

ILLINOIS POLLUTION CONTROL BOARD  
September 8, 1988

IN THE MATTER OF: )  
 )  
PROCEDURAL RULES REVISION, ) R88-5  
35 ILL. ADM. CODE 101, )  
102, AND 106 )

Proposed Rule.      First Notice.

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

In accordance with the Board's on-going review of its procedural rules, and in response to recent legislation, the Board today proposes revisions to certain of its procedural rules. Today's proposal includes new general rules (35 Ill. Adm. Code 101), rules covering regulatory proceedings (35 Ill. Adm. Code 102), and rules for adjusted standards proceedings (35 Ill. Adm. Code 106). Many of these new rules are proposed in response to SB 1834 (P.A. 85-1048), signed by the Governor on July 14, 1988 and effective January 1, 1989. This legislation changes several aspects of the regulatory and adjusted standards processes, such as: 1) authorizing the Board to determine whether an economic impact study should be prepared by the Department of Energy and Natural Resources (ENR); 2) establishing a pre-hearing conference procedure for rulemakings; and 3) expanding the adjusted standards procedures. The Board believes that the rules proposed today will fully implement the provisions of SB 1834. Additionally, the Board has tightened and reorganized its existing rules.

In preparing this draft the Board has considered the comments filed by participants in predecessor dockets R82-27, R82-36, and R83-37, as well as comments filed in response to the Board's RES 88-1. (The Board presently anticipates taking action concerning RES 88-1 on or about September 22.) However, participants who have commented on predecessor dockets are encouraged to reiterate any comments which they feel have not been fully addressed.

SUBSTANCE OF THE PROPOSAL

The Board has placed a high priority on the preparation of this proposal since the signing of SB 1834. This proposal is the product of collaborative efforts of the Board's professional staff.

As a practical matter, after consultation with the Administrative Code Unit, the Board has determined that the most efficient way to revise the existing rules and add new provisions is to repeal the existing Parts and propose new Parts, at the

same Part number, covering the same subject matter. Thus, the Board proposes to repeal existing Parts 101 (general rules), 102 (regulatory proceedings), and 107 (sanctions). At the same time, the Board proposes new Parts 101 (general rules) and 102 (regulatory proceedings). Please note that rules pertaining to sanctions, currently in Part 107, have been added to Part 101. Part 107 will be repealed and left open for two years, as is required by 1 Ill. Adm. Code 100.315. New rules implementing the general adjusted standards procedures of SB 1834 have been proposed as new Subpart G in Part 106. The existing Part 106 has been changed only to update references to other Parts.

This docket (R88-5) will be used only for revisions to Parts 101, 102, and 106. The Board is in the process of drafting proposals to amend the balance of the procedural rules and intends to open new dockets for revisions to other portions of the procedural rules shortly.

The Board realizes that the proposed requirements for the filing of a complete regulatory proposal may appear to impose a higher initial burden on a proponent than was the case in the past. The Board feels that the new proposed requirements are reasonable expectations of the vast majority of regulatory proponents, and that these requirements are necessary to focus the regulatory process. The Board specifically points out that Section 102.104 provides for a waiver of any requirement of Part 102 upon a showing that a particular requirement imposes an undue burden on a person.

THE NEED TO EXPEDITE THIS PROCEEDING

SB 1834 has made some fundamental changes to the rulemaking system which has evolved over the past 18 years. The Board accordingly believes it is imperative to have regulations implementing these changes in effect on or about January 1, 1989, the effective date of SB 1834. In order to achieve this result, the Board believes it necessary to conduct this proceeding in adherence to the following presently projected schedule:

September 8:	Board adoption of proposed first notice rules
September 22:	Board adoption of proposed first notice Opinion
September 13:	Board submission of proposed rules to <u>Illinois Register</u> and of request to <u>Joint Committee On Administrative Rules (JCAR)</u> for its preliminary review

September 23:	<u>Illinois Register</u> publication of first notice
October 10-21:	Two hearings, one in Chicago and one in Springfield
November 7:	Close of written comment period
November 17:	Board adoption of second notice proposal
November 18:	Board submission of second notice to JCAR
January 4:	Expiration of 45 day second notice period
January 5:	Board adoption of final rules (unless earlier adoption possible as a result of early JCAR action)

As this schedule for Board action is already quite tight, the Board will not kindly view requests for continuance.

The Board had considered delaying the distribution of this Proposed Order until adoption of the supporting Proposed Opinion. However, in light of the tight time frames here projected, the Board will not do so to facilitate early review by all participants. The Board anticipates that, as well as explaining the rationale for various rules here proposed, the Opinion will request comments on specific provisions which have (or have not) been included in this proposal. The Board would accordingly request that participants defer filing comments until after they have reviewed the Board's Opinion. Finally additional information concerning this proceeding will be outlined in a Hearing Officer Order to be issued shortly.

The following rules are proposed for first notice. The Clerk of the Board is directed to file these proposed rules with the Secretary of State.

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

PART 101  
GENERAL RULES

Section	
101.100	Applicability
101.101	Definitions
101.102	Filing Of Documents
101.103	Form Of Documents
101.104	Length Of Briefs
101.105	Waivers
101.106	Incorporation Of Prior Proceedings
101.107	Appearances And Withdrawals
101.108	Substitution Of Attorneys
101.109	Computation Of Time

SUBPART B: FILING AND PHOTOCOPYING FEES

Section	
101.120	Filing Fees
101.121	Photocopying Fees
101.122	Forms Of Payment

SUBPART C: SERVICE

Section	
101.140	Applicability
101.141	Service Of Initial Filings
101.142	Service Of Subsequent Filings
101.143	Proof Of Service
101.144	Effective Date Of Service

SUBPART D: PUBLIC INFORMATION

Section	
101.160	Public Information
101.161	Non-Disclosable Information
101.162	Publications

SUBPART E: BOARD MEETINGS

Section	
101.180	Board Meetings
101.181	Agenda For Board Meeting

SUBPART F: EX PARTE CONTACTS

Section	
101.200	Ex Parte Contacts

SUBPART G: HEARINGS

Section	
101.220	Authority Of Hearing Officer
101.221	Hearing Decorum

SUBPART H: MOTION PRACTICE

Section	
101.240	Applicability
101.241	Filing Of Motions And Responses
101.242	Contents Of Motions And Responses
101.243	Motions Attacking Jurisdiction
101.244	Motion For Summary Judgment
101.245	Motion Preliminary To Hearing
101.246	Motions For Reconsideration
101.247	Disposition Of Motion

SUBPART I: DISCOVERY

Section	
101.260	Subpoenas
101.261	Production Of Information

SUBPART J: SANCTIONS

Section	
101.280	Sanctions For Refusal To Comply With Procedural Rules, Board Orders, Or Hearing Officer Order
101.281	Sanctions For Abuse Of Discovery Procedures

SUBPART K: RELIEF FROM AND REVIEW OF FINAL ORDERS

Section	
101.300	Relief From Final Orders
101.301	Judicial Review Of Final Board Orders
101.302	Stay Procedures
101.303	Interlocutory Appeals

Appendix A	Captions
Appendix B	Appearance Form
Appendix C	Withdrawal Of Appearance Form
Appendix D	Notice Of Filing
Appendix E	Certificate Of Service

Section 101.100      Applicability

- a) This Part governs the practices and procedures of the Pollution Control Board, and contains rules which are applicable to all proceedings conducted by the Board. This Part should be read in conjunction with 35 Ill. Adm. Code 102 through 120, which contain rules applicable to specific proceedings conducted by the Board.
- b) The provisions of the Code of Civil Procedure (Ill. Rev. Stat. 1987, ch. 110, pars. 1-101 et seq.) do not apply to proceedings before the Board unless otherwise expressly stated.

Section 101.101      Definitions

The definitions of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1001 et seq.) apply to this Part unless otherwise provided. The following definitions also apply to this Part:

"Act" means the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1001 et seq.)

"Agency" means the Illinois Environmental Protection Agency.

"APA" means the Administrative Procedure Act (Ill. Rev. Stat. 1987, ch. 127, par. 1001 et seq.)

"Attorney General" means the Office of the Attorney General of the State of Illinois

"Board" means the Illinois Pollution Control Board.

"Chairman" means the Chairman of the Board.

"Clean Air Act" means the federal Clean Air Act (42 U.S.C. 7401 et seq. (1986)).

"Clean Water Act" means the federal Clean Water Act (35 U.S.C. 1251 et seq. (1986)).

"Clerk" means the Clerk of the Board.

"Contested case" means an adjudicatory proceeding, not including regulatory, quasi-legislative, informational, or similar proceedings.

"Document" means pleading, notice, motion, affidavit, memorandum, brief, petition, or other paper or combination of papers required or permitted to be filed.

"DNS" means the Illinois Department of Nuclear Safety.

"ENR" means the Illinois Department of Energy and Natural Resources.

"JCAR" means the Joint Committee on Administrative Rules.

"Person" means any entity defined in Section 3.26 of the Act, including but not limited to any individual, partnership, company, corporation, political subdivision, or state agency.

"Registered agent" means a person registered with the Secretary of State for the purpose of accepting service of notices for any entity, or a person otherwise

authorized in writing as an agency for that entity.

"Relevant" means that having any tendency to make the existence of any fact that is of consequence to the determination of the proceeding more probable or less probable that it would be without that information.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.).

"SDWA" means the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.).

"Site-specific" means a proposed or adopted regulation, not of general applicability, which applies only to a specific facility or geographic site.

"USEPA" means the United States Environmental Protection Agency.

#### Section 101.102 Filing Of Documents

- a) Documents and requests permitted or required to be filed with the Board or its Clerk shall be addressed and mailed to or filed with the Clerk at 100 West Randolph Street, State of Illinois Center, Suite 11-500, Chicago, Illinois 60601. Filing, inspection, and copying of documents may be done in the Clerk's office from 8:30 a.m. to 4:30 p.m. Monday through Friday, except for national and state legal holidays. The Board offices are open from 8:30 a.m. to 5:00 p.m. Monday through Friday, except for national and state legal holidays.
- b) Filings received after 4:30 p.m. will be date-stamped the following business day.
- c) Documents may be filed with the Clerk by certified, registered, or First Class mail, by messenger service, or personally at the Board's Chicago office. Filing by electronic transmission, such as telefax machine or computer modem, will not be accepted, except when specifically requested by the Board.

#### Section 101.103 Form of Documents

- a) Documents shall clearly show the title of the proceeding in which they are filed. Appendix A of this Part sets forth examples of proper captions. Documents shall bear a heading which clearly describes the nature of the relief sought, such as, but not limited to "Petition for Amendment to Regulation," "Complaint," "Petition for Variance," "Petition for Review," "Motion," or "Public Comment."

- b) Except as otherwise provided, the original and nine (9) copies of all documents shall be filed with the Clerk. Only the original and four (4) copies of any discovery motion, deposition, interrogatory, answer to interrogatory, or subpoena need be filed with the Clerk.
- c) After the filing of the initial document in a proceeding, all filings, including exhibits, shall include the Board docket number for the proceeding in which the item is to be filed. If the filing is a document, the docket number shall appear on the first page of the filing. For filings which are not documents, the docket number shall appear on a readily visible portion of the filing.
- d) Documents, excluding exhibits, shall be typewritten or reproduced from typewritten copy and double-spaced on unglazed white paper of greater than 12 pound weight and measuring 8" x 10 1/2" or 8 1/2" x 11". Reproductions may be made by any process that produces legible black-on-white copies. All documents shall be fastened on the left side or in the upper left hand corner. The left margin of each page shall be at least 1 1/2 inches and the right margin at least one inch.
- e) The requirements of subsections (b), (c), and (d) may be waived by the Board upon request. A request for a filing waiver shall be presented to the Board in the form of a motion accompanied by affidavits necessary to verify any factual assertions contained in the motion. If the Board finds that compliance with the filing requirements would impose an undue burden, the Board will grant the motion.
- f) Exhibits, where possible, shall be reduced to conform to the size requirements of subsection (d). However, one non-conforming copy may be filed with the Clerk's office.
- g) The original of each document filed shall be signed by the party or by its authorized representative or attorney. All copies submitted for filing shall be made from the signed original. All documents shall bear the business address and telephone number of the attorney filing the document, or of the party who appears on his or her own behalf. The Clerk will refuse to accept for filing any document which does not comply with this subsection.
- h) Except as otherwise provided by Ill. Rev. Stat. 1987, ch. 116, pars. 35-38, or by leave of the Board, documents on microfiche are not acceptable for filing.



- i) The Clerk may refer all filings which do not conform with the requirements of this Section to the Board for review.

Section 101.104 Length of Briefs

- a) No brief in support of or in opposition to any motion shall exceed 15 pages without prior approval of the Board or hearing officer.
- b) No post-hearing brief, brief submitted in response to a Board order, or public comment submitted in lieu of a brief shall exceed 50 pages without prior approval of the Board or hearing officer. No reply brief shall exceed 25 pages.

