

ILLINOIS POLLUTION CONTROL BOARD

July 20, 2006

IN THE MATTER OF: )  
 )  
AMENDMENTS TO THE BOARD'S ) R04-9  
ADMINISTRATIVE RULES: 2 ILL. ADM. ) (Rulemaking - Procedural)  
CODE 2175 )

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

Today the Board adopts amendments to its administrative rules at Part 2175 of Title 2 of the Illinois Administrative Code. The administrative rules, last amended in 1996, describe the Board's organization, the types of Board proceedings, how to pay filing and copying fees, and how the public may access information. Amendments to these rules are needed primarily to: (1) codify statutory changes affecting the Board; (2) reference the Board's overhauled procedural rules (35 Ill. Adm. Code 101-130); and (3) update information about the Board, including how filings with the Board may be viewed, downloaded, and searched on-line through the Board's Web-based Clerk's Office On-Line (COOL).

In this opinion, the Board first provides the procedural background for this rulemaking. The Board then discusses the main changes being made to the administrative rules. The rule amendments themselves are set forth in the order following this opinion.

**PROCEDURAL BACKGROUND**

The Board opened this docket, R04-9, in August 2003. An important objective in doing so was to have the 2 Ill. Adm. Code 2175 administrative rules reflect detailed Board procedural rules on electronic filing that were pending at the time. See Amendments to the Board's Administrative Rules: 2 Ill. Adm. Code 2175, R04-9 (Aug. 21, 2003). To ensure the effectiveness of filing through COOL, however, the Board undertook a pilot test of its electronic filing system, postponing completion of the electronic filing rulemaking, R04-8, Amendments to the Board's Procedural Rules: 35 Ill. Adm. Code 101-130.

The Board remains committed to electronic filing in accordance with the Electronic Commerce Security Act (5 ILCS 175 (2004)) and to the adoption of related procedural rules. To that end, the Board is now considering the impact of the United States Environmental Protection Agency's recent Cross-Media Electronic Reporting Rule, 40 C.F.R. 3 (eff. Jan. 11, 2006). However, because there are numerous important items besides electronic filing that should be codified in the Board's administrative rules, the Board has chosen to proceed with those amendments today. The Board is adopting these amendments to Part 2175 as final rules under Section 5-15 of the Illinois Administrative Procedure Act (5 ILCS 100/5-15 (2004)). *See* 1 Ill. Adm. Code 100.800, 100.810. When electronic filing procedural rules are adopted, the Board

will revisit the Part 2175 rules and reference appropriate aspects of electronic filing, including the payment of filing fees on-line by credit or debit card.

## **DISCUSSION**

As noted, the Part 2175 rules were last amended in 1996. Since then, there have been many changes at the Board. Three significant areas of updating are now needed. With today's amendments, the administrative rules reflect: (1) statutory changes affecting the Board; (2) Board procedural rule changes; and (3) various developments at the Board, such as the public availability of COOL as an "electronic file cabinet" on the Board's Web site.

### **Statutory Changes**

Over the last several years, amendments to the Environmental Protection Act (Act) (415 ILCS 5 (2004)) and the Open Meetings Act (5 ILCS 120 (2004)) have impacted the Board. For example, Public Act 93-509 (eff. Aug. 11, 2003) amended the Act, reducing the number of Board Members from seven to five. 415 ILCS 5/5(a). This, in turn, lowered the number of affirmative votes needed for Board action from four to three. These statutory changes are reflected in today's amendments at Sections 2175.105(b) (Board membership) and 2175.120(b) (approval of majority of members required for Board decisions).

Public Act 93-523 (eff. Jan. 1, 2004) amended the Open Meetings Act to require that public bodies keep a "verbatim record of all their closed meetings in the form of an audio or video recording." 5 ILCS 120/2.06(a). The Board complies with this new requirement by audio-taping its closed deliberative sessions, held pursuant to Section 2(c)(4) of the Open Meetings Act (5 ILCS 120/2(c)(4) (2004)). Verbatim recording is now covered in Section 2175.135 of the Board's administrative rules.

Other new provisions of the Open Meetings Act, brought about by Public Act 94-28 (eff. Jan. 1, 2006), impose Web site posting requirements on certain public bodies. Under Section 2.02 of the Open Meetings Act (5 ILCS 120/2.02), a public body with a Web site maintained by a full-time staff must post its regular meeting agendas and annual meeting schedule on its Web site. Under Section 2.06(b) of the Open Meetings Act (5 ILCS 120/2.06(b)), such a public body must also post the regular open meeting minutes of the public body on the Web site within seven days after approving the minutes. The Board has full-time staff dedicated to its Web site maintenance. The Board addresses the new Web site posting requirements in Sections 2175.125, 2175.130, and 2175.135 of the administrative rules.

### **Procedural Rule Changes**

The Board adopted an entirely new set of procedural rules in 2000, repealing its then-current procedural rules and replacing them and all Board procedural resolutions. *See Revision of the Board's Procedural Rules: 35 Ill. Adm. Code 101-130, R00-20* (Dec. 21, 2000). The new procedural rules took effect January 1, 2001, and consist of ten parts within Title 35 of the Illinois Administrative Code (35 Ill. Adm. Code 101-108, 125, 130). The Board's procedural rules govern how persons initiate and participate in all proceedings before the Board.

The Board developed the new procedural rules to more efficiently and effectively implement the Act and other laws and to make it easier for the public to participate in Board proceedings. For example, besides reorganizing the rules, the Board for the first time codified procedural requirements specific to administrative citations, tax certifications, pollution control facility siting appeals, and third-party National Pollutant Discharge Elimination System permit appeals. *See* 35 Ill. Adm. Code 105.Subpart B, 107, 108, and 125. Today the Board cross-references the new procedural rules in the administrative rules. The Board also adds to the administrative rules descriptions of various Board proceedings that had been lacking, such as of Clean Air Act “Fast-Track” rulemaking. *See, e.g.*, Sections 2175.550, 2175.555, and 2175.600.

### **Updating Information About the Board**

When the Board last amended its administrative rules, the Board’s Web site was in its infancy. Since 1996, the Board’s Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)) has made great advances, including the creation of COOL. As the updated administrative rules now describe:

COOL is the Board’s searchable electronic docketing system for rulemakings and adjudicatory cases, containing Board opinions and orders, hearing transcripts, and participant and party filings, all of which may be viewed, searched, and downloaded. *See* Section 2175.310(a)(10).

For example, persons may search for information within COOL by docket number, party name, or key words. This information may be downloaded free of any Board charge. Of course, the Board also continues to meet its obligations under the Freedom Of Information Act (5 ILCS 140 (2004)) and make paper records available for inspection and copying at the Clerk’s Office.

Other developments at the Board, reflected in these amendments, are as basic as noting a new address for the Board’s Springfield office. *See* Section 2175.115(c). For larger document requests, the Board may provide the information electronically on a compact disk. *See* Section 2175.205(a)(4). In addition, the Board’s organizational chart has been updated. *See* Section 2175.Appendix A.

The Board also takes this opportunity to better describe its open meeting and closed deliberative session processes. *See* Sections 2175.120 – 2175.135. The Board now conducts many of its open meetings by videoconference between Chicago and Springfield locations. This practice reduces travel expenses and allows the public to attend a Board meeting at both locations. *See* Section 2175.125(d). The Board recognizes that Senate Bill 585 to amend the Open Meetings Act is awaiting the Governor’s signature. That legislation would require open meeting quorums to be present physically or by videoconference, and would restrict telephonic attendance by public body members at such meetings. In anticipation of these statutory changes, but also primarily to reflect current Board practice, the Board is amending its administrative rules now regarding the ways in which Board members may attend open meetings. Generally, Board members attend such meetings physically or by videoconference. Only in limited circumstances, such as personal illness or family emergency, may a Board member attend an open meeting telephonically. *See* Section 2175.120(d).

## CONCLUSION

The Board today amends its administrative rules at 35 Ill. Adm. Code 2175. Since the rules were last amended, there have been numerous changes to the Board's organization, practices, and procedures. Most significantly, these administrative rule amendments reflect important statutory and procedural rule developments over the last several years and update essential information about the Board, including how the public may access adjudicatory and regulatory filings through COOL on the Board's Web site.

## ORDER

The Board directs the Clerk of the Board to file the following final rule amendments with the Secretary of State for publication in the *Illinois Register*.

