

ILLINOIS POLLUTION CONTROL BOARD  
December 20, 1984

IN THE MATTER OF: )  
RCRA PROCEDURAL RULES ) R84-10

FINAL ORDER. ADOPTED RULE.  
FINAL ORDER OF THE BOARD (by J. Anderson):

On June 14, 1984 the Board proposed to adopt amendments to 35 Ill. Adm. Code 102, 103 and 104 to establish special procedures to be followed in cases involving the RCRA rules or RCRA permits. The proposal appeared at 8 Ill. Reg. 9888, June 29, 1984.

On November 8, 1984 the Board modified the proposal in response to public comments, and sent the proposal to second notice. On December 11, 1984, the Joint Committee on Administrative Rules (JCAR) objected to provisions of Sections 103.263(a) and 103.268(c)(1). The Board has modified the rules in response to these objections by:


1. Deleting the provision which addressed the Board's extension of the 60 day time period for the filing of a partial draft permit (Section 103.263(a)); and,
2. Paraphrasing the language of Section 33(b) of the Act (Section 103.268(c)(2)).

The Board has made other minor changes to the rules in response to comments from the JCAR staff. The complete text of the rules as modified is attached to this Order. The Board shortly will adopt a supporting Opinion.

IT IS SO ORDERED.

Board Member B. Forcade concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 20th day of December, 1984 by a vote of 5-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

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

PART 102  
REGULATORY AND OTHER NONADJUDICATIVE  
HEARINGS AND PROCEEDINGS

SUBPART A: GENERAL PROVISIONS

Section  
102.101 Applicability  
102.102 Adoption of Regulations

SUBPART B: PROPOSAL OF REGULATIONS

Section  
102.120 Proposal of Regulations  
102.121 Authorization of Hearing  
102.122 Notice of Hearing  
102.123 Proposal of RCRA Amendments  
102.124 Notice of Site-Specific RCRA Proposals

SUBPART C: DISCOVERY

Section  
102.140 Discovery

SUBPART D: HEARINGS

Section  
102.160 Authority of Hearing Officer  
102.161 Examination of Witnesses  
102.162 Prior Submissions  
102.163 Written Submissions  
102.164 Record

SUBPART E: ECONOMIC IMPACT HEARINGS

Section  
102.180 Hearings on the Economic Impact Study of New  
Proposals  
102.181 Hearings on the Economic Impact Study of Existing  
Regulations

SUBPART F: BOARD ACTION

Section  
102.200 Revision of Proposed Regulations  
102.201 Notice of Adopted Regulations  
102.202 Adoption of RCRA Amendments

SUBPART G: OTHER PROCEEDINGS

Section  
102.220 Other Proceedings

Appendix Old Rule Numbers Referenced

AUTHORITY: Authorized by Section 26 of the Environmental Protection Act (Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1026); and implementing Sections 5, 22.4(a), 27 and 28 of the Environmental Protection Act (Ill. Rev. Stat. 1983, ch. 111 1/2, pars. 1005, 1022.4(a), 1027 and 1028); 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. 1983, ch. 96 1/2, par. 7404).

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 \_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART B: PROPOSAL OF REGULATIONS

Section 102.123      Proposal of RCRA Amendments

- a) As used in this Part, "RCRA rules" shall mean 35 Ill. Adm. Code 703, 720, 721, 722, 723, 724 and 725.
- b) Any proposal to amend the RCRA rules shall:
  - 1) Indicate whether it is made pursuant to the provisions of Section 22.4(a), 22.4(b) or 22.4(c) of the Act;
  - 2) Include a listing of all amendments to the corresponding Federal regulations since the last amendment of the Board's RCRA rules;
  - 3) Include a certificate of service indicating that a copy of the proposal has been served on the United States Environmental Protection Agency. Service shall be made at the following address:

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

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

Section 102.124      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 102.122, 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 the United States Environmental Protection Agency;
  - 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;
  - 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 102.122, the Board will give notice by broadcast over at least one radio station in the area of the facility containing the information required by paragraphs (d)(2) and (d)(4) through (d)(8).
  
