

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

PART 103
ENFORCEMENT

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AUTHORITY: Implementing Sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, 30, 31, 41, and 42 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 29, 30, 31, 41, and 42] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part III, Enforcement Proceedings, in R70-4, at 1 PCB 43, October 8, 1970; amended in R80-2, at 39 PCB 456, at 4 Ill. Reg. 39, p. 285, effective September 12, 1980; amended in R80-18, at 44 PCB 125, at 5 Ill. Reg. 14146, effective December 3, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1383, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 425, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8793, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2349, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12898, effective September 8, 2015.

SUBPART A: GENERAL PROVISIONS

Section 103.100 Applicability

- a) This Part applies to proceedings before the Illinois Pollution Control Board (Board) concerning complaints alleging violations of the Environmental Protection Act (Act), regulations, and orders of the Board pursuant to Section 31 of the Act.

- b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all of the Board’s adjudicatory proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part apply.

Section 103.102 Severability

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

Section 103.104 Definitions

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

Section 103.106 General

Enforcement proceedings may be initiated *against any person allegedly violating the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order* [415 ILCS 5/31(d)(1)]. Complaints filed by persons other than the Attorney General or a State’s Attorney will be known as citizen’s complaints.

(Source: Amended 29 Ill. Reg. 8793, effective June 8, 2005)

SUBPART B: COMPLAINT, REQUEST FOR INFORMAL AGENCY INVESTIGATION,
SERVICE, AND AUTHORIZATION OF HEARING

Section 103.200 Who May File

Pursuant to Section 31 of the Act, an enforcement proceeding may be commenced by any person.

Section 103.202 Parties

- a) The person initiating an enforcement proceeding must be named the complainant. Any adverse party must be named the respondent. If the Agency is requested by the Board to conduct an investigation pursuant to Section 30 of the Act, the Board will name the Agency as a “party in interest” pursuant to 35 Ill. Adm. Code 101.404. Upon motion of the Agency, the Board may align the Agency with any other party or parties as appropriate.

- b) With leave of the Board and in accordance with Section 103.206 of this Part, cross-complainants, counter-complainants, and third-party complainants may be named as parties.
- c) Misnomer of a party is not a ground for dismissal; the name of any party may be corrected at any time.

Section 103.204 Notice, Complaint, and Answer

- a) An enforcement proceeding will be commenced by the service of a notice and complaint by U.S. Mail with a recipient's signature recorded, a third-party commercial carrier with a recipient's signature recorded, or personal service upon all respondents and the filing of the notice and complaint with the Clerk. (See 35 Ill. Adm. Code 101.300(b) and (c), 101.302(h) and 101.304(c)(2).)
- b) The notice must be directed to the respondents notifying them of the filing of the accompanying complaint and that they may be required to attend a hearing at a date set by the Board.
- c) The complaint must be captioned in accordance with 35 Ill. Adm. Code 101.Appendix A, Illustration A and contain:
 - 1) A reference to the provision of the Act and regulations that the respondents are alleged to be violating;
 - 2) The dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations. The complaint must advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense; and
 - 3) A concise statement of the relief that the complainant seeks.
- d) Except as provided in subsection (e), the respondent may file an answer within 60 days after receipt of the complaint if respondent wants to deny any allegations in the complaint. All material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer, unless respondent asserts a lack of knowledge sufficient to form a belief. Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing.
- e) If the respondent timely files a motion under Section 103.212(b) or 35 Ill. Adm. Code 101.506, the 60-day period to file an answer described in subsection (d) of this Section will be stayed. The stay will begin when the motion is filed and end

when the Board disposes of the motion.

- f) Any party serving a complaint upon another party must include the following language in the notice: "Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney."

