

ILLINOIS POLLUTION CONTROL BOARD  
February 19, 2015

IN THE MATTER OF: )  
)  
PROCEDURAL RULES AMENDMENTS: ) R15-20  
PROPOSED AMENDMENTS TO 35 ILL. ) (Rulemaking)  
ADM. CODE 101, 103, 106, 108 )

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by J.A. Burke):

The Board proposes procedural rule amendments for first-notice publication in the *Illinois Register*. This proposal will amend the Board’s procedural rules for out-of-state attorneys and service of filings. The proposal will also amend the Board’s procedural rules for administrative citations filed pursuant to Section 23.1 of the Public Water Supply Operations (PWSO) Act (415 ILCS 45/23.1). P.A. 98-0856, eff. Aug. 4, 2014. Today’s amendments are to Parts 101, 103, 106 and 108 of the Board’s procedural rules. Part 101 contains the general rules that apply to all Board proceedings. Part 103 contains the Board’s procedural rules on enforcement. Part 106 contains procedural rules for proceedings pursuant to specific rules or statutory provisions. Part 108 contains procedural rules for administrative citations filed before the Board.

First-notice publication in the *Illinois Register* of these proposed amendments starts a period of 45 days during which anyone may file a public comment with the Board. Instructions for submitting comments to the Board are provided below.

**BACKGROUND OF PROPOSED RULE AMENDMENTS**

**Proposed Procedural Rules for Out-of-State Attorneys**

Section 101.400(a)(3) of the Board’s procedural rules currently allows an out-of-state attorney to request to appear *pro hac vice* on a particular matter on a motion filed with the Board. 35 Ill. Adm. Code 101.400(a)(3). The Illinois Supreme Court revised the process for allowing out-of-state attorneys to appear *pro hac vice* in Illinois by amending its Rule 707. Ill. S. Ct. R. 707 (eff. July 1, 2013). This rule applies to cases “before an agency or administrative tribunal of the State of Illinois . . . if the representation by the out-of-state attorney constitutes the practice of law in Illinois or the agency or tribunal requires that a representative be an attorney.” Ill. S. Ct. R. 707(c)(3). The Board has held that the Supreme Court’s amended Rule 707 applies to proceedings before the Board. Sierra Club v. Ameren Energy Medina Valley Cogen, LLC and FutureGen Industrial Alliance Inc., PCB 14-134, slip op. at 2 (July 24, 2014).

For an attorney to represent a party before the Board, he or she must comply with Supreme Court Rule 707. The rule establishes a procedure by which “an eligible out-of-state attorney . . . is permitted to appear as counsel and provide legal services in the proceeding

without order of the tribunal.” Ill. S. Ct. R. 707(a). For example, the rule requires the filing of an appearance of an active status Illinois attorney associated with the out-of-state attorney in the proceeding. Ill. S. Ct. R. 707(a).

The proposed amendments remove the ability for an out-of-state attorney to request to appear *pro hac vice* in a particular matter through a motion filed with the Board. The proposed amendments instead state that an out-of-state attorney may only appear before the Board as counsel if that attorney has complied with Supreme Court Rule 707.

### **Proposed Amendments to Procedural Rules on Service**

The Board recently adopted amendments to its procedural rules. See Procedural Rule Amendments to Implement Electronic Filing and Allow for Public Remarks at Board Meetings, R 14-21 (Jan. 23, 2015). These amendments codified the practices the Board’s Clerk developed to accommodate electronic filing through the Clerk’s Office On-Line (COOL) and for the first time explicitly addressed e-mail service, which had previously been allowed by Board hearing officers on a case-by-case basis.

Today’s proposed amendments continue to update the Board’s procedural rules for all forms of service, by clarifying a number of Board procedural requirements. With these amendments, parties, particularly non-attorneys, will more clearly understand the Board’s various procedural requirements when participating in a Board action.

### **Proposed Amendments to Administrative Citation Rules**

Public Act 98-0856, which took effect on August 4, 2014, amends the PWSO Act (415 ILCS 45 (2012)) to, among other items, create a new administrative citation process. Previously, the Illinois Environmental Protection Agency (Agency) was only able to file administrative citations pursuant to Section 31.1 of the Illinois Environmental Protection Act (Act) for certain violations of the Act but not violations of the PWSO Act. However, new Section 23.1 of the PWSO Act allows the Agency to issue an administrative citation against a responsible operator of a community water supply for violating new Section 1.1(b)(3) of the PWSO Act. Section 1.1(b)(3) of the PWSO Act requires a responsible operator in charge of a community water supply to submit “consumer confidence reports, monthly operating reports, and drinking water compliance monitoring results, such as corrosion control reports and monitoring reports.” P.A. 98-0856, eff. Aug. 4, 2014.

Today’s proposed amendments update the Board’s procedural rules, specifically Parts 101 and 108, to account for this administrative citation process in new Section 23.1 of the PWSO Act before the Board.

## **SECTION-BY-SECTION SUMMARY OF PROPOSED RULE AMENDMENTS**

### **Section 101.100 Applicability**

The amendments to this section clarify that Board procedural rules may provide for the application of provisions of the Code of Civil Procedure and the Supreme Court rules to proceedings before the Board.

### **Section 101.202 Definitions for Board's Procedural Rules**

The definition of "Affidavit of service" is removed because the terms "Affidavit" and "Service" are already defined, and the concept is now better explained in proposed Section 101.304(d) on documentation of service. "Registered agent" is removed because the term is not used in the Board's procedural rules.

The definitions of "Administrative citation" and "Administrative citation review (appeal)" are edited to account for administrative citations filed pursuant to Section 23.1 of the PWSO Act. These definitions previously only accounted for administrative citations filed pursuant to Section 31.1 of the Act.

"Delegated Unit" is edited to reflect that while Section 31.1 of the Act explicitly refers to the Agency being able to delegate its administrative citation function to a unit of local government, Section 23.1 of the PWSO Act does not. The amendments also include definitions for "PWSO Act" and "Responsible Operator in Charge," two terms that are introduced into the Board's procedural rules following these amendments. "Responsible Operator in Charge" is defined in the Board's procedural rules the same way it appears in the PWSO Act. 415 ILCS 45/9.6 (2014).

The amendments make a minor clarifying edit to the definition of "Act" and "Service." The definition of "Service list" is amended to account for service by parties to a proceeding, and not just participants, as those terms are distinguishable before the Board.

### **Section 101.300 Computation of Time**

The amendments to this section describe the procedure for determining the date on which a document is considered to have been filed or served. For determining the date of filing, the amendments expand the Board's existing rules to allow for the date a document was provided to a third-party commercial carrier for delivery to the Clerk within three business days, in accordance with Supreme Court Rule 373.

To be considered served upon another party, a document must be delivered in compliance with Section 101.304 of the Board's procedural rules and any other service requirements specified elsewhere in the Board's procedural rules. The amendments distinguish between personal service; service by U.S. mail or a third-party commercial carrier with recipient signature; service by electronic mail or facsimile; and service by U.S. mail or a third-party commercial carrier without recipient signature.

The Board makes a number of clarifying edits to this section to aid non-attorney litigants in understanding the procedural requirements of actions before the Board. These include clearer descriptions of the types of service allowed under 35 Ill. Adm. Code 101.300(c).

### **Section 101.302 Filing of Documents**

The amendments to this section clarify the procedure for filing a document. For example, the amendments describe how documents filed with the Clerk must provide the name and signature of the person seeking to file the document and identify the name of the person on whose behalf the document is being filed; documents filed with the Clerk are required to be accompanied by a notice of filing and documentation of service; and service of a document upon a hearing officer does not constitute filing with the Clerk unless the document is submitted to the hearing officer during the course of a hearing. These amendments are intended to aid in understanding the Board's procedural requirements.

### **Section 101.304 Service of Documents**

The amendments to this section describe when a party is required to initiate service of a document. Further, the amendments describe the accepted methods of document service, including: personal service; U.S. mail; third-party commercial carrier; e-mail; and facsimile. The amendments also describe the required methods of service for enforcement complaints, administrative citations, and Environmental Management System Agreement (EMSA) statements of deficiency upon respondents.

Section 101.304(c) addresses methods of service. This section is amended to clarify the types of service allowed depending on the type of document being served. The amendments also specify that an administrative citation issued pursuant to Section 23.1 of the PWSO Act must be served either through personal service or service by certified mail.

Section 101.304(d) outlines documentation of service and when to file documentation of service. This subsection describes the requirements for personal service, service of a document by U.S. Mail or third-party carrier, and service by e-mail or facsimile. The section also outlines that an affidavit of service must be notarized and is for use by a non-attorney, and that a certificate of service is for an attorney.

### **Section 101.400 Appearances, Withdrawals, and Substitutions of Attorneys in Adjudicatory Proceedings**

The amendments to this section update the Board's procedural requirements for out-of-state attorneys to conform to Supreme Court Rule 707. The amendments remove the ability for an out-of-state attorney to request to appear *pro hac vice* before the Board. Section 101.400(a)(5) is amended to reflect amendments to Section 2-301 of the Code of Civil Procedure.

**Section 101.1060 E-Mail Service**

The amendments to this part remove the description of when service of a document by e-mail is deemed complete. This language appears in amended 35 Ill. Adm. Code 101.300(c)(3), making the language in 35 Ill. Adm. Code 101.1060(d) redundant. The amendments also describe the methods of service allowed for administrative citations filed under Section 23.1 of the PWSO Act, and make minor clarifying changes.

**Section 101.APPENDIX A ILLUSTRATION I Administrative Citation Pursuant to Section 31.1 of the Act**

This illustration is amended to note that the provided caption would only apply to administrative citations filed pursuant to Section 31.1 of the Act, *i.e.*, not Section 23.1 of the PWSO Act.

**Section 101.APPENDIX A ILLUSTRATION J Administrative Citation Pursuant to Section 23.1 of the PWSO Act**

The newly-proposed Illustration J provides a caption example for administrative citations filed pursuant to Section 23.1 of the Act.

**Section 101.APPENDIX A ILLUSTRATION K General Rulemaking**

The heading of this illustration is edited to account for the newly-proposed Illustration J above.

**Section 101.APPENDIX A ILLUSTRATION L Site-Specific Rulemaking**

The heading of this illustration is edited to account for the newly-proposed Illustration J above.

**Section 101.APPENDIX E ILLUSTRATION A Service by Non-Attorney**

The amendments to this illustration clarify what is required of a non-attorney for an affidavit of service.

**Section 101.APPENDIX E ILLUSTRATION B Service by Attorney**

The amendments to this illustration clarify the requirements for a certificate of service by an attorney.

**Section 103.204 Notice, Complaint, and Answer**

This section is amended to clarify the accepted methods of service for a notice and complaint in an enforcement proceeding. Specifically, accepted methods of service are: by U.S.

Mail with a recipient's signature recorded; by third-party commercial carrier with a recipient's signature recorded; or by personal service upon all respondents.

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

This section is amended to maintain consistency with the accepted methods of service described in Section 103.204, described above.

**Section 103.404 Joinder of the Agency**

The amendment to this section clarifies that messenger service will not be used by the Clerk when the Board directs that the Agency be joined in an enforcement proceeding.

**Section 106.708 Service**

The amendments to this section describe the accepted methods of service for the Agency to serve a notice of filing and statement of deficiency when attempting to terminate an Environmental Management System Agreement. Specifically, the Agency may use either U.S. Mail with a recipient's signature recorded, or a third-party commercial carrier with a recipient's signature recorded.

**Section 108.100 Applicability**

Section 108.100 is amended to account for administrative citations filed pursuant to Section 23.1 of the PWSO Act.

**Section 108.200 Administrative Citation Issuance**

The amendment to Section 108.200(a) updates the Board's rule to note that the Agency may issue an administrative citation pursuant to Section 31.1 of the Act or Section 23.1 of the PWSO Act. Section 108.200(b) is amended to take into account that unlike Section 31.1 of the Act, Section 23.1 of the PWSO Act does not explicitly refer to the Agency being able to delegate its administrative citation function to a unit of local government.

**Section 108.202 Service of Citation/Filing of Citation with the Board**

Section 31.1 of the Act and Section 23.1 of the PWSO Act impose different requirements for the basis, contents, service, and filing of administrative citations. Section 108.202 is amended to have subsection (a) address citations issued under the Act and have subsection (b) address citations issued under the PWSO Act. Subsection (c) of Section 108.202 is deleted because this filing requirement for citations issued under the Act is moved to subsection (a).