Section 101.105 Waivers

A waiver of a deadline for Board action, as specified in the Act, shall be filed as a separate document. The waiver shall be clearly titled as such, identify the proceeding by name and docket number, and be signed by the party or by his authorized representative or attorney. The waiver shall be an open waiver or a waiver until a calendar date certain. A contingent waiver is not acceptable.

Section 101.106 Incorporation of Prior Proceedings

- a) Upon the request of any person or on its own initiative, the Board or hearing officer may incorporate materials from the record of another Board docket into any proceeding. The person seeking incorporation shall file with the Board ten copies of the material to be incorporated. The person seeking incorporation shall demonstrate to the Board or the hearing officer that the material to be incorporated is relevant to the proceeding.
- b) The Board will give the incorporated matter the appropriate weight in light of the following factors: the standard of evidence under which the material was previously presented to the Board; the present purpose for incorporating and material; and the past and current opportunity for cross-examination of the matters asserted within the incorporated material.

Section 101.107 Appearances And Withdrawals

- a) Any person entitled to participate in Board proceedings shall appear as follows:
  - 1) A natural person on his or her own behalf or by an attorney at law licensed and registered to practice in the State of Illinois, or both.

- 2) A corporation, in contested cases, by an attorney at law licensed and registered to practice in the State of Illinois.
  - 3) Any other person through any officer, employee, or representative, or by an attorney licensed and registered to practice in the State of Illinois, or both.
- b) Attorneys not licensed and registered to practice in the State of Illinois may request to appear on a particular matter on motion filed with the Board.
  - c) An attorney appearing in a representative capacity shall file a written notice of appearance with the Clerk, together with proof of service on all participants or their representative. A sample appearance form appears in Appendix B of this Part.
  - d) An attorney who has appeared in a representative capacity and who wishes to withdraw from that representation shall file a notice of withdrawal with the Clerk, together with proof of service on all participants or their representative. A sample notice of withdrawal appears in Appendix C of this Part.

#### Section 101.108 Substitution of Attorneys

Any attorney who substitutes for an attorney of record shall file a written appearance pursuant to Section 101.107(c). That appearance shall identify the attorney for whom the substitution is made.

#### Section 101.109 Computation of Time

Computation of any period of time prescribed by this Chapter or the Act shall begin with the first calendar day following the day on which the act, event or development occurs and shall run until the end of the last day, or the next business day if the last day is a Saturday, Sunday or national or state legal holiday.

### SUBPART B: FILING AND PHOTOCOPYING FEES

#### Section 101.120 Filing Fees

- a) A person filing an action for which a filing fee is prescribed by the Act shall pay that fee at the time the petition is presented to the Clerk for filing.
- b) The types of petitions for which fees are required and the amount of those fees are as follows:

- 1) PETITION FOR SITE-SPECIFIC REGULATION, \$75;
- 2) PETITION FOR VARIANCE, \$75;
- 3) PETITION FOR REVIEW OF PERMIT or any petition for review pursuant to Section 40 of the Act, \$75;
- 4) PETITION TO CONTEST LOCAL GOVERNMENT DECISION PURSUANT TO SECTION 40.1 OF THE ACT, \$75; and
- 5) PETITION FOR ADJUSTED STANDARD PURSUANT TO SECTION 28.1 OF THE ACT, \$75.

(Section 7.2 of the Act; Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1007.2.)

- c) The Clerk will refuse to accept any petition which is not accompanied by the required fee. The fee must be paid in the form specified in Section 101.122.

Section 101.121 Photocopying Fees

- a) All files, records, and data may be copied at Board offices in Chicago UPON PAYMENT OF REASONABLE REPRODUCTION FEES TO BE DETERMINED BY THE BOARD. (Section 7 of the Act, Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1007.)
- 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 possible. Requests 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.

Section 101.122 Forms of Payment

- a) The filing fees specified in Section 101.120 shall be paid by cashier's check, money order, certified check, or check drawn on an attorney's account.
- b) Photocopying fees shall be paid by personal check, cashier's check, money order, certified check, or check drawn on an attorney's account.
- c) All checks and money orders shall be made payable to the Illinois Pollution Control Board.

SUBPART C: SERVICE

Section 101.140      Applicability

This Subpart applies to all Board proceedings generally. However, to the extent that 35 Ill. Adm. Code 102 through 120 conflict with or supplement this Subpart, that more specific Part governs.

Section 101.141      Service Of Initial Filings

A copy of all initial filings in any Board proceeding shall be served upon all persons, required by this Subtitle to be served, or their registered agent. 35 Ill. Adm. Code 102-120 set forth more specifically who must be served in any given type of Board proceeding. Service of all initial filings shall be made personally, or by registered or certified mail, or by messenger service.

Section 101.142      Service Of Subsequent Filings

After initial filings are served pursuant to Section 101.141, all subsequent filings shall be served personally, or by First Class mail, or by messenger service.

Section 101.143      Proof Of Service

- a) Service of all initial filings pursuant to Section 101.141 is proved by:
  - 1) In case of service by personal delivery, by certificate of the attorney, or affidavit of the person other than than an attorney, who made delivery; or
  - 2) In case of service by mail, by registered or certified mail receipt, or by messenger service receipt.
- b) Service of subsequent filings pursuant to Section 101.142 is proved by:
  - 1) In case of service by personal delivery, by certificate of the attorney, or affidavit of the of the person other than an attorney who made delivery;
  - 2) In case of service by mail, by certificate of attorney, or affidavit of person other than attorney, which states the date, time, and place of mailing, the complete address which appeared on the envelope, and the fact that proper postage was prepaid. Service may also be proved by messenger service receipt.
- c) A sample certificate of service appears in Appendix E of

this Part.

Section 101.144 Effective Date Of Service

- a) In the case of service by personal delivery, service is complete on the date of that personal delivery.
- b) In the case of service by registered or certified mail, or by messenger service, service is complete on the date specified on the registered or certified mail receipt or the messenger service receipt.
- c) Service by First Class mail is presumed complete four days after mailing.

SUBPART D: PUBLIC INFORMATION

Section 101.160 Public Information

- 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, communications to or from the Board or any Board member, the Environmental Register and other Board releases, business records, informal complaints, and internal communications filed at the request of any Board member.
- b) All files will be open to reasonable public inspection and copying, except the following material:
  - 1) Internal communications between and among Board members and staff;
  - 2) Material protected from public disclosure under the trade secret provisions of 35 Ill. Adm. Code 120; and
  - 3) Material which is stamped "Not Subject to Disclosure" by Board order, pursuant to Section 101.141.
- c) The Clerk shall maintain a list of all files open to public inspection.

Section 101.161 Non-Disclosable Information

- a) Only the following materials may be stamped "Not Subject to Disclosure" by the Board:
  - 1) Information privileged against introduction in

judicial proceedings;

- 2) Information concerning secret manufacturing processes or confidential data submitted by any person under the Act; and
  - 3) Income and earnings data when not an issue in the proceeding.
- b) Material will be stamped "Not Subject to Disclosure" only upon request of a Board member or upon written application at the time the material is filed. Procedures governing the identification and protection of trade secrets are found in 35 Ill. Adm. Code 120. An application for non-disclosure other than pertaining to trade secrets shall contain the following:
- 1) Identification of the precise material, or parts of material, for which non-disclosure is sought;
  - 2) Indication of the particular non-disclosure category into which the material falls; and
  - 3) A concise statement of the reasons for requesting non-disclosure. The application shall be verified and contain such data and information as will inform the Board of the nature of material for which non-disclosure is sought, the reasons why non-disclosure is necessary, and the number and title of all persons familiar with such information, and how long the material has been limited from disclosure.
- c) A single copy of the material for non-disclosure shall be filed with the Clerk with the application and shall be available for examination only by Board members, Board assistants, Environmental Scientists of the Board's Scientific/Technical Section, the assigned hearing officer, the Clerk, and the Assistant Clerk. The Board will promptly rule on every application and inform the applicant of its decision. Public inspection of the material for non-disclosure shall be barred until the application has been disposed of by the Board and the time for appeal has run. The Board may enter conditional non-disclosure orders allowing withdrawal by the applicant of the material covered by such order, at which time the Board's ruling on the application shall be based on the record excluding the material so withdrawn.

#### Section 101.162 Publications

- a) At least once each month, the Board will publish an Environmental Register containing reports of Board

activities and notices of meetings and hearings. One copy will be sent to any persons without charge, upon request.

- b) Copies of the Act and regulations in effect will be provided in reasonable quantities without charge, by mail and at the Board's Chicago office.
- c) The Board will regularly publish its decisions and orders, which subscribers may buy and receive by mail at a reasonable cost.

SUBPART E: BOARD MEETINGS

Section 101.180 Board Meetings

- a) All decisions of the Board will be made at meetings open to the public. Four members of the Board constitutes a quorum. 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 Act (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1034(d)).
- b) THE BOARD WILL HOLD AT LEAST ONE MEETING EACH MONTH AND WILL ADOPT AT THE BEGINNING OF EACH CALENDAR OR FISCAL YEAR A SCHEDULE OF MEETINGS WHICH SHALL APPEAR AT LEAST ONCE IN ITS MINUTES AND IN THE ENVIRONMENTAL REGISTER. SPECIAL MEETINGS MAY BE CALLED BY THE CHAIRMAN OR BY ANY TWO BOARD MEMBERS UPON DELIVERY OF 24 HOURS WRITTEN NOTICE TO THE OFFICE OF EACH MEMBER. PUBLIC NOTICE OF ALL MEETINGS WILL BE GIVEN AT LEAST 24 HOURS IN ADVANCE OF EACH MEETING BY POSTING AT THE BOARD'S OFFICES. IN EMERGENCIES IN WHICH A MAJORITY OF THE BOARD CERTIFIES THAT EXIGENCIES OF TIME REQUIRE, THE REQUIREMENTS OF PUBLIC NOTICE AND 24 HOUR WRITTEN NOTICE TO MEMBERS MAY BE DISPENSED WITH, AND BOARD MEMBERS WILL RECEIVE SUCH NOTICE AS IS REASONABLE UNDER THE CIRCUMSTANCES. (Section 5 of the Act, Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1005.)
- c) The Board will keep a complete and accurate record of all meetings including the votes of individual members on all adjudications and proposed regulations.
- d) No oral argument will be heard at any Board meeting, unless specifically requested by the Board.

Section 101.181 Agenda For Board Meetings

Unless the Board determines that undue delay or material prejudice will result, no document received by the Clerk for filing after 4:30 p.m. two days before a scheduled Board meeting will be placed on the agenda for that Board meeting. Any such filing will appear on the agenda for the next regularly scheduled

Board meeting.

SUBPART F: EX PARTE CONTACTS

Section 101.200 Ex Parte Contacts

- a) Contested Case Proceedings. No Board member, hearing officer, or employee of the Board shall communicate ex parte with any person not employed by the Board with respect to the substance of any contested case proceeding pending before the Board. Ex parte contacts with respect to individual pollution sources which may become the subject of such a proceeding are permissible to the extent that information so received is relevant to rulemaking proceedings, but caution shall be exercised by Board members and employees to avoid prejudging the merits of any potential case.
- b) Non-contested Case Proceedings. Board members and employees should not permit ex parte contacts designed to influence his or her action in any regulatory proceeding after docketing and authorization of hearings. In the event such an ex parte contact does occur, Board members and employees shall make every communications become a matter of public record, in order that information on which the Board bases its decisions can be subject to scrutiny and to rebuttal. Whenever practicable, communications shall be in writing and addressed to the Board rather than to individual members.
- c) Nothing in this Section shall preclude Board members, hearing officers, or employees from receiving informal complaints about individual pollution sources, or forbid such administrative contacts as would be appropriate for judges and other judicial officers.

SUBPART G: HEARINGS

Section 101.220 Authority of Hearing Officer

The hearing officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear, complete, and concise record. He or she shall have all powers necessary to these ends, including (but not limited to) the authority to:

- a) Require and establish a schedule for, and notice and distribution of, any prior submission of testimony and written exhibits and rebuttal testimony and exhibits;
- b) Require all participants to state their position with respect to the proposal;



- c) Administer oaths and affirmations;
- d) Examine witnesses and direct witnesses to testify;
- e) Regulate the course of the hearing;
- f) Establish reasonable limits on the frequency and duration of the testimony and questioning of any witness and limit repetitious or cumulative testimony and questioning;
- g) Issue, in the name of the Board, an order requiring the answering of interrogatories;
- h) Order the production of evidence;
- i) Initiate, schedule and conduct a pre-hearing conference;
- j) Issue subpoenas;
- k) Exclude late-filed documents from inclusion in the record for decision; and
- l) Rule upon motions as specified in Section 101.247.

