

BOARD PROPOSAL FOR PUBLIC COMMENT OCTOBER 3, 1996

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD
PART 104

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SOURCE: Subpart B: Originally adopted as Chapter I: Procedural Rules, Part IV: Variances, in R70-4, at 1 PCB 43, October 8, 1970; amended in R77-16, 29 PCB 503, at 2 Ill. Reg. 16, p. 3, effective May 1978, amended in R79-9, 35 PCB 433, at 3 Ill. Reg. 51, p. 128, effective December 7, 1979; amended in R80-12, 40 PCB 451, at 5 Ill. Reg. 2763, effective March 2, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10, 62 PCB 87, at 9 Ill. Reg. 1409, effective January 16, 1985; Part repealed, new Part adopted in R96-2 at ___ Ill. Reg. _____, effective _____; Subpart C, new Part adopted in R96-2 at ___ Ill. Reg. _____, effective _____; Subparts D through I: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg.2, p. 186, effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg. 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4, 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July, 13, 1988; amended in R88-10 at 12 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended at 18 Ill. Reg. 11579, effective July 11, 1994; Part repealed, new Part adopted in R96-2 at ___ Ill. Reg. _____, effective _____.

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PART 104 REGULATORY RELIEF MECHANISMS AND REGULATORY ALTERNATIVES

SUBPART A: GENERAL

Section 104.100 Applicability

- a) This Part applies to adjudicatory proceedings before the Illinois Pollution Control Board (Board) which provide for relief from environmental regulations under certain circumstances as set forth in Title IX and VII of Environmental Protection Act (Act). [415 ILCS 5/35 to 5/38 and 5/28.1.] Defined at 35 Ill. Adm. Code 101.Subpart B, such relief mechanisms and alternatives include variances, provisional variances, adjusted standards and others set forth in this Part.
- b) This Part shall be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all adjudicatory Board proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part apply.

Section 104.102 Severability

If any provision of this Part or its application to any person or under any circumstances is adjudged invalid, such adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

Section 104.104 Definitions

For the purpose of this Subpart, words and terms shall have the meaning as defined in 35 Ill. Adm. Code 101.Subpart B, unless otherwise provided.

SUBPART B: VARIANCES

Section 104.200 General

- a) Description:
 - 1) General Variance. A variance is a temporary exemption from any specified rule, regulation, requirement or order of the Board, which may be granted by the Board with or without conditions for a period of time not to exceed five years, upon presentation of adequate proof by the petitioner that compliance with the rule, regulation, requirement or order of the Board *would impose an arbitrary or unreasonable hardship*. [415 ILCS 5/35(a).]
 - 2) Resource Conservation and Recovery Act (RCRA) Variance. A RCRA variance is an exemption from 35 Ill. Adm. Code 703, 720, 721, 722, 723, 724 or 725 or which allows the Illinois Environmental Protection Agency (Agency) to issue or modify any provision of a RCRA permit required pursuant to Section 21(f) of the Act. [415 ILCS 5/21(f).]
- b) Effect of Filing:

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- 1) The filing of a petition for variance does not stay enforcement of a regulation except as provided in subsection (b)(2) below.
- 2) *If any person files a petition for variance from a rule or regulation within 20 days after the effective date of such rule or regulation, the operation of such rule or regulation shall be stayed as to such person pending the disposition of the petition; provided, however, that the operation of any rule or regulation adopted by the Board which implements, in whole or in part, a State RCRA, Underground Injection Control (UIC), or National Pollution Discharge Elimination System (NPDES) program shall not be stayed. The Board may hold a hearing upon said petition 5 days from the date of notice of such hearing or thereafter. [415 ILCS 5/38(b).]*

Section 104.202 Filing Requirements

- a) **Who May File.** Any person seeking a variance from any rule or regulation, requirement or order of the Board that would otherwise be applicable to that person may file a variance petition.
- b) **General Filing and Service Requirements.** All general filing and service requirements for Board filings, including the form of filing and the fee requirements for filing, apply to the filing of a petition for variance. These general requirements are found at 35 Ill. Adm. Code 101.Subpart C.
- c) **Special Filing and Service Requirements.** In addition to the general requirements found at 35 Ill. Adm. Code 101.Subpart C, a person filing a petition for variance shall meet the following requirements:
 - 1) The petition shall be accompanied by Board Form # -- or reasonably similar form at that contains all information required on the relevant Board Form # -- is electronically available on the Board's Home Page or may be obtained at the Board's Chicago and Springfield offices. Additionally, a copy of Board Form#-- appears at 35 Ill. Adm. Code 101.Appendix G, Illustration C;
 - 2) One copy of the petition and all related documents, including Board Form # -- -, must be served on the Agency. Such service on the Agency shall be initiated on or before the date the petition is filed with the Board. Additionally, all RCRA variances must be served on the United States Environmental Protection Agency (USEPA) Region V Director of Waste Management. An affidavit of service of the petition and related documents shall accompany the filing with the Board; and
 - 3) The petition must contain all information or documents necessary to satisfy the petition contents requirements found below in Sections 104.204, 104.206, and 104.208 of this Part.

Section 104.204 Petition Content Requirements

The petition shall be captioned in accordance with 35 Ill. Adm. Code 101.Appendix A, Illustration C and shall include the information required by subsections (a) through (n). Additionally, there are specific content requirements set forth at Section 104.206 of this Part for RCRA variance petitions. If the petitioner believes that any of these requirements are not applicable to the specific variance requested, the petitioner shall so state and explain his reasoning.

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- a) A statement describing the regulation, requirement, or order of the Board from which a variance is sought. If variance from a regulation is sought, the statement must include the Illinois Administrative Code citation to the regulation as well as the effective date of that regulation. If variance from a requirement or order of the Board is sought, the statement must include the citation to that requirement or order of the Board promulgating that requirement, including docket number;
- b) A complete and concise description of the nature of petitioner's activity that is the subject of the proposed variance, including:
 - 1) The location of, and area affected by, the petitioner's activity;
 - 2) The location of points of discharge, and, as applicable, the identification of the receiving waterway or land, or the location of the nearest air monitoring station maintained by the Agency;
 - 3) An identification, including docket number, of any prior variance issued relevant to this variance request;
 - 4) An identification, including number, of the environmental permits held by petitioner for the activity which may be affected by grant of variance;
 - 5) The number of persons employed by the petitioner's facility at issue and the age of that facility;
 - 6) The nature and amount of the materials used in the process or activity for which the variance is sought and a full description of the particular process or activity in which the materials are used;
 - 7) A description of the relevant pollution control equipment already in use; and
 - 8) The nature and amount of emissions, discharges or releases of the constituent in question currently generated by the petitioner's activity;
- c) Data describing the nature and extent of the present failure to meet the regulation, requirement, or order of the Board from which variance is sought and facts which support petitioner's argument that compliance with the regulation, requirement, or order of the Board was not or cannot be achieved by any required compliance date;
- d) A description of the efforts that would be necessary for the petitioner to achieve immediate compliance with the regulation, requirement, or Board order at issue. All possible compliance alternatives, with the corresponding costs for each alternative, must be set forth and discussed. The discussion of compliance alternatives shall include the availability of alternate methods of compliance, the extent that such methods were studied, and the comparative factors leading to the selection of the control program proposed for compliance. The discussion of the costs of immediate compliance may include, but is not limited to, the overall capital costs and the annualized capital and operating costs;
- e) Facts which set forth the reasons the petitioner believes that immediate compliance with the regulation, requirement, or order of the Board would impose an arbitrary or unreasonable hardship;

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- f) A detailed description of the compliance plan, including:
 - 1) A discussion of the proposed equipment or proposed method of control to be undertaken to achieve full compliance with the regulation, requirement, or order of the Board;
 - 2) A time schedule for the implementation of all phases of the control program from initiation of design to program completion; and
 - 3) The estimated costs involved for each phase and the total cost to achieve compliance;
- g) A description of the environmental impact of the petitioner's activity including:
 - 1) The qualitative and quantitative description of the impact of petitioner's activity on human health and the environment if the requested variance is granted, compared to the impact of petitioner's activity if immediate compliance is required. Cross-media impacts, if any, shall be discussed; and
 - 2) The nature and amount of emissions, discharges, or releases of the constituent in question if the requested variance is granted, compared to that which would result if immediate compliance is required;
- h) Citation to supporting documents or legal authorities whenever such are used as a basis for the petition. Relevant portions of such documents and legal authorities other than Board decisions, reported state and federal court decisions, or state and federal regulations and statutes must be appended to the petition;
- i) If the requested variance involves an existing permit or a pending permit application, a copy of the material portion of the permit or permit application must be appended to the petition;
- j) Any conditions petitioner suggests for the requested variance;
- k) A proposed beginning and ending date for the variance. If the petitioner requests that the term of the variance begin on any date other than the date on which the Board takes final action on the petition, a detailed explanation and justification for the alternate beginning date;
- l) A discussion of consistency with federal law, including an analysis of applicable federal law and facts that may be necessary to show compliance with federal law as set forth in Section 104.208 of this Part;
- m) An affidavit verifying any facts submitted in the petition; and
- n) A statement requesting or denying that a hearing should be held in this matter.

