

ILLINOIS POLLUTION CONTROL BOARD
April 30, 1987

IN THE MATTER OF:)		
)		
PROCEDURAL RULES)	R82-27	
)	R82-36	Consol.
)	R83-37	

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

The Board hereby adopts the following amendments to Title 35: Environmental Protection; Subtitle A: General Provisions; Chapter I: Pollution Control Board; Part 103. However, the Clerk is directed not to submit these rules for first notice publication until such time as the remaining rules in this subtitle are similarly adopted. The rules as hereby amended follow:

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

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APPENDIX A Old Rule Numbers Referenced (Repealed)

AUTHORITY: Implementing Sections 5, 31, 32 and 33 and authorized by Section 26 of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111^{1/2}, pars. 1005, 1031, 1032, 1033 and 1026)

SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part III, Enforcement Proceedings, in R70-4, at 1 PCB 43, October 6, 1970; amended 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 9 Ill. Reg. 1383, effective January 16, 1985; 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 103
 ENFORCEMENT PROCEEDINGS

SUBPART A: GENERAL PROVISIONS

Section 103.101 Applicability

The Rules in this Part apply where applicable to proceedings to adjudicate alleged violations of the Environmental Protection Act (Act), regulations, and orders of the Board, permit appeal and variance petitions. 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

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

SUBPART B: COMPLAINT, SERVICE AND AUTHORIZATION
OF HEARING

Section 103.120 Who May Initiate

An enforcement proceeding may be ~~commenced~~ initiated by any person.

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

Section 103.121 Parties

- a) The person initiating an enforcement proceeding shall be designated the complainant. Any adverse party shall be designated the respondent.
- b) Misnomer of a party is not a ground for dismissal; the name of any party may be corrected at any time.
- c) If a complete determination of a controversy cannot be had without the presence of other parties, the Board or Hearing Officer shall order them to be brought in. joined as a party. If a person not a party has an interest which the order may affect, the Board or Hearing Officer may order him to be made joined as a party. The Board shall provide the joined party with service of process and copies of all pleadings filed prior to the joinder. Service of process and subsequent pleadings shall be had as directed by Section 35 Ill. Adm. Code 103.123.

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

Section 103.122 Notice, Formal Complaint, and Answer

- a) An enforcement action shall be commenced by the service of a notice and formal complaint upon all respondents and the filing of 10 copies of the notice and formal complaint with the Clerk.
- b) The notice shall be directed to the respondents notifying them of the filing of the accompanying complaint and that they may be required to attend a hearing at a date set by the Board.

c) The formal complaint shall contain:

- 1) A reference to the provision of the Act and regulations which the respondents are alleged to be violating;
- 2) The dates, location, events, nature, extent, duration and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations. The complaint shall advise respondents of the extent and nature of the alleged violations so as to reasonably allow preparation of a defense; and
- 3) A concise statement of the relief which the complainant seeks;
- 4) If the complainant is the Agency, such complaint shall be accompanied by a notification to the respondent that financing may be available through the Illinois Environmental Financing Facilities Act, to correct such violation.
- 5) If the complainant is a citizen, such complaint shall contain a verified statement that it does not duplicate allegations identical or substantially similar to matters brought in another forum or previously brought before the Board.

d) Respondent ~~may~~ shall file an answer within 30 days of receipt of the complaint. All material allegations of the complaint shall be taken as ~~denied~~ admitted if not specifically ~~admitted~~ denied by the answer, or if no answer is filed. Any facts constituting an affirmative defense which would be likely to take the complainant by surprise must be plainly set forth prior to hearing in the answer or in a supplemental answer filed pursuant to section 35 Ill. Adm. Code 103.210(b).

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

Section 103.123 Service

- a) A copy of the notice and complaint shall either be served personally on the respondent or his authorized agent, or shall be served by registered or certified mail or by messenger service with return receipt signed by the respondent or his the respondent's authorized agent. Proof of service shall be made by affidavit of the person making personal service, or by properly executed registered or certified mail or messenger service receipt. Proof of service of the notice and

complaint and shall be filed with the Clerk immediately upon completion of service.

- b) After notice and complaint, all pleadings, motions and discovery notices and all other notices shall be served personally or by First Class United States mail or by messenger service, and ~~10~~ Ten copies of pleadings and motions shall be filed with the Clerk with proof of service an affidavit that service was made in accordance with this subsection. Two copies of any discovery motion, deposition, interrogatories, answer to interrogatories, notice or subpoena shall be filed with the Clerk with proof of service.
- c) Service by mail is presumed complete four days after mailing.