Section 101.221 Hearing Decorum

- a) Hearings should be conducted with fitting dignity and decorum. Any persons may record the proceedings by tape, film or other means, provided however that the hearing officer may prescribe reasonable rules to govern the right to make such recordings. If a witness refuses to testify on the grounds that he or she may not be compelled to testify if any portion of the witness' testimony is to be broadcast or televised or if motion pictures are to be taken of the witness while the witness is testifying, the hearing officer will prohibit such recording during the testimony of the witness.
- b) Participants in proceedings before the Board shall at all times conduct themselves with the same degree of dignity and respect that they would before a court.

SUBPART H: MOTION PRACTICE

Section 101.240 Applicability

This Subpart applies to all Board proceedings generally. However, to the extent that 35 Ill. Adm. Code 102-120 conflict with or supplement this Subpart, that more specific Part governs.

Section 101.241 Filing Of Motions And Responses

- a) All motions shall be in writing, unless made orally on

the record during a hearing, and shall state whether directed to the Board or to the hearing officer. If the motion is directed to the Board, ten copies shall be filed with the Clerk. If the motion is directed to the hearing officer, two copies shall be filed with the Clerk and one copy served upon the hearing officer. All other participants shall be served pursuant to Section 101.142.

- b) Within 7 days after service of a motion, a participant may file a response to the motion. If no response is filed, the participants shall be deemed to have waived objection to the granting of the motion, but such waiver of objection does not bind the Board or the hearing officer in the decision of the motion.
- c) The moving person shall not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice.

#### Section 101.242 Contents Of Motions And Responses

- a) All motions shall clearly state the reasons for and grounds upon which the motion is made and shall contain a concise statement of the relief sought. Facts asserted which are not of record in the proceeding shall be supported by affidavit. A brief may be included when appropriate.
- b) All responses shall clearly state the position of the responding person and the reasons for that position. Facts asserted which are not of record in the proceeding shall be supported by affidavit. A brief may be included when appropriate.

#### Section 101.243 Motions Attacking Jurisdiction

- a) All motions challenging the jurisdiction of the Board shall be filed within 14 days after service of the initial filing in that proceeding, unless the Board determines that material prejudice would result.
- b) A person may participate in a proceeding without waiving any jurisdictional objection if such objection is timely raised pursuant to subsection (a).

#### Section 101.244 Motion For Summary Judgment

A motion for summary judgment prior to hearing may be made by any party to an enforcement proceeding pursuant to Title VIII of the Act or a permit appeal pursuant to Title X of the Act. Specific rules for such motions for summary judgment are found in 35 Ill. Adm. Code 103 (enforcement proceedings) and 35 Ill. Adm. Code 105 (permit appeals).

Section 101.245 Motions Preliminary To Hearing

- a) All motions preliminary to hearing shall be presented to the Board or the hearing officer at least 21 days prior to the date of hearing, unless allowed by the Board or the hearing officer to prevent material prejudice. The Board or the hearing officer may direct that the scheduled hearing proceed during the pendency of the motion. The Board may take all motions directed to it with the case.
- b) No motion to continue a hearing in a proceeding with a deadline for Board action, as specified in the Act, will be granted unless the motion to continue is accompanied by a waiver of that decision deadline. The waiver shall conform with the requirements of Section 101.105.

Section 101.246 Motions For Reconsideration

- a) Any motion for reconsideration or modification of a final Board order shall be filed within 35 days of the order.
- b) Any response to a motion for reconsideration or modification shall be filed within 14 days from the filing of the motion.
- c) A timely-filed motion for reconsideration or modification stays the effect of the final order until final disposition of the motion. The time for appeal of the Board order runs anew after the Board rules upon the motion unless otherwise provided.

Section 101.247 Disposition Of Motion

- a) The hearing officer may rule upon all motions except any motion to dismiss, motion to decide a proceeding on the merits, motion to strike any claim or defense for insufficiency or want of proof, motion for summary judgment, or motion for reconsideration. The hearing officer will refer all such motions to the Board.
- b) No interlocutory appeal of a motion may be taken to the Board from a ruling of the hearing officer, except by allowance of the Board after motion. Notwithstanding, when in the judgment of the hearing officer immediate appeal of any order is necessary to prevent harm to the public interest or to avoid unusual delay or expense, the hearing officer may refer the ruling promptly to the Board and notify the participants. A continuing objection to a hearing officer ruling may be raised at the close of hearing and in post-hearing submissions.

- c) Unless otherwise ordered by the Board, neither the filing of a motion, the certification of a question to the Board, nor any appeal to the Board of a hearing officer order shall stay the proceeding or extend the time for the performance of any act. All hearing officer orders shall remain in effect during the pendency of any appeal to the Board.

SUBPART I: DISCOVERY

Section 101.260 Subpoenas

- a) Upon written motion by any participant, the hearing officer or the Board may issue subpoenas for attendance of witnesses at a hearing or deposition. Subpoenas may include a command to produce books, papers, documents, or tangible things designated therein and relevant to the matter under consideration.
- b) If the witness is a non-resident of the state, the hearing officer or Board order may provide specific terms and conditions in connection with his or her appearance, including payment of the witness' reasonable expenses by the moving participant.
- c) A subpoena shall state the title of the action and shall command each person to whom it is directed to attend and give testimony at the time and place therein specified. A copy of the subpoena shall be filed with the Clerk and served upon the hearing officer.
- d) The hearing officer or the Board, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance, may quash or modify the subpoena if it is unreasonable or oppressive.
- e) Failure of any witness to comply with a Board subpoena shall subject the witness to sanctions under this Part.

Section 101.261 Production Of Information

The hearing officer may at any time on his or her own motion, or on motion of any participant, or at the direction of the Board, order the production of information which is relevant to the matter under consideration. The hearing officer will deny, limit, condition or regulate the production of information when necessary to prevent delay, expense, harassment, or oppression or to protect materials from disclosure consistent with the provisions of Section 7 and 7.1 of the Act and 35 Ill. Adm. Code 120.

SUBPART J: SANCTIONS

Sections 101.280 Sanctions For Refusal To Comply With

Procedural Rules, Board Orders, Or Hearing  
Officer Orders

If a party or any person unreasonably refuses to comply with any provision of 35 Ill. Adm. Code 101-120 or fails to comply with any order entered by the Board or the hearing officer, including any subpoena issued by the Board or hearing officer, the Board may order sanctions. In addition to remedies elsewhere specifically provided, the sanctions may include, among others, the following:

- a) That further proceedings be stayed until the order or rules are complied with, except that if the proceeding is on a petition for variance or permit denial appeal, such proceeding shall be dismissed prior to the date on which decision is due;
- b) That the offending person be barred from filing any other pleading relating to any issue to which the refusal or failure relates;
- c) That the offending person be barred from maintaining any particular claim, counter claim, third-party complaint, or defense relating to that issue;
- d) That a witness be barred from testifying concerning that issue;
- e) That, as to claims or defense asserted in any pleading to which that issue is material, a judgment by default be entered against the offending person or that the proceeding be dismissed with or without prejudice;
- f) That any portion of the offending person's pleadings relating to that issue be stricken and, if appropriate, judgment be entered as to that issue;
- g) That the offending person pay the amount of reasonable expenses incurred in obtaining an order pursuant to this Section.

Section 101.281 Sanctions For Abuse Of Discovery Procedures

The Board or the hearing officer may order that information obtained through abuse of discovery procedures be suppressed. If a person wilfully obtains or attempts to obtain information by an improper discovery method, wilfully obtains or attempts to obtain information to which he is not entitled, or otherwise abuses discovery rules, the Board may enter any order provided for in this Subpart.

SUBPART K: RELIEF FROM AND REVIEW OF FINAL ORDERS

Section 101.300 Relief From Final Orders

SUBPART K: RELIEF FROM AND REVIEW OF FINAL ORDERS

Section 101.300 Relief From Final Orders

- a) Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Board at anytime on its own initiative or on the motion of any party and after such notice, if any, as the Board orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of appellate court.
- b) On motion, the Board may relieve a party from a final order, for the following:
  - 1) Newly discovered evidence which existed at the time of hearing and which by due diligence could not have been timely discovered; or
  - 2) Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or
  - 3) Void order, such as an order based upon jurisdictional defects.
- c) A motion under this Section does not affect the finality of a Board order or suspend the operation of a Board order. The motion must be filed in the same proceeding in which the order was entered but is not a continuation of the proceeding. The motion must be supported by affidavit or other appropriate showing as to matters not of record. All parties to the motion shall be notified as provided by Section 101.141(a).
- d) A motion under subsection (b) shall be filed with the Board within one year after entry of the order except that a motion pursuant to subsection (b)(3) shall be filed within a reasonable time after entry of the order.

Section 101.301 Judicial Review Of Final Board Orders

- a) Judicial review of final Board orders shall be pursuant to Sections 29 and 41 of the Act (Ill. Rev. Stat. 1987, ch. 111 1/2, pars. 1029 and 1041), Rule 335 of the Rules of the Supreme Court of Illinois (Ill. Rev. Stat. 1987, ch. 110A, par. 335) and the Administrative Review Law (Ill. Rev. Stat. 1087, ch. 110, pars. 3-101 --- 3-112).
- b) For purposes of judicial review, Board action becomes final upon enactment, or upon subsequent Board action on any motion for reconsideration under Section 101.246.

Section 101.302 Stay Procedures

The procedure for stay of any Board order during appeal shall be as provided in Rule 335 of the Rules of the Supreme Court of Illinois.

Section 101.303 Interlocutory Appeals

- a) When the Board, in making an interlocutory order not otherwise appealable, finds pursuant to Rule 308 of the Rules of the Supreme Court of Illinois (Ill. Rev. Stat. 1987, ch. 110A, par. 308) that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the Board may so state in writing, identifying the question of law involved, on its own motion or on motion of any party.
- b) Appeal of such interlocutory order by the Board shall be in accordance with Rule 308 of the Supreme Court of Illinois.

Appendix A  
Captions

Illustration A General Rulemaking

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
REVISION OF THE FLUORIDE	)	R
DRINKING WATER STANDARD:	)	(Rulemaking)
AMENDMENTS TO 35 ILL. ADM.	)	
CODE XXX.XXX	)	

Illustration B Site-specific Rulemaking

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
PETITION OF ABC COMPANY FOR	)	R
SITE-SPECIFIC AIR REGULATION:	)	(Site-Specific Rulemaking)
35 ILL. ADM. XXX.XXX	)	

Illustration C Adjusted Standards Petitions

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
PETITION OF ABC COMPANY (AND	)	AS
THE ILLINOIS ENVIRONMENTAL	)	(Adjusted standard)
PROTECTION AGENCY) FOR ADJUSTED	)	
STANDARD FROM 35 ILL. ADM. CODE	)	
XXX.XXX	)	

Illustration D Permit Appeals And Variances

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
ABC COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB
	)	(Permit appeal or variance)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

Illustration E Enforcement Cases

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY, (or OTHER	)	
PERSON'S NAME),	)	
	)	
Complainant,	)	
	)	
v.	)	PCB
	)	(Enforcement)
ABC COMPANY,	)	
	)	
Respondent.	)	



Illustration F Administrative Citation

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY (or UNIT OF	)	
LOCAL GOVERNMENT),	)	
	)	
Complainant,	)	
	)	
v.	)	AC-
ABC COMPANY,	)	(Administrative Citation)
	)	IEPA Number
Respondent.	)	

Appendix B  
APPEARANCE FORM

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

APPLICABLE CAPTION	)	
(see Appendix A)	)	
	)	
	)	docket number
	)	
	)	
	)	

APPEARANCE

I hereby file my appearance in this proceeding, on behalf of ABC Company.

\_\_\_\_\_  
Attorney's Name

Name of Attorney and Firm  
Address  
Telephone Number

Appendix C  
WITHDRAWAL OF APPEARANCE FORM

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

APPLICABLE CAPTION	)	
(see Appendix A)	)	
	)	
	)	docket number
	)	
	)	
	)	

NOTICE OF WITHDRAWAL OF APPEARANCE

I hereby give notice of withdrawal, of my appearance as representative of ABC Company in this proceeding.

\_\_\_\_\_  
Attorney's Name

Name of Attorney and Firm  
Address  
Telephone Number

Appendix D  
Notice of Filing

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

APPLICABLE CAPTION	)	
(see Appendix A)	)	
	)	
	)	docket number
	)	
	)	
	)	

NOTICE OF FILING

TO: (List all persons served.)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the [specify what document was filed] of [name of persons filing the document], a copy of which is herewith served upon you.