- 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;
- 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; and
- 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 (35 Ill. Adm. Code 120).
- 9) A statement that site-specific rules may be adopted pursuant to Ill. Rev. Stat. 1983, ch. 111 1/2, pars. 1027 et seq. and 35 Ill. Adm. Code 102, and a reference to the Board regulations sought to be modified.
- 10) Any additional information considered necessary or proper.

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

SUBPART F: BOARD ACTION

Section 102.202 Adoption of RCRA Amendments

The Board will adopt RCRA regulations pursuant to the applicable requirements of this Part, Title VII of the Act and the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1983 ch. 127, par. 1001 et seq.) Additionally, prior to adopting regulations, other than emergency amendments, the Board will:

- a) Make available to the public a proposed Opinion and Order containing the text of the amendments;
- b) Publish the proposed rule in the Illinois Register and the Environmental Register;
- c) Serve a copy of the proposed Opinion and Order on the United States Environmental Protection Agency;

- d) Receive written comments from the United States Environmental Protection Agency and other persons for at least 45 days after the date of publication in the Illinois Register.

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

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

PART 103  
ENFORCEMENT PROCEEDINGS  
SUBPART A: GENERAL PROVISIONS

Section  
103.101 Applicability

SUBPART B: COMPLAINT, SERVICE AND  
AUTHORIZATION OF HEARING

Section  
103.120 Who May Initiate  
103.121 Parties  
103.122 Notice, Formal Complaint and Answer  
103.123 Service  
103.124 Authorization of Hearing  
103.125 Notice of Hearing

SUBPART C: MOTIONS, JOINDER AND INTERVENTION

Section  
103.140 Motions and Responses  
103.141 Consolidation and Severance of Claims and Joining  
Additional Parties  
103.142 Intervention  
103.143 Continuances

SUBPART D: DISCOVERY, ADMISSIONS  
AND SUBPOENAS

Section  
103.160 Prehearing Conferences  
103.161 Discovery  
103.162 Admissions  
103.163 Subpoenas

SUBPART E: SETTLEMENT PROCEDURE

Section  
103.180 Settlement Procedure  
103.181 RCRA Settlement Procedure

SUBPART F: CONDUCT OF HEARINGS AND  
RULES OF EVIDENCE

Section	
103.200	Authority of Hearing Officer
103.201	Authority of Board Members and Board Assistants
103.202	Order of Enforcement Hearings
103.203	Conduct of Hearing
103.204	Admissible Evidence
103.205	Written Narrative Testimony
103.206	Official Notice
103.207	Viewing of Premises
103.208	Admission of Business Records in Evidence
103.209	Examination of Adverse Party or Agent and Hostile Witnesses; Compelling Appearance Thereof at Hearing
103.210	Amendment and Variance

SUBPART G: POST-HEARING PROCEDURES

Section	
103.220	Default
103.221	Transcript
103.222	Record
103.223	Briefs and Oral Argument
103.224	Contents of Board Opinions and Orders

SUBPART H: RELIEF FROM FINAL ORDERS

Section	
103.240	Motion Subsequent to Entry of Final Order
103.241	Relief from Section 103.224 Final Orders

SUBPART I: DECISION IN CASES INVOLVING RCRA PERMITS

<u>Section</u>	
<u>103.260</u>	<u>Purpose, Scope and Applicability</u>
<u>103.261</u>	<u>Interim Order</u>
<u>103.262</u>	<u>Joinder of Agency</u>
<u>103.263</u>	<u>Draft Permit</u>
<u>103.264</u>	<u>Stipulated Draft Remedy</u>
<u>103.265</u>	<u>Contents of Public Notice</u>
<u>103.266</u>	<u>Public Comment</u>
<u>103.267</u>	<u>Hearing</u>
<u>103.268</u>	<u>Contents of Board Order</u>

Appendix Old Rule Numbers Referenced

AUTHORITY: Authorized by Section 26 of the Environmental  
Protection Act (Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1026)

and implementing Sections 5 and 31 through 33 of the Illinois Environmental Protection Act (Ill. Rev. Stat. 1983, ch. 111 1/2, pars. 1005 and 1031 through 1033).

SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part III, Enforcement Proceedings, in R70-4, at 1 PCB 43, October 8, 1970; amended in R80-2, at 39 PCB 456, at 4 Ill. Reg. 39, page 285, effective September 12, 1980; amended in R80-18, at 44 PCB 125, at 5 Ill. Reg. 14146, effective December 3, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10 at \_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

#### SUBPART E: SETTLEMENT PROCEDURE

##### Section 103.180 Settlement Procedure

- a) No case pending before the Board shall be disposed of or modified without an order of the Board. All parties to any case in which a settlement or compromise is proposed shall file with the Hearing Officer at the time of the scheduled hearing a written statement, signed by the parties or their authorized representatives, outlining the nature of, the reasons for, and the purpose to be accomplished by the settlement. Such statement shall contain:
  - 1) A full stipulation of all material facts pertaining to the nature, extent and causes of the alleged violations;
  - 2) The nature of the relevant parties' operations and control equipment;
  - 3) Any explanation for past failures to comply and an assessment of the impact on the public resulting from such noncompliance;
  - 4) Details as to future plans for compliance, including a description of additional control measures and the dates for their implementation; and
  - 5) The proposed penalty.
- b) When the parties submit a proposed settlement or stipulation to the Hearing Officer, the Hearing Officer shall conduct a hearing in which all interested persons may testify with respect to the nature of the alleged violation and its impact on



the environment, together with their views on the proposed stipulation and settlement. The Hearing Officer shall transmit such record of hearing to the Board, together with all exhibits.

- c) The Board shall consider such proposed settlement and stipulation and the hearing record. The Board may accept, suggest revisions in, reject the proposed settlement and stipulation, or direct further hearings as it appears appropriate. Where an NPDES (National Pollutant Discharge Elimination System) permit is involved in the settlement, notice of hearing shall be published in the Environmental Register at least 30 days prior to such hearing.
- d) If the Board determines that a settlement involves or may involve the issuance or modification of a RCRA permit it will enter an interim order pursuant to Section 103.261.

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

SUBPART I: DECISION IN CASES INVOLVING RCRA PERMITS

Section 103.260 Purpose, Scope and Applicability

- a) This Subpart applies when the Board finds in an interim order that an enforcement action involves issuance or modification of a RCRA permit;
- b) Enforcement actions which involve issuance or modification of a RCRA permit include those in which, to grant complete relief, it appears that the Board will have to:
  - 1) revoke a RCRA permit; or
  - 2) order a RCRA permit issued or modified; or
  - 3) enter an order which could require actions which would be different from the conditions of a RCRA permit or 35 Ill. Adm. Code 724 or 725; or
  - 4) enter an order directing facility closure or modification after a finding that a facility was operating without a RCRA permit and that one was required.

- c) These procedures provide methods by which the Board will formulate a compliance plan, and, if necessary, direct the issuance or modification of a RCRA permit.

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

Section 103.261      Interim Order

- a) The Board will enter an interim order invoking the procedures of this Subpart on its own motion or on the motion of any party. Before the Board enters an interim order the parties must develop, through hearings or admissions pursuant to Section 103.162, a sufficient record to support the findings which the Board must make in paragraph (b).
- b) An interim order invoking the procedures of this Subpart will include:
- 1) A finding or proposed finding of violation and any penalty or proposed monetary penalty; and
  - 2) A finding that the case is an enforcement action which involves or may involve the issuance or modification of a RCRA permit; and
  - 3) Joinder of the Agency if it is not already a party; and
  - 4) A time schedule for filing by the Agency of a partial draft permit.
- c) The interim order is not a final order and may be appealed only with leave of the Board.

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

Section 103.262      Joinder of Agency

If the Board directs that the Agency be joined, the Clerk will send, by messenger or by certified mail addressed to the Agency, a copy of the Board Order requiring joinder. Such mailing shall constitute service of process upon the Agency.