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

Section 103.124 Authorization of Hearing

- a) The Clerk shall assign a docket number to each complaint filed, deposit the complaint and notice in the Board's files, and distribute copies to each Board Member. If the complaint is filed by a person other than the Agency or DNS, the Clerk shall also send a copy to the Agency or DNS. ~~the Chair shall place the matter on the agenda for Board determination whether the complaint is duplicitous or frivolous. If the Board rules that the complaint is duplicitous or frivolous, it shall enter an order setting forth its reasons for so ruling and shall notify the parties of its decision. If the Board rules that the complaint is not duplicitous or frivolous, this does not preclude the filing of motions regarding the insufficiency of the pleadings.~~
- b) ~~If~~ Unless the Board ~~rules~~ determines that the complaint is ~~not~~ duplicitous or frivolous, or if the complaint is filed by the Agency or DNS, the Chairman shall designate a Hearing Officer and the Clerk shall notify the parties of such designation. The Hearing Officer may be a member of the Board if otherwise qualified.
- c) If the Board determines that the complaint is duplicitous or frivolous, it shall enter an order setting forth its reason for so ruling and shall notify the parties of its decision. Any Board determination concerning the duplicitousness or frivolousness of the complaint does not preclude the filing of motions regarding the insufficiency of that complaint.

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

Section 103.125 Notice of Hearing

- a) The Hearing Officer, after appropriate reasonable consultation with the parties, shall set a time and place for hearing to be held within 90 days after the filing of the complaint unless the Board orders otherwise.
- b) The hearing shall be held in the county in which the alleged violation occurred or in such other county as the Hearing Officer shall for stated cause designate. The Clerk shall give notice of the hearing at least 21 days before the hearing to:
 - 1) All persons on the Board's mailing list by notice By publication in the Board's Environmental Register, or by special mailing; and
 - 2) Except when the Agency is complainant, at least 21 days before the hearing by public advertisement in a newspaper of general circulation in the county in which the cause of action arose.
- c) The Hearing Officer shall give notice of the hearing, at least 21 days before the hearing, to the parties in accordance with Section 35 Ill. Adm. Code 103.123(b).
- d) The Agency, when complainant, shall give notice of each complaint and hearing at least 21 days before the hearing to:
 - 1) Any person who has complained to the Agency with respect to respondent within six months preceding the date of the complaint;
 - 2) Any person in the county in which the alleged offending activity occurred who has requested notice of enforcement proceedings;
 - 3) The public, by public advertisement in a newspaper of general circulation in the county in which the cause of action arose; and
 - 4) Such other persons as required by law.
- e) Failure to comply with the provisions of this section may not be used as a defense to an enforcement action, but any person adversely affected by such failure of compliance may upon motion to the Hearing Officer have the hearing postponed if prejudice is shown.
- f) Whenever a proceeding before the Board may affect the right of the public individually or collectively to the

use of community sewer or water facilities provided by a municipally owned or publicly regulated company, the Board shall at least 30 days prior to the scheduled date of the first hearing in such proceeding, give notice of the date, time, place and purpose of such hearing by public advertisement in a newspaper of general circulation in the area of the State concerned.

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

SUBPART C: MOTIONS, JOINDER AND INTERVENTION

Section 103.140 Filing of Motions and Responses

- a) All motions preliminary to a hearing shall be presented to the Board or to the Hearing Officer at least 14 days prior to the date of the hearing unless otherwise allowed by the Board or Hearing Officer. Unless made orally on the record during a hearing or unless the Hearing Officer directs otherwise, a motion shall be in writing, shall clearly designate whether a ruling is requested from the Hearing Officer or the Board, shall state the reasons for and grounds upon which the motion is made, and may shall be accompanied by any affidavits or other evidence relied on and, when appropriate, by a proposed order. All written motions by complainant to voluntarily dismiss an enforcement action shall be accompanied by affidavit attesting to the truth of the facts alleged. All motions must be served on all parties, including the Hearing Officer, with proof of service in accordance with 35 Ill. Adm. Code 103.123(b).
- b) Within 7 days after service of a written motion, or such other period as the Board or Hearing Officer may prescribe, a party may file a response in support of or in opposition to the motion, accompanied by affidavits or other evidence. If no response is filed, the parties shall be deemed to have waived objection to the granting of the motion, but such waiver of objection does not bind the Board in its determination. The moving party shall not have the right to reply, except as permitted by the Hearing Officer or the Board.
- c) No oral argument will be heard on a motion may be permitted before the Board, at its discretion unless the Board so directs. A written brief may be filed with a motion or an answer to a motion, stating the arguments and authorities relied on.

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

Section 103.141 Motions to Dismiss

- a) All motions preliminary to a hearing shall be presented to the Board or to the Hearing Officer at least 14 days prior to the date of the hearing, or on such other date as the Hearing Officer or the Board shall designate. All motions by respondent to dismiss or strike the complaint or challenging the jurisdiction of the Board shall be filed within 14 days after receipt of complaint, unless otherwise allowed by the Board. shall be directed to the Board and shall be disposed of prior to hearing on the complaint, subject, however, to subsections (e) and (i). Motions by complainant to voluntarily dismiss an action against any or all parties as to any or all claims shall be directed to the Board and may be made orally upon the hearing record, or may be made in writing at any time prior to issuance of the Board's decision. All motions must be served on all parties, including the Agency and its representative and the Hearing Officer designated by the Board, with proof of service. Oral argument on motions before the Board shall be permitted only by order of the Board.
- b) Any party may participate in the proceedings without forfeiting any jurisdictional objection, if such objection is raised at or before the time the respondent files his initial pleading or motion, or, if no pleading or motion is made, within 14 days after receipt of the complaint. All jurisdictional objections shall conform to the requirements of subsection (a).
- c) Motions by complainant to voluntarily dismiss an action against any or all parties as to any or all claims shall be directed to the Board and may be made at any time prior to issuance of the Board's decision. All written motions by complainant to voluntarily dismiss an enforcement action shall be accompanied by an affidavit attesting to the truth of the facts alleged.