(Source: Amended at 39 Ill. Reg. 12898, effective September 8, 2015)

Section 103.206 Adding Parties; Filing Counter-, Cross-, or Third-Party Complaints; Filing New or Modified Claims

- a) The Board, on its own motion or the motion of a respondent, may order a person to be added as a respondent if a complete determination of a controversy cannot be had without the presence of the person who is not already a party to the proceeding.
- b) If the Board orders a person to be added as a respondent pursuant to subsection (a), the Board will grant the complainant leave to file an amended complaint that sets forth a claim against the added respondent. The amended complaint must meet the requirements of Section 103.204.
- c) Misjoinder and nonjoinder of parties with respect to enforcement proceedings are governed by 35 Ill. Adm. Code 101.403(b).
- d) If a party wishes to file a counter-complaint, cross-complaint, or third-party complaint, the party must move the Board for leave to file the pleading. If a party wishes to file an amendment to a complaint, counter-complaint, cross-complaint, or third-party complaint that sets forth a new or modified claim against another person, the party who wishes to file the pleading must move the Board for leave to file the pleading.
- e) The pleading sought to be filed pursuant to subsection (d) must:
 - 1) Set forth a claim that arises out of the occurrence or occurrences that are the subject of the proceeding; and
 - 2) Meet the requirements of Section 103.204 of this Subpart, including the requirement to serve the pleading by U.S. Mail with a recipient's signature recorded, a third-party commercial carrier with a recipient's signature recorded, or personal service upon the respondent, counter-respondent, cross-respondent, or third-party respondent.

(Source: Amended at 39 Ill. Reg. 12898, effective September 8, 2015)

Section 103.208 Request for Informal Agency Investigation

- a) Any person may request an informal Agency investigation by submitting a request to the Board.
- b) The Board will forward the request to the Agency with a copy to the person requesting the investigation. The Agency must send an acknowledgment of receipt of the informal investigation request to the Board.
- c) The Board will take no further action upon the request for informal investigation beyond the action described in subsection (b) of this Section.

Section 103.210 Notice of Complaint

- a) In addition to the notice of hearing requirements set forth in 35 Ill. Adm. Code 101, the Office of the Attorney General or the State's Attorney of the county in which the alleged violation occurred, when complainant, must give notice of each complaint and hearing at least 21 days before the hearing to:
 - 1) *any person that has complained to the Agency respecting the respondent within the six months preceding the date of the complaint; and*
 - 2) *to any person in the county in which the offending activity occurred that has requested notice of enforcement proceedings [415 ILCS 5/31(c)(1)].*
- b) Failure to comply with the provisions of this Section may not be used as a defense to an enforcement proceeding, but any person adversely affected by the failure of compliance may upon motion to the hearing officer have the hearing postponed if prejudice is shown.

Section 103.212 Hearing on Complaint

- a) *Any person may file with the Board a complaint against any person allegedly violating the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order. When the Board receives a citizen's complaint, unless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing. [415 ILCS 5/31(d)(1)] The definition for duplicative and frivolous can be found at 35 Ill. Adm. Code 101.Subpart B.*

- b) Motions made by respondents alleging that a citizen's complaint is duplicative or frivolous must be filed no later than 30 days following the date of service of the complaint upon the respondent. Motions under this subsection may be made only with respect to citizen's enforcement proceedings. Timely filing the motion will, pursuant to Section 103.204(e) of this Subpart, stay the 60 day period for filing an answer to the complaint.
- c) The Board will automatically set for hearing all complaints filed by the Attorney General or a State's Attorney on behalf of the People of the State of Illinois.
- d) The Board in its discretion may hold a hearing on the violation and a separate hearing on the remedy.

(Source: Amended 29 Ill. Reg. 8793, effective June 8, 2005)

SUBPART C: SETTLEMENT PROCEDURE

Section 103.300 Request for Relief from Hearing Requirement in State Enforcement Proceeding

- a) *Whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a proposed stipulation and settlement accompanied by a request for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act [415 ILCS 5/31(c)(2)]. The proposed stipulation and settlement agreement must conform to the statement required for settlement submissions at hearing in Section 103.302 of this Part.*
- b) Unless the Board, in its discretion, concludes that a hearing will be held, the Board will cause notice of the proposed stipulation and settlement, and request for relief, to be published and sent, as is required for hearing, by the Clerk's office. The notice will include a statement that any person may file with the Clerk of the Board a written demand for a hearing within 21 days after publication of the notice. The written demand for hearing must clearly state that a public hearing is requested and should indicate the assigned Board Docket number and respondent's name in the matter.
- c) *If any person files a timely written demand for a hearing, the Board will deny the request for relief from a hearing and will hold a hearing in accordance with the notice provisions of Section 31(c)(1) of the Act. [415 ILCS 5/31(c)(2)] A copy of the proposed stipulation and settlement will be entered into and presented for the record.*

