**Section 741.115 Discovery Before an Action is Filed**

a) Any person who wishes to engage in discovery before filing an action seeking proportionate shares may file a petition with the Board for discovery for the sole purpose of identifying persons who may have proximately caused or contributed to a release or substantial threat of a release of regulated substances or pesticides.

b) The petition, which must be supported by affidavits, must be brought in the name of the petitioner and must name as respondents the person or persons from whom discovery is sought. A brief or memorandum and other supporting documents may be filed with the petition. The petition must include:

1) The name and address of the respondents;

2) The reason the proposed discovery is necessary, including why the petitioner could not obtain the information sought by any other reasonable means;

3) A copy of the proposed discovery requests;

4) A statement of the petitioner's basis for belief that there is a release or substantial threat of a release and that the respondent has or may have the information sought;

5) The petitioner's proposed time for compliance with the order (not less than 30 days from the date of issuance of the order);

6) A request that the Board enter an order authorizing petitioner to obtain such discovery; and

7) A notice informing the respondent of the opportunity to respond to the petition within 30 days.

c) The petitioner must serve a notice of filing and a copy of the petition and any supporting documents upon the persons to whom the order is to be directed who must be designated the respondents.

d) Within 30 days from the date of service of the petition, the respondent may file a response to the petition supported by affidavits as necessary. The respondent may file a brief or memorandum and other supporting documents with the response. If no response is filed, the respondent is deemed to have waived objection to the discovery sought.

e) The petitioner may reply to the response within 7 days after the date of service of the response.

f) Petitioner must serve and file the petition in accordance with 35 Ill. Adm. Code 101.Subpart C, except that petitioner must initially serve the petition personally, by registered or certified mail, or by messenger service.

g) The Board will review the petition, response, affidavits, and any other supporting documents on file and grant the petition if the Board finds that the requested discovery, or a portion of the requested discovery that the Board specifies, is necessary to identify persons who may have proximately caused or contributed to a release or a substantial threat of a release of regulated substances or pesticides and that the information could not be obtained by any other reasonable means. The order will specify a reasonable time for compliance and the method of compliance.

h) Unless extended for cause shown, the Board's order automatically expires 60 days after issuance. If any respondent fails to comply with a discovery request authorized under this Section, the petitioner may seek penalties under Section 42 of the Act.

i) The petitioner must bear the respondent's reasonable expenses of providing the discovery (excluding attorney fees).

j) Nothing in this Section limits the ability of any person to obtain information in any other lawful manner.

k) No petition under this Section may be brought:

1) Against agencies subject to the Freedom of Information Act [5 ILCS 140]; or

2) For information privileged under 35 Ill. Adm. Code 101 and 103.