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

Section 103.142 Disposition of Motions

- a) The Hearing Officer shall rule upon all motions, except that he shall have no authority to ~~dismiss, or rule upon a~~ any motion to dismiss, or to decide a proceeding on the merits, or for failure to state a claim, or for want of jurisdiction, or to strike any claim or defense for insufficiency or want of proof. The Hearing Officer shall refer any such motions to the Board. pursuant to paragraph (a). ~~Notwithstanding the provisions of paragraph (a) above,~~ The Board, in its discretion, may direct that hearing on the proceeding be conducted and, in its discretion, may take all motions directed to it

with the case. This conditional ruling by the Board shall not foreclose a party from advancing the same contentions as to jurisdiction or adequacy of the complaint upon the completion of the hearing. When ruling on a motion by complainant for voluntary dismissal of an action the Board shall, for reasons stated in its Order, dismiss the action without leave to reinstate if justice so demands. Among the factors to be considered in making such a determination are evidence and arguments concerning the action's age and procedural history, and the prejudicial effects, if any, of dismissing the action with leave to reinstate.

b) When ruling on a motion by complainant for voluntary dismissal of an action the Board shall, for reasons stated in its Order, dismiss the action without leave to reinstate if justice so demands. Among the factors to be considered in making such a determination are evidence and arguments concerning the action's age and procedural history, and the prejudicial effects, if any, of dismissing the action with leave to reinstate.

cb) No interlocutory appeal of a motion may be taken to the Board from a ruling of the Hearing Officer, except by allowance of the Board after motion filed by a party or the Hearing Officer. When in the judgment of the Hearing Officer prompt decision immediate appeal of any order is necessary to prevent harm to the public interest or to avoid unusual delay or expense, the Hearing Officer may refer the ruling promptly to the Board and notify the parties either by announcement on the record or by written notice if the hearing is not in session.

de) Rulings of the Hearing Officer may be reviewed by the Board after conclusion of the hearing, but will be set aside only to avoid material prejudice to the rights of a litigant. The Hearing Officer, if a member of the Board, may vote upon motions to review his rulings as Hearing Officer.

ed) Unless otherwise provided herein or ordered by the Board, neither the filing of a motion nor the certification of a question to the Board shall stay the proceeding or extend the time for the performance of any act.

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

Section 103.143 Continuances

a) A motion for continuance of an enforcement, variance or permit appeal proceeding shall may be granted by the Hearing Officer whenever as justice may require. All

motions for continuance must be supported by an affidavit or written motion before the Hearing Officer by the person or persons having knowledge of the facts supporting the motion. Provided, however, that if the Board determines, in its discretion, that an ~~variance petition, permit appeal or~~ enforcement case is not proceeding expeditiously to a conclusion, the Board shall order such actions as it deems appropriate to reach an expeditious conclusion.

- b) ~~No continuance shall be granted to the petitioner for any variance or permit appeal proceeding unless the deadline for final Board action, whenever applicable, is extended by the petitioner for a like period, as a minimum.~~

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

Section 103.144 Consolidation and Severance of Claims and Joining Additional Parties

In the interest of convenient, expeditious, and complete determination of claims, the Board may consolidate or sever enforcement, variance, permit or other adjudicative claims involving any number of parties, and may order additional parties to be brought in pursuant to the provisions of Section 103.121(c).

Section 103.145 Intervention

- a) Upon timely ~~written~~ application and subject to the necessity for conducting an orderly and expeditious hearing, the Hearing Officer shall permit any person to intervene in an enforcement proceeding when either of the following conditions is met:
- 1) The applicant is so situated that he the applicant may be adversely affected by a final order of the Board; or
 - 2) An applicant's claim or defense and the enforcement proceeding involve a common question of law or fact.
- b) Ten (10) copies of a petition for intervention shall be filed with the Board and the applicant shall also serve copies on each party. ~~not later than 48 hours prior to the date set for hearing.~~ The Hearing Officer may permit intervention at any time ~~before the beginning of the hearing~~ when good cause for delay is shown. Upon allowance of intervention the Hearing Officer shall notify the parties and the Clerk and may allow a

continuance of the hearing to enable adequate pre-hearing procedures as justice may require.

- c) An intervenor shall have all the rights of an original party, except that the intervenor shall be bound by orders ~~theretofore~~ previously issued and shall not raise issues which actually were raised or were required to be raised at an earlier stage of the proceeding.
- d) Whenever a proceeding before the Board may affect the right of the public individually or collectively to the use of community sewer and water facilities provided by a municipally owned or publicly regulated company, all persons claiming an interest shall have the right to intervene as parties pursuant to this section and present evidence of such social and economic impact.