Section 103.301 Request for Relief from Hearing Requirement in Citizen's Enforcement Proceeding

- a) *Whenever a complaint has been filed by a person other than the Attorney General or State's Attorney, the parties may file with the Board a stipulation and proposed settlement accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act [415 ILCS 5/31(c)(1)]. [415 ILCS 5/31(d)(2)] The stipulation and proposed settlement agreement must conform to the statement required for settlement submissions at hearing in Section 103.302 of this Part.*
- b) *Unless the Board, in its discretion, concludes that a hearing should be held, no hearing on the stipulation and proposal for settlement is required. [415 ILCS 5/31(d)(2)]*

(Source: Added 29 Ill. Reg. 8793, effective June 8, 2005)

Section 103.302 Contents of Proposed Stipulation and Settlement Agreement

No proceeding pending before the Board will be disposed of or modified without an order of the Board. A proposed stipulation and settlement agreement must contain a written statement, signed by the parties or their authorized representatives, outlining the nature of, the reasons for, and the purpose to be accomplished by the settlement. The written statement must include:

- a) A full stipulation of all material facts pertaining to the nature, extent, and causes of the alleged violations proposed to be settled;
- b) The nature of the relevant parties' operations and control equipment;
- c) *Facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved, including:*
 - 1) *the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;*
 - 2) *the social and economic value of the pollution source;*
 - 3) *the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;*
 - 4) *the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and*
 - 5) *any subsequent compliance. [415 ILCS 5/33(c)]*

- d) Details as to future plans for compliance, including a description of additional control measures and the dates for their implementation, if any; and
- e) The proposed penalty, if any, supported by factors in mitigation or aggravation of penalty, including the factors set forth in Section 42(h) of the Act [415 ILCS 5/42(h)].

(Source: Amended 29 Ill. Reg. 8793, effective June 8, 2005)

Section 103.304 Hearing on Proposed Stipulation and Settlement Agreement

When the parties submit a proposed stipulation and settlement agreement to the hearing officer at hearing, or when the Board orders that a hearing be held in accordance with Section 103.300(c) or 103.301(b) of this Part, the hearing officer will conduct a hearing in which interested persons may make statements with respect to the nature of the alleged violation and its impact on the environment, together with their views on the proposed stipulation and settlement agreement. The statements must be in accordance with 35 Ill. Adm. Code 101.628.

(Source: Amended 29 Ill. Reg. 8793, effective June 8, 2005)

Section 103.306 Board Order on Proposed Stipulation and Settlement Agreement

- a) The Board will consider the proposed settlement and stipulation agreement and the hearing record, if any. The Board may accept, suggest revisions in, reject the proposed settlement and stipulation agreement, or direct initial or further hearings as it deems appropriate. Where a National Pollutant Discharge Elimination System (NPDES) permit is involved in the settlement, notice of settlement must be published in the Environmental Register at least 30 days prior to the settlement.
- b) If the Board determines that a settlement involves or may involve the issuance or modification of a Resource Conservation Recovery Act (RCRA) permit, it will enter an interim order pursuant to Section 103.402 of this Part.

(Source: Amended 29 Ill. Reg. 8793, effective June 8, 2005)

SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

Section 103.400 Purpose, Scope, and Applicability

- a) This Subpart applies when the Board finds in an interim order that an enforcement proceeding involves issuance or modification of a RCRA permit.

- b) Enforcement proceedings that involve issuance or modification of a RCRA permit include those in which, to grant complete relief, it appears that the Board will have to:
 - 1) Revoke a RCRA permit;
 - 2) Order a RCRA permit issued or modified;
 - 3) Enter an order that could require actions that would be different from the conditions of a RCRA permit or 35 Ill. Adm. Code 724 or 725; or
 - 4) Enter an order directing facility closure or modification after a finding that a facility was operating without a RCRA permit and that one was required.
- c) These procedures provide methods by which the Board will formulate a compliance plan, and, if necessary, direct the issuance or modification of a RCRA permit.

