

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: NPDES Permits
- 2) Code Citation: 35 Ill. Adm. Code 403
- 3)

<u>Section Numbers</u> :	<u>Proposed Actions</u> :
403.100	Amendment
403.101	Amendment
403.102	Amendment
403.103	Amendment
403.104	Amendment
403.APPENDIX A	Amendment
- 4) Statutory Authority: Authorized by Section 27 and implementing Sections 12 and 13 of the Environmental Protection Act [415 ILCS 5/12, 13, and 27].
- 5) A Complete Description of the Subjects and Issues Involved: In 2016, the Board began reviewing its rules to identify obsolete or otherwise unnecessary language. On January 10, 2018, the Illinois Environmental Protection Agency (IEPA) filed a proposal to update provisions including Part 403. IEPA's proposal arose from Executive Order 2016-13, which required agencies to identify outdated, repetitive, confusing, or unnecessary rules and then amend or repeal them. These proposed amendments include those submitted by IEPA and those identified separately by the Board. Both IEPA and the Board intend the amendments to be non-substantive clarifications.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].



POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments should refer to docket R18-24 and be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.pcb.illinois.gov. Comments may be filed with the Clerk of the Board and be addressed to:

Clerk's Office
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago IL 60601

Interested persons may request copies of the Board's opinion and order in R18-24 by calling the Clerk's office at 312/814-3620 or may download copies from the Board's website at www.pcb.illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: While the proposed amendments may affect a small business that engages in mining activities, the Board intends for the amendments to be non-substantive clarifications of existing rules.
 - B) Reporting, bookkeeping or other procedures required for compliance: None beyond those required to comply with current rules.
 - C) Types of professional skills necessary for compliance: None beyond those necessary to comply with current rules.
- 14) Small Business Impact Analysis:
- A) Types of businesses subject to the proposed amendments:

21 Mining
 - B) Categories that the Agency reasonably believes the amendments will impact: The Board intends for the proposed amendments to be non-substantive clarifications of existing rules and does not expect them to have an impact in categories such as staffing, purchasing, equipment, or record keeping.

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

15) Regulatory Agenda on which this rulemaking was summarized: July 2018

The full text of the Proposed Amendments begins on the next page:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE D: MINE RELATED WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 403
NPDES PERMITS

- Section
- 403.100 Preamble
 - 403.101 Incorporation of NPDES Water Rules
 - 403.102 NPDES Permits Required of Certain Dischargers
 - 403.103 Application
 - 403.104 Construction Authorization

403.APPENDIX A References to Previous Rules

AUTHORITY: Authorized by Section 27 and implementing Sections 12 and 13 of the Illinois Environmental Protection Act (~~415 ILCS 5/12, 13 and 27~~).

SOURCE: Adopted at 4 Ill. Reg. 34, p. 164, effective August 7, 1980; codified at 5 Ill. Reg. 34, p. 8527, effective August 10, 1981; amended in R18-24 at 43 Ill. Reg. _____, effective _____.

Section 403.100 Preamble

a) Part 403 governs mining activities and permit issuance for ~~with respect to holders of an~~ NPDES permit holders and persons required to obtain an NPDES permit for a facility.

b) Under 35 Ill. Adm. Code ~~As provided by Section~~ Code 404.102, ~~these facilities operating which operate~~ operating under an NPDES ~~Permit~~ permit need not obtain a ~~state~~ State permit so long as the Agency administers the NPDES permit program.

c) Under 35 Ill. Adm. Code 404.102, Part 404 does not ~~apply is~~ ~~inapplicable~~ apply to NPDES permit holders, ~~as provided by Section 404.102~~.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 403.101 Incorporation of NPDES Water Rules

~~The rules contained in Subpart A, Part 309, Subtitle C: Water Pollution shall apply to NPDES permits required under this Subtitle D, Chapter I, except for Section 309.154*, Authorization to Construct, provided, however, that in the event conflict arises between Subtitle D, Chapter I and Subpart A, Part 309, Subtitle C, Chapter I, the requirements of Subtitle D, Chapter I shall apply to Mine related facilities.~~
Except for 35 Ill. Adm. Code 309.154, 35 Ill. Adm. Code 309.Subpart A applies to NPDES permits required by Subtitle D. In the event of a

conflict between Subtitle D and 35 Ill. Adm. Code 309. Subpart A, Subtitle D applies to mine-related facilities.

~~*Prior to codification, Rule 910(n) of Chapter 3.~~

(Source: Amended at 43 Ill. Reg. _____, effective

Section 403.102 NPDES Permits Required of Certain Dischargers

~~Except as in compliance with the provisions of the Act, Board regulations, the FWPCA and the provisions and conditions of the NPDES permit issued to the discharger, The discharge of any~~
~~contaminant~~~~contaminant or pollutant~~~~pollutant~~The discharge of
contaminants or pollutants by any person into the waters of the ~~state~~State from a point source or into a well ~~is~~shall be unlawful, except when complying with provisions of the Act, Board regulations, the FWPCA (32 USC 1251 et seq.), and the provisions and conditions of the discharger's NPDES permit.

(Source: Amended at 43 Ill. Reg. _____, effective

Section 403.103 Application

a) A person required to obtain an NPDES permit ~~must~~shallmust file an application ~~complying in accordance~~complying with 35 Ill. Adm. ~~Code~~SectionCode 405.104 on forms provided by the Agency ~~or the United States Environmental Protection Agency as applicable.~~

b) A person who holds an NPDES permit ~~for a facility~~ or who submits an NPDES permit application for ~~at that~~a facility need not apply for a ~~state~~State permit unless ~~and until~~ the Agency notifies ~~them~~ that person that a ~~state~~State permit is required ~~for that facility.~~

c) Application for a renewed or ~~modified~~supplementalmodified NPDES permit is governed by the rules on NPDES applications ~~in general.~~

(Source: Amended at 43 Ill. Reg. _____, effective

Section 403.104 Construction Authorization

a) If an NPDES permit is required to ~~No person shall~~ prepare land for mining activities or construct a mine related facility, a person ~~must~~shall before preparing land or constructing a facility ~~for which an NPDES permit is required unless:~~

1) ~~Hold~~The person holdsHold an NPDES permit ~~containing as~~ including a condition authorizing the permit holder to prepare land or construct a facility ~~a construction authorization for the preparation or construction;~~ or

2) ~~Hold~~The person holds Hold a construction permit under 35 Ill. Adm. Code 404.101 to prepare land or construct a facility ~~for the preparation or construction issued pursuant to Section 404.101.~~

b) ~~ANe~~A permittee must not ~~construct~~shall cause or allow the ~~construction of~~construct a new mine related facility or ~~modify~~modification of modify a mining activity or mine related facility for which the permittee holds an NPDES permit ~~is held~~ unless the NPDES permit includes ~~as~~ a condition authorizing ~~thea~~ construction ~~authorization for such~~the construction or modification. If the modification is already covered under the existing permit condition, a separate authorization from the Agency is not required. ~~provided, however that construction authorization is not required for modification which would not cause a violation of conditions of the existing permit.~~

c) Any person required to obtain a construction authorization must ~~apply~~shall make application apply at least 180 days before ~~in advance of~~ the date ~~on which~~ construction or modification ~~begins to begin~~ begins.

d) Any person seeking a construction authorization must ~~submit~~shall ~~furnish information and complete~~submit an application ~~under as provided in under~~ 35 Ill. Adm. ~~Code~~Section ~~Code~~ 405.104. The rules governing ~~issuing~~Issuance of a construction authorization shall be governed by ~~which govern~~ issuance of an NPDES permit, including 35 Ill. Adm. ~~Code~~Sections ~~Code~~ 405.101 and 405.102, also apply to issuing a construction authorization.

(Source: Amended at 43 Ill. Reg. ~~---~~, effective ~~---~~)

Section 403.APPENDIX A References to Previous ~~Rules~~REFERENCES TO PREVIOUS RULES

The following table is provided to ~~refer previous~~aid in referencing ~~old~~correlate previous Board rule numbers ~~to~~with current ~~section~~Illinois Administrative Code Section numbers ~~pursuant to codification.~~

Chapter 4, Mine Related Pollution
Part III, NPDES Permits 35 Ill. ~~Adm~~Admin~~Adm~~. Code ~~Part~~ 403Rule
300Section 403.100Rule 301Section 403.101Rule 302Section 403.102Rule
303Section 403.103Rule 304Section 403.104

(Source: Amended at 43 Ill. Reg. ~~---~~, effective ~~---~~)

~~ILLINOIS REGISTER~~

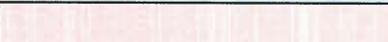
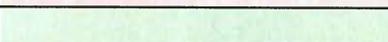
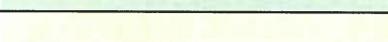
~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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Document comparison by Workshare Compare on Wednesday, April 17, 2019
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Document 1 ID	file:///I:/Input/Agency Rulemakings - Files Received\2019\April 2019\35-403-Agency Proposed-(issue 17).docx
Description	35-403-Agency Proposed-(issue 17)
Document 2 ID	file:///I:/Input/Agency Rulemakings - Files Received\2019\April 2019\35-403-r01(issue 17).docx
Description	35-403-r01(issue 17)
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<u>Insertion</u>	
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Insertions	46
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Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	115

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE D: MINE RELATED WATER POLLUTION
3 CHAPTER I: POLLUTION CONTROL BOARD
4

5 PART 403
6 NPDES PERMITS
7

8 Section

- 9 403.100 Preamble
10 403.101 Incorporation of NPDES Water Rules
11 403.102 NPDES Permits Required of Certain Dischargers
12 403.103 Application
13 403.104 Construction Authorization

14
15 403.APPENDIX A References to Previous Rules
16

17 AUTHORITY: Authorized by Section 27 and implementing Sections 12 and 13 of the Illinois
18 Environmental Protection Act [415 ILCS 5].
19

20 SOURCE: Adopted at 4 Ill. Reg. 34, p. 164, effective August 7, 1980; codified at 5 Ill. Reg. 34,
21 p. 8527, effective August 10, 1981; amended in R18-24 at 43 Ill. Reg. _____, effective
22 _____.
23

24 **Section 403.100 Preamble**
25

- 26 a) Part 403 governs mining activities and permit issuance ~~for with respect to holders~~
27 ~~of an NPDES permit holders~~ and persons required to obtain an NPDES permit for
28 a facility.
29
30 b) ~~Under 35 Ill. Adm. Code As provided by Section 404.102, those facilities~~
31 ~~operating which operate~~ under an NPDES permit need not obtain a ~~State~~
32 permit so long as the Agency administers the NPDES permit program.
33
34 c) ~~Under 35 Ill. Adm. Code 404.102, Part 404 does not apply is inapplicable to~~
35 NPDES permit holders, ~~as provided by Section 404.102.~~
36

37 (Source: Amended at 43 Ill. Reg. _____, effective _____)
38

39 **Section 403.101 Incorporation of NPDES Water Rules**
40

41 ~~Except for 35 Ill. Adm. Code 309.154, 35 Ill. Adm. Code 309.Subpart A applies to NPDES~~
42 ~~permits required by Subtitle D. In the event of a conflict between Subtitle D and 35 Ill. Adm.~~
43 ~~Code 309.Subpart A, Subtitle D applies to mine-related facilities. The rules contained in Subpart~~

44 ~~A, Part 309, Subtitle C: Water Pollution shall apply to NPDES permits required under this~~
 45 ~~Subtitle D, Chapter I, except for Section 309.154*, Authorization to Construct; provided,~~
 46 ~~however, that in the event conflict arises between Subtitle D, Chapter I and Subpart A, Part 309,~~
 47 ~~Subtitle C, Chapter I, the requirements of Subtitle D, Chapter I shall apply to Mine-related~~
 48 ~~facilities.~~

49
 50 *Prior to codification, Rule 910(n) of Chapter 3.