The Board also takes this opportunity to show that Sections 22.51, 22.51a, and 55(k) of the Act have been added to Sections 21(o) and 21(p) of the Act as provisions that may be enforced through administrative citations issued under Section 31.1 of the Act.

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

Section 108.204 is amended to set forth the filing requirements for a petition to contest an administrative citation issued pursuant to Section 23.1 of the PWSO Act. The section distinguishes between who may be named as the complainant for an administrative citation issued pursuant to Section 31.1 of the Act or Section 23.1 of the PWSO Act.

### **Section 108.206 Petition Requirements**

Section 108.206 is amended to include, as a reason for contesting an administrative citation, that the administrative citation recipient is not the “Responsible Operator in Charge” for a community water supply.

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

Section 108.300(b) is amended to account for hearings held pursuant to Section 23.1 of the PWSO Act.

### **Section 108.402 Dismissal**

This section is amended to include dismissal of administrative citations that were not served pursuant to Section 23.1 of the PWSO Act.

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

Section 108.500(a) is amended to include the amount of civil penalty that the Board may impose on an administrative citation recipient found to have violated Section 1.1(b)(3) of the PWSO Act (415 ILCS 45/1.1(b)(3), added by P.A. 98-0856 (Aug. 4, 2014)). Specifically, the administrative citation recipient is subject to a \$500 civil penalty for each violation of that provision, except that the penalty amount imposed will be \$1,500 for each violation of Section 1.1(b)(3) that is the administrative citation recipient’s second or subsequent adjudicated violation of that provision.

Section 108.500(b) is amended to include the amount of civil penalty that the Board may impose on an administrative citation recipient who chooses to contest the administrative citation issued pursuant to Section 23.1 of the PWSO Act. Section 108.500(c) is amended to include the amount of civil penalty that the Board may impose on an administrative citation recipient who chooses to contest the administrative citation issued pursuant to Section 23.1 of the PWSO Act, but then voluntarily chooses to withdraw the petition for review after the hearing starts.

### **HEARING AND PUBLIC COMMENT PERIOD**

A hearing is not required in this procedural rulemaking and no hearing is currently scheduled. *See* 5 ILCS 100/5-40(b) (2012); *see also* 415 ILCS 5/26-28 (2012).

The Board today adopts the proposed rule amendments for first notice under the Illinois Administrative Procedures Act. 5 ILCS 100/5-40(b) (2012). First-notice publication in the *Illinois Register* of these proposed amendments starts a period of 45 days during which anyone may file a public comment with the Board. The docket number for this rulemaking, R15-20, should be indicated on the public comment.

Public comments must be filed with the Clerk of the Board. Public comments may be filed at the following address:

Pollution Control Board  
 John T. Therriault, Clerk  
 James R. Thompson Center  
 100 W. Randolph Street, Suite 11-500  
 Chicago, IL 60601

In addition, public comments may be filed electronically through the Clerk's Office On-Line (COOL) on the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us). Any questions about electronic filing through COOL should be directed to the Clerk's Office at (312) 814-3629.

### **CONCLUSION**

The Board proposes procedural rule amendments for first-notice publication in the *Illinois Register*. Publication in the *Illinois Register* of the proposed rule changes will start a 45-day period during which anyone may file public comments with the Board.

### **ORDER**

The Board directs the Clerk to cause the first-notice publication of the following proposed rule amendments in the *Illinois Register*. Proposed additions are underlined and proposed deletions are stricken.

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

PART 101  
 GENERAL RULES

SUBPART A: GENERAL PROVISIONS

Section	
101.100	Applicability
101.102	Severability
101.104	Repeals
101.106	Board Authority
101.108	Board Proceedings

101.110	Public Participation
101.111	Informal Recordings of Board Meetings
101.112	Bias and Conflict of Interest
101.114	Ex Parte Communications

#### SUBPART B: DEFINITIONS

Section	
101.200	Definitions Contained in the Act
101.202	Definitions for Board's Procedural Rules

#### SUBPART C: COMPUTATION OF TIME, FILING, SERVICE OF DOCUMENTS, AND STATUTORY DECISION DEADLINES

Section	
101.300	Computation of Time
101.302	Filing of Documents
101.304	Service of Documents
101.306	Incorporation of Documents from Another Proceeding
101.308	Statutory Decision Deadlines and Waiver of Deadlines

#### SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

Section	
101.400	Appearances, Withdrawals, and Substitutions of Attorneys in Adjudicatory Proceedings
101.402	Intervention of Parties
101.403	Joinder of Parties
101.404	Agency as a Party in Interest
101.406	Consolidation of Claims
101.408	Severance of Claims

#### SUBPART E: MOTIONS

Section	
101.500	Filing of Motions and Responses
101.502	Motions Directed to the Hearing Officer
101.504	Contents of Motions and Responses
101.506	Motions Attacking the Sufficiency of the Petition, Complaint, or Other Pleading
101.508	Motions to Board Preliminary to Hearing
101.510	Motions to Cancel Hearing
101.512	Motions for Expedited Review
101.514	Motions to Stay Proceedings
101.516	Motions for Summary Judgment
101.518	Motions for Interlocutory Appeal from Hearing Officer Orders
101.520	Motions for Reconsideration

101.522 Motions for Extension of Time

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

Section

101.600 Hearings  
 101.602 Notice of Board Hearings  
 101.604 Formal Board Transcript  
 101.606 Informal Recordings of the Proceedings  
 101.608 Default  
 101.610 Duties and Authority of the Hearing Officer  
 101.612 Schedule to Complete the Record  
 101.614 Production of Information  
 101.616 Discovery  
 101.618 Admissions  
 101.620 Interrogatories  
 101.622 Subpoenas and Depositions  
 101.624 Examination of Adverse, Hostile or Unwilling Witnesses  
 101.626 Information Produced at Hearing  
 101.628 Statements from Participants  
 101.630 Official Notice  
 101.632 Viewing of Premises

SUBPART G: ORAL ARGUMENT

Section

101.700 Oral Argument

SUBPART H: SANCTIONS

Section

101.800 Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing Officer Orders  
 101.802 Abuse of Discovery Procedures

SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

Section

101.902 Motions for Reconsideration  
 101.904 Relief from Final Opinions and Orders  
 101.906 Judicial Review of Board Orders  
 101.908 Interlocutory Appeal

SUBPART J: ELECTRONIC FILING AND E-MAIL SERVICE

Section

101.1000	Electronic Filing and E-Mail Service
101.1010	Electronic Filing Authorization and Signatures
101.1020	Filing Electronic Documents
101.1030	Form of Electronic Documents for Filing
101.1040	Filing Fees
101.1050	Documents Required in Paper or Excluded from Electronic Filing
101.1060	E-Mail Service
101.1070	Consenting to Receipt of E-Mail Service
101.APPENDIX A	Captions
101.ILLUSTRATION A	Enforcement Case
101.ILLUSTRATION B	Citizen's Enforcement Case
101.ILLUSTRATION C	Variance
101.ILLUSTRATION D	Adjusted Standard Petition
101.ILLUSTRATION E	Joint Petition for an Adjusted Standard
101.ILLUSTRATION F	Permit Appeal
101.ILLUSTRATION G	Underground Storage Tank Appeal
101.ILLUSTRATION H	Pollution Control Facility Siting Appeal
101.ILLUSTRATION I	Administrative Citation Pursuant to Section 31.1 of the Act
101.ILLUSTRATION J	Administrative Citation Pursuant to Section 23.1 of the <u>PWSO Act</u>
101.ILLUSTRATION <del>K</del> J	General Rulemaking
101.ILLUSTRATION <del>L</del> K	Site-specific Rulemaking
101.APPENDIX B	Appearance Form
101.APPENDIX C	Withdrawal of Appearance Form
101.APPENDIX D	Notice of Filing
101.APPENDIX E	Affidavit or Certificate of Service
101.ILLUSTRATION A	Service by Non-Attorney
101.ILLUSTRATION B	Service by Attorney
101.APPENDIX F	Notice of Withdrawal (Repealed)
101.APPENDIX G	Comparison of Former and Current Rules (Repealed)
101.APPENDIX H	Affidavit or Certificate of E-Mail Service
101.ILLUSTRATION A	E-Mail Service by Non-Attorney
101.ILLUSTRATION B	E-Mail Service by Attorney
101.APPENDIX I	Consent to Receipt of E-Mail Service

AUTHORITY: Implementing Sections 5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27] and Section 25-101 of the Electronic Commerce Security Act [5 ILCS 175/25-101].

SOURCE: Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; Part repealed, new Part adopted in R88-5A at 13 Ill. Reg. 12055, effective July 10, 1989; amended in R90-24 at 15 Ill. Reg. 18677, effective December 12, 1991; amended in R92-7 at 16 Ill. Reg. 18078, effective November 17, 1992; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 446, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8743, effective June 8,

2005; amended in R06-9 at 29 Ill. Reg. 19666, effective November 21, 2005; amended in R07-17 at 31 Ill. Reg. 16110, effective November 21, 2007; amended in R10-22 at 34 Ill. Reg. 19566, effective December 3, 2010; amended in R12-22 at 36 Ill. Reg. 9211, effective June 7, 2012; amended in R13-9 at 37 Ill. Reg. 1655, effective January 28, 2013; amended in R14-21 at 39 Ill. Reg. 2276, effective January 27, 2015; amended in R 15-21 at \_\_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

### Section 101.100 Applicability

- a) This Part sets forth the rules generally applicable to proceedings before the Illinois Pollution Control Board (Board), and should be read in conjunction with procedural rules for the Board's specific proceedings processes, found at 35 Ill. Adm. Code 102 through 130, and the Board's Administrative Rules, found at 2 Ill. Adm. Code 2175. In the event of a conflict between the rules of this Part and those found in subsequent Parts, the more specific requirement applies.
- b) Except when the Board's procedural rules provide otherwise, the provisions of the Code of Civil Procedure [735 ILCS 5] and the Supreme Court Rules [Ill. S. Ct. Rules] do not ~~expressly~~ apply to proceedings before the Board. However, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance when ~~where~~ the Board's procedural rules are silent.

## SUBPART B: DEFINITIONS

### Section 101.202 Definitions for Board's Procedural Rules

Unless otherwise provided in 35 Ill. Adm. Code 101-130, or unless a different meaning of a word or term is clear from the context, the following definitions also apply to the Board's procedural rules, found in 35 Ill. Adm. Code 101 through 130:

"Act" means the Environmental Protection Act [415 ILCS 5/].

"Adjudicatory proceeding" means an action of a quasi-judicial nature brought before the Board pursuant to authority granted to the Board under Section 5(d) of the Act or as otherwise provided by law. Adjudicatory proceedings include enforcement, variance, permit appeal, pollution control facility siting appeal, Underground Storage Tank (UST) Fund determination, water well set back exception, adjusted standard, and administrative citation proceedings. Adjudicatory proceedings do not include regulatory, quasi-legislative, or informational proceedings.

"Adjusted standard" or "AS" means an alternative standard granted by the Board in an adjudicatory proceeding pursuant to Section 28.1 of the Act and 35 Ill. Adm. Code 104.Subpart D. The adjusted standard applies instead of the rule or regulation of general applicability.

"Administrative citation" or "AC" means either a citation issued pursuant to Section 31.1 of the Act by the Agency; or by a unit of local government acting as the Agency's delegate pursuant to Section 4(r) of the Act, or a citation issued pursuant to Section 23.1 of the PWSO Act.

"Administrative citation review" or "administrative citation appeal" means a petition for review of an administrative citation filed pursuant to Section 31.1(d) of the Act or Section 23.1(d) of the PWSO Act. (See 35 Ill. Adm. Code 108.)

"Affidavit" means a sworn, signed statement witnessed by a notary public.

~~"Affidavit of service" means an affidavit that states that service of a document upon specified persons was made, and the manner in which, and date upon which, service was made.~~

"Agency" means the Illinois Environmental Protection Agency as established by Section 4 of the Act.

"Agency recommendation" means the document filed by the Agency pursuant to Sections 37(a) and 28.1(d)(3) of the Act in which the Agency provides its recommended disposition of a petition for variance or an adjusted standard. This includes a recommendation to deny, or a recommendation to grant with or without conditions. (See 35 Ill. Adm. Code 104.218 and 104.416.)