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

Section 103.263      Draft Permit or Statement

- a) Within 60 days after entry of an interim order, the Agency shall file and serve on all parties either a

partial draft permit or a statement that no RCRA permit needs to be issued or modified.

- b) The partial draft permit shall be in compliance with the requirements of 35 Ill. Adm. Code 705.141 and shall include such conditions as the Agency finds are necessary to correct the violations found in the interim order.
- c) The Agency may confer with other parties and enter into agreements as to the substance of the partial draft permit which it will recommend to the Board. The Agency shall disclose any such conferences or agreements in the proposed draft permit. Such agreements do not bind the Board.
- d) If the Agency issues a statement that no RCRA permit needs to be issued or modified, the remaining Subpart I procedures will not be followed, unless the Board determines otherwise.

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

Section 103.264      Stipulated Draft Remedy

- a) The parties may agree to a stipulated draft remedy.
- b) A stipulated draft remedy shall include the following:
  - 1) Proposed mandatory orders which the parties agree should be included in the Board's final order, which may include one or more of the following:
    - A) An order to cease and desist conducting regulated activities;
    - B) An order to close a facility or unit;
    - C) An order to execute a post-closure care plan;
    - D) A compliance plan, including a time schedule to assure compliance with regulations in the shortest possible time;
    - E) An order to provide a performance bond or other financial assurance;
    - F) An order to apply for a permit or permit modification;

- G) An order revoking a permit.
- 2) A partial draft permit or statement as provided by Section 103.263.
- 3) A statement as to whether or not the stipulation is divisible for purposes of Board determinations.
- c) All parties, including the Agency, must sign the stipulated draft remedy before notice is given pursuant to Section 103.265.

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

Section 103.265      Contents of Public Notice

- a) In addition to all parties, the Agency shall serve a copy of any partial draft permit on the United States Environmental Protection Agency at the following address:
  - Director, Waste Management Division
  - USEPA, Region V
  - 230 South Dearborn Street
  - Chicago, IL 60604
- b) In addition to the requirements of the Act and Section 103.125, the Agency shall, at a minimum, give notice of the filing of a partial draft permit to the following persons:
  - 1) Federal agencies as designated by the United States Environmental Protection Agency;
  - 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;
  - 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 103.125, the Agency shall give notice by broadcast over at least one radio station in the area of the facility containing the information required by paragraphs (d) (2), (d) (4) and (d) (6) through (d) (8).
- d) A notice of a partial draft permit shall include the following information:
- 1) The address of the Board office;
  - 2) Name and address of the respondent and, if different, of the facility subject to the enforcement action;
  - 3) A brief description of the business conducted at the facility and the activity which is the subject of the enforcement action;
  - 4) A statement of the violations the Board has found or has proposed to find;
  - 5) A statement that the Agency has filed a partial draft permit;
  - 6) Name, address and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the partial draft permit and/or stipulated remedy; and
  - 7)
    - A) A statement that a hearing will be held and that the record will remain open for written comments for 45 days after filing of the partial draft permit and/or stipulated remedy. The notice will include the address of the Board to which comments shall be mailed; and,
    - B) Notice of a hearing;
  - 8) A statement that the record in the action 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 (35 Ill. Adm. Code 120).

- 9) A statement that enforcement actions are considered pursuant to Ill. Rev. Stat. 1983, ch. 111 1/2, pars. 1030 et seq.
- 10) Any additional information considered necessary or proper.

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

Section 103.266      Public Comment

Any person, including the United States Environmental Protection Agency, may comment on the partial draft permit or stipulated draft remedy within 45 days after it has been filed with the Board and notice given pursuant to Section 103.265.

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

Section 103.267      Hearing

The following shall apply in addition to Sections 103.125(e) and (f):

- a) The Hearing Officer, after appropriate consultation with the parties, shall set a time and place for the hearing to be held not less than 30 days after the filing of the partial draft permit and/or stipulated remedy.
- b) The hearing shall be held in the county in which the facility is located, in the population center in such county closest to the facility.
- c) The Clerk in consultation with the Hearing Officer shall give notice of the hearing to the persons entitled to notice in Sections 103.125 and 103.265, and to any other persons who have commented, requested to comment or requested notice, and to any persons on a mailing list provided by the Agency.
- d) Notice shall be mailed not less than 30 days before the hearing.