Section 103.402 Interim Order

- a) The Board will enter an interim order invoking the procedures of this Subpart on its own motion or on the motion of any party. Before the Board enters an interim order the parties must develop, through hearings or admissions pursuant to 35 Ill. Adm. Code 101.Subpart F, a sufficient record to support the findings that the Board must make in subsection (b) of this Section.
- b) An interim order invoking the procedures of this Subpart will include:
 - 1) A finding or proposed finding of violation and any penalty or proposed monetary penalty;
 - 2) A finding that the proceeding is an enforcement action that involves or may involve the issuance or modification of a RCRA permit;
 - 3) Joinder of the Agency if it is not already a party; and
 - 4) A time schedule for filing by the Agency of a partial draft permit.
- c) The interim order is not a final order and may be appealed only with leave of the Board.

Section 103.404 Joinder of the Agency

If the Board directs that the Agency be joined, the Clerk will send, by certified mail addressed to the Agency, a copy of the Board Order requiring joinder. The mailing will constitute service of process upon the Agency.

(Source: Amended at 39 Ill. Reg. 12898, effective September 8, 2015)

Section 103.406 Draft Permit or Statement

- a) Within 60 days after entry of an interim order, the Agency must file and serve on all parties either a partial draft permit or a statement that no RCRA permit needs to be issued or modified.
- b) The partial draft permit must be in compliance with the requirements of 35 Ill. Adm. Code 705.141 and must include such conditions as the Agency finds are necessary to correct the violations found in the interim order.
- c) The Agency may confer with other parties and enter into agreements as to the substance of the partial draft permit that it will recommend to the Board. The Agency must disclose any such conferences or agreements in the proposed draft permit. The agreements do not bind the Board.
- d) If the Agency issues a statement that no RCRA permit needs to be issued or modified, the remaining procedures of this Subpart will not be followed, unless the Board determines otherwise.

Section 103.408 Stipulated Draft Remedy

- a) The parties may agree to a stipulated draft remedy.
- b) A stipulated draft remedy must include the following:
 - 1) Proposed mandatory orders that the parties agree should be included in the Board's final order, which may include one or more of the following:
 - A) An order to cease and desist conducting regulated activities;
 - B) An order to close a facility or unit;
 - C) An order to execute a post-closure care plan;
 - D) A compliance plan, including a time schedule to assure compliance with regulations in the shortest possible time;

- E) An order to provide a performance bond or other financial assurance;
 - F) An order to apply for a permit or permit modification; and
 - G) An order revoking a permit.
 - 2) A partial draft permit or statement as provided by Section 103.406 of this Part.
 - 3) A statement as to whether or not the stipulation is divisible for purposes of Board determinations.
- c) All parties, including the Agency, must sign the stipulated draft remedy before notice is given pursuant to Section 103.410 of this Part.

Section 103.410 Contents of Public Notice

- a) In addition to all parties, the Agency must serve a copy of any partial draft permit on USEPA in accordance with 35 Ill. Adm. Code 101.304(c).
- b) In addition to the requirements of the Act and Section 103.210 of this Part, the Agency must, at a minimum, give notice of the filing of a partial draft permit to the following persons:
 - 1) Federal agencies as designated by USEPA;
 - 2) Illinois Department of Transportation;
 - 3) Illinois Department of Natural Resources;
 - 4) Illinois Department of Public Health;
 - 5) The Governor of any other state adjacent to the county in which the facility is located; and
 - 6) 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 103.208 of this Part, the Agency must give notice by broadcast over at least one radio station in the area of the facility containing the information required by subsections (d)(2), (d)(4) and (d)(6) through (d)(8).

- d) A notice of a partial draft permit must include the following information:
- 1) The addresses of the Board offices and the Board website;
 - 2) Name and address of the respondent and, if different, of the facility subject to the enforcement proceeding;
 - 3) A brief description of the business conducted at the facility and the activity that is the subject of the enforcement proceeding;
 - 4) A statement of the violations the Board has found or has proposed to find;
 - 5) A statement that the Agency has filed a partial draft permit;
 - 6) Name, address, e-mail address, and telephone number of the Clerk of the Board, from whom interested persons may obtain further information, including copies of the partial draft permit or stipulated remedy;
 - 7) A notice of a hearing, the address of the Board, a statement that a hearing will be held and that the record will remain open for 45 days after the filing of the partial draft or stipulated remedy for written comments;
 - 8) A statement that the record in the proceeding is available to be inspected at the Board office and may also be available through the Clerk's Office On-Line (COOL), located on the Board website, except those portions of the record that are claimed or determined to be trade secrets or other non-disclosable information, and that procedures are available whereby disclosure may be sought by the public in accordance with 35 Ill. Adm. Code 130;
 - 9) A statement that enforcement proceedings are considered pursuant to 415 ILCS 5/30; and
 - 10) Any additional information considered necessary or proper.