"Amicus curiae brief" means a brief filed in a proceeding by any interested person who is not a party. (See Sections 101.110 and 101.628 of this Part.)

"Applicant" means any person who submits, or has submitted, an application for a permit or for local siting approval pursuant to any of the authorities to issue permits or granting of siting approval identified in Sections 39, 39.1, and 39.5 of the Act.

"Article" means *any object, material, device or substance, or whole or partial copy thereof, including any writing, record, document, recording, drawing, sample, specimen, prototype, model, photograph, culture, microorganism, blueprint or map* [415 ILCS 5/7.1].

"Attorney General" means the Attorney General of the State of Illinois or representatives thereof.

"Authorized representative" means any person who is authorized to act on behalf of another person.

"Board" means the Illinois Pollution Control Board as created in Section 5 of the Act or, if applicable, its designee.

"Board decision" means an opinion or an order voted in favor of by at least three members of the Board at an open Board meeting except in a proceeding to remove a seal under Section 34(d) of the Act.

"Board designee" means an employee of the Board who has been given authority by the Board to carry out a function for the Board (e.g., the Clerk, Assistant Clerk of the Board, or hearing officer).

"Board meeting" means an open meeting held by the Board pursuant to Section 5(a) of the Act in which the Board makes its decisions and determinations.

"Board's procedural rules" means the Board's regulations set forth at 35 Ill. Adm. Code 101 through 130.

"Brief" means a written statement that contains a summary of the facts of a proceeding, the pertinent laws, and an argument of how the law applies to the facts supporting a position.

"CAAPP" means the Clean Air Act Permit Program, as adopted in Section 39.5 of the Act.

"Certificate of acceptance" means a certification, executed by a successful petitioner in a variance proceeding, in which the petitioner agrees to be bound by all terms and conditions that the Board has affixed to the grant of variance.

"Chairman" means the Chairman of the Board designated by the Governor pursuant to Section 5(a) of the Act.

"Citizen's enforcement proceeding" means an enforcement action brought before the Board pursuant to Section 31(d) of the Act by any person who is not authorized to bring the action on behalf of the People of the State of Illinois.

"Clean Air Act" or "CAA" means the federal *Clean Air Act, as now and hereafter amended, 42 USC 7401 et seq.* [415 ILCS 5/39.5]

"Clean Water Act" means the federal Clean Water Act, 33 USC 1251 et seq.

"Clerk" means the Clerk of the Board.

"Clerk's Office On-Line" or "COOL" means the Board's web-based file management system that allows electronic filing of and access to electronic documents in the records of the Board's adjudicatory and regulatory proceedings. COOL is located on the Board's website at <http://www.ipcb.state.il.us/COOL/external/>.

"Complaint" means the initial filing that begins an enforcement proceeding pursuant to Section 31 of the Act and 35 Ill. Adm. Code 103.

"Compliance plan" means a detailed description of a program designed to achieve compliance with the Act and Board regulations.

"Copy" means *any facsimile, replica, photograph or other reproduction of an article, and any note, drawing or sketch made of or from an article* [415 ILCS 5/7.1].

"Counter-complaint" means a pleading that a respondent files setting forth a claim against a complainant. (See 35 Ill. Adm. Code 103.206.)

"Cross-complaint" means a pleading that a party files setting forth a claim against a co-party. (See 35 Ill. Adm. Code 103.206.)

"Cross-media impacts" means impacts that concern multiple environmental areas, such as air, land and/or water.

"Decision date" means the date of the Board meeting immediately preceding the decision deadline.

"Decision deadline" means the last day of any decision period, as established by law, within which the Board is required to render a decision in an adjudicatory proceeding. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions respectively.)

"Decision period" means the period of time established by the Act within which the Board is required to make a Board decision in certain adjudicatory proceedings. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions, respectively.)

"Deinked stock" *means paper that has been processed to remove inks, clays, coatings, binders and other contaminants* [415 ILCS 20/2.1].

"Delegated unit" means the unit of local government to which the Agency has delegated its administrative citation function under Section 31.1 of the Act or other function pursuant to Section 4(r) of the Act.

"Digital signature" means *a type of electronic signature created by transforming an electronic document using a message digest function and encrypting the resulting transformation with an asymmetric cryptosystem using the signer's private key such that any person having the initial untransformed electronic document, the encrypted transformation, and the signer's corresponding public key can accurately determine whether the transformation was created using the private key that corresponds to the signer's public key and whether the initial*

*electronic document has been altered since the transformation was made. A digital signature is a security device.* [5 ILCS 175/5-105]

"Discovery" means a pre-hearing process that can be used to obtain facts and information about the adjudicatory proceeding in order to prepare for hearing. The discovery tools include depositions upon oral and written questions, written interrogatories, production of documents or things, and requests for admission. "DNR" means the Illinois Department of Natural Resources.

"DOA" means the Illinois Department of Agriculture.

"Duplicative" means the matter is identical or substantially similar to one brought before the Board or another forum.

"Electronic" includes *electrical, digital, magnetic, optical, electromagnetic, or any other form of technology that entails capabilities similar to these technologies* [5 ILCS 175/5-105].

"Electronic document" means any notice, information, or filing generated, communicated, received or stored by electronic means to use in an information system or to transmit from one information system to another. (See 5 ILCS 175/5-105.)

"Electronic signature" means *a signature in electronic form attached to or logically associated with an electronic document* [5 ILCS 175/5-105].

"Environmental Management System Agreement" or "EMSA" means the agreement between the Agency and a sponsor, entered into under Section 52.3 of the Act and 35 Ill. Adm. Code 187, that describes the innovative environmental measures to be implemented, schedules to attain goals, and mechanisms for accountability.

"Enforcement proceeding" means an adjudicatory proceeding brought upon a complaint filed pursuant to Section 31 of the Act by the Attorney General, State's Attorney, or other persons, in which the complaint alleges violation of the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order.

"Ex parte communication" means *any written or oral communication by any person that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi-adjudicatory, investment, or licensing matters pending before or under consideration by the Board. "Ex parte communication" does not include the following:*

*statements by a person publicly made in a public forum, including pleadings, transcripts, public comments, and public remarks made part of the proceeding's record* [5 ILCS 430/5-50(b)(i)];

*statements regarding matters of procedure and practice, such as format , the number of copies required, the manner of filing, and the status of a matter [5 ILCS 430/5-50(b)(ii)]; and*

*statements made by a State employee of the Board to Board members or other employees of the Board [5 ILCS 430/5-50(b) (iii)]. For purposes of this definition, "Board employee" means a person the Board employs on a full-time, part-time, contract or intern basis. (See Section 101.114 of this Part.)*

"Fast Track rulemaking" means a Clean Air Act rulemaking conducted pursuant to Section 28.5 of the Act.

"Federally required rule" means *a rule that is needed to meet the requirements of the federal Clean Water Act, Safe Drinking Water Act, Clean Air Act (including required submission of a State Implementation Plan), or Resource Conservation and Recovery Act, other than a rule required to be adopted under subsection (c) of Section 13, Section 13.3, Section 17.5, subsection (a) or (d) of Section 22.4, or subsection (a) of Section 22.40 [415 ILCS 5/28.2].*

"Filing" means the act of delivering a document or article into the custody of the Clerk with the intention of incorporating that document or article into the record of a proceeding before the Board. The Clerk's Office is located at 100 West Randolph Street, Suite 11-500, Chicago IL 60601. Electronic filing is done through COOL on the Board's website.

"Final order" means an order of the Board that terminates the proceeding leaving nothing further to litigate or decide and that is subject to judicial review. (See Subpart I of this Part.)

"Frivolous" means a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.

"Hearing" means a public proceeding conducted by a hearing officer where the parties and other interested persons, as provided for by law and the Board's procedural rules, present evidence and argument regarding their positions.

"Hearing officer" means a person licensed to practice law in the State of Illinois who presides over hearings and otherwise carries out record development responsibilities as directed by the Board.

"IAPA" means the Illinois Administrative Procedure Act [5 ILCS 100].

"Identical-in-substance rules" or "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 USEPA administered the subject program in Illinois* [415 ILCS 5/7.2].

"Initial filing" means the filing that initiates a Board proceeding and opens a docket. For instance, the initial filing in an enforcement proceeding is the complaint; in a permit appeal it is a petition for review; and in a regulatory proceeding it is the proposal.

"Innovative environmental measures" means any procedures, practices, technologies or systems that pertain to environmental management and are expected to improve environmental performance when applied. (See 35 Ill. Adm. Code 106.Subpart G.)

"Inquiry hearing" means a hearing conducted by the Board for the purpose of seeking input and comment from the public regarding the need for a rulemaking proceeding in a specific area.

"Interlocutory appeal" means an appeal of a Board decision to the appellate court that is not dispositive of all the contested issues in the proceeding. (See Section 101.908 of this Part.) An interlocutory appeal may also be the appeal of a hearing officer ruling to the Board. (See Section 101.518 of this Part.)

"Intervenor" means a person, not originally a party to an adjudicatory proceeding, who voluntarily participates as a party in the proceeding with the leave of the Board. (See Section 101.402 of this Part.)

"Intervention" means the procedure by which a person, not originally a party to an adjudicatory proceeding, voluntarily comes into the proceeding as a party with the leave of the Board. (See Section 101.402 of this Part.)

"JCAR" means the Illinois General Assembly's Joint Committee on Administrative Rules established by the IAPA (see 5 ILCS 100/5-90).

"Joinder" means the procedure by which the Board adds a person, not originally a party to an adjudicatory proceeding, as a party to the proceeding. (See Section 101.403 of this Part and 35 Ill. Adm. Code 103.206.)

"Misnomer" means a mistake in name, giving an incorrect name in a complaint or other document with respect to any properly included party.

"Motion" means a request made to the Board or the hearing officer for the purposes of obtaining a ruling or order directing or allowing some act to be done in favor of the movant. (See definition of "movant" in this Section.)

"Movant" means the person who files a motion.

"New pollution control facility" means *a pollution control facility initially permitted for development or construction after July 1, 1981; or the area of expansion beyond the boundary of a currently permitted pollution control facility; or a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste* [415 ILCS 5/3.330(b)].

"Non-disclosable information" means *information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; information concerning secret manufacturing processes or confidential data submitted by any person under the Act* [415 ILCS 5/7(a)].

"Notice list" means the list of persons in a regulatory proceeding who will receive all Board opinions and orders and all hearing officer orders. Persons on a notice list generally do not receive copies of motions, public comments, or testimony. (See definition of "service list" in this Section.) (See also 35 Ill. Adm. Code 102.422.)

"Notice to reinstate" means a document filed that recommences the decision period after a decision deadline waiver has been filed. The notice will give the Board a full decision period in which to make a decision. (See Section 101.308 of this Part.)

"Oral argument" means a formal verbal statement of advocacy on a proceeding's legal questions made at a Board meeting with the Board's permission. (See Section 101.700 of this Part.)

"OSFM" means Office of the State Fire Marshal.

"OSFM appeal" means an appeal of an OSFM final decision concerning eligibility and deductibility made pursuant to Title XVI of the Act.

"Participant" means any person, not including the Board or its staff, who takes part in an adjudicatory proceeding who is not a party, or a person who takes part in a regulatory or other quasi-legislative proceeding before the Board. A person becomes a participant in any of several ways, including filing a comment, being added to the notice list of a particular proceeding, testifying at hearing, or making public remarks at a Board meeting.

"Participant in a CAAPP Comment Process" means a person who takes part in a Clean Air Act Permit Program (CAAPP) permit hearing before the Agency or comments on a draft CAAPP permit.

"Party" means the person by or against whom an adjudicatory proceeding is brought or who is granted party status by the Board through intervention or joinder.

"Party in interest" means the Agency when asked to conduct an investigation pursuant to Section 30 of the Act during an ongoing proceeding. (See Section 101.404 of this Part.)

"Peremptory rulemaking" means *any rulemaking that is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions that preclude compliance with the general rulemaking requirements of Section 5-40 of the IAPA and that preclude the exercise by the Board as to the content of the rule it is required to adopt.* [5 ILCS 100/5-50]

"Permit appeal" means an adjudicatory proceeding brought before the Board pursuant to Title X of the Act.

