

Section
101.140 Review of Final Orders and Stay Procedures
101.141 Interlocutory Appeals

APPENDIX Old Rule Numbers Referenced (Repealed)

AUTHORITY: Authorized by Section 26 of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111¹/₂, par. 1026); and implementing Sections 5, 7.1, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40 and 41 of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111¹/₂, pars. 1005, 1007.1, 1027, 1028, 1029, 1031, 1032, 1033, 1035, 1036, 1037, 1038, 1040 and 1041); and Section 4 of "An Act in relation to natural resources, research, data collection and environmental studies," approved and effective July 14, 1978, as amended (Ill. Rev. Stat. 1985, ch. 96¹/₂, par. 7404).

SOURCE: Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; amended in R82-27, R82-36 and R83-37 at Ill. Reg. _____, effective _____.

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

PART 101
GENERAL RULES

SUBPART A: GENERAL PROVISIONS

Section 101.101 Applicability

- a) This ~~Chapter~~ Subtitle governs the practices and procedures of the Board and all proceedings conducted by the Board. Unless the contrary is clearly indicated, all references to "Parts" or "Sections" are to Illinois Administrative Code, Title 35: Environmental Protection. For example, "Part 309" is 35 Ill. Adm. Code 309, and "Section 309.101" is 35 Ill. Adm. Code 309.101.
- b) The provisions contained in this Subtitle are in addition to the provisions contained in the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, pars. 1001 et seq.).

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

Section 101.102 Definitions

As used in 35 Ill. Adm. Code Parts 101-10720 the following terms mean:

"Act" means the Environmental Protection Act (Sections 1-51) and all amendments thereto (Ill. Rev. Stat., ch. 111^{1/2}, pars. 1001-1051 as amended).

"Agency" means the Illinois Environmental Protection Agency.

"Board" means the Illinois Pollution Control Board.

"Chairman" means the Chairman of the Board.

"Clerk" means the Clerk of the Board.

"Contested Case" means an adjudicatory proceeding, not including regulatory, quasi-legislative, informational or similar proceedings.

"DENR" means the Illinois Department of Energy and Natural Resources, formerly the Institute of Natural Resources.

"Department" "DNS" means the Illinois Department of Nuclear Safety.

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

"Economic Impact Study" means the study prepared by the ~~Institute~~ DENR in accordance with Ill. Rev. Stat. 1979⁸⁵, ch. 96^{1/2}, par. 7404.

"Environmental Register" means the official Board publication containing information and legal notices regarding Board activities.

"Hearing Officer" means a person duly qualified and designated as a Hearing Officer under Section 5(a) of the Act.

~~"Institute" means the Illinois Department of Energy and Natural Resources, formerly the Institute of Natural Resources.~~

"Person" means any entity defined in Section 3 of the Act.

"NPDES" means the National Pollutant Discharge Elimination System for issuing, establishing conditions for, and denying permits under Section 402 of the Clean

Water Act (92-500) (33 U.S.C. Sections 1251, 1342). All terms used in connection with NPDES which have been defined in the Clean Water Act or regulations adopted thereunder shall have the meanings specified therein, unless specifically noted otherwise.

"NPDES Permit" means an NPDES permit issued by the Agency or the United States Environmental Protection Agency.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

"SDWA" means the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.).

"UIC" means the Underground Injection Control Program under Part C of the Safe Drinking Water Act (42 U.S.C. Section 300h et seq.).

"USEPA" means the United States Environmental Protection Agency.

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

Section 101.103 Filing

- a) Documents and requests permitted or required to be filed with the Board or its Clerk shall be addressed and mailed to or filed with the Clerk at: ~~the office address.~~ The office address of the Clerk is 309 West Washington Street, Suite 300, Chicago, Illinois 60606 100 West Randolph, State of Illinois Center, Suite 11-500, Chicago, Illinois 60601. The office of the Clerk is open for filing, inspection, and copying of documents from 8:30 a.m. to 5:00 p.m. Monday through Friday, except for national and state legal holidays.
- b) Filings received after 5:00 p.m. will be date-stamped the following business day.

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

Section 101.104 Form of Documents

- a) Documents shall clearly show the file or docket number and the title of the proceeding ~~with in~~ in which they are filed, and shall ~~be designated~~ bear a heading which describes the nature of the relief sought such as, but

not limited to, "Petition for Amendment to Regulation," "Complaint," "Petition for Variance," "Petition for Review," "Motion," or "Public Comment." or any other heading which describes the nature of the relief sought.