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

PART 102  
REGULATORY AND INFORMATIONAL  
HEARINGS AND PROCEEDINGS

SUBPART A: GENERAL PROVISIONS

Section  
102.100 Applicability  
102.101 Definitions  
102.102 Incorporations By Reference  
102.103 Types Of Regulatory Proposals  
102.104 Waiver Of Requirements  
102.105 Other Proceedings

SUBPART B: PROPOSAL OF  
REGULATIONS OF GENERAL APPLICABILITY

Section  
102.120 Proposal Of Regulations  
102.121 Contents Of Proposal  
102.122 Dismissal Of Proposal  
102.123 Proposal Of RCRA Amendments

SUBPART C: PROPOSAL OF REGULATIONS NOT OF  
GENERAL APPLICABILITY

Section  
102.140 Proposal Of Regulations Not Of General  
Applicability  
102.141 Contents Of Proposal  
102.142 Dismissal Of Proposal

SUBPART D: CONTENTS OF SITE-SPECIFIC  
PROPOSALS PERTAINING TO WATER

Section  
102.160 Relationship With Other Rules  
102.161 Description Of Facility  
102.162 Description Of Affected Area  
102.163 Assessment Of Environmental Impact  
102.164 Consistency With Federal Law  
102.165 Evaluation Of Control Options

SUBPART H: AUTHORIZATION AND NOTICE OF HEARINGS

Section  
102.240 Authorization Of Hearing  
102.241 Notice Of Hearing  
102.242 Notice Of Site-Specific RCRA Proposals

SUBPART I: ECONOMIC IMPACT STUDY DETERMINATIONS

Section  
102.260 Board Determinations  
102.261 Request For Determination  
102.262 Basis For Board Determination  
102.263 Notice Of Board Determination

SUBPART J: AUTHORITY OF HEARING OFFICER

Section  
102.280 Authority Of Hearing Officer  
102.281 Notice And Service Lists  
102.282 Effect Of Hearing Officer Ruling

SUBPART K: PRE-HEARING CONFERENCES

Section  
102.300 Initiation and Scheduling  
102.301 Purpose  
102.302 Pre-hearing Order

SUBPART L: MOTIONS AND DISCOVERY

Section  
102.320 Filing Of Motions And Responses  
102.321 Production Of Information  
102.322 Subpoenas

SUBPART M: REGULATORY HEARINGS

Section  
102.340 Pre-submitted Testimony  
102.341 Transcript  
102.342 Admissible Information  
102.343 Presentation Of Testimony  
102.344 Questioning Of Witnesses  
102.345 Record For Decision

SUBPART N: ECONOMIC IMPACT HEARINGS

Section  
102.360 Hearings On The Economic Impact Study Of New  
Proposals  
102.361 Hearings On The Economic Impact Study Of Existing  
Regulations

SUBPART O: PUBLIC COMMENTS

Section  
102.380 Public Comments

SUBPART O: BOARD ACTION

Section	
102.400	Revision Of Proposed Regulations
102.401	Adoption Of Regulations
102.402	First Notice Of Proposed Regulations
102.403	Second Notice Of Proposed Regulations
102.404	Notice Of Board Final Action
102.405	Adoption Of RCRA Rules
102.406	Adoption Of Identical In Substance Regulation
102.407	Adoption Of Emergency Regulations
102.408	Adoption Of Peremptory Regulations
102.409	Adoption Of Temporary Regulations

SUBPART Q: MOTION FOR RECONSIDERATION AND APPEAL

Section	
102.420	Filing Of Motion For Reconsideration
102.421	Disposition Of Motions For Reconsideration
102.422	Appeal

Section 102.100 Applicability

This Part applies to all regulatory and informational hearings and proceedings, and shall be read in conjunction with 35 Ill. Adm. Code 101. Hearings conducted pursuant to this Part shall be quasi-legislative in nature, except that all testimony shall be sworn. All persons taking part in these hearings are participants, rather than parties as in contested cases.

Section 102.101 Definitions

The following definitions shall apply to this Part:

"Act" means the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1001 et seq.).

"Agency" means the Illinois Environmental Protection Agency.

"APA" means the Administrative Procedure Act (Ill. Rev. Stat. 1987, ch. 127, par. 1001 et seq.).

"Attorney General" means the Office of the Attorney General of the State of Illinois.

"Board" means the Illinois Pollution Control Board.

"Chairman" means the Chairman of the Board.

"Clerk" means the Clerk of the Board.

"Document" means pleading, notice, motion, affidavit, memorandum, brief, petition, or other paper required or permitted to be filed.

"DNS" means the Illinois Department of Nuclear Safety.

"Economic impact study" means the economic impact study performed by ENR.

"ENR" means the Illinois Department of Energy and Natural Resources.

"Fire Marshall" means the Office of the State Fire Marshall.

"Identical in substance regulations" means STATE REGULATIONS WHICH REQUIRE THE SAME ACTIONS WITH RESPECT TO PROTECTION OF THE ENVIRONMENT, BY THE SAME GROUP OF AFFECTED PERSONS, AS WOULD FEDERAL REGULATIONS IF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ADMINISTERED THE SUBJECT PROGRAM IN ILLINOIS. (Section 7.2 of the Act.)

"Identical in substance rulemakings" are those proceedings conducted pursuant to Sections 13(c), 13.3, 17.5, 22.4(a), 22.4(d) and 22.7(d) of the Act.

"JCAR" means the Joint Committee on Administrative Rules.

"Peremptory rulemaking" means ANY RULEMAKING WHICH IS REQUIRED AS A RESULT OF FEDERAL LAW, FEDERAL RULES AND REGULATIONS, OR AN ORDER OF A COURT, UNDER CONDITIONS WHICH PRECLUDE COMPLIANCE WITH THE GENERAL RULEMAKING REQUIREMENTS OF SECTION 5.01 OF THE APA AND WHICH PRECLUDE THE EXERCISE BY THE BOARD AS TO THE CONTENT OF THE RULE. (Section 5.03 of the APA.)

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.).

"RCRA rules" means 35 Ill. Adm. Code 703, 720, 721, 722, 723, 724, and 725.

"Relevant" means that having any tendency to make the existence of any fact that is of consequence to the determination of the proceeding more probable or less probable that it would be without the information.

"Required rule" means a rule that is NEEDED TO FULFILL THE REQUIREMENTS OF THE FEDERAL CLEAN WATER ACT (35 U.S.C. 1251 ET SEQ.), SAFE DRINKING WATER ACT, (42 U.S.C. 300f ET SEQ.), CLEAN AIR ACT (42 U.S.C. 7401 ET SEQ.), OR RESOURCE CONSERVATION AND RECOVERY ACT (42 U.S.C. 6901 ET SEQ.) OTHER THAN A RULE TO BE ADOPTED UNDER SECTION 13(c), 13.3, 17.5, 22.4(a), 22.4(d), OR 22.7 OF THE ACT. (Section 28.2 of the Act.)

"Site-specific" means a proposed or adopted regulation, not of general applicability, which applies only to a specific facility or geographic site.

"USEPA" means the United States Environmental Protection Agency.

#### Section 102.102 Incorporation By Reference

40 CFR 131 (1987) is incorporated by reference. This incorporation by reference contains no later amendments or editions.

#### Section 102.103 Types Of Regulatory Proposals

- a) The Act provides for three types of regulatory proposals:
  - 1) Identical in substance proposals, as defined in Section 102.101;
  - 2) Federally required rules, as defined in Section 102.101; and
  - 3) Other regulatory proposals, both of general applicability and not of general applicability.
- b) Regulations arising from these types of proposals may be adopted through four types of rulemaking:
  - 1) General rulemaking pursuant to Section 5.01 of the APA (Ill. Rev. Stat. 1987, ch. 127, par. 1005.01), and Sections 26 and 27 of the Act (Ill. Rev. Stat. 1987, ch. 111 1/2, pars. 1026-1027);
  - 2) Emergency rulemaking pursuant to Section 5.02 of the APA (Ill. Rev. Stat. 1987, ch. 127, par. 1005.02) and Section 27 of the Act;
  - 3) Peremptory rulemaking pursuant to Section 5.03 of the APA (Ill. Rev. Stat. 1987, ch. 127, par. 1005.03); and
  - 4) Temporary rulemaking pursuant to Section 27(b) of the Act.

#### Section 102.104 Waiver Of Requirements

The Board may waive any of the requirements of this Part upon a showing by a person that a particular requirement would create an undue burden on that person.

#### Section 102.105 Other Proceedings



The Board may conduct such other noncontested or informational hearings as may be necessary to accomplish the purposes of the Act. Such other hearings shall be conducted according to this Part to the extent applicable.

SUBPART B: PROPOSAL OF  
REGULATIONS OF GENERAL APPLICABILITY

Section 102.120      Proposal of Regulations

Any person may submit a regulatory proposal for the adoption, amendment, or repeal of a regulation. Ten (10) copies of each proposal shall be filed with the Clerk and one copy each with the Attorney General, the Agency and ENR.

Section 102.121      Contents of Proposal

Each regulatory proposal shall include:

- a) The language of the proposed regulation or amendment, including an identification of the existing regulatory language proposed to be amended or deleted. Language being added shall be indicated by underscoring and language being deleted shall be indicated by strike-outs;
- b) A statement of the reasons supporting the proposal, including a statement of the facts which support the proposal, and a statement of the purpose and effect of the proposal. The statement shall discuss the applicable factors listed in Section 27 of the Act. Where the proposal covers more than one substantive point, the statement of reasons shall include statements in support of each point. The statement of reasons shall include a technical and economic justification for proposed controls;
- c) Pursuant to Section 27 of the Act, A RECOMMENDATION OF WHETHER AN ECONOMIC IMPACT STUDY IS ADVISABLE. The recommendation shall describe, TO THE EXTENT REASONABLY PRACTICABLE, THE UNIVERSE OF AFFECTED SOURCES AND FACILITIES AND THE ECONOMIC IMPACT OF THE PROPOSED RULE. The recommendation shall also address the questions contained in the Analysis of Economic and Budgetary Effects of Proposed Rulemaking, set forth at 1 Ill. Adm. Code 220, Exhibit B, and identify issues to be addressed by any economic impact study;
- d) Copies of all testimony to be presented by the proponent at hearing;
- e) Copies of all exhibits and references;

- f) Copies of all material to be incorporated by reference;  
and
- g) Proof of service upon all persons required to be served pursuant to Section 102.120.

Section 102.122 Dismissal of Proposal

- a) Failure of the proponent to satisfy the content requirements of Section 102.121 or failure to respond to Board requests for additional information will render a proposal subject to dismissal for inadequacy.
- b) Failure of the proponent to pursue disposition of the proposal in a timely manner will render a proposal subject to dismissal.

Section 102.123 Proposal of RCRA Amendments

Any proposal to amend the RCRA regulations shall:

- a) Indicate whether it is made pursuant to the provisions of Section 22.4(a), 22.4(b) or 22.4(c) of the Act;
- b) Include a listing of all amendments to the corresponding federal regulations since the last amendment of the Board's RCRA rules;
- c) Include a certificate of service indicating that a copy of the proposal has been served on the United States Environmental Protection Agency (USEPA). Service shall be made at the following address:

Director, Waste Management Division  
USEPA, Region V  
230 South Dearborn Street  
Chicago, Illinois 60604

SUBPART C: PROPOSAL OF REGULATIONS  
NOT OF GENERAL APPLICABILITY

Section 102.140 Proposal of Regulations Not of General Applicability

Any person or group of persons may submit a written proposal for the adoption, amendment or repeal of a substantive regulation not of general applicability, as it applies to a specific site or sites, geographical location, or activity. Ten (10) copies of each proposal shall be filed with the Clerk and one copy each served upon the Agency, ENR, and the Attorney General.

Section 102.141 Contents of Proposal

- a) The proposal shall identify the regulations which are to be addressed by the proposed amendment and the language to be added, deleted, or repealed. Language being added shall be indicated by underscoring and language being deleted shall be indicated by strike-outs.
- b) Except as otherwise provided in the Act, the proposal shall include a statement of reasons and facts supporting the proposal, and a statement of the purpose and effect of the proposal.
- c) The proposal shall also comply with all requirements set forth in Section 102.121.
- d) In the event that the proposed rule would replace the applicability of a general rule to the pollution source, the proposal shall specify, with supporting documentation, the reasons why the general rule is not technically feasible or economically reasonable for the particular pollution source. Such documentation shall include relevant information on other similar pollution sources' ability to comply with the general rule.
- e) Where circumstances may render any information requested in this Subpart inapplicable, the proposal shall include a justification for such inapplicability.
- f) The proposal shall demonstrate that the Board may grant the requested relief consistent with federal law.

Section 102.142 Dismissal of Proposal

- a) Failure of the proponent to satisfy the content requirements for proposals under this Subpart or failure to respond to Board requests for additional information will render a proposal subject to dismissal for inadequacy.
- b) Failure of the proponent to pursue disposition of the proposal in a timely manner will render a proposal subject to dismissal.