"Person" means *any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.* [415 ILCS 5/3.315]

"Petition" means the initial filing in an adjudicatory proceeding other than an enforcement proceeding, including permit appeals, OSFM appeals, UST appeals, appeals of pollution control facility siting decisions, variances and adjusted standards.

"Pilot project" means an innovative environmental project that covers one or more designated facilities, designed and implemented in the form of an EMSA. (See Section 52.3 of the Act.)

"Pollution control facility" means *any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act. The following are not pollution control facilities: waste storage sites regulated under 40 CFR 761.42;*

*sites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person;*

*sites or facilities at which the State is performing removal or remedial action pursuant to Section 22.2 or 55.3 of the Act;*

*abandoned quarries used solely for the disposal of concrete, earth materials, gravel, or aggregate debris resulting from road construction activities conducted by a unit of government or construction activities due to the construction and installation of underground pipes, lines, conduit or wires off of the premises of a public utility company which are conducted by a public utility;*

*sites or facilities used by any person to specifically conduct a landscape composting operation;*

*regional facilities as defined in the Central Midwest Interstate Low-Level Radioactive Waste Compact;*

*the portion of a site or facility where coal combustion wastes are stored or disposed of in accordance with subdivision (r)(2) or (r)(3) of Section 21 of the Act;*

*the portion of a site or facility used for the collection, storage or processing of waste tires as defined in Title XIV;*

*the portion of a site or facility used for treatment of petroleum contaminated materials by application onto or incorporation into the soil surface and any portion of that site or facility used for storage of petroleum contaminated materials before treatment. Only those categories of petroleum listed in Section 57.9(a)(3) of the Act are exempt under this definition;*

*the portion of a site or facility where used oil is collected or stored prior to shipment to a recycling or energy recovery facility, provided that the used oil is generated by households or commercial establishments, and the site or facility is a recycling center or a business where oil or gasoline is sold at retail;*

*processing sites or facilities that receive only on-specification used oil, as defined in 35 Ill. Adm. Code 739, originating from used oil collectors for processing that is managed under 35 Ill. Adm. Code 739 to produce products for sale to off-site petroleum facilities, if these processing sites or facilities are:*

*located within a home rule unit of local government with a population of at least 30,000 according to the 2000 federal census, that home rule unit of local government has been designated as an Urban Round II Empowerment Zone by the United States*

*Department of Housing and Urban Development, and that home rule unit of local government has enacted an ordinance approving the location of the site or facility and provided funding for the site or facility; and*

*in compliance with all applicable zoning requirements;*

*the portion of a site or facility utilizing coal combustion waste for stabilization and treatment of only waste generated on that site or facility when used in connection with response actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the federal Resource Conservation and Recovery Act of 1976, or the Illinois Environmental Protection Act or as authorized by the Agency;*

*the portion of a site or facility that accepts exclusively general construction or demolition debris, is located in a county with a population over 3,000,000 as of January 1, 2000 or in a county that is contiguous to such a county, and is operated and located in accordance with Section 22.38 of the Act;*

*the portion of a site or facility, located within a unit of local government that has enacted local zoning requirements, used to accept, separate, and process uncontaminated broken concrete, with or without protruding metal bars, provided that the uncontaminated broken concrete and metal bars are not speculatively accumulated, are at the site or facility no longer than one year after their acceptance, and are returned to the economic mainstream in the form of raw materials or products;*

*the portion of a site or facility located in a county with a population over 3,000,000 that has obtained local siting approval under Section 39.2 of the Act for a municipal waste incinerator on or before July 1, 2005 and that is used for a non-hazardous waste transfer station;*

*effective January 1, 2008, a site or facility that temporarily holds in transit for 10 days or less, non-putrescible solid waste in original containers, no larger in capacity than 500 gallons, provided that such waste is further transferred to a recycling, disposal, treatment, or storage facility on a non-contiguous site and provided such site or facility complies with the applicable 10-day transfer requirements of the federal Resource Conservation and Recovery Act of 1976 and United States Department of Transportation hazardous material requirements. For purposes of this Section only, "non-putrescible solid waste" means waste other than municipal garbage that does not rot or become putrid, including, but not limited to, paints, solvent, filters, and absorbents;*

*the portion of a site or facility located in a county with a population greater than 3,000,000 that has obtained local siting approval, under Section 39.2 of the Act, for a municipal waste incinerator on or before July 1, 2005 and that is used for wood combustion facilities for energy recovery that accept and burn only wood material, as included in a fuel specification approved by the Agency;*

*a transfer station used exclusively for landscape waste, including a transfer station where landscape waste is ground to reduce its volume, where the landscape waste is held no longer than 24 hours from the time it was received;*

*the portion of a site or facility that is used for the composting of food scrap, livestock waste, crop residue, uncontaminated wood waste, or paper waste, including, but not limited to, corrugated paper or cardboard, and meets all of the following requirements:*

*there must not be more than a total of 30,000 cubic yards of livestock waste in raw form or in the process of being composted at the site or facility at any one time;*

*all food scrap, livestock waste, crop residue, uncontaminated wood waste, and paper waste must, by the end of each operating day, be processed and placed into an enclosed vessel in which air flow and temperature are controlled, or all of the following additional requirements must be met:*

*the portion of the site or facility used for the composting operation must include a setback of at least 200 feet from the nearest potable water supply well;*

*the portion of the site or facility used for the composting operation must be located outside the boundary of the 10-year floodplain or floodproofed;*

*except in municipalities with more than 1,000,000 inhabitants, the portion of the site or facility used for the composting operation must be located at least one-eighth of a mile from the nearest residence, other than a residence located on the same property as the site or facility;*

*the portion of the site or facility used for the composting operation must be located at least one-eighth of a mile from the property line of all of the following areas:*

*facilities that primarily serve to house or treat people that are immunocompromised or immunosuppressed, such as cancer or AIDS patients; people with asthma, cystic fibrosis, or*

*bioaerosol allergies; or children under the age of one year;*

*primary and secondary schools and adjacent areas that the schools use for recreation;*

*any facility for child care licensed under Section 3 of the Child Care Act of 1969; preschools; and adjacent areas that the facilities or preschools use for recreation;*

*by the end of each operating day, all food scrap, livestock waste, crop residue, uncontaminated wood waste, and paper waste must be processed into windrows or other piles and covered in a manner that prevents scavenging by birds and animals and that prevents other nuisances;*

*food scrap, livestock waste, crop residue, uncontaminated wood waste, paper waste, and compost must not be placed within 5 feet of the water table;*

*the site or facility must meet all of the requirements of the Wild and Scenic Rivers Act (16 USC 1271 et seq.);*

*the site or facility must not restrict the flow of a 100-year flood, result in washout of food scrap, livestock waste, crop residue, uncontaminated wood waste, or paper waste from a 100-year flood, or reduce the temporary water storage capacity of the 100-year floodplain, unless measures are undertaken to provide alternative storage capacity, such as by providing lagoons, holding tanks, or drainage around structures at the facility;*

*the site or facility must not be located in any area where it may pose a threat of harm or destruction to the features for which:*

*an irreplaceable historic or archaeological site has been listed under the National Historic Preservation Act (16 USC 470 et seq.) or the Illinois Historic Preservation Act [20 ILCS 3410];*

*a natural landmark has been designated by the National Park Service or the Illinois State Historic Preservation Office; or*

*a natural area has been designated as a Dedicated Illinois Nature Preserve under the Illinois Natural Areas Preservation Act [525 ILCS 30];*

*the site or facility must not be located in an area where it may jeopardize the continued existence of any designated endangered species, result in the destruction or adverse modification of the critical habitat for such species, or cause or contribute to the taking of any endangered or threatened species of plant, fish, or wildlife listed under the Endangered Species Act (16 USC 1531 et seq.) or the Illinois Endangered Species Protection Act [520 ILCS 10];*

*the portion of a site or facility that is located entirely within a home rule unit having a population no less than 120,000 and no more than 135,000, according to the 2000 federal census, and that meets all of the following requirements:*

*the portion of the site or facility is used exclusively to perform testing of a thermochemical conversion technology using only woody biomass, collected as landscape waste within the boundaries of the home rule unit, as the hydrocarbon feedstock for the production of synthetic gas in accordance with Section 39.9 of the Act;*

*the portion of the site or facility is in compliance with all applicable zoning requirements; and*

*a complete application for a demonstration permit at the portion of the site or facility has been submitted to the Agency in accordance with Section 39.9 of the Act within one year after July 27, 2010 (the effective date of Public Act 96-1314);*

*the portion of a site or facility used to perform limited testing of a gasification conversion technology in accordance with Section 39.8 of the Act and for which a complete permit application has been submitted to the Agency prior to one year from April 9, 2010 (the effective date of Public Act 96-887);*

*the portion of a site or facility that it used to incinerate only pharmaceuticals from residential sources that are collected and*

*transported by law enforcement agencies under Section 17.9A of the Act; and*

*until July 1, 2017, the portion of a site or facility:*

*that is used exclusively for the transfer of commingled landscape waste and food scrap held at the site or facility for no longer than 24 hours after their receipt;*

*that is located entirely within a home rule unit having a population of either not less than 100,000 and not more than 115,000 according to the 2010 federal census or not less than 5,000 and not more than 10,000 according to the 2010 federal census;*

*that is permitted, by the Agency, prior to January 1, 2002, for the transfer of landscape waste; and*

*for which a permit application is submitted to the Agency by July 1, 2014 to modify an existing permit for the transfer of landscape waste to also include, on a demonstration basis not to exceed 18 months, the transfer of commingled landscape waste and food scrap. [415 ILCS 5/3.330]*

"Pollution control facility siting appeal" means an appeal of a decision made by a unit of local government filed with the Board pursuant to Section 40.1 of the Act.

"Postconsumer material" means *paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after the waste has been passed through its end usage as a consumer item, including used corrugated boxes, old newspapers, mixed waste paper, tabulating cards, and used cordage. Additionally, it includes all paper, paperboard, and other fibrous wastes that are diverted or separated from the municipal solid waste stream [415 ILCS 20/3(f)(2)(i) and (ii)].* (See also definition of "recycled paper" in this Section.)

"Prehearing conference" means a meeting held in an adjudicatory case to determine the status of the proceedings. A prehearing conference may also be a meeting held in a regulatory proceeding prior to the hearing, the purposes of which *shall be to maximize understanding of the intent and application of the proposal, if possible, and to attempt to identify and limit the issues of disagreement among participants to promote efficient use of time at hearing [415 ILCS 5/27(d)].* (See 35 Ill. Adm. Code 102.404 and 102.406.)

"Proceeding" means an action conducted before the Board pursuant to authority granted under Section 5 of the Act or as otherwise provided by law. Board proceedings are of two types: quasi-legislative (rulemaking and inquiry proceedings) and quasi-judicial (adjudicatory proceedings).

"Proponent" means any person, not including the Board or its staff, who submits a regulatory proposal to the Board for the adoption, amendment, or repeal of a regulation.

"Provisional variance" means a short term variance sought by an applicant and issued by the Agency pursuant to Section 35(b) of the Act. (See 35 Ill. Adm. Code 104.Subpart C.)

"Public comment" means information submitted to the Board during a pending proceeding either by oral statement made at hearing or written statement filed with the Board.

"Public remarks" mean an oral statement that is publicly made at a Board meeting and directed to the Board concerning a proceeding listed on that meeting's agenda. (See Section 101.110(d) of this Subpart.)

"PWSO Act" means the Public Water Supply Operations Act [415 ILCS 45].

"Qualitative description" means a narrative description pertaining to attributes and characteristics.

"Quantitative description" means a numerically based description pertaining to attributes and characteristics.

"RCRA variance" means a variance from a RCRA rule or a RCRA permit required pursuant to Section 21(f) of the Act.

"Record" means the official collection, as kept by the Clerk, of all documents and exhibits including pleadings, transcripts, and orders filed during the course of a proceeding.

"Recycled paper" means paper which contains at least 50% recovered paper material. The recovered paper material must contain at least 45% deinked stock or postconsumer material. (See also "postconsumer material" in this Section.)

~~"Registered agent" means a person registered with the Secretary of State for the purpose of accepting service for any entity, or a person otherwise authorized in writing as an agent for the purpose of accepting service for that entity.~~

"Regulatory hearing" or "proceeding" means a hearing or proceeding held pursuant to Title VII of the Act or other applicable law with respect to regulations.