TITLE 2: GOVERNMENTAL ORGANIZATION  
SUBTITLE E: MISCELLANEOUS STATE AGENCIES  
CHAPTER XXVIII: POLLUTION CONTROL BOARD

PART 2175  
ORGANIZATION, PUBLIC INFORMATION, AND TYPES OF PROCEEDINGS

SUBPART A: INTRODUCTION AND ORGANIZATION

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2175.100	Summary and Purpose
2175.105	Board Membership
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2175.130	Agenda of <u>Open Board Meetings and Closed Deliberative Sessions</u>
2175.135	Minutes of <u>Open Board Meetings; Minutes and Verbatim Record of Closed Deliberative Sessions</u>
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2175.510	First Notice
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2175.520	Adopted Rules
2175.525	Emergency Rules
2175.530	Peremptory Rules
2175.535	<u>Rules Identical-In-Substance to Adoption of Federal Regulations</u>
2175.540	<u>Federally Required Rules</u>
2175.545	<u>Generally Applicable Rules and Site-Specific Rules</u>
2175.550	<u>Clean Air Act Fast-Track Rulemaking</u>
2175.555	<u>Updating Incorporations By Reference</u>

#### SUBPART F: ADJUDICATORY PROCEEDINGS

Section	
2175.600	Adjudicatory Proceedings

#### 2175.APPENDIX A: ORGANIZATIONAL CHART

**AUTHORITY:** Implementing Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15] and authorized by Section 5 of the ~~Illinois~~ Environmental Protection Act [415 ILCS 5/5].

**SOURCE:** Administrative rules adopted at 3 Ill. Reg. 23, p. 96, effective May 29, 1983; repealed by operation of law effective October 1, 1984; new rules adopted at 9 Ill. Reg. 107, effective December 21, 1984; Part repealed, new Part adopted at 20 Ill. Reg. 107, effective March 5, 1996; amended in R04-9 at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

#### SUBPART A: INTRODUCTION AND ORGANIZATION

Section 2175.100	Summary <u>and</u> & Purpose
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As required by Section 5-15 of the Illinois Administrative Procedure Act (IAPA) [5 ILCS 100/5-15] and Section 140/4 of the Freedom of Information Act (FOIA) [5 ILCS 140/4], this Part sets forth the administrative rules ~~that which~~ apply to the Illinois Pollution Control Board (Board). These rules are intended to generally explain what the Board is, how the Board is organized and operates, and how the public can get information from the Board. These rules do not explain, and are not intended to explain, the Board's procedural requirements for processing rulemakings and adjudicatory cases. Those procedural rules are found at 35 Ill. Adm. Code 101-~~120~~130. If there is a conflict between the Board's procedural rules (35 Ill. Adm. Code 101-130) and this Part, the procedural rules will control.

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 2175.105 Board Membership

- a) The Board was created pursuant to Section 5 of the ~~Illinois~~ Environmental Protection Act (Act) [415 ILCS 5/5]. The Board is a quasi-legislative and quasi-judicial administrative agency responsible for adopting environmental regulations and deciding certain environmental disputes and cases brought pursuant to the ~~Illinois Environmental Protection~~ Act. The Board determines, defines, and implements environmental control standards in accordance with the ~~Illinois-Environmental Protection~~ Act.
- b) The Board is comprised of ~~five seven~~ technically qualified members. The members are appointed by the Governor with the advice and consent of the Senate, for a term of three years.
- c) The Governor designates one member to serve as Chairman. The Chairman serves at the pleasure of the Governor and is responsible for the administration of the Board.
- d) Pursuant to Section 3.1 of the Executive Reorganization Implementation Act [15 ILCS 15/3.1], the Board is an agency of State government that is created by law with the primary responsibility of exercising regulatory or adjudicatory functions independently of the Governor. As such, the Board is excluded from the term "Agency directly responsible to the Governor" or "agency" as defined in the Executive Reorganization Implementation Act [15 ILCS 15/3.1].

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 2175.110 Organization and Supervisory Relationships

- a) Each member of the Board is aided by a confidential assistant who may be an attorney or who may have an advanced technical degree, and a personal secretary. The Chairman may have two confidential assistants and a personal secretary.

- b) ~~In order to~~ To carry out its functions, the Board is comprised of the following offices and units: Clerk's Office, Legal Unit, ~~Hearings Unit~~, Technical Unit, and Fiscal Unit. The function of each is as follows:
- 1) Clerk's Office. This ~~Office~~ office is responsible for the processing, maintenance, and distribution of all regulatory and adjudicatory case-related materials of the Board. The Clerk's Office is located in Chicago.
  - 2) Legal Unit. This unit is responsible for general legal functions of the Board and case or rule-related legal responsibilities, as designated by the Chairman. Under the direction of the Senior Attorney, this unit also consists of attorneys responsible for conducting Board adjudicatory hearings throughout the State, making such rulings as may be necessary at hearing, and generally managing the Board's adjudicatory caseload.
  - 3) Technical Unit. This unit is comprised of environmental specialists responsible for gathering such technical and scientific data as may be required by the Board in the performance of its duties and for advising the Board on technical issues related to pending adjudicatory cases and rulemakings, as assigned by the Chairman.
  - ~~4) Hearing Hearings Unit. Under the direction of a Chief Hearing Officer, this unit is comprised of attorneys responsible for conducting Board hearings throughout the State, making such rulings as may be necessary at hearing, and generally managing the Board's adjudicatory caseload.~~
  - 45) Fiscal Unit. Under the direction of a Fiscal Officer, this unit is responsible for budgeting, expenditures, procurement, computer operations, and related duties.
- c) The Board may also employ ~~employs~~ other professional staff to carry out its functions and mandates, including ~~but not limited to~~ an Executive Coordinator, a Public Information Affairs Coordinator, a Human Resources Manager ~~Services~~-Coordinator, ~~and a Legislative and Governmental Affairs Coordinator, an~~ Information Systems Analyst, and a Rulemaking Coordinator.
- d) Organizational relationships are shown in the organizational chart in Appendix A at the end of this Part. Detailed descriptions of the specific responsibilities and duties of each of the job titles are maintained in the Board's Springfield or Chicago office.

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

a) The Board maintains two central offices, one in Chicago and one in Springfield.  
~~The Board may also maintain satellite offices in various regions of the State.~~

b) The Clerk's Office is located in the Chicago Office. The address and general telephone number of the Chicago office is:

Illinois Pollution Control Board  
 James R. Thompson Center  
 100 W. Randolph St.  
 Suite 11-500  
 Chicago, Illinois 60601  
 (312)-814-3620  
 (312) 814-3669 (Fax)

c) ~~The Office of the Chairman, the Fiscal unit, and the Legislative/Government Affairs Coordinator are located in the Springfield office.~~ The address and general telephone number of the Springfield office is:

Illinois Pollution Control Board  
1021 North Grand Ave. East  
~~600 South Second Street~~  
~~Suite 402~~  
 Springfield, Illinois 62702 ~~62704~~  
 (217)-524-8500  
 (217) 524-8508 (Fax)

d) ~~The Board maintains satellite offices in the following locations:~~

~~Illinois Pollution Control Board  
 110 South State Street  
 Jerseyville, Illinois 62052  
 (618) 498-9802  
 (618) 498-5934 (Fax)~~

~~Illinois Pollution Control Board  
 148 North Third Street  
 P.O. Box 505  
 DeKalb, Illinois 60115  
 (815) 753-1904  
 (815) 753-1970 (Fax)~~

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)



- a) The Board makes all decisions on adjudicatory cases and regulatory matters at open meetings of the Board noticed and held in accordance with the Open Meetings Act [5 ILCS 120/1 et seq]. The Board may also hold meetings that are closed to the public meetings pursuant to Section 2(c) 120/2(a) of the Open Meetings Act [5 ILCS 120/2(c) (a)], including closed deliberative sessions under Section 2(c)(4) of the Open Meetings Act [5 ILCS 120/2(c)(4)]. The Board regularly holds closed deliberative sessions (see Sections 2175.125 and 2175.130 of this Part).
- b) Open Board Mmeetings may be held when a quorum of Board members,– constituted by four members of the Board, is present. *If there is no vacancy on the Board, four members of the Board constitute a quorum; otherwise, a majority of the Board constitutes a quorum, and no vacancy impairs the right of the remaining members to exercise all of the powers of the Board. Every action approved by a majority of the members of the Board constitutes the action of the Board* [415 ILCS 5/5(a)]. ~~Four affirmative votes are required for any final determinations of the Board, except in a proceeding to remove a seal under Section 34(d) of the Illinois Environmental Protection Act [415 ILCS 5/34(d)].~~
- c) The Board may hold a closed meeting upon a majority vote of a quorum present taken at an open meeting for which notice has been given as required by the Open Meetings Act [5 ILCS 120/2a]. Closed meetings may be held when a majority of a quorum is present [5 ILCS 120/1.02].
- de) Board members may attend meetings in the following ways:
- 1) Meetings, whether open or closed, may be held with Board members ~~physically~~ present physically or by videoconference. Closed meetings may also be held with Board members ~~or~~ present telephonically.
  - 2) If a quorum of Board members is present physically or by videoconference at an open meeting, a majority of the Board may allow a Board member to attend the meeting telephonically if the member cannot otherwise attend because of personal illness or disability, the business of the Board, or a family or other emergency. In such instances, the Board member who wishes to attend telephonically will notify the Clerk of the Board before the meeting unless advance notice is impractical.
- ed) Section 5 of the ~~Illinois Environmental Protection~~ Act requires the Board to hold at least one open meeting each month and allows the Board to hold special and emergency meetings [415 ILCS 5/5]. The Chairman or two Board ~~m~~Members may call a special or emergency meeting of the Board that is open to the public.

