

ILLINOIS POLLUTION CONTROL BOARD

June 14, 1984

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

PROPOSED RULE. FIRST NOTICE
PROPOSED OPINION AND ORDER OF THE BOARD (by J. Anderson):

On March 21, 1984 the Board opened this docket for the purpose of adopting procedural public comment rules to be followed in cases arising pursuant to the RCRA rules.

On April 12, 1984 the Hearing Officer entered into the record Exhibit 1, consisting of a letter dated February 10, 1984 from Valdas V. Adamkus, Regional Administrator of the United States Environmental Protection Agency (USEPA), to Richard J. Carlson, Director of the Illinois Environmental Protection Agency (Agency), together with a four page attachment containing general and specific comments concerning 35 Ill. Adm. Code 103, 104, 702, 703, and 725. The Board hereby orders entered into the record Exhibit 2, consisting of a Draft Memorandum of Agreement between the Board and USEPA, which Draft the Board has received from the Agency. The First Notice Proposal is based on these exhibits.

The Board's authority to adopt rules, decide enforcement cases and grant variances could affect modifications in RCRA permits. The Board has proposed special procedures to be invoked in such situations. The procedures are adapted from the federal procedures found in 35 Ill. Adm. Code 705, which governs issuance of RCRA permits by the Agency. The procedures provide for a draft decision, to be prepared by the Board or the Agency, followed by notice, public comment and public hearing (in enforcement cases) or the opportunity for a public hearing (in variance cases) prior to a final decision which may result in the issuance or modification of a RCRA permit.

The Part 102 amendments will require the Board to notify USEPA and follow Illinois Administrative Procedure Act notice and comment before amending the RCRA rules.

The Part 103 amendments will require the Agency to propose, or participate in the preparation of, a proposed remedy, which will be exposed to public comment and hearing before the Board enters a final order in an enforcement action which might result in issuance or modification of a RCRA permit.

The Part 104 amendments will require the Agency to file a draft permit with its recommendation. Public notice will be given of the recommendation, and the public will be allowed to comment before the Board grants a variance from the RCRA rules.

The proposed amendments of 35 Ill. Adm. Code 102, 103 and 104 are hereby adopted for first notice. The record will remain open for public comment for a period of 45 days following publication in the Illinois Register. The full text of the proposal is as follows:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER a: PROCEDURAL RULES

PART 102
REGULATORY AND OTHER NONADJUDICATIVE
HEARINGS AND PROCEEDINGS

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102.101 Applicability
102.102 Adoption of Regulations

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102.200 Revision of Proposed Regulations
102.201 Notice of Adopted Regulations
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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, 27 and 28 of the Environmental Protection Act (Ill. Rev. Stat. 1983, ch. 111 1/2, pars. 1005, 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 at 8 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) or 22.4(b) 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 an attestation that a copy of the proposal has been served on the United States Environmental Protection Agency. Service shall be made at the following address:

USEPA
Region V
230 South Dearborn Street
Chicago, Illinois 60604

(Source: Added at 8 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 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 a Notice of the proposal 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: Adopted at 8 Ill. Reg. _____, effective _____.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER a: PROCEDURAL RULES

PART 103
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103.207 Viewing of Premises
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103.221 Transcript
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103.223 Briefs and Oral Argument
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SUBPART H: RELIEF FROM FINAL ORDERS

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SUBPART I: DECISION IN CASES INVOLVING RCRA PERMITS

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103.261 Interim Order
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103.264 Stipulated Draft Remedy
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103.266 Public Comment
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103.268 Contents of Board Order

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 8 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.

Section 103.181 RCRA Settlement Procedure

- a) This Section governs settlements of enforcement actions prior to entry of an interim order pursuant to Subpart I which may involve the issuance or modification of a RCRA permit.
- b) Section 103.180 procedures shall be followed only if the proposed settlement includes a statement by the Agency that the settlement does not involve the issuance or modification of a RCRA permit.
- c) If the Agency determines that the proposed settlement involves the issuance or modification of a RCRA permit, Section 103.180 procedures shall be followed except that the proposed settlement shall:
 - 1) Include a draft permit in substantial compliance with the requirements of 35 Ill. Adm. Code 705; and
 - 2) Be submitted for public notice and comment pursuant to Subpart I, Section 103.265 and 103.266; and
 - 3) Hearing pursuant to Subpart I, Section 103.267.
- d) If the Agency is not a complainant, the Agency shall be joined as a respondent in accordance with Section 103.262 for the purpose of implementing this Section.