Section 104.206 Resource Conservation and Recovery Act (RCRA) Petition Contents

In addition to the requirements of Sections 104.204 and 104.208 of this Part, a petition for a RCRA variance must meet the following requirements:

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- a) All petitions for RCRA variances must include a showing that the Board can grant the requested relief consistent with, and establish RCRA permit conditions no less stringent than, those which would be required by RCRA, and the regulations thereunder promulgated by the USEPA (40 CFR 260, 261, 262, 263, 264, 265, 266, 267, 268 and 270 (1988)). Petitions must indicate whether any federal provisions authorize the relief requested, and must include any facts necessary to show that the petitioner would be entitled to the requested relief pursuant to federal law;
- b) Persons who have, or are required to have, a RCRA permit and who seek a RCRA variance that could result in modification or issuance of the RCRA permit must have on file with the Agency a RCRA permit application reflecting the requested variance prior to filing the variance petition;
- c) Petitioner shall attach to the variance petition a copy of the RCRA permit application, or such portion as may be relevant to the variance request; and
- d) Petitioner shall attach to the variance petition proof of service on USEPA as required by Section 104.202 of this Part.

Section 104.208 Consistency with Federal Law

- a) All petitions for variances from Title II of the Act or from 35 Ill. Adm. Code, Subtitle B, Ch. I "Air Pollution", shall indicate whether the Board may grant the requested relief consistent with the Clean Air Act (CAA) (42 U.S.C. 7401 *et seq.*) and the federal regulations adopted pursuant thereto. If granting a variance would constitute issuance of a delayed compliance order as that term is defined in 40 CFR 65.01(e), the petition shall indicate whether the requested relief is consistent with Section 113(d) of the CAA (42 U.S.C. 7413) and 40 CFR 65.01-65.10 and 65.181. If granting a variance would require revision of the State Implementation Plan, the petition shall indicate whether the requirements of Section 110(a) of the CAA (42 U.S.C. 7410(a)) and 40 CFR 51 will be satisfied.
- b) All petitions for variances from Title III of the Act; from 35 Ill. Adm. Code, Subtitle C, Ch. I "Water Pollution", or from water pollution related requirements of any other title of the Act or chapter of the Board's regulations shall indicate whether the Board may grant the relief consistent with the Clean Water Act (CWA) (33 U.S.C. 1251 *et seq.*), USEPA effluent guidelines and standards, any other federal regulations, or any area wide waste treatment management plan approved by the Administrator of USEPA pursuant to Section 208 of the CWA (33 U.S.C. 1288).
- c) All petitions for variances from Title IV of the Act or from 35 Ill. Adm. Code, Subtitle F, Ch. I "Public Water Supplies", and to the extent applicable, from Title V of the Act or from 35 Ill. Adm. Code, Subtitle D, Ch. I "Mine Related Water Pollution" shall indicate whether the Board may grant the relief consistent with the Safe Drinking Water Act (42 U.S.C. 300(f) *et seq.*), the federal National Primary Drinking Water Regulations (40 CFR 141) and Underground Injection Control Program and other federal regulations adopted pursuant thereto.
- d) All petitions for variances from Title V of the Act or from 35 Ill. Adm. Code, Subtitle G, Ch. I "Waste Disposal" shall indicate whether the Board may grant the requested relief consistent with the RCRA, and the federal regulations adopted pursuant thereto.

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- e) All petitions for RCRA variances, petitioner should consult the federal RCRA rules which contain procedures that are referred to as "Variances" (40 CFR 260, 261, 262, 263, 264, 265, 266, 267, 268 and 270 (1993).) The petitioner should consult the comparable Board regulations to decide whether the variance procedures of this Part need to be followed.

Section 104.210 Petition for an Extension of Prior Variance

- a) A variance extension pursuant to Section 36(b) of the Act *may be extended from year to year by affirmative action of the Board, but only if satisfactory progress has been shown* by the petitioner. [415 ILCS 5/36(b).]
- b) A petition to extend a prior variance granted by the Board is a new petition for variance before the Board, and must be filed in accordance with this Subpart and 35 Ill. Adm. Code 101.Subpart C, including, but not limited to, payment of the filing fee pursuant to Section 104.202(b) of this Part and 35 Ill. Adm. Code 101.302(f)(2).
- c) If the petitioner desires to have the term of the variance extension to be sequential with the term of the prior variance, the petition to extend a prior variance must be filed with the Board no later than 120 days prior to the termination of the prior variance.
- d) In addition to the requirements of this Subpart, the petition for extension of variance must contain:
 - 1) A detailed statement showing that *satisfactory progress* toward compliance has been or will have been achieved during the term of the prior variance [415 ILCS 5/36(b).];
 - 2) A statement that the conditions of the prior variance have been fully met, or, if any condition or conditions have not been fully met, a detailed explanation of the reason or reasons that the condition or conditions have not been fully met; and
 - 3) A motion to incorporate any material from the record of the prior variance proceeding in accordance with 35 Ill. Adm. Code 101.306.

Section 104.212 Motion for Modification of Internal Variance Compliance Dates

- a) The petitioner may request, by written motion, modification of internal dates within a compliance schedule of an existing variance, so long as the modification does not extend the length of the existing variance period. Such written motion will not be considered to be an extension of the prior variance. The motion must be filed under the docket number of the existing variance, and must be filed with the Clerk and served upon the Agency, and any joined parties pursuant to 35 Ill. Adm. Code 101.Subpart D. The Agency shall, and any joined parties may, file a response to that motion. Any response must be filed within 14 days after receipt of the motion.
- b) A motion for modification that would extend the length of the existing variance period constitutes a Petition for an Extension of Prior Variance and shall be filed in accordance with Section 104.210 of this Part.

Section 104.214 Illinois Environmental Protection Agency's (Agency) Notice of Petition

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- a) Within 14 days of receipt of the petition *the Agency shall publish a single notice of such petition in a newspaper of general circulation in the county where the facility or pollution source is located.* [415 ILCS 5/37(a).]
- b) Upon receipt of a petition for variance, *the Agency shall promptly give written notice of such petition to:*
 - 1) *Any person in the county in which the installation or property for which variance is sought is located who has in writing requested notice of variance petitions, the State's attorney of such county;*
 - 2) *The Chairman of the County Board of such county; and*
 - 3) *Each member of the General Assembly from the legislative district in which that installation or property is located.*

[415 ILCS 5/37(a).]

- c) Upon receipt of a petition for RCRA variance, the Agency shall promptly give notice of such petition to:
 - 1) Federal agencies as designated by the USEPA;
 - 2) Illinois Department of Transportation;
 - 3) Department of Natural Resources;
 - 4) Illinois Department of Public Health;
 - 5) The Governor of any other state adjacent to the county in which the facility or pollution source is located; and
 - 6) Elected officials of any counties, in other states, adjacent to the county in which the facility or pollution source is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility or pollution source.
- d) In addition to the methods of notice stated above in a RCRA variance the Agency shall also give notice by broadcast over at least one local radio station in the area of the facility or pollution source containing the information required by subsections (e) and (f) below.
- e) The notices required by this section shall include the following:
 - 1) The street address of the facility or pollution source, and if there is no street address then the legal description or the location with reference to any well known landmark, highway, road, thoroughfare or intersection;
 - 2) A description of the requested relief;
 - 3) An indication that any person may request a hearing by filing with the Board a written objection to the grant of such variance within 21 days of the

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publication of the Agency's notice, together with a written request for hearing; and

- 4) The Clerk of the Board's address and phone number and a statement that a copy of the variance may be obtained through the Clerk's Office.
- f) The Agency shall file with the Board a certification of publication which states the date on which the notice was published and attach a copy of the published notice within 21 days of the publication of the notice.

Section 104.216 Agency Investigation and Recommendation

- a) Upon receipt of a petition for variance, *the Agency shall promptly investigate such petition and consider the views of persons who might be adversely affected by the grant of a variance.* [415 ILCS 5/37(a).]
- b) *The Agency shall make a recommendation to the Board as to the disposition of the petition.* [415 ILCS 5/37(a).] Unless otherwise allowed by the hearing officer or the Board, the recommendation shall be filed with the Board within 50 days of the filing of the petition or amended petition, or where there has been a hearing scheduled, at least 30 days before hearing, whichever is earlier. The Agency shall serve a copy of its recommendation by First Class mail on the petitioner, joined parties, and assigned hearing officer, if applicable. At a minimum, the recommendation must include:
 - 1) A description of the efforts made by the Agency to investigate the facts as alleged and to ascertain the views of persons who might be affected, and a summary of the views so ascertained;
 - 2) A statement of the degree to which, if at all, the Agency disagrees with the facts as alleged in the petition, including facts refuting any allegations in the petition for variance;
 - 3) Allegations of any other facts the Agency believes relevant to the disposition of the petition, including, but not limited to, any past or pending enforcement actions against petitioner;
 - 4) The Agency's estimate of the costs that compliance would impose on the petitioner and on others;
 - 5) The Agency's estimate of the injury that the grant of the variance would impose on the public including the effect that continued discharge of contaminants will have upon the environment;
 - 6) The Agency's analysis of applicable federal laws and regulations and an opinion concerning the consistency of the petition with such federal laws and regulations;
 - 7) The status of any permits or pending permit applications that are associated with or affected by the requested variance;
 - 8) Allegation of any facts which the Agency believes are relevant to whether the Board should condition a grant of variance on the posting of a performance bond pursuant to Section 104.246 of this Part;

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- 9) Citation to supporting documents or legal authorities whenever such are used as a basis for the Agency's recommendation. Relevant portions of such documents and legal authorities other than Board decisions, reported state and federal court decisions, state and federal regulations and statutes must be appended to the recommendation if not already in the record of the proceeding;
- 10) The Agency's recommendation of what disposition should be made of the petition, deny or grant, and suggested conditions. If the Agency recommends that variance be granted, a recommended beginning and end date of the requested variance, and any recommended conditions on the variance; and
- 11) An affidavit verifying any facts outside the record referenced in the recommendation.

