**Section 106.712 Deficient Performance**

a) For purposes of this Subpart, a respondent's performance under its EMSA is deficient if the Board finds that any of the following conditions exist:

1) The respondent misrepresented the factual basis for entering into the EMSA.

2) The respondent failed to provide access to the pilot project for the Agency to monitor compliance with an EMSA.

3) The respondent falsified any monitoring data, record-keeping information or reports regarding the pilot project.

4) The respondent or the owner or operator of the pilot project failed to comply with any requirement of any federal or local environmental law or regulation that applies to the pilot project and that the EMSA does not address, and for which a citizen's complaint has been filed with a court of competent jurisdiction or the appropriate authority has sent a notice of violation, complaint or other notice of failure to comply to the respondent or the owner or operator of the pilot project.

5) The respondent or the owner or operator of the pilot project failed to comply with any requirement of any State environmental law or regulation that applies to the pilot project and that the EMSA does not address, and for which a citizen's complaint has been filed with the Board, or the Agency has mailed a notice of violation to the respondent or the owner or operator of the pilot project under Section 31(a) or (b) of the Act.

6) The respondent failed to comply with its EMSA, subject to any grace or cure periods or rights contained in the EMSA.

b) Any Board finding of deficient performance under subsection (a)(4) or (a)(5) of this Section will not be binding for any purpose or in any other proceeding under the Act, other than under this Subpart.

(Source: Amended at 41 Ill. Reg. 10104, effective July 5, 2017)