51
 52 (Source: Amended at 43 Ill. Reg. _____, effective _____)

53
 54 **Section 403.102 NPDES Permits Required of Certain Dischargers**

55
 56 ~~Except as in compliance with the provisions of the Act, Board regulations, the FWPCA and the~~
 57 ~~provisions and conditions of the NPDES permit issued to the discharger, The discharge of~~
 58 ~~contaminantsany contaminant or pollutantpollutant by any person into the waters of the~~
 59 ~~Statestate from a point source or into a well isshall be unlawful, except when complying with~~
 60 ~~provisions of the Act, Board regulations, the FWPCA (32 USC 1251 et seq.), and the provisions~~
 61 ~~and conditions of the discharger's NPDES permit.~~

62
 63 (Source: Amended at 43 Ill. Reg. _____, effective _____)

64
 65 **Section 403.103 Application**

- 66
 67 a) A person required to obtain an NPDES permit ~~must~~shall file an application
 68 ~~complying in accordance with 35 Ill. Adm. Code Section 405.104 on forms~~
 69 ~~provided by the Agency or the United States Environmental Protection Agency as~~
 70 ~~applicable.~~
 71
 72 b) A person who holds an NPDES permit for a facility or who submits an NPDES
 73 permit application for ~~a~~that facility need not apply for a ~~State~~state permit unless
 74 ~~and until~~ the Agency notifies that person that a ~~State~~state permit is required for
 75 ~~that facility.~~
 76
 77 c) Application for a renewed or ~~modified~~supplemental NPDES permit is governed
 78 by the rules on NPDES applications ~~in general.~~

79
 80 (Source: Amended at 43 Ill. Reg. _____, effective _____)

81
 82 **Section 403.104 Construction Authorization**

- 83
 84 a) ~~If an NPDES permit is required to~~No person shall prepare land for mining
 85 ~~activities or construct a mine related facility, a person must, before preparing land~~
 86 ~~or constructing a facility for which an NPDES permit is required unless:~~

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- 1) ~~Hold~~The person holds an NPDES permit ~~including~~containing as a condition authorizing the permit holder to prepare land or construct a facility~~a construction authorization for the preparation or construction; or~~
- 2) ~~Hold~~The person holds a construction permit under 35 Ill. Adm. Code 404.101 to prepare land or construct a facility~~for the preparation or construction issued pursuant to Section 404.101.~~
- b) ~~A~~No permittee ~~must not construct~~shall cause or allow the construction of a new mine related facility or ~~modify~~modification of a mining activity or mine related facility for which ~~the permittee holds~~ an NPDES permit ~~is held~~ unless the NPDES permit includes as a condition ~~authorizing the~~a construction authorization for such construction or modification;~~;~~ If the modification is already covered under the existing permit condition, a separate authorization from the Agency is not required.~~provided, however, that construction authorization is not required for modification which would not cause a violation of conditions of the existing permit.~~
- c) Any person required to obtain a construction authorization ~~must apply~~shall make application at least 180 days ~~before~~in advance of the date ~~on which~~ construction or modification ~~begins~~is to begin.
- d) Any person seeking a construction authorization ~~must submit~~shall furnish ~~information and complete~~ an application under 35 Ill. Adm. Code~~as provided in Section 405.104. The rules governing issuance~~Issuance of a construction authorization shall be governed by the rules which govern issuance of an NPDES permit, including 35 Ill. Adm. Code~~Sections 405.101 and 405.102, also apply to~~ issuing a construction authorization.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

118

119 **Section 403.APPENDIX A References to Previous Rules**

120

121 The following table is provided to ~~correlate previous~~aid in referencing old Board rule numbers
122 with the current Illinois Administrative Code Section~~section~~ numbers pursuant to codification.

123

Chapter 4, Mine Related Pollution Part III, NPDES Permits	35 Ill. <u>Adm</u> Admin. Code Part 403
Rule 300	Section 403.100
Rule 301	Section 403.101
Rule 302	Section 403.102
Rule 303	Section 403.103
Rule 304	Section 403.104

124

125 (Source: Amended at 43 Ill. Reg. _____, effective _____)

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: State and NPDES Permits
- 2) Code Citation: 35 Ill. Adm. Code 405
- 3)

<u>Section Numbers</u> :	<u>Proposed Actions</u> :
405.101	Amendment
405.102	Amendment
405.103	Amendment
405.104	Amendment
405.105	Amendment
405.106	Amendment
405.107	Amendment
405.108	Amendment
405.109	Amendment
405.110	Amendment
405.111	Amendment
405.112	Amendment
405.113	Amendment
405.APPENDIX A	Amendment
- 4) Statutory Authority: Authorized by Section 27 and implementing Sections 12 and 13 of the Environmental Protection Act [415 ILCS 5/12, 13, and 27].
- 5) A Complete Description of the Subjects and Issues Involved: In 2016, the Board began reviewing its rules to identify obsolete or otherwise unnecessary language. On January 10, 2018, the Illinois Environmental Protection Agency (IEPA) filed a proposal to update provisions including Part 405. IEPA's proposal arose from Executive Order 2016-13, which required agencies to identify outdated, repetitive, confusing, or unnecessary rules and then amend or repeal them. These proposed amendments include those submitted by IEPA and those identified separately by the Board. Both IEPA and the Board intend the amendments to be non-substantive clarifications.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No

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Pollution Control Board

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments should refer to docket R18-24 and be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.pcb.illinois.gov. Comments may be filed with the Clerk of the Board and be addressed to:

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James R. Thompson Center
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- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: While the proposed amendments may affect a small business that engages in mining activities, the Board intends for the amendments to be non-substantive clarifications of existing rules.
- B) Reporting, bookkeeping or other procedures required for compliance: None beyond those required to comply with current rules.
- C) Types of professional skills necessary for compliance: None beyond those necessary to comply with current rules.
- 14) Small Business Impact Analysis:

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

A) Types of businesses subject to the proposed amendments:

21 Mining

B) Categories that the agency reasonably believes the amendments will impact: The Board intends for the proposed amendments to be non-substantive clarifications of existing rules and does not expect them to have an impact in categories such as staffing, purchasing, equipment, or record keeping.15) Regulatory Agenda on which this rulemaking was summarized: July 2018The full text of the Proposed Amendments begins on the next page:

JCAR350405-1904766r01

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE D: MINE RELATED WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 405
STATE AND NPDES PERMITS

Section

- 405.100 Preamble
- 405.101 Special Conditions: Agency Guidance Document
- 405.102 Standard for Permit Issuance or Certification
- 405.103 Permit Modification When New Regulations Are Adopted
- 405.104 Permit Applications
- 405.105 Surface Drainage Control
- 405.106 Refuse Disposal
- 405.107 Experimental Permits for Refuse Disposal
- 405.108 Permit for Use of Acid-producing Mine Refuse
- 405.109 Abandonment Plan
- 405.110 Cessation, Suspension or Abandonment
- 405.111 Emergency Procedures To Control Pollution
- 405.112 Mine Entrances
- 405.113 Permit Area

405.APPENDIX A References to Previous Rules

AUTHORITY: Implementing Sections 12 and 13 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5].

SOURCE: Adopted in R76-20, R77-10, 39 PCB 196, at 4 Ill. Reg. 34, p. 164, effective August 7, 1980; codified at 5 Ill. Reg. 8527; amended in R83-6A at 8 Ill. Reg. 13267, effective July 16, 1984; amended in R07-9 at 32 Ill. Reg. 15004, effective September 8, 2008; amended in R18-24 at 43 Ill. Reg. _____, effective _____.

Section 405.101 Special Conditions: Agency Guidance Document

a) ~~In addition to the standards and conditions required by this Subtitle D, Chapter I, the Agency may, in granting permits, impose such conditions as may be necessary to accomplish the purposes of the Act that and which are not inconsistent with Subtitle D, Chapter I. All NPDES permits must shall contain these terms and conditions, including but not limited to schedules of compliance, which may be required to accomplish the purposes and provisions of the Act.~~

b) ~~The Agency shall adopt such procedures as are necessary for permit issuance under this Subtitle D, Chapter I. Such procedures shall be included in an Agency~~

44 ~~guidance document.*~~

45

46 e) ~~The Agency may adopt criteria for the design, operation, maintenance and~~
 47 ~~abandonment of mine related facilities and other wastewater sources. Such criteria~~
 48 ~~as are adopted shall be set forth in an Agency guidance document and shall be~~
 49 ~~revised from time to time to reflect current engineering judgement and advances~~
 50 ~~in the state of the art.*~~

51

52 d) ~~In adopting new or revised criteria or procedures, the Agency shall comply with~~
 53 ~~the requirements of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1979,~~
 54 ~~ch. 127, §1001 et seq.~~

55

56 e) ~~To the extent the Agency adopts such criteria, they will represent a formal~~
 57 ~~Agency interpretation of what is consistent with the Act and Subtitle D, Chapter I~~
 58 ~~and necessary to accomplish the purposes of the Act.~~

59

60 f) ~~In adopting new or revised criteria the Agency shall consider other applicable~~
 61 ~~state and federal statutes and regulations and shall avoid issuing criteria which~~
 62 ~~conflict with such.~~

63

64 ~~*35 Ill. Admin. Code Part 450 et seq.~~

65

66 (Source: Amended at 43 Ill. Reg. _____, effective _____)

67

68 **Section 405.102 Standard for Permit Issuance or Certification**

69

70 a) ~~The Agency will~~shall issue or certify a permit if ~~and only~~ if the operator submits
 71 adequate proof that the mine related facilities and mining activities will be
 72 constructed, prepared and operated without causing~~so as not to~~ cause a violation
 73 of the Act or Subtitle D, Chapter I.

74

75 b) ~~If an Agency guidance document is promulgated and if it contains criteria with~~
 76 ~~regard to any condition of a permit, then for purposes of permit issuance proof of~~
 77 ~~conformity with the Agency guidance document shall be prima facie evidence of~~
 78 ~~no violation. However, nonconformity with the Agency guidance document shall~~
 79 ~~not be grounds for permit denial if the condition of subsection (a) of this Section~~
 80 ~~is met.~~

81

82 be) The Agency may issue ~~under Section 405.107~~ an experimental permit under 35
 83 Ill. Adm. Code 405.107 despite, subsection (a) ~~of this Section notwithstanding.~~

84

85 (Source: Amended at 43 Ill. Reg. _____, effective _____)

86

87 **Section 405.103 Permit Modification When New Regulations Are Adopted**

88
89 If the Board adopts new regulations affecting the terms and conditions of a permit that is in
90 effect on an outstanding permit, the Agency may issue to the permittee a new or supplemental permit
91 including terms and conditions reflecting the new regulations setting forth the affected terms and
92 conditions as modified.

93
94 (Source: Amended at 43 Ill. Reg. _____, effective _____)

95
96 **Section 405.104 Permit Applications**

97
98 a) Plans, reports, specifications and application forms submitted to the Agency as
99 part of a ~~State~~ or NPDES permit application ~~must~~ shall be certified by a
100 registered professional engineer when required by the Illinois Professional
101 Engineering Act [225 ILCS 325], Ill. Rev. Stat., 1979, ch. 111, par. 5101 et seq.

102
103 b) An application for a ~~State~~ or NPDES permit ~~must~~ shall include:

104
105 1) ~~The location~~ Location of the affected land and the maximum extent of the
106 affected land during the term of the requested permit;

107
108 2) Activities on the affected land to prepare the site for mining activities,
109 including all earth moving, grading activities, construction and any other
110 preparatory activity;

111
112 3) Measures to be taken to avoid ~~violating~~ violation of the Act and Subtitle
113 D, ~~Chapter I.~~

114
115 4) The location of all streams, creeks, bodies of water, and aquifers
116 ~~that~~ which receive drainage from the affected land;

117
118 5) The location of all private water supplies on or within one mile of the
119 affected land;

120
121 6) The name, type and location of all public water supplies within ~~10~~ ten
122 miles of the affected land;

123
124 7) Plans for surface drainage control ~~under~~ as required by Section 405.105.

