

ILLINOIS POLLUTION CONTROL BOARD
October 20, 2005

IN THE MATTER OF:)
)
AMENDMENTS TO THE PROCEDURAL) R06-9
RULES – “POLLUTION CONTROL) (Procedural Rulemaking)
FACILITY” DEFINITION UNDER)
P.A. 93-0998, P.A. 94-0094, AND)
P.A. 94-0249 (35 ILL. ADM. CODE 101.202))

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by J.P. Novak):

On August 4, 2005, the Board sent to first notice under the Illinois Administrative Procedure Act (APA) (5 ILCS 100/1-1 *et seq.* (2004)) a proposal amending its procedural rules to reflect three recent amendments to the definition of “pollution control facility” in the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2004)). The amended definitions appear in the Board’s rules at 35 Ill. Adm. Code 101.202. Today, the Board sends this matter to second notice under the APA. The Board has received no public comment on this matter and makes no substantive changes from its first-notice proposal in this order.

In this opinion, the Board first provides a brief background of this proceeding before discussing the statutory provisions necessitating the proposed rule changes and reaching its conclusion. The amending language is set forth in the order following this opinion.

BACKGROUND

The Board opened this docket and proposed rules for first-notice publication with an opinion and order dated August 4, 2005. In that opinion and order, the Board stated that, because the rulemaking proposal amends only a definition in procedural rules, it did not then intend to hold a hearing. *See* 415 ILCS 5/26 (2004). That proposal was published in the *Illinois Register* on August 26, 2005. 35 Ill. Reg. 13174. Although the 45-day comment period continued to October 10, 2005, the Board did not receive a public comment or request for hearing.

SUMMARY OF PROPOSAL FOR SECOND NOTICE

This rulemaking proposes changes necessary to make the definition of “pollution control facility” in the Board’s procedural rules consistent with recent revisions to the Act. These statutory amendments have occurred since or were not included in the Board’s last procedural rule update docket. *See Amendments to the Board’s Procedural Rules to Accommodate New Statutory Provisions: 35 Ill. Adm. Code 101-130, R04-24 (May 19, 2005).*

Public Act 93-0998

Public Act 93-0998 (P.A. 93-0998, eff. Aug. 23, 2004) amended the Act's definition of "pollution control facility." Specifically, P.A. 93-0998 added a fourteenth exception to that definition:

the portion of a site or facility, located within a unit of local government that has enacted local zoning requirements, used to accept, separate, and process uncontaminated broken concrete, with or without protruding metal bars, provided that the uncontaminated broken concrete and metal bars are not speculatively accumulated, are at the site or facility no longer than one year after their acceptance, and are returned to the economic mainstream in the form of raw materials or products.

P.A. 93-0998 (eff. Aug. 23, 2004). The Board proposes to amend the definition of "pollution control facility" in Section 101.202 to follow the statutory language by adopting this added exception.

Public Act 94-0094

Public Act 94-0094 (P.A. 94-0094, eff. July 1, 2005) also amended the Act's definition of "pollution control facility." Specifically, P.A. 94-0094 amended the existing exemption from that definition for "the portion of a site or facility accepting exclusively general construction or demolition debris, located in a county with a population over 700,000, and operated and located in accordance with Section 22.38 of this Act." 415 ILCS 5/3.330(a)(13) (2002); see also 35 Ill. Adm. Code 101.202 (following statutory language). P.A. 94-0094 limits that exemption to counties that had reached the population threshold of 700,000 "as of January 1, 2000." P.A. 94-0094, eff. July 1, 2005. The Board proposes to amend the definition of "pollution control facility" in Section 101.202 to follow the statutory language amending the existing exception.

Public Act 94-0249

Public Act 94-0249 (P.A. 94-0249, eff. July 19, 2005) also amended the Act's definition of "pollution control facility." Specifically, P.A. 94-0249 added a fifteenth exception to that definition:

the portion of a site or facility located in a county with a population over 3,000,000 that has obtained local siting approval under Section 39.2 of this Act for a municipal waste incinerator on or before July 1, 2005 and that is used for a non-hazardous waste transfer station.