SUBPART D: CONTENTS OF SITE-SPECIFIC  
PROPOSALS PERTAINING TO WATER

Section 102.160 Relationship With Other Rules

This Subpart contains specific provisions for the contents of site-specific proposals pertaining to water. The rules in this Subpart should be read in conjunction with, and are cumulative to, Subpart C.

Section 102.161 Description of Facility

All proposals shall describe the facility for which the regulatory change is sought, including:

- a) The location, either by street or county road, or by legal description and a map adequate to identify the facility's location and other nearby relevant physical features;
- b) The activity performed at the facility, processes employed, and materials used;
- c) The waste material produced or discharged including quantity, in terms of volume or flow rate, and the content, in terms of concentration or mass load, of pertinent physical, thermal, chemical, biological, bacterial, and radioactive properties;
- d) The type of treatment or control and the components of the treatment system or control equipment currently employed or proposed; and
- e) A list of all prior Board proceedings concerning the facility and the specific parameters for which regulatory change is sought, arranged by Board docket number.

Section 102.162 Description of Affected Area

All proposals shall describe:

- a) The identity of and effect upon the receiving waters;
- b) The present and anticipated future public and private uses of and access to the affected waters;
- c) The nature of the surrounding land uses, zoning and population characteristics; and
- d) The other facilities within the affected area that might benefit from or be adversely affected by the proposal.

Section 102.163 Assessment of Environmental Impact

- a) All proposals shall describe:
  - 1) The current aquatic uses of the affected waters;
  - 2) The causes of any impairment in the aquatic uses; and
  - 3) The aquatic uses which might be attained based on the physical, chemical and biological characteristics of the affected waters.

- b) All proposals shall describe the condition of and the environmental impact upon the affected waters under current operations with respect to:
  - 1) The attainment of and compliance with presently applicable water quality standards;
  - 2) The ability to support currently designated uses as contained in 35 Ill. Adm. Code 303.
- c) All proposals shall describe the condition of and the environmental impact upon the affected waters if the proposal were adopted with respect to:
  - 1) The attainment of and compliance with presently applicable water quality standards;
  - 2) The ability to support currently designated uses as contained in 35 Ill. Adm. Code 303; and
  - 3) The ability to support any higher level uses other than currently designated in 35 Ill. Adm. Code 303.

Section 102.164 Consistency with Federal Law

- a) All proposals shall demonstrate that relief can be granted consistent with the Clean Water Act (33 U.S.C. 1251 et seq.), USEPA water quality guidelines and standards, any other federal regulation, and any wastewater treatment management plan certified and approved pursuant to Section 208 of the Clean Water Act.
- b) Any proposal requesting relief from a specific water quality standard contained in 35 Ill. Adm. Code 302, use designation contained in 35 Ill. Adm. Code 303 or 304.105, or necessitating relief or relaxation of any such rule in order to realize the benefit intended by the proposal shall include a statement of the proposal's consistency with USEPA water quality standards and use designation criteria as contained in 40 CFR 131.

Section 102.165 Evaluation of Control Options

- a) All proposals shall describe the treatment or control options available, including costs and efficiencies, as to:
  - 1) Present levels of control;
  - 2) Past efforts to obtain compliance with applicable regulations; and
  - 3) Any available or proposed control options including the elimination of the source.

- b) The description of costs shall include, at a minimum, estimates of:
  - 1) Capital costs;
  - 2) Operating costs;
  - 3) Total annualized costs; and
  - 4) Any economic benefit to the proponent, such as material recovery.
- c) The description of efficiencies shall include information on design efficiency and operating efficiency.

SUBPART H: AUTHORIZATION AND NOTICE OF HEARINGS

Section 102.240 Authorization of Hearing

- a) The Clerk shall assign a docket number to any proposal and distribute copies to each Board member. All regulatory proposals will be placed on the Board agenda for determination of adequacy under the Act and Sections 102.121 and 102.141. IF THE BOARD FINDS THAT ANY SUCH PROPOSAL IS NOT PLAINLY DEVOID OF MERIT, DOES NOT DEAL WITH A SUBJECT ON WHICH A HEARING HAS BEEN HELD WITHIN THE PRECEDING 6 MONTHS, IS ACCOMPANIED BY AN ADEQUATE STATEMENT OF SUPPORTING REASONS AND A PETITION SIGNED BY AT LEAST 200 PERSONS, and meets the requirements of this Part, THE BOARD WILL SCHEDULE A PUBLIC HEARING FOR CONSIDERATION OF THE PROPOSAL. IF A PROPOSAL IS MADE BY THE AGENCY, ENR, OR DNS, THE BOARD SHALL SCHEDULE A PUBLIC HEARING WITHOUT REGARD TO THE ABOVE CONDITIONS. Pursuant to Section 28 of the Act, THE BOARD MAY ALSO IN ITS DISCRETION SCHEDULE A PUBLIC HEARING UPON ANY PROPOSAL WITHOUT REGARD TO THE ABOVE CONDITIONS. (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1028.) If the Board denies a hearing, it will enter an order setting forth its reasons for the denial, and will notify the proponent of its decision. Notwithstanding the above, a proposal will proceed to hearing only after the Proponent cures any inadequacy identified by Board order.
- b) When the Board authorizes a hearing, the Chairman will designate an attending Board member. A member of the Board may serve as hearing officer if otherwise qualified, and such hearing need not be attended by another Board member.
- c) In the case of a proposed regulatory change under the provisions of 35 Ill. Adm. Code 302.211(j) or

304.141(c), the requirement of subsection (a) relating to a requirement of 200 signatures shall not apply. In such case only a single hearing shall be required, to be held in the affected county.

- d) The Board may consolidate two or more proposals for hearing or decision.

Section 102.241 Notice of Hearing

- a) The hearing officer will set a time and place for hearing. The Clerk shall give notice of the date of the hearing as follows:
  - 1) By notice in the Board's Environmental Register; and
  - 2) At least 20 days prior to the hearing date, by public advertisement in a newspaper of general circulation in the county in which the hearing is to be held. In the case of regulatory proposals concerning air pollution and RCRA, newspaper notice shall be published at least 30 days prior to the hearing date.
- b) The hearing officer will give notice by mail to the proponent and to all persons who have submitted their names and addresses to the Clerk concerning the proposal.
- c) Hearings which are continued on the hearing record for a period of less than 45 days do not require notice that complies with subsections (a) and (b).

Section 102.242 Notice of Site-Specific RCRA Proposals

- a) Public notice of hearings on site-specific RCRA proposals shall be given at least 30 days before the date of the hearing.
- b) In addition to the requirements of Section 28 of the Act and Section 102.211, the Board, at a minimum, will give notice of hearings on a site specific RCRA proposal to the following persons:
  - 1) Federal agencies as designated by USEPA;
  - 2) Illinois Department of Transportation;
  - 3) Illinois Department of Conservation;
  - 4) Illinois Department of Energy and Natural Resources;

- 5) Illinois Department of Public Health;
  - 6) The governor of any other state adjacent to the county in which the facility is located; and
  - 7) Elected officials of any counties, in other states, adjacent to the county in which the facility is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility.
- c) In addition to the methods of notice by publication of Section 28 of the Act and Section 102.241, the Board will give notice by radio broadcast in the area of the facility. That notice will include the information required by subsections (d)(2) and (d)(4) through (d)(8) below.
- d) A hearing notice on a site-specific RCRA proposal will include the following information:
- 1) The address of the Board office;
  - 2) Name and address of the proponent and, if different, of the facility for which the site-specific rule is sought;
  - 3) A brief description of the business conducted at the facility and the activity described in the petition;
  - 4) A description of the relief requested in the petition and the Board's docket number of the Proceeding;
  - 5) Name, address and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the proposal;
  - 6) The name, address and telephone number of the Agency's representative in the rulemaking;
  - 7) A description of any written comment period or a statement that a comment period will be established in the future;
  - 8) A statement that the record in the rulemaking is available at the Board office for inspection, except those portions which are claimed or determined to be trade secrets, and that procedures are available whereby disclosure may be sought by the public pursuant to 35 Ill. Adm. Code 120.



- 9) A statement that site specific rules may be adopted pursuant to Title VII of the Act and 35 Ill. Adm. Code 102, and a reference to the Board regulations sought to be modified; and
- 10) Any additional information considered necessary or proper.

SUBPART I: ECONOMIC IMPACT STUDY DETERMINATIONS

Section 102.260 Board Determinations

- a) Within 60 days of the date that the Board accepts a proposal for hearing pursuant to Section 28 of the Act and Section 102.210, the Board shall determine whether an economic impact study should be prepared.
- b) Notwithstanding subsection (a), AT ANY TIME PRIOR TO THE CLOSE OF THE RECORD DURING THE RULEMAKING PROCEEDING, THE BOARD MAY DETERMINE THAT AN ECONOMIC IMPACT STUDY SHOULD BE PREPARED. Such a determination may be made IF THE PROPOSAL HAS BEEN SUBSTANTIALLY MODIFIED OR IF INFORMATION IN THE RECORD INDICATES THAT AN ECONOMIC IMPACT STUDY WOULD BE ADVISABLE. (Section 27 of the Act.)
- c) IF THE BOARD DETERMINES THAT AN ECONOMIC IMPACT STUDY SHOULD BE CONDUCTED, ENR SHALL CONDUCT SUCH A STUDY IN ACCORDANCE WITH "AN ACT IN RELATION TO NATURAL RESOURCES, RESEARCH, DATA COLLECTION AND ENVIRONMENTAL STUDIES" (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7401 et seq.). THE BOARD MAY IDENTIFY SPECIFIC ISSUES TO BE ADDRESSED IN THE STUDY. (Section 27 of the Act.)

Section 102.261 Request For Determination

- a) WITHIN 21 DAYS OF THE DATE THAT THE BOARD ACCEPTS A PROPOSAL FOR HEARING PURSUANT TO SECTION 28 OF THE ACT AND SECTION 102.210, ANY PERSON MAY REQUEST THAT THE BOARD DETERMINE THAT AN ECONOMIC IMPACT STUDY SHOULD OR SHOULD NOT BE PREPARED. (Section 27 of the Act.)
- b) Such request shall be made in writing, and shall detail the reasons for the request. The request SHALL DESCRIBE, TO THE EXTENT REASONABLY PRACTICABLE, THE ECONOMIC IMPACT OF THE PROPOSED RULE. (Section 27 of the Act.) All material facts asserted in the request shall be verified by affidavit.
- c) The person filing the request shall file 10 copies with the Clerk, and one copy each with the Agency, ENR, the Attorney General, and the proponent.

Section 102.262 Basis for Board Determination

In determining whether an economic impact study should be performed, the Board will consider:

- a) Information in the record furnished by the proponent pursuant to Section 102.121 and by any person filing a request for determination pursuant to Section 102.231;
- b) ITS ASSESSMENT OF THE POTENTIAL ECONOMIC IMPACT OF THE RULE;
- c) THE POTENTIAL FOR CONSIDERATION OF THE ECONOMIC IMPACT ABSENT SUCH A STUDY;
- d) THE EXTENT, IF ANY, TO WHICH THE BOARD IS FREE UNDER THE STATUTE AUTHORIZING THE RULE TO MODIFY THE SUBSTANCE OF THE RULE BASED UPON THE CONCLUSIONS OF AN ECONOMIC IMPACT STUDY; and
- e) ANY OTHER CONSIDERATIONS THE BOARD DEEMS APPROPRIATE. (Section 27 of the Act.)

Section 102.263 Notice of Board Determination

The Board will issue a written order giving the reasons for its determination. The proponent and any person who has asked to be placed on the notice list for the proposal will be given notice of the Board's determination.

SUBPART J: AUTHORITY OF HEARING OFFICER

Section 102.280 Authority of Hearing Officer

The hearing officer will have the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear, complete, and concise record. He or she will have all powers necessary to these ends, including (but not limited to) the authority to:

- a) Require and establish a schedule for, and notice and distribution of, any prior submission of testimony and written exhibits and rebuttal testimony and exhibits;
- b) Require all participants to state their position with respect to the proposal;
- c) Administer oaths and affirmations;
- d) Examine witnesses and direct witnesses to testify;
- e) Regulate the course of the hearing;
- f) Establish reasonable limits on the frequency and duration of the testimony and questioning of any witness

and limit repetitious or cumulative testimony and questioning;

- g) Issue, in the name of the Board, an order requiring the answering of interrogatories;
- h) Order the production of evidence as specified in Section 102.322;
- i) Initiate, schedule and conduct a pre-hearing conference as specified in Subpart K;
- j) Issue subpoenas pursuant to Section 102.323; and
- k) Exclude late-filed documents from inclusion in the record for decision.