(Source: Added at 8 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 inconsistent with 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 the RCRA permit.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 103.261 Interim Order

- a) 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, each of which may be made pursuant to hearings in a contested enforcement action.
 - 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 proposed draft permit.
- b) The interim order is not a final order and may be appealed only with leave of the Board.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 103.262 Joinder of Agency

This Section applies if the Agency is not a party to an enforcement action involving a RCRA permit. The Agency shall be joined as a respondent upon entry of an interim order pursuant either to Section 103.261 or to Section 103.181. The Clerk shall serve a copy of the interim order on the Agency.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 103.263 Draft Permit

- a) Within 60 days after entry of an interim order, or at such other time as may be specified by the Board, the Agency shall file and serve on all parties either a proposed draft permit or a statement that no RCRA permit needs to be issued or modified.
- b) The proposed draft permit shall be in substantial compliance with the requirements of 35 Ill. Adm. Code 705.
- c) The Agency may confer with other parties and enter into agreements as to the substance of the proposed 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 shall not be followed.

(Source: Added at 8 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 (Section 103.268(c)); and
 - 2) A draft permit in substantial compliance with the requirements of 35 Ill. Adm. Code 705.

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 8 Ill. Reg. _____, effective _____.)

Section 103.265 Contents of Public Notice

a) In addition to all parties, the Agency shall serve a copy of any draft remedy on the United States Environmental Protection Agency at the following address:

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 give notice of the filing of a draft permit to the following persons:

1) Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources and over coastal zone management plans;

2) The Advisory Council on Historic Preservation and State historic preservation officers;

3) Other appropriate government authorities, including:

A) Illinois Department of Transportation;

B) Illinois Department of Conservation;

C) Illinois Department of Energy and Natural Resources.

4) Appropriate officials of other States adjacent to the County in which the facility is located.

c) In addition to the methods of notice by publication of Section 103.125, the Agency shall give notice by broadcast over local radio stations in the area of the facility.

- d) A notice of a 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 or will file a 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 proposed 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 proposed or stipulated remedy. The notice will include the address of the Board to which comments and requests for hearing shall be mailed; or,
 - 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 to be trade secrets, and that procedures are available whereby disclosure may be sought by the public.
 - 9) A description of the anticipated environmental effects of activities conducted under the proposed or stipulated remedy.
 - 10) A statement that enforcement actions are considered pursuant to Ill. Rev. Stat. 1983, ch. 111 1/2, pars. 1030 et seq.
 - 11) Any additional information considered necessary or proper.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 103.266 Public Comment

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

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 103.267 Hearing

The following shall apply in addition to Section 103.125:

- 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 45 days after the filing or anticipated filing of the proposed 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 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.
- d) Notice shall be mailed not less than 30 days before the hearing.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 103.268 Contents of Board Order

The Board's final order in an enforcement action involving issuance or modification of a RCRA permit shall include a finding of violation and may include the following:

- a) A monetary penalty;
- b) Mandatory orders, which may include, but which are not limited to, the following examples:
 - 1) An order to cease and desist conducting regulated activities;

- 2) An order to close a facility or unit;
 - 3) An order to execute a post-closure care plan;
 - 4) A compliance plan, including a time schedule to assure compliance with regulations in the shortest possible time;
 - 5) A performance bond;
 - 6) An order to apply for a permit or permit modification;
 - 7) An order revoking a permit.
- c) An order directing the Agency to issue or modify a 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.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER a: PROCEDURAL RULES

PART 104
VARIANCES

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104.120 Petition for Variance
104.121 Contents of Variance Petition
104.122 Consistency with Federal Law
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104.124 Hearing Request or Waiver; Affidavit
104.125 Dismissal for Inadequacy
104.126 RCRA Variances: Additional Material

SUBPART C: NOTICE AND OBJECTIONS

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104.140 Notice of Petition
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SUBPART D: AUTHORIZATION OF HEARINGS

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104.160 Board Action on Petitions for variance and
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SUBPART E: RECOMMENDATION AND RESPONSE

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104.180 Agency Investigation and Recommendation
104.181 Response or Amended Petition
104.182 RCRA Variances: Additional Information in
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SUBPART F: HEARINGS

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104.200 Notice of Hearing
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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 at 8 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 is titled "variance petition", or which is deemed such by the Board, and 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 modify any provision of a RCRA permit.
- b) Some procedures which are referred to as "variances" in the federal RCRA rules (40 CFR 260, 261, 262, 263, 264, 265 and 270) may be granted by the Agency pursuant to permit modification procedures if the applicable Board rule so provides. Board variances are granted on a showing of arbitrary or unreasonable hardship, require a compliance plan and are temporary. The Board may grant permanent relief from a rule pursuant to 35 Ill. Adm. Code 102.
- c) 35 Ill. Adm. Code 105 provides for Board review of the Agency's denial of permits or issuance with conditions.