"Regulatory relief mechanisms" means variances, provisional variances and adjusted standards. (See 35 Ill. Adm. Code 104.)

"Representing" means, for purposes of Part 130, *describing, depicting, containing, constituting, reflecting or recording* [415 ILCS 5/7.1].

"Requester" means, for purposes of Part 130, the person seeking from the agency the material claimed or determined to be a trade secret (see 415 ILCS 5/7.1).

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

"Responsible Operator in Charge" means an individual who is designated as a Responsible Operator in Charge of a community water supply under Section 1 of the PWSO Act.

"Rulemaking" or "rulemaking proceeding" means a proceeding brought under Title VII of the Act or other applicable law for the purpose of adoption, amendment, or repeal of a regulation.

"Sanction" means a penalty or other mechanism used by the Board to provide incentives for compliance with the Board's procedural rules, Board orders or hearing officer orders. (See also Subpart H of this Part.)

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

"Service" means delivery of ~~a document~~ documents upon a person. (See Sections 101.300(c) and 101.304 of this Part.)

"Service list" means the list of persons designated by the hearing officer or Clerk in a regulatory or adjudicatory proceeding upon whom parties or participants must serve motions, prefiled questions and prefiled testimony and any other documents that the parties or participants file with the Clerk unless the hearing officer otherwise directs. (See definition of "notice list" in this Section.) (See also 35 Ill. Adm. Code 102.422.)

"Severance" means the separation of a proceeding into two or more independent proceedings, each of which terminates in a separate, final judgment.

"Site-specific rule or regulation" means a proposed or adopted regulation, not of general applicability, that applies only to a specific facility, geographic site, or activity. (See 35 Ill. Adm. Code 102.208.)

"Sponsor" means the proponent of a pilot project that enters into an EMSA with the Agency.

"State enforcement proceeding" means an enforcement proceeding, other than a citizen's enforcement proceeding, that is brought pursuant to Section 31 of the Act.

"Stay" means a temporary suspension of the regular progress of a proceeding pursuant to an order of the Board or by operation of law. (See Section 101.514 of this Part.)

"Subpoena" means a command to appear at a certain time and place to give testimony upon a certain matter.

"Subpoena duces tecum" means a document that compels the production of specific documents and other items at a specified time and place.

"Summary judgment" means the disposition of an adjudicatory proceeding without hearing when the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (See Section 101.516 of this Part.)

"Third party complaint" means a pleading that a respondent files setting forth a claim against a person who is not already a party to the proceeding. (See 35 Ill. Adm. Code 103.206.)

"Trade secret" means *the whole or any portion or phase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.* [415 ILCS 5/3.490]

"Transcript" means the official recorded testimony from a hearing or public remarks from a Board meeting.

"USEPA" means the United States Environmental Protection Agency.

"Underground storage tank appeal" or "UST appeal" means an appeal of an Agency final decision made pursuant to Title XVI of the Act.

"UST" means underground storage tank.

"Variance" means a temporary exemption from any specified regulation, requirement or order of the Board granted to a petitioner by the Board pursuant to Title IX of the Act *upon presentation of adequate proof that compliance with the*

*rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship [415 ILCS 5/35(a)].*

"Waiver" means the intentional relinquishing of a known right, usually with respect to a hearing before the Board or entry of a Board decision within the decision period. (See also Section 101.308 of this Part.)

"Website" means the Board's computer-based informational and filing service accessed on the Internet at <http://www.ipcb.state.il.us>.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART C: COMPUTATION OF TIME, FILING, SERVICE OF DOCUMENTS, AND STATUTORY DECISION DEADLINES

### Section 101.300 Computation of Time

- a) Computation of Time. Computation of any period of time prescribed in the Act, other applicable law, or this Subpart will begin with the first calendar day following the day on which the act, event or development occurs and will run until the close of business on the last day, or the next business day if the last day is a Saturday, Sunday or national or State legal holiday.
- b) ~~Date~~Time of Filing. Documents will be considered filed with the Clerk only if when they are filed in compliance~~conformance~~ with the requirements found in Section 101.302 of this Subpart and any other filing requirements specified elsewhere in the Board's procedural rules (see 35 Ill. Adm. Code 101 through 130). Subpart J of this Part sets forth when electronic documents submitted to COOL will be considered filed.
  - 1) ~~If a document is submitted to the Clerk for filing delivered in person, by messenger service, or by mail delivery service other than U.S. Mail, by e-mail or facsimile pursuant to Section 101.302(d) of this Subpart, or by third-party commercial carrier, the document is~~documents are considered filed on the date it is~~when they are received by~~in the Office of the Clerk. However, a document received by the Clerk after 4:30 p.m. is considered filed on the next business day. The Clerk will mark the filing date on each filed document.
  - 2) Notwithstanding subsection (b)(1) of this Section, if~~If~~ the Clerk receives a document by U.S. Mail or third-party commercial carrier after~~subsequent~~ to a filing deadline date, yet the postmark date precedes or is the same as the filing deadline date, the document will be deemed filed on:
    - A) The~~the~~ postmark date the document was provided to the U.S. Postal Service; or

- B) The date the document was provided to the third-party commercial carrier for delivery to the Clerk within three business days, provided all filing requirements set forth in Section 101.302 of this Subpart are met.
- 3) For purposes of subsection (b)(2) of this Section, documentation of when the document being filed was provided to the U.S. Postal Service or the third-party commercial carrier consists of the affidavit or certificate required by Section 101.304(d)(2)(A) or (d)(4) of this Subpart and must accompany the document being filed. In addition, for delivery by a third-party commercial carrier, the affidavit or certificate must contain the filing party's representation that the charge for delivery to the Clerk within three business days was prepaid. Documents received in the Office of the Clerk after 4:30 p.m. will be marked as filed the following business day, provided all filing requirements set forth in Section 101.302 of this Subpart are met. The Clerk will record the appropriate filing date on all filed documents.
- 4) For purposes of Board decision deadlines, the decision period does not begin until the date that is marked by the Clerk on which the initial filing is date-stamped by the Clerk.
- c) Date/Time of Service. Documents will be considered served upon another party only if they are served in compliance with Section 101.304 of this Subpart and any other service requirements specified elsewhere in the Board's procedural rules. The date on which service of a document is considered to have been completed is determined as follows: In the case of personal service, service is deemed complete on the date personal delivery was effectuated. In the case of facsimile transmission, service is deemed complete on the date of a complete and proper transmittal. Facsimile filings are only allowed in accordance with Section 101.302(d) of this Subpart. In the case of service by e-mail, Section 101.1060(d) of this Part sets forth when service is deemed complete. E-mail filings are only allowed in accordance with Section 101.302(d) of this Subpart. In the case of service by registered or certified mail, or by messenger service, service is deemed complete on the date specified on the registered or certified mail receipt or the messenger service receipt. In the case of service by U.S. Mail, service is presumed complete four days after mailing. The presumption can be rebutted by proper proof.
- 1) Personal Service. Personal service of a document is complete on the date the document was delivered, as that date is specified in either the affidavit or certificate of service signed by the person who made personal delivery or the declaration of service signed by the process server who made personal delivery.

- 2) Service by U.S. Mail or Third-Party Commercial Carrier with Recipient Signature. If a recipient's signature is recorded by the U.S. Postal Service or a third-party commercial carrier upon delivery of a document, service by U.S. Mail or a third-party commercial carrier is complete on the date the document was delivered, as that date is specified in the delivery confirmation signed by the recipient of service.
  - 3) Service by E-Mail or Facsimile. Service of a document by e-mail or facsimile is complete on the date the document was successfully transmitted, as that date is specified in the affidavit or certificate of service, signed by the party to the proceeding who is serving the document. However, a document successfully e-mailed or faxed on a Saturday or Sunday, on a national or State legal holiday, or after 5:00 p.m. on a weekday is deemed served on the next business day.
  - 4) Service by U.S. Mail or Third-Party Commercial Carrier without Recipient Signature. If a recipient's signature is not recorded by the U.S. Postal Service or a third-party commercial carrier upon delivery of a document, service by U.S. Mail or a third-party commercial carrier is presumed complete four days after the date on which the document was provided to the U.S. Postal Service or the third-party commercial carrier.
    - A) The presumption applies only if an affidavit or certificate of service, signed by the party to the proceeding who is serving the document, states the following: the date, the time by when, and the place the document was provided to the U.S. Postal Service or the third-party commercial carrier; the address appearing on the envelope or package containing the document; and that proper postage or the delivery charge was prepaid.
    - B) The presumption can be rebutted by proper proof, which may include delivery tracking information from the website of the U.S. Postal Service or the website of the third-party commercial carrier.
- d) Date of Board Decision.
- 1) For purposes of statutory decision deadline proceedings, the date of the Board decision is the date of the Board meeting where a final opinion and order of the Board was adopted by the vote of at least three Board members.
  - 2) For purposes of appeal, the date of the party's certified mail receipt of the Board decision is the date of service of the final opinion and order by the Board upon the appealing party. Or, in the event of a timely filed motion for reconsideration filed pursuant to Section 101.520 of this Part, the date

of the party's certified mail receipt of the Board order ruling upon the motion is the date of service by the Board upon the appealing party.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 101.302 Filing of Documents**

- a) This Section contains the Board's general filing requirements. Additional requirements may exist for specific proceedings elsewhere in the Board's procedural rules (see 35 Ill. Adm. Code 101 through 130). The Clerk will refuse for filing any document that does not comply with the minimum requirements of this Section.
  
- b) ~~All documents to be filed with the Board must provide the name and signature of the person seeking to file the document and identify the name of the person on whose behalf the document is being filed. If a paper document is submitted for filing, the original must bear the original pen and ink signature of the person seeking to file the document. Signatures for purposes of electronic filings through COOL are addressed in Section 101.1010 of this Part. All documents to be filed with the Board must be filed with the Clerk's Office. Service on a hearing officer does not constitute filing with the Board unless the document is submitted to the hearing officer during the course of a hearing.~~
  - 1) Documents may be filed at the following address:

Pollution Control Board, Attn: Clerk  
100 West Randolph Street  
James R. Thompson Center, Suite 11-500  
Chicago, Illinois 60601-3218
  - 2) All documents to be filed with the Clerk must provide the name and signature of the person seeking to file the document and identify the name of the person on whose behalf the document is being filed. If a paper document is submitted for filing, the original must bear the original pen-and-ink signature of the person seeking to file the document. Signatures for purposes of electronic filings through COOL are addressed in Section 101.1010 of this Part.
  - 3) Each document being filed with the Clerk (e.g., enforcement complaint, petition for review) must be accompanied by a notice of filing (see Appendix D to this Part) and documentation of service (see Section 101.304(d) of this Subpart).
  - 4) The date on which a document is considered to have been filed is determined pursuant to Section 101.300(b) of this Subpart.