125
126 8) ~~Affected land areas~~ Areas of the affected land where mining will occur;

127
128 9) ~~Affected land areas~~ Areas of the affected land where mine refuse and spoil
129 will be deposited;:-

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- 10) The general characteristics of the mine refuse and spoil ~~according to the classification scheme set forth in the Agency Guidance Document or any other general soil classification system acceptable to the Agency;~~
- 11) The proposed method of mining;
- 12) A refuse disposal plan ~~underas required by~~ Section 405.106 or ~~Section~~ 405.107;
- 13) The location of all bore holes, mine shafts, and wells on the affected land;
- 14) An estimate certified by an engineer of the quality and quantity of drainage from the mine area and mine refuse area, including ~~estimated estimates of~~ concentrations of chloride, sulfate, total dissolved solids and all Section 406.106 contaminants ~~regulated under Section 406.106, together with an explanation for a statement of~~ the basis of the estimates;
- 15) The location of all mine ~~dicharges discharge points~~ and non-point source mine ~~discharges discharge sources~~, method or type of sediment basins, erosion control devices and wastewater treatment facilities for all mine related facilities, including ~~identifying designation of~~ collection points for water discharged from all mechanical pumping or gravity flow systems used for draining the mine and mine refuse area;
- 16) An abandonment plan ~~underas required by~~ Section 405.109; and
- 17) If the applicant intends to use acid-producing mine refuse, a plan ~~underas required by~~ Section 405.108.

- c) The Agency may ~~requirespecify~~ other necessary information when ~~consideringnecessary for consideration of~~ the permit application. This may be done ~~throughby way of~~ an application form, ~~through the Agency guidancee document~~ and through requests for information directed to the applicant.
- d) This Section does not limit ~~section shall not be construed as limiting~~ the Agency's authority to enter into an agreement with the Illinois Department of Natural Resources, Office of Mines and Minerals for joint permit applications.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 405.105 Surface Drainage Control

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- a) A ~~State~~ state or NPDES permit ~~must~~shall include a plan for surface drainage control as a condition.
- b) The applicant's plan for surface drainage control ~~must~~shall be incorporated into a permit by reference if it meets the standard of Section 405.102(a); otherwise, the Agency ~~must~~shall either deny the permit or issue it with a modified plan ~~modified by conditions subject to the provisions of Section 405.101.~~
- c) Mining activities and ~~depositing~~the deposition of mine refuse ~~must~~shall be planned and conducted so as to avoid contact or interference with waters of the State that could reasonably cause water pollution ~~state where such contact can reasonably be expected to cause or allow pollution of such waters.~~
- d) Stream diversion~~Diversion~~, redirection or impoundment ~~of streams~~ ~~must~~shall not be undertaken when~~where~~ the Agency demonstrates that there is an economically reasonable alternative.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 405.106 Refuse Disposal

- a) A ~~State~~state or NPDES permit ~~must~~shall include a refuse disposal plan as a condition.
- b) The applicant's refuse disposal plan ~~must~~shall be incorporated into the permit by reference if it meets the standard of Section 405.102(a); otherwise the Agency ~~must~~shall either deny the permit or issue it with a modified plan ~~modified by conditions subject to the provisions of Section 405.101.~~
- c) Seepage from a refuse disposal area is considered a mine discharge and~~as defined by Section 402.101~~ which is subject to 35 Ill. Adm. Code~~the standards contained in Part 406 of this Subtitle D.~~
- d) The mine refuse area ~~must~~shall not encompass~~be located in an area of~~ natural springs or an aquifer recharge area or intercept a drainage course unless special provisions protect them~~have been made to protect such~~. The Agency has the burden to prove~~of proof shall be on the Agency to show~~ that an area is an aquifer recharge area.
- e) Acid-producing solid mine refuse ~~must~~shall be immediately spread, and compacted in layers, and covered ~~as necessary~~ with suitable non-acid-producing material as necessary. If wetness prohibits immediate spreading, the refuse

- 216 ~~must~~ shall be spread and compacted as soon as possible and prior to ~~depositing~~the
 217 ~~deposition~~ of a subsequent layer of refuse or cover material. ~~The~~However, the
 218 Agency may permit alternate refuse disposal methods.
 219
- 220 f) Any refuse disposal plan constituting a change from the permitted refuse disposal
 221 plan is a revised refuse disposal plan.
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- 223 g) ~~Implementing~~Implementation of a revised refuse disposal plan ~~requires~~shall
 224 ~~require~~ a new, ~~or~~ revised, or supplemental NPDES or ~~State~~state permit.
 225 ~~Applications must~~Application shall be ~~submitted~~made within the time limits in 35
 226 Ill. Adm. Code 403.104 and 404.104~~prescribed~~ for the respective permits ~~as~~
 227 ~~provided by Sections 403.104 and 404.104.~~
 228
- 229 h) Subsection (e) ~~does~~shall not apply to acid-producing solid mine refuse disposed
 230 of underground or in strip pits where disposal is below the level of natural
 231 drainage; however, a layer ~~containing~~of at least two feet of suitable non-acid-
 232 producing material ~~must~~shall be applied no later than one year after completion of
 233 a refuse pile in an open pit.
 234

235 (Source: Amended at 43 Ill. Reg. _____, effective _____)
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237 **Section 405.107 Experimental Permits for Refuse Disposal**
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- 239 a) To promote ~~technological development~~the development of the technology of mine
 240 refuse pollution control, the Agency may issue experimental permits for refuse
 241 disposal not satisfying the requirements of Section 405.102 if the applicant
 242 demonstrates that the process, technique or system has a reasonable chance of
 243 complying~~for compliance~~ with the Act and Subtitle D, ~~Chapter I.~~
 244
- 245 b) During operation, drainage from an experimental refuse area ~~must~~shall be
 246 monitored ~~for to determine~~ compliance with the Act and Subtitle D, ~~Chapter I.~~
 247
- 248 c) ~~As a permit condition, the~~The Agency may require ~~as a permit condition that the~~
 249 ~~permittee to~~ submit performance data and cost information while operating~~during~~
 250 ~~the operation of~~ an experimental refuse area.
 251
- 252 d) Applications for experimental permits ~~must~~shall comply with ~~the requirements of~~
 253 ~~Section 405.104 of this Subtitle D.~~
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- 255 e) After the Agency approves an experimental permit, it may terminate the permit if
 256 data or maintenance practices indicate that the experimental method is no longer
 257 likely to meet the requirements of the Act and Subtitle D. Within 45 days after
 258 termination, the Agency will reimpose the requirements of Section

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~~405.102. Agency approval of an experimental permit may be terminated at any time and the requirements of Section 405.102 reimposed within forty five days whenever data or maintenance practices indicate that the experimental method no longer appears likely to meet the requirements of the Act and Subtitle D, Chapter I.~~

- f) ~~Within 12~~twelve months ~~after terminating an~~of the termination of the experimental permit, the permittee ~~must~~shall complete the abandonment plan in the permitted mine refuse disposal area unless otherwise approved by the Agency.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 405.108 Permit for Use of Acid-producing Mine Refuse

- a) ~~Using acid-producing mine refuse requires, as a permit condition, an adequate plan within a State~~A state or NPDES permit ~~shall include as a condition an adequate plan for use of acid-producing mine refuse if the operator is to use such.~~
- b) ~~Using~~As defined by Section 402.101, use of acid-producing mine refuse is a mining activity ~~that may require~~for which a permit may be required under 35 Ill. Adm. CodeSection 404.101.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 405.109 Abandonment Plan

- a) A ~~State~~state or NPDES permit ~~must~~shall include, ~~as a condition,~~ an abandonment plan ~~as a condition.~~
- b) An abandonment plan ~~must~~shall be incorporated into the permit by reference if it:
 - 1) ~~Contains~~Includes a time schedule ~~for executing~~establishing that the ~~abandonment plan will be executed and completing the plan~~completed within a reasonable time after abandonment considering any potential adverse ~~enviromental impact~~impact on the environment pending the ~~plan's~~ plan's completion ~~of the plan and the amount of time necessary to complete all required to carry out the steps within it.~~ necessary to complete ~~all required to carry out the steps within it.~~ ~~One~~in the plan; one year is assumed to be a reasonable time unless the operator demonstrates that a longer time is reasonable; and
 - 2) Shows that the mine related facilities and mining activities will be abandoned ~~without violating~~so as not to cause a violation of the Act or Subtitle Dthis Chapter.

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- c) If the abandonment plan does not meet ~~the standard of~~ subsection (b) requirements, the Agency may either deny the permit or issue it with a modified abandonment plan ~~modified by conditions subject to Section 405.101.~~
- d) The time limit ~~underprovided by~~ subsection (b)(1) is inapplicable to abandonment plans for surface coal mines ~~that~~ which are approved as reclamation plans under the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].
- e) Any abandonment plan constituting a substantial change from the permitted abandonment plan is a revised abandonment plan.
- f) A permittee ~~must~~ shall apply for a new, ~~or~~ revised, or supplemental NPDES or State permit ~~before implementing~~ prior to implementation of a revised abandonment plan within the time limits ~~of~~ provided by 35 Ill. Adm. Code 403.104(c).

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 405.110 Cessation, Suspension or Abandonment

- a) A permittee ~~must~~ shall notify the Agency in writing by certified mail within 30 ~~thirty~~ days ~~after~~ of any of the following:
 - 1) Abandonment; or
 - 2) Cessation or suspension of active mining for 30 ~~thirty~~ days or more unless caused by a labor dispute.
- b) ~~Regardless of the cause, During~~ cessation or suspension of active mining requires, ~~whether caused by a labor dispute or not, the permittee to undertake~~ shall provide whatever interim impoundment, drainage diversion, ~~or and~~ wastewater treatment is necessary to avoid ~~violating~~ violations of the Act or Subtitle D ~~this Chapter~~.
- c) Upon abandonment, the permittee ~~must~~ shall execute and complete the permitted abandonment plan, ~~unless; provided, however, that the permittee need not execute and complete the permitted abandonment plan if~~ the abandonment arises solely from transfer of ownership to a responsible party.
- d) A responsible party is a person who holds a State ~~state~~ or NPDES permit and all other necessary permits for the same facility. If ~~such~~ permit is issued following ~~subsequent to~~ the transfer, it ~~must~~ shall relieve the transferor of any

345 ~~further~~ the obligation to ~~execute~~ ~~of further executing~~ the abandonment plan.

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347 e) Upon request by the permittee, the Agency ~~must~~shall issue a certificate of
 348 abandonment whenever the permittee demonstrates that:

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350 1) The abandonment plan has been satisfactorily executed; and

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352 2) The requirements of ~~Section~~Sections 405.109(b)(2)(A) and (b)(2)(B) have
 353 been met.

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355 f) Refusal to issue a certificate of abandonment is a permit denial for purposes of
 356 appeal.

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358 (Source: Amended at 43 Ill. Reg. _____, effective _____)

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360 **Section 405.111 Emergency Procedures To Control Pollution**

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362 a) A permittee ~~must~~shall notify the Agency within one hour of becoming aware of
 363 an emergency situation concerning mining activities ~~that~~which causes or threatens
 364 ~~to cause a~~ discharge of contaminants into the waters of Illinois. The permittee
 365 ~~must~~shall initially notify the Agency by telephone and ~~then by~~follow this with
 366 written notice, including a description of corrective measures taken. The
 367 permittee ~~must~~shall immediately undertake necessary corrective measures
 368 consistent with Agency approval under ~~subsection~~paragraph (b) ~~of this Section.~~
 369 Emergency situations, likely to ~~violate~~cause a violation of the Act or Subtitle
 370 ~~D~~this Chapter I, include ~~but are not limited to the following:~~

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372 1) Dike, levee, dam or pipeline rupture;

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374 2) Flooded pit containing waters ~~that~~which do not meet the standards of 35
 375 Ill. Adm. Code~~Part~~ 406;

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377 3) Power failure or mechanical breakdown of any wastewater treatment
 378 facility.

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380 b) The Agency may temporarily suspend the permit requirement ~~that a permit be~~
 381 ~~obtained~~ to install and operate any device or facility necessary to correct the
 382 emergency situation.

