**Section 703.303 Getting a RAP Approved**

a) The process for approving or denying an application for a RAP.

1) If the Agency tentatively finds that an owner's or operator's RAP application includes all of the information required by Section 703.302(d) and that the proposed remediation waste management activities meet the regulatory standards, the Agency must make a tentative decision to approve the RAP application. The Agency must then prepare a draft RAP and provide an opportunity for public comment before making a final decision on the RAP application, according to this Subpart H.

2) If the Agency tentatively finds that the owner's or operator's RAP application does not include all of the information required by Section 703.302(d) or that the proposed remediation waste management activities do not meet the regulatory standards, the Agency may request additional information from an owner or operator or ask an owner or operator to correct deficiencies in the owner's or operator's application. If an owner or operator fails or refuses to provide any additional information the Agency requests, or to correct any deficiencies in its RAP application, the Agency may either make a tentative decision to deny that owner's or operator's RAP application or to approve that application with certain changes, as allowed pursuant to Section 39 of the Act [415 ILCS 5/39]. After making this tentative decision, the Agency must prepare a notice of intent to deny the RAP application ("notice of intent to deny") or to approve that application with certain changes and provide an opportunity for public comment before making a final decision on the RAP application, according to the requirements in this Subpart H.

BOARD NOTE: Subsection (a) is derived from 40 CFR 270.130 (2005).

b) What the Agency must include in a draft RAP. If the Agency prepares a draft RAP, the draft must include the following information:

1) The information required pursuant to Section 703.302(d)(1) through (d)(6);

2) The following terms and conditions:

A) Terms and conditions necessary to ensure that the operating requirements specified in the RAP comply with applicable requirements of 35 Ill. Adm. Code 724, 726, and 728 (including any recordkeeping and reporting requirements). In satisfying this provision, the Agency may incorporate, expressly or by reference, applicable requirements of 35 Ill. Adm. Code 724, 726, and 728 into the RAP or establish site-specific conditions, as required or allowed by 35 Ill. Adm. Code 724, 726, and 728;

B) The terms and conditions in Subpart F of this Part;

C) The terms and conditions for modifying, reissuing, and terminating the RAP, as provided in Section 703.304(a); and

D) Any additional terms or conditions that the Agency determines are necessary to adequately protect human health and the environment, including any terms and conditions necessary to respond to spills and leaks during use of any units permitted under the RAP; and

3) If the draft RAP is part of another document, as described in Section 703.301(a)(4)(B), the Agency must clearly identify the components of that document that constitute the draft RAP.

BOARD NOTE: Subsection (b) is derived from 40 CFR 270.135 (2005).

c) What else the Agency must prepare in addition to the draft RAP or notice of intent to deny. Once the Agency has prepared the draft RAP or notice of intent to deny, it must then do the following:

1) Prepare a statement of basis that briefly describes the derivation of the conditions of the draft RAP and the reasons for them, or the rationale for the notice of intent to deny;

2) Compile an administrative record, including the following information:

A) The RAP application, and any supporting data furnished by the applicant;

B) The draft RAP or notice of intent to deny;

C) The statement of basis and all documents cited therein (material readily available at the applicable Agency office or published material that is generally available need not be physically included with the rest of the record, as long as it is specifically referred to in the statement of basis); and

D) Any other documents that support the decision to approve or deny the RAP; and

3) Make information contained in the administrative record available for review by the public upon request.

BOARD NOTE: Subsection (c) is derived from 40 CFR 270.140 (2005).

d) The procedures for public comment on the draft RAP or notice of intent to deny.

1) The Agency must publish notice of its intent as follows:

A) Send notice to an owner or operator of its intention to approve or deny the owner's or operator's RAP application, and send an owner or operator a copy of the statement of basis;

B) Publish a notice of its intention to approve or deny the owner's or operator's RAP application in a major local newspaper of general circulation;

C) Broadcast its intention to approve or deny the owner's or operator's RAP application over a local radio station; and

D) Send a notice of its intention to approve or deny the owner's or operator's RAP application to each unit of local government having jurisdiction over the area in which the owner's or operator's site is located, and to each State agency having any authority under State law with respect to any construction or operations at the site.

2) The notice required by subsection (d)(1) of this Section must provide an opportunity for the public to submit written comments on the draft RAP or notice of intent to deny within at least 45 days.

3) The notice required by subsection (d)(1) of this Section must include the following information:

A) The name and address of the Agency office processing the RAP application;

B) The name and address of the RAP applicant, and if different, the remediation waste management site or activity the RAP will regulate;

C) A brief description of the activity the RAP will regulate;

D) The name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft RAP or notice of intent to deny, statement of basis, and the RAP application;

E) A brief description of the comment procedures in this Section, and any other procedures by which the public may participate in the RAP decision;

F) If a hearing is scheduled, the date, time, location, and purpose of the hearing;

G) If a hearing is not scheduled, a statement of procedures to request a hearing;

H) The location of the administrative record, and times when it will be open for public inspection; and

I) Any additional information that the Agency considers necessary or proper.