- b) Except as otherwise provided, 10 copies of all documents shall be filed with the Clerk. Only two copies of any discovery motion, deposition, interrogatories, answer to interrogatories, or subpoena or public comment under 5 pages need be filed with the Clerk.
- c) Documents, excluding exhibits, shall be typewritten or reproduced from typewritten copy on unglazed white paper of greater than 12 pound weight and measuring 8" x 10^{1/2}" or 8^{1/2}" x 11". Reproductions may be made by carbon or electrostatic copying machine or any other process that produces legible black-on-white copies. All documents shall be fastened on the left side or in the upper left hand corner. The left margin of each page shall be at least 1^{1/2} inches and the right margin at least one inch. The Board may make an exception from these requirements. ~~for citizen complaints.~~
- d) Exhibits, where possible, shall be reduced to conform to the size requirements of subsection(c), provided however, that at least one non-conforming copy may be filed with the Clerk's office.
- ed) One copy of each document filed need shall be signed by the party or by his authorized representative or attorney. The first dDocuments filed in any cause or first served upon the opposite party shall bear the business address and telephone number, if any, of the attorney filing the same, or of the party who appears ion his or her own proper person. behalf.
- fe) Except as otherwise provided by Ill. Rev. Stat. 1979⁸⁵, ch. 116, pars. 35-39, or by leave of the Board, documents on microfiche are not acceptable for filing.
- g) The Clerk may refuse to accept for filing any document which fails to comply with the form requirements of this Section.

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

Section 101.105 Computation of Time

- a) Computation of any period of time prescribed by these rules or the Act shall begin with the first business calendar day following the day on which the act, event,

or development occurs and shall run until the end of the last day, or the next following calendar ~~business~~ day if the last day is a Saturday, Sunday, or legal holiday; as defined or fixed in any statute now or hereafter in force in this State. Where the period of time is ~~five~~ seven days or less, Saturdays, Sundays and legal holidays shall be excluded in the computation of time; but in no event shall such period of time total more than ten days.

- b) Notice requirements shall be construed to mean notice received, but proof that notice was sent by means reasonably calculated to be received by the prescribed date shall be prima facie proof that notice was timely received.

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

Section 101.106 Appearances

- a) Any person entitled to participate in Board proceedings shall appear as follows:
- 1) A natural person ~~in~~ on his own behalf or by an attorney at law licensed and registered to practice in the State of Illinois, or both.
 - 2) A corporation, in contested cases, by an attorney at law licensed and registered to practice in the State of Illinois.
 - 3) Any other person through any bonafide officer, employee, or representative or by an attorney licensed and registered to practice in the State of Illinois, or both.
- b) Attorneys not licensed and registered to practice in the State of Illinois may request to appear on a particular matter on motion filed with the Board.
- c) An attorney appearing in a representative capacity shall file a written notice of appearance with the Clerk, together with proof of service on all parties or their respective attorneys.

Section 101.107 Public and Non-Disclosable Information

- a) The Board shall maintain files containing all information submitted to or produced by the Board or any of its members relating to matters within the Board's

jurisdiction. Without limiting the foregoing, the files shall include: pleadings, motions, notices, minutes, transcripts, exhibits, orders and opinions, proposed and adopted regulations, communications to or from the Board or any Board Member, the Environmental Register and other Board releases, business records, informal complaints, and such internal communications filed at the request of any Board Member.

- b) All such files shall be open to reasonable public inspection and copying, except material which constitutes an internal communication by the Board or a Board Member or which is protected from public disclosure under the provisions of 35 Ill. Adm. Code Part 120 or which is stamped "Not Subject to Disclosure" by Board Order. ~~Not Subject to disclosure~~ Only the following materials may be so stamped by the Board:
- ~~1)~~ Information which constitutes a trade secret;
 - 12) Information privileged against introduction in judicial proceedings;
 - ~~3)~~ Internal communications by the Board;
 - 24) Information concerning secret manufacturing processes or confidential data submitted by any person under the Act; and
 - 35) Income and earnings data when not an issue in the proceeding.
- c) Except in the case of internal communications, material shall be stamped "Not Subject to Disclosure" only upon written application at the time the material is submitted. Procedures governing the identification and protection of trade secrets are found at Part 120 of these rules. An application for nondisclosure other than pertaining to trade secrets shall contain the following:
- 1) Identification of the precise material, or parts of material, for which nondisclosure is sought;
 - 2) Indication of the particular nondisclosure category into which the material falls; and
 - 3) A concise statement of the reasons for requesting nondisclosure. The application shall be verified and contain such data and information as will apprise the Board of the nature of the material for which nondisclosure is sought, the reasons why

nondisclosure is necessary, and the number and title of all persons familiar with such information, and how long the material has been limited ~~for~~ from disclosure.