P.A. 94-0249 (eff. July 19, 2005). The Board proposes to amend the definition of "pollution control facility" in Section 101.202 to follow the statutory language by adopting this added exception.

CONCLUSION

The Board will proceed to second notice with proposed rules amending the Board's procedural rules at 35 Ill. Adm. Code 101.202.

ORDER

The Board directs the Clerk to cause the submission of the following second-notice proposal to the Joint Committee on Administrative Rules.

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

PART 101 GENERAL RULES

SUBPART A: GENERAL PROVISIONS

Section	
101.100	Applicability
101.102	Severability
101.104	Repeals
101.106	Board Authority
101.108	Board Proceedings
101.110	Public Participation
101.112	Bias and Conflict of Interest
101.114	Ex Parte Communications

SUBPART B: DEFINITIONS

Section	
101.200	Definitions Contained in the Act
101.202	Definitions for Board's Procedural Rules

SUBPART C: COMPUTATION OF TIME, FILING, SERVICE OF DOCUMENTS, AND STATUTORY DECISION DEADLINES

Section	
101.300	Computation of Time
101.302	Filing of Documents
101.304	Service of Documents
101.306	Incorporation of Documents by Reference
101.308	Statutory Decision Deadlines and Waiver of Deadlines

SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

Section	
101.400	Appearances, Withdrawals, and Substitutions of Attorneys in Adjudicatory Proceedings
101.402	Intervention of Parties
101.403	Joinder of Parties
101.404	Agency as a Party in Interest
101.406	Consolidation of Claims
101.408	Severance of Claims

SUBPART E: MOTIONS

Section	
101.500	Filing of Motions and Responses
101.502	Motions Directed to the Hearing Officer
101.504	Contents of Motions and Responses
101.506	Motions Attacking the Sufficiency of the Petition, Complaint, or Other Pleading
101.508	Motions to Board Preliminary to Hearing
101.510	Motions to Cancel Hearing
101.512	Motions for Expedited Review
101.514	Motions to Stay Proceedings
101.516	Motions for Summary Judgment
101.518	Motions for Interlocutory Appeal from Hearing Officer Orders
101.520	Motions for Reconsideration
101.522	Motions for Extension of Time

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

Section	
101.600	Hearings
101.602	Notice of Board Hearings
101.604	Formal Board Transcript
101.606	Informal Recordings of the Proceedings
101.608	Default
101.610	Duties and Authority of the Hearing Officer
101.612	Schedule to Complete the Record
101.614	Production of Information
101.616	Discovery
101.618	Admissions
101.620	Interrogatories
101.622	Subpoenas and Depositions
101.624	Examination of Adverse, Hostile or Unwilling Witnesses
101.626	Information Produced at Hearing
101.628	Statements from Participants
101.630	Official Notice
101.632	Viewing of Premises

SUBPART G: ORAL ARGUMENT

Section
101.700 Oral Argument

SUBPART H: SANCTIONS

Section
101.800 Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing Officer Orders
101.802 Abuse of Discovery Procedures

SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

Section
101.902 Motions for Reconsideration
101.904 Relief from and Review of Final Opinions and Orders
101.906 Judicial Review of Board Orders
101.908 Interlocutory Appeal