Section 104.218 Agency Recommendation to a RCRA Variance

In addition to the recommendation requirements stated in Section 104.216 of this Part the Agency recommendation on petitions for RCRA variances shall also include the following and, in addition to the service requirements Section 104.216 of this Part, the Agency shall serve its recommendation on USEPA and all persons who have notified the Agency that they intend to comment or have otherwise asked to be served a copy of the recommendation.

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

Section 104.220 Response to Agency Recommendation

- a) Within 7 days after service of the Agency recommendation the petitioner may file a response to the Agency recommendation or an amended petition. The petitioner must serve a copy of the response or amended petition upon the hearing officer, the Agency, and any other parties to the proceeding.
- b) The response or amended petition may include a request for hearing. New information in a response or amended petition must be verified by oath or affidavit.
- c) Any amended petition in response to Agency recommendation, or request for hearing restarts the decision period, pursuant to Section 104.232 of this Part.

Section 104.222 Stipulations

Filing of a stipulation in a variance proceeding is permissible to the extent that the stipulation conveys to the Board those facts upon which the parties agree. However, the Board will not accept as fact any stipulation to findings of ultimate fact or conclusion of law, such as, stipulating that there would be arbitrary or unreasonable hardship if petitioner was to immediately comply with the applicable rule or regulation.

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Section 104.224 Non-Party Participants' Objections to Petition, Written Comments and Request for Hearing

- a) A person who files an objection, request for hearing, or a comment is a non-party participant as defined in 35 Ill. Adm. Code 101.Subpart B.
- b) Except as provided in subsection (e) below for RCRA variances, any person may file with the Clerk, within 21 days after the publication of the Agency's notice pursuant to Section 104.214 of this Part, a written objection to the grant of variance. The Clerk will mail a copy of the objection to the petitioner, the Agency, the hearing officer, and any joined parties by First Class mail.
- c) A non-party participant must also file a written request for hearing within 21 days after the publication of the Agency's notice pursuant to Section 104.214 of this Part in order for a hearing to be held in accordance with Section 104.236 of this Part and 35 Ill. Adm. Code 101.Subpart F.
- d) Any person may file written comments in a variance proceeding. Comments filed later than 65 days after the filing of the petition or as directed by the hearing officer will be considered as time allows.
- e) In RCRA variances, subsection (b) and (c) above do not apply. However, non-party participants may file written comments within 45 days after the Agency files its recommendation.

Section 104.226 Amended Petition and Amended Recommendation

- a) The petitioner may amend the petition prior to the close of the hearing, if a hearing is held, or prior to the Board's decision, if a hearing is not held by filing a motion pursuant to 35 Ill. Adm. Code 101.Subpart E. Amended petitions subsequent to hearing will be accepted only with leave of the Board. Amended petitions must be in writing and filed with the Board and served in accordance with 35 Ill. Adm. Code 101.Subpart C. The filing of an amended petition restarts the decision period, pursuant to Section 104.232 of this Part, and requires additional notice pursuant to Section 104.214 of this Part.
- b) If the petitioner amends the petition, the Agency shall file or give an amended recommendation in writing or orally at hearing, but in any event not later than 30 days after the filing of an amended petition. The Agency may amend its recommendation even if the petitioner has not amended its petition. In such an instance, a recommendation may be amended prior to close of the hearing if a hearing is held or 30 days prior to the Board's decision date if a hearing is not held.
- c) Written amendments to the petition or recommendation need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear.

Section 104.228 Insufficient Petition

If the Board finds the petition fails to contain information as required by Sections 104.204, 104.206, and 104.208 of this Part, the Board may order the petitioner to supplement the information contained in the petition. Filings made in response to such order constitute an amended petition for the purposes of calculating the decision deadline pursuant to Section 104.232 of this Part. Alternatively, pursuant to

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Section 104.230 of this Part, the Board may dismiss the petition for lack of sufficient information. Failure of the Board to require supplemental information does not preclude a later finding that the information provided is insufficient to support grant of variance, or constitute a Board decision on the merits of the petition.

Section 104.230 Dismissal of Petition

A petition is subject to dismissal if the Board determines that:

- a) The petition requests relief that the Board is not empowered to grant;
- b) The petition fails to comply with the requirements of 35 Ill. Adm. Code 101.Subpart C and Sections 104.202, 104.204, 104.206 and 104.208 of this Part;
- c) The petitioner fails to timely comply with any order issued by the Board or the hearing officer, including but not limited to an order requiring additional information pursuant to Section 104.228 of this Part; or
- d) The petitioner is not subject to the rule or regulation, requirement, or order of the Board at issue.

Section 104.232 Calculation of Decision Deadline

- a) Pursuant to Section 38(a) of the Act [415 ILCS 5/38(a)] the Board will render its final decision upon the petition within 120 days of the date of filing of the petition with the Board, except:
 - 1) The petitioner may waive its right to a decision within the prescribed period in accordance with 35 Ill. Adm. Code 101.Subpart C and Section 104.204 of this Part;
 - 2) Pursuant to Section 38(a) of the Act [415 ILCS 5/38(a)], when the Board receives a request for hearing pursuant to Section 104.224 of this Part, the decision deadline recommences from the date of receipt of that request;
 - 3) Where the petitioner submits an amended petition for variance pursuant to Section 104.228 of this Part or on its own motion, or requests hearing subsequent to filing of the original petition, the decision deadline recommences from the date of filing with the Board of the, amended petition, or request for hearing; and
 - 4) When a hearing is canceled pursuant to 35 Ill. Adm. Code 101.510.
- b) Time is be computed in accordance with 35 Ill. Adm. Code 101.Subpart C.

Section 104.234 Authorization of Hearing

The Board will authorize a hearing on a variance petition if:

- a) A hearing is requested by the petitioner at the time of initial filing on the associated form or in writing, which is filed and served in accordance with 35 Ill. Adm. Code 101.Subpart C;

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- b) A hearing is requested in a response or amended petition;
- c) *The Board, in its discretion, concludes that a hearing would be advisable;* [415 ILCS 5/37(a)]
- d) *The Agency or any other person files a written objection to the grant of such variance within 21 days of the publication of the Agency's notice pursuant to Section 104.214 of this Part, together with a written request for hearing.* For the purposes of this subsection, a recommendation of the Agency to deny the variance pursuant to Section 104.214 of this Part without a request for hearing constitutes a request for a hearing; [415 ILCS 5/37(a)]
- e) The variance request, if granted, would result in an amendment to the State Implementation Plan for a critical pollutant under the CAA; or
- f) If the request concerns a RCRA variance a hearing will be held.

Section 104.236 Hearings

Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, except that:

- a) All hearings are to be held in the county where the petitioner's facility or pollution source is located;
- b) Hearings may be canceled pursuant to a motion filed in accordance 35 Ill. Adm. Code 101.510 at the discretion of the hearing officer; and
- c) If all parties and non-party participants who have requested a hearing pursuant to this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board in its discretion deems it advisable.
- d) The hearing officer shall notice RCRA hearings to the following persons:
 - 1) Any person in the county in which the installation or property for which variance is sought is located who has in writing requested notice of variance petitions, the State's attorney of such county;
 - 2) The Chairman of the county board of such county;
 - 3) Each member of the General Assembly from the legislative district in which that installation or property is located;
 - 4) Federal agencies as designated by the USEPA;
 - 5) Illinois Department of Transportation;
 - 6) Department of Natural Resources;
 - 7) Illinois Department of Public Health;
 - 8) The Governor of any other state adjacent to the county in which the facility or pollution source is located;

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- 9) Elected officials of any counties, in other states, adjacent to the county in which the facility or pollution source is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility or pollution source; and
- 10) The USEPA's Region V Director of Waste Management Division.

Section 104.238 Standard of Review

- a) *The Board may grant individual variances beyond the limitations prescribed by the Act, whenever it is found, upon presentation of adequate proof, that compliance with any rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship.* [415 ILCS 5/35(a).] The burden of proof in a variance proceeding is on the petitioner.
- b) In addition to subsection (a) above the Board may grant a RCRA variance only to the extent consistent with, and with conditions no less stringent than, those that would be required by RCRA and 40 CFR 260, 261, 262, 263, 264, 265, 266, 267, 268, and 270. Variances must require compliance with the regulations in the shortest practicable time.