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

- a) Public Notice of Regular Open Board Meetings and Closed Deliberative Sessions.
- 1) The Board adopts annual schedules of open meetings and closed deliberative sessions. Regular open Board meetings are generally held twice a month, usually every first and third Thursday of the month at the James R. Thompson Center (JRTC) (JTRC) in Chicago or at the Board's Springfield office, but dates, times and locations are subject to change. Regular closed deliberative sessions are generally held twice a month, usually every second and fourth Thursday of the month at the JRTC in Chicago or at the Board's Springfield office, but dates, times and locations are subject to change.
  - 2) Notification of ~~these~~ regular open Board meetings is given in the Board's *Environmental Register*, a monthly publication available in hard copy and on the Board's Web site Home Page (see Section 2175.310 of this Part). Notification of all regular open Board meetings and closed deliberative sessions is also provided ~~posted~~ pursuant to Sections 2.02 and 2.03 of the Open Meetings Act [5 ILCS 120/2.02 and 2.03].
    - A) At least 48 hours before each regular open Board meeting and closed deliberative session, an agenda for the meeting or session is posted at the Board's Chicago office and at any other location where the meeting or session is to be held. Each such agenda is also posted on the Board's Web site and remains so posted at least until the regular meeting or session is concluded.
    - B) Notification of the annual schedule of regular open Board meetings and closed deliberative sessions is given at the beginning of each fiscal year by posting a copy of the schedule at the Board's Chicago office. In addition, the annual schedule is posted on the Board's Web site and remains so posted at least until a new public notice of the schedule of regular meetings and sessions is approved. The schedule of regular open Board meetings also appears at the end of every regular open Board meeting agenda.
- b) ~~Teleconferencing. The Board attempts to hold one meeting every quarter via teleconferencing equipment, with hook ups in, at least, Chicago and Springfield. Both locations are open to the public.~~
- be) Public Notice of Special or Emergency Meetings.
- 1) Whether a special or emergency meeting is an open Board meeting or a closed deliberative session, notice ~~Notice~~ of a special or emergency meeting will generally be given to all Board members and the public at least 48 hours prior to the meeting. The notice will include a copy of the

~~agenda and will comply with the Open Meetings Act. If, however, a majority of the Board certifies that an emergency exists and exigencies of time are such that the 48-hour notice must be dispensed with, a special meeting may be called by the Chairman or two Board Members merely by posting notice in the Board's offices and giving notice to the public of an emergency meeting will be given as soon as is reasonably far in advance as is practicable, but prior to the holding of such meeting.~~

- 2) Notice of a special or emergency meeting will include a copy of the meeting agenda and will be posted at the Board's Chicago office, at any other location where the meeting is to be held, and on the Board's Web site (see Section 2175.310 of this Part), pursuant to Section 2.02 of the Open Meetings Act [5 ILCS 120/2.02].
- 3) Notwithstanding subsections (b)(1) and (2) of this Section, at any open Board meeting for which notice has been given as required by the Open Meetings Act, the Board may, without additional notice under Section 2.02 of the Open Meetings Act [5 ILCS 120/2.02], hold a special or emergency closed deliberative session. Only topics specified in the vote to close the meeting may be considered during the closed deliberative session [5 ILCS 120/2a] (see Section 2175.120(c) of this Part).

~~c)~~ Notice to Media. The Board gives notice of regular, special, or emergency meetings, whether the meeting is an open Board meeting or a closed deliberative session, to any news medium that which has filed an annual request for such notice under Section 2.02(b) of the Open Meetings Act ([5 ILCS 120/2.02(b))].

d) Videoconference and Teleconference. Whether the meeting is a regular, special, or emergency meeting, the Board may hold its open meetings and closed deliberative sessions by videoconference between Chicago and Springfield locations. Such open Board meetings may be attended by the public at both locations. A Board member may attend an open Board meeting telephonically only in accordance with Section 2175.120(d)(2) of this Part. The Board may hold its closed deliberative sessions by teleconference.

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 2175.130 Agenda of Open Board Meetings and Closed Deliberative Sessions

- a) The Board maintains an agenda for each of its open Board meetings and closed deliberative sessions in accordance with Section 2.02 of the Open Meetings Act [5 ILCS 120/2.02]. Open Board meeting agendas contain the list of rulemakings, adjudicatory cases, and motions that may be decided by the Board at that meeting. Closed deliberative session agendas contain the list of rulemakings, adjudicatory cases, and motions on which the Board may deliberate at that session. Agendas and are posted at the Board's Chicago offices, at any other location where the

meeting or session is to be held, and on the Board's Home Page Web site (see Section 2175.310 of this Part).

- b) The Board does not generally place any item on ~~the~~ an open Board meeting agenda that has been filed less than two full days before ~~the a scheduled Board~~ meeting.
- c) The Board may also issue an addendum to the agenda of an open Board meeting or closed deliberative session and, as provided for in Section 2.02(a) of the Open Meetings Act [5 ILCS 120/2.02(a)], may consider items not specifically set forth on the agenda.

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 2175.135      Minutes of Open Board Meetings; Minutes and Verbatim Record of Closed Deliberative Sessions

- a) The Board will keep minutes of all open Board meetings in accordance with Section 2.06(a) of the Open Meetings Act [5 ILCS 120/2.06(a)]. Minutes of all such meetings ~~subject to the Open Meetings Act will shall~~ be available to the public at the Clerk's Office ~~and or~~ on the Board's Home Page Web site (see Section 2175.310 of this Part~~02~~) within seven days of approval of the minutes. The minutes will remain posted on the Board's Web site for at least 60 days after their initial posting [5 ILCS 120/2.06(b)]. The minutes will include the time, date, and place of the meeting, the items decided and the numeric decision vote, the Board members recorded as present or absent, and whether the members were present physically, by videoconference, or telephonically.
- b) The Board will keep minutes of all its closed deliberative sessions in accordance with Section 2.06(a) of the Open Meetings Act [5 ILCS 120/2.06(a)]. Minutes of all such sessions will be available to the public only as provided in Sections 2.06(d) and (f) of the Open Meetings Act [5 ILCS 120/2.06(d) and (f)]. The minutes will include the time, date, and place of the session, the items on which the Board deliberated, the Board members recorded as present or absent, and whether the members were present physically, by videoconference, or telephonically.
- c) The Board will keep a verbatim record of all its closed deliberative sessions in the form of an audio or video recording in accordance with Section 2.06(a) of the Open Meetings Act [5 ILCS 120/2.06(a)]. Verbatim recordings of all such sessions will be available to the public only as provided in Sections 2.06(c) and (e) of the Open Meetings Act [5 ILCS 120/2.06(c) and (e)].

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 2175.140      Accessibility of Open Board Meetings and Hearings

In compliance with the Americans with Disabilities Act and other applicable federal and State laws, the Board will make every effort to hold public meetings and hearings in facilities that ~~which~~ are accessible to people with disabilities. Persons requiring such services should contact Dorothy Gunn, Clerk of the Board, at 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601 or at 312/814-3620 or [gunnd@ipcb.state.il.us](mailto:gunnd@ipcb.state.il.us) ~~within~~ at least five (5) days prior to a Board meeting or hearing.