101.APPENDIX A Captions
 ILLUSTRATION A Enforcement Case
 ILLUSTRATION B Citizen's Enforcement Case
 ILLUSTRATION C Variance
 ILLUSTRATION D Adjusted Standard Petition
 ILLUSTRATION E Joint Petition for an Adjusted Standard
 ILLUSTRATION F Permit Appeal
 ILLUSTRATION G Underground Storage Tank Appeal
 ILLUSTRATION H Pollution Control Facility Siting Appeal
 ILLUSTRATION I Administrative Citation
 ILLUSTRATION J General Rulemaking
 ILLUSTRATION K Site-specific Rulemaking
 101.APPENDIX B Appearance Form
 101.APPENDIX C Withdrawal of Appearance Form
 101.APPENDIX D Notice of Filing
 101.APPENDIX E Certificate of Service
 101.ILLUSTRATION A Service by Non-Attorney
 101.ILLUSTRATION B Service by Attorney
 101.APPENDIX F Notice of Withdrawal (Repealed)
 101.APPENDIX G Comparison of Former and Current Rules (Repealed)

AUTHORITY: Implementing Sections 5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; Part repealed, new Part adopted in R88-5A at 13 Ill. Reg. 12055, effective July 10, 1989; amended in R90-24 at 15 Ill. Reg. 18677, effective December 12, 1991; amended in R92-7 at 16 Ill. Reg. 18078, effective November 17, 1992; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 446, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8743, effective June 8, 2005; amended in R06-9 at 29 Ill. Reg. _____, effective _____.

SUBPART B: DEFINITIONS

Section 101.202 Definitions for Board's Procedural Rules

Unless otherwise provided in 35 Ill. Adm. Code 101-130, or unless a different meaning of a word or term is clear from the context, the following definitions also apply to the Board's procedural rules, found in 35 Ill. Adm. Code 101 through 130:

“Act” means the Environmental Protection Act. [415 ILCS 5/1-~~et seq.~~].

“Adjudicatory proceeding” means an action of a quasi-judicial nature brought before the Board pursuant to authority granted to the Board under Section 5(d) of the Act or as otherwise provided by law. Adjudicatory proceedings include enforcement, variance, permit appeal, pollution control facility siting appeal, Underground Storage Tank (UST) Fund determination, water well set back exception, adjusted standard, and administrative citation proceedings. Adjudicatory proceedings do not include regulatory, quasi-legislative, or informational proceedings.

“Adjusted standard” or “AS” means an alternative standard granted by the Board in an adjudicatory proceeding pursuant to Section 28.1 of the Act and 35 Ill. Adm. Code 104.Subpart D. The adjusted standard applies instead of the rule or regulation of general applicability.

“Administrative citation” or “AC” means a citation issued pursuant to Section 31.1 of the Act by the Agency, or by a unit of local government acting as the Agency's delegate pursuant to Section 4(r) of the Act.

“Administrative citation review (appeal)” means a petition for review of an administrative citation filed pursuant to Section 31.1(d) of the Act. (See 35 Ill. Adm. Code 108.)

“Affidavit” means a sworn, signed statement witnessed by a notary public.

“Affidavit of service” means an affidavit that states that service of a document upon specified persons was made, and the manner in which, and date upon which, service was made.

“Agency” means the Illinois Environmental Protection Agency as established by Section 4 of the Act.

“Agency recommendation” means the document filed by the Agency pursuant to Sections 37(a) and 28.1(d)(3) of the Act in which the Agency provides its recommended disposition of a petition for variance or an adjusted standard. This includes a recommendation to deny, or a recommendation to grant with or without conditions. (See 35 Ill. Adm. Code 104.218 and 104.416.)

“Amicus curiae brief” means a brief filed in a proceeding by any interested person who is not a party. (See Sections 101.110 and 101.628 of this Part.)

“Applicant” means any person who submits, or has submitted, an application for a permit or for local siting approval pursuant to any of the authorities to issue permits or granting of siting approval identified in Sections 39, 39.1, and 39.5 of the Act.

“Article” means *any object, material, device or substance, or whole or partial copy thereof, including any writing, record, document, recording, drawing, sample, specimen, prototype, model, photograph, culture, microorganism, blueprint or map* [415 ILCS 5/7.1].

“Attorney General” means the Attorney General of the State of Illinois or representatives thereof.

“Authorized representative” means any person who is authorized to act on behalf of another person.