Section 102.281 Notice and Service Lists

- a) The hearing officer shall maintain a notice list for each regulatory proceeding. The notice list will consist of those persons who have furnished their names and addresses for inclusion on the notice list for a specific proceeding. Notice of all Board action and hearing officer orders will be given to all persons included on the notice list.
- b) The hearing officer may establish a service list for any regulatory proceeding, in addition to the notice list. The hearing officer may direct participants to serve copies of all documents upon the persons listed on the service list.

Section 102.282 Effect of Hearing Officer Ruling

All decisions, orders, and rulings made by the hearing officer shall remain in effect during the pendency of any appeal to the Board of that decision, order or ruling.

SUBPART K: PRE-HEARING CONFERENCES

Section 102.300 Initiation and Scheduling

- a) TO THE EXTENT CONSISTENT WITH ANY DEADLINE FOR ADOPTION OF ANY REGULATIONS MANDATED BY STATE OR FEDERAL LAW, PRIOR TO INITIATING ANY HEARING ON A REGULATORY PROPOSAL, THE BOARD MAY ASSIGN A QUALIFIED HEARING OFFICER WHO MAY SCHEDULE A PRE-HEARING CONFERENCE BETWEEN THE PROPONENT AND ANY OR ALL OF THE POTENTIALLY AFFECTED PERSONS. (Section 27(e) of the Act.) Such a pre-hearing conference may be scheduled by the hearing officer on his or her own motion, or on the motion of the proponent or any potentially affected person. A motion to schedule such a pre-hearing conference shall be directed to the hearing officer.

- b) THE NOTICE REQUIREMENTS OF SECTION 28 of the Act and Section 102.241 SHALL NOT APPLY TO SUCH PRE-HEARING CONFERENCES. (Section 27(e) of the Act). However, the hearing officer will give notice to any person who has requested inclusion on the notice list of that proposal.

Section 102.301 Purpose

The purpose of a pre-hearing conference shall be:

- a) TO MAXIMIZE UNDERSTANDING OF THE INTENT AND APPLICATION OF THE PROPOSAL;
- b) TO REACH AGREEMENT ON ASPECTS OF THE PROPOSAL, IF POSSIBLE; AND
- c) TO ATTEMPT TO IDENTIFY AND LIMIT THE ISSUES OF DISAGREEMENT AMONG THE PARTICIPANTS TO PROMOTE EFFICIENT USE OF THE TIME AT HEARING. (Section 27(e) of the Act.)

Section 102.302 Pre-hearing Order

- a) NO RECORD OF THE PRE-HEARING CONFERENCE NEED BE KEPT, NOR SHALL ANY PARTICIPANT OR THE BOARD BE BOUND BY ANY DISCUSSIONS CONDUCTED AT THE PRE-HEARING CONFERENCE.
- b) Notwithstanding subsection (a), WITH THE CONSENT OF ALL PARTICIPANTS IN THE PRE-HEARING CONFERENCE, THE HEARING OFFICER MAY ENTER A PRE-HEARING ORDER DELINEATING ISSUES TO BE HEARD, AGREED FACTS, AND OTHER MATTERS.
- c) The hearing officer may require that the participants furnish an agreed order setting forth the substance of the agreements reached at the pre-hearing conference. The hearing officer will enter that order if he or she agrees that it fairly sets forth the substance of the agreement.
- d) A PRE-HEARING ORDER SHALL NOT BE BINDING ON NONPARTICIPANTS IN THE PRE-HEARING CONFERENCE. (Section 27(e) of the Act.)

SUBPART L: MOTIONS AND DISCOVERY

Section 102.320 Motion Practice

Motion practice in regulatory proceedings is governed by 35 Ill. Adm. code 101: Subpart H.

Section 102.321 Production of Information

The hearing officer may at any time on his or her own motion, or on motion of any participant, or at the direction of the Board,

order the production of information which is relevant to the matter under consideration. The hearing officer will deny, limit, condition or regulate the production of information when necessary to prevent delay, expense, harassment, or oppression or to protect materials from disclosure consistent with the provisions of Section 7 and 7.1 of the Act and 35 Ill. Adm. Code 120.

Section 102.322 Subpoenas

- a) Upon written motion by any participant, the hearing officer or the Board may issue subpoenas for attendance of witnesses at a hearing under this Part. Subpoenas may include a command to produce books, papers, documents, or tangible things designated therein and relevant to the matter under consideration.
- b) Subpoenas shall conform to the requirements of 35 Ill. Adm. Code 101.260.

SUBPART L: REGULATORY HEARINGS

Section 102.340 Pre-submitted Testimony

- a) All participants other than the proponent shall submit written testimony and any related exhibits 14 days prior to the hearing at which the witness testifies, unless the hearing officer directs otherwise.
  - 1) The original and four (4) copies of testimony and exhibits shall be filed with the Clerk, and one copy each with the Agency and, if participants, the Attorney General and ENR. One copy shall also be filed with each previously identified participant unless otherwise specified or limited by the hearing officer or the Board.
  - 2) All testimony and exhibits shall be bound pursuant to 35 Ill. Adm. Code 101.103 and labelled with the docket number of the proceeding, the name of the witness submitting the material or exhibit, and the title of the material or exhibit.
- b) If the proponent wishes to supplement testimony previously submitted pursuant to Section 102.121, written testimony and exhibits shall be pre-submitted in accordance with subsection (a).
- c) The proponent and each participant who has pre-submitted testimony shall bring extra copies of that testimony and any accompanying exhibits to the hearing.
- d) Pre-submitted testimony will be entered into the record as if read, unless the hearing officer determines that

it will aid public understanding to have the testimony read by the witness. All witnesses will be sworn pursuant to Section 102.343(b), and will be subject to questioning.

- e) Any testimony which is not pre-submitted pursuant to subsections (a) and (b) will be allowed only as time permits.

#### Section 102.341 Transcript

All testimony shall be recorded stenographically. When the transcript is filed with the Clerk, the hearing officer will receive and rule on typographical corrections from any person who may examine the transcript for accuracy. Failure of any witness to correct the transcript within 14 days after its receipt in Board offices shall constitute a waiver of any right to correct.

#### Section 102.342 Admissible Information

All information which is relevant and not repetitious or cumulative shall be admitted by the hearing officer. Objections on grounds of relevancy, repetition, or harassment will be ruled upon by the hearing officer.

#### Section 102.343 Presentation of Testimony

- a) All witnesses at hearings shall be sworn.
- b) Narrative testimony, rather than a question and response format, is encouraged.

#### Section 102.344 Questioning Of Witnesses

All witnesses shall be subject to questioning by any person. Repetitious or irrelevant questioning will be prohibited by the hearing officer.

#### Section 102.345 Record For Decision

The transcript, all written testimony, all exhibits offered in connection with the hearing, and all public comments timely filed with the Clerk shall constitute the record.

### SUBPART N: ECONOMIC IMPACT HEARINGS

#### Section 102.360 Hearings on the Economic Impact Study of New Proposals

- a) Before the final adoption of any proposal, the Board shall conduct hearings on any economic impact study submitted by ENR on any proposed regulation, or proposed amendment to existing regulation, unless otherwise provided by the Act.

- b) IN THE CASE OF A REQUIRED RULE, IF THE ECONOMIC IMPACT STUDY IS NOT SUBMITTED TO THE BOARD WITHIN SIX (6) MONTHS OF THE BOARD'S DECISION THAT AN ECONOMIC IMPACT STUDY SHOULD BE CONDUCTED, THE BOARD MAY PROCEED TO ADOPT A REQUIRED RULE WITHOUT AN ECONOMIC IMPACT STUDY. (Section 28.2 of the Act, Ill. Rev. Stat. 1987, ch. 111 1/2, par. 28.2.)
- c) The provisions of this Part govern all hearings held pursuant to this Section.
- d) Hearings held pursuant to this Section may be consolidated with any other hearings held pursuant to this Part.

Section 102.361 Hearings on the Economic Impact Study of Existing Regulations

- a) WITHIN A REASONABLE TIME, BUT NOT MORE THAN 120 DAYS, AFTER EACH ECONOMIC IMPACT STUDY SUBMITTED BY ENR HAS BEEN FILED, THE BOARD SHALL CONDUCT AT LEAST ONE PUBLIC HEARING ON SUCH STUDY.
- b) THE PROVISIONS OF THIS PART GOVERN ALL HEARINGS HELD PURSUANT TO THIS SECTION.
- c) AFTER CONCLUSION OF THE HEARINGS, THE BOARD SHALL PUBLISH ITS FINDINGS AND CONCLUSIONS ON THE AREAS COVERED BY THE STUDY AND THE TESTIMONY RECEIVED BY THE BOARD.
- d) THE BOARD SHALL ALSO SPECIFICALLY DETERMINE WHETHER, AS A RESULT OF ITS FINDINGS AND CONCLUSIONS, ANY REGULATIONS OF THE BOARD SHALL BE MODIFIED OR REPEALED.
- e) IF THE BOARD CONCLUDES THAT MODIFICATION OR REPEAL MAY BE NECESSARY, IT SHALL PROPOSE SUCH MODIFICATION AS REGULATIONS AND CONDUCT FURTHER HEARINGS ON SAID MODIFICATION.
- f) ANY SUCH PROPOSED MODIFICATIONS SHALL NOT REQUIRE ANY ADDITIONAL ECONOMIC IMPACT STUDY.

SUBPART O: PUBLIC COMMENTS

Section 102.380 Public Comments

Any person may submit written comments on any proposal within 14 days after the close of the hearing or within 14 days after regulation revision under Section 102.400, unless otherwise specified by the hearing officer or the Board. Comments shall be filed with the Clerk and served upon the participants, unless otherwise specified by the hearing officer. Comments which are

not timely filed will not be considered, except as allowed by the hearing officer or the Board to prevent material prejudice.

SUBPART P: BOARD ACTION

Section 102.400 Revision of Proposed Regulations

- a) After a regulatory hearing, the Board may revise the proposed regulations before adoption in response to suggestions made at hearing and in written comments made prior to second notice. No additional hearing on the revisions need be held.
- b) THE BOARD MAY MODIFY AND SUBSEQUENTLY ADOPT ANY PROPOSED REGULATIONS, OR AMENDMENTS TO EXISTING REGULATIONS WITHOUT ANY ADDITIONAL ECONOMIC IMPACT STUDY; PROVIDED THAT SUCH MODIFICATION BY THE BOARD DOES NOT SIGNIFICANTLY ALTER THE INTENT AND PURPOSE OF THE PROPOSED REGULATION WHICH WAS THE SUBJECT OF ENR'S ECONOMIC IMPACT STUDY. (Section 27(b) of the Act.)
- c) Unless otherwise provided in the Act, THE BOARD MAY REVISE PROPOSED REGULATIONS AFTER HEARING IN RESPONSE TO OBJECTIONS OR SUGGESTIONS MADE BY JCAR PURSUANT TO SECTIONS 5.01(b) AND 7.06(a) OF THE APA. THE BOARD MAY MAKE SUCH A REVISION WHERE IT FINDS:
  - 1) THAT SUCH OBJECTIONS OR SUGGESTIONS RELATE TO THE STATUTORY AUTHORITY UPON WHICH THE REGULATION IS BASED, WHETHER THE REGULATIONS IS IN PROPER FORM, OR WHETHER ADEQUATE NOTICE WAS GIVEN; and
  - 2) THAT THE RECORD BEFORE THE BOARD IS SUFFICIENT TO SUPPORT SUCH A CHANGE WITHOUT FURTHER HEARING. (Section 28 of the Act.)

Section 102.401 Adoption of Regulations

- a) Except as other wise provided by the Act, no substantive regulation shall be adopted, amended or repealed by the Board until after a public hearing. In the case of site-specific rules or rules not of general applicability, a public hearing shall be held in the affected county. In the case of state-wide regulations, public hearings shall be held in at least two counties of the state.
- b) The Board need not hold a hearing on a procedural regulation, except as provided by Section 5.01 of the APA.
- c) IN ADOPTING ANY NEW REGULATIONS, EXCEPT A REQUIRED RULE OR AN IDENTICAL IN SUBSTANCE REGULATION, THE BOARD SHALL CONSIDER THOSE ELEMENTS DETAILED IN ANY ECONOMIC IMPACT



STUDY PERFORMED BY ENR ON THAT REGULATIONS. THE BOARD SHALL, IN ITS WRITTEN OPINION, MAKE A DETERMINATION, BASED UPON THE ECONOMIC IMPACT STUDY AND OTHER EVIDENCE IN THE RECORD, AS TO WHETHER THE PROPOSED REGULATION HAS ANY ADVERSE ECONOMIC IMPACT ON THE PEOPLE OF THE STATE OF ILLINOIS. (Section 27(b) of the Act.)

- d) In the case of a required rule, the Board shall follow the procedures of subsection (c), except as provided in Section 102.360.
- e) As provided by Sections 13(c), 13.3, 17.5, 22.4(a), 22.4(d), and 22.7(d) of the Act, the provisions of Title VII of the Act and Section 5 of the APA shall not apply to identical in substance rulemakings.