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART B: FEES AND FORMS OF PAYMENT

### Section 2175.200 Filing Fees

- a) A person filing an action for which a filing fee is prescribed by Section 7.5 of the Illinois Environmental Protection Act [415 ILCS 5/7.5] ~~must~~ shall pay that fee at the time the petition is presented to the Clerk for filing.
- b) The following initial filings require filing fees and will only be considered filed when accompanied by the appropriate fee, ~~which may be paid in the form of government voucher, money order, or check made payable to the Illinois Pollution Control Board, but which may not be paid in cash:~~
  - 1) Petition for Site-Specific Regulation, \$75;
  - 2) Petition for Variance, \$75;
  - 3) Petition for Review of Illinois Environmental Protection Agency (Agency) Permit Decision, Underground Storage Tank (UST) Decision, or any other final appeal determination pursuant to Section 40 of the Illinois Environmental Protection Act [415 ILCS 5/40], \$75;
  - 4) Petition to Contest Local Government Pollution Control Facility Siting Decision, pursuant to Section 40.1 of the ~~Illinois Environmental Protection Act [415 ILCS 5/40.1], \$75; and~~
  - 5) Petition for Adjusted Standard, pursuant to Section 28.1 of the ~~Illinois Environmental Protection Act [415 ILCS 5/28.1], \$75.~~
- c) The Clerk will refuse to file any petition ~~which~~ that is not accompanied by the required fee. The fee must be paid in the form specified in Section 2175.215 of ~~these rules~~ this Part.

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 2175.205 ~~Photocopying~~ Copying Fees

- a) Most All files, records, and data are available on the Board's Web site (see Section 2175.310 of this Part), where they may be viewed, searched, and downloaded free of charge. Copies may also be made may be copied at the Board offices in Chicago upon payment of reasonable reproduction fees [415 ILCS 5/7] as follows:
- 1a) A hard copy of a single opinion and order will be furnished on request without cost, irrespective of length, with any the dissenting and/or concurring opinion(s). Hard €copies of multiple opinions and orders cost 75 cents per page.
  - 2b) Hard copies of Hhearing Ttranscripts cost 75 cents per page.
  - 3e) Hard copies of Aall other documents cost 75 cents per page.
  - d) ~~State agencies are, upon request, provided copies of opinions and orders and transcripts free of charge.~~
  - 4) When reasonably practicable, materials may be provided electronically in the form of a diskette or compact disk. The fee for such material will be based on actual costs incurred by the Board.
- b) State agencies are, upon request, provided a hard copy of opinions and orders and transcripts free of charge.
- c) Fees will be waived or reduced if:
- 1) The requestor is a constitutional officer or a member of the General Assembly; or
  - 2) *The requestor states the specific purpose for the request and indicates that a waiver of the fee is in the public interest. Waiver of the fee is in the public interest if the principal purpose of the request is to access and disseminate information regarding the health, safety, and welfare or the legal rights of the general public and is not for the purpose of personal or commercial benefit [5 ILCS 140/6(b)].*
- d) No fee will be charged to inspect records. Inspection of records can only take place in Chicago at the Clerk's Office.

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 2175.210 ~~Photocopying~~ Copying Procedures

- a) All files, records, and data may be copied at the Board's offices in Chicago office upon payment, except for information exempted pursuant to Section 7 of FOIA [5 ILCS 140/7]. (See Section 2175.300 of this Part.) [415 ILCS 5/7.]
- b) The Board will contract for any copying that would impose a substantial administrative burden on the Board. The person requesting such copies will be charged the reproduction charges incurred by the Board.
- c) Requests for copies will be honored in as timely a manner as is reasonably practicable possible. Requests to receive ~~for~~ copies by mail will be honored. However, the Board reserves the right to charge the requesting party for the mailing costs incurred by the Board.

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 2175.215 Forms ~~of~~ Payment

- a) Any amount over \$10 must be paid by check or money order made payable to the Illinois Pollution Control Board, except as provided in subsection (b) of this Section. A State agency may use an Office of the Comptroller voucher to remit payment for filing fees and photocopy charges.
- b) Filing fees may be paid in the form of a check or money order made payable to the Illinois Pollution Control Board, or cash, but cash payment is discouraged. A State agency may use an Office of the Comptroller voucher to remit payment for filing fees (see Section 2175.200 of this Part) and copy fees (see Section 2175.205 of this Part).
- ~~cb)~~ If ~~In the event that~~ a check for filing fees, paid pursuant to Section 7.5 of the Illinois Environmental Protection Act is not honored by petitioner's bank, the Fiscal Officer may require that payment be made within 48 hours by certified check or money order. Failure to make payment may subject petitioner the parties to sanctions, ~~including penalties~~ as provided ~~for~~ in the Board's procedural rules. (See 35 Ill. Adm. Code 101.800-120.)
- ~~de)~~ If ~~In the event that~~ a check for photocopying fees charges is not honored by the remitter's bank, the Fiscal Officer may require that payment be made within 48 hours by certified check or money order. The Fiscal Officer may also require that photocopy fees be paid only by certified check or money orders prior to the conveyance of material for any entity firm or individual who remits to the Board a check that which subsequently is not honored by the remitter's bank.

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 2175.220 Other Fees/Costs

The Board may, in its procedural rules (see 35 Ill. Adm. Code 101-120 130), provide for the payment of certain types of its costs where appropriate.

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### SUBPART C: PUBLIC INFORMATION

#### Section 2175.300 Files Open to Reasonable Inspection

- a) The Clerk will maintain files containing all information submitted to or produced by the Board or any of its members relating to matters within the Board's jurisdiction. ~~Without limiting the foregoing,~~ The files will include: pleadings, motions, notices, minutes, transcripts, exhibits, orders and opinions, proposed and adopted regulations, the *Environmental Register* and other Board releases, business records, and informal complaints.
- b) Pursuant to ~~Section 1 of~~ the Illinois State Records Act, the Clerk will shall maintain for five (~~5~~) years; all documents submitted by the parties in ~~rulemaking and~~ adjudicatory cases and participants in rulemakings [5 ILCS 160/4]. After five (~~5~~) years, the documents will shall be microfilmed and the microfilm will shall be maintained by the Board. Documents microfilmed for the Board's record are subject to destruction unless the parties or participants request that the documents be returned at the closure of the five-~~(5)~~ year period. Over-sized exhibits ~~which that~~ are not capable of being microfilmed will be returned to the parties or participants at their request or destroyed.
- c) All files, records, and data, other than personnel files, are maintained by the Clerk's Office and are available from the Clerk of the Board, in the Board's Chicago office ~~only~~. Most of these materials are also available through the Board's Web site (see Section 2175.310 of this Part), where they may be viewed, searched, and downloaded. Such types of material include ~~but are not limited to:~~
  - 1) Documents filed ~~within an adjudicatory case or rulemaking, including, but not limited to~~ appearances, pleadings, exhibits, motions, transcripts of hearings, and public comments;
  - 2) Opinions ~~and & O~~rders of the Board;
  - 3) ~~Copies of d~~Documents published by the Board for use by the general public, such as the *Environmental Register*.
- d) The files, records, and data of the Board are open to reasonable public inspection and copying in the Board's Chicago office, except for information exempted pursuant to Section 7 of FOIA ~~the Freedom of Information Act~~ [5 ILCS 140/7], including ~~but not limited to,~~ information ~~that~~which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal



communication between or among the Board and ~~or~~ staff; draft orders and opinions and orders; and technical unit memoranda.

- e) The Board has adopted procedural rules at 35 Ill. Adm. Code ~~120~~ 130 to establish the procedures to be taken by any person to obtain ~~trade secret~~ protection for trade secrets and other non-disclosable information as described in Section 7 of the ~~Illinois Environmental Protection~~ Act [415 ILCS 5/7]. (See 35 Ill. Adm. Code ~~101-120~~ 130.)

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 2175.305 Publications

- a) *Environmental Register*
- 1) The Board's monthly publication, the ~~will publish an~~ *Environmental Register*, ~~containing~~ contains reports of the Board's activities and notices of meetings and hearings. Single hard copies are provided free of charge at the Board's Chicago and Springfield ~~O~~ffices.
  - 2) A yearly hard copy subscription may be purchased, at a cost of \$20 to defray ~~defer~~ reproduction and distribution charges, by contacting the Board's Chicago office. Government entities and not-for-profit organizations properly categorized as such under the Internal Revenue Code may request a free hard copy subscription to the *Environmental Register*. Proof of organizational status is required.
  - 3) The *Environmental Register* is provided free of charge on the Board's ~~Home Page~~ Web site (see as described at Section 2175.310 of this Part).
- b) Opinions, Orders, Regulations
- 1) Copies of opinions and orders of the Board are available ~~upon request~~ as provided at Section 2175.205 ~~(a)~~ of this Part, including through the Board's Web site (see Section 2175.310 of this Part).
  - 2) The Board's opinions and orders are also available through various commercial services including LEXIS and Westlaw.
  - 3) The Board's regulations are published in the *Illinois Register* (see Section 2175.305(d) of this Part) and by various commercial services. They are also published periodically by the Agency by subtitle and are available in hard copy as quantities permit free of charge from the Board's Chicago office. Additionally, the Board maintains on its Web site the text of the Board's regulations set forth in Title 35 of the Illinois Administrative Code.