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

Section 103.268      Contents of Board Order

- a) The Board will not enter an order which would require the issuance or modification of a RCRA permit unless the public notice, public comment and hearing procedures of this Subpart have been followed.

b) If the Board determines that, to grant complete relief, it must order the issuance or modification of a RCRA permit, its final order will include an order directing the Agency to issue or modify the RCRA permit, which may take one of the following forms:

- 1) An order to issue or modify a permit in conformance with a draft permit;
- 2) An order to issue or modify a permit in conformance with a draft permit as modified by the Board order;
- 3) Guidelines for issuance or modification of a permit in conformance with the order and other applicable regulations.

c) If the order specifies a schedule leading to compliance with the Act and Board rules:

- 1) Such schedule shall require compliance as soon as possible; and,
- 2) The order may require the posting of sufficient performance bond or other security to assure correction of such violation within the time prescribed.

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

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

PART 104  
 VARIANCES

SUBPART A: GENERAL PROVISIONS

Section	
104.102	Variance from New Regulation
104.103	References
<u>104.104</u>	<u>RCRA Variances</u>

SUBPART B: PETITION FOR VARIANCE

Section	
104.120	Petition for Variance
104.121	Contents of Variance Petition
104.122	Consistency with Federal Law
104.123	Extension of Prior Variance
104.124	Hearing Request or Waiver; Affidavit
104.125	Dismissal for Inadequacy
<u>104.126</u>	<u>RCRA Variances: Additional Material</u>

SUBPART C: NOTICE AND OBJECTIONS

Section  
104.140 Notice of Petition  
104.141 Objections to Petition  
104.142 RCRA Variances: Notice of Filing of Petition

SUBPART D: AUTHORIZATION OF HEARINGS

Section  
104.160 Board Action on Petitions for Variance and  
Authorization of Hearing

SUBPART E: RECOMMENDATION AND RESPONSE

Section  
104.180 Agency Investigation and Recommendation  
104.181 Response or Amended Petition  
104.182 RCRA Variances: Additional Information in  
Recommendation  
104.183 RCRA Variances: Public Comment

SUBPART F: HEARINGS

Section  
104.200 Notice of Hearing  
104.201 Proceedings  
104.202 Transcripts

SUBPART G: FINAL ACTION

Section  
104.220 Decision  
104.221 RCRA Variances: Board Decision

Appendix Old Rule Numbers Referenced

AUTHORITY: Authorized by Section 26 of the Environmental Protection Act (Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1026) and implementing Sections 5 and 35 through 38 of the Environmental Protection Act (Ill. Rev. Stat. 1983, ch. 111 1/2, pars. 1005 and 1035 through 1038).

SOURCE: Originally adopted as Chapter I: Procedural Rules, Part IV: Variances, in R70-4, at 1 PCB 43, October 8, 1970; amended in R77-16, 29 PCB 503, at 2 Ill. Reg. 16, p. 3, effective May 1, 1978, amended in R79-9, 35 PCB 433, at 3 Ill. Reg. 51, p. 128, effective December 7, 1979; amended in R80-12, 40 PCB 451, at 5 Ill. Reg. 2763, effective March 2, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10 at \_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.



SUBPART A: GENERAL PROVISIONS

Section 104.104      RCRA Variances

- a) As used in this Part, "petition for a RCRA variance" shall mean any pleading which meets either, or both, of the following criteria:
- 1) It requests a variance from 35 Ill. Adm. Code 703, 720, 721, 722, 723, 724 or 725; or,
  - 2) It asks that the Board order the Agency to issue or modify any provision of a RCRA permit required pursuant to Section 21(f) of the Act.
- b) The federal RCRA rules contain procedures which are referred to as "variances" (40 CFR 260, 261, 262, 263, 264, 265 and 270 (1984)). The petitioner should consult the comparable Board regulations to decide whether the variance procedures of this Part need to be followed. As provided in Title IX of the Act and Section 104.160(f), the Board may grant a temporary variance. The Board may grant permanent relief from a rule pursuant to 35 Ill. Adm. Code 102. Pursuant to 35 Ill. Adm. Code 105 a permit applicant may request Board review of the Agency's denial of a permit or issuance with conditions.