- 5) Service of a document upon a hearing officer does not constitute filing with the Clerk unless the document is submitted to the hearing officer during the course of a hearing.
- c) Documents may be filed with the Clerk by U.S. Mail ~~or other mail delivery service~~, by electronic means in accordance with Subpart J of this Part, in person, or by third-party commercial carrier messenger.
- d) A filing by e-mail or facsimile will only be allowed with the prior approval of the Clerk of the Board or the hearing officer assigned to the proceeding. Any prior approval by the Clerk or hearing officer applies only to the specified filing.
- e) The initial filings listed in this subsection require filing fees and will only be considered filed when accompanied by the appropriate fee. The fee may be paid in the form of government voucher, money order, or check made payable to the Illinois Pollution Control Board, or electronically through COOL in accordance with Section 101.1040(b)(1) of this Part, but cannot be paid in cash.:
- 1) Petition for Site-Specific Regulation, \$75;
  - 2) Petition for Variance, \$75;
  - 3) Petition for Review of Agency Permit Decision, UST Decision, or any other appeal filed pursuant to Section 40 of the Act, \$75;
  - 4) Petition to Review Pollution Control Facility Siting Decisions, pursuant to Section 40.1 of the Act, \$75; and
  - 5) Petition for Adjusted Standard, pursuant to Section 28.1 of the Act, \$75.
- f) For each document~~All documents~~ filed with the Clerk, the filing party must serve a copy of the document upon the other parties and, if a hearing officer has been assigned, upon the hearing officer~~be served~~ in accordance with Section 101.304 of this Subpart C of this Part.
- g) All documents filed with the Board must contain the relevant proceeding caption and docket number. All documents must be submitted on or formatted to print on 8½ x 11 inch paper, except as provided in subsection (j) of this Section. Paper documents must be submitted on recycled paper as defined in Subpart B of this Part, and, if feasible, double sided. All pages in a document must be sequentially numbered. All documents created by word processing programs must be formatted as follows:
- 1) The margins must each be a minimum one inch on the top, bottom, and both sides of the page; and

- 2) The size of the type in the body of the text must be no less than 12 point font, and in footnotes no less than 10 point font.
- h) Unless the Board or its procedural rules provide otherwise, all documents must be filed in paper or through COOL electronically pursuant to this subsection.
- 1) Except as provided in subsection (h)(2), (h)(3), or (h)(4) of this Section:
    - A) Any type of document may be filed in paper or through COOL.
    - B) If a document is filed in paper, the original and three copies of the document (four total) are required.
    - C) If a document is filed through COOL in accordance with Subpart J of this Part, no paper original or copy of the document is required.
  - 2) The original documents listed in this subsection (h)(2) must be filed in paper. In lieu of filing three paper copies with the original pursuant to subsection (h)(1)(B) of this Section, a compact disk of the document in text-searchable Adobe PDF may be filed with the original. The following documents must be filed in paper:
    - A) The original Agency record required by 35 Ill. Adm. Code 105.212 (permit decision or other final decision), 105.302 (CAAPP permit application), 105.410 (leaking UST decision), or 125.208 (recommendation on tax certification) (see 35 Ill. Adm. Code 105.116);
    - B) The original OSFM record required by 35 Ill. Adm. Code 105.508 (UST Fund eligibility and deductibility) (see 35 Ill. Adm. Code 105.116);
    - C) The original local siting authority record required by 35 Ill. Adm. Code 107.302 (pollution control facility siting) (see 35 Ill. Adm. Code 107.304); and
    - D) An original oversized exhibit (see subsection (j) of this Section).
  - 3) A document containing information claimed or determined to be a trade secret, or other non-disclosable information pursuant to 35 Ill. Adm. Code 130, is prohibited from being filed electronically and must instead be filed only in paper. The version of the document that is redacted pursuant to 35 Ill. Adm. Code 130 may be filed through COOL.
  - 4) When filing a rulemaking proposal, the proponent must file three paper originals of any document that is protected by copyright law (17 USC 101

*et seq.*) and proposed pursuant to Section 5-75 of the IAPA [5 ILCS 100/5-75] to be incorporated by reference; provided, however:

- A) One or two paper copies may be substituted for the corresponding number of required paper originals if the rulemaking proposal includes the copyright owner's written authorization for the rulemaking proponent to create the paper copy or copies.
  - B) The proponent may file no more than two authorized copies in lieu of the corresponding number of required originals.
  - C) Any copyrighted document that is proposed for incorporation by reference is prohibited from being filed electronically and must instead be filed only in paper. The remainder of the rulemaking proposal may be filed through COOL.
- i) No written discovery, including interrogatories, requests to produce, and requests for admission, or any response to written discovery, may be filed with the Clerk of the Board except upon leave or direction of the Board or hearing officer. Any discovery request under these rules to any nonparty must be filed with the Clerk of the Board in accordance with subsection (h) of this Section.
  - j) Oversized Exhibits. When reasonably practicable, oversized exhibits must be reduced to conform to or be formatted to print on 8½ x 11 inch paper for filing with the Clerk's Office. However, even when an oversized exhibit is so reduced or formatted, the original oversized exhibit still must be filed with the Clerk's Office. In accordance with 2 Ill. Adm. Code 2175.300, the original oversized exhibit may be returned to the person who filed it.
  - k) Page Limitation. No motion, brief in support of motion, or brief may exceed 50 pages, and no amicus curiae brief may exceed 20 pages, without prior approval of the Board or hearing officer. These limits do not include appendices containing relevant material.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **Section 101.304 Service of Documents**

- a) Service Requirements. This Section contains the Board's general service requirements. However, the more specific Part for a proceeding type may contain additional requirements.
- b) Duty to Serve and When to Initiate Service. ~~Parties in Board adjudicatory proceedings are responsible for service of all documents they file with the Clerk's Office. Documentation of service of initial filings must be filed with the Board upon completion of service. A party filing a document with the Clerk pursuant to~~

Section 101.302 of this Subpart must also serve one copy of the document upon each of the other parties to the adjudicatory proceeding and, if a hearing officer has been assigned, upon the assigned hearing officer. Service of a document must be initiated concurrently with submitting the document to the Clerk for filing.

- 1) Service of a document upon a party must be made upon a person authorized by law to receive service on behalf of the party. If a party is represented by an attorney who has filed an appearance, service upon the party is made by serving the document upon the party's attorney. If more than one attorney appears for a party, service upon one of the party's attorneys is sufficient.
  - 2) Each document being served (e.g., enforcement complaint, petition for review) must be accompanied by a notice of filing (see Appendix D to this Part) and a copy of the documentation of service (see subsection (d) of this Section).
  - 3) The date on which service of a document is considered to have been completed is determined pursuant to Section 101.300(c) of this Subpart.
  - 4) A proceeding is subject to dismissal, and the filing party is subject to sanctions, if service is not timely initiated or completed.
  - 5) Whether service of a document was proper may be challenged by the party allegedly served. To avoid waiving the right to contest personal jurisdiction, any challenge to service must be made pursuant to Section 101.400(a)(5) of this Part.
- e) MethodsMethod of Service. Service may be effectuated by U.S. Mail or other mail delivery service, in person, by messenger, or by e-mail in accordance with Subpart J, of this Part, except for service of enforcement complaints, administrative citations, and EMSA statements of deficiency, which must be made personally, by registered or certified mail, or by messenger service. Documentation of service of enforcement complaints, administrative citations, and EMSA statements of deficiency must be filed with the Board upon completion of service. A method of service specified in this subsection (c) must be used to serve a document.
- 1) Except as provided in subsection (c)(2) of this Section, service of documents may be made by any of the following methods:
    - A) By personal service;
    - B) By U.S. Mail;
    - C) By a third-party commercial carrier;

- D) By e-mail in accordance with Subpart J of this Part; and
- E) By facsimile, but only if the party being served has filed a notice consenting to receipt of facsimile service and not filed a notice revoking that consent.
- 2) Service of enforcement complaints, administrative citations pursuant to Section 31.1 of the Act, and EMSA statements of deficiency upon respondents must be made as follows:
  - A) By personal service;
  - B) By U.S. Mail with a recipient's signature recorded by the U.S. Postal Service upon delivery; or
  - C) By a third-party commercial carrier with a recipient's signature recorded by the third-party commercial carrier upon delivery.
- 3) Service of administrative citations pursuant to Section 23.1 of the PWSO Act must be made as follows:
  - A) By personal service; or
  - B) By certified mail.
- d) Documentation Affidavit or Certificate of Service and When to File Documentation of Service. A party serving a document upon another party must also file documentation of that service. A proceeding is subject to dismissal, and the filing party is persons are subject to sanctions, if documentation of service is not timely filed with the Clerk. in accordance with Section 101.800 of this Part, if service is not timely made. Documentation of service is the responsibility of the person filing and serving the document. An affidavit of service or certificate of service must accompany all filings. A sample form of the affidavit of service and certificate of service is available in Appendix E of this Part. The requirements for documenting service and filing that documentation are as follows:
  - 1) For personal service of a document, either an affidavit or certificate of service signed by the person who made personal delivery or a declaration of service signed by the process server who made personal delivery must accompany the document being filed with the Clerk. However, if the signed affidavit, certificate, or declaration is not available to the filing party when the document (e.g., enforcement complaint, petition for review) is submitted for filing:
    - A) An affidavit or certificate of service, signed by the filing party, must accompany the document being filed with the Clerk. The

affidavit or certificate of service must state that service has been initiated, but not yet completed, and the following: the date, the time by when, and the place the document was provided to the person making personal delivery; the address appearing on the envelope or package containing the document; and that the delivery charge was prepaid; and

B) Within seven days after it becomes available to the filing party, the affidavit or certificate of service containing the signature of the person who made personal delivery or the declaration of service containing the signature of the process server must be filed with the Clerk, accompanied by a notice identifying the filed document (e.g., enforcement complaint, petition for review) to which the signed affidavit, certificate, or declaration corresponds. A copy of the signed affidavit, certificate, or declaration and the notice must be served pursuant to subsection (a) of this Section.

2) For service of a document by U.S. Mail or third-party commercial carrier with a recipient's signature recorded by the U.S. Postal Service or the third-party commercial carrier upon delivery, the delivery confirmation containing the recipient's signature must accompany the document being filed with the Clerk. However, if the delivery confirmation containing the recipient's signature is not available to the filing party when the document (e.g., enforcement complaint, petition for review) is submitted for filing:

A) An affidavit or certificate of service, signed by the filing party, must accompany the document being filed with the Clerk. The affidavit or certificate of service must state that service has been initiated, but not yet completed, and the following: the date, the time by when, and the place the document was provided to the U.S. Postal Service or the third-party commercial carrier; the address appearing on the envelope or package containing the document; and that proper postage or the delivery charge was prepaid; and

B) Within seven days after it becomes available to the filing party, the delivery confirmation containing the recipient's signature must be filed with the Clerk, accompanied by a notice identifying the filed document (e.g., enforcement complaint, petition for review) to which the signed delivery confirmation corresponds. A copy of the delivery confirmation and the notice must be served pursuant to subsection (a) of this Section.

3) For service of a document by e-mail or facsimile, an affidavit or certificate of service must accompany the document being filed with the Clerk. An affidavit or certificate of e-mail service must comply with Section

101.1060 of this Part. An affidavit or certificate of facsimile service must include the date of the facsimile transmission and the time by when it took place, the telephone number to which the transmission was sent, the number of pages transmitted, and a statement that the document was served by facsimile.

- 4) For service of a document by U.S. Mail or a third-party commercial carrier without a recipient's signature recorded by the U.S. Postal Service or the third-party commercial carrier upon delivery, an affidavit or certificate of service must accompany the document being filed with the Clerk. The affidavit or certificate must state the following: the date, the time by when, and the place the document was provided to the U.S. Postal Service or the third-party commercial carrier; the address appearing on the envelope or package containing the document; and that proper postage was or the delivery charge was prepaid.
  - 5) An affidavit of service must be notarized and is for use by a non-attorney. A certificate of service is for use by an attorney. Sample forms of an affidavit of service and a certificate of service are available in Appendices E and H to this Part.
  - 6) A certificate of service must bear an attorney's handwritten or typographical signature. Signatures in affidavits of service, declarations of service, and delivery confirmations must be written by hand. A handwritten signature in documentation of service filed with the Clerk may be a facsimile or digitized electronic signature.
- e) Service of Amicus Curiae Briefs. Any person who files an amicus curiae brief with the Board in any proceeding must serve copies of that brief on all parties in accordance with this Section.
  - f) Service of Comments of Participants in an Adjudicatory Proceeding. Participants are required to serve their comments upon the parties to the proceeding. The Board will consider the comments as time and the Act or other applicable law allow.
  - g) Service on Agencies. Service must be at the addresses listed below unless a specific person has an appearance on file with the Board or has, in accordance with Section 101.1070 of this Part, consented to e-mail service.
    - 1) Service on the Illinois Environmental Protection Agency (Agency). The Agency must be served at the following address:

Division of Legal Counsel  
 Illinois Environmental Protection Agency  
 1021 North Grand Avenue East

P.O. Box 19276  
Springfield IL 62794-9276

- 2) Service on Office of State Fire Marshal (OSFM). The OSFM must be served at the following address:

Division of Petroleum and Chemical Safety  
Office of the State Fire Marshal  
1035 Stevenson Dr.  
Springfield IL 62703

- 3) Service on the Illinois Attorney General. The Office of the Attorney General must be served at the following address:

Division Chief of Environmental Enforcement  
Office of the Attorney General  
100 West Randolph St., Suite 1200  
Chicago IL 60601

- 4) Service on the Illinois Department of Natural Resources (DNR). DNR must be served at the following address:

Office of Legal Services  
Illinois Department of Natural Resources  
One Natural Resources Way  
Springfield IL 62702-1271