4) A single copy of the material for nondisclosure shall be filed with the Clerk with the application and shall be available for examination only by Board Members. The Board, by resolution, may authorize employees or staff to view nondisclosable material for the purpose of assisting the Board in its deliberations. The Clerk shall maintain a log of all persons who have viewed the non-disclosable material. The Board shall promptly rule on every application and inform the applicant of its decision. An application shall bar Public inspection of the material for nondisclosure shall be barred until the application has been disposed of by the Board and the time for appeal has run. The Board may enter conditional nondisclosure orders allowing withdrawal by the applicant of the material covered by such order, at which time the Board's ruling on the application shall be based on the record excluding the material so withdrawn.

d) Internal communications may be stamped "Not Subject to Disclosure" by any Board Member at any time subject to review by the Board subject to review by the Board.

de) The Clerk shall maintain a comprehensive index of all Board files open to public inspection.

ef) Reasonable copying facilities shall be available at the Board offices. Requests by mail shall be honored. All files, records and data may be copied at Board offices in Chicago upon payment of reasonable reproduction fees to be determined by the Board. A single opinion or order Requests for copies totaling less than 25 pages, will be furnished on request without cost, irrespective of length. Requests for multiple opinions or orders totaling 10 pages or less shall be furnished without cost. All other Rrequests for multiple opinions and orders copies totaling more than 10 pages shall be furnished at a honored upon payment of a reasonable cost to be determined by the Board, plus mailing costs. However, tThe Board reserves the right to contract with a professional reproduction service for any copying that would impose a substantial administrative burden on the Board and to charge to the requesting party the reproduction and mailing costs incurred, by the Board. Requests for copies will be honored in as timely a manner as possible. Requests for transmittal of copies

by mail will be honored but the Board reserves the right to charge the requesting party for the mailing costs incurred.

(Source: Amended at ____ Ill. Reg. _____, effective _____)
Section 101.108 Publications

The Board shall publish at least once every month an Environmental Register containing notices of meetings, hearings, and reports of Board activities. One copy shall be sent without charge to anyone requesting it. Copies of the Act and regulations proposed and in ~~force~~ effect shall be provided without charge in reasonable quantities by mail and at Board offices. The Board shall publish regularly its decisions and orders, which subscribers may buy and receive by mail at a reasonable cost.

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

Section 101.109 Board Meetings

- a) All decisions of the Board shall be made at meetings open to the public. ~~Three~~ Four members of the Board shall constitute a quorum, and ~~three~~ four affirmative votes shall be required for any final determinations of the Board, except in a proceeding to remove a seal under Section 34(d) of the Act.
- b) The Board shall hold at least one meeting a month and shall adopt at the beginning of each calendar or fiscal year a schedule of meetings which shall appear at least once in its minutes and Environmental Register. Special meetings may be called by the Chairman or by any two Board Members upon delivery of 24 hours' written notice to the office of each member. Public notice of all ~~special~~ meetings shall be given at least 24 hours in advance of each meeting by posting at the Board's offices. The public notice shall include the agenda for the meeting. In emergencies in which a majority of the Board certifies that exigencies of time require a ~~special meeting to be held immediately,~~ the requirements of public notice and 24 hour written notice to members may be dispensed with, and Board Members shall receive such notice as is reasonable under the circumstances. ~~Notice of changes in the regular meeting schedule shall be given in the manner used for special meetings.~~
- c) The Board shall keep a complete and accurate record of all meetings including the votes of individual members on all adjudications and proposed regulations.

(Source: Amended at _____ Ill. Reg. _____, effective _____)
Section 101.110 Informal Complaints

Informal Complaints received by the Board against particular pollution sources shall be filed with the Clerk, who shall maintain a file and index of such complaints. No hearing shall be scheduled upon the filing of an informal complaint, but the Clerk shall send a copy of the complaint to the Attorney General and to the Agency or DNS depending on the nature of the complaint and request a response to the Board. At the time of the filing of the informal complaint, the Clerk shall notify the complainant of his or her right to commence an enforcement proceeding pursuant to 35 Ill. Adm. Code 103 by filing a formal complaint and shall provide a form on which a formal complaint may be filed with the Clerk.