SUBPART D: DISCOVERY, ADMISSIONS AND SUBPOENAS

Section 103.160 Pre-hearing Conferences

- a) Upon written notice by the Hearing Officer's own motion, or upon motion by a party, the Hearing Officer may, upon written notice, direct the in an proceeding, parties or their attorneys ~~may be directed~~ to appear at a specified time and place for a conference, prior to or during the course of hearing for the purposes of:
 - 1) Simplifying the issues;
 - 2) Amending the pleadings for clarification, amplification, or limitation;
 - 3) Making admissions of facts or stipulating to the admissibility of any matters to expedite the hearing;
 - 4) Limiting the number of witnesses;
 - 5) Exchanging prepared testimony and exhibits; and
 - 6) Aiding in the simplification of the evidence and disposition of the proceeding.
- b) Action taken at the pre-hearing conference shall be noted in the hearing record by the Hearing Officer, unless the parties enter upon written stipulation as to such matters, or agree to a statement in another appropriate ruling.

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

Section 103.161 Discovery

- a) Regarding any matter not privileged, the Hearing Officer shall have the authority to order discovery upon the written request of any party when parties cannot agree to the legitimate scope of discovery. The Hearing Officer shall set a schedule for the orderly submission of discovery and shall file a copy of the schedule with the Clerk. It is not a ground for objection that the testimony will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence or is relevant to the subject matter involved in the pending action. The Hearing Officer shall order:
- 1) The production of the identity and location of persons having knowledge of relevant facts.
 - 2) The taking of the deposition of any witness including expert witnesses expected to testify at the hearing.
 - 3) The taking of the interrogatory of any party.
 - 4) The production of evidence under the control or possession of any party for the purposes of inspection and where necessary for purposes of copying or duplication. This shall include the right of reasonable inspection of premises of any party.
- b) The Hearing Officer may at any time on his own initiative, or on motion of any party or witness, make a protective order as justice requires, denying, limiting, conditioning or regulating discovery to prevent unreasonable delay, expense, harassment, or oppression, or to protect materials from disclosure by the party obtaining such materials consistent with the provisions of Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 101.107 and 120.
- c) All depositions and interrogatories taken pursuant to this section shall be for purposes of discovery only, except as herein provided. Depositions and interrogatories may be used for the following purposes:
- 1) Impeachment of the testimony of the deposed or interrogated person; and as or
 - 2) Admissions of the deposed or interrogated person;
or

- 3) Upon application to the Hearing Officer either before or after the taking of such deposition or interrogatories and upon a showing at the time of the hearing that the person deposed or interrogated will not be available to participate in the hearing because of death, age, sickness, infirmity, absence from the country or other exceptional circumstances, the Hearing Officer may order that the deposition or interrogatories be used as evidence in the hearing.
- d) Upon transcription of the deposition, it shall be made available to the deponent for examination, unless his signature is waived by him and by the parties who are represented at the deposition. Any changes in form or substance which the deponent desires to make shall be entered upon the deposition by the Hearing Officer with a statement of the reasons given by the deponent making them. The deposition shall then be signed by the deponent unless he is ill or cannot be found or refuses to sign, in which event the Hearing Officer's certificate shall state the reason for the omission of the signature.
- e) In addition to the limitations in (c) above, Aa party at hearing may exclude by objection those portions of any deposition which contain evidence that would be excluded if the witness were testifying in person.
- f) All objections to rulings of the Hearing Officer shall be made in the record. When, in the judgment of the Hearing Officer prompt decision by the Board is necessary the Hearing Officer may request the Board to rule on the objection. The Board shall grant or deny the objection or in its discretion rule that the Hearing Officer's ruling be conditionally upheld and take the objection with the case. Any ruling by the Board to grant or deny the objections or to conditionally uphold the ruling of the Hearing Officer shall not relieve the objecting party of otherwise complying with the requirements of Section 103.140(e).
- g) SubSection 103.140(b), (c), (d), (e), (g), (h) and (i) 103.142 shall apply regarding procedures for ruling on objections.
- h) Failure to comply with any ruling shall subject the persons to sanctions under Part 107 35 Ill. Adm. Code 109.

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

- a) Request for Admission of Fact. A party may serve on any other party, ~~no sooner than 21 days after filing of the complaint,~~ a written request for the admission by the ~~latter~~ of the truth of any specified relevant fact set forth in the request.
- b) Request for Admission of Genuineness of Document. A party may serve on any other party, ~~no sooner than 21 days after filing of the complaint,~~ a written request for admission of the genuineness of any relevant documents described in the request. Copies of the document shall be served with the request unless copies have already been furnished.
- c) Admission in the Absence of Denial. Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 2028 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters or written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission. If good faith requires that a party deny only a part, or requires qualification, of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder. Any objection to a request or to an answer shall be heard by the Hearing Officer upon prompt notice and motion of the party making the request.
- d) Effect of Admission. Any admission made by a party pursuant to request under this section is for the purpose of the pending action only. It does not constitute an admission by ~~him~~ the party for any other purpose and may not be used against ~~him~~ the party in any other proceeding.
- e) Expenses of Refusal to Admit. If a party, after being served with a request to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter of fact, he may apply to the Board for an order under ~~Part 107~~ 35 Ill. Adm. Code 109.

