

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

PART 108  
ADMINISTRATIVE CITATIONS

SUBPART A: GENERAL PROVISIONS

Section	
108.100	Applicability
108.102	Severability
108.104	Definitions

SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST

Section	
108.200	Administrative Citation under the Act
108.201	Administrative Citation under the PWSO Act
108.202	Administrative Citation under the EPRR Act
108.204	Filing Requirements for Petition to Contest
108.206	Petition Contents
108.208	AC Recipient's Voluntary Withdrawal

SUBPART C: HEARINGS

Section	
108.300	Authorization of Hearing

SUBPART D: BOARD DECISIONS

Section	
108.400	Burden of Proof
108.402	Dismissal
108.404	Default
108.406	Non-Contested Citations

SUBPART E: ASSESSMENT OF PENALTIES AND COSTS

Section	
108.500	Penalties and Costs
108.502	Claimed Costs of Agency or Delegated Unit
108.504	Board Costs
108.506	Response to Claimed Costs and Reply

**AUTHORITY:** Authorized by Sections 26 and 27 of the Environmental Protection Act [415 ILCS 5/26 and 27] and implementing Sections 21(o), 21(p), 22.51, 22.51a, 31.1, 42(b)(4), 42(b)(4-5), and 55(k) of the Act [415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1, 42(b)(4), 42(b)(4-5), and 55(k)] and Sections 1.1(b)(3) and 23.1 of the Public Water Supply Operations Act [415 ILCS 45/1.1(b)(3) and 23.1] and Sections 20 and 80 of the Electronic Products Recycling and Reuse Act [415 ILCS 150/20 and 80].

**SOURCE:** Adopted in R00-20 at 25 Ill. Reg. 397, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8833, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2397, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12921, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. 8003, effective May 20, 2016.

## SUBPART A: GENERAL PROVISIONS

### **Section 108.100 Applicability**

- a) This Part applies to proceedings before the Board concerning petitions to contest the issuance of an administrative citation.
- 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 this Part, the provisions of this Part will apply.

(Source: Amended at 39 Ill. Reg. 12921, effective September 8, 2015)

### **Section 108.102 Severability**

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

### **Section 108.104 Definitions**

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

## SUBPART B: ISSUANCE OF THE CITATION AND PETITION TO CONTEST

### **Section 108.200 Administrative Citation under the Act**

- a) An administrative citation (AC) under the Act may be issued by either of the following:

- 1) Illinois Environmental Protection Agency. The Agency may issue an AC pursuant to Section 31.1 of the Act.
  - 2) Delegated Unit of Local Government. Pursuant to Section 4(r) of the Act, the Agency may by agreement delegate its AC authority to a unit of local government, which may then issue an AC. All Delegated Units must submit to the Clerk of the Board a copy of the delegation agreement on or before July 1 of every year.
- b) In accordance with Section 31.1 of the Act, the Agency or Delegated Unit may serve an AC upon any person believed, through direct observation, to have violated Section 21(o), 21(p), 22.51, 22.51a, or 55(k) of the Act.
- 1) The AC must be issued and served upon the AC Recipient *not more than 60 days after the date of the observed violation* and must contain the following information:
    - A) *A statement specifying the provisions of Section 21(o), 21(p), 22.51, 22.51a, or 55(k) of the Act that the AC Recipient was observed to have violated;*
    - B) *A copy of the inspection report in which the Agency or Delegated Unit recorded the violation. The report must include the date and time of inspection and weather conditions prevailing during the inspection;*
    - C) *The penalty imposed by Section 42(b)(4) or (b)(4-5) of the Act for the violations;*
    - D) *An affidavit by the personnel observing the violation, attesting to their material actions and observations; and*
    - E) *Instructions for contesting the AC findings, including notification that the AC Recipient has 35 days within which to file a petition to contest the AC and, if an appeal is filed and the Board finds a violation, the AC Recipient may have to pay hearing costs pursuant to Section 108.500. [415 ILCS 5/31.1(b)]*
  - 2) The Agency or Delegated Unit must serve the AC upon the AC Recipient as follows:
    - A) Personal service;

- B) U.S. Mail with a recipient's signature recorded by the U.S. Postal Service upon delivery; or
  - C) Third-party commercial carrier with a recipient's signature recorded by the third-party commercial carrier upon delivery.
- 3) The Agency or Delegated Unit must file the AC with the Board *no later than 10 days after the date of service* upon the AC Recipient. [415 ILCS 5/31.1(c)]