“Board” means the Illinois Pollution Control Board as created in Section 5 of the Act or, if applicable, its designee.

“Board decision” means an opinion or an order voted in favor of by at least three members of the Board at an open Board meeting except in a proceeding to remove a seal under Section 34(d) of the Act.

“Board designee” means an employee of the Board who has been given authority by the Board to carry out a function for the Board (e.g., the Clerk, Assistant Clerk of the Board, or hearing officer).

“Board meeting” means an open meeting held by the Board pursuant to Section 5(a) of the Act in which the Board makes its decisions and determinations.

“Board’s procedural rules” means the Board’s regulations set forth at 35 Ill. Adm. Code 101 through 130.

“Brief” means a written statement that contains a summary of the facts of a proceeding, the pertinent laws, and an argument of how the law applies to the facts supporting a position.

“CAAPP” means the Clean Air Act Permit Program, as adopted in Section 39.5 of the Act.

“Certificate of acceptance” means a certification, executed by a successful petitioner in a variance proceeding, in which the petitioner agrees to be bound by all terms and conditions that the Board has affixed to the grant of variance.

“Chairman” means the Chairman of the Board designated by the Governor pursuant to Section 5(a) of the Act.

“Citizen’s enforcement proceeding” means an enforcement action brought before the Board pursuant to Section 31(d) of the Act by any person who is not authorized to bring the action on behalf of the People of the State of Illinois.

“Clean Air Act” or “CAA” means the federal *Clean Air Act, as now and hereafter amended, 42 USC 7401 et seq.* [415 ILCS 5/ 39.5]

“Clean Water Act” means the federal Clean Water Act, 33 USC 1251 et seq.

“Clerk” means the Clerk of the Board.

“Complaint” means the initial filing that begins an enforcement proceeding pursuant to Section 31 of the Act and 35 Ill. Adm. Code 103.

“Compliance plan” means a detailed description of a program designed to achieve compliance with the Act and Board regulations.

“Copy” means *any facsimile, replica, photograph or other reproduction of an article, and any note, drawing or sketch made of or from an article* [415 ILCS 5/7.1].

“Counter-complaint” means a pleading that a respondent files setting forth a claim against a complainant. (See 35 Ill. Adm. Code 103.206.)

“Cross-complaint” means a pleading that a party files setting forth a claim against a co-party. (See 35 Ill. Adm. Code 103.206.)

“Cross-media impacts” means impacts that concern multiple environmental areas, such as air, land and/or water.

“Decision date” means the Board meeting immediately preceding the decision deadline.

“Decision deadline” means the last day of any decision period, as established by law, within which the Board is required to render a decision in an adjudicatory proceeding. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions respectively.)

“Decision period” means the period of time established by the Act within which the Board is required to make a Board decision in certain adjudicatory proceedings. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions, respectively.)

“Deinked stock” *means paper that has been processed to remove inks, clays, coatings, binders and other contaminants* [415 ILCS 20/2.1].

“Delegated unit” means the unit of local government to which the Agency has delegated its administrative citation or other function pursuant to Section 4(r) of the Act.

“DNR” means the Illinois Department of Natural Resources.

“Discovery” means a pre-hearing process that can be used to obtain facts and information about the adjudicatory proceeding in order to prepare for hearing. The discovery tools include depositions upon oral and written questions, written interrogatories, production of documents or things, and requests for admission.

“DOA” means the Illinois Department of Agriculture.

“Duplicative” means the matter is identical or substantially similar to one brought before the Board or another forum.

“Environmental Management System Agreement” or “EMSA” means the agreement between the Agency and a sponsor, entered into under Section 52.3 of the Act and 35 Ill. Adm. Code 187, that describes the innovative environmental measures to be implemented, schedules to attain goals, and mechanisms for accountability.

“Enforcement proceeding” means an adjudicatory proceeding brought upon a complaint filed pursuant to Section 31 of the Act by the Attorney General, State’s Attorney, or other persons, in which the complaint alleges violation of the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order.

