

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER 1: POLLUTION CONTROL BOARD

PART 107
PETITION TO REVIEW POLLUTION CONTROL FACILITY SITING DECISIONS

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AUTHORITY: Authorized by Sections 26 and 27 of the Environmental Protection Act (Act) [415 ILCS 5/26 and 27] and implementing Sections 39.2, and 40.1 of the Act [415 ILCS 5/39.2 and 40.1].

SOURCE: 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 in R93-30 at 18 Ill. Reg. 11579, effective July 11, 1994; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 539, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8828, effective June 8, 2005.

SUBPART A: GENERAL PROVISIONS

Section 107.100 Applicability

- a) This Part applies to adjudicatory proceedings before the Board concerning petitions to review a pollution control facility siting decision made by local government pursuant to Sections 39.2 and 40.1 of the Act.
- b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all of the Board's adjudicatory 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 107.102 Severability

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

Section 107.104 Definitions

For purposes of this Part, words and terms will have the meanings as defined in 35 Ill. Adm. Code 101.Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

Section 107.106 Description

Pursuant to Section 39(c) of the Act, any new pollution control facility, prior to receiving a permit from the Agency to construct and operate, must first receive siting approval from the *County Board of the county if in an unincorporated area, or the governing body of the*

municipality when in an incorporated area, in which the facility is to be located [415 ILCS 5/39(c)]. The siting approval can only be given pursuant to Section 39.2 of the Act and only after the unit of local government conducts a public hearing that comports with the requirements of Section 39.2(d) and with general standards of fundamental fairness. Pursuant to Section 40.1 of the Act, a decision of a unit of local government to site or deny siting of a new pollution control facility is reviewable by the Board. The decision of the Board is appealable to the Illinois appellate court.

SUBPART B: PETITION FOR REVIEW

Section 107.200 Who May File Petition

The following persons may file a petition for review of a decision concerning siting of a new pollution control facility pursuant to Section 40.1 of the Act:

- a) Siting applicants. Any person who has properly applied to one or more units of local government, pursuant to Section 39.2 of the Act, for siting approval of a new pollution control facility and has been denied siting approval under Section 39.2 of the Act, may file a petition for review of the decision to deny siting. The siting applicant may also appeal conditions imposed in a decision granting siting approval.
- b) Other persons. Any person who has participated in the public hearing conducted by the unit of local government and is so located as to be affected by the proposed facility may file a petition for review of the decision to grant siting. Associations that file a petition before the Board must be represented by an attorney in accordance with 35 Ill. Adm. Code 101.400.

Section 107.202 Parties

- a) In a petition to review a local government's decision concerning a new pollution control facility, the following are parties to the proceeding:
 - 1) The petitioner or petitioners are the persons described in Section 107.200 of this Part. If there is more than one petitioner, they must be referred to as co-petitioners; and
 - 2) The unit(s) of local government whose decision is being reviewed must be named the respondent(s). In an appeal pursuant to Section 107.200(b), the siting applicant must also be named as a respondent.
- b) Where the interests of the public would be served, the Board or hearing officer may allow intervention by the Attorney General or the State's Attorney of the county in which the facility will be located.

Section 107.204 Time for Filing Petition

A petition for review must be filed within 35 days after the local siting authority's action to approve or disapprove siting. Action means the local government's official written decision granting or denying local siting approval. Pursuant to Section 39.2(e) of the Act, action includes failure of the governing body to act within 180 days after receiving a request for siting approval.

Section 107.206 Filing and Service Requirements

- a) Filing. The petition for review must be filed with the Clerk of the Board in accordance with the filing requirements contained in the Board's general procedural rules, found at 35 Ill. Adm. Code 101.Subpart C and Section 107.208 of this Part.
- b) Service. The petition for review must be served upon all parties in accordance with the Board's service requirements contained in the Board's general procedural rules, found at 35 Ill. Adm. Code 101.Subpart C.

Section 107.208 Petition Content Requirements

In addition to the requirements of 35 Ill. Adm. Code 101.Subpart C the petition must also include:

- a) A copy of the local siting authority's written decision or ordinance;
- b) A statement as to how the filing party is a proper petitioner under Section 107.200 of this Part; and
- c) In accordance with Section 39.2 of the Act, a specification of the grounds for the appeal, including any allegations for fundamental unfairness or any manner in which the decision as to particular criteria is against the manifest weight of the evidence.

SUBPART C: FILING OF LOCAL RECORD

Section 107.300 Record

Pursuant to Sections 39.2 and 40.1 of the Act, the siting authority must compile a complete record of its proceedings.

Section 107.302 Filing of the Record

The siting authority must file the record of its proceedings with the Board as directed by Board or hearing officer order. Failure to file the entire record on the date directed by the Board or hearing officer may subject the respondent to sanctions as may be ordered by the Board in accordance with 35 Ill. Adm. Code 101.Subpart H.