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384 (Source: Amended at 43 Ill. Reg. _____, effective _____)

385

386 **Section 405.112 Mine Entrances**

387

388 Bore holes, openings, drill holes, entrances to underground mines, and auger or punch mine
389 entries ~~must~~ shall be plugged and sealed to the extent necessary to avoid the threat of water
390 pollution.

391
392 (Source: Amended at 43 Ill. Reg. _____, effective _____)

393
394 **Section 405.113 Permit Area**

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396 A ~~State~~ or NPDES permit ~~must~~ shall specify a permit area. During the permit term, ~~no~~
397 ~~portion of the affected land, or any portion of it, must not~~ shall be outside the permit area.

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399 (Source: Amended at 43 Ill. Reg. _____, effective _____)

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401 **Section 405.APPENDIX A References to Previous Rules**

402

403 The following table is provided to correlate previousaid in referencing old Board rule numbers to
 404 with current Illinois Administrative Code Sectionsection numbers pursuant to codification.

405

Chapter 4, Mine Related Pollution	35 Ill. <u>Adm.</u> Admin. Code
Part V, State and NPDES Permits	<u>Part</u> 405
Rule 500	Section 405.100
Rule 501	Section 405.101
Rule 502	Section 405.102
Rule 503	Section 405.103
Rule 504	Section 405.104
Rule 505	Section 405.105
Rule 506	Section 405.106
Rule 507	Section 405.107
Rule 508	Section 405.108
Rule 509	Section 405.109
Rule 510	Section 405.110
Rule 511	Section 405.111
Rule 512	Section 405.112
Rule 513	Section 405.113

406

407 (Source: Amended at 43 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE D: MINE RELATED WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 405
STATE AND NPDES PERMITS

Section	
405.100	Preamble
405.101	Special Conditions: Agency Guidance Document
405.102	Standard for Permit Issuance or Certification
405.103	Permit Modification When New Regulations Are <u>are</u> Adopted
405.104	Permit Applications
405.105	Surface Drainage Control
405.106	Refuse Disposal
405.107	Experimental Permits for Refuse Disposal
405.108	Permit for Use of Acid-producing Mine Refuse
405.109	Abandonment Plan
405.110	Cessation, Suspension or Abandonment
405.111	Emergency Procedures To Control Pollution
405.112	Mine Entrances
405.113	Permit Area

405.APPENDIX A References to Previous Rules

AUTHORITY: Implementing Sections 12 and 13 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/~~12, 13 and 27~~].

SOURCE: Adopted in R76-20, R77-10, 39 PCB 196, at 4 Ill. Reg. 34, p. 164, effective August 7, 1980; codified at 5 Ill. Reg. 8527; amended in R83-6A at 8 Ill. Reg. 13267, effective July 16, 1984; amended in R07-9 at 32 Ill. Reg. 15004, effective September 8, 2008; amended in R18-24 at 43 Ill. Reg. ~~_____~~, effective ~~_____~~.

Section 405.101 Special Conditions: Agency Guidance Document

a) In addition to the standards and conditions required by this Subtitle D, ~~Chapter I,~~ the Agency may, in granting permits, impose ~~such conditions as may be necessary to accomplish the purposes of the Act and which that~~ are not inconsistent with Subtitle D, Chapter I. All NPDES permits must ~~shall~~ contain ~~those~~ terms and conditions, including ~~but not limited to~~ schedules of compliance, which may be required to accomplish the purposes and provisions of the Act.

b) ~~The Agency shall adopt such procedures as are necessary for permit issuance under this Subtitle D, Chapter I. Such procedures shall be included in an Agency guidance document.*~~

c) ~~The Agency may adopt criteria for the design, operation, maintenance and abandonment of mine related facilities and other wastewater sources. Such criteria as are adopted shall be set forth in~~

~~an Agency guidance document and shall be revised from time to time to reflect current engineering judgment and advances in the state of the art.*~~

~~d) In adopting new or revised criteria or procedures, the Agency shall comply with the requirements of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1979, ch. 127, pars. 1001 et seq.~~

~~e) To the extent the Agency adopts such criteria, they will represent a formal Agency interpretation of what is consistent with the Act and Subtitle D, Chapter I and necessary to accomplish the purposes of the Act.~~

~~f) In adopting new or revised criteria the Agency shall consider other applicable state and federal statutes and regulations and shall avoid issuing criteria which conflict with such.~~

~~* 35 Ill. Admin. Code Part 450 et seq.~~

(Source: Amended at 43 Ill. Reg. , effective
)

Section 405.102 Standard for Permit Issuance or Certification

a) The Agency ~~will~~shallwill issue or certify a permit if ~~and only if~~ the operator submits adequate proof that the mine related facilities and mining activities will be constructed, prepared, and operated without causing ~~so as not to cause~~ a violation of the Act or Subtitle D, ~~Chapter I~~.

~~b) If an Agency guidance document is promulgated and if it contains criteria with regard to any condition of a permit, then for purposes of permit issuance proof of conformity with the Agency guidance document shall be prima facie evidence of no violation. However, nonconformity with the Agency guidance document shall not be grounds for permit denial if the condition of subsection (a) of this Section is met.~~ b) The Agency may issue ~~under Section 405.107~~ an experimental permit, under 35 Ill. Adm. Code 405.107 despite subsection (a) ~~of this Section notwithstanding~~.

(Source: Amended at 43 Ill. Reg. , effective
)

Section 405.103 Permit Modification When New Regulations ~~are~~Are Adopted

If the Board adopts new regulations affecting the terms and conditions of a permit that is in effect ~~an outstanding permit~~, the Agency may issue ~~to the permittee~~ a new or supplemental permit including terms and conditions reflecting the new ~~regulations setting forth the affected terms and conditions as modified~~ regulations.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 405.104 Permit Applications

- a) Plans, reports, specifications and application forms submitted to the Agency as part of a ~~state~~State or NPDES permit application ~~mustshall~~must be certified by a registered professional engineer when required by the Illinois Professional Engineering Act, ~~[225 ILCS 325- Ill. Rev. Stat., 1979, ch. 111, par. 5101 et seq.]~~[225 ILCS 325- Ill. Rev. Stat., 1979, ch. 111, par. 5101 et seq.]
- b) An application for a ~~state~~State or NPDES permit ~~mustshall~~must include:
 - 1) The ~~location~~Location of the affected landlocation and the maximum extent of the affected land during the term of the requested permit;
 - 2) Activities on the affected land to prepare the site for mining activities, including all earth moving, grading activities, construction and any other preparatory activity;
 - 3) Measures to be taken to avoid ~~violating~~violation of~~the~~violating the Act and Subtitle D, ~~Chapter I;~~
 - 4) The location of all streams, creeks, bodies of water, and ~~aquifers which~~aquifers that receive drainage from the affected land;
 - 5) The location of all private water supplies on or within one mile of the affected land;
 - 6) The name, type and location of all public water supplies within ~~ten~~10 miles of the affected land;
 - 7) Plans for surface drainage control ~~underas required by Section 405.105;~~underSection 405.105.
 - 8) Affected land ~~Areas of the affected land~~areas where mining will occur;
 - 9) Affected land ~~Areas of the affected land~~areas where mine refuse and spoil will be deposited;
 - 10) The general characteristics of the mine refuse and spoil ~~according to the classification scheme set forth in the Agency Guidance Document or any other general soil classification system acceptable to the Agency;~~
 - 11) The proposed method of mining;
 - 12) A refuse disposal plan ~~underas required by~~under Section 405.106 or ~~Section~~ 405.107;

13) The location of all bore holes, mine shafts, and wells on the affected land;

14) An estimate certified by an engineer of the quality and quantity of drainage from the mine area and mine refuse area, including ~~estimated estimates of~~ estimated concentrations of chloride, sulfate, total dissolved solids, and all Section 406.106 contaminants ~~regulated under Section 406.106, together~~ with an explanation ~~statement of~~ for the basis of the estimates;

15) The location of all mine ~~discharges discharge points discharges~~ and non-point source mine ~~discharges discharges sources discharges~~, method or type of sediment basins, erosion control devices, and wastewater treatment facilities for all mine related facilities, including identifying ~~designation of~~ collection points for water discharged from all mechanical pumping or gravity flow systems used for draining the mine and mine refuse area;

16) An abandonment plan ~~under as required by~~ under Section 405.109; and

17) If the applicant intends to use acid-producing mine refuse, a plan ~~under as required by~~ under Section 405.108.

c) The Agency may require ~~specify~~ other necessary information when ~~necessary for consideration of~~ considering the permit application. This may be done through ~~by way of an application form, through the Agency guidance document~~ and through ~~information~~ requests for information directed to the applicant.

d) This ~~section~~ Section does not limit ~~shall not be construed as limiting~~ the Agency's authority to enter into an agreement with the Illinois Department of Natural Resources, Office of Mines and Minerals for joint permit applications.

(Source: Amended at 43 Ill. Reg. ~~—~~ _____, effective _____)

Section 405.105 Surface Drainage Control

a) A State state or NPDES permit ~~must shall~~ must include a plan for surface drainage control as a condition.

b) The applicant's plan for surface drainage control ~~must shall~~ must be incorporated into a permit by reference if it meets the standard of Section 405.102(a); otherwise, the Agency must ~~shall either deny the permit or issue it with a modified plan modified by conditions subject to the provisions of Section 405.101.~~

c) Mining activities and ~~depositing the deposition of~~ depositing mine refuse ~~must shall~~ must be planned and conducted so as to avoid contact or interference with waters of the ~~state~~ State that could reasonably cause

water pollution ~~where such contact can reasonably be expected to cause or allow pollution of such waters.~~

d) Stream diversion ~~Diversión~~, redirection, or impoundment ~~of streams~~ ~~must shall~~ must not be undertaken ~~wherewhen~~ the Agency demonstrates that there is an economically reasonable alternative.

(Source: Amended at 43 Ill. Reg. ~~—~~, effective _____)

Section 405.106 Refuse Disposal

a) A ~~state~~ State or NPDES permit ~~must shall~~ must include a refuse disposal plan as a condition.

b) The applicant's refuse disposal plan ~~must shall~~ must be incorporated into the permit by reference if it meets the standard of Section 405.102(a); otherwise, the Agency must ~~shall either deny the permit or issue it with a modified plan modified by conditions subject to the provisions of Section 405.101.~~

c) Seepage from a refuse disposal area is considered a mine discharge ~~as defined by Section 402.101 and which~~ and is subject to 35 Ill. Adm. Code ~~the standards contained in Part 406 of this Subtitle D. Code 406.~~

d) The mine refuse area ~~must shall~~ must not encompass ~~be located in an area of~~ natural springs or an aquifer recharge area or intercept a drainage course unless special provisions protect them ~~have been made to protect such.~~ The Agency has the burden ~~of proof shall be on the Agency to show~~ to prove that an area is an aquifer recharge area.

e) Acid-producing solid mine refuse must ~~shall~~ be immediately spread, ~~and~~ compacted in layers, and covered ~~as necessary~~ with suitable non-acid-producing material as necessary. If wetness prohibits immediate spreading, the refuse must ~~shall~~ be spread and compacted as soon as possible and prior to depositing ~~the deposition of~~ a subsequent layer of refuse or cover material. ~~The~~ However, the The Agency may permit alternate refuse disposal methods.

f) Any refuse disposal plan constituting a change from the permitted refuse disposal plan is a revised refuse disposal plan.

g) ~~Implementing~~ Implementation of Implementing a revised refuse disposal plan ~~requires shall requires arequires a~~ new, ~~or~~ revised, or supplemental NPDES or ~~state~~ State permit. ~~Applications~~ Application ~~must shall~~ Applications must be submitted ~~made~~ within the time limits in 35 Ill. Adm. Code 403.104 and 404.104 ~~prescribed~~ for the respective permits ~~as provided by Sections 403.104 and 404.104.~~

~~h~~ h) Subsection (e) ~~does shall does~~ not apply to acid-producing solid mine refuse disposed of underground or in strip pits where disposal is below the level of natural drainage; however, a layer containing ~~of~~ at

least two feet of suitable non-acid-producing material ~~must~~shall~~must~~ be applied no later than one year after completion of a refuse pile in an open pit.

