

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

PART 106
HEARINGS PURSUANT TO SPECIFIC RULES

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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.

SUBPART E: AIR ADJUSTED STANDARD PROCEDURES

Section 106.501 Scope and Applicability

This Subpart applies only whenever an adjusted standard, as provided in Section 28.1 of the Environmental Protection Act (Act), is sought pursuant to 35 Ill. Adm. Code 212.126.

(Source: Added at 12 Ill. Reg. 12484, effective July 13, 1988)

Section 106.502 Joint or Single Petition

A person may initiate an adjusted standard proceeding either by filing a petition jointly with the Illinois Environmental Protection Agency (Agency), or by filing a petition singly.

(Source: Added at 12 Ill. Reg. 12484, effective July 13, 1988)

Section 106.503 Request to Agency to Join As Co-Petitioner

- a) The Agency may, in its discretion, act as a co-petitioner in any adjusted standard proceeding.
- b) Any person may request Agency assistance in initiating a petition for adjusted standard. The Agency may require the person to submit to the Agency any background information in the person's possession relevant to the adjusted standard which is sought. The Agency shall promptly notify the person in writing of its determination either to join as a co-petitioner, or to decline to join as a co-petitioner. If the Agency declines to join as a co-petitioner, the Agency shall state the basis for this decision.
- c) Discretionary decisions made by the Agency pursuant to this Section are not appealable to the Board.

(Source: Added at 12 m. Reg. 12484, effective July 13, 1988)

Section 106.504 Contents of Petition

- a) The petitioner shall file ten copies of the petition for adjusted standard with the Clerk of the Pollution Control Board (Board), and shall serve one copy upon the Agency.
- b) The petition shall contain the following information:
 - 1) Identification of the regulation of general applicability;
 - 2) A written statement, signed by the petitioner, or an authorized representative, outlining the scope of the evaluation, the nature of, the reasons for and the basis of the adjusted standard, consistent with the level of justification contained in the regulation of general applicability;
 - 3) The nature of the petitioner's operations and control equipment; and
 - 4) Any additional information which may be required in the regulation of general applicability.

(Source: Added at 12 Ill. Reg. 12484, effective July 13, 1988)

Section 106.505 Response and Reply

- a) Within 45 days after filing of a petition, The Agency shall file a response to any petition in which it has not joined as a co-petitioner. This response shall include the Agency's recommendations concerning the Board's proposed action on the petition.
- b) The petitioner may file a reply within 14 days after the filing of any Agency response.

(Source: Added at 12 Ill. Reg. 12484, effective July 13, 1988)

Section 106.506 Notice and Conduct of Hearing

- a) The Board will hold at least one public hearing prior to granting an adjusted standard.
- b) The hearing officer will schedule the hearing. The Clerk will give notice of hearing in accordance with 35 Ill. Adm. Code 102.162.
- c) The proceedings will be in accordance with 35 Ill. Adm. Code 102.Subpart J.

(Source: Amended at 14 Ill. Reg. 9442, effective June 5, 1990.)

Section 106.507 Opinions and Orders

- a) The Board will adopt an order and opinion stating the facts and reasons leading to the final Board determination consistent with any considerations which may be specified in the regulation of general applicability or Section 27(a) of the Act.
- b) The Board will issue such other orders as the Board deems appropriate, including, but not limited to accepting or rejecting the petition, requiring the submission of further information or directing that further hearings be held.
- c) SUCH BOARD ORDERS AND OPINIONS WILL BE MAINTAINED FOR PUBLIC INSPECTION BY THE CLERK OF THE BOARD AND A LISTING OF ALL DETERMINATIONS MADE PURSUANT TO THIS SUBPART WILL BE PUBLISHED IN THE ILLINOIS REGISTER AND THE ENVIRONMENTAL REGISTER AT THE END OF EACH FISCAL YEAR. (Section 28.1 of the Act).
- d) A FINAL BOARD DETERMINATION MADE UNDER THIS SUBPART MAY BE APPEALED PURSUANT TO SECTION 41 OF THE ACT. (Section 28.1 of the Act).

(Source: Added at 12 Ill. Reg. 12484, effective July 13, 1988)

SUBPART J: CULPABILITY DETERMINATIONS**Section 106.930 Applicability**

The provisions of this Subpart shall apply to any appeal initiated by an owner of a source

pursuant to a finding of culpability by the Illinois Environmental Protection Agency (Agency) under Ill. Adm. Code 212.702.

(Source: Added at 18 Ill. Reg.11579, effective July 11, 1994)

Section 106.931 Petition for review

- a) A proceeding brought under this Subpart shall be commenced by the owner or operator of a source by filing the original and nine copies of a petition for review with the Clerk of the Pollution Control Board (Board). The petitioner shall serve upon the Agency one copy of the petition for review.
- b) General filing and practice rules are set forth in 35 Ill. Adm. Code 101.
- c) A petition for review filed pursuant to this Subpart shall include, but need not be limited to:
 - 1) A copy of the letter, or other written communication, setting forth the Agency's finding of culpability;
 - 2) A clear identification of the county in which the source is located; and
 - 3) A detailed description of, and justification for, the source's position that the Agency's finding of culpability is incorrect.

(Source: Added at 18 Ill. Reg.11579, effective July 11, 1994)

Section 106.932 Response and Reply

- a) The Agency shall file a response to a petition appealing a determination of culpability within 21 days after service of the petition.
- b) The Agency's response shall contain, at a minimum, the basis of its determination of the petitioner's culpability, including any meteorological, monitoring, or sampling data upon which the determination was made.
- c) The petitioner may file a reply within 7 days after the service of any response by the Agency.

(Source: Added at 18 Ill. Reg.11579, effective July 11, 1994)

Section 106.933 Notice and hearing

- a) Within 14 days after a petition is filed, the Agency shall publish notice of such petition in a newspaper of general circulation in the county in which the source is located. Within 30 days of the filing of the petition, any person may file with the Clerk of the Board a request for hearing on the petition.

- b) The hearing officer will schedule any hearing. The Clerk of the Board shall give notice of the hearing in accordance with 35 Ill. Adm. Code 103. The proceeding shall be conducted in accordance with 35 Ill. Adm. Code 103.
- c) The burden of proof in appeals pursuant to this Subpart is on the petitioner.

(Source: Added at 18 Ill. Reg.11579, effective July 11, 1994)

Section 106.934 Opinion and order

The Board will issue a written opinion and order that sets forth the Board's decision and supporting rationale.

(Source: Added at 18 Ill. Reg.11579, effective July 11, 1994)