Section 107.304 Record Contents

- a) The record must contain all information or evidence presented to the local siting authority or relied upon by the local siting authority during its hearing process including:
 - 1) The siting application;
 - 2) Any and all transcripts of local hearings;
 - 3) All briefs and other arguments and statements of parties and participants;
 - 4) All exhibits relied upon by the local siting authority in making its decision;
 - 5) All written public comments relevant to the local government proceeding;
 - 6) Minutes of all relevant open meetings of the siting authority;
 - 7) Notices of hearings or all relevant meetings of the siting authority;
 - 8) The written decision of the siting authority made pursuant to Section 39.2 of the Act;
 - 9) Certificate of Record as described in Section 107.308 of this Part; and
 - 10) *If, prior to making a final local siting decision, a county board or governing body of a municipality has negotiated and entered into a host agreement with the local siting applicant, the terms and conditions of the host agreement, whether written or oral, shall be disclosed and made a part of the hearing record for that local siting proceeding. In the case of an oral agreement, the disclosure shall be made in the form of a written summary jointly prepared and submitted by the county board or governing body of the municipality and the siting applicant and shall describe the terms and conditions of the oral agreement. [415 ILCS 5/39.2(e)]*
- b) The record must contain the originals or legible copies of all documents, must be arranged in chronological sequence, and must be sequentially numbered, placing the letter “C” before the number of each page.
- c) Seven copies of the transcript and one original and 9 copies of all other documents in the record must be filed with the Board.

Section 107.306 Preparing of the Record

Unless petitioner is a citizen or citizen's group, the petitioner must pay the costs of preparing and certifying the record to the Board. If the petitioner is a citizen or citizen's group, *such petitioner shall be exempt from paying the costs of preparing and certifying the record* [415 ILCS 5/39.2(n)].

Section 107.308 Certification of Record

The record filed with the Board must be certified by the county clerk, if the siting authority is a county, or the municipal clerk, if the siting authority is a municipality. The certification must be entitled "Certificate of Record on Appeal". The Certificate must contain an index that lists the documents comprising the record and show the page number upon which they start and end. The Certificate of Record must be served on all parties.

SUBPART D: HEARING

Section 107.400 General

Hearings and discovery will be conducted in accordance with the provisions set forth in the Board's general procedural rules found at 35 Ill. Adm. Code 101.Subpart F.

Section 107.402 Authority and Duties of Hearing Officer

The authority and duties of the hearing officer are set forth in the Board's general procedural rules found at 35 Ill. Adm. Code 101.Subpart F.

Section 107.404 Public Participation

Parties to the proceeding will have all rights of examination and cross-examination relevant in any judicial proceeding. Persons who are not parties as set forth in Section 107.202 of this Part are considered participants and will have hearing participation rights as determined by the hearing officer in accordance with 35 Ill. Adm. Code 101.628. Participants may offer comment at a specifically determined time in the proceeding, but may not examine or cross-examine witnesses for either party. In accordance with this Section and 35 Ill. Adm. Code 101.628, public comment will not be considered testimony unless sworn and subject to cross-examination.

SUBPART E: BOARD REVIEW AND DECISION

Section 107.500 Preliminary Board Determination/Set for Hearing

Upon proper filing of the petition, the Board will set the matter for hearing unless it determines that the matter is frivolous or duplicative as required by Section 40.1(b) of the Act.

(Source: Amended at 29 Ill. Reg. 8828, effective June 8, 2005)

Section 107.502 Dismissal of Petition

- a) The Board on its own motion or motion by any party, may dismiss any petition that:
 - 1) is untimely filed pursuant to Section 107.204 of this Part;
 - 2) fails to name all parties as required by Section 39.2 of the Act;
 - 3) fails to include the required fee and all information as required by Section 107.208 of this Part; or
 - 4) fails to meet the requirements in 35 Ill. Adm. Code 101.Subpart C.
- b) Upon motion by any unit of local government that is required to prepare and certify its record alleging that any petitioner required to pay costs of preparing and certifying the record of the proceedings has failed to pay those costs, the Board may enter a dismissal or other order as allowed by Section 39.2(n) of the Act.

Section 107.504 Decision Deadline

In accordance with Section 40.1 of the Act only the applicant for siting may waive the decision deadline. Unless the applicant for siting waives the decision deadline in accordance with 35 Ill. Adm. Code 101.308 of the Board's general procedural rules, the Board will issue its decision within 120 days after the proper filing and service of a petition for review.

Section 107.506 Burden of Proof

The petitioner bears the burden of proof in accordance with Section 40.1(a) of the Act.

107.APPENDIX A Comparison of Former and Current Rules (Repealed)

(Source: Repealed at 29 Ill. Reg. 8828, effective June 8, 2005)