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

SUBPART B: PETITION FOR VARIANCE

Section 104.122      Consistency with Federal Law

- a) All petitions for variances from Title II of the Act or from 35 Ill. Adm. Code, Subtitle B, Ch. I (Air Pollution), shall indicate whether the Board may grant the requested relief consistent with the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal regulations adopted pursuant thereto. If granting a variance would constitute issuance of a delayed compliance order as that term is defined in 40 CFR 65.01(e), the petition shall indicate whether the requested relief is consistent with Section 113(d) of the Clean Air Act and 40 CFR 65.01-65.10 and 65.181. If granting a variance would require revision of the State Implementation Plan, the petition shall indicate whether the requirements of Section 110(a) of the Clean Air Act and 40 CFR 51 will be satisfied.

- b) All petitions for variances from Title III of the Act; from 35 Ill. Adm. Code, Subtitle C, Ch. I; or from water pollution related requirements of any other title of the Act or chapter of the Board's Regulations shall indicate whether the Board may grant the relief consistent with the Clean Water Act (33 U.S.C. 1251), U.S.E.P.A. effluent guidelines and standards, any other Federal regulations, or any areawide waste treatment management plan approved by the Administrator of U.S.E.P.A. pursuant to Section 208 of the Clean Water Act.
- c) All petitions for variances from Title IV of the Act or from 35 Ill. Adm. Code, Subtitle F, Ch. I (Public Water Supplies), shall indicate whether the Board may grant the relief consistent with the Safe Drinking Water Act (42 U.S.C. 300(f) et seq.) and the U.S.E.P.A. National Interim Primary Drinking Water Regulations (40 CFR 141).
- d) The petition may include an analysis of applicable federal law and legal arguments and facts which may be necessary to show compliance with federal law. If it does not and petitioner subsequently files a pleading containing such, it will be deemed an amended petition, thereby restarting the decision period. However, petitioner may, pursuant to Section 104.181, file a response to the Agency's analysis of federal laws without amending the petition.
- e) All petitions for RCRA variances shall include a showing that the Board can grant the requested relief consistent with, and establish RCRA permit conditions no less stringent than, that which would be required by the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (P.L.94-580, as amended by P.L.95-609, 42 U.S.C. 6901 et seq.), and the regulations thereunder promulgated by the United States Environmental Protection Agency (40 CFR 260, 261, 262, 263, 264, 265 and 270 (1984)). Such petitions shall indicate whether any federal provisions authorize the relief requested, and shall include any facts necessary to show that the petitioner would be entitled to the requested relief pursuant to federal law.

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

Section 104.126      RCRA Variances: Additional Material

- a) The petitioner must clearly identify a petition for a RCRA variance as such.
- b) Persons who have, or are required to have, a RCRA permit and who seek a RCRA variance which could result in modification or issuance of the RCRA permit must have on file with the Agency a RCRA permit application reflecting the requested variance prior to filing the variance petition.
- c) Petitioner shall attach to the variance petition a copy of the RCRA permit application, or such portion as may be relevant to the variance request.
- d) Petitioner shall attach to the variance petition proof of service on USEPA as required by Section 104.142.

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

SUBPART C: NOTICE AND OBJECTIONS

Section 104.141      Objections to Petition

- a) Any person may file with the Clerk, within 21 days after the filing of the petition, a written objection to the grant of the variance. Such objection may or may not be accompanied by a petition to intervene in accordance with Section 103.220. A copy of such objection shall be mailed to the petitioner and the Agency by the Clerk.
- b) Paragraph (a) does not apply to RCRA variances. Sections 104.183 and 104.200 provide for public comment and a public hearing on all such petitions.