#### Section 102.402 First Notice of Proposed Regulations

Except when otherwise directed by the Act, the Board shall give first notice of its proposed adoption, amendment, or repeal of regulations pursuant to Section 5.01 of the APA. The first notice period shall be at least 45 days, and shall begin on the day that first notice is published in the Illinois Register. The Board shall accept written comments from any person concerning the proposed regulations during the 45-day first notice period.

#### Section 102.403 Second Notice of Proposed Regulations

- a) Except when otherwise directed by the Act, the Board shall give second notice of its proposed adoption, amendment, or repeal of regulations to JCAR. The second notice period shall begin on the date written notice is received by JCAR, and shall expire 45 days after that date, except as provided by Section 5.01 of the APA. The Board will accept comments only from JCAR during the second notice period.
- b) After the beginning of the second notice period, no changes will be made to the proposed regulation, except in response to objections or suggestions from JCAR. Such changes will be made pursuant to Section 102.400(c).

#### Section 102.404 Notice of Board Final Action

Any person who has requested notice concerning the proposal and who has submitted his or her name and address to the Clerk shall be given notice of the Board's final action. Notice of the Board's final action will be published in the Illinois Register and in the Environmental Register. The Board will publish a written opinion stating the reasons in support of its final action .

#### Section 102.405 Adoption of RCRA Rules

The Board will adopt RCRA rules pursuant to the applicable requirements of this Part, Title VII of the Act, and the APA. Additionally, prior to adopting rules, other than emergency amendments, the Board will:

- a) Make available to the public a proposed Opinion and Order containing the text of the amendments;
- b) Publish the proposed rule in the Illinois Register, and notice of the proposed rule in the Environmental Register;
- c) Serve a copy of the proposed Opinion and Order on the USEPA;
- d) Receive written comments from the USEPA and other persons for at least 45 days after the date of publication in the Illinois Register.

Section 102.406 Adoption of Identical In Substance Regulation

- a) Prior to adopting identical in substance regulations, the Board will:
  - 1) Make available to the public a proposed Opinion and Order containing the text of the rules;
  - 2) Publish the proposed regulations in the Illinois Register;
  - 3) Serve a copy of the proposed Opinion and Order on the USEPA; and
  - 4) Receive written comments from the USEPA and other persons for at least 45 days after the date of publication in the Illinois Register.
- b) AFTER CONSIDERATION OF COMMENTS FROM THE USEPA, THE AGENCY, THE ATTORNEY GENERAL AND THE PUBLIC, THE BOARD SHALL ADOPT THE VERBATIM TEXT OF SUCH USEPA REGULATIONS AS ARE NECESSARY AND APPROPRIATE FOR AUTHORIZATION OF THE PROGRAM. EXCEPT AS PROVIDED IN SECTION 7.2 OF THE ACT, THE ONLY CHANGES THAT MAY BE MADE BY THE BOARD TO THE FEDERAL REGULATIONS ARE THOSE CHANGES THAT ARE NECESSARY FOR COMPLIANCE WITH THE ILLINOIS ADMINISTRATIVE CODE, AND TECHNICAL CHANGES THAT IN NO WAY CHANGE THE SCOPE OR MEANING OF ANY PORTION OF THE REGULATIONS. (Section 7.2(a) of the Act.)

Section 102.407 Adoption Of Emergency Regulations

- a) WHEN THE BOARD FINDS THAT A SITUATION EXISTS WHICH REASONABLY CONSTITUTES A THREAT TO THE PUBLIC INTEREST,

SAFETY, OR WELFARE, THE BOARD MAY ADOPT REGULATIONS IN ACCORDANCE WITH SECTION 5.02 OF THE APA. (Section 27(c) of the Act.)

- b) WHEN THE BOARD FINDS THAT A SEVERE PUBLIC HEALTH EMERGENCY EXISTS, THE BOARD MAY, IN RELATION TO ANY PROPOSED REGULATION, ORDER THAT SUCH REGULATION TAKE EFFECT WITHOUT DELAY. THE BOARD SHALL PROCEED WITH ANY REQUIRED HEARINGS WHILE THE REGULATION CONTINUES IN EFFECT. (Section 27(c) of the Act.)

Section 102.408 Adoption Of Peremptory Regulations

- a) WHEN THE BOARD FINDS THAT A PEREMPTORY RULEMAKING IS NECESSARY AND STATES IN WRITING ITS REASONS FOR THAT FINDING, THE BOARD MAY ADOPT PEREMPTORY RULEMAKING UPON FILING A NOTICE OF RULEMAKING WITH THE SECRETARY OF STATE PURSUANT TO SECTION 6.01 OF THE APA. (Section 5.03 of the APA.)
- b) Notice of such peremptory rulemaking will be published in the Illinois Register.

Section 102.409 Adoption Of Temporary Regulations

- a) THE BOARD MAY ADOPT A PROPOSED REGULATION PRIOR TO ITS CONSIDERATION OF AN ECONOMIC IMPACT STUDY WHEN SUCH STUDY IS FILED WITH THE BOARD LESS THAN 120 DAYS IN ADVANCE OF A DATE ON WHICH A TEMPORARY NON-EMERGENCY REGULATION OR PROVISION THEREOF WOULD LAPSE PRIOR TO ADOPTION OF A PERMANENT REGULATION OR PROVISION THEREOF ON THE SAME SUBJECT, OR LESS THAN 120 DAYS IN ADVANCE OF A DEADLINE FOR ADOPTION OF THE REGULATION WHICH IS ESTABLISHED IN A STATE STATUTE. (Section 27 of the Act.)
- b) SUCH ADOPTED REGULATION SHALL BE EFFECTIVE UNTIL 180 DAYS AFTER THE ECONOMIC IMPACT STUDY REQUIRED PURSUANT TO THIS SECTION IS FILED WITH THE BOARD, AND IN NO EVENT SHALL A REGULATION ADOPTED PURSUANT TO THIS PROCEDURE STAY IN EFFECT FOR MORE THAN ONE YEAR. (Section 27 of the Act.)

SUBPART Q: MOTIONS FOR RECONSIDERATION  
AND APPEAL

Section 102.420 Filing of Motion for Reconsideration

Motion for reconsideration or modification of any Board order taking substantive action on a regulatory proposal shall be filed in accordance with 35 Ill. Adm. Code 101.246. The contents of such motions are governed by 35 Ill. Adm. Code 101.242.

Section 102.421 Disposition of Motions for Reconsideration

- a) AFTER COMMENCEMENT OF THE SECOND NOTICE PERIOD, NO SUBSTANTIVE CHANGES MAY BE MADE TO A PROPOSED RULEMAKING UNLESS IT IS MADE IN RESPONSE TO AN OBJECTION OR SUGGESTION OF JCAR. (Section 5.01(b) of the APA.) Therefore, submission of second notice of a proposal to JCAR will preclude the Board from revising that proposal in response to a motion for reconsideration. However, the Board may resubmit a rule for first notice if necessary to prevent material prejudice.
  
- b) An adopted rule becomes effective upon the filing of that rule with the Secretary of State. Therefore, the Board is precluded from allowing a motion for reconsideration of a final order adopting a rule, if that rule has been filed with the Secretary of State.

Section 102.422 Appeal

Appeal of any final Board order is to the appellate court, pursuant to Sections 29 and 41 of the Act.

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

PART 106  
HEARINGS PURSUANT TO SPECIFIC RULES

SUBPART A: HEATED EFFLUENT DEMONSTRATIONS

- Section 106.101 Petition
- 106.102 Requirements for Petition
- 106.103 Parties
- 106.104 Recommendation
- 106.105 Notice and Hearing
- 106.106 Transcripts
- 106.107 Opinion and Order

SUBPART B: ARTIFICIAL COOLING LAKE DEMONSTRATIONS

- Section 106.201 Petition
- 106.202 Notice and Hearing
- 106.203 Transcripts
- 106.204 Effective Date

SUBPART C: SULFUR DIOXIDE DEMONSTRATIONS

- Section 106.301 Petition
- 106.302 Requirements for Petition
- 106.303 Parties

106.304 Recommendation  
106.305 Notice and Hearing  
106.306 Transcripts

SUBPART D: RCRA ADJUSTED STANDARD PROCEDURES

Section  
106.401 Petition (Repealed)  
106.402 Notice of Petition (Repealed)  
106.403 Recommendation (Repealed)  
106.404 Response (Repealed)  
106.405 Public Comment (Repealed)  
106.406 Public Hearings (Repealed)  
106.407 Decision (Repealed)  
106.408 Appeal (Repealed)  
106.410 Scope and Applicability  
106.411 Joint or Single Petition  
106.412 Request to Agency to Join as Co-Petitioner  
106.413 Contents of Petition  
106.414 Response and Reply  
106.415 Notice and Conduct of Hearing  
106.416 Opinions and Orders

SUBPART E: AIR ADJUSTED STANDARD PROCEDURES

Section  
106.501 Scope and Applicability  
106.502 Joint or Single Petition  
106.503 Request to Agency to Join As Co-Petitioner  
106.504 Contents of Petition  
106.505 Response and Reply  
106.506 Notice and Conduct of Hearing  
106.507 Opinions and Orders

SUBPART F: WATER WELL SETBACK EXCEPTION PROCEDURES

Section  
106.601 Scope and Applicability  
106.602 Contents of Petition  
106.603 Response and Reply  
106.604 Notice and Conduct of Hearing  
106.605 Opinions and Orders

SUBPART G: ADJUSTED STANDARDS

106.701 Applicability  
106.702 Definitions  
106.703 Joint or Single Petition  
106.704 Request to Agency to Join As Co-Petitioner  
106.705 Petition Contents  
106.706 Petition Verification  
106.707 Federal Procedural Requirements  
106.708 Incorporated Material  
106.709 Motions

<u>106.710</u>	<u>Proof of Service</u>
<u>106.711</u>	<u>Petition Notice</u>
<u>106.712</u>	<u>Proof of Petition Notice</u>
<u>106.713</u>	<u>Request for Public Hearing</u>
<u>106.714</u>	<u>Agency Response</u>
<u>106.801</u>	<u>Hearing Scheduled</u>
<u>106.802</u>	<u>Hearing Notice</u>
<u>106.803</u>	<u>Pre-Hearing Submission of Testimony and Exhibits</u>
<u>106.804</u>	<u>Production of Information</u>
<u>106.805</u>	<u>Admissible Evidence</u>
<u>106.806</u>	<u>Order of Hearing</u>
<u>106.807</u>	<u>Post-hearing Comments</u>
<u>106.808</u>	<u>Burden of Proof</u>
<u>106.901</u>	<u>Board Deliberations</u>
<u>106.902</u>	<u>Dismissal of Petition</u>
<u>106.903</u>	<u>Board Decision</u>
<u>106.904</u>	<u>Opinion and Order</u>
<u>106.905</u>	<u>Appeal of Board Decisions</u>
<u>106.906</u>	<u>Publication of Adjusted Standards</u>
<u>106.907</u>	<u>Effect of Filing a Petition</u>

Appendix A Old Rule Numbers Referenced

SUBPART D: RCRA ADJUSTED STANDARD PROCEDURES

Section 106.415 Notice and Conduct of Hearing

- a) The Board will hold at least one public hearing prior to granting an adjusted standard.
- b) The hearing officer will schedule the hearing. The Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code ~~102.124~~ 102.241.
- c) The proceedings will be in accordance with 35 Ill. Adm. Code ~~102.160 through 102.164~~ 102.Subpart M.

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

SUBPART E: AIR ADJUSTED STANDARD PROCEDURES

Section 106.506 Notice and Conduct of Hearing

- a) The Board will hold at least one public hearing prior to granting an adjusted standard.
- b) The hearing officer will schedule the hearing. The Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code ~~102.122~~ 102.241.
- c) The proceedings will be in accordance with 35 Ill. Adm. Code ~~102.160 through 102.164~~ 102.SUBPART M.

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

SUBPART F: WATER WELL SETBACK EXCEPTION PROCEDURES

Section 106.602 Contents of Petition

- a) The petitioner shall file ten copies of the petition for exception with the Clerk of the Pollution Control Board (Board), and shall serve one copy upon the Agency.
- b) The petition shall contain the following information:
  - 1) 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 level of justification contained in Section 14.2(c) of the Act.
  - 2) The nature of the petitioner's operations and control equipment; and
  - 3) Any additional information which may be required in Section 14.2(c) of the Act.
- c) In accordance with 35 Ill. Adm. Code ~~103-123~~ 101.143 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 14.2(c) of the Act,

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

Section 106.604 Notice and Conduct of Hearing

- a) The Board will hold at least one public hearing prior to granting an exception.
- b) The hearing officer will schedule the hearing. The Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code ~~102-122~~ 102.241.
- c) The proceedings will be in accordance with 35 Ill. Adm. Code ~~102-160 through 102-164~~ 102.Subpart M.