(Source: Amended at 43 Ill. Reg. ~~—~~ , effective)

Section 405.107 Experimental Permits for Refuse Disposal

- a) To promote technological development ~~the development of the technology~~ of mine refuse pollution control, the Agency may issue experimental permits for refuse disposal not satisfying the requirements of Section 405.102 if the applicant demonstrates that the process, technique, or system has a reasonable chance of complying ~~for compliance~~ with the Act and Subtitle D, ~~Chapter I~~.
- b) During operation, drainage from an experimental refuse area ~~must~~shall be monitored ~~to determine~~ for compliance with the Act and Subtitle D, ~~Chapter I~~.
- c) As a permit condition, ~~the~~The~~the~~ Agency may require ~~as a permit condition that~~ the permittee to submit performance data and cost information while operating ~~during the operation of~~ an experimental refuse area.
- d) Applications for experimental permits must ~~shall~~ comply with ~~the requirements of~~ Section ~~405.104 of this Subtitle D.~~405.104.
- e) ~~Agency approval of an experimental permit may be terminated at any time and the requirements of Section 405.102 reimposed within forty five days whenever data or maintenance practices indicate that the experimental method no longer appears likely to meet the requirements of the Act and Subtitle D, Chapter I.~~ After the Agency approves an experimental permit, it may terminate the permit if data or maintenance practices indicate that the experimental method is no longer likely to meet the requirements of the Act and Subtitle D. Within 45 days after termination, the Agency will reimpose the requirements of Section 405.102.
- f) Within ~~twelve~~12 months after terminating ~~and of the termination of the~~an experimental permit, the permittee ~~must~~shall~~must~~ complete the abandonment plan in the permitted mine refuse disposal area unless otherwise approved by the Agency.

(Source: Amended at 43 Ill. Reg. ~~—~~ , effective)

Section 405.108 Permit for Use of Acid-producing Mine Refuse

- a) Using acid-~~producing~~producing mine refuse requires, as a permit condition, an adequate plan within a ~~A state~~State or NPDES permit ~~shall~~

~~include as a condition, an adequate plan for use of acid-producing mine refuse if the operator is to use such.~~

b) ~~Using~~As defined by Section 402.101, use of Using acid-producing mine refuse is a mining activity that may require ~~for which~~ a permit ~~may be required~~ under 35 Ill. Adm. ~~Code~~SectionCode 404.101.

(Source: Amended at 43 Ill. Reg. ~~—~~, effective
)

Section 405.109 Abandonment Plan

a) A ~~state~~State or NPDES permit must ~~shall~~ include, as a condition, an abandonment plan ~~as a condition~~.

b) An abandonment plan must ~~shall~~ be incorporated into the permit by reference if it:

1) Contains ~~Includes~~ a time schedule for ~~executing~~establishing that the abandonment plan will be executed and completed~~executing and completing~~ the plan within a reasonable time after abandonment considering any potential adverse ~~environmental impact~~enviromental impact on the environment pending the plan's completion ~~of the plan~~ and the amount of time necessary to complete all ~~required to carry out the steps within it.~~the plan; ~~One~~one year is assumed to be a reasonable time unless the operator demonstrates that a longer time is reasonable; and

2) Shows that the mine related facilities and mining activities will be abandoned without violating ~~so as not to cause a violation of~~ the Act or Subtitle ~~this Chapter.~~D.

c) If the abandonment plan does not meet ~~the standard of~~ subsection (b) requirements, the Agency may either deny the permit or issue it with a modified ~~an~~ abandonment plan ~~modified by conditions subject to Section 405.101.~~

d) The time limit under ~~provided by~~ subsection (b)(1) is inapplicable to abandonment plans for surface coal mines ~~which~~that are approved as reclamation plans under the Surface Coal Mining Land Conservation and Reclamation Act, [225 ILCS 720].

e) Any abandonment plan constituting a substantial change from the permitted abandonment plan is a revised abandonment plan.

f) A permittee must ~~shall~~ apply for a new, ~~or~~ revised, or supplemental NPDES or ~~state~~State permit before implementing ~~prior to implementation of~~ a revised abandonment plan within the time limits of ~~provided by~~ 35 Ill. Adm. Code 403.104(c).

(Source: Amended at 43 Ill. Reg. ~~—~~, effective
)

Section 405.110 Cessation, Suspension or Abandonment

a) A permittee must ~~shall~~ notify the Agency in writing by certified mail within 30 ~~thirty~~ days after ~~of any of~~ the following:

1) Abandonment; or

2) Cessation or suspension of active mining for 30 ~~thirty~~ days or more unless caused by a labor dispute.

b) Regardless of the cause, ~~During~~ cessation or suspension of active mining, ~~whether caused by a labor dispute or not,~~ requires the permittee ~~shall provide~~ to undertake whatever interim impoundment, drainage diversion, or ~~and~~ wastewater ~~treatment is~~ treatment is necessary to avoid ~~violating violations of the~~ violating the Act or Subtitle ~~D~~ this Chapter, D.

c) Upon abandonment, the permittee must ~~shall~~ execute and complete the permitted abandonment plan, ~~provided, however, that the permittee need not execute and complete the permitted abandonment plan if~~ unless the abandonment arises solely from transfer of ownership to a responsible party.

d) A responsible party is a person who holds a ~~state~~ State or NPDES permit and all other necessary permits for the same facility. If ~~such a~~ permit is issued following ~~subsequent to~~ the transfer, it must ~~shall~~ relieve the transferor of any further ~~the~~ obligation ~~of further to~~ execute ~~executeing~~ to execute the abandonment plan.

e) Upon request by the permittee, the Agency must ~~shall~~ issue a certificate of abandonment whenever the permittee demonstrates that:

1) The abandonment plan has been satisfactorily executed; and

2) The requirements of ~~Sections~~ Section 405.109(b)(2)(A) and (b)(2)(B) have been met.

f) Refusal to issue a certificate of abandonment is a permit denial for purposes of appeal.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 405.111 Emergency Procedures To Control Pollution

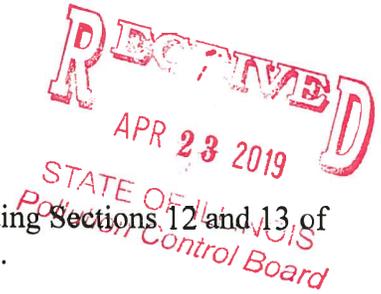
a) A permittee must ~~shall~~ notify the Agency within one hour of becoming aware of an emergency situation concerning mining activities ~~which that~~ causes or threatens ~~to cause~~ a discharge of contaminants into the waters of Illinois. The permittee must ~~shall~~ initially notify the Agency by telephone and then by ~~follow this with~~ written notice, including a description of ~~describing the~~ corrective measures taken. The permittee must ~~shall~~ immediately undertake necessary corrective

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Definitions
- 2) Code Citation: 35 Ill. Adm. Code 402
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
402.100	Amendment
402.101	Amendment
402.APPENDIX A	Amendment
- 4) Statutory Authority: Authorized by Section 27 and implementing Sections 12 and 13 of the Environmental Protection Act [415 ILCS 5/12, 13, and 27].
- 5) A Complete Description of the Subjects and Issues Involved: In 2016, the Board began reviewing its rules to identify obsolete or otherwise unnecessary language. On January 10, 2018, the Illinois Environmental Protection Agency (IEPA) filed a proposal to update provisions including Part 402. IEPA's proposal arose from Executive Order 2016-13, which required agencies to identify outdated, repetitive, confusing, or unnecessary rules and then amend or repeal them. These proposed amendments include those submitted by IEPA and those identified separately by the Board. Both IEPA and the Board intend the amendments to be non-substantive clarifications.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments should refer to docket R18-24 and be filed electronically through the Clerk's Office On-



TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE D: MINE RELATED WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 402
DEFINITIONS

Section	
402.100	Terms Defined Elsewhere
402.101	Definitions

402.APPENDIX A References to Previous Rules

AUTHORITY: Implementing Sections 12 and 13 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5].

SOURCE: Adopted at 4 Ill. Reg. 34, p. 164, effective August 7, 1980; codified at 5 Ill. Reg. 34, p. 8527; amended in R84-29 at 11 Ill. Reg. 12890, effective July 27, 1987; amended in R18-24 at 43 Ill. Reg. _____, effective _____.

Section 402.100 Terms Defined Elsewhere

Unless otherwise stated or unless the context clearly indicates a different meaning, the definition of terms used in ~~Subtitle D~~this Chapter are the same as those found in the Illinois Environmental Protection Act [415 ILCS 5] (Act), (~~Ill. Rev. Stat. 1979, ch. 111½, Section 1001 et seq.~~) 35 Ill. Adm. Code Subtitle C, Chapter I, the Water Pollution Regulations of the Illinois Pollution Control Board (subtitle C, chapter I) and the Federal Water Pollution Control Act of 1972 (FWPCA), (33 USCU.S.C. 1251 et seq., 1972 as amended). ~~The following definitions which apply to this Chapter can be found in the Act, Subtitle C, Chapter I or the FWPCA:~~
~~Administrator, Agency, Board, Contaminant, Effluent, Federal Water Pollution Control Act (FWPCA), National Pollutant Discharge Elimination System (NPDES), Point Source Discharge, Pollutant, Refuse, Storet, Treatment Works, Underground Waters, Wastewater, Wastewater Source, Water Pollution and Waters.~~

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 402.101 Definitions

For purposes of this ~~Subtitle D~~Chapter the following terms are defined:

"Abandon": to transfer ownership of or to close down mining activities, a mine or mine refuse area with no intention by ~~the~~that operator to reopen the affected land.
A mine or mine refuse area ~~that~~which has been inoperative for one year ~~is~~shall be

44 rebuttably presumed to be abandoned.

45

46 "Acid or Ferruginous Mine Drainage": mine drainage ~~that~~which, before any
47 treatment, has a pH of less than 6.0 or a total iron concentration greater than 10
48 mg/L.

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50 "Acid-producing Material": material ~~that~~which when exposed to air and water,
51 ~~may cause~~is capable of causing drainage containing sulfuric acid. In determining
52 whether material is acid-producing, consideration ~~must~~shall be given to the sulfur
53 content of the material, the size and spatial distribution of pyritic compounds and
54 other compounds of sulfur, the neutralizing effect of surrounding intermixed
55 materials, and the quality of drainage produced by mining on sites with similar
56 soils.

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58 "Affected Land": any land owned, ~~or~~ controlled, or otherwise used by the
59 operator in connection with mining activities, except the surface area above
60 underground mine workings that is not otherwise used for mining activities. The
61 term does not include offsite office buildings and farming operations or
62 recreational activities on undisturbed land. Land described in a certificate of
63 abandonment issued by the Agency under 35 Ill. Adm. Code~~Section~~ 405.110(e) is
64 no longer part of the affected land.

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66 "Alkaline Mine Drainage": mine drainage ~~that~~which, prior to treatment, has a pH
67 equal to or greater than 6.0 and a total iron concentration of less than 10 mg/L.

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69 "Aquifer": *saturated (with groundwater) soils and geologic materials that are*
70 *sufficiently permeable to readily yield economically useful quantities of water to*
71 *wells, springs, or streams under ordinary hydraulic gradients.* [415 ILCS
72 55/3(b)] ~~A zone, stratum or group of strata which can store and transmit water in~~
73 ~~sufficient quantities for a specific use.~~

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75 "Base Flow": any flow ~~that~~which is not a result of immediate runoff from
76 precipitation. It includes, ~~but is not limited to,~~ groundwater flow, mechanical
77 pumpages, springs, discharges from subsurface drainage systems, and controlled
78 outfalls from other treatment works. It is normally any flow beyond 24 hours
79 after the rainfall ceases.