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

Section 104.142      RCRA Variances: Notice of Filing of Petition

- a) Any petition requesting a RCRA variance shall not be deemed filed until proof of service has been filed with the Board. Petitioner shall serve the United States Environmental Protection Agency a copy of any petition requesting a RCRA variance at the following address:

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

- b) In addition to the requirements of Section 37 of the Act and Section 104.140, the Agency at a minimum shall give notice of the filing of a petition for a RCRA variance to the following persons:
- 1) Federal agencies as designated by the United States Environmental Protection Agency;
  - 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;
  - 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 104.140, the Agency shall give notice by broadcast over at least one local radio station in the area of the facility containing the information required by paragraphs (d)(2) and (d)(4) through (d)(7).
- d) The notices required by paragraphs (b) and (c) shall be accomplished within the time limit established by Section 104.140(b).
- e) A notice of the filing of a petition for a RCRA variance shall include the following information:
- 1) The address of the Board office;
  - 2) Name and address of the petitioner and, if different, of the facility for which the variance is sought;

- 3) A brief description of the business conducted at the facility and the activity described in the petition;
- 4) Name, address and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the variance petition; and
- 5) A statement that the Agency is preparing a recommendation, the date on which the recommendation is to be filed, and the name, address and telephone number of the Agency employee responsible for the recommendation;
- 6) A statement that a hearing will be held after the filing of the recommendation and that the record will remain open for written comments for 45 days after filing of the recommendation. The notice will include the address of the Board to which comments shall be mailed;
- 7) A statement that the record in the variance proceeding is available at the Board office for inspection, except those portions which are claimed to be trade secrets, and that procedures are available whereby disclosure may be sought by the public.
- 8) A statement that variances may be granted pursuant to Ill. Rev. Stat. 1983, ch. 111 1/2, pars. 1035 et seq. and 35 Ill. Adm. Code 104, and a reference to the Board regulations or order from which a variance is sought.
- 9) Any additional information considered necessary or proper.

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

SUBPART D: AUTHORIZATION OF HEARINGS

Section 104.160 Board Action on Petitions for Variance and Authorization of Hearing

- a) The Clerk shall assign a docket number to each petition filed, deposit the petition in the Board's files, and distribute copies to each Board Member.

Copies of objections to the petition, amendments, the Agency's recommendations and responses to the recommendation shall be filed and distributed as received.

- b) All petitions for variance shall be placed on the Board agenda and the Board will authorize one or more of the following actions, as they shall determine:
- 1) The petition may be dismissed if the Board determines that it is not adequate under ~~the Act~~ and Subpart B or the Act hereof; or,
  - 2) The Board may enter an order for additional information in support of the petition; or,
  - 3) The Board may accept the petition and defer decision until an Agency recommendation has been served upon the petitioner and filed with the Board; or,
  - 4) The Board may authorize a hearing on the petition.
- c) The Board shall authorize a hearing on any petition for variance, determined to be an adequate petition by the Board, in any of the following circumstances:
- 1) When a hearing is requested by the petitioner on filing the petition in accordance with Section 104.124; or,
  - 2) When an objection to the variance has been filed within 21 days after the filing of the petition in accordance with Section 104.141; or,
  - 3) When a petition for a RCRA variance has been filed; or,
  - 3) 4) When a hearing is requested by an amended petition within 7 days after receipt of the Agency recommendation by the petitioner in accordance with Section 104.181(b).
- d) When a hearing has been authorized by the Board pursuant to subsections (b)(4) or (c), the Chairman shall designate a Hearing Officer in accordance with Section 103.181(b).

- e) If no hearing has been authorized pursuant to subsections (b)(4) or (c), the Board shall act within 90 days of the filing of the petition and shall prepare an opinion stating reasons supporting the grant or denial of the petition, except that the Board shall not act to grant or deny any petition until after 21 days have elapsed from the date of filing. The decision period on RCRA, UIC and NPDES variances is as provided in Section 38(c) of the Act.
- f) No variance shall be granted, with or without hearing, without a showing by affidavits or other adequate proof by the petitioner that compliance with the regulations or Board order would impose an arbitrary or unreasonable hardship upon the petitioner.