(Source: Amended at 39 Ill. Reg. 12921, effective September 8, 2015)

### **Section 108.201 Administrative Citation under the PWSO Act**

- a) An AC under the Public Water Supply Operations Act [415 ILCS 45] may be issued by the Illinois Environmental Protection Agency. The Agency may issue an AC pursuant to Section 23.1(b) of the PWSO Act.
- b) In accordance with Section 23.1 of the PWSO Act, *if Agency personnel discover that a Responsible Operator in Charge has violated Section 1.1(b)(3) of the PWSO Act, the Agency may serve an AC upon that individual.*
  - 1) The AC must be issued and served upon the AC Recipient *not more than 90 days after the date of the discovery of the violation* and must contain the following information:
    - A) *A statement specifying the report or result that the Responsible Operator in Charge failed to submit in accordance with Board rules and a citation to the Board rules that were violated;*
    - B) *A copy of any report in which the Agency recorded the violation;*
    - C) *The penalty imposed by Section 23.1(f) of the PWSO Act for the violation;*
    - D) *Instructions for contesting the AC findings pursuant to Section 23.1 of the PWSO Act, including notification that the individual has 35 days within which to file a petition for review before the Board to contest the AC and, if an appeal is filed and the Board finds a violation, a statement that the AC Recipient may have to pay hearing costs pursuant to Section 108.500; and*
    - E) *An affidavit by the personnel recording the violation.* [415 ILCS 45/23.1(b)]

- 2) The Agency must serve the AC upon the AC Recipient by personal service or certified mail.
- 3) The Agency must file the AC with the Board *no later than 15 days after the date of service* upon the AC Recipient. [415 ILCS 45/23.1(c)]

(Source: Added at 39 Ill. Reg. 12921, effective September 8, 2015)

### **Section 108.202 Administrative Citation under the EPRR Act**

- a) An AC under the Electronic Products Recycling and Reuse Act [415 ILCS 150] may be issued by either of the following:
  - 1) Illinois Environmental Protection Agency. The Agency may issue an AC pursuant to Section 20(k) of the EPRR Act.
  - 2) Delegated Unit. Pursuant to Section 4(r) of the Act, the Agency may delegate its AC authority to a unit of local government, which may then issue an AC. Under Section 20(k) of the EPRR Act, a Delegated Unit must be a county. All Delegated Units must submit to the Clerk of the Board a copy of the delegation agreement on or before July 1 of every year.
- b) In accordance with Section 20(k) of the EPRR Act, the Agency or Delegated Unit may serve an AC upon any person believed, based on direct observation, to have violated any provision of the EPRR Act or the entity employing that person.
  - 1) The AC must be issued and served upon the AC Recipient not more than *60 days after the date of the observed violation* and must contain the following information:
    - A) *A statement specifying the provisions of the EPRR Act that the person or the entity employing the person has violated;*
    - B) *A copy of the inspection report in which the Agency or Delegated Unit recorded the violation; the report must include the date and time of inspection;*
    - C) *The penalty imposed by Section 80 of the EPRR Act for the violations;*
    - D) *An affidavit by the personnel observing the violation, attesting to their material actions and observations; and*

- E) Instructions for contesting the AC findings, including notification that the AC Recipient has *35 days* within which to file a petition to contest the AC. [415 ILCS 150/20(k)]
- 2) The Agency or Delegated Unit must serve the AC upon the AC Recipient as follows:
  - A) Personal service;
  - B) U.S. Mail with a recipient's signature recorded by the U.S. Postal Service upon delivery; or
  - C) Third-party commercial carrier with a recipient's signature recorded by the third-party commercial carrier upon delivery.

(Source: Amended at 39 Ill. Reg. 12921, effective September 8, 2015)

#### **Section 108.204 Filing Requirements for Petition to Contest**

- a) **Who May File.** The AC Recipient may file with the Board a petition to contest the AC. The AC Recipient must be named as the respondent and the Agency or Delegated Unit must be named as the complainant.
- b) **Time to File.** The petition to contest must be filed with the Board within 35 days after the date of the service of the AC.
- c) **Additional Requirements.** Additional filing and service requirements are set forth at 35 Ill. Adm. Code 101.Subpart C.