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81 "Coal Preparation Plant": a facility where coal is subjected to cleaning,
82 concentrating, or other processing or preparation ~~in order~~ to separate coal from its
83 impurities.

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85 "Coal Preparation Plant Associated Areas": coal preparation plant yards,
86 immediate access roads, coal refuse piles, and coal storage piles and facilities.

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"Coal Refuse Disposal Pile": any coal refuse permanently deposited on the earth or stored for more than 180 days. It does not include coal refuse deposited within the active mining area or coal refuse never removed from the active mining area.

"Coal Transfer Facility" or "Coal Storage Yard": any area where coal is transferred from one mode of transportation to another or where coal is dumped, piled, stored or blended. The term includes ~~but is not limited to~~ coal docks, blending yards, conveyor belts and pipelines. As used in this Subtitle D Chapter, the terms mining activity and mine-related facility ~~shall~~ include coal transfer facilities and coal storage yards.

"Construction Authorization": authorization under 35 Ill. Adm. Code ~~Section~~ 403.104 to prepare land for mining activities or to construct mine-related facilities. Construction authorization is issued to a person who holds or is required to have a National Pollutant Discharge Elimination System ~~an~~ (NPDES) permit.

"Construction Permit": a ~~State~~ permit issued under 35 Ill. Adm. Code ~~Section~~ 404.101 ~~that~~ ~~which~~ allows the operator to prepare land for mining activities or to construct mine-related facilities.

"Controlled Surface Mine Drainage": any surface mine drainage that is pumped or siphoned from a mine area or mined area.

"Domestic Retail Sales Yard": a business ~~that~~ ~~which~~ stockpiles coal or other minerals solely to supply for the purpose of supplying homeowners, small businesses, small industries or other institutions with the minerals ~~mineral~~ for their individual consumption. The term does not include any sales yard located at a mine.

"Drainage Course": any natural or man-made channel or ditch that directs ~~which~~ serves the purpose of directing the flow of water into a natural waterway.

"Facility": a contiguous area of land, including all structures above or below the ground, ~~which~~ is owned or controlled by one person.

"Mine Area" or "Mined Area": the surface and subsurface land where mining has occurred or is occurring. The term does not include the unmined surface land directly above underground mine workings ~~that~~ ~~which~~ is not otherwise disturbed by mining activities.

"Mine Discharge": any point source discharge, whether natural or man-made,

130 from a mine-related facility. Such discharges include ~~but are not limited to~~
 131 mechanical pumpages, pit overflows, spillways, drainage ditches, seepage from
 132 mine or mine refuse areas, and effluent from processing and milling or mineral
 133 preparation plants. Other discharges including ~~but not limited to~~ sanitary sewers
 134 and sewage treatment works are not mine discharges. The term mine discharge
 135 includes surface runoff discharged from a sedimentation pond but does not
 136 include non-point source mine discharges.

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 138 "Mine Refuse": gob, coal, rock, slate, shale, mill tailings, boney, clay, pyrites and
 139 other unmerchantable solid or slurry material intended to be discarded that ~~which~~
 140 results from ~~is connected with the~~ cleaning and preparation of mined materials at a
 141 preparation plant or washery. It includes sludge or other precipitated matter
 142 produced by the treatment of acid mine drainage but does not ~~otherwise~~ generally
 143 include sediment from alkaline mine drainage. The term also includes acid-
 144 producing spoil.

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 146 "Mine Refuse Area": any land used for dumping, storing ~~storage~~ or
 147 disposing ~~disposal~~ of mine refuse.

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 149 "Mine Refuse Pile": any deposit of solid mine refuse ~~which is intended for~~ to
 150 serve as ~~permanent disposal of such material.~~

151
 152 "Mine-Related Facility": a portion of a facility that ~~which~~ is related to mining
 153 activities. The term includes, ~~but is not limited to,~~ the following:

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 155 Affected land;

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 157 Coal storage yard or transfer facility;

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 159 Mine;

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 161 Mine drainage treatment facility;

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 163 Mine refuse area; and

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 165 Processing or mineral preparation plant.

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 167 "Mining": the surface or underground extraction or processing of natural deposits
 168 of coal, clay, fluorspar, gravel, lead bearing ores, peat, sand, stone, zinc bearing
 169 ores or other minerals using ~~by the use of~~ any mechanical operation or process.
 170 The term also includes recovering ~~the recovery~~ or processing ~~of the~~ minerals from
 171 a mine refuse area. It does not include drilling for oil or natural gas.
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"Mining Activities": all activities on a facility ~~that~~ which are directly further~~in~~
furtherance of mining, including activities before, during and after mining. The
term does not include land acquisition, exploratory drilling, surveying and similar
activities. The term includes, ~~but is not limited to,~~ the following:

Preparation of land for mining activities;

Construction of mine-related facilities ~~that~~ which could generate refuse,
result in a discharge or have the potential to cause water pollution;

Ownership or control of a mine-related facility;

Ownership or control of a coal storage yard or transfer facility;

Generation or disposal of mine refuse;

Mining;

Opening a mine;

Production of a mine discharge or non-point source mine discharge;

Surface drainage control; and

Use of acid-producing mine refuse.

"Mountaintop Removal": surface coal mining and reclamation operations that
remove entire coal seams running through the upper fraction of a mountain, ridge,
or hill by removal of all of the overburden and create a level plateau or gently
rolling contour with no highwalls remaining.

"New Source Coal Mine": a coal mine, including an abandoned mine ~~that~~ which
is being remined, at which:

Construction commenced after May 4, 1984; or

A major alteration has resulted in a new, altered or increased discharge of
pollutants. Major alterations are:

Extraction from a coal seam not previously extracted by that mine;

Discharge into a drainage area not previously affected by
wastewater discharge from that mine;

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Extensive new surface disruption at the mining operation; and
Construction of a new shaft, slope or drift.

"Non-point Source Mine Discharge": surface runoff from the affected land. The term does not include surface runoff ~~which is~~ discharged from a sedimentation pond or seepage from a mine or mine refuse area.

"Opening a Mine": any construction activity related to preparation for mining on a facility.

"Operating Permit": a State permit required of a person carrying out mining activities.

"Operator": a person who carries out mining activities.

"Permittee": a person who holds a State or NPDES permit issued under ~~this Subtitle D, Chapter I.~~ In some contexts, the term permittee also includes a permit applicant.

"Person": any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, State agency, or any other legal entity, or their legal representative, agent or assigns.

"Processing or Mineral Preparation Plant": a facility used to size or separate ~~for the sizing or separation from the ore or raw mineral~~ of coal, clay, fluorspar, gravel, lead bearing ores, peat, sand, stone, zinc bearing ores, or other materials from the ore or raw mineral.

"Reclamation Area": the surface area of a coal mine ~~which has been~~ returned to the contour required by permit and on which revegetation work has begun ~~commenced~~.

"Slurry": mine refuse separated from the mineral in the cleaning process, consisting of readily pumpable fines and clays and other materials in the preparation plant effluent. This term includes mill tailings.

"Spoil": the accumulation of excavated overburden or other earth, dirt or rock overlying the mineral seam or other deposit excavated from its original location by surface or underground mining.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE D: MINE RELATED WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 402
DEFINITIONS

Section
402.100 Terms Defined Elsewhere
402.101 Definitions

402.APPENDIX A References to Previous Rules

AUTHORITY: Implementing Sections 12 and 13 and authorized by Section 27 of the Environmental Protection Act (~~[415 ILCS 5/12, 13 and 27]~~).1

SOURCE: Adopted at 4 Ill. Reg. 34, page, 164, effective August 7, 1980; codified at 5 Ill. Reg. 34, ~~page 8527, p. 8527~~; amended in R84-29 at 11 Ill. Reg. 12890, effective July 27, 1987; amended in R18-24 at 43 Ill. Reg. _____, effective _____.

Section 402.100 Terms Defined Elsewhere

Unless otherwise stated or unless the context clearly indicates a different meaning, the definition of terms used in Subtitle ~~D~~this Chapter are the same as those found in the Illinois Environmental Protection Act (~~Act~~), (~~[415 ILCS 5]~~), (~~Ill. Rev. Stat. 1979, ch. 111 1/2, Section 1001 et seq.~~)1 (~~Act~~), 35 Ill. Adm. Code Subtitle C, Chapter I, ~~Water Pollution Regulations of the Illinois Pollution Control Board (subtitle C, chapter I)~~ and the Federal Water Pollution Control Act of 1972 (FWPCA), (~~33 U.S.C. 1251 et seq., 1972 as amended~~). ~~The following definitions which apply to this Chapter can be found in the Act, Subtitle C, Chapter I or the FWPCA: Administrator, Agency, Board, Contaminant, Effluent, Federal Water Pollution Control Act (FWPCA), National Pollutant Discharge Elimination System (NPDES), Point Source Discharge, Pollutant, Refuse, Storet, Treatment Works, Underground Waters, Wastewater, Wastewater Source, Water Pollution and Waters~~ (33 USC 1251).

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 402.101 Definitions

For purposes of this Subtitle ~~Chapter D~~Chapter D, the following terms are defined:

"Abandon": to transfer ownership of or to close down mining activities, a mine or mine refuse area with no intention by ~~that~~the operator to reopen the affected land. A mine or mine refuse area ~~that~~which~~that~~ has been inoperative for one year ~~is~~shall be rebuttably presumed ~~to be~~ abandoned.

"Acid or Ferruginous Mine Drainage": mine drainage ~~which~~that, before any treatment, has a pH of less than 6.0 or a total iron concentration greater than 10 mg/L.

"Acid-producing Material": material ~~that~~which~~that~~, when exposed to air and water, may ~~cause~~~~is capable of causing~~cause drainage containing sulfuric acid. In determining whether material is acid-producing, consideration ~~must~~~~shall~~must be given to the sulfur content of the material, the size and spatial distribution of pyritic compounds and other compounds of sulfur, the neutralizing effect of surrounding intermixed materials, and the quality of drainage produced by mining on sites with similar soils.

"Affected Land": any land owned, ~~or~~ controlled, or otherwise used by the operator in connection with mining activities, except the surface area above underground mine workings that is not otherwise used for mining activities. The term does not include offsite office buildings and farming operations or recreational activities on undisturbed land. Land described in a certificate of abandonment issued by the Agency under 35 Ill. Adm. ~~Code~~Section Code 405.110(e) is no longer part of the affected land.

"Alkaline Mine Drainage": mine drainage ~~which~~that, prior to treatment, has a pH equal to or greater than 6.0 and a total iron concentration of less than 10 mg/L.

"Aquifer": saturated (with groundwater) soils and geologic materials ~~which~~that are sufficiently permeable to readily yield economically useful quantities of water to wells, springs, or streams under ordinary hydraulic gradients. [415 ILCS 55/3(b)] ~~A zone, stratum or group of strata which can store and transmit water in sufficient quantities for a specific use.~~

"Base Flow": any flow ~~which~~that is not a result of immediate runoff from precipitation. It includes, ~~but is not limited to,~~ groundwater flow, mechanical pumpages, springs, discharges from subsurface drainage systems, and controlled outfalls from other treatment works. It is normally any flow beyond 24 hours after the rainfall ceases.

"Coal Preparation Plant": a facility where coal is subjected to cleaning, concentrating, or other processing or preparation ~~in order~~ to separate coal from its impurities.

"Coal Preparation Plant Associated Areas": coal preparation plant yards, immediate access roads, coal refuse piles, and coal storage piles and facilities.

"Coal Refuse Disposal Pile": any coal refuse permanently deposited on the earth or stored for more than 180 days. It does not include coal refuse deposited within the active mining area or coal refuse never removed from the active mining area.

"Coal Transfer Facility" or "Coal Storage Yard": any area where coal is transferred from one mode of transportation to another or where coal is dumped, piled, stored or blended. The term includes ~~but is not limited to~~ coal docks, blending yards, conveyor belts and pipelines. As used in this Subtitle ~~Chapter D~~, the terms mining activity and mine-related facility ~~shall include~~ coal transfer facilities and coal storage yards.