“Ex parte communication” means *any written or oral communication by any person that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi-adjudicatory, investment, or licensing matters pending before or under consideration by the Board. “Ex parte communication” does not include the following:*

statements by a person publicly made in a public forum, including pleadings, transcripts, and public comments made part of the proceeding's record;

statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter; and

statements made by a State employee of the Board to Board members or other employees of the Board. [5 ILCS 430/5-50(b)]. For purposes of this definition, "Board employee" means a person the Board employs on a full-time, part-time, contract or intern basis. (See Section 101.114 of this Part.)

"Fast Track rulemaking" means a Clean Air Act rulemaking conducted pursuant to Section 28.5 of the Act.

"Federally required rule" means *a rule that is needed to meet the requirements of the federal Clean Water Act, Safe Drinking Water Act, Clean Air Act (including required submission of a State Implementation Plan), or Resource Conservation and Recovery Act, other than a rule required to be adopted under subsection (c) of Section 13, Section 13.3, Section 17.5, subsection (a) or (d) of Section 22.4, or subsection (a) of Section 22.40 [415 ILCS 5/28.2].*

"Filing" means the act of delivering a document or article into the custody of the Clerk with the intention of incorporating that document or article into the record of a proceeding before the Board. The Clerk's Office is located at 100 West Randolph Street, Suite 11-500, Chicago, IL 60601.

"Final order" means an order of the Board that terminates the proceeding leaving nothing further to litigate or decide and that is appealable to an appellate court pursuant to Section 41 of the Act. (See Subpart I of this Part.)

"Frivolous" means a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.

"Hearing" means a public proceeding conducted by a hearing officer where the parties and other interested persons, as provided for by law and the Board's procedural rules, present evidence and argument regarding their positions.

"Hearing officer" means a person licensed to practice law in the State of Illinois who presides over hearings and otherwise carries out record development responsibilities as directed by the Board.

"IAPA" means the Illinois Administrative Procedure Act [5 ILCS 100].

"Identical-in-substance rules (or regulations)" means *State regulations which require the same actions with respect to protection of the environment, by the same group of affected*

persons, as would federal regulations if USEPA administered the subject program in Illinois [415 ILCS 5/7.2].

“Initial filing” means the filing that initiates a Board proceeding and opens a docket. For instance, the initial filing in an enforcement proceeding is the complaint; in a permit appeal it is a petition for review; and in a regulatory proceeding it is the proposal.

“Innovative environmental measures” means any procedures, practices, technologies or systems that pertain to environmental management and are expected to improve environmental performance when applied. (See 35 Ill. Adm. Code 106.Subpart G.)

“Inquiry hearing” means a hearing conducted by the Board for the purpose of seeking input and comment from the public regarding the need for a rulemaking proceeding in a specific area.

“Interlocutory appeal” means an appeal of a Board decision to the appellate court that is not dispositive of all the contested issues in the proceeding. (See Section 101.908 of this Part.) An interlocutory appeal may also be the appeal of a hearing officer ruling to the Board. (See Section 101.518 of this Part.)

“Intervenor” means a person, not originally a party to an adjudicatory proceeding, who voluntarily participates as a party in the proceeding with the leave of the Board. (See Section 101.402 of this Part.)

“Intervention” means the procedure by which a person, not originally a party to an adjudicatory proceeding, voluntarily comes into the proceeding as a party with the leave of the Board. (See Section 101.402 of this Part.)

“JCAR” means the Illinois General Assembly’s Joint Committee on Administrative Rules established by the IAPA (see 5 ILCS 100/5-90).

“Joinder” means the procedure by which the Board adds a person, not originally a party to an adjudicatory proceeding, as a party to the proceeding. (See Section 101.403 of this Part and 35 Ill. Adm. Code 103.206.)