4) If, within the comment period, the Agency receives written notice of opposition to its intention to approve or deny the owner's or operator's RAP application and a request for a hearing, the Agency must hold an informal public hearing to discuss issues relating to the approval or denial of the owner's or operator's RAP application. The Agency may also determine on its own initiative that an informal hearing is appropriate. The hearing must include an opportunity for any person to present written or oral comments. Whenever possible, the Agency must schedule this hearing at a location convenient to the nearest population center to the remediation waste management site and give notice according to the requirements in subsection (d)(1) of this Section. This notice must, at a minimum, include the information required by subsection (d)(3) of this Section and the following additional information:

A) A reference to the date of any previous public notices relating to the RAP application;

B) The date, time, and place of the hearing; and

C) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

BOARD NOTE: Subsection (d) is derived from 40 CFR 270.145 (2005).

e) How the Agency must make a final decision on a RAP application.

1) The Agency must consider and respond to any significant comments raised during the public comment period or during any hearing on the draft RAP or notice of intent to deny, and the Agency may revise the draft RAP based on those comments, as appropriate.

2) If the Agency determines that the owner's or operator's RAP includes the information and terms and conditions required in subsection (b) of this Section, then it will issue a final decision approving the owner's or operator's RAP and, in writing, notify the owner or operator and all commenters on the owner's or operator's draft RAP that the RAP application has been approved.

3) If the Agency determines that the owner's or operator's RAP does not include the information required in subsection (b) of this Section, then it will issue a final decision denying the RAP and, in writing, notify the owner or operator and all commenters on the owner's or operator's draft RAP that the RAP application has been denied.

4) If the Agency's final decision is that the tentative decision to deny the RAP application was incorrect, it must withdraw the notice of intent to deny and proceed to prepare a draft RAP, according to the requirements in this Subpart H.

5) When the Agency issues its final RAP decision, it must refer to the procedures for appealing the decision pursuant to subsection (f) of this Section.

6) Before issuing the final RAP decision, the Agency must compile an administrative record. Material readily available at the applicable Agency office or published materials that are generally available and which are included in the administrative record need not be physically included with the rest of the record, as long as it is specifically referred to in the statement of basis or the response to comments. The administrative record for the final RAP must include information in the administrative record for the draft RAP (see subsection (c)(2) of this Section) and the following items:

A) All comments received during the public comment period;

B) Tapes or transcripts of any hearings;

C) Any written materials submitted at these hearings;

D) The responses to comments;

E) Any new material placed in the record since the draft RAP was issued;

F) Any other documents supporting the RAP; and

G) A copy of the final RAP.

7) The Agency must make information contained in the administrative record available for review by the public upon request.

BOARD NOTE: Subsection (e) is derived from 40 CFR 270.150 (2005).

f) Administrative appeal of a decision to approve or deny a RAP application.

1) Any commenter on the draft RAP or notice of intent to deny, or any participant in any public hearing on the draft RAP, may appeal the Agency's decision to approve or deny the owner's or operator's RAP application to the Board pursuant to 35 Ill. Adm. Code 705.212. Any person that did not file comments, or did not participate in any public hearings on the draft RAP, may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals of RAPs may be made to the same extent as for final permit decisions pursuant to 35 Ill. Adm. Code 705.201 (or a decision pursuant to Section 703.240 to deny a permit for the active life of a RCRA hazardous waste management facility or unit). Instead of the notice required pursuant to Subpart D of 35 Ill. Adm. Code 705 and 705.212(c), the Agency must give public notice of any grant of review of a RAP through the same means used to provide notice pursuant to subsection (d) of this Section. The notice will include the following information:

A) The public hearing and any briefing schedule for the appeal, as provided by the Board;

B) A statement that any interested person may participate in the public hearing or file public comments or an amicus brief with the Board; and

C) The information specified in subsection (d)(3) of this Section, as appropriate.

2) This appeal is a prerequisite to seeking judicial review of these Agency actions.

BOARD NOTE: Subsection (f) is derived from 40 CFR 270.155 (2005).

g) When a RAP becomes effective. A RAP becomes effective 35 days after the Agency notifies the owner or operator and all commenters that the RAP is approved, unless any of the following is true:

1) The Agency specifies a later effective date in its decision;

2) An owner or operator or another person has appealed the RAP pursuant to subsection (f) of this Section (if the RAP is appealed, and the request for review is granted pursuant to subsection (f), conditions of the RAP are stayed according to 35 Ill. Adm. Code 705.202 through 705.204); or

3) No commenters requested a change in the draft RAP, in which case the RAP becomes effective immediately when it is issued.

BOARD NOTE: Subsection (g) is derived from 40 CFR 270.160 (2005). The corresponding federal provision provides that a RAP is effective 30 days after the Agency notice of approval. The Board has used 35 days to be consistent with the 35 days within which a permit appeal must be filed pursuant to Section 40(a)(1) of the Act [415 ILCS 5/40(a)(1)].

h) When an owner or operator may begin physical construction of new units permitted under the RAP. An owner or operator must not begin physical construction of new units permitted under the RAP for treating, storing, or disposing of hazardous remediation waste before receiving a final, effective RAP.

BOARD NOTE: Subsection (h) is derived from 40 CFR 270.165 (2005).

(Source: Amended at 31 Ill. Reg. 487, effective December 20, 2006)