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

Section 103.163 Subpoenas

- a) Upon timely motion to the Board by any party, or on motion of the Hearing Officer or the Board, ~~t~~The Hearing Officer or the Board shall issue a subpoena for attendance at a deposition or a hearing upon written motion by any party. The subpoena may include a command to produce evidence reasonably necessary to resolution of the matter under consideration, subject to the limitations on discovery prescribed by this ~~Chapter~~ Part. A copy of the subpoena shall be served upon the Clerk for Board files. If the witness is a non-resident of the state, the order may provide such terms and conditions in connection with his appearance at the hearing as are just, including payment of his reasonable expenses.
- b) Every subpoena shall state the title of the action and shall command each person to whom it is directed to attend and give testimony at the time and place therein specified.
- c) The Hearing Officer or the Board, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if it is unreasonable and oppressive.
- d) Failure of any witness to comply with a Board subpoena shall subject the witness to sanctions under ~~Part 107 35~~ Ill Adm. Code 109.

(Source: Amended 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;
 - 5) The proposed penalty with an explanation as to how the penalty figure was reached.
- 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 _____)

Section 103.181 Definitions

As used in 35 Ill. Adm. Code 103.182 through 103.186, the following terms mean:

- a) Approval: A finding by the Agency that the Respondent's written statement has established that it has performed

or achieved the compliance item on or before the compliance date.

b)

Compliance Item: An action or goal included in the written settlement which is to be performed or achieved by the Respondent, including but not limited to:

- 1) The commencement of construction of additional control measures or the completion of such construction;
- 2) The filing of an application for a permit;
- 3) The obtaining of or contracting for a properly certified operator; and
- 4) Compliance with the Act, Board regulations or permit conditions.

c)

Compliance Date: The calendar date specified in the written settlement for performance or achievement of a compliance item.

d)

Disapproval: A finding by the Agency that the Respondent's written statement has failed to establish that it has performed or achieved the specified compliance item on or before the compliance date.

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

Section 103.182

Contingent Penalty

a)

Upon agreement of the parties and upon approval by the Board the written settlement may provide for the imposition of a contingent penalty.

b)

The contingent penalty may consist of the payment of a monetary amount upon the Respondent's failure to perform or achieve one or more specified compliance items on or before the compliance date. The contingent penalty may be in the form of a lump sum amount or a per diem amount based upon the time period commencing with the compliance date and ending on the date when the compliance item is performed or achieved.

c)

A contingent penalty may be imposed only where the written settlement, at a minimum, contains the following provisions:

- 1) A listing of which compliance items which are the subject of the contingent penalty.

- 2) A compliance date for each compliance item subject to the contingent penalty.
- 3) That the Respondent shall file a written statement with the Agency, which shall establish the performance or achievement of the compliance item on or before the compliance date, within fourteen days after each compliance date set forth in subsection(c)(2).
- 4) In the case of a per diem contingent penalty, that the Respondent shall file a written statement with the Agency, which shall establish the performance of or achievement of the compliance item and the date upon which the compliance item was performed or achieved, within fourteen days of the issuance date of a request by the Agency for such statement. The Agency may request the filing of such statement at any time following the compliance date.
- 5) The identity and location of the Agency unit which is to receive the Respondent's written statement.

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

Section 103.183

Determination of Compliance

- a) Within sixty days of the filing date of the written statement required pursuant to 35 Ill. Adm. Code 103.182(c)(3) or (c)(4) the Agency shall issue a written determination providing an approval or disapproval of the written statement. In the event that the Agency's written determination constitutes a disapproval, the written determination shall contain a statement of reasons and a statement of the penalty amount payable as of the date the written determination is issued, as calculated in accordance with the provisions of the written settlement.
- b) In the event that the Respondent does not timely file the statement required by 35 Ill. Adm. Code 103.182(c)(3) or (c)(4), the Agency shall issue its written determination pursuant to subsection(a) within sixty days following the compliance date.

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

Section 103.184

Uncontested Determinations and Order for Payment

- a) No less than thirty-five days following the issuance of the Agency's determination of disapproval pursuant to 35 Ill. Adm. Code 103.183(a), and in the event that the Respondent has not filed a timely petition for review pursuant to 35 Ill. Adm. Code 103.185, the Agency shall submit to the Board a written request that it issue an order for payment of the contingent penalty in the amount stated in the Agency's written determination. This submission shall also contain a copy of the Respondent's written statement and the Agency's written determination.
- b) The Board shall order the payment of the contingent penalty upon a finding that the procedural requirements of 35 Ill. Adm. Code 103.183 and 103.184(a) have been complied with by the Agency.