- 5) Service on the Illinois Department of Transportation (IDOT). IDOT must be served at the following address:

Office of Chief Counsel  
DOT Administration Building  
2300 S. Dirksen Parkway, Room 300  
Springfield IL 62764

- 6) Service on Region V of the United States Environmental Protection Agency (USEPA). USEPA Region V must be served at the following address:

USEPA, Region V  
77 West Jackson  
Chicago IL 60604

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

### Section 101.400 Appearances, Withdrawals, and Substitutions of Attorneys in Adjudicatory Proceedings

- a) Appearances. A person who is a party in a Board adjudicatory proceeding may appear as follows:
- 1) Individuals may appear on their own behalf or through an attorney-at-law licensed and registered to practice law. (Section 1 of the Attorney Act [705 ILCS 205/1])
  - 2) When appearing before the Board, any person other than individuals must appear through an attorney-at-law licensed and registered to practice law. (Section 1 of the Corporation Practice of Law Prohibition Act [705 ILCS 220/1] and Section 1 of the Attorney Act [705 ILCS 205/1])
  - 3) An out-of-state attorney may appear as counsel and provide legal services in a particular proceeding before the Board only if the attorney has permission to do so pursuant to Supreme Court Rule 707 (Ill. S. Ct. Rule 707). No Board order is required for an out-of-state attorney to appear and no motions to appear pro hac vice may be filed with the Board. The out-of-state attorney's appearance must include the following:
    - A) A representation that the out-of-state attorney is in, and will maintain throughout the proceeding, compliance with Illinois Supreme Court Rule 707; and
    - B) Identification of the active status Illinois attorney associated with the out-of state attorney pursuant to Supreme Court Rule 707 and the date on which the active status Illinois attorney filed an appearance in the proceeding. ~~Attorneys who are licensed to practice in a state other than Illinois and who are not licensed and registered to practice in the State of Illinois may request to appear pro hac vice on a particular matter on a motion filed with the Board.~~
  - 4) Any attorney appearing in a representative capacity must file a separate written ~~notice of appearance~~ with the Clerk, together with documentation of service of the appearance pursuant to Section 101.304(d) of this Part and notice of filing of the appearance pursuant to Section 101.304(b)(2) of this Part on all parties in the proceeding. Law firms, the Agency, and the Attorney General's Office when appearing before the Board must designate a lead attorney for purposes of phone and mail contact pertaining to the proceeding. Absent a ~~separate~~ written notice, the Board will designate the attorney whose signature appears first on the party's first filing ~~complaint~~ as the lead attorney.

- 5) Any person ~~seeking appearing before the Board may appear in a special limited capacity~~ to contest personal jurisdiction must do so by filing a motion with the Board in accordance with Section 2-301 of the Code of Civil Procedure [735 ILCS 5/2-301].
- b) Withdrawals. An attorney who has appeared in a representative capacity and who wishes to withdraw from that representation must file a notice of withdrawal with the Clerk, together with documentation of service and notice of filing on all parties or their representatives.
- c) Substitution. Any attorney who substitutes for an attorney of record must file a written appearance pursuant to subsection (a) of this Section. That appearance must identify the attorney for whom the substitution is made. However, no attorney will be considered withdrawn from a proceeding until a formal withdrawal is filed in accordance with subsection (b) of this Section.
- d) Any person may appear on behalf of himself or others in a rulemaking proceeding in accordance with 35 Ill. Adm. Code 102.100(b).

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### SUBPART J: ELECTRONIC FILING AND E-MAIL SERVICE

##### **Section 101.1060 E-Mail Service**

- a) Except as provided in subsections (b) and (c) of this Section, a person required to serve a document may serve the document by e-mail, in lieu of serving a paper document, if the recipient has consented to e-mail service in the proceeding and has not revoked the consent. (See Section 101.1070 of this Subpart.) To serve a document by e-mail, it is not necessary to electronically file the document or to obtain a State of Illinois digital signature certificate.
- b) Service of enforcement complaints, administrative citations under to Section 31.1 of the Act, and EMSA statements of deficiency on a respondent must be made personally, by U.S. Mail with a recipient's signature recorded~~registered or certified mail~~, or by a third-party commercial carrier with a recipient's signature recorded~~messenger service~~. (See Section 101.304(c)(2) of this Part.)
- c) Service of administrative citations under Section 23.1 of the PWSO Act must be made personally or by certified mail.
- de) A person required to serve a document on the hearing officer may serve the hearing officer by sending the document to the hearing officer's e-mail address in lieu of serving a paper document.

- d) ~~When a document is served by e-mail, service is considered complete on the date of successful e-mail transmission, except that a document successfully e-mailed on a Saturday or Sunday, on a national or State legal holiday, or after 5:00 p.m. on a weekday is deemed served the next business day.~~
- e) When a document is served by e-mail, documentation of service must be filed with the Clerk and served on all persons entitled to service in that proceeding. A sample form of affidavit or certificate of e-mail service is available in Appendix H to this Part. An affidavit or certificate of e-mail service must ~~be filed with the document in question and~~ include the following:
  - 1) The e-mail address of the recipient and the person authorizing the filing;
  - 2) The number of pages in the e-mail transmission;
  - 3) A statement that the document was served by e-mail; and
  - 4) The date ~~and time~~ of the e-mail transmission and the time by when it took place.
- f) If any computer malfunction precludes the e-mail service of a document, the person authorizing the filing must promptly serve the document in paper pursuant to Section 101.304(c) of this Part.
- g) Except for final orders of the Board, which the Clerk's Office serves in paper by certified mail, the Clerk's Office may serve Board orders and hearing officer orders by e-mail, in lieu of serving paper documents, if the recipient has consented to e-mail service in the proceeding and has not revoked the consent. (See Section 101.1070 of this Subpart.) The Clerk will record the date and time of e-mail service, consistent with subsection (e) of this Section.

(Source: Added at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 101.APPENDIX A Captions**

**Section 101.ILLUSTRATION I Administrative Citation Pursuant to Section 31.1 of the Act**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

COUNTY OF COOK, )  
 )  
 Complainant, )  
 )  
 v. ) AC xx-xxx



DISCHARGE TO XYZ CREEK: )  
35 Ill. Adm. Code )

BOARD NOTE: The Board notes that all docket numbers consist of letter(s) followed by two numbers. The first two digit number is the fiscal year the matter was filed. Then the second number is the sequential number for that type of filing the Board has received that year. Persons making filings are not responsible for the Board docket number on the original filing. The Clerk of the Board will assign the appropriate docket number when the matter is filed. All filings in a matter that has been assigned a docket number should contain a docket number located as indicated on the examples above. The Board will also be designating its opinion and orders with the type of case and media involved in the matter. Where the above examples have the type of case preceded by "X" the Board will, for example if the case is dealing with a variance from certain water regulations, put the media, water, after variance to become "Variance-Water". Again, persons making filings need not place this on original filings. However, all filings in a matter that has been assigned the media should indicate that media in the location as in the above examples. Where there are specific procedural rules developed for specific types of cases, as in a "UST Appeal", persons making filings should follow those examples.

**Section 101.APPENDIX E Affidavit or Certificate of Service**

**Section 101.ILLUSTRATION A Service by Non-Attorney**

AFFIDAVIT OF SERVICE

I, the undersigned, on oath [or affirmation] state that I have served on the date of \_\_\_\_\_, the attached [describe document served]; upon the following persons by [describe method of service, e.g., depositing the document in a U.S. Postal Service mailbox or delivering the document to a third-party commercial carrier], by the time of \_\_\_\_\_, with proper postage or delivery charges prepaid upon the following persons:

[list persons served and the respective addresses at which they were served]

[signature]

Notary Seal

SUBSCRIBED AND SWORN TO BEFORE ME this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 101.ILLUSTRATION B Service by Attorney**

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served on the date of \_\_\_\_\_ the attached [describe document served]; upon the following persons by [describe method of service, e.g., depositing the document in a U.S. Postal Service mailbox or delivering the document to a third-party commercial carrier], by the time of \_\_\_\_\_, with proper postage or delivery charges prepaid upon the following persons:

[list persons served and the respective addresses at which they were served]

[signature]

[date]

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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

PART 103  
ENFORCEMENT

SUBPART A: GENERAL PROVISIONS

Section	
103.100	Applicability
103.102	Severability
103.104	Definitions
103.106	General

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

Section	
103.200	Who May File
103.202	Parties
103.204	Notice, Complaint, and Answer
103.206	Adding Parties; Filing Counter-, Cross-, or Third-Party Complaints; Filing New or Modified Claims
103.208	Request for Informal Agency Investigation
103.210	Notice of Complaint
103.212	Hearing on Complaint

SUBPART C: SETTLEMENT PROCEDURE

Section

- 103.300 Request for Relief from Hearing Requirement in State Enforcement Proceeding  
 103.301 Request for Relief from Hearing Requirement in Citizen's Enforcement Proceeding  
 103.302 Contents of Proposed Stipulation and Settlement Agreement  
 103.304 Hearing on Proposed Stipulation and Settlement Agreement  
 103.306 Board Order on Proposed Stipulation and Settlement Agreement

#### SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

- Section  
 103.400 Purpose, Scope, and Applicability  
 103.402 Interim Order  
 103.404 Joinder of the Agency  
 103.406 Draft Permit or Statement  
 103.408 Stipulated Draft Remedy  
 103.410 Contents of Public Notice  
 103.412 Public Comment  
 103.414 Hearing  
 103.416 Contents of Board Order

#### SUBPART E: IMPOSITION OF PENALTIES

- Section  
 103.500 Default  
 103.502 Civil Penalties  
 103.504 Civil Penalties Method of Payment

#### SUBPART F: ENFORCING BOARD ORDERS

- Section  
 103.600 Civil Action  
 103.APPENDIX A Comparison of Former and Current Rules (Repealed)

**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 \_\_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

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

**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~~registered or certified mail, a third-party commercial carrier with a recipient's signature recorded messenger service,~~ 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) of this Section, 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. \_\_\_\_\_, effective \_\_\_\_\_)

**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) of this Section, 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 of this Subpart.
- 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) of this Section 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~~registered or certified mail~~, a third-party commercial carrier with a recipient's signature recorded~~messenger service~~, or personal service upon the respondent, counter-respondent, cross-respondent, or third-party respondent.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART D: PROCEEDINGS INVOLVING RCRA PERMITS

**Section 103.404 Joinder of the Agency**

If the Board directs that the Agency be joined, the Clerk will send, ~~by messenger or~~ 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. \_\_\_\_\_, effective \_\_\_\_\_)

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

## PART 106

## PROCEEDINGS PURSUANT TO SPECIFIC RULES OR STATUTORY PROVISIONS

## SUBPART A: GENERAL PROVISIONS

Section	
106.100	Applicability
106.102	Severability
106.104	Definitions

## SUBPART B: HEATED EFFLUENT, ARTIFICIAL COOLING LAKE, AND SULFUR DIOXIDE DEMONSTRATIONS

Section	
106.200	General
106.202	Petition Requirements
106.204	Additional Petition Requirements in Sulfur Dioxide Demonstrations
106.206	Notice
106.208	Recommendation and Response
106.210	Burden of Proof

## SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES

Section	
106.300	General
106.302	Initiation of Proceeding
106.304	Petition Content Requirements
106.306	Response and Reply
106.308	Hearing
106.310	Burden of Proof

**SUBPART D: REVOCATION AND REOPENING OF CLEAN AIR ACT PERMIT  
PROGRAM (CAAPP) PERMITS**

Section	
106.400	General
106.402	Definitions
106.404	Initiation of Proceedings
106.406	Petition Content Requirements
106.408	Response and Reply
106.410	Hearing
106.412	Burden of Proof
106.414	Opinion and Order
106.416	USEPA Review of Proposed Determination

**SUBPART E: MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY  
DETERMINATIONS**

Section	
106.500	General
106.502	Definitions
106.504	Initiation of Proceedings
106.506	Petition Content Requirements
106.508	Response and Reply
106.510	Hearing
106.512	Burden of Proof
106.514	Board Action

**SUBPART F: CULPABILITY DETERMINATIONS FOR PARTICULATE MATTER LESS  
THAN OR EQUAL TO 10 MICRONS (PM-10)**

Section	
106.600	General
106.602	Initiation of Proceedings
106.604	Petition Content Requirements
106.606	Response and Reply
106.608	Hearing
106.610	Burden of Proof