## c) Annual Report

- 1) The Board publishes an Annual Report of the Chairman. The report includes information regarding the Board's membership, regulatory and case activities for the fiscal year, a summary of legislative activity affecting the Board, a summary of Board decisions reviewed by the courts during the fiscal year, and information on administrative activities.
- 2) When completed and printed, the Annual Report is available in hard copy free of charge in reasonable quantities from the Board's Chicago and Springfield Offices. The Annual Report is also available free of charge from the Board's Web site (see Section 2175.310 of this Part).

d) *Illinois Register*

- 1) Required Filings. The *Illinois Register* is a publication containing all ~~state~~ State regulations and is published by and available from the Office of the Secretary of State and various commercial services. The Board is required to publish the following information in the *Illinois Register*:
  - A) Notice of all proposed and adopted regulations as required by Section 5-40 of the IAPA [5 ILCS 100/5-40]. The notices describe the rules, contain contact names for questions, and provide directions for participation at public hearings and submission of written comments.
  - B) Notice of all emergency and preemptory regulations as required by Sections 5-45 and 5-~~5046~~ of the ~~IAPA~~ Illinois Administrative Procedure Act [5 ILCS 100/5-45 and 5/5046]. The notices describe the rules and contain contact names for questions.
  - C) Results of Board determinations in adjusted standards proceedings pursuant to Section 28.1 of the ~~Illinois Environmental Protection Act~~ [415 ILCS 5/28.1]. The Board publishes this list at the close of each fiscal year, in July or August depending upon the *Illinois Register* publication schedule.
  - D) A regulatory agenda ~~which sets~~ setting forth rules ~~that which~~ the Board may be considering during a six-month period. This agenda lists is to list rules before in advance of publication of the notice described in subsection (d)(1) of this Section. The regulatory agenda appears in January/February or July/August of each year, depending upon the *Illinois Register* publication schedule. The agenda describes the anticipated rules, contains contact names for questions, and provides directions for public participation.

- 2) Discretionary filings. Section 7.3 of the ~~Illinois Environment Protection Act~~ [415 ILCS 5/7.3] and Section 5-70(b) of the ~~IAPA Illinois Administrative Procedure Act~~ [5 ILCS 100/5-70(b)15] allow the Board to publish other documents concerning its activities. These include, ~~but are not limited to,~~ notices of public hearings, and notices of proposed and adopted identical-in-substance rules as discussed in Section 7.2 of the ~~Illinois Environmental Protection Act~~ [415 ILCS 5/7.2].

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 2175.310 ~~Board's Home Page on World Wide Web Internet~~ Board Web Site

- a) The Board maintains a ~~Home Page on the World Wide Web of the Internet. The information on the Home Page is continuously updated. The Board's Home Page Web site with information that includes, but is not limited to,~~ the following ~~information:~~
- 1) Board Members' Profiles and a Citizen's Guide to the Board;
  - 2) Environmental Register;
  - 3) Open Board Meeting and Closed Deliberative Session Dates and Agendas;
  - 4) Procedural Rules in Title 35 of the Illinois Administrative Code;
  - 5) Administrative Rules in Title 2 of the Illinois Administrative Code;
  - 6) Annual Reports;
  - 7) ~~Summary of Pending Rulemakings;~~
  - 8) ~~Summary of Recent Legislation Affecting the Board;~~
  - 9) Open Board Meeting Minutes;
  - 10) The Clerk's Office On-Line (COOL); COOL is the Board's searchable electronic docketing system for rulemakings and adjudicatory cases, containing Board opinions and orders, hearing transcripts, and participant and party filings, all of which may be viewed, searched, and downloaded;
  - 11) Environmental Regulations in Title 35 of the Illinois Administrative Code;
  - 12) The Act [415 ILCS 5]; and
  - 13) Formal and informal complaint forms.
- b) The information on the Board's ~~Home Page~~ Web site can be downloaded free of Board charges. The ~~Home Page~~ Web site can be accessed through the Internet using any commercially available on-line service. The ~~Home Page~~ Web site can be accessed directly ~~at~~ via the following electronic address:
- <http://www.state.il.us/pcb/pebhp.htm> <http://www.ipcb.state.il.us>
- c) The Board's ~~Web site~~ Home Page can also be accessed through the State of Illinois ~~Home Page~~ Web site (under the "Agencies" option) at the following electronic address:

~~http://www.state.il.us/~~ <http://www.illinois.gov/government/agency.cfm>

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 2175.315 Documents Prepared by the Clerk's Office

Various documents are routinely prepared by and for the Clerk's ~~o~~Office for internal use by the Board and are also available for inspection and copying. These include, ~~but are not limited to,~~ docket sheets, listings of adjudicatory cases and rulemakings by type and status tracking sheets. Hard Copies will be available within five (~~5~~) working days of a request at a cost of \$5.00 per page.

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 2175.320 Requests for Information

- a) Informal requests for information may be made to any Board office. Informal requests will be filled promptly upon receipt of the request. However, where a request for information maintained by the Clerk's Office is made at a Board office other than the Chicago office, some delay may be necessary to allow for the Clerk's ~~o~~Office to provide the material. Inspection of documents can only take place at the Clerk's Office.
- b) A formal request for information pursuant to ~~the Freedom of Information Act~~ (FOIA) must shall state that it is a formal request pursuant to FOIA. The formal request must shall be addressed to the Clerk of the Board, who willshall date-stamp the request upon receipt. All formal requests will be processed pursuant to the timeframe ~~time frame~~ requirements set forth in FOIA. ~~The~~ FOIA requires an initial response to the request be made within seven (~~7~~) working days of receipt of the formal request, subject to extension.
  - 1) Any person whose formal request is denied by the Clerk may appeal such denial by filing a written notice of appeal addressed to the Chairman of the Board. The notice of appeal ~~shall~~ must include a copy of the formal request, the Clerk's denial letter, and a statement of why the person believes the denial was improper. The Chairman will determine in writing whether the Clerk's denial was proper or improper, and will notify the person within seven (~~7~~) working days after receipt of the notice.
  - 2) If the Chairman affirms the denial or fails to take action within seven (~~7~~) working days, the person may file suit in circuit court for injunctive or declaratory relief pursuant to Section 11 of ~~the~~ FOIA [5 ILCS 140/11].

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### SUBPART D: ACCESS TO BOARD RULES

## Section 2175.400 Access to Board Rules in the Illinois Administrative Code

- a) All Board rules have been codified under Title 35 of the Illinois Administrative Code since October, 1983. Each general area of regulation has been assigned a particular Subtitle as set out below:

SUBTITLE	SUBJECT MATTER
A	Procedural Rules
B	Air Rules
C	Water Rules
D	Mine Rules
E	Livestock Waste
F	Public Water Supplies
G	Waste Disposal
H	Noise Rules
I	Nuclear Radiation
M	Biological Materials

- b) The Subtitles listed in subsection (a) ~~of this Section, above,~~ also include some rules of the ~~Environmental Protection Agency and the Department of Natural Resources.~~ The Board's rules appear at Chapter I of each of the Subtitles.

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART E: RULEMAKING

## Section 2175.500 Proposals

- a) Rulemaking procedures are set out in the Board's procedural rules at 35 Ill. Adm. Code 102.
- 1) The Act provides for five types of rulemakings:
- A) Identical-in-substance rulemakings, as defined in Sections 7.2, 13.3, 28.2, and 28.4 of the Act [415 ILCS 5/7.2, 13.3, 28.2, and 28.4] (see 35 Ill. Adm. Code 102.610);
- B) Federally required rules, as defined in Section 28.2 of the Act [415 ILCS 5/28.2] (see 35 Ill. Adm. Code 102.Subpart E);
- C) Other regulatory proposals, both of general applicability and not of general applicability, as allowed by Sections 26, 27, and 28 of the Act [415 ILCS 5/26, 27, and 28] (see 35 Ill. Adm. Code 102.Subpart B);

D) Clean Air Act fast-track rulemakings, as defined by Section 28.5 of the Act [415 ILCS 5/28.5] (see 35 Ill. Adm. Code 102.Subpart C); and

E) Updating incorporations by reference, as allowed by Section 28.6 of the Act [415 ILCS 5/28.6] (see 35 Ill. Adm. Code 102.211).