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

SUBPART G: ADJUSTED STANDARDS

Section 106.701 Applicability

The procedures set forth in this Subpart apply to any person seeking an adjusted standard pursuant to Section 28.1 of the Illinois Environmental Protection Act, (Ill. Rev. Stat. 1987, ch. 111<sup>1/2</sup>, par. 1001 et seq.), except as otherwise provided in

Subparts A, B, C, D, E, and F. This Subpart shall be read in conjunction with 35 Ill. Adm. Code 101 which contains procedures generally applicable to Board proceedings. In a proceeding held pursuant to this Subpart, the requirements of this Subpart shall apply in the event of conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Subpart.

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

Section 106.702 Definitions

For the purpose of this Subpart, words and terms shall have the meanings as defined in 35 Ill. Adm. Code 101.101, unless the context clearly requires otherwise.

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

Section 106.703 Joint or Single Petition

A person begins an adjusted standard proceeding by filing a petition for an Adjusted Standard (petition) either jointly with the Illinois Environmental Protection Agency (Agency) or singly. One original and nine copies of the signed petition shall be filed with the Clerk of the Board. A filing fee shall be paid at the time of the filing of the petition in accordance with the requirements of 35 Ill. Adm. Code 101.120 and 101.122. One copy of the petition shall also be served on the Agency. Such service on the Agency shall be initiated on the date the petition is filed with the Board, or any earlier date, and shall be conducted in accordance with 35 Ill. Adm. Code 101.141.

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

Section 106.704 Request to Agency to Join As Co-Petitioner

- a) The Agency may 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) Decisions made by the Agency pursuant to this Section are not appealable to the Board.



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

Section 106.705      Petition Contents

The petition shall be captioned in accordance with the applicable requirements of 35 Ill. Adm. Code 101. Appendix A. 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. 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 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 Clean Water Act, Safe Drinking Water Act, Comprehensive Environmental Response, Compensation and Liability Act, Clean Air Act, or the State Resource Conservation and Recovery Act (RCRA), Underground Injection Control (UIC), or National Pollutant Discharge Elimination System (NPDES) programs.
- c) The level of justification for adjusted standards specified by the regulation of general applicability or statement that the regulation of general applicability does not specify a level of justification;
- 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, age of the facility in question, relevant pollution control equipment already in use, and the qualitative and quantitative nature of emissions 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.

- 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. Such cost information shall include the overall capital cost as well as the annualized capital and operating costs;
- g) The quantitative and qualitative 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 compare the qualitative and quantitative nature of emissions 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; and
- 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.

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

Section 106.706      Petition Verification

All material facts asserted within the petition shall be verified by affidavits. Such affidavits shall be filed with the petition.

(Source: Added at Ill. Reg. ,

effective )

Section 106.707      Federal Procedural Requirements

It shall be the duty of the petitioner to ensure compliance with any procedural requirements identified pursuant to Section 106.705(i).

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

Section 106.708      Incorporated Material

- a) Upon the request of any person or on its own initiative, the Board or hearing officer may incorporate materials into an adjusted standard proceeding from the record of another Board docket. The person seeking incorporation must file with the Board ten copies of the material to be incorporated. Such incorporation shall be allowed if the person seeking the incorporation demonstrates that the material is relevant to the matter under consideration.
  
- b) The Board will give the incorporated matter the appropriate weight in light of the following factors: the standard of evidence under which the material was previously presented to the Board; the present purpose for incorporating the material; and the past and current opportunity for cross-examination of the matters asserted within the incorporated material.

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

Section 106.709      Motions

The filing of motions and responses to motions shall be conducted in accordance with 35 Ill. Adm. Code 101.Subpart H.

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

Section 106.710      Service of Filings

All filings in an adjusted standard proceeding shall be served upon the petitioner and the Agency as well as other persons as required by the Board or Hearing Officer. Proof of such service shall accompany each filing and shall be of the form as prescribed by 35 Ill. Adm. Code 101.143.

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

Section 106.711      Petition Notice

- 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. (Section 28.1 of the Act, Ill. Rev. Stat. 1987, ch.111<sup>1/2</sup>, par.1028.1). 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."
- b) The notice shall contain the name and address of the petitioner and the statement that the petitioner has filed with the Illinois Pollution Control 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."

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

Section 106.712 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" (Ill. Rev. Stat. 1987, ch.100, par.1).

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

Section 106.713 Request for Public Hearing

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 Section 106.711. Requests for hearing should make reference to the Board docket number assigned to the proceeding.

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

Section 106.714 Agency Response

- a) The Agency shall file a response not later than 30 days after the filing of a petition, if the Agency is not a co-petitioner to the petition. The response 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 response, 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 response shall identify the types of information needed to correct the deficiencies.
- 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 106.705.
- 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.

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

Section 106.801 Hearing Scheduled

- a) The Board shall assign a hearing officer to an adjusted standard proceeding when:

- 1) The Board receives a hearing request, pursuant to Section 106.713, not later than 21 days after the date of the publication of the petition notice in accordance with Section 106.111; or
  - 2) The Board IN ITS DISCRETION DETERMINES THAT A HEARING WOULD BE ADVISABLE. (Section 28.1 of the Act). Such a determination need not be evidenced by a Board opinion or order.
- b) The hearing officer shall set a time and place for the hearing. The hearing officer may 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 28.1 of the Act).
  - c) After the hearing has been scheduled, the hearing officer shall notify the Clerk of time and place of the hearing.

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

Section 106.802 Hearing Notice

After receiving notification from the hearing officer pursuant to Section 106.201(c), the Clerk shall cause the publication of a hearing notice BY ADVERTISEMENT IN A NEWSPAPER OF GENERAL CIRCULATION in the county in which the hearing is to be held. SUCH NOTICE SHALL BE PUBLISHED AT LEAST 20 DAYS BEFORE THE DATE OF THE HEARING. (Section 28.1 of the Act).

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

Section 106.803 Pre-hearing Submission of Testimony and Exhibits

- a) The hearing officer may require the pre-hearing submission of testimony and exhibits which are to be presented at hearing. When such pre-hearing submission is required, an original and four (4) copies of each testimony and each exhibit shall be filed with the Board. The Agency, petitioner and any other person as required by the hearing officer shall each be served with one copy of each testimony and exhibit. Such service shall be initiated at such a time so as to reasonably ensure that service will be completed on or before the date that copies are filed with the Board. All testimony and exhibits shall be bound and labeled with the docket number of the proceeding, the name of the witness submitting the material or exhibit, and the title of the material or exhibit.

- b) Testimony submitted prior to hearing will be entered into the record as if read, unless the hearing officer determines that it will aid public understanding to have the testimony read. All persons testifying will be sworn and will be subject to examination. Modifications to previously submitted testimony and exhibits may be allowed by the hearing officer at hearing provided that such modifications are either non-substantive in nature or would not materially prejudice another person's participation at hearing. Objections to such modifications are waived unless raised at hearing.
  
- c) If pre-hearing submission of testimony is required, any testimony which is not filed prior to hearing pursuant to subsection (a) will be allowed only as time permits.

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

Section 106.804 Production of Information

The production of information will be accomplished pursuant to the procedures set forth by 35 Ill. Adm. Code 101.261.

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

Section 106.805 Admissible Evidence

- a) The hearing officer shall receive evidence which is admissible under the rules of evidence and privilege as applied in the courts of Illinois pertaining to civil actions except as this Section otherwise provides. The hearing officer may admit evidence which is not admissible under such rules if it is relevant and would be relied upon by reasonably prudent persons in the conduct of their affairs.
  
- b) When the admissibility of evidence depends upon an arguable interpretation of substantive law, the hearing officer shall admit such evidence.
  
- c) The hearing officer may order the record of any relevant pending or prior proceeding before the Board or part thereof incorporated into the record of the present proceeding, in accordance with Section 106.708.
  
- d) Relevant scientific or technical articles, treatises or materials may be introduced into evidence subject to refutation or disputation through any introduction of comparable documentary evidence or expert testimony.

- e) Any person may testify at hearing provided that she or he is sworn and subject to cross-examination. Cross-examination of any person who presents testimony may be conducted by any person.
  
- f) Information received at hearing will only be considered as substantive evidence in the Board's deliberations if it is presented as an exhibit or direct testimony, or if it is elicited from a a person under cross-examination. The Board will not consider, as substantive evidence, information which is presented in the form of a question during cross-examination.

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

Section 106.806 Order of Hearing

The following shall be the order of an adjusted standard hearing subject to modification by the hearing officer for good cause:

- a) Presentation, argument, and disposition of motions preliminary to a hearing on the merits of matters raised by the petition and Agency response;
  
- b) Presentation of opening statements by petitioner, Agency, and any interested person;
  
- c) Testimony and exhibits by Petitioner;
  
- d) Testimony and exhibits by Agency;
  
- e) Testimony and exhibits by interested persons;
  
- f) Testimony and exhibits by petitioner in rebuttal;
  
- g) Presentation and argument of all motions to be disposed of by the Board;
  
- h) Presentation of closing statements by the petitioner, Agency, and any interested person; and
  
- i) A schedule for the submission of post-hearing comments to the Board.

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

Section 106.807 Post-hearing Comments



The petitioner, the Agency, and any interested person may file post-hearing comments. The hearing officer may order any person to file such comments. Post-hearing comments shall be filed within fourteen (14) days after the close of the last hearing unless the hearing officer specifies a different date for submission of post-hearing comments. All post-hearing comments shall present arguments or comments based only on information contained in the record. Such comments may also present legal argument citing legal authorities. The Board will not consider any new information presented by post-hearing comments.

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

Section 106.808 Burden of Proof

The burden of proof in an adjusted standard proceeding is on the petitioner.

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

Section 106.901 Board Deliberations

In making its decision on an adjusted standard petition, the Board shall consider only the record of the adjusted standard proceeding.

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

Section 106.902 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 106.705, 106.706, 106.710, and 106.712 (Section 28.1 of the Act); or
- b) The Board DETERMINES THAT THE PETITIONER IS NOT PURSUING DISPOSITION OF THE PETITION IN A TIMELY MANNER. (Section 28.1 of the Act).

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

Section 106.903 Board Decision

- 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 (Section 28.1 of the Act) by a preponderance of the evidence, 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 (Section 28.1 of the Act);
  - 2) THE EXISTENCE OF THOSE FACTORS JUSTIFIES AN ADJUSTED STANDARD (Section 28.1 of the Act);
  - 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 (Section 28.1 of the Act); AND
  - 4) THE ADJUSTED STANDARD IS CONSISTENT WITH ANY APPLICABLE FEDERAL LAW (Section 28.1 of the Act).
- 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, by a preponderance of the evidence, the level of justification specified by the regulation of general applicability.
- c) IF THE REGULATION OF GENERAL APPLICABILITY IMPLEMENTS IN WHOLE OR IN PART THE REQUIREMENTS OF THE CLEAN AIR ACT, THE BOARD WILL ADOPT EITHER (Section 28.1 of the Act):
- 1) The proposed adjusted standard if the petitioner proves, by a preponderance of the evidence, the applicable level of justification; or
  - 2) A STANDARD THE SAME AS THAT IMPOSED BY THE REGULATION OF GENERAL APPLICABILITY, if the petitioner fails to prove, by a preponderance of the evidence, the applicable level of justification. (Section 28.1 of the Act).
- d) In adopting adjusted standards THE BOARD MAY IMPOSE SUCH CONDITIONS AS MAY BE NECESSARY TO ACCOMPLISH THE PURPOSES OF THE ACT (Section 28.1 of the Act).

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

Section 106.904 Opinion and Order

The Board shall issue a written opinion and order which sets forth the Board's decision and supporting rationale. Such opinions and orders SHALL BE MAINTAINED FOR PUBLIC INSPECTION BY THE CLERK OF THE BOARD. (Section 28.1).

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

Section 106.905 Appeal of Board Decisions

ANY FINAL ORDER OR DETERMINATION OF THE BOARD IN AN ADJUSTED STANDARD PROCEEDING MAY BE APPEALED TO THE APPELLATE COURT PURSUANT TO SECTION 41 OF THE ACT. (Section 28.1 of the Act).

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

Section 106.906 Publication of Adjusted Standards

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. (Section 28.1 of the Act).

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

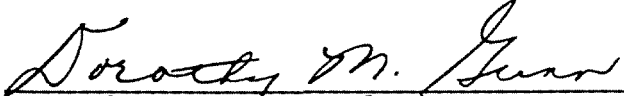
Section 106.907 Effect of Filing a Petition

- 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. (Section 28.1 of the Act).
  
- 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. (Section 28.1 of the Act).

(Source: Added at Ill. Reg. ,

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Proposed Order was adopted on the 8<sup>th</sup> day of September, 1988 by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board