(Source: Amended at 39 Ill. Reg. 2349, effective January 27, 2015)

Section 103.412 Public Comment

Any person, including USEPA, may comment on the partial draft permit or stipulated draft remedy within 45 days after it has been filed with the Board and notice given pursuant to Section 103.410 of this Part. Parties will receive distributions from the Clerk's Office in accordance with 35 Ill. Adm. Code 101.628(c)(3).

Section 103.414 Hearing

- a) The hearing officer, after appropriate consultation with the parties, will set a time and place for the hearing to be held not less than 30 days after the filing of the partial draft permit or stipulated remedy.
- b) The hearing will be held in the county in which the facility is located, in the population center in the county closest to the facility.
- c) The Clerk in consultation with the hearing officer will give notice of the hearing to the persons entitled to notice in Sections 103.210 and 103.410 of this Part, and to any other persons who have commented, requested to comment or requested notice, and to any persons on a mailing list provided by the Agency.
- d) Notice will be mailed not less than 30 days before the hearing.

Section 103.416 Contents of Board Order

- a) The Board will not enter an order that would require the issuance or modification of a RCRA permit unless the public notice, public comment and hearing procedures of this Subpart have been followed.
- b) If the Board determines that, to grant complete relief, it must order the issuance or modification of a RCRA permit, its final order will include an order directing the Agency to issue or modify the RCRA permit, which may take one of the following forms:
 - 1) An order to issue or modify a permit in conformance with a draft permit;
 - 2) An order to issue or modify a permit in conformance with a draft permit as modified by the Board order; or
 - 3) Guidelines for issuance or modification of a permit in conformance with the order and other applicable regulations.
- c) If the order specifies a schedule leading to compliance with the Act and Board rules:
 - 1) The schedule will require compliance as soon as practicable; and
 - 2) The order may require the posting of sufficient performance bond or other security to assure correction of the violation within the time prescribed.

SUBPART E: IMPOSITION OF PENALTIES

Section 103.500 Default

The procedures for default can be found at 35 Ill. Adm. Code 101.608.

Section 103.502 Civil Penalties

Civil penalties will be determined pursuant to Sections 33(c) and 42 of the Act. [415 ILCS 5/33(c) and 42]

Section 103.504 Civil Penalties Method of Payment

- a) Payment of the penalty must be made by certified or cashier's check, money order, or in installments by the foregoing means after execution of a promissory note containing an agreement for judgment.
- b) All remittances must be made payable to the Environmental Protection Trust Fund or such other fund as specified by the Board.
- c) Any such penalty not paid within the time prescribed in the Board order will incur interest at the rate set forth in Section 1003(a) of the Illinois Income Tax Act [35 ILCS 5/1003(a)].

Section 103.600 Civil Action

- a) *All orders issued and entered by the Board pursuant to Section 33 of the Act [415 ILCS 5/33] in a State enforcement proceeding are enforceable by injunction, mandamus, or other appropriate remedy, in accordance with Section 42 of the Act [415 ILCS 5/42]. [415 ILCS 5/33(d)]*
- b) *A final order issued by the Board pursuant to Section 33 of the Act [415 ILCS 5/33] in a citizen's enforcement proceeding may be enforced through a civil action for injunctive or other relief instituted by a person who was a party to the Board enforcement proceeding in which the Board issued the final order. [415 ILCS 5/45(e)]*

(Source: Added 29 Ill. Reg. 8793, effective June 8, 2005)

APPENDIX A Comparison of Former and Current Rules (Repealed)

(Source: Repealed 29 Ill. Reg. 8793, effective June 8, 2005)