

ILLINOIS POLLUTION CONTROL BOARD  
April 1, 1987

IN THE MATTER OF:  
PROCEDURAL RULES

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R82-27  
R82-36 Consol.  
R83-37

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

In order to break what is currently Section 103.140 of Subpart C "Motions, Joinder and Intervention" of Part 103 "Enforcement Proceedings" of the Board's Procedural Rules into three smaller sections, it is necessary to recodify them. Other than splitting this large section into three smaller sections, the process of recodification does not allow for any substantive changes to be made to the text of the rules. Any such amendments will be made during the process of amending the procedural rules as a whole. Renumbering of certain other sections was also necessitated by this recodification. The following table clarifies the renumbering and recodification accomplished by this Order.

Conversion Table of Present and Recodified Parts:

<u>Present Part</u> <u>(Section Numbers)</u>	<u>Recodified Part</u> <u>(Section Numbers)</u>
103.140(a)	103.141(a)
103.140(b)	103.140(a)
103.140(c)	103.140(b)
103.140(d)	103.140(c)
103.140(e)	103.142(a)
103.140(f)	103.142(b)
103.140(g)	103.142(c)
103.140(h)	103.142(d)
103.140(i)	103.141(b)
103.141	103.144
103.142	103.145

ORDER

The Board hereby adopts the following recodification and renumbering amendments to Title 35: Environmental Protection; Subtitle A: General Provisions; Chapter I: Pollution Control Board; Part 103: Enforcement Proceedings:

SUBPART C: MOTIONS, JOINDER AND INTERVENTION

Section 103.140 Filing of Motions and Responses

- a) Unless made orally on the record during a hearing or unless the Hearing Officer directs otherwise, a motion shall be in writing, shall state the reasons for and grounds upon which the motion is made, and may be accompanied by any affidavits or other evidence relied on and, when appropriate, by a proposed order. All written motions by complainant to voluntarily dismiss an enforcement action shall be accompanied by affidavit attesting to the truth of the facts alleged.
- b) Within 7 days after service of a written motion, or such other period as the Board or Hearing Officer may prescribe, a party may file a response in support of or in opposition to the motion, accompanied by affidavits or other evidence. If no response is filed, the parties shall be deemed to have waived objection to the granting of the motion, but such waiver of objection does not bind the Board in its determination. The moving party shall not have the right to reply, except as permitted by the Hearing Officer or the Board.
- c) No oral argument will be heard on a motion before the Board unless the Board so directs. A written brief may be filed with a motion or an answer to a motion, stating the arguments and authorities relied on.

(Source: Recodified at \_\_\_\_\_ Ill. Reg. \_\_\_\_\_)

Section 103.141 Motions to Dismiss

- a) All motions preliminary to a hearing shall be presented to the Board or to the Hearing Officer at least 14 days prior to the date of the hearing, or on such other date as the Hearing Officer or the Board shall designate. All motions by respondent to dismiss or strike the complaint or challenging the jurisdiction of the Board shall be filed within 14 days after receipt of complaint, shall be directed to the Board and shall be disposed of prior to hearing on the complaint, subject, however, to subsections (e) and (i). Motions by complainant to voluntarily dismiss an action against any or all parties as to any or all claims shall be directed to the Board and may be made orally upon the hearing record, or may be made in writing at any time prior to issuance of the Board's decision. All motions must be served on all parties, including the Agency and its representative and the Hearing Officer designated by the Board, with proof of service. Oral argument on motions before the Board shall be permitted only by order of the Board.

- b) Any party may participate in the proceedings without forfeiting any jurisdictional objection, if such objection is raised at or before the time the respondent files his initial pleading or motion, or, if no pleading or motion is made, within 14 days after receipt of complaint. All jurisdictional objections shall conform to the requirements of subsection (a).