“Misnomer” means a mistake in name, giving an incorrect name in a complaint or other document with respect to any properly included party.

“Motion” means a request made to the Board or the hearing officer for the purposes of obtaining a ruling or order directing or allowing some act to be done in favor of the movant. (See definition of “movant” in this Section.)

“Movant” means the person who files a motion.

“New pollution control facility” means *a pollution control facility initially permitted for development or construction after July 1, 1981; or the area of expansion beyond the*

boundary of a currently permitted pollution control facility; or a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste [415 ILCS 5/3.32(b)3.330(b)].

“Non-disclosable information” means *information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; information concerning secret manufacturing processes or confidential data submitted by any person under the Act [415 ILCS 5/7(a)].*

“Notice list” means the list of persons in a regulatory proceeding who will receive all Board opinions and orders and all hearing officer orders. Persons on a notice list generally do not receive copies of motions, public comments, or testimony. (See definition of “service list” in this Section.) (See also 35 Ill. Adm. Code 102.422.)

“Notice to reinstate” means a document filed that recommences the decision period after a decision deadline waiver has been filed. The notice will give the Board a full decision period in which to make a decision. (See Section 101.308 of this Part.)

“Oral argument” means a formal verbal statement of advocacy on a proceeding’s legal questions made at a Board meeting with the Board’s permission. (See Section 101.700 of this Part.)

“OSFM” means Office of the State Fire Marshal.

“OSFM appeal” means an appeal of an OSFM final decision concerning eligibility and deductibility made pursuant to Title XVI of the Act.

“Participant” means any person, not including the Board or its staff, who takes part in an adjudicatory proceeding who is not a party, or a person who takes part in a regulatory or other quasi-legislative proceeding before the Board. A person becomes a participant in any of several ways, including filing a comment, being added to the notice list of a particular proceeding, or testifying at hearing.

“Participant in a CAAPP Comment Process” means a person who takes part in a Clean Air Act Permit Program (CAAPP) permit hearing before the Agency or comments on a draft CAAPP permit.

“Party” means the person by or against whom a proceeding is brought.

“Party in interest” means the Agency when asked to conduct an investigation pursuant to Section 30 of the Act during an ongoing proceeding. (See Section 101.404 of this Part.)

“Peremptory rulemaking” means *any rulemaking that is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions that preclude compliance with the general rulemaking requirements of Section 5-40 of the IAPA and*

that preclude the exercise by the Board as to the content of the rule it is required to adopt. [5 ILCS 100/5-50]

“Permit appeal” means an adjudicatory proceeding brought before the Board pursuant to Title X of the Act.

“Person” means *any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns. [415 ILCS 5/3.315]*

“Petition” means the initial filing in an adjudicatory proceeding other than an enforcement proceeding, including permit appeals, OSFM appeals, UST appeals, appeals of pollution control facility siting decisions, variances and adjusted standards.

“Pilot project” means an innovative environmental project that covers one or more designated facilities, designed and implemented in the form of an EMSA. (See Section 52.3 of the Act.)

“Pollution control facility” means *any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act. The following are not pollution control facilities:*

waste storage sites regulated under 40 CFR 761.42;

sites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person;

sites or facilities at which the State is performing removal or remedial action pursuant to Section 22.2 or 55.3 of the Act;

abandoned quarries used solely for the disposal of concrete, earth materials, gravel, or aggregate debris resulting from road construction activities conducted by a unit of government or construction activities due to the construction and installation of underground pipes, lines, conduit or wires off of the premises of a public utility company which are conducted by a public utility;

sites or facilities used by any person to specifically conduct a landscape composting operation;

regional facilities as defined in the Central Midwest Interstate Low-Level Radioactive Waste Compact;

the portion of a site or facility where coal combustion wastes are stored or disposed of in accordance with subdivision (r)(2) or (r)(3) of Section 21 of the Act;

the portion of a site or facility used for the collection, storage or processing of waste tires as defined in Title XIV;