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

SUBPART E: RECOMMENDATION AND RESPONSE

Section 104.182      RCRA Variances: Additional Information in Recommendation

- a) This section shall apply to Agency recommendations on petitions for RCRA variances in addition to the provisions of Section 104.180.
- b) The Agency shall file its recommendation with the Board within 30 days after the petition is filed.
- c) The recommendation shall include a fact sheet or statement of basis as provided in 35 Ill. Adm. Code 705.141 through 705.143, insofar as relevant to the variance requested.
- d) If the Agency recommends that the variance be granted, a partial draft permit reflecting the variance and recommended conditions shall be included with the recommendation.
- e) If the Agency recommends that the variance be denied, a notice of intent to deny shall be included with the recommendation.

- f) The Agency shall serve its recommendation on the United States Environmental Protection Agency and all persons who have notified the Agency that they intend to comment or have otherwise asked to be served a copy of the recommendation.

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

Section 104.183      RCRA Variances: Public Comment

- a) Any person, including the United States Environmental Protection Agency, may comment in writing within 45 days after the Agency files its recommendation.
- b) Comment may be on both the petition for a RCRA variance and on the recommendation.
- c) The Board will mail copies of any written comment to the petitioner, the Agency and the United States Environmental Protection Agency, unless the person filing the comment files a proof of service on the persons entitled to copies.

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

SUBPART F: HEARINGS

Section 104.200      Notice of Hearing

- a) The Hearing Officer, after appropriate consultation with the parties, shall set a time and place for hearing to be held within 60 days of the filing of the petition.
- b) The Hearing Officer shall give notice of the hearing in accordance with 35 Ill. Adm. Code Section 103.123(b), at least 21 days before the hearing to the petitioner, the Agency, and anyone who has filed an objection to the petition.
- c) The Clerk shall publish the time and place of the hearing in the Board's Environmental Register in the first publication of the Environmental Register after the Hearing Officer shall have set the date for hearing.



- d) Notice of hearings on petitions for RCRA variances shall be subject to the following provisions instead of paragraphs (a), (b) and (c):
- 1) The Hearing Officer, after appropriate consultation with the parties, shall set a time and place for the hearing to be held not less than 30 days after the filing of the recommendation. The Hearing Officer may give notice of any hearing prior to the actual filing of the recommendation. If the recommendation is actually filed less than 30 days before the scheduled date of the hearing, the Hearing Officer shall reschedule the hearing and give public notice again.
  - 2) The hearing shall be held in the County in which the facility is located, in the population center in such county closest to the facility.
  - 3) The Hearing Officer shall give notice of the hearing to the persons entitled to notice in Sections 104.140 and 104.142, and to any other persons who have commented, requested to comment or requested notice.
  - 4) Notice shall be mailed not less than 30 days before the hearing.

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

SUBPART G: FINAL ACTION

Section 104.221 RCRA Variances: Board Decision

- a) Decision periods for RCRA variances are as provided in Section 38(c) of the Act.
- b) The Board will not grant a variance from 35 Ill. Adm. Code 703, 720, 721, 722, 723, 724 or 725, or order issuance or modification of a RCRA permit, unless the procedures of this Part applicable to petitions for RCRA variances have been followed.
- c) The Board may grant a RCRA variance only to the extent consistent with, and with conditions no less stringent than, those which would be required by the Solid Waste Disposal Act as amended by the

Resource Conservation and Recovery Act, and 40 CFR 260, 261, 262, 263, 264, 265 and 270. Variances shall require compliance with the regulations in the shortest possible time.

- d) The Board's final Order may direct the Agency to issue or modify a RCRA permit with conditions which may be set forth specifically in the Order, or which may consist of general guidelines to be followed by the Agency, together with applicable regulations, in issuing a permit.
- e) The Board will send copies of its final Opinion and Order to the Agency by messenger, to the United States Environmental Protection Agency, the petitioner and any other party by certified mail, and to all other persons who have requested such information by first class mail.

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