2) The IAPA provides for three types of rulemakings:

A) General rulemaking pursuant to Section 5-40 of the IAPA [5 ILCS 100/5-40], which includes first notice and second notice (see 35 Ill. Adm. Code 102.600-102.608);

B) Emergency rulemaking pursuant to Section 5-45 of the IAPA [5 ILCS 100/5-45] (see 35 Ill. Adm. Code 102.612); and

C) Peremptory rulemaking pursuant to Section 5-50 of the IAPA [5 ILCS 100/5-50] (35 Ill. Adm. Code 102.614).

- b) Proposals for the adoption, amendment, or repeal of a substantive regulation may be made by the ~~Environmental Protection Agency (Agency)~~, the Illinois Department of Natural Resources (Department), the Board, or any member of the public. Only the Agency may propose a Clean Air Act fast track rulemaking [415 ILCS 5/28.5]. Proposals made by the Agency, Department, or Board are automatically scheduled for hearings.
- c) In the case of a proposal made by a member of the public, the proposal must be accompanied by a petition signed by 200 persons, specifying home addresses, unless that requirement is waived by the Board. When the proposal is accompanied by a petition, the matter is placed on the agenda for Board decision. Generally, the Board will authorize a hearing unless it determines that the proposal is plainly devoid of merit, or deals with a subject on which a hearing has been held within the preceding six months, or is not accompanied by an adequate statement of supporting reasons. The proponent will be notified of an adverse decision and of the reasons for such a decision.

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 2175.505 ~~Initial~~ Hearing

- a) All hearings on regulatory proposals are conducted according to the Board's procedural rules at 35 Ill. Adm. Code 102. These hearings are open to the public, and at such hearings, the public is permitted to examine the record, examine witnesses (~~except as limited by the Hearing Officer~~), testify, and submit evidence, except as limited by the Hearing Officer or Board procedural rule.

- b) Unless otherwise directed by the Hearing Officer or the Board, the rulemaking record remains open for written public comment for a minimum of 14 days following the Board's receipt ~~close~~ of the hearing transcript. Any person may make a written submission on the proposal within this period or during the first notice period pursuant to the ~~Administrative Procedure Act (IAPA)~~ [5 ILCS 100].

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 2175.510 First Notice

- a) The Board may adopt a proposed rule for first notice pursuant to Section 5-40 of the ~~IAPA~~ APA at any time after a regulatory proceeding is initiated [5 ILCS 100/5-40]. The proposed rules are filed with the Secretary of State for first-notice publication in the *Illinois Register*. Generally, the Board does not proceed to first notice until merit and economic hearings have concluded and comments have been received unless there is a need to proceed more expeditiously.
- b) The public has a right to comment on the proposed rules during the first-notice period and retains all other rights set out in Section 5-40 of the IAPA [5 ILCS 100/5-40].
- c) Pursuant to Section 28 of the ~~Illinois Environmental Protection~~ Act, the Board may, after hearing in general, revise the proposed regulation before adoption without conducting further hearings [415 ILCS 5/28].

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 2175.515 Second Notice

- a) Upon termination of the first-notice period, the Board may adopt the proposal for second notice pursuant to Section 5-40 of the ~~IAPA~~ APA [5 ILCS 100/5-40], for review by the Joint Committee on Administrative Rules (JCAR).
- b) After the second-notice period has commenced, the proposed rules will only be amended in response to JCAR recommendations.

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 2175.520 Adopted Rules

- a) At the conclusion of the second-notice period, the Board may adopt a final opinion and order adopting the new or amended rules and setting forth the reasons for adoption.
- b) The adopted rules are then filed with the Secretary of State and are published in the *Illinois Register* along with supporting information.

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 2175.525 Emergency Rules

Pursuant to the Illinois Emergency Management Agency Act [20 ILCS 3305/7] ~~Illinois-Emergency Services and Disaster Act of 1975 [65 ILCS 5/4]~~, on proclamation by the Governor; that a disaster ~~emergency~~ exists, or when the Board finds that a severe public health emergency is involved in relation to any proposed regulation, then such regulation ~~will~~ shall take effect without delay and the Board may proceed with the required economic impact hearings while the regulation continues in effect [415 ILCS 5/27(c)]. When such an emergency exists, or when the Board finds another situation exists that reasonably constitutes a threat to the public interest, safety, or welfare, the customary 45-day notice ~~period~~ provision is waived; however, notice and text of the emergency rule must be published in the *Illinois Register* [5 ILCS 100/5-45(b)]. An emergency rule is effective for a maximum period of 150 days pursuant to Section 5-45(c) of the IAPA ~~[5 ILCS 100/5-45(c)]~~, but it may be adopted as a permanent rule by following usual rulemaking procedures.

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 2175.530 Peremptory Rules

When the Board is required by federal law, federal rules and regulations, or by a court order to adopt a certain rule, that rule need not be published in the *Illinois Register* until it has been adopted pursuant to Section 5-50 of the IAPA ~~[5 ILCS 100/5-5070.]~~ However, notice and text of the adopted rule must be published in the *Illinois Register* pursuant to Section 5-70 of the IAPA ~~APA~~. [5 ILCS 100/5-70.]

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 2175.535 Rules Identical-In-Substance to Adoption of Federal Regulations

- a) The Board adopts regulations in the following programs pursuant to Section 7.2 of the ~~Illinois Environmental Protection Act [415 ILCS 5/7.2]~~ that are identical-in-substance to federal regulations and which are exempt from Sections 5-35 and 5-40 of the IAPA ~~Illinois Administrative Procedure Act [5 ILCS 100/5-35 and 5-40]~~:
  - 1a) Exemptions from the definition of volatile organic material: Section 9.1(e) of the ~~Illinois Environmental Protection Act [415 ILCS 5/9.1(e)]~~,
  - 2b) Underground injection control (UIC): Section 13(c) of the ~~Illinois Environmental Protection Act [415 ILCS 5/13(c)]~~,
  - 3e) Wastewater pretreatment: Section 13.3 of the ~~Illinois Environmental Protection Act [415 ILCS 5/13.3)]~~,



- 4d) Safe Drinking Water Act (SDWA): Section 17.5 of the ~~Illinois Environmental Protection Act~~ [415 ILCS 5/17.5],
- 5e) Resource Conservation and Recovery Act (RCRA), Subtitle C, hazardous waste (~~RCRA Subtitle C~~): Section 22.4(a) of the ~~Illinois Environmental Protection Act~~ [415 ILCS 5/22.4(a)],
- 6f) RCRA Resource Conservation and Recovery Illinois Environmental Protection Act, Subtitle I, ~~underground storage tank (UST)~~: Section 22.4(d) of the ~~Illinois Environmental Protection Act~~ [415 ILCS 22.4(d)],
- 7g) RCRA Resource Conservation and Recovery Act, Subtitle D municipal solid waste landfills (~~RCRA Subtitle D~~): Section 22.40(a) of the ~~Illinois Environmental Protection Act~~ [415 ILCS 5/22.40(a)].
- b) Section 7.2(b) of the Act [415 ILCS 5/7.2(b)] provides timetables for rule adoption, but generally the Board must adopt rules within one year after the United States Environmental Protection Agency’s (USEPA) adoption of the corresponding federal rule. The Board adopts a proposal for public comment that is published in the Illinois Register. The Board then accepts public comments for 45 days, after which the Board adopts final rules that are published in the Illinois Register.
- c) Because Sections 5-35 and 5-40 of the IAPA [5 ILCS 100/5-35 and 5-40] do not apply to identical-in-substance rulemaking under Section 7.2 of the Act [415 ILCS 5/7.2], the Board does not follow the IAPA’s procedure of first notice, second notice, and final adoption.

(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 2175.540      Federally Required Rules

Under Section 28.2 of the Act [415 ILCS 5/28.2], the Board may adopt a “required rule.” A “required rule” means a rule that is needed to meet the requirements of the federal Clean Water Act, SDWA, Clean Air Act (including required submission of a State Implementation Plan), or RCRA, other than a rule required to be adopted as an identical-in-substance rule (see Section 2175.535 of this Part) [415 ILCS 5/28.2(a)].

#### Section 2175.545      Generally Applicable Rules and Site-Specific Rules

Under Sections 27 and 28 of the Act [415 ILCS 5/27 and 28], the Board may adopt substantive environmental rules of generally applicability and of site-specific applicability. Under Section 26 of the Act [415 ILCS 5/26], the Board may adopt such procedural rules as may be necessary to accomplish the purposes of the Act.