the portion of a site or facility used for treatment of petroleum contaminated materials by application onto or incorporation into the soil surface and any portion of that site or facility used for storage of petroleum contaminated materials before treatment. Only those categories of petroleum listed in Section 57.9(a)(3) of the Act are exempt under this definition;

the portion of a site or facility where used oil is collected or stored prior to shipment to a recycling or energy recovery facility, provided that the used oil is generated by households or commercial establishments, and the site or facility is a recycling center or a business where oil or gasoline is sold at retail;

the portion of a site or facility utilizing coal combustion waste for stabilization and treatment of only waste generated on that site or facility when used in connection with response actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the federal Resource Conservation and Recovery Act of 1976, or the Illinois Environmental Protection Act or as authorized by the Agency;

the portion of a site or facility accepting exclusively general construction or demolition debris, located in a county with a population over 700,000 as of January 1, 2000, and operated and located in accordance with Section 22.38 of the Act. ~~[415 ILCS 5/3.330];~~

the portion of a site or facility, located within a unit of local government that has enacted local zoning requirements, used to accept, separate, and process uncontaminated broken concrete, with or without protruding metal bars, provided that the uncontaminated broken concrete and metal bars are not speculatively accumulated, are at the site or facility no longer than one year after their acceptance, and are returned to the economic mainstream in the form of raw materials or products; and

the portion of a site or facility located in a county with a population over 3,000,000 that has obtained local siting approval under Section 39.2 of the Act for a municipal waste incinerator on or before July 1, 2005 and that is used for a non-hazardous waste transfer station [415 ILCS 5/3.330].

“Pollution control facility siting appeal” means an appeal of a decision made by a unit of local government filed with the Board pursuant to Section 40.1 of the Act.

“Postconsumer material” means *paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after the waste has been passed through its end usage as a consumer item, including used corrugated boxes, old newspapers, mixed waste paper, tabulating cards, and used cordage.* Additionally, it includes *all paper, paperboard, and other fibrous wastes that are diverted or separated from the municipal solid waste stream* [415 ILCS 20/3(f)(2)(i) and (ii)]. (See also definition of “recycled paper” in this Section.)

“Prehearing conference” means a meeting held in an adjudicatory case to determine the status of the proceedings. A prehearing conference may also be a meeting held in a regulatory proceeding prior to the hearing, the purposes of which *shall be to maximize understanding of the intent and application of the proposal, if possible, and to attempt to identify and limit the issues of disagreement among participants to promote efficient use of time at hearing* [415 ILCS 5/27(d)]. (See 35 Ill. Adm. Code 102.404 and 102.406.)

“Proceeding” means an action conducted before the Board pursuant to authority granted under Section 5 of the Act or as otherwise provided by law. Board proceedings are of two types: quasi-legislative (rulemaking and inquiry proceedings) and quasi-judicial (adjudicatory proceedings).

“Proponent” means any person, not including the Board or its staff, who submits a regulatory proposal to the Board for the adoption, amendment, or repeal of a regulation.

“Provisional variance” means a short term variance sought by an applicant and issued by the Agency pursuant to Section 35(b) of the Act. (See 35 Ill. Adm. Code 104.Subpart C.)

“Public comment” means information submitted to the Board during a pending proceeding either by oral statement made at hearing or written statement filed with the Board.

“Qualitative description” means a narrative description pertaining to attributes and characteristics.

“Quantitative description” means a numerically based description pertaining to attributes and characteristics.

“RCRA variance” means a variance from a RCRA rule or a RCRA permit required pursuant to Section 21(f) of the Act.

“Record” means the official collection, as kept by the Clerk, of all documents and exhibits including pleadings, transcripts, and orders filed during the course of a proceeding.

“Recycled paper” means paper which contains at least 50% recovered paper material. The recovered paper material must contain at least 45% deinked stock or postconsumer material. (See also “postconsumer material” in this Section.)