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

Section 103.185 Contested Determinations

- a) In case of a disapproval to which the Respondent objects, a Respondent who seeks to appeal the Agency determination shall file a petition for hearing before the Board within thirty-five days of the issuance date of the Agency's written determination.
- b) The petition shall include:
 - 1) A citation of the particular compliance item which is the subject of the appeal;
 - 2) A complete and precise description of the facility, equipment, vehicle, vessel, or aircraft which was the subject of the compliance item, including its location;
 - 3) Such other materials as may be necessary to demonstrate the performance or achievement of the compliance item; and
 - 4) The date of compliance.
- c) The method of filing service shall be in accordance with 35 Ill. Adm. Code 103.122 and 103.123.
- d) The Agency shall appear and shall, within fourteen days, upon notice of the petition, file with the Board the entire Agency record of the written determination, including:

- 1) The Respondent's statement made pursuant to 35 Ill. Adm. Code 103.182(c)(4).
 - 2) Correspondence with the Respondent.
 - 3) The Agency's written determination made pursuant to 35 Ill. Adm. Code 103.183(a) or (b).
 - 4) Agency documents relevant to the question of whether the Respondent achieved or performed the compliance item on or before the compliance date.
 - 5) Proof of service upon respondent.
- e) The proceedings shall be in accordance with the rules set forth in this Part.

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

Section 103.186 Scope of Board Review

- a) The Board shall rule upon whether the Respondent established that it performed or achieved the compliance item on or before the compliance date or established any defenses. The Respondent shall have the burden of proof.
- b) The decision of the Board shall be based exclusively on the record before the Agency and the record of the hearing before the Board, if any, unless the parties agree to supplement the record.
- c) Should the Board uphold the Agency's written determination, the Board may order the payment of a penalty based upon the evidence in the record. The contingent penalty specified in the Agency's written determination shall be presumed fair and reasonable.

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

SUBPART F: CONDUCT OF HEARINGS AND RULES OF EVIDENCE

Section 103.200 Authority of Hearing Officer

The Hearing Officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear and complete record. He in addition to the powers enumerated in 35 Ill. Adm. Code 103.160 and 103.161, the Hearing Officer shall have all

powers necessary to these ends including (but not limited to) the authority to:

- a) Issue discovery orders;
- b) Rule upon objections to discovery orders;
- c) Make such protective orders as justice requires, denying, limiting, conditioning or regulating discovery to prevent unreasonable delay, expense, harassment, or oppression, or to protect materials from disclosure by the party obtaining such materials;
- d) Hold pre-hearing conferences for settlement, simplification of the issues, or any other proper purposes;
- ae) Administer oaths and affirmations;
- bf) Rule upon offers of proof and receive evidence and rule upon objections to the introduction of evidence; **subject to Section 103.203;**
- cg) Regulate the course of the hearings and the conduct of the parties and their counsel;
- dh) Examine witnesses for the sole purpose of clarifying the record established by the parties at the hearing. When any party is not represented by counsel, the hearing Officer may examine and cross examine any witness to insure a clear and complete record. However, the Hearing Officer may not exclude exhibits or other testimony as a result of his examination unless all parties so agree;
- ei) Except as otherwise provided in 35 Ill. Adm. Code 103.142, consider and rule **as justice may require** upon motions. **appropriate to an adjudicative proceeding**

Section 103.201 Authority of Board Members and Board Assistants

Any Board Member or assistant to the Board who is an attorney licensed to practice in Illinois present at the hearing may advise the Hearing Officer and may interrogate witnesses but shall not have the authority to rule on objections or motions or to overrule the Hearing Officer during the hearing.

Section 103.202 Order of Enforcement Hearings

The following shall be the order of all enforcement hearings, subject to modification by the Hearing Officer for good cause:

- a) Presentation, argument, and disposition of motions preliminary to a hearing; **on the merits of the matters raised in the complaint**
- b) Presentation of opening statements;
- c) Complainant's case in chief;
- d) Respondent's case in chief
- e) Complainant's case in rebuttal;
- f) Statements from interested citizens, as **authorized by the Hearing Officer provided by 35 Ill. Adm. Code 103.203;**
- g) Complainant's **opening closing** argument, which may include legal argument;
- h) Respondent's closing argument, which may include legal argument;
- i) Complainant's **closing rebuttal** argument, which may include legal argument;
- j) Presentation and argument of all motions prior to submission of the transcript to the Board; and
- k) A schedule for submission of briefs to the Board.

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

Section 103.203 Conduct of Hearing

- a) All hearings under this Part shall be public~~7~~, and The Hearing Officer shall permit any person not a party and not otherwise a witness for a party may to submit written statements or reasonable oral testimony relevant to the subject matter of the hearing. Any person submitting such a statement or testimony shall be subject to cross-examination by any party. If such person is not available for cross-examination upon timely request, the written statement or testimony may be stricken from the record. The Hearing Officer shall permit any person to offer reasonable oral testimony whether or not a party to the proceedings.
- b) All witnesses shall be sworn.
- c) Whenever a proceeding before the Board may affect the right of the public individually or collectively to the use of community sewer or water facilities provided by a

municipally owned or publicly regulated company, evidence of any social and economic impact which would result from restriction or denial of the right to use such facilities shall be admissible in such proceeding. The Hearing Officer shall allow all persons claiming an interest to intervene as parties pursuant to Section 103.1425 and to present evidence of such social and economic impact.

