopt an order in accordance with Section 108.406 of this Part.

SUBPART C: HEARINGS

Section 108.300 Authorization of Hearing

- a) The hearing date will be set within 60 days after the filing of the petition to contest unless the hearing officer orders otherwise to prevent material prejudice.
- b) The hearing officer shall give the parties at least 21 days written notice of the hearing in accordance with Section 31.1(d) of the Act. [415 ILCS 5/31.1(d).]
- c) The hearing will be held in accordance with 35 Ill. Adm. Code 101.Subpart F.
- d) The hearing will be held at a time and location consistent with the Board's resources as designated by the hearing officer.

SUBPART D: BOARD DECISIONS

Section 108.400 Standard of Review/Burden of Proof

- a) The burden of proof shall be on the Agency or Delegated Unit. [415 ILCS 5/31.1(d)(2).]
- b) The Board will issue an order finding a violation as alleged in the AC and will impose the penalty as specified in Section 42(b)(4) of the Act if, based on the record of the proceeding, the alleged violation occurred and the AC Recipient has not shown that the violation was the result of uncontrollable circumstances. [415 ILCS 5/31.1(d)(2).]

Section 108.402 Dismissal

The Board may issue an order dismissing the AC and closing the docket upon its own motion or a motion by the AC Recipient, Agency or Delegated Unit if the AC was not timely and properly served pursuant to Section 31.1 of the Act and Section 108.200 of this Part. [415 ILCS 31.1.]

Section 108.404 Default

Failure of a party to appear at the hearing, or failure to proceed as ordered by the Board or hearing officer, shall constitute default. Upon default the Board will issue an order against the defaulting party.

Section 108.406 Non-Contested Citations

The Board will consider the AC non-contested if the AC Recipient does not file a petition to contest, fails to timely file a petition to contest, or withdraws its petition to contest pursuant to Section 108.208.

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If the AC is non-contested prior to hearing, the Board will adopt a final order in accordance with Section 108.500(a). If the AC Recipient withdraws its petition to contest after the hearing the Board will adopt a final order in accordance Section 108.500(c) of this Part. [415 ILCS 5/42(b)(4).]

SUBPART E: ASSESSMENT OF PENALTIES AND COSTS

Section 108.500 Assessment of Penalties and Costs

The Board will assess the penalties and costs in the following manner:

- a) If the AC is non-contested or defaulted as set forth in Sections 108.404 and 108.406 of this Part, the Board will issue an order assessing a \$500 penalty per alleged violation against the AC Recipient.
- b) If the AC Recipient contests the AC and the Board finds based on the record that the violations occurred and that the AC Recipient has not shown that the violation resulted from uncontrollable circumstances, the Board will impose a \$500 penalty per alleged violation in the AC and associated hearing costs as set forth in Sections 108.502 and 108.504 of this Part against the AC Recipient.
- c) If the AC Recipient contests the AC but voluntarily withdraws the petition for review pursuant to Section 108.208 of this Part after the start of the hearing but before the Board issues an order, the Board will impose a \$500 penalty per alleged violation in the AC and associated hearing costs as set forth in Sections 108.502 and 108.504 of this Part against the AC Recipient.

Section 108.502 Claimed Costs of Agency or Delegated Unit

Within 30 days of the close of the hearing or as otherwise directed by the hearing officer, the Agency or Delegated Unit shall submit to the Clerk of the Board and serve on all parties an itemized listing of the costs associated with the hearing. Such costs shall not include attorney's fees or witness fees for persons employed by the Agency or Delegated Unit.

Section 108.504 Board Costs

At the beginning of every fiscal year the Board will place on file a schedule of hearing costs for AC cases. Such schedule will include a per day breakdown of the Board's costs for holding a hearing. A copy will be available at the Board's offices and on the Board's Home Page.

Section 108.506 Response to Claimed Costs and Reply

- a) The AC Recipient may challenge the claimed costs submitted by the Agency, Delegated Unit, or the Board by filing a response. The response shall be filed within 21 days of the service of the claimed costs and shall be served on all parties.
- b) The Agency of Delegated Unit may file a reply to the AC Recipient's Response to claimed costs within 14 days of the service of the response.