"Construction Authorization": authorization under 35 Ill. Adm. ~~Code Section Code~~ 403.104 to prepare land for mining activities or to construct mine-related facilities. Construction authorization is issued to a person who holds or is required to have a National Pollutant Discharge Elimination ~~System~~ ~~System~~ (NPDES) permit.

"Construction Permit": a ~~state~~ ~~State~~ permit issued under 35 Ill. Adm. ~~Code Section Code~~ 404.101 ~~which that~~ allows the operator to prepare land for mining activities or to construct mine-related facilities.

"Controlled Surface Mine Drainage": any surface mine drainage that is pumped or siphoned from a mine area or mined area.

"Domestic Retail Sales Yard": a business ~~which that~~ stockpiles coal or other minerals solely to ~~supply for the purpose of supplying~~ ~~supply~~ homeowners, small businesses, small industries or other institutions with ~~the~~ minerals for ~~their~~ individual consumption. The term does not include any sales yard located at a mine.

"Drainage Course": any natural or man-made channel or ditch that ~~directs which serves the purpose of directing~~ ~~directs~~ the flow of water into a natural waterway.

"Facility": a contiguous area of land, including all structures above or below the ground, ~~which is~~ owned or controlled by one person.

"Mine Area" or "Mined Area": the surface and subsurface land where mining has occurred or is occurring. The term does not include the unmined surface land directly above underground mine workings ~~which~~that is not otherwise disturbed by mining activities.

"Mine Discharge": any point source discharge, whether natural or man-made, from a mine related facility. Such discharges include ~~but are not limited to~~ mechanical pumpages, pit overflows, spillways, drainage ditches, seepage from mine or mine refuse areas, and effluent from processing and milling or mineral preparation plants. Other discharges including ~~but not limited to~~ sanitary sewers and sewage treatment works are not mine discharges. The term mine discharge includes surface runoff discharged from a sedimentation pond but does not include non-point source mine discharges.

"Mine Refuse": gob, coal, rock, slate, shale, mill tailings, boney, clay, pyrites and other unmerchantable solid or slurry material intended to be discarded ~~which result from~~is connected with the that results from cleaning and preparation of mined materials at a preparation plant or washery. It includes sludge or other precipitated matter produced by the treatment of acid mine drainage but does not ~~otherwise~~ generally include sediment from alkaline mine drainage. The term also includes acid-producing spoil.

"Mine Refuse Area": any land used for dumping, storing, ~~storage~~ or ~~disposing~~disposal ~~disposing~~ of mine refuse.

"Mine Refuse Pile": any deposit of solid mine refuse ~~which is intended to serve as~~ for permanent disposal ~~of such material~~.

"Mine-Related Facility": a portion of a facility ~~which~~that is related to mining activities. The term includes, ~~but is not limited to~~, the following:

Affected land;

Coal storage yard or transfer facility;

Mine;

Mine drainage treatment facility;

Mine refuse area; and

Processing or mineral preparation plant.

"Mining": the surface or underground extraction or processing of natural deposits of coal, clay, fluorspar, gravel, lead bearing ores, peat, sand, stone, zinc bearing ores or other minerals ~~using by the use of~~ using any mechanical operation or process. The term also includes ~~recovering the recovery~~ recovering or processing ~~of the~~ minerals from a mine refuse area. It does not include drilling for oil or natural gas.

"Mining Activities": all activities on a facility ~~which are that~~ directly ~~further in furtherance of~~ further mining, including activities before, during and after mining. The term does not include land acquisition, exploratory drilling, surveying and similar activities. The term includes ~~, but is not limited to,~~ the following:

Preparation of land for mining activities;

Construction of mine -related facilities ~~which that~~ could generate refuse, result in a discharge or have the potential to cause water pollution;

Ownership or control of a mine -related facility;

Ownership or control of a coal storage yard or transfer facility;

Generation or disposal of mine refuse;

Mining;

Opening a mine;

Production of a mine discharge or non-point source mine discharge;

Surface drainage control; and

Use of acid-producing mine refuse.

"Mountaintop Removal": surface coal mining and reclamation operations that remove entire coal seams running through the upper fraction of a mountain, ridge, or hill by removal of all of the overburden and create a level plateau or gently rolling contour with no highwalls remaining.

"New Source Coal Mine": a coal mine, including an abandoned mine ~~which that~~ is being remined, at which:

Construction commenced after May 4, 1984; or

A major alteration has resulted in a new, altered or increased discharge of pollutants. Major alterations are:

Extraction from a coal seam not previously extracted by that mine;

Discharge into a drainage area not previously affected by wastewater discharge from that mine;

Extensive new surface disruption at the mining operation; and

Construction of a new shaft, slope or drift.

"Non-point Source Mine Discharge": surface runoff from the affected land. The term does not include surface runoff ~~which is~~ discharged from a sedimentation pond or seepage from a mine or mine refuse area.

"Opening a Mine": any construction activity related to preparation for mining on a facility.

"Operating Permit": a ~~state~~State permit required of a person carrying out mining activities.

"Operator": a person who carries out mining activities.

"Permittee": a person who holds a ~~state~~State or NPDES permit issued under ~~this~~ Subtitle D, ~~Chapter I~~. In some contexts, the term permittee also includes a permit applicant.

"Person": any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, ~~state~~State agency, or any other legal entity, or their legal representative, agent or assigns.

"Processing or Mineral Preparation Plant": a facility used to size or ~~separate for the sizing or separation from the ore or raw mineral~~ ~~of~~separate coal, clay, fluorspar, gravel, lead bearing ores, peat, sand, stone, zinc bearing ores, or other materials from the ore or raw mineral.

"Reclamation Area": the surface area of a coal mine ~~which has been~~ returned to the contour required by permit and on which revegetation work has ~~begun~~commenced. begun.

"Slurry": mine refuse separated from the mineral in the cleaning process, consisting of readily pumpable fines and clays and other materials in the preparation plant effluent. This term includes mill tailings.

"Spoil": the accumulation of excavated overburden or other earth, dirt or rock overlying the mineral seam or other deposit excavated from its original location by surface or underground mining.

"State Permit": a construction permit or operating permit issued by the Agency. NPDES permits are not ~~state~~ State permits.

"Steep Slope": any slope of more than 20 degrees.

"Surface Drainage Control": control of surface water on the affected land by a person ~~who is~~ engaging in mining activities. Control of surface water includes ~~diverting~~ diversion of ~~diverting~~ surface waters around or away from the active mining area or mine refuse area and ~~diverting~~ diversion ~~diverting~~, redirecting, ~~redirection or~~ impounding ~~impoundment of~~ or impounding a stream or ~~impounding~~ impoundment of ~~impounding~~ water to ~~augment~~ augment flow ~~augmentation or~~ control ~~controlled or~~ control release of effluents.

"Surface Mining": mining conducted in an open pit, including area and contour strip mining.

"Underground Mining": mining conducted below the surface by means of constructing an access facility to the mineral deposit. The term includes slope, drift, shaft mines and auger or punch mining.

"Use of Acid-producing Mine Refuse": use of acid-producing mine refuse includes any use, offer for sale, sale or offer for use in roadway projects, mine roads, mine yards or elsewhere.

(Source: Amended at 43 Ill. Reg. ~~_____~~, effective _____)

Section 402.APPENDIX A References to Previous ~~Rules~~ REFERENCES TO PREVIOUS RULES Rules

The following table is provided to ~~refer previous~~ aid in referencing ~~old~~ correlate previous Board rule numbers ~~to~~ with current ~~section~~ Illinois Administrative Code Section numbers ~~pursuant to codification~~.

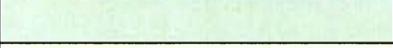
Chapter 4, Mine Related Pollution

Part II, Definitions 35 Ill. ~~Adm~~ Admin ~~Adm~~. Code ~~Part~~ 402 ~~Rule~~ 200 ~~Section~~ 402.100 ~~Rule~~ 201 ~~Section~~ 402.101

(Source: Amended at 43 Ill. Reg. ~~_____~~, effective _____)

Document comparison by Workshare Compare on Wednesday, April 17, 2019
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Input:	
Document 1 ID	file:///I:\Input\Agency Rulemakings - Files Received\2019\April 2019\35-402-Agency Proposed-(issue 17).docx
Description	35-402-Agency Proposed-(issue 17)
Document 2 ID	file:///I:\Input\Agency Rulemakings - Files Received\2019\April 2019\35-402-r01(issue 17).docx
Description	35-402-r01(issue 17)
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Legend:	
<u>Insertion</u>	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	77
Deletions	92
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	169

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: General Provisions
- 2) Code Citation: 35 Ill. Adm. Code 401
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
401.101	Repealed
401.102	Amendment
401.103	Amendment
401.104	Amendment
401.105	Amendment
401.106	Repealed
401.APPENDIX A	Amendment
- 4) Statutory Authority: Authorized by Section 27 and implementing Sections 12 and 13 of the Environmental Protection Act [415 ILCS 5/12, 13, and 27].
- 5) A Complete Description of the Subjects and Issues Involved: In 2016, the Board began reviewing its rules to identify obsolete or otherwise unnecessary language. On January 10, 2018, the Illinois Environmental Protection Agency (IEPA) filed a proposal to update provisions including Part 401. IEPA's proposal arose from Executive Order 2016-13, which required agencies to identify outdated, repetitive, confusing, or unnecessary rules and then amend or repeal them. These proposed amendments include those submitted by IEPA and those identified separately by the Board. Both IEPA and the Board intend the amendments to be non-substantive clarifications.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].



POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments should refer to docket R18-24 and be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.pcb.illinois.gov. Comments may be filed with the Clerk of the Board and be addressed to:

Clerk's Office
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago IL 60601

Interested persons may request copies of the Board's opinion and order in R18-24 by calling the Clerk's office at 312/814-3620 or may download copies from the Board's website at www.pcb.illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: While the proposed amendments may affect a small business that engages in mining activities, the Board intends for the amendments to be non-substantive clarifications of existing rules.
 - B) Reporting, bookkeeping or other procedures required for compliance: None beyond those required to comply with current rules.
 - C) Types of professional skills necessary for compliance: None beyond those necessary to comply with current rules.
- 14) Small Business Impact Analysis:
- A) Types of businesses subject to the proposed amendments:

21 Mining
 - B) Categories that the Agency reasonably believes the amendments will impact: The Board intends for the proposed amendments to be non-substantive clarifications of existing rules and does not expect them to have an impact in categories such as staffing, purchasing, equipment, or record keeping.

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

15) Regulatory Agenda on which this rulemaking was summarized: July 2018

The full text of the Proposed Amendments begins on the next page:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE D: MINE RELATED WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 401
GENERAL PROVISIONS

- Section
- 401.101 Authority (Repealed)
- 401.102 Policy
- 401.103 Purpose
- 401.104 Compliance with Other Laws Required
- 401.105 Severability ~~Validity Not Affected~~
- 401.106 Repealer (Repealed)

401.APPENDIX A References to Previous Rules

AUTHORITY: Authorized by Section 27 and implementing Sections 12 and 13 of the Illinois Environmental Protection Act [415 ILCS 5].

SOURCE: Adopted at 4 Ill. Reg. 34, p. 164, effective August 7, 1980; codified at 5 Ill. Reg. 34, p. 8527, effective August 10, 1981; amended in R18-24 at 43 Ill. Reg. _____, effective _____.