“Registered agent” means a person registered with the Secretary of State for the purpose of accepting service for any entity, or a person otherwise authorized in writing as an agent for the purpose of accepting service for that entity.

“Regulatory hearing” or “proceeding” means a hearing or proceeding held pursuant to Title VII of the Act or other applicable law with respect to regulations.

“Regulatory relief mechanisms” means variances, provisional variances and adjusted standards. (See 35 Ill. Adm. Code 104.)

“Representing” means, for purposes of Part 130, *describing, depicting, containing, constituting, reflecting or recording* [415 ILCS 5/7.1].

“Requester” means, for purposes of Part 130, the person seeking from the agency the material claimed or determined to be a trade secret (see 415 ILCS 5/7.1).

“Resource Conservation and Recovery Act” or “RCRA” means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.).

“Rulemaking” or “rulemaking proceeding” means a proceeding brought under Title VII of the Act or other applicable law for the purpose of adoption, amendment, or repeal of a regulation.

“Sanction” means a penalty or other mechanism used by the Board to provide incentives for compliance with the Board’s procedural rules, Board orders or hearing officer orders. (See also Subpart H of this Part.)

“SDWA” means the federal Safe Drinking Water Act (42 USC 300f et seq.).

“Service” means delivery of documents upon a person. (See Sections 101.300(c) and 101.304 of this Part.)

“Service list” means the list of persons designated by the hearing officer or Clerk in a regulatory or adjudicatory proceeding upon whom participants must serve motions, prefiled questions and prefiled testimony and any other documents that the participants file with the Clerk unless the hearing officer otherwise directs. (See definition of “notice list” in this Section.) (See also 35 Ill. Adm. Code 102.422.)

“Severance” means the separation of a proceeding into two or more independent proceedings, each of which terminates in a separate, final judgment.

“Site-specific rule or regulation” means a proposed or adopted regulation, not of general applicability, that applies only to a specific facility, geographic site, or activity. (See 35 Ill. Adm. Code 102.208.)

“Sponsor” means the proponent of a pilot project that enters into an EMSA with the Agency.

“State enforcement proceeding” means an enforcement proceeding, other than a citizen’s enforcement proceeding, that is brought pursuant to Section 31 of the Act.

“Stay” means a temporary suspension of the regular progress of a proceeding pursuant to an order of the Board or by operation of law. (See Section 101.514 of this Part.)

“Subpoena” means a command to appear at a certain time and place to give testimony upon a certain matter.

“Subpoena duces tecum” means a document that compels the production of specific documents and other items at a specified time and place.

“Summary judgment” means the disposition of an adjudicatory proceeding without hearing when the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (See Section 101.516 of this Part.)

“Third party complaint” means a pleading that a respondent files setting forth a claim against a person who is not already a party to the proceeding. (See 35 Ill. Adm. Code 103.206.)

“Trade secret” means *the whole or any portion or phase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.* [415 ILCS 5/3.490]

“Transcript” means the official recorded testimony from a hearing.

“USEPA” means the United States Environmental Protection Agency.

“Underground storage tank appeal” or “UST appeal” means an appeal of an Agency final decision made pursuant to Title XVI of the Act.

“UST” means underground storage tank.

“Variance” means a temporary exemption from any specified regulation, requirement or order of the Board granted to a petitioner by the Board pursuant to Title IX of the Act *upon presentation of adequate proof that compliance with the rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship* [415 ILCS 5/35(a)].

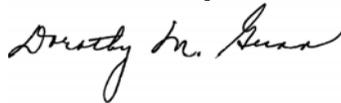
“Waiver” means the intentional relinquishing of a known right, usually with respect to a hearing before the Board or entry of a Board decision within the decision period. (See also Section 101.308 of this Part.)

“Web site” means the Board’s computer-based informational service accessed on the Internet at <http://www.ipcb.state.il.us>.

(Source: Amended at 29 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on October 20, 2005, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board