**SUBPART G: INVOLUNTARY TERMINATION OF ENVIRONMENTAL MANAGEMENT  
SYSTEM AGREEMENTS (EMSAs)**

Section	
106.700	Purpose
106.702	Applicability
106.704	Termination Under Section 52.3-4(b) or (b-5) of the Act
106.706	Who May Initiate, Parties

106.707	Notice, Statement of Deficiency, Answer
106.708	Service
106.710	Notice of Hearing
106.712	Deficient Performance
106.714	Board Decision
106.716	Burden of Proof
106.718	Motions, Responses
106.720	Intervention
106.722	Continuances
106.724	Discovery, Admissions
106.726	Subpoenas
106.728	Settlement Procedure
106.730	Authority of Hearing Officer, Board Members, and Board Assistants
106.732	Order and Conduct of Hearing
106.734	Evidentiary Matters
106.736	Post-Hearing Procedures
106.738	Motion After Entry of Final Order
106.740	Relief from Final Orders

**SUBPART H: AUTHORIZATIONS UNDER THE REGULATION OF PHOSPHORUS IN  
DETERGENTS ACT**

Section	
106.800	General
106.802	Definitions
106.804	Initiation of Proceeding
106.806	Petition Content Requirements
106.808	Response and Reply
106.810	Hearing
106.812	Burden of Proof

**SUBPART I: AUTHORIZATIONS FOR CERTAIN LANDSCAPE WASTE AND COMPOST  
APPLICATIONS AND ON-FARM COMPOSTING FACILITIES**

Section	
106.900	General
106.902	Initiation of Proceeding
106.904	Petition Content Requirements
106.906	Petition Notice Requirements
106.908	Proof of Petition Notice Requirements
106.910	Response and Reply
106.912	Hearing
106.914	Burden of Proof

**SUBPART J: TEMPORARY LANDFILL BAN WAIVERS UNDER THE ELECTRONIC  
PRODUCTS RECYCLING AND REUSE ACT**

Section	
106.1000	General (Repealed)
106.1002	Definitions (Repealed)
106.1004	Initiation of Proceeding (Repealed)
106.1006	Petition Content Requirements (Repealed)
106.1008	Response and Reply (Repealed)
106.1010	Burden of Proof (Repealed)
106.1012	Board Decision (Repealed)

SUBPART K: ALTERNATIVE THERMAL EFFLUENT LIMITATIONS  
PURSUANT TO SECTION 316(a) OF THE CLEAN WATER ACT AND  
35 ILL. ADM. CODE 304.141(c)

Section	
106.1100	Purpose
106.1105	General
106.1110	Definitions
106.1115	Early Screening
106.1120	Detailed Plan of Study
106.1125	Initiation of Proceeding
106.1130	Contents of Petition
106.1135	Petition Notice Requirements
106.1140	Proof of Petition Notice Requirements
106.1145	Recommendation and Response
106.1150	Request for Public Hearing
106.1155	Notice and Conduct of Hearing
106.1160	Burden of Proof
106.1165	Evidentiary Matters
106.1170	Opinion and Order
106.1175	Post-Hearing Procedures
106.1180	Renewal of Alternative Thermal Effluent Limitations

106.APPENDIX A Comparison of Former and Current Rules (Repealed)

**AUTHORITY:** Implementing and authorized by Sections 5, 14.2(c), 21(q), 22.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3 of the Environmental Protection Act (the Act) [415 ILCS 5/5, 14.2(c), 21(q), 21.622.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3], and Section 5 of the Regulation of Phosphorus in Detergents Act [415 ILCS 92/5].

**SOURCE:** Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186, effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg. 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4, 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in

R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579, effective July 11, 1994; amended in R99-9 at 23 Ill. Reg. 2697, effective February 16, 1999; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 550, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8817, effective June 8, 2005; amended in R10-19 at 34 Ill. Reg. 11486, effective July 23, 2010; amended in R12-21 at 36 Ill. Reg. 9236, effective June 7, 2012; amended in R12-11 at 36 Ill. Reg. 16581, effective November 5, 2012; amended in R13-20 at 38 Ill. Reg. 6086, effective February 26, 2014; amended in R14-21 at 39 Ill. Reg. 2375, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**SUBPART G: INVOLUNTARY TERMINATION OF ENVIRONMENTAL MANAGEMENT SYSTEM AGREEMENTS (EMSAs)**

**Section 106.708 Service**

The Agency must serve a copy of the notice of filing and statement of deficiency personally, by U.S. Mail with a recipient's signature recorded~~registered or certified mail~~, or by a third-party commercial carrier with a recipient's signature recorded~~messenger service~~. (See 35 Ill. Adm. Code 101.300(c) and 101.304(c)(2).)

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**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 Issuance
108.202	Service of Citation/Filing of Citation with the Board
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 (Act) [415 ILCS 5/26 and 27] and implementing Sections 21(o), 21(p), 22.51, 22.51a, 31.1, and 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, and 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].

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; and amended in R15-20 at \_\_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## 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 pursuant to Section 31.1 of the Act or Section 23.1 of the Public Water Supply Operations (PWSO) 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 this Part, the provisions of this Part will apply.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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

**Section 108.200 Administrative Citation Issuance**

An administrative citation (AC) may be issued by either of the following:

- a) Illinois Environmental Protection Agency (Agency). The Agency may issue an AC pursuant to Section 31.1 of the Act or Section 23.1 of the PWSO Act.
- b) Delegated Unit of Local Government (Delegated Unit) for an administrative citation issued pursuant to Section 31.1 of the Act. 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.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 108.202 Service of Citation/Filing of Citation with the Board**

- a) In accordance with Section 31.1 of the Act, the Agency or Delegated Unit may serve an AC upon any person (AC Recipient) believed, through direct observation, to have violated Section 21(o) ~~or (p)~~, 21(p), 22.51, 22.51a, or 55(k) of the Act. ~~Service of an AC upon the AC Recipient must be made personally, by registered or certified mail, or by messenger service. (See 35 Ill. Adm. Code 101.300(e) and 101.304(e).)~~
  - 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 subsection (o) or (p) of Section 21 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, which 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 must pay hearing costs pursuant to Section 108.500 of this Part.

- 2) The Agency must serve the AC upon the AC Recipient by personal service, by U.S. Mail with a recipient's signature recorded, or by a third-party commercial carrier with a recipient's signature recorded. 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.
- 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*
    - E) *An affidavit by the personnel recording the violation.*
  - 2) The Agency must serve the AC upon the AC Recipient by personal service or certified mail. The Agency must file the AC with the Board no later than 15 days after the date of service upon the AC Recipient.
- b) ~~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:~~
- 1) ~~A statement specifying the provisions of Section 21(o) or (p) of the Act that the AC Recipient was observed to have violated;~~
  - 2) ~~A copy of the inspection report in which the Agency or Delegated Unit recorded the violation, which report must include the date and time of inspection, and weather conditions prevailing during the inspection;~~

- 3) ~~The penalty imposed by Section 42(b)(4) or (b)(4-5) of the Act for the violations;~~
  - 4) ~~An affidavit by the personnel observing the violation, attesting to their material actions and observations; and~~
  - 5) ~~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 must pay hearing costs pursuant to Section 108.500 of this Part.~~
- e) As required by Section 31.1 of the Act, 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.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **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. For an AC issued pursuant to Section 31.1 of the Act, the AC Recipient must be named as the respondent and the Agency or Delegated Unit must be named as the complainant in accordance with Section 31.1(d)(2) of the Act. For an AC issued pursuant to Section 23.1 of the PWSO Act, the AC Recipient must be named as the respondent and the Agency must be named as the complainant in accordance with Section 23.1(d) of the Act.
- 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 as required by Section 31.1(d)(1) of the Act and Section 23.1(d) of the PWSO Act.
- 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. \_\_\_\_\_, effective \_\_\_\_\_)

#### **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 does not own the property or, for a community water supply, is not the Responsible Operator in Charge;
- b) The AC Recipient did not cause or allow the alleged violations;

- c) The AC was not timely filed or properly served; or
- d) The alleged violation was the result of uncontrollable circumstances.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### 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 in accordance with Section 31.1(d) of the Act or Section 23.1(d) of the PWSO Act.
- c) The hearing will be held in accordance with 35 Ill. Adm. Code 101.Subpart F.
- d) The hearing will be held at a time and location consistent with the Board's resources as designated by the hearing officer.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### SUBPART D: BOARD DECISIONS

##### **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 Section 31.1 of the Act or Section 23.1 of the PWSO Act, and Section 108.200 of this Part.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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

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

The Board will impose penalties and assess costs as follows:

- a) If the AC is defaulted or non-contested as set forth in Section 108.404 or 108.406 of this Part, respectively, the Board will do the following:

- 1) Impose on the AC Recipient found to have violated any provision of Section 21(o) of the Act a \$500 penalty for each violation of each such provision; ~~and~~
  - 2) Impose on the AC Recipient found to have violated any provision of Section 21(p), 22.51, 22.51a, or 55(k) of the Act a \$1,500 penalty for each violation of each such provision, except that the penalty amount imposed will be \$3,000 for each violation of any provision of Section 21(p), 22.51, 22.51a, or 55(k) of the Act that is the AC Recipient's ~~recipient's~~ second or subsequent adjudicated violation of that provision; ~~and~~
  - 3) Impose on the AC Recipient found to have violated Section 1.1(b)(3) of the PWSO Act a \$500 civil penalty for each violation of that provision, except that the penalty amount imposed will be \$1,500 for each violation of Section 1.1(b)(3) that is the AC Recipient's second or subsequent adjudicated violation of that provision.
- b) If the AC Recipient contests the AC and the Board finds, based on the record, that the violation occurred and that the AC Recipient has not shown that the violation resulted from uncontrollable circumstances, the Board will do the following:
- 1) Impose on the AC Recipient found to have violated any provision of Section 21(o) of the Act a \$500 penalty for each violation of each such provision;
  - 2) Impose on the AC Recipient found to have violated any provision of Section 21(p), 22.51, 22.51a, or 55(k) of the Act a \$1,500 penalty for each violation of each such provision, except that the penalty amount imposed will be \$3,000 for each violation of any provision of Section 21(p), 22.51, 22.51a, or 55(k) of the Act that is the AC recipient's second or subsequent adjudicated violation of that provision; ~~and~~
  - 3) Impose on the AC Recipient found to have violated Section 1.1(b)(3) of the PWSO Act a \$500 civil penalty for each violation of that provision, except that the penalty amount imposed will be \$1,500 for each violation of Section 1.1(b)(3) that is the AC Recipient's second or subsequent adjudicated violation of that provision; and
  - 4) Assess the AC Recipient found to have violated any provision of Section 21(o), ~~or 21(p), 22.51, 22.51a, or 55(k)~~ of the Act or Section 1.1(b)(3) of the PWSO Act associated hearing costs pursuant to Sections 108.502 and 108.504 of this Subpart.
- c) If the AC Recipient contests the AC but voluntarily withdraws the petition for review pursuant to Section 108.208 of this Part after the hearing starts, the Board will do the following:

- 1) Impose on the AC Recipient found to have violated any provision of Section 21(o) of the Act a \$500 penalty for each violation of each such provision;
- 2) Impose on the AC Recipient found to have violated any provision of Section 21(p), 22.51, 22.51a, or 55(k) of the Act a \$1,500 penalty for each violation of each such provision, except that the penalty amount imposed will be \$3,000 for each violation of any provision of Section 21(p), 22.51, 22.51a, or 55(k) of the Act that is the AC recipient's second or subsequent adjudicated violation of that provision; ~~and~~
- 3) Impose on the AC Recipient found to have violated Section 1.1(b)(3) of the PWSO Act a \$500 civil penalty for each violation of that provision, except that the penalty amount imposed will be \$1,500 for each violation of Section 1.1(b)(3) that is the AC Recipient's second or subsequent adjudicated violation of that provision; and
- 4) ~~3)~~ Assess the AC Recipient found to have violated any provision of Section 21(o) or (p) of the Act or Section 1.1(b)(3) of the PWSO Act associated hearing costs pursuant to Sections 108.502 and 108.504 of this Subpart.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 19, 2015, by a vote of 4-0.




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John T. Therriault, Clerk  
Illinois Pollution Control Board