Section 401.101 Authority (Repealed)

~~Pursuant to authority granted by Section 12 and 13 of the Environmental Protection Act (Act), which empower the Board to designate equipment or facilities capable of causing or contributing to water pollution; to set standards for the issuance of permits for the construction, installation and operation and for the inspection of said equipment or facility; to prohibit the sale, offer or use of articles for reasons of water pollution control; to set standards limiting the amounts or concentrations of contaminants that may be discharged into the waters of the State; to set standards for the filling or sealing of abandoned holes in order to protect groundwater; and to adopt requirements, standards and procedures to enable the state to implement and participate in the NPDES program established by the Federal Water Pollution Control Act of 1972 (FWPCA), as amended, (33 U.S.C. 1251 et seq.), the Board adopts the following rules and regulations:~~

(Source: Repealed at 43 Ill. Reg. _____, effective _____)

Section 401.102 Policy

A policy of the General Assembly in adopting the Environmental Protection Act [415 ILCS 5] is to restore, maintain and enhance the purity of the water of Illinois ~~in order~~ to protect health,

44 welfare, property and the quality of life. It is determined that mining activities including the
 45 preparation, operation and abandonment of mines, mine refuse areas and mine related facilities
 46 without environmental planning and safeguards and ~~using the use of~~ certain refuse materials can
 47 cause, threaten or allow the discharge of contaminants into the waters of Illinois. Causing,
 48 threatening, or allowing these discharges can ~~so as to~~ cause or threaten to cause a nuisance or to
 49 render ~~thesesueh~~ waters harmful or detrimental to public health, safety or welfare or to domestic,
 50 commercial, industrial, agricultural, recreational or other legitimate uses including use by
 51 livestock, wild animals, birds, fish or other aquatic life and riparian vegetation.

52
 53 (Source: Amended at 43 Ill. Reg. _____, effective _____)
 54

55 **Section 401.103 Purpose**

56
 57 The purpose of ~~this~~ Subtitle D is to prevent pollution of waters of Illinois caused by failure to
 58 plan proper environmental safeguards for the location, preparation, operation and abandonment
 59 of mining activities, mining and mine refuse operations. Subtitle D establishes a permit system
 60 ~~is established to control the multitude of~~ contaminating point and non-point source discharges,
 61 visible and hidden, continuous and fluctuating, ~~that~~ which are potentially present in mining
 62 activities, mining and mine refuse operations. ~~To~~ In order to ensure that ~~thesesueh~~ activities meet
 63 environmental standards, Subtitle D establishes water quality and effluent standards ~~are~~
 64 established to limit discharges from point sources ~~and as well as~~ to protect waters for beneficial
 65 uses. Subtitle D establishes ~~In addition,~~ procedural safeguards ~~are established~~ to ensure the
 66 protection of waters. ~~It~~ Furthermore, it is the purpose of ~~this~~ Subtitle D to meet the requirements
 67 of Section 402 of the Federal Water Pollution Control Act of 1972 (FWPCA).
 68

69 (Source: Amended at 43 Ill. Reg. _____, effective _____)
 70

71 **Section 401.104 Compliance with Other Laws Required**

72
 73 Nothing in this ~~Part~~ regulation is intended to be inconsistent with or impair the obligation to
 74 comply with the provisions of ~~the~~ Act entitled, "The Surface Coal Mining Land Conservation
 75 and Reclamation Act [225 ILCS 720]" of Illinois or with any other ~~State~~ state or federal law
 76 affecting the duties of an operator.
 77

78 (Source: Amended at 43 Ill. Reg. _____, effective _____)
 79

80 **Section 401.105 Severability ~~Validity Not Affected~~**

81
 82 If any provision of ~~this~~ Subtitle D, ~~Chapter I~~ is adjudged invalid or if the application to any
 83 person or in any circumstances is adjudged invalid, ~~thesueh~~ such invalidity will ~~shall~~ not affect the
 84 validity of this Subtitle D, ~~Chapter I~~ as a whole or of any ~~Part~~ part, ~~Subpart~~ subpart, sentence or
 85 clause ~~thereof~~ not adjudged invalid.
 86

87 (Source: Amended at 43 Ill. Reg. _____, effective _____)

88

89 **Section 401.106 Repealer (Repealed)**

90

91 ~~Chapter 4: Mine Related Pollution, effective May 23, 1972 and all amendments thereto~~
92 ~~heretofore adopted are hereby superseded.~~

93

94 (Source: Repealed at 43 Ill. Reg. _____, effective _____)

95

96 **Section 401.APPENDIX A References to Previous Rules**

97

98 The following table is provided to ~~correlate previous~~ ~~aid in referencing old~~ Board rule numbers
 99 ~~with~~ current Illinois Administrative Code Section ~~section~~ numbers pursuant to codification.

100

Chapter 4, Mine Related Pollution Part I, General Provisions	35 Ill. Adm Admin. Code Part 401
Rule 101	Section 401.101
Rule 102	Section 401.102
Rule 103	Section 401.103
Rule 104	Section 401.104
Rule 105	Section 401.105
Rule 106	Section 401.106

101

102 (Source: Amended at 43 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE D: MINE RELATED WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 401
GENERAL PROVISIONS

Section

- 401.101 Authority (Repealed)
- 401.102 Policy
- 401.103 Purpose
- 401.104 Compliance with Other Laws Required
- 401.105 ~~Severability~~~~Validity Not Affected~~Severability
- 401.106 Repealer (Repealed)

401.APPENDIX A References to Previous Rules

AUTHORITY: Authorized by Section 27 and implementing Sections 12 and 13 of the Illinois Environmental Protection Act ~~(415 ILCS 5/12, 13 and 27)~~.

SOURCE: Adopted at 4 Ill. Reg. 34, p. 164, effective August 7, 1980; codified at 5 Ill. Reg. 34, p. 8527, effective August 10, 1981; amended in R18-24 at 43 Ill. Reg. , effective .

Section 401.101 Authority (Repealed)

~~Pursuant to authority granted by Section 12 and 13 of the Environmental Protection Act (Act), which empower the Board to designate equipment or facilities capable of causing or contributing to water pollution; to set standards for the issuance of permits for the construction, installation and operation and for the inspection of said equipment or facility; to prohibit the sale, offer or use of articles for reasons of water pollution control; to set standards limiting the amounts or concentrations of contaminants that may be discharged into the waters of the State; to set standards for the filling or sealing of abandoned holes in order to protect groundwater; and to adopt requirements, standards and procedures to enable the state to implement and participate in the NPDES program established by the Federal Water Pollution Control Act of 1972 (FWPCA), as amended, (33 U.S.C. 1251 et seq.), the Board adopts the following rules and regulations.~~

(Source: Repealed at 43 Ill. Reg. , effective)

Section 401.102 Policy

A policy of the General Assembly in adopting the Environmental Protection Act [415 ILCS 5] is to restore, maintain and enhance the purity of the water of Illinois ~~in order~~ to protect health, welfare, property and the quality of life. It is determined that mining activities including the preparation, operation and abandonment of

mines, mine refuse areas and mine related facilities without environmental planning and safeguards and ~~using the use of~~ using certain refuse materials can cause, threaten or allow the discharge of contaminants into the waters of Illinois. ~~so as to~~ Causing, threatening, or allowing these discharges can cause or threaten to cause a nuisance or ~~to~~ render ~~such~~ these waters harmful or detrimental to public health, safety or welfare or to domestic, commercial, industrial, agricultural, recreational or other legitimate uses including use by livestock, wild animals, birds, fish or other aquatic life and riparian vegetation.

(Source: Amended at 43 Ill. Reg. ~~—~~, effective

Section 401.103 Purpose

The purpose of ~~this~~ Subtitle D is to prevent pollution of waters of Illinois caused by failure to plan proper environmental safeguards for the location, preparation, operation and abandonment of mining activities, mining and mine refuse operations. Subtitle D establishes ~~a~~ permit system ~~is established to control the multitude of~~ contaminating point and non-point source discharges, visible and hidden, continuous and fluctuating, ~~which that~~ are potentially present in mining activities, mining and mine refuse operations. ~~To in order to~~ To ensure that ~~such~~ these activities meet environmental standards, Subtitle D establishes water quality and effluent standards ~~are established to~~ limit discharges from point sources ~~as well as~~ and to protect waters for beneficial uses. Subtitle D ~~establishes~~ ~~In addition,~~ establishes procedural safeguards ~~are established to~~ ensure the protection of waters. ~~Furthermore, it~~ It is the purpose of ~~this~~ Subtitle D to meet the requirements of Section 402 of the Federal Water Pollution Control Act of 1972 (FWPCA).

(Source: Amended at 43 Ill. Reg. ~~—~~, effective

Section 401.104 Compliance with Other Laws Required

Nothing in this ~~regulation~~ Part is intended to be inconsistent with or impair the obligation to comply with the provisions of ~~the an Act~~ entitled, "~~The~~ the Surface Coal Mining Land Conservation and Reclamation Act, [225 ILCS 720, "~~of Illinois~~ 720] or with any other ~~state~~ State or federal law affecting the duties of an operator.

(Source: Amended at 43 Ill. Reg. ~~—~~, effective

Section 401.105 ~~Severability~~ Validity Not Affected ~~Severability~~

If any provision of ~~this~~ Subtitle D, ~~Chapter I~~ is adjudged invalid or if the application to any person or in any circumstances is adjudged invalid, ~~the~~ ~~such~~ the invalidity ~~will~~ ~~shall~~ ~~will~~ not affect the validity of

this Subtitle D, ~~Chapter I~~ as a whole or of any ~~part, subpart~~ Part, Subpart, sentence or clause ~~thereof~~ not adjudged invalid.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 401.106 Repealer (Repealed)

~~Chapter 4: Mine Related Pollution, effective May 23, 1972, and all amendments thereto heretofore adopted are hereby superseded.~~

(Source: Repealed at 43 Ill. Reg. _____, effective _____)

Section 401.APPENDIX A References to Previous ~~Rules~~ REFERENCES TO PREVIOUS RULES Rules

The following table is provided to ~~refer previous~~ aid in referencing ~~old~~ correlate previous Board rule numbers to with current section Illinois Administrative Code Section numbers ~~pursuant to codification.~~

Chapter 4, Mine Related Pollution

Part I, General Provisions 35 Ill. ~~Adm~~ Admin ~~Adm~~. Code ~~Part 401~~ Rule
~~101~~ Section 401.101 ~~Rule 102~~ Section 401.102 Rule 103 Section 401.103 Rule
104 Section 401.104 Rule 105 Section 401.105 ~~Rule 106~~ Section 401.106

(Source: Amended at 43 Ill. Reg. _____, effective _____)

~~ILLINOIS REGISTER~~

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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Document comparison by Workshare Compare on Wednesday, April 17, 2019
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Input:	
Document 1 ID	file:///I:\Input\Agency Rulemakings - Files Received\2019\April 2019\35-401-Agency Proposed-(issue 17).docx
Description	35-401-Agency Proposed-(issue 17)
Document 2 ID	file:///I:\Input\Agency Rulemakings - Files Received\2019\April 2019\35-401-r01(issue 17).docx
Description	35-401-r01(issue 17)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	36
Deletions	57
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	95

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Mine Waste Effluent and Water Quality Standards
- 2) Code Citation: 35 Ill. Adm. Code 406
- 3)

<u>Section Numbers</u> :	<u>Proposed Actions</u> :
406.100	Amendment
406.101	Amendment
406.102	Amendment
406.103	Amendment
406.104	Amendment
406.105	Amendment
406.106	Amendment
406.107	Amendment
406.108	Amendment
406.109	Amendment
406.110	Amendment
406.202	Amendment
406.204	Amendment
406.205	Amendment
406.206	Amendment
406.207	Amendment
406.208	Amendment
406.APPENDIX A	Amendment
- 4) Statutory Authority: Authorized by Section 27 and implementing Sections 12 and 13 of the Environmental Protection Act [415 ILCS 5/12, 13, and 27].
- 5) A Complete Description of the Subjects and Issues Involved: In 2016, the Board began reviewing its rules to identify obsolete or otherwise unnecessary language. On January 10, 2018, the Illinois Environmental Protection Agency (IEPA) filed a proposal to update provisions including Part 406. IEPA's proposal arose from Executive Order 2016-13, which required agencies to identify outdated, repetitive, confusing, or unnecessary rules and then amend or repeal them. These proposed amendments include those submitted by IEPA and those identified separately by the Board. Both IEPA and the Board intend the amendments to be non-substantive clarifications.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments should refer to docket R18-24 and be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.pcb.illinois.gov. Comments may be filed with the Clerk of the