Section 2175.550      Clean Air Act Fast-Track Rulemaking

Under Section 28.5 of the Act [415 ILCS 5/28.5], the Board may adopt rules proposed by the Agency that are required to be adopted by the State under the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (CAAA). A “fast-track” rulemaking proceeding is a proceeding to promulgate a rule that the CAAA requires to be adopted. For purposes of this type of rulemaking, “requires to be adopted” refers only to those regulations or parts of regulations for which USEPA is empowered to impose sanctions against the State for failure to adopt such rules [415 ILCS 5/28.5(a) and (c)].

Section 2175.555      Updating Incorporations By Reference

Under Section 28.6 of the Act [415 ILCS 5/28.6], the Board may update an incorporation by reference included in a Board rule without conducting hearings if no objection is filed or hearing is requested during the first-notice period pursuant to Section 5-40 of the IAPA [5 ILCS 100/5-40]. Such rulemaking is limited to replacing a reference in a Board rule to an older or obsolete version of an incorporated document with a reference to the current version of that document or its successor document.

SUBPART F: ADJUDICATORY PROCEEDINGS

Section 2175.600      Adjudicatory Proceedings

- a) The Board is authorized to hear the following types of adjudicatory cases: (See 35 Ill. Adm. Code 101-~~120~~ 130 for procedural rules governing the processing of these cases.)
  - 1) Enforcement Action. The Illinois Attorney General, any State’s Attorney, or any person may initiate an enforcement action by the filing of a complaint pursuant to Section 31 of the ~~Illinois Environmental Protection Act~~ [415 ILCS 5/31]. (See 35 Ill. Adm. Code 103.)
  - 2) Permit Appeal. Any person who, pursuant to Section 39 of the Act [415 ILCS 5/39], has been denied a permit by the Agency, or ~~who has been~~ issued a permit by the ~~Illinois Environmental Protection Agency pursuant to Section 39 of the Illinois Environmental Protection Act [(415 ILCS 5/39)]~~ with one or more conditions to which that person objects, may file a petition with the Board for a review of the Agency's action. If the Agency grants a RCRA permit for a hazardous waste disposal site or grants or denies a National Pollutant Discharge Elimination System (NPDES) permit, certain third parties may petition the Board for a hearing to contest the decision of the Agency [415 ILCS 5/40(b), (e)(1)]. (See 35 Ill. Adm. Code 105.)

- 3) Pollution Control Facility Siting Review. An applicant for local siting approval of a pollution control facility who has been denied such approval or granted conditional approval by a county board or the governing body of a municipality ~~or third party who participated in the public hearing conducted by a county board or the governing body of a municipality~~ may contest that decision by filing a petition for hearing pursuant to Section 40.1(a) of the ~~Illinois Environmental Protection Act~~ [415 ILCS 5/40.1(a)]. A third party who participated in the public hearing conducted by a county board or the governing body of a municipality may contest a grant of local siting approval by filing a petition for hearing pursuant to Section 40.1(b) of the Act [415 ILCS 5/40.1(b)]. (See 35 Ill. Adm. Code 107.)
- 4) Variances/Adjusted Standards. Any person adversely affected by a Board rule or order may file a petition for a variance ~~or adjusted standard~~ pursuant to Section 37 of the ~~Illinois Environmental Protection Act~~ [415 ILCS 5/37] or a petition for an adjusted standard pursuant to Section 28.1 of the Act [415 ILCS 5/28.1]. (See 35 Ill. Adm. Code 104.)
- 5) Trade Secret Determination. Any person who is adversely affected by a trade secret determination made by the ~~Illinois Environmental Protection Agency or the Illinois Department of Natural Resources~~ may contest that determination before ~~to~~ the Board. (See 35 Ill. Adm. Code 130.)
- 6) Appeal of ~~Office of the State Fire Marshal (OSFM) UST Fund Denial of Eligibility or Deductibility Determination to UST Program.~~ Owners or operators of USTs underground storage tanks who have been denied eligibility by the OSFM to access the UST underground storage tank reimbursement fund, or who disagree with an OSFM determination of the applicable deductible for UST Fund reimbursement, by the Office of State Fire Marshal may petition for review pursuant to Section 57.9(c) of the ~~Illinois Environmental Protection Act~~ [415 ILCS 5/57.9(c)]. (See 35 Ill. Adm. Code 105.)
- 7) Appeal of Agency Decisions Regarding UST Program. Owners or operators of USTs underground storage tanks who have been denied requested UST Fund reimbursement or UST cleanup approvals by the Agency may petition for review pursuant to Section 40 of the ~~Illinois Environmental Protection Act~~ [415 ILCS 5/40]. (See 35 Ill. Adm. Code 105.)
- 8) Tax ~~Pollution Control Facility~~ Certifications. Under the Property Tax Code, the Board may issue a certificate finding that a facility is a “pollution control facility” or that a device is a “low sulfur dioxide emission coal fueled device” for property tax purposes [35 ILCS 200/11-10, 11-40]. A person seeking a tax certificate must first submit an application to the Agency. The Agency is then required to file with the

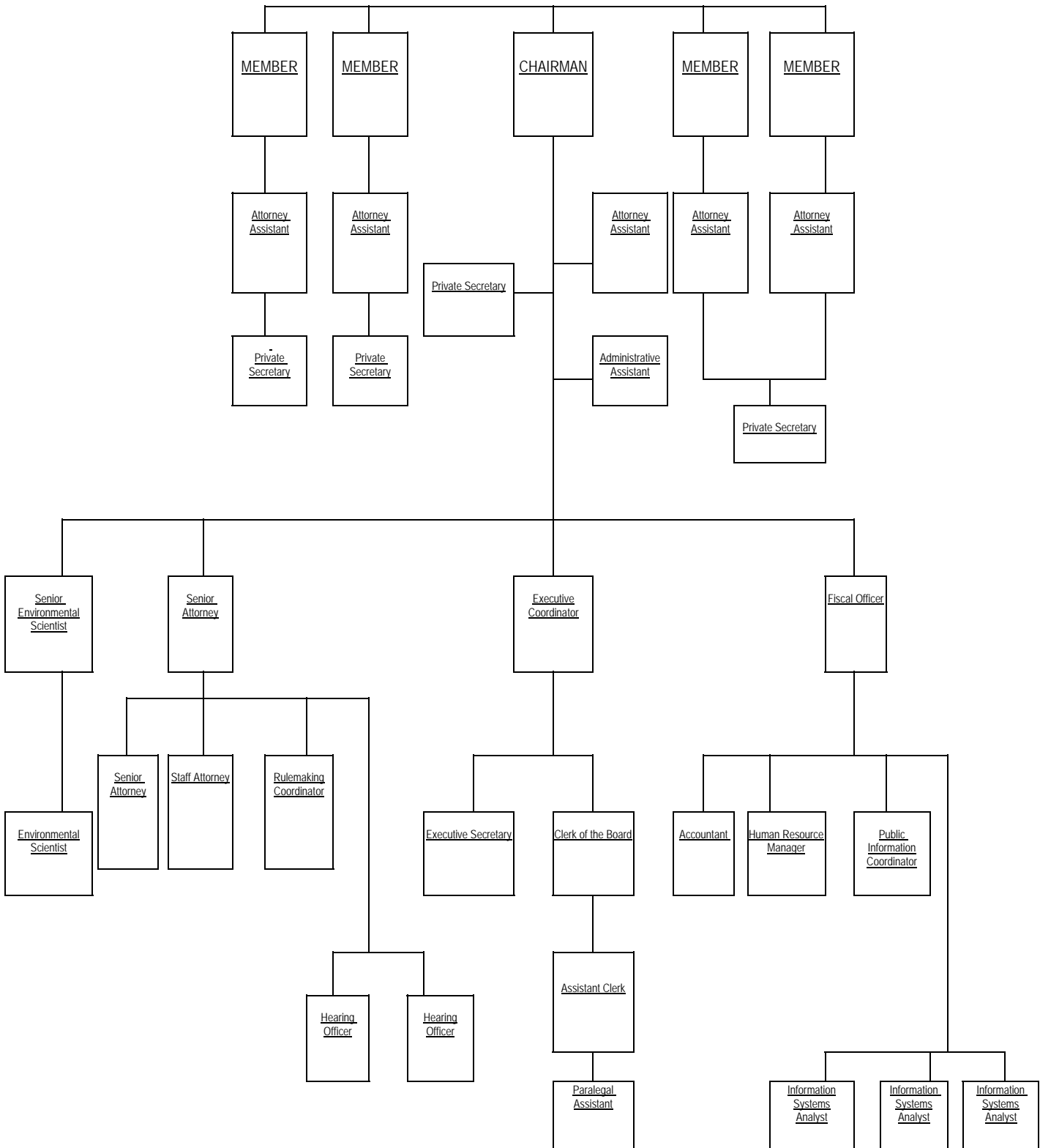
Board a recommendation on whether the Board should issue the certificate. An applicant who wishes to contest an Agency recommendation that the Board deny tax certification may file a petition with the Board. (See 35 Ill. Adm. Code 125.) Application for a pollution-control facility certificate demonstrating that a particular facility is entitled to tax treatment as a pollution control facility as defined in Section 11-10 of the Property Tax Code may be filed with the Board pursuant to Sections 11-25 and 11-30 of that Code [35 ILCS 200/11-25 and 11-30].