(Source: Amended at 39 Ill. Reg. 12921, effective September 8, 2015)

#### **Section 108.206 Petition Contents**

A formal petition to contest must include any reasons why the AC Recipient believes the AC was improperly issued, including:

- a) The AC Recipient did not cause or allow the alleged violations;
- b) The AC was not timely filed or properly served; or
- c) The alleged violation was the result of uncontrollable circumstances.

(Source: Amended at 39 Ill. Reg. 12921, effective September 8, 2015)

## **Section 108.208 AC Recipient's Voluntary Withdrawal**

The AC Recipient may, at any time before entry of the Board decision, withdraw its petition to contest. It must do so in writing or orally on the record at hearing. If an AC Recipient withdraws its petition to contest, the Board will adopt an order in accordance with Section 108.406 of this Part.

### **SUBPART C: HEARINGS**

#### **Section 108.300 Authorization of Hearing**

- a) The hearing date will be set within 60 days after the filing of the petition to contest unless the hearing officer orders otherwise to prevent material prejudice.
- b) The hearing officer will give the parties at least 21 days written notice of the hearing.
- c) The hearing will be held in accordance with 35 Ill. Adm. Code 101.Subpart F.
- d) Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 40 Ill. Reg. 8003, effective May 20, 2016)

### **SUBPART D: BOARD DECISIONS**

#### **Section 108.400 Burden of Proof**

The burden of proof is on the Agency or Delegated Unit.

#### **Section 108.402 Dismissal**

The Board may issue an order dismissing the AC and closing the docket upon its own motion or a motion by the AC Recipient, Agency or Delegated Unit if the AC was not timely and properly served pursuant to the relevant statute and Section 108.200, 108.201 or 108.202.

(Source: Amended at 39 Ill. Reg. 12921, effective September 8, 2015)

#### **Section 108.404 Default**

Failure of a party to appear at the hearing, or failure to proceed as ordered by the Board or hearing officer, may constitute default. Upon default the Board will issue an order against the defaulting party.

### **Section 108.406 Non-Contested Citations**

The Board will consider the AC non-contested if the AC Recipient does not file a petition to contest, fails to timely file a petition to contest, or withdraws its petition to contest pursuant to Section 108.208.

(Source: Amended at 39 Ill. Reg. 12921, effective September 8, 2015)

## **SUBPART E: ASSESSMENT OF PENALTIES AND COSTS**

### **Section 108.500 Penalties and Costs**

- a) Unless the AC Recipient has shown that the violations resulted from uncontrollable circumstances, the Board will impose penalties as follows:
  - 1) For violations of the Act, the Board will impose penalties as set forth in Sections 42(b)(4) and 42(b)(4-5) of the Act.
  - 2) For violations of the PWSO Act, the Board will impose penalties as set forth in Section 23.1(f) of the PWSO Act.
  - 3) For violations of the EPRR Act, the Board will impose penalties as set forth in Section 80(j) of the EPRR Act.
- b) When the Board imposes penalties pursuant to subsection (a) following a finding of violation of the Act or the PWSO Act, the Board will assess the AC Recipient associated hearing costs, if any, pursuant to Sections 108.502 and 108.504.

(Source: Amended at 39 Ill. Reg. 12921, effective September 8, 2015)

### **Section 108.502 Claimed Costs of Agency or Delegated Unit**

Within 30 days after the close of the hearing or as otherwise directed by the hearing officer, the Agency or Delegated Unit must submit to the Clerk of the Board and serve on all parties an itemized listing of the costs associated with the hearing. The costs must not include attorney's fees or witness fees for persons employed by the Agency or Delegated Unit.

### **Section 108.504 Board Costs**



At the beginning of every fiscal year the Board will place on file a schedule of hearing costs for AC cases. The schedule will include a per day breakdown of the Board's costs for holding a hearing. A copy will be available at the Board's offices and on the Board's Web site.

**Section 108.506      Response to Claimed Costs and Reply**

- a)      The AC Recipient may challenge the claimed costs submitted by the Agency, Delegated Unit, or the Board by filing a response. The response must be filed within 21 days after the service of the claimed costs and must be served on all parties.
  
- b)      The Agency or Delegated Unit may file a reply to the AC Recipient's response to claimed costs within 14 days after the service of the response.
  
- c)      The Board may hold an evidentiary hearing on hearing costs.