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

SUBPART B: CANONS OF ETHICS

Section 101.120 Financial Disclosure (Repealed)

~~Board Members shall comply with financial disclosure requirements as provided by Law and Executive Order.~~

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

Section 101.121 Ex parte Contacts

- a) Contested Case Proceedings. No Board Member, hearing officer, or employee of the Board shall communicate ex parte, directly or indirectly, with any person not employed by the Board with respect to any adjudicative contested case proceeding pending before the Board. Ex parte contacts with respect to individual pollution sources which may become the subject of such a proceeding are permissible to the extent that information so received is relevant to possible rulemaking proceedings, but caution shall be exercised by Board Members and employees to avoid prejudging the merits of any potential individual case. Nothing in this section shall preclude Board Members, hearing officers, or employees from receiving informal complaints about individual pollution sources in accordance with Section 101.110, or forbid such administrative contacts as would be appropriate for judges and other judicial officers.
- b) Non-contested Case Proceedings. Board Members and employees should not permit ex parte contacts designed to influence his or her action in any regulatory

proceeding after docketing and authorization of hearings. In the event such an ex parte contact does occur, Board Members and employees shall make every reasonable effort to assure that any ex parte such communications with respect to nonadjudicative proceedings become a matter of public record, in order that information on which the Board bases its decisions can be subject to scrutiny and to rebuttal. Whenever practicable, communications shall be in writing and addressed to the Board rather than to individual members.

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

Section 101.122 Improper Publicity Hearing Decorum

- a) Hearings should be conducted with fitting dignity and decorum. Any person may record the proceedings by tape, film or other means, provided however that the Hearing Officer may prescribe reasonable rules to govern the right to make such recordings. forbid the taking of photographs or the broadcasting or televising of all or part of the proceedings while the hearing is being conducted if he finds that such activities detract from the dignity of the proceedings or unduly distract participants and witnesses in giving testimony. If a witness refuses to testify on the grounds that he or she may not be compelled to testify if any portion of the witness' testimony is to be broadcast or televised or if motion pictures are to be taken of the witness while the witness is testifying the Hearing Officer shall prohibit such recording during the testimony of the witness.
- b) Parties in proceedings brought before the Board shall at all times conduct themselves with the same degree of dignity and respect that they would before a court.

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

Section 101.140 Review of Final Orders and Stay Procedures

- a) Review of final orders of the Board in regulatory non-contested and adjudicatory contested case proceedings shall be pursuant to Sections 29 and 41 of the Act respectively and to Rule 335 of the Rules of the Supreme Court of Illinois and any amendments thereto and the Administrative Review Act Law of the State of Illinois, as amended (Ill. Rev. Stat. 197985, ch. 110, pars. 264 3-101 et. seq.).

- b) Procedure for stay of any order to the Board upon appeal shall be as provided in Rule 335 of the Rules of the Supreme Court of Illinois. ~~and amendments thereto.~~
- c) For purposes of judicial review, Board action becomes final upon enactment, or upon subsequent Board action on any Motion to Reconsider under Section 35 Ill. Adm. Code 103.240.

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

Section 101.141 Interlocutory Appeals

- a) When the Board, in making an interlocutory order not otherwise appealable, finds pursuant to Rule 308 of the Rules of the Supreme Court of Illinois that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the Board may so state in writing, identifying the question of law involved, on its own motion or on motion of any party.
- b) Appeal of such interlocutory order by the Board shall be in accordance with Rule 308 of the Rules of the Supreme Court of Illinois.

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

APPENDIX (Repealed)
OLD RULE NUMBERS REFERENCED

The following table is provided to aid in referencing old Board rule numbers to section numbers pursuant to codification:

Chapter 1:	Procedural Rules	35 Ill. Adm. Code
	Parts 101-107	
Part 1:	General Rules	Part 101: General Rules
Rule 101	Section 101-101	
Rule 102	Section 101-102	
Rule 103	Section 101-103	
Rule 104	Section 101-104	
Rule 105	Section 101-105	
Rule 106	Section 101-106	
Rule 107	Section 101-107	
Rule 108	Section 101-108	
Rule 109	Section 101-109	
Rule 110	Section 101-110	

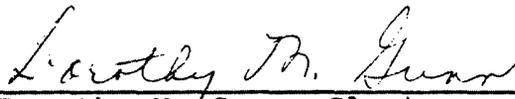
Rule 801 Section 101-120
Rule 802 Section 101-121
Rule 803 Section 101-122
Rule 901 Section 101-140

(Source: Repealed at 11 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

B. Forcade concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 19th day of March, 1987, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board