(Source: Recodified at \_\_\_\_\_ Ill. Reg. \_\_\_\_\_)

Section 103.142      Disposition of Motions

- a) The Hearing Officer shall rule upon all motions, except that he shall have no authority to dismiss, or rule upon a motion to dismiss or decide a proceeding on the merits, or for failure to state a claim, or for want of jurisdiction, or to strike any claim or defense for insufficiency or want of proof. The Hearing Officer shall refer any such motions to the Board, pursuant to paragraph (a). Notwithstanding the provisions of paragraph (a) above, the Board in its discretion, may direct that hearing on the proceeding be conducted and, in its discretion, may take all motions directed to it with the case. This conditional ruling by the Board shall not foreclose a party from advancing the same contentions as to jurisdiction or adequacy of the complaint upon the completion of the hearing. When ruling on a motion by complainant for voluntary dismissal of an action the Board shall, for reasons stated in its Order, dismiss the action without leave to reinstate if justice so demands. Among the factors to be considered in making such a determination are evidence and arguments concerning the action's age and procedural history, and the prejudicial effects, if any, of dismissing the action with leave to reinstate.
- 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 filed by a party or the Hearing Officer. When in the judgment of the Hearing Officer prompt decision 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 parties either by announcement on the record or by written notice if the hearing is not in session.
- c) Rulings of the Hearing Officer may be reviewed by the Board after conclusion of the hearing, but will be set aside only to avoid material prejudice to the rights of a litigant. The Hearing Officer, if a member of the Board,

may vote upon motions to review his rulings as Hearing Officer.

- d) Unless otherwise provided herein or ordered by the Board, neither the filing of a motion nor the certification of a question to the Board shall stay the proceeding or extend the time for the performance of any act.

Section 103.143 Continuances

- a) A motion for continuance of an enforcement, variance or permit appeal proceeding shall be granted by the Hearing Officer whenever as justice may require. All motions for continuance must be supported by an affidavit or written motion before the Hearing Officer by the person or persons having knowledge of the facts supporting the motion. Provided, however, that if the Board determines, in its discretion, that an variance petition, permit appeal or enforcement case is not proceeding expeditiously to a conclusion, the Board shall order such actions as it deems appropriate to reach an expeditious conclusion.
- b) No continuance shall be granted to the petitioner for any variance or permit appeal proceeding unless the deadline for final Board action, whenever applicable, is extended by the petitioner for a like period, as a minimum.

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

Section 103.144 Consolidation and Severance of Claims and Joining Additional Parties

In the interest of convenient, expeditious, and complete determination of claims, the Board may consolidate or sever enforcement, variance, permit or other adjudicative claims involving any number of parties, and may order additional parties to be brought in pursuant to the provisions of Section 103.121(c).

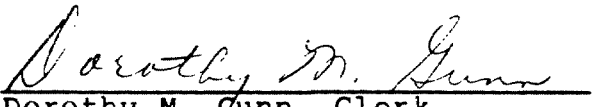
Section 103.145 Intervention

- a) Upon timely written application and subject to the necessity for conducting an orderly and expeditious hearing, the Hearing Officer shall permit any person to intervene in an enforcement proceeding when either of the following conditions is met:

- 1) The applicant is so situated that he he may be adversely affected by a final order of the Board;  
or
  - 2) An applicant's claim or defense and the enforcement proceeding involve a common question of law or fact.
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- b) Ten (10) copies of a petition for intervention shall be filed with the Board and the applicant shall also serve copies on each party. not later than 48 hours prior to the date set for hearing. The Hearing Officer may permit intervention at any time before the beginning of the hearing when good cause for delay is shown. Upon allowance of intervention the Hearing Officer shall notify the parties and the Clerk and may allow a continuance of the hearing to enable adequate pre-hearing procedures as justice may require.
  - c) An intervenor shall have all the rights of an original party, except that the intervenor shall be bound by orders theretofore issued and shall not raise issues which actually were raised or were required to be raised at an earlier stage of the proceeding.
  - d) Whenever a proceeding before the Board may affect the right of the public individually or collectively to the use of community sewer and water facilities provided by a municipally owned or publicly regulated company, all persons claiming an interest shall have the right to intervene as parties pursuant to this section and present evidence of such social and economic impact.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 1<sup>st</sup> day of April, 1987, by a vote of 6-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board