- d) Upon the conclusion of the hearing, the Hearing Officer shall make a statement as to the credibility of the witnesses. This statement shall be based upon ~~his~~ the Hearing Officer's legal judgment and experience and shall indicate whether ~~he~~ the Hearing Officer finds credibility to be at issue in the case and if so, the reasons why. This statement shall become a part of the official record and shall be transmitted by the Hearing Officer to each of the parties in the case. No other statement shall be made or be appropriate unless otherwise ordered by the Board.

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

Section 103.204 Admissible Evidence

- a) The Hearing Officer shall receive evidence which is admissible under the rules of evidence as applied in the courts of Illinois pertaining to civil actions except as these rules otherwise provide. The Hearing Officer may receive evidence which is material, relevant and would be relied upon by reasonably prudent persons in the conduct of serious affairs provided that the rules relating to privileged communications and privileged topics shall be observed.
- b) When the admissibility of evidence depends upon an arguable interpretation of substantive law, the Hearing Officer shall admit such evidence.
- c) ~~Upon stipulation of the parties,~~ The Hearing Officer may order the record of any relevant prior proceeding before the Board or part thereof incorporated into the record of the present proceeding provided that the party requesting such incorporation has provided the Hearing Officer or Clerk with copies of the record or partial record to be incorporated. Accordingly, the Hearing Officer shall direct the Clerk to physically incorporate the entire or appropriate portions of the record constituting such prior proceeding into the present proceeding.
- d) Relevant scientific or technical articles, treatises or materials may be introduced into evidence subject to

refutation or disputation through any introduction of comparable documentary evidence or expert testimony.

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

Section 103.205 Written Narrative Testimony

Written narrative testimony may be introduced by a party in a hearing only if provided to all other parties of record at least 5 days prior to the date of the hearing and only if actually read into the record by the witness so testifying who shall be subject to cross examination. and only after tThe opposing parties have may had an opportunity to object to all or portions of the written testimony and to obtain a ruling on said objections prior to its introduction at hearing. The person whose behalf the testimony is submitted shall be available at hearing for cross-examination-

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

Section 103.206 Official Notice

Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge and experience of the Board.

Section 103.207 Viewing of Premises

Upon motion of any party or upon the Hearing Officer's own motion, the Hearing Officer and any Board Members **present** may view the premises in question to establish a more comprehensive record but no such viewing by less than the whole Board shall be made if any party objects. No stenographic record need be taken of what transpires at the viewing.

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

Section 103.208 Admission of Business Records in Evidence

Any writing or record, whether in the form of any entry in a book or otherwise made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of the act, transaction, occurrence, or event. To be admissible the writing or record shall have been made in the regular course of any business, provided it was the regular course of the business to make such a memorandum or record at the time of such an act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but shall not affect its admissibility. The term "business," as used in this rule, includes business, profession, occupation, and calling of every kind.

Section 103.209 Examination of Adverse Party or Agent
and Hostile Witnesses; Compelling Appearance
Thereof at Hearing

- a) Upon the hearing of any action, any party thereto, or any person for whose immediate benefit the action is prosecuted or defended, or the officers, directors, managing agents or foreman of any party to the action, may be called and examined as if under cross-examination at the instance of any adverse party. The party calling for the examination may rebut the testimony given by counter testimony and may impeach the witness by proof of prior inconsistent statements.
- b) If the Hearing Officer determines that a witness is hostile or unwilling, the witness may be examined by the party calling him as if under cross-examination.
- c) The party calling an occurrence witness, upon the a showing that he called the witness in good faith and is surprised by his testimony, may impeach the witness by proof of prior inconsistent statements.
- d) The appearance at the hearing of a party or a person who at the time of the hearing is an officer, director or employee of a party may be required by serving the party with a notice designating the person who is required to appear. If the party or person is a non-resident of the State, the Hearing Officer shall provide by order such terms and conditions in connection with his appearance at the hearing as are just, including payment of his reasonable expenses. The notice also may require production at the hearing of documents or tangible things.

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

Section 103.210 Amendment and Variance of Pleadings

- a) Subject to subsection(b) 7 proof may depart from pleadings and pleadings may be amended to conform to proof, so long as no undue surprise results that cannot be remedied by a continuance.
- b) At any time prior to commencement of hearing and prior to the close of hearing, 7 tThe Hearing Officer may upon motion of a party permit a supplemental pleading setting forth continuing transactions or occurrences which have continued or occurred subsequent to the date of the filing of the initial pleading or any amendment thereto, so long as no undue surprise results that cannot be remedied by a continuance. Supplemental pleadings shall

be filed with the parties, the Board and the Hearing Officer prior to the close of hearing.

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

Section 103.211 Admissibility of Duplicate Documents

A duplicate document is admissible to the same extent as an original document unless a genuine question is raised as to the authenticity of the original document.

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

SUBPART G: POST-HEARING PROCEDURES

Section 103.220 Default

Failure of a party to appear on the date set for hearing or failure to proceed as ordered by the Board shall constitute a default. The Board shall thereafter enter such final order or make such final determination as it shall deem appropriate under the circumstances, ~~as limited by the pleadings and based upon the evidence introduced at the hearing.~~

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

Section 103.221 Transcript

- a) The Board ~~shall~~ will provide for ~~or arrange~~ a court reporter who shall transcribe the entire hearing. ~~Seven (7) copies,~~ of which one ~~(1)~~ must be an original, of the transcript shall be filed with the Board within 15 days following the close of the hearing.
- b) Any party or witness may correct the transcript, as provided in Section 102.164.