Section 104.240 Certificate of Acceptance

The Board will include a certificate of acceptance in all variances, which the petitioner must execute and forward to the Agency. The certificate constitutes acceptance of the variance and its conditions by the petitioner. A variance and its conditions are not binding upon the petitioner until the certificate is executed and forwarded to the Agency. Failure to timely execute and forward the certificate renders the variance void. However, execution of the certificate is not necessary prior to seeking reconsideration pursuant to 35 Ill. Adm. Code 101.Subpart J, or appeal pursuant to Section 104.244 of this Part.

Section 104.242 Term of Variance

Except as provided by Section 38(a) of the Act, any variance granted pursuant to the provisions of this part shall be for such period of time, not exceeding five years, as shall be specified by the Board at the time of the grant of such variance, and upon the condition that the person who receives such variance shall make such periodic progress reports as the Board shall specify. Such variance may be extended from year to year by affirmative action of the Board, but only if satisfactory progress is shown. [415 ILCS 5/36(b).]

Section 104.244 Variance Conditions

In granting a variance the Board may impose such conditions as the policies of the act may require. [415 ILCS 5/36(a).] In a RCRA variance the Board may direct the Agency to issue or modify a RCRA permit with conditions that may be set forth specifically in the order, or which may consist of general guidelines to be followed by the Agency, together with applicable regulations, in issuing a permit.

Section 104.246 Performance Bonds

If the hardship complained of consists solely of the need for a reasonable delay in which to correct a violation of this Act or of the Board regulations, the Board shall condition the grant of such variance upon the posting of sufficient performance bond or other security to assure the completion of the work covered by the variance. The original amount of such performance bond shall not exceed the

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reasonable cost of the work to be completed pursuant to the variance. The obligation under such bond shall at no time exceed the reasonable cost of work remaining pursuant to the variance. [415 ILCS 5/36(a).]

Section 104.248 Objection to Conditions

Notwithstanding this subsection, the Board may include such conditions in granting a variance and may adopt such rules and regulations as the policies of this Act may require. If an objection is made to a variance condition, the Board shall reconsider the condition within not more than 75 days from the date of the objection. [415 ILCS 5/41(b).] An objection to a specific variance condition may be made by filing a motion pursuant to 35 Ill. Adm. Code 101.Subpart E, within 35 days of the receipt of the Board's opinion and order containing the objectionable condition.

Section 104.250 Revocation

The Board has the authority to, upon its own motion or upon a motion filed pursuant to 35 Ill. Adm. Code 101.Subpart E by petitioner, Agency or non-party participant revoke or vacate any variance or any condition of any variance. The Board will vacate or revoke a variance or any condition in a variance for reasons including but not limited to, non-compliance with the variance or any conditions to variance. The Board will hold a hearing pursuant to 35 Ill. Adm. Code 101.Subpart F if necessary to determine whether the variance or any condition of a variance should be revoked or vacated.

SUBPART C: PROVISIONAL VARIANCES

Section 104.300 Applicability

This Subpart applies to any person seeking a provisional variance pursuant to Title IX of the Act. This Subpart shall be read in conjunction with 35 Ill. Adm. Code 101 and this Part. In the event of conflict between this Subpart and the requirements of 35 Ill. Adm. Code 101, the requirements of this Subpart apply.

Section 104.302 Board Action

The Board shall grant provisional variances only upon notification from the Agency that compliance on a short term basis with any rule or regulation, requirement or order of the Board, or with any permit requirement would impose an arbitrary or unreasonable hardship. Such provisional variances shall be issued within 2 working days of notification from the Agency. [415 ILCS 5/35(b).]

Section 104.304 Initiating a Request

Any person seeking a provisional variance pursuant to Section 104.401 of this Part shall make a request to the Agency. The Agency shall promptly investigate and consider the merits of the request. The Agency may notify the Board of its recommendation. If the Agency fails to take final action within 30 days after receipt of the request, the person may initiate a variance proceeding pursuant to Section 104.120 of this Part. [415 ILCS 5/37(b).]

Section 104.306 Notice

The Board shall give prompt notice of its action on provisional variance requests to the public by issuing a press release for distribution to newspapers of general circulation in the county. [415 ILCS 5/37(b).]

Section 104.308 Term

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Any provisional variance granted by the Board pursuant to subsection (b) of Section 35 shall be for a period of time not to exceed 45 days. Upon receipt of a recommendation from the Agency to extend this time period, the Board shall grant up to an additional 45 days. The provisional variances granted to any one person shall not exceed a total of 90 days during any calendar year. [415 ILCS 5/36(c).]

Section 104.310 Simultaneous Variance Prohibition

The Board will not grant a provisional variance pursuant to this Subpart if the petitioner simultaneously holds a variance pursuant to Subpart B of this Part from the same regulation or order of the Board.

SUBPART D: ADJUSTED STANDARDS

Section 104.400 General

- a) Description. An adjusted standard is an environmental regulation that would apply to petitioner, if granted, in lieu of the general regulation that would otherwise be applicable to a petitioner and the regulated community.
- b) Applicability. This Subpart shall apply to any person seeking an adjusted standard pursuant to Section 28.1 of the Act. [415 ILCS 5/28.1.] This includes an adjusted standard sought pursuant to 35 Ill. Adm. Code 212.126 (CAA) and 35 Ill. Adm. Code 700 through 750 (RCRA). This Subpart shall be read in conjunction with 35 Ill. Adm. Code Part 101 which contains procedures generally applicable to all adjudicatory proceedings before the Board. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Subpart, the provisions of this Subpart apply.

Section 104.402 Initiation of Proceeding

A person may initiate an adjusted standard proceeding by filing a petition which meets the requirements of Section 104.406 of this Part. A petition for an adjusted standard (petition) may be filed either jointly with the Agency or singly pursuant to the filing requirements of 35 Ill. Adm. Code 101. If filed singly the petitioner shall also serve the petition upon the Agency in accordance with of 35 Ill. Adm. Code 101. Additionally, a person may file a petition and request the Agency to join as a co-petitioner as set forth below in Section 104.404 of this Part.

Section 104.404 Request to Agency to Join as Co-Petitioner

- a) The Agency may, in its discretion, act as a co-petitioner in any adjusted standard proceeding.
- b) Any person may request Agency assistance in initiating a petition for adjusted standard. The Agency may require the person to submit to the Agency any background information in the person's possession relevant to the adjusted standard which is sought. The Agency shall promptly notify the person in writing of its determination either to join as a co-petitioner, or to decline to join as a co-petitioner. If the Agency declines to join as a co-petitioner, the Agency shall state the basis for this decision.
- c) Discretionary decisions made by the Agency pursuant to this Section are not appealable to the Board.

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- d) Subsequent to the filing of the petition and prior to hearing, the Board will grant the Agency co-petitioner status upon joint motion of the Agency and the petitioner who originally filed the petition.

Section 104.406 Petition Content Requirements

The petition shall be captioned in accordance with 35 Ill. Adm. Code 101. Appendix A, Illustration D. If the Agency is a co-petitioner, the petition shall so state. The petition shall contain headings corresponding to the informational requirements of each subsection of this Section. If the petitioner believes that any of the informational requirements are not applicable to the specific adjusted standard requested, the petitioner shall so state and explain his reasoning. The following information shall be contained in the petition:

- a) A statement describing the standard from which an adjusted standard is sought. This shall include the Illinois Administrative Code citation to the regulation of general applicability imposing the standard as well as the effective date of that regulation;
- b) A statement which indicates whether the regulation of general applicability was promulgated to implement, in whole or in part, the requirements of the CWA (33 U.S.C. 1251 *et seq.* (1988)), Safe Drinking Water Act (42 U.S.C. 300(f) *et seq.* (1988)), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 *et seq.* (1988)), CAA (42 U.S.C. 7401 *et seq.* (1988)), or the State programs concerning RCRA, UIC, or NPDES [415 ILCS 5/28.1];
- c) The level of justification as well as other information or requirements necessary for an adjusted standard as specified by the regulation of general applicability or a statement that the regulation of general applicability does not specify a level of justification or other requirements [415 ILCS 5/28.1];
- d) A description of the nature of the petitioner's activity which is the subject of the proposed adjusted standard. The description shall include the location of and area affected by the petitioner's activity. This description shall also include the number of persons employed by the petitioner's facility at issue, age of that facility, relevant pollution control equipment already in use, and the qualitative and quantitative description of the nature of emissions, discharges or releases currently generated by the petitioner's activity;
- e) A description of the efforts which would be necessary if the petitioner were to comply with the regulation of general applicability. All compliance alternatives, with the corresponding costs for each alternative, shall be discussed. The discussion of costs shall include the overall capital costs as well as the annualized capital and operating costs. Such cost information shall include the overall capital cost as well as the annualized capital and operating costs;
- f) A narrative description of the proposed adjusted standard as well as proposed language for a Board order which would impose the standard. Efforts necessary to achieve this proposed standard and the corresponding costs shall also be presented;
- g) The quantitative and qualitative description of the impact of the petitioner's activity on the environment if the petitioner were to comply with the regulation of general applicability as compared to the quantitative and qualitative impact on the environment if the petitioner were to comply only with the proposed adjusted standard. To the extent applicable, cross-media impacts shall be discussed. Also, the petitioner shall