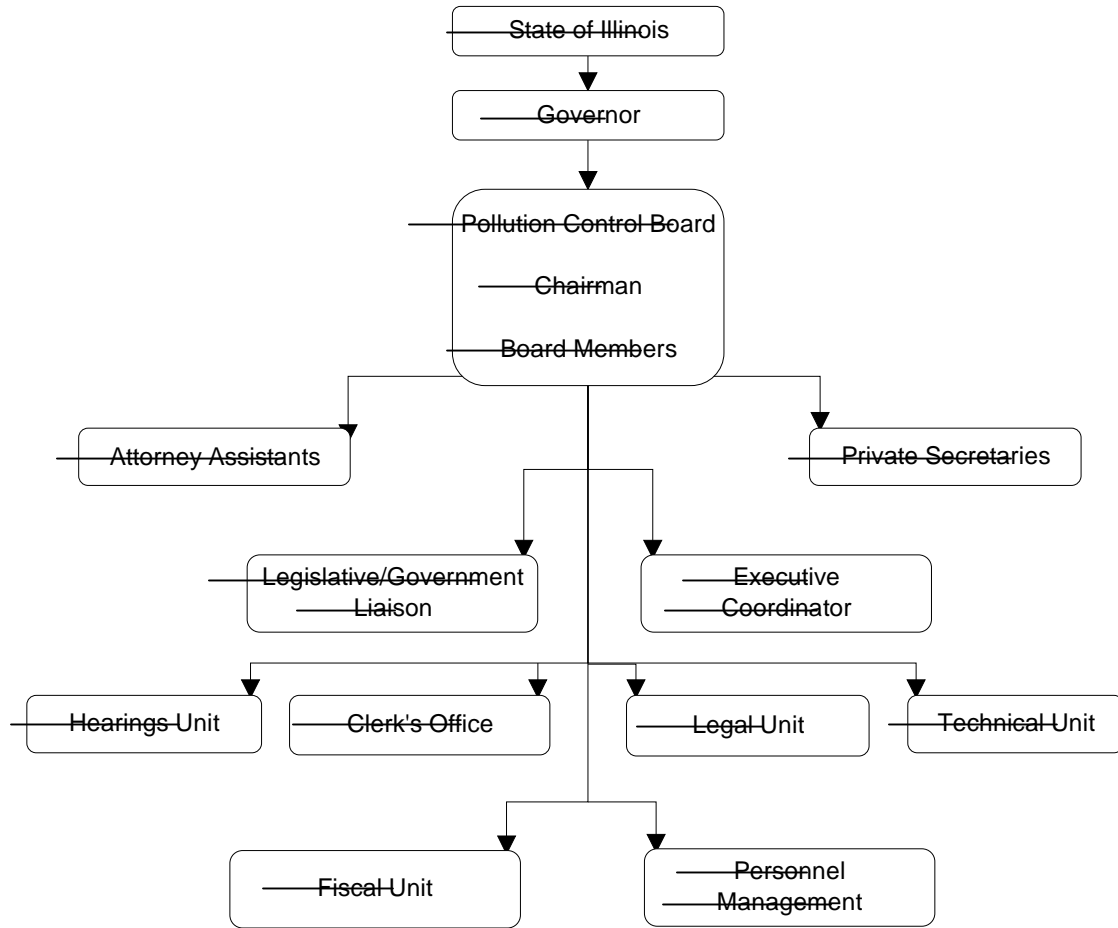
- 9) Administrative Citations. The Agency or a unit of local government delegated authority by the Agency; may issue administrative citations for violations of ~~the Illinois Environmental Protection Act, Sections 21(o) and (p) of the Act [415 ILCS 5/21(o) and (p)],~~ and ~~These citations are shall~~ be enforceable by filing copies with the Board pursuant to Section 31.1 of the ~~Illinois Environmental Protection Act [415 ILCS 5/31.1].~~ The respondent named in the administrative citation may file a petition for review with the Board. (See 35 Ill. Adm. Code 108.)
- 10) Water Well Setback Exceptions. A water well owner may petition the Board for an exception from the water well setback requirements of the ~~Illinois Environmental Protection Act~~ by filing a petition with the Board ~~and the Agency~~ pursuant to Section 14.2 of the ~~Illinois Environmental Protection Act [415 ILCS 5/14.2].~~ (See 35 Ill. Adm. Code 106.)
- 11) Other. Any other proceedings ~~which are~~ authorized by the ~~Illinois Environmental Protection Act~~ or the Board's procedural rules may be brought before the Board pursuant to statutory authority and any Board regulations adopted thereunder.

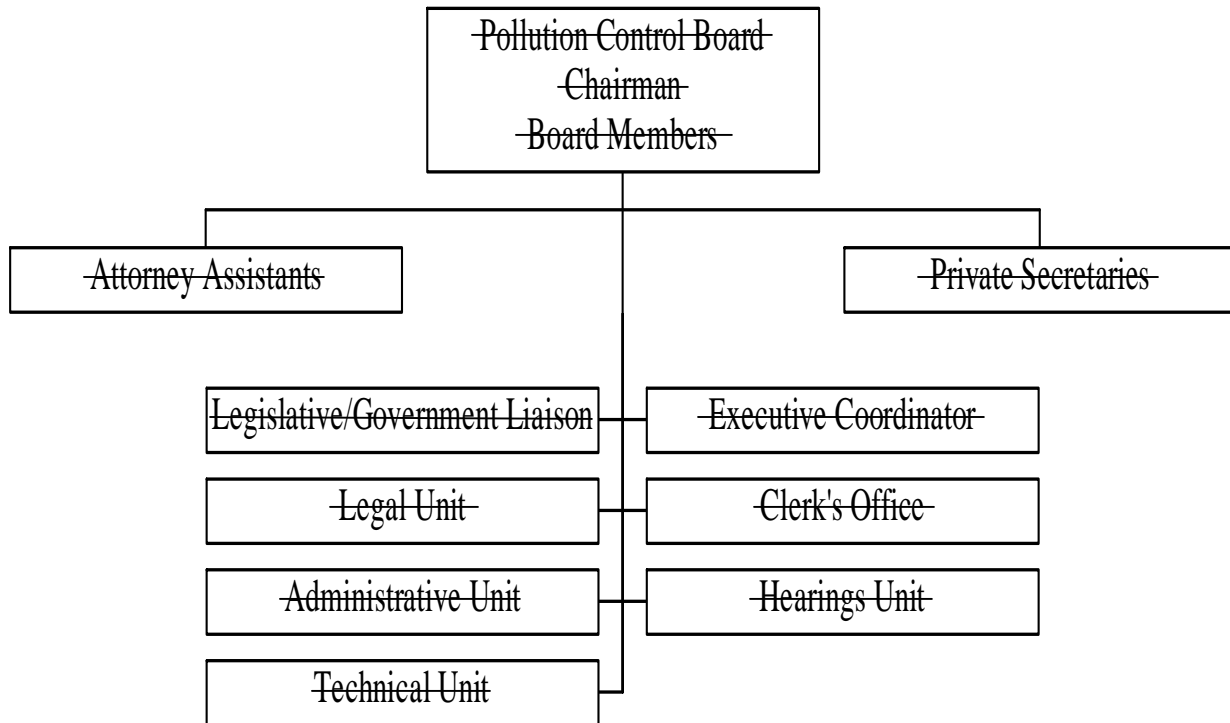
(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 2175.APPENDIX A Organizational Chart

ORGANIZATIONAL CHART







(Source: Amended at 30 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2004); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on July 20, 2006, by a vote of 4-0.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board