(Source: Added at 8 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, those which would be required by the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580, as amended by Pub. L. 95-609, 42 U.S.C. 6901), and the regulations thereunder promulgated by the United States Environmental Protection Agency (40 CFR 260, 261, 262, 263, 264, 265 and 270). 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 8 Ill. Reg. _____, effective _____.)

Section 104.126 RCRA Variances; Additional Material

- a) Persons who have, or are required to have, a RCRA permit and who seek a RCRA variance for the facility which would 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.
- b) A copy of the RCRA permit application, or such portion as may be relevant to the variance request, shall be attached to the variance petition.

(Source: Added at 8 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.
 - 1) A hearing will be held on a petition for a RCRA variance if any person requests a hearing within 45 days after the Agency files its recommendation.
 - 2) Any person, including the United States Environmental Protection Agency, may comment in writing on a petition for a RCRA variance within 45 days after the Agency files its recommendation.
 - 3) Copies of any comment or request for hearing will be mailed to the petitioner, the Agency and the United States Environmental Protection Agency, unless the person filing the comment or request files a proof of service on the persons entitled to copies.

(Source: Amended at 8 Ill. Reg. _____, effective _____.)

Section 104.142

RCRA Variances: Notice of Filing of
Petition

- a) Petitioner shall serve the United States Environmental Protection Agency a copy of any petition requesting a RCRA variance. Such petition shall not be deemed filed until proof of such service has been filed with the Board. Service shall be made at the following address:
- USEPA
Region V
230 South Dearborn Street
Chicago, IL 60604
- b) In addition to the requirements of the Act and Section 104.140, the Agency shall give notice of the filing of a petition for a RCRA variance to the following persons:
- 1) Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources and over coastal zone management plans;
 - 2) The Advisory Council on Historic Preservation and State Historic Preservation Officers;
 - 3) Other appropriate government authorities, including:
 - A) Illinois Department of Transportation;
 - B) Illinois Department of Conservation;
 - C) Illinois Department of Energy and Natural Resources.
 - 4) Appropriate officials of other States adjacent to the County in which the facility is located.
- c) In addition to the methods of notice by publication of Section 104.140, the Agency shall give notice by broadcast over local radio stations in the area of the facility.
- d) Notices of RCRA variances 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 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, and the name, address and telephone number of the Agency employee responsible for the recommendation;
- 6) A statement that a hearing will be held if any person requests one in writing within 45 days 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 and requests for hearing 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 description of the anticipated environmental effects of activities conducted under the variance.
- 9) 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 from which a variance is sought.
- 10) Any other available information which may assist the public in evaluating the likely impact of the proposed activity upon the integrity of the receiving water, land or air.
- 11) Any additional information considered necessary or proper.

(Source: Added at 8 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 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 request for a hearing on a petition for a RCRA variance has been filed within 45 days after the filing of the recommendation, in accordance with Section 104.141; 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 8 Ill. Reg. _____, effective _____.)

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 recommendation shall include a fact sheet or statement of basis as provided in 35 Ill. Adm. Code 705.141 through 705.143.
- c) If the Agency recommends that the variance be granted, a draft permit reflecting the variance and recommended conditions shall be included with the recommendation.
- d) The recommendation shall be served 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.

- e) The recommendation shall be filed within 30 days after the petition is filed, and at least 45 days before the end of the public comment period on the petition, and at least 45 days before a public hearing is held. If necessary, the public comment period shall be extended and additional public hearings scheduled.
- f) If the Agency does not recommend that the variance be granted, subsections c), d) and e) will not be implemented unless the Board orders otherwise.
- g) Any person may comment on the recommendation in writing or at any public hearing within 45 days after its filing.

(Source: Adopted at 8 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 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 45 days after the filing or anticipated filing of the recommendation.
 - 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 8 Ill. Reg. _____, effective _____.)

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 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.
- c) The Board's final Order may direct the Agency to issue 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.
- d) Copies of the Board's final Opinion and Order shall be served upon the United States Environmental Protection Agency and all persons who have participated in the variance proceeding.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Proposed Opinion and Order was adopted on the 14th day of June, 1984 by a vote of 6-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board