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

Section 103.222 Record

The transcript of the hearing approved by the Hearing Officer, the pleadings, the briefs, written statements by the public in conformance with 35 Ill. Adm. Code 103.203, and all exhibits shall constitute the record. The Clerk shall certify the record to the Board when it is complete.

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

Section 103.223 Briefs and Oral Argument

The parties may submit briefs to the Board within 14 days after receipt of final transcripts in Board offices or such other reasonable time as in accordance with a briefing schedule set by the Hearing Officer shall determine which shall be consistent with the Board's responsibility for expeditious decision, and the needs of the parties under Section 103.202(k): Upon request at the time of the submission of briefs motion by a party or on its own motion, the Board may permit oral argument by the parties before the whole Board.

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

Section 103.224 Contents of Board Opinions and Orders

The Board shall prepare a written opinion and order for all final determinations which shall include:

- a) Findings of fact (with specific page references to principal supporting items of evidence in the record) and conclusions of law (supported by adequate reasoning) on all material issues.
- b) The final order or determination of the Board. The Board Order may include any or all of the following:
 - 1) A direction to cease and desist from violations of the Act or of the Board's rules and regulations;
 - 2) The imposition of money penalties in such amounts as appropriate in each case;
 - 3) ~~The grant, denial, or revocation of a variance;~~
 - 4) ~~The grant, denial, or revocation of a permit;~~
 - 35) The posting of sufficient performance bond or other security as provided by the Act to assure the correction of such violation within the time prescribed; and
 - 46) Such other order that may be appropriate.
- c) The Clerk shall publish the order and opinion with the vote of each Board Member recorded and shall notify the parties required to be notified of the hearing from which the order arose of such order and opinion.

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

SUBPART H: RELIEF FROM FINAL ORDERS

Section 103.240 Motion Subsequent to Entry of Final Order

Within 35 days after the adoption of a final order, any party may file a motion for ~~rehearing~~ reconsideration or modification of the order or to vacate the order or for other relief. Response to said motion shall be filed within 14 days from the filing thereof. A motion filed within 35 days stays enforcement of the final order until final disposition of such motion. ~~and~~ The time for appeal from such order runs anew after the Board rules upon the motion. Failure of a party to appeal a final order or to file for appellate court review within 35 days of adoption of the final order waives all right to review except as set out in Section 103.241.

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

Section 103.241 Relief from ~~Section 103-224~~ Final Orders

- a) Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Board at any time ~~of~~ on its own initiative or on the motion of any party and after such notice, if any, as the Board orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.
- b) On motion and upon such terms as are just, the Board may relieve a party or ~~his~~ the party's legal representative from a final order, for the following:
 - 1) Newly discovered evidence which existed at the time of hearing and which by due diligence could not have been timely discovered in time under Section 103-224; or
 - 2) Fraud (whether ~~heretofore~~ denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or
 - 3) Void order.
- c) ~~1)~~ A motion under this section does not affect the finality of a Board order or suspend the operation of a Board order. The motion must be filed in the same proceeding in which the order was entered but is not a continuation of the proceeding. The motion must be supported by affidavit or other

appropriate showing as to matters not of record. All parties to the motion shall be notified as provided by Section 35 Ill. Adm. Code 103.123(a).

- d 2) ~~The A~~ motion under subsection (b) shall be filed with the Board within one year after entry of the order except that a motion pursuant to subsection (b)(3) shall be filed within a reasonable time after entry of the order.

(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.

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.

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.

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.

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.

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.

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.

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.

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.

APPENDIX A
 OLD RULE NUMBERS REFERENCED (Repealed)

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 III: Enforcement Proceedings	Part 103: Enforcement Proceedings

Rule 301	Section 103-101
Rule 302	Section 103-120
Rule 303	Section 103-121
Rule 304	Section 103-122
Rule 305	Section 103-123
Rule 306	Section 103-124
Rule 307	Section 103-125
Rule 308	Section 103-140
Rule 309	Section 103-141
Rule 310	Section 103-142
Rule 311	Section 103-143
Rule 312	Section 103-160
Rule 313	Section 103-161
Rule 314	Section 103-162
Rule 315	Section 103-163
Rule 316	Section 103-200
Rule 317	Section 103-201
Rule 318	Section 103-202
Rule 319	Section 103-203
Rule 320	Section 103-204
Rule 323	Section 103-205
Rule 322	Section 103-206
Rule 323	Section 103-207
Rule 324	Section 103-208
Rule 325	Section 103-209
Rule 326	Section 103-210
Rule 327	Section 103-220
Rule 328	Section 103-221
Rule 329	Section 103-222
Rule 330	Section 103-223
Rule 331	Section 103-186
Rule 332	Section 103-224
Rule 333	Section 103-240
Rule 334	Section 103-241

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

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 30th day of April, 1967, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board