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compare the qualitative and quantitative nature of emissions, discharges or releases which would be expected from compliance with the regulation of general applicability as opposed to that which would be expected from compliance with the proposed adjusted standard;

- h) A statement which explains how the petitioner seeks to justify, pursuant to the applicable level of justification, the proposed adjusted standard;
- i) A statement with supporting reasons that the Board may grant the proposed adjusted standard consistent with federal law. The petitioner shall also inform the Board of all procedural requirements applicable to the Board's decision on the petition which are imposed by federal law and not required by this Subpart. Relevant regulatory and statutory authorities shall be cited;
- j) A statement requesting or waiving a hearing on the petition (Pursuant to Section 104.422(a)(4) a hearing will be held in all petitions for adjusted standards filed pursuant to 35 Ill. Adm. Code 121.126 (CAA));
- k) The petition shall cite to supporting documents or legal authorities whenever such are used as a basis for the petitioner's proof. Relevant portions of such documents and legal authorities other than Board decisions, state regulations, statutes, and reported cases shall be appended to the petition;
- l) Any additional information which may be required in the regulation of general applicability.

Section 104.408 Petition Notice Requirements

- a) *Within fourteen days after the filing of a petition, the petitioner shall cause, at its own expense, the publication of a notice by advertisement in a newspaper of general circulation in the area likely to be affected by the petitioner's activity which is the subject of the adjusted standard proceeding. [415 ILCS 5/28.1.]*
- b) The title of the notice shall be in the form as follows: "Notice of Petition by [petitioner's name] for an Adjusted Standard before the Illinois Pollution Control Board." The notice shall contain the name and address of the petitioner and the statement that the petitioner has filed with the Board a petition for an adjusted standard. The notice shall also provide the date upon which the petition was filed, the Board docket number, the regulatory standard (with appropriate Administrative Code citation) from which an adjusted standard is sought, the proposed adjusted standard, and a general description of the petitioner's activity which is the subject of the adjusted standard proceeding, and the location of that activity. This information shall be presented so as to be understood in accordance with the context of this Section's requirements. The concluding portion of the notice shall read as follows:

"Any person may cause a public hearing to be held in the above-described adjusted standard proceeding by filing a hearing request with the Illinois Pollution Control Board within 21 days after the date of the publication of this notice. The hearing request should clearly indicate the docket number for the adjusted standard proceeding, as found in this notice, and shall be mailed to the Clerk of the Board, Illinois Pollution Control Board, 100 W. Randolph, Suite 11-500, Chicago, Illinois 60601."

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Section 104.410 Proof of Petition Notice

Within 30 days after the filing of the petition, the petitioner shall file a certificate of publication, issued by the publisher of the petition notice certifying the publication of that notice. The certificate shall be issued in accordance with Section 1 of "An Act to Revise the Law in Relation to Notices" [715 ILCS 5/1].

Section 104.412 Effect of Filing a Petition: Stay

- a) *If any person files a petition for an individual adjusted standard in lieu of complying with the applicable regulation within 20 days after the effective date of the regulation, the operation of the regulation shall be stayed as to such person pending the disposition of the petition; provided, however, that the operation of any regulation shall not be stayed if that regulation was adopted by the Board to implement, in whole or in part, the requirements of the federal Clean Air Act, Safe Drinking Water Act or Comprehensive Environmental Response, Compensation, and Liability Act, or the state RCRA, UIC or NPDES programs. [415 ILCS 5/28.1(e).]*
- b) *Within 20 days after the effective date of any regulation that implements in whole or in part the requirements of the Clean Air Act, if any person files a petition for an individual adjusted standard in lieu of complying with the regulation, such source will be exempt from the regulation until the Board makes a final determination on the petition. If the regulation adopted by the Board from which the individual adjusted standard is sought replaces a previously adopted Board regulation, the source shall be subject to the previously adopted Board regulation until final action is taken by the Board on the petition. [415 ILCS 5/28.1.]*

Section 104.414 Dismissal of Petition

The Board may at any time dismiss a petition for any of the following reasons:

- a) *The Board determines that the petition is frivolous, duplicative, or deficient with respect to the requirements of Section 104.406, 104.408, and 104.410 of this Part [415 ILCS 5/28.1]; or*
- b) *The Board determines that the petitioner is not pursuing disposition of the petition in a timely manner. [415 ILCS 5/28.1].*

Section 104.416 Agency Recommendation and Petitioner Reply

- a) *Unless otherwise ordered by the hearing officer, the recommendation shall be filed with the Board within 50 days of the filing of the petition or amended petition, or where there has been a hearing scheduled, at least 30 days before hearing, whichever is earlier. The recommendation shall recommend either a grant or denial of the proposed adjusted standard, and it shall set forth rationale which supports the Agency's conclusion. In its recommendation, the Agency may present any information which the Agency believes is relevant to the Board's consideration of the proposed adjusted standard. If the Agency recommends a denial of the petition due to informational deficiencies within the petition, the recommendation shall identify the types of information needed to correct the deficiencies.*

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- b) At a minimum, the Agency shall address and respond to the petition with respect to each issue raised by the requirements of subsections (a) through (j) of Section 104.406 of this Part.
- c) The recommendation shall cite to supporting documents or legal authorities whenever such are used as a basis for the Agency's conclusion. Relevant portions of such documents and legal authorities other than Board decisions, State regulations, statutes and reported cases shall be appended to the recommendation if not already in the record of the proceeding.
- d) The petitioner may file a reply to the recommendation within 14 days from the date of service of the recommendation.

Section 104.418 Amended Petition, Amended Recommendation, and Reply

- a) Amended Petition. The petitioner may amend its petition at any time. Such an amendment shall be in writing and filed with the Board unless made orally at hearing. If the petitioner amends the petition such that the amendment is a substantive change to the requested relief in that it requests additional relief, petitioner shall re-notice the amended petition pursuant to Section 104.408 of this Part.
- b) Amended Recommendation. The Agency may amend its recommendation at any time, even if the petitioner has not amended its petition, if such amendment does not cause material prejudice. Such an amendment shall be in writing and filed with the Board unless made orally at hearing.
- c) Reply. The petitioner may file a reply to a written amended recommendation within 14 days of the date of receipt of the amended recommendation or within 14 days of the hearing when the Agency orally amended its recommendation.
- d) Written amendments to the petition or recommendations need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear.

Section 104.420 Request for Public Hearing by Non-Party Participant

- a) Any person can request that a public hearing be held in an adjusted standard proceeding. Such requests shall be filed not later than 21 days after the date of the publication of the petition notice in accordance with subsections (a) and (b) of Section 104.408 of this Part. [415 ILCS 5/28.1.] Requests for hearing should make reference to the Board docket number assigned to the proceeding. A copy of each timely hearing request will be mailed to the petitioner and Agency by the Clerk. Participation by the public at such hearing shall be in accordance with 35 Ill. Adm. Code 101.110 and 101.628.
- b) Where all parties and non-party participants who have requested a hearing pursuant to this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board in its discretion deems it advisable.

Section 104.422 Public Hearing

- a) A public hearing will be held and the Board will assign a hearing officer to an adjusted standard proceeding when:

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- 1) The petitioner requests a hearing be held; or
 - 2) The Board receives a hearing request by a non-party participant, pursuant to Section 104.420 of this Part, not later than 21 days after the date of the publication of the petition notice in accordance with Section 104.408 of this Part; or
 - 3) The Board *in its discretion determines that a hearing would be advisable.* [415 ILCS 5/28.1.] Such a determination need not be evidenced by a Board opinion or order; or
 - 4) The adjusted standard is sought pursuant to 35 Ill. Adm. Code 212.126 (CAA).
- b) The hearing officer will set a time and place for the hearing. The hearing officer will make an attempt to consult with the petitioner and the Agency prior to the scheduling of a hearing. Hearings are to be held in the county likely to be affected by the petitioner's activity which is the subject of the proposed adjusted standard.

Section 104.424 Hearing Notice

After receiving notification from the hearing officer of the scheduled hearing date made pursuant to Section 104.422 of this Part, the Clerk shall cause the publication of a hearing in accordance with Section 28.1 of the Act and 35 Ill. Adm. Code 101. [415 ILCS 5/28.1.]

Section 104.426 Burden of Proof

The burden of proof in an adjusted standard proceeding is on the petitioner. A petitioner must justify an adjusted standard consistent with subsection (a) of Section 27 of the Act. [415 ILCS 5/28.1.]

- a) *If the regulation of general applicability does not specify a level of justification for an adjusted standard, the Board may adopt the proposed adjusted standard if the petitioner proves that:*
- 1) *Factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;*
 - 2) *The existence of those factors justifies an adjusted standard;*
 - 3) *The requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and*
 - 4) *The adjusted standard is consistent with any applicable federal law.*

[415 ILCS 5/28.1].

- b) If the regulation of general applicability specifies a level of justification for an adjusted standard, the Board may adopt the proposed adjusted standard, if the petitioner proves the level of justification specified by the regulation of general applicability.

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Section 104.428 Board Action

- a) In adopting adjusted standards the Board may impose such conditions as may be necessary to accomplish the purposes of the Act. [415 ILCS 5/28.1.]
- b) Subsequent to the Board's adoption of an adjusted standard, the Board will publish, in the Environmental Register, the name of the petitioner, date of the Order which adopted the adjusted standard, and a brief narrative description of the adopted adjusted standard.
- c) *The Board shall cause the publication of a listing of all determinations made pursuant to Section 28.1 of the Act in the Illinois Register and the Environmental Register at the end of each fiscal year.* [415 ILCS 5/28.1.]

SUBPART E: HEATED EFFLUENT, ARTIFICIAL COOLING LAKE AND SULFUR DIOXIDE DEMONSTRATIONS

Section 104.500 General

- a) Description:
 - 1) Heated Effluent Demonstration. The owner or operator of a source of heated effluent which discharges 150 megawatts or more is required, pursuant to 35 Ill. Adm. Code 302.211(f), to demonstrate that the discharges have not caused and cannot be reasonably expected to cause significant ecological damage to the receiving waters. Such demonstration must be made with the Board not less than 5 years nor more than 6 years after the commencement of the operation.
 - 2) Artificial Cooling Lake Demonstration. Pursuant to 35 Ill. Adm. Code 302.211(j) dischargers may demonstrate to the Board that the artificial cooling lake receiving the heated effluent will be environmentally acceptable. Upon such adequate demonstration and compliance with the other requirements of Section 302.211(j), the Board will promulgate specific thermal standards to be applied to the discharge instead of the standards set forth in 35 Ill. Adm. Code 303.
 - 3) Sulfur Dioxide Demonstrations. Any owner or operator of a fuel combustion emission source may petition the Board, pursuant to 35 Ill. Adm. Code 214.185 and this Subpart, for approval of substitute standards from those set forth in 35 Ill. Adm. Code 214.183 and 214.184.
- b) Initiation of Proceeding. The owner or operator may initiate a Heated Effluent, Artificial Cooling Lake or Sulfur Dioxide demonstration by filing a petition in accordance with the requirements set forth in this Subpart with the Clerk of the Board.
- c) Parties. The owner or operator will be named as petitioner and the Agency will be named as the respondent.
- d) Filing and Service. The method of filing and service shall be in accordance with 35 Ill. Adm. Code 101.Subpart C.

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Section 104.502 Petition Requirements

A proceeding shall be commenced by filing a petition which meets the appropriate requirements set forth below:

- a) Heated Effluent and Artificial Cooling Lake Demonstrations. The petition shall include, where applicable, the following information and any reports or other evidence petitioner intends to introduce at the hearing:
 - 1) General Plant Description
 - A) Generating capacity;
 - B) Type of fuel used;
 - C) Operating characteristics of the condenser cooling system;
 - D) History of the load factor of the plant for the last five years;
 - E) Projected load factors for the life of the plant;
 - F) Estimated date of retirement for each unit at the plant and any plans for additional units at the plant;
 - G) History of plant shutdowns; and
 - H) Planned, emergency, and projected shutdowns with frequency and duration.
 - 2) Description of Method for Heat Dissipation
 - A) Type of system used (such as once-through, mechanical, and draft cooling towers,) in narrative form; and
 - B) Summary information on temperature of discharge to receiving waters in narrative form.
 - 3) Plume Studies
 - A) Actual plume studies in the last five years correlated with plant operation and meteorological conditions;
 - B) Theoretical plume studies for all four seasons for typical and worst case conditions. Worst case conditions shall be identified as worst conditions of plant load factor, precipitation, ambient water temperature, air temperature; such studies shall consider the frequency of occurrence and their joint probabilities of occurrence; and
 - C) Theoretical plume studies which identify isotherms at 3⁰ Fahrenheit (1.7⁰ Centigrade) intervals down to ambient temperature indicating three dimensional effects.

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- 4) The discharger shall satisfactorily demonstrate that discharges from that source have not caused and cannot be reasonably expected to cause significant ecological damage to the receiving waters, including but not limited to:
 - A) Biological studies in the last five years on receiving waters, including species studied, location of studies, and conclusions reached, including conclusions as to both the lethal and sublethal effects of the thermal discharge;
 - B) The impact on other animal life (such as waterfowl and amphibians) in the area as a result of the thermal discharge;
 - C) Secondary Considerations:
 - 1) Possible and known impact on recreation from thermal discharges; and
 - 2) Management practices employed or planned in order to limit the effect of any environmental harm established under this subsection.
 - D) The required showing in this subsection may take the form of an acceptable and still accurate final environmental impact statement or pertinent provisions of environmental assessments used in the preparation of the final environmental impact statement, or may take the form of a showing pursuant to Section 304.141(c) or Section 302.211(j).
 - 5) A citation to any prior proceedings, in which petitioner was a party, brought pursuant to 35 Ill. Adm. Code 302.211(f) and (j).
- b) Sulfur Dioxide Demonstration. The petition shall include but not be limited to the following information:
- 1) An explicit statement of the site-specific emission limitation (in pounds of sulfur dioxide per million British Thermal Units (btu) actual heat input and total pounds of sulfur dioxide per hour) which is proposed for the facility.
 - 2) Emission Sources Description:
 - A) The diameter, height, exit gas temperature, and exit gas velocity for all stacks or vents through which sulfur dioxide is emitted into the atmosphere;
 - B) A description of the fuels used including type, ultimate analysis, sulfur content, and heat content;
 - C) A description of the type of fuel combustion equipment including method of firing and size (in million btu per hour capacity);
 - D) A topographic map of terrain within 30 miles of the emission source(s);

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- E) A specific description of the location of the emission sources, including a plot plan; and
 - F) A specific description of the operating conditions which produce maximum sulfur dioxide emissions.
- 3) A summary of any and all ambient air quality data collected by the owner or operator of the source(s) since January 1, 1973. The summary shall include annual averages; maximum and second-highest one-hour, three-hour, and 24-hour averages for each month; and the number of times the three-hour and 24-hour sulfur dioxide standards were exceeded during each month.
 - 4) A summary of any and all meteorological data collected by the owner or operator of the source(s) since January 1, 1973, if such data are used in the development of the site-specific emission standard.
 - 5) A complete description of and justification for all dispersion models and plume rise equations which are used to develop the site-specific emission limitation including all model equations.
 - 6) A description of and justification for the use of all data which were inputs to the dispersion and plume rise formula used to establish the site-specific emission standard. The description and justification shall cover, as a minimum, the following input data;
 - A) Stack diameters, stack heights, exit gas temperatures, and exit gas velocities for all stacks and vents emitting sulfur dioxide at the subject facility as well as for any other sources of sulfur dioxide which were modeled;
 - B) All sulfur dioxide emission sources which were modeled; and
 - C) All meteorological data.
 - 7) Calculated maximum ground-level concentrations using the following method, or such other method (or modification of the hereinafter stated method) which the petitioner proves to the satisfaction of the Board to be acceptable.
 - A) Selection of simulation model:
 - 1) Gaussian models which allow the input of hourly meteorological data shall be used which are appropriate for the specific location and type of source(s) in question.
 - 2) Dispersion models presented in "Guidelines on Air Quality Models" (EPA-450/2-78-027), as amended from time to time, or those deemed by the Board to be equivalent to these models shall be used for detailed air quality studies.
 - B) Selection of meteorological data and stack parameters:

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- 1) The most recent five years of hour-by-hour meteorological data reasonably available, including wind speed, wind direction, atmospheric stability, mixing height and surface temperature shall be used, unless the petitioner demonstrates that one of the five years causes substantially higher concentrations than the other four, in which case detailed analyses conducted for only that "worst case" year would be acceptable. Notwithstanding the previous sentence, one year of on-site data may be used in lieu of the 5-year data requirement;
 - 2) Data shall be from the nearest, representative, quality controlled meteorological collecting site; and
 - 3) Stack parameters (including emission rate, stack height, stack diameter, exit velocity, and exit temperature) shall reflect the maximum operating rate for comparison with the 24-hour and 3-hour sulfur dioxide standards.
- C) Receptors:
- 1) Receptors shall be located so as to ensure that the source's maximum impact is detected;
 - 2) The determination of the receptor grid shall be fully documented in the modeling study;
- D) Special conditions:
- 1) All special conditions which may affect the dispersion of the effluent plume, including local terrain effects and aerodynamic downwash, shall be considered in the modeling study;
 - 2) If terrain is a factor in the vicinity of the source, a model capable of handling variable-height receptors shall be used;
 - 3) If the computed height of the effluent plume is less than 2.5 times the height of nearby buildings or local obstructions, aerodynamic downwash shall be studied and considered as a possible factor in the dispersion of that effluent.
- E) Determination of violation:
- The determination of whether an applicable air quality increment or standard is being violated shall be based on the second highest predicted concentration over the receptor grid for short-term averaging times and on the highest predicted concentration for annual averaging times. However, if only one year of meteorological data is used in the short-term analysis, then the highest-predicted concentration may be compared to the applicable standard to determine whether a violation has occurred.

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F) Other sources:

Effects of other sources of sulfur dioxide shall be taken into account in the modeling study. Methods by which other sources of sulfur dioxide may be accounted are as follows:

- 1) An acceptable method is to estimate the "background" from monitoring data which has been subjected to adequate quality control where available. When monitored data is used, the background shall be estimated using monitoring days with meteorological conditions similar to those identified as "worst case" for the source in question; or
 - 2) If monitoring data is not available, then all sources of sulfur dioxide having a significant impact in the area of the source's impact area shall be used in the simulation model. These sources of sulfur dioxide shall also be modeled at their maximum allowable emission rate for any studies addressing 24-hour or 3-hour averaging times.
- 8) Estimates of the frequency, characteristics, probable time of occurrence, and duration of the meteorological conditions associated with the maximum ground-level concentration of sulfur dioxide to which the facility under study contributes. A description of the techniques used in arriving at the above estimates shall be included.
 - 9) Background concentrations which were determined for all meteorological conditions required to be examined under subsection (7) and for any other meteorological conditions considered in the development of the alternative standard.
 - 10) A description of the method that was used to determine background sulfur dioxide concentrations in the vicinity of the subject facility for each of the meteorological conditions required to be examined under subsection (7) and for any additional meteorological conditions considered in developing the alternative standard.
 - 11) An evaluation and calibration of the dispersion model if air quality monitoring data were available to perform such evaluation and calibration.

Section 104.504 Petition Requirements in Sulfur Dioxide Demonstrations

In addition to meeting the petition contends requirements of Section 104.502(b) of this Part the petitioner shall ensure that the procedural requirements of 40 CFR 51.4 (1977) are met and, at least 30 days prior to the date of the hearing, petitioner shall:

- a) Give notice to the public by prominent advertisement in the Air Quality Control Region affected announcing the date, time and place of such hearing;
- b) Make available a copy of the petition for public inspection in at least one location in the Air Quality Control Region in which the source is located;
- c) Notify the Administrator of the USEPA (through the appropriate Regional Office);

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- d) Notify each local air pollution control agency located within the aforementioned Air Quality Control Region; and
- e) Notify, in the case of an interstate Air Quality Control Region, any air pollution control agencies of other states included, in whole or in part, in the Region.

Section 104.506 Notice

The Clerk shall give notice of the petition and hearing in accordance with 35 Ill. Adm. Code 101.602. The proceedings shall be in accordance with 35 Ill. Adm. Code 101.Subpart F. However, the requirement as to the county in which the hearing is to be held shall be inapplicable.

Section 104.508 Agency Recommendation and Petitioner Reply.

The Agency is required to file a recommendation in Heated Effluent, Artificial Cooling Lake, and Sulfur Dioxide demonstrations as prescribed below. The petitioner or any other person may file a reply to the Agency recommendation within 14 days with proper notice given to the Board and the Agency.

- a) Heated Effluent and Artificial Cooling Lake Demonstrations:
 - 1) Within sixty days of the filing of the petition, the Agency may make a recommendation to the Board as to the ecological impact of the thermal discharges from petitioner's source upon the receiving waters. Such recommendation may include:
 - A) A description of the efforts made by the Agency in conducting its review;
 - B) The Agency's conclusion as to whether discharges from the source have caused or can reasonably be expected to cause significant ecological damage to the receiving waters;
 - C) The factual basis for the Agency's conclusion;
 - D) Any corrective measures which the Agency recommends be taken and the recommended time period for implementation of such measures; and
 - E) The Agency's conclusion of what disposition should be made of the petition.
- b) Sulfur Dioxide Demonstrations:
 - 1) Within 90 days of the filing of the petition the Agency shall make a recommendation to the Board as to be proposed site-specific emission limitation. Such recommendation may include the following:
 - A) A description of the efforts made by the Agency in conducting its review;

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- B) The Agency's conclusion as to whether the proposed site-specific emission limitation is adequate to prevent violations of the Primary and Secondary Sulfur Dioxide Ambient Air Quality Standards; and
- C) The Agency's conclusion as to what disposition should be made of the petition.

Section 104.510 Burden of Proof

The burden of proof shall be on the petitioner.

SUBPART F: WATER WELL SETBACK EXCEPTION PROCEDURES

Section 104.600 General

- a) Description. This Subpart applies to any *owner of a new potential route, a new potential primary source other than landfilling or land treating, or new potential secondary source* who files a petition for an exception from the setback requirements of Sections 14.2 and 14.3(e) of the Act pursuant to Section 14.2(c) of the Act and this Subpart. [415 ILCS 5/14.2, 14.3 and 14.2(c).]
- b) Parties. The owner filing the petition for an exception will be named as the petitioner and the Agency will be named as respondent.
- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C shall apply to the proceedings of this Subpart.

Section 104.602 Initiation of Proceeding

- a) The petitioner shall file the petition for exception with the Clerk of the Board, and shall serve one copy upon the Agency.
- b) The petitioner shall notify and provide a copy of the petition to the owners of each potable water supply for which the setback requirements would be affected by the exception. [415 ILCS 5/14.2(c).]

Section 104.604 Petition Content Requirements

The petition contain the following information:

- a) A written statement, signed by the petitioner or an authorized representative, outlining the scope of the evaluation, the nature of, the reasons for and the basis of the exception, consistent with the burden of proof contained in Section 104.610 of this Part;
- b) The nature of the petitioner's operations and control equipment;
- c) In accordance with 35 Ill. Adm. Code 101, the petition shall contain proof of service on owners required to be notified and provided with a copy of the petition as required by Section 104.602(b) of this Part and Section 14.2(c) of the Act [415 ILCS 5/14.2(c)]; and

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- d) Any other information which may be required by Section 14.2 of the Act. [415 ILCS 5/14.2.]

Section 104.606 Response and Reply

- a) Within 21 days after the filing of a petition, the Agency and any owner required to be notified may file a response to any petition in which it has not joined as co-petitioner. The response shall include the comments concerning potential Board action on the petition.
- b) The petitioner may file a reply within 14 days after the service of any response.

Section 104.608 Hearing

The Board will hold at least one public hearing in an exception proceeding. The hearing officer will schedule the hearing. The Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code 101. The proceedings will be in accordance with 35 Ill. Adm. Code 101.Subpart F.

Section 104.610 Burden of Proof

The burden of proof is on the petitioner. The petitioner must demonstrate that:

- a) Compliance with the setback requirements of Section 14.2 or 14.3(e) of the Act [415 ILCS 5/14.2 and 14.3(e)] would pose an arbitrary and unreasonable hardship;
- b) The petitioner will utilize the best available control technology controls economically achievable to minimize the likelihood of contamination of the potable water supply well;
- c) The maximum feasible alternative setback will be utilized; and
- d) The location of such potential route will not constitute a significant hazard to the potable water supply well.

SUBPART G; REVOCATION AND REOPENING OF CLEAN AIR ACT PERMIT PROGRAM (CAAPP) PERMITS

Section 104.700 General

- a) Description. The provisions of this Subpart shall apply to:
 - 1) Any revocation/reopening proceeding initiated by the Agency when it determines that there are grounds to revoke and reissue a Clean Air Act Permit Program (CAAPP) permit for cause, pursuant to Section 39.5(15)(b) of the Act. [415 ILCS 5/39.5(15)(b)]; and
 - 2) Any reopening proceeding initiated by USEPA when USEPA determines that there are grounds to terminate or revoke and reissue a CAAPP permit for cause, pursuant to Section 39.5(16) of the Act. [415 ILCS 5/39.5(16).]
- b) Parties.

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- 1) In a revocation/reopening proceeding initiated by the Agency, the Agency will be named as petitioner and the holder of the CAAPP will be named as respondent.
 - 2) In a reopening proceeding initiated by USEPA, the Agency and USEPA will be named as petitioners and the holder of the CAAPP will be named as respondent.
- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C shall apply to the proceedings of this Subpart.

Section 104.702 Definitions

The definitions of 35 Ill. Adm. Code 101.Subpart B and Section 39.5 of the Act shall apply to this Subpart unless otherwise provided. If there is a conflict the definitions of Section 39.5 of the Act shall apply. [415 ILCS 5/39.5.]

Section 104.704 Initiation of Proceedings

- a) Agency revocation/reopening proceeding. The Agency may initiate a revocation/reopening proceeding before the Board by serving a petition for revocation/reopening upon the respondent and filing the petition with the Board.
- b) USEPA reopening proceeding. If the Agency receives from USEPA a notice to terminate or revoke and reissue a CAAPP permit for cause, the Agency shall, within 30 days after receipt of USEPA's notice, serve a petition upon the respondent and file the petition with the Board.

Section 104.706 Petition Content Requirements

- a) Agency revocation/reopening proceeding. The petition in a revocation proceeding shall include:
 - 1) The grounds for the revocation of the CAAPP permit;
 - 2) The associated permit record; and
 - 3) Any other information necessary to establish that the CAAPP permit should be revoked.
- b) USEPA reopening proceeding. The petition in a reopening proceeding shall include:
 - 1) The USEPA notice to terminate or revoke and reissue a CAAPP permit for cause which initiated the matter;
 - 2) The associated permit record; and
 - 3) The Agency's proposed determination and the justification for the proposed determination.

Section 104.708 Response and Reply

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- a) The respondent may file a response to the Agency's petition within 21 days after service of the petition.
- b) The Agency may file a reply within 21 days after filing of any response.

Section 104.710 Hearing

The Board shall hold at least one public hearing in the county where the CAAPP source is located. The Clerk shall give notice of the petition and hearing in accordance with 35 Ill. Adm. Code 101.602. The proceeding shall be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F.

Section 104.712 Burden of Proof

- a) Agency revocation/reopening proceeding. The burden of proof shall be on the Agency to establish that the permit should be revoked under the standards set forth in this Act and the Clean Air Act. [415 ILCS 5/39.5(15)(b).]
- b) USEPA reopening proceeding. The burden of proof shall be on the Agency. [415 ILCS 5/39.5(16)(b)(i).]

Section 104.714 Opinion and Order

- a) Agency revocation/reopening proceeding:
 - 1) The Board shall issue a written opinion and order within 120 days after the filing of the petition that sets forth the Board's decision and supporting rationale.
 - 2) If the Board determines that the permit should be revoked and reissued, its final order shall direct the Agency to revoke and reissue the CAAPP permit consistent with Section 39.5 of the Act. [415 ILCS 5/39.5.]
- b) USEPA reopening proceeding:
 - 1) *After due consideration of the written and oral statements, the testimony and arguments that shall be submitted at hearing, the Board shall issue and enter an interim order for the proposed determination within 120 days after the filing of the petition, which shall set forth all changes, if any, required in the Agency's proposed determination. The interim order shall comply with requirements for final order as set forth in Section 33 of the Act. Issuance of an interim order by the Board under this subsection (b), however, shall not affect the permit status and does not constitute a final action for purposes of the Act or the Administrative Review Law. [415 ILCS 5/39.5(16)(b)(ii).]*
 - 2) The Board shall cause a copy of its interim order to be served upon all parties to the proceeding as well as upon USEPA. The Agency shall submit the proposed determination to USEPA in accordance with the Board's interim order within 180 days after receipt of the notification from USEPA. [415 ILCS 5/39.5(16)(b)(iii).]

Section 104.716 USEPA Review of Proposed Determination

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- a) If USEPA does not object to the proposed determination within 90 days after receipt, the Board shall, within 7 days after receipt of USEPA's final approval or within 21 days after expiration of the 90-day period, whichever is earlier, enter the interim order as a final order. The final order may be appealed as provided by Title XI of the act. The Agency shall take final action in accordance with the Board's final order. [415 ILCS 5/39.5(16)(c)(i).]
- b) USEPA Objection.
 - 1) If USEPA objects to the proposed determination within 90 days after receipt, *the Agency shall submit USEPA's objection and the Agency's comments and recommendation on the objection to the Board* and permittee upon receipt of the objection. Within 15 days after receipt of USEPA's objection, the Agency shall submit *the Agency's comments and recommendation on the objection to the Board and permittee.* [415 ILCS 5/39.5(16)(c)(ii).]
 - 2) *The Board shall review its interim order in response to USEPA's objection and the Agency's comments and recommendation and issue a final order in accordance with Sections 32 and 33 of the Act* within 60 days after receipt of the Agency's comments and recommendation on USEPA's objection. *The Agency shall, within 90 days after receipt of such objection, respond to USEPA's objection in accordance with the Board's final order.* [415 ILCS 5/39.5(16)(c)(ii).]

SUBPART H: MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY DETERMINATIONS

Section 104.800 General

- a) Description. The provisions of this Subpart shall apply to any proceeding initiated by an owner or operator of a CAAPP source pursuant to Section 39.5(19)(a) or (e) of the Act challenging the Agency's determination not to utilize the CAAPP source emission limitation or the CAAPP source limitation for a case-by-case maximum achievable control technology (MACT). [415 ILCS 5/39.5(19)(a) and (e).]
- b) Parties. The owner or operator of the CAAPP source who initiates the proceeding shall be named as petitioner and the Agency shall be named as respondent.
- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C shall apply to the proceedings of this Subpart.

Section 104.802 Definitions

The definitions of 35 Ill. Adm. Code 101.Subpart B and Section 39.5 of the Act shall apply to this Subpart unless otherwise provided. If there is a conflict the definitions of 39.5 of the Act shall apply.

Section 104.804 Initiation of Proceedings

The owner or operator of a CAAPP source may initiate a proceeding before the Board by serving a petition for an emission limitation or MACT determination upon the Agency and filing with the Clerk of the Board.

Section 104.806 Petition Content Requirements

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A petition filed pursuant to Sections 39.5(19)(a) and (e) of the Act [415 ILCS 5/39.5(19)(a) and (e)] shall include:

- a) A detailed description of and justification for the emission limitation that is being proposed for the source and an explanation of how such emission limitation provides for the level of control required under Section 112 of the CAA (42 U.S.C. 7412);
- b) A petition filed pursuant to Section 39.5(19)(a) of the Act shall also include the justification for the Board to establish whether the emission limitation proposed by the owner or operator of the CAAPP source provides for the emission limitation equivalent to the emission limitation that would apply to the source if USEPA had promulgated the applicable emission standard pursuant to Section 112(d) of the CAA (42 U.S.C 7412(d)) in a timely manner; and
- c) The Agency's notification of its refusal to adopt the CAAPP source's proposed emission limitation or the CAAPP source's MACT determination.

Section 104.808 Response and Reply

- a) The Agency may file a response to the petition of the owner or operator within 21 days after service of the petition.
- b) The owner or operator may file a reply within 21 days after the filing of any response.

Section 104.810 Hearing

The Board will hold at least one public hearing in the county where the CAAPP source is located. The Clerk of the Board shall give notice of the petition and any hearing in accordance with 35 Ill. Adm. Code 101.602. The proceeding shall be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F.

Section 104.812 Burden of Proof

The burden of proof shall be on the petitioner to demonstrate that the emission limitation provides for the level of control required under Section 112 of the Clean Air Act.

Section 104.814 Board Action

The Board shall determine whether the emission limitation proposed by the owner or operator or an alternative emission limitation proposed by the Agency provides for the level of control required under Section 112 of the Clean Air Act, or shall otherwise establish an appropriate emission limitation, pursuant to Section 112 of the Clean Air Act. [415 ILCS 5/39.5(19)(a) and (e).]

SUBPART I: CULPABILITY DETERMINATIONS FOR PARTICULATE MATTER LESS THAN OR EQUAL TO 10 MICRONS (PM-10)

Section 106.900 General

- a) Description. The provisions of this Subpart shall apply to any appeal initiated under 35 Ill. Adm. Code 212.702 by an owner or operator of a source pursuant to a finding of culpability for an exceedence of the 24-hour ambient air quality standard for

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particulate matter less than or equal to ten (10) microns (PM-10) at 35 Ill. Adm. Code 243.120 by the Agency.

- b) Parties. The owner or operator of a source initiated the proceeding will be named as the petitioner and the Agency will be named as respondent.
- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101. Subpart C shall apply to the proceedings of this Subpart.

Section 104.902 Initiation of Proceedings

The owner or operator of a source may initiate a proceeding before the Board by serving a petition review of the Agency culpability determination and filing with the Clerk of the Board.

Section 104.904 Petition Content Requirements

A petition for review filed pursuant to this Subpart shall be captioned in accordance with 35 Ill. Adm. Code 101. Appendix A and include, but need not be limited to:

- a) A copy of the letter, or other written communication, setting forth the Agency's finding of culpability;
- b) A clear identification of the county in which the source is located; and
- c) A detailed description of, and justification for, the source's position that the Agency's finding of culpability is incorrect.

Section 104.906 Response and Reply

- a) The Agency shall file a response to a petition appealing a determination of culpability within 21 days after service of the petition.
- b) The Agency's response shall contain, at a minimum, the basis of its determination of the petitioner's culpability, including any meteorological, monitoring, or sampling data upon which the determination was made.
- c) The petitioner may file a reply within 7 days after the service of any response by the Agency.

Section 104.908 Hearing

- a) Within 14 days after a petition is filed, the Agency shall publish notice of such petition in a newspaper of general circulation in the county in which the source is located. Within 30 days after the filing of the petition, any person may file with the Clerk of the Board a request for hearing on the petition.
- b) The hearing officer will schedule any hearing. The Clerk of the Board shall give notice of the hearing in accordance with 35 Ill. Adm. Code 101.602. The proceeding shall be conducted in accordance with 35 Ill. Adm. Code 101. Subpart F

Section 104.910 Burden of Proof

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The burden of proof shall be on the petitioner to demonstrate that the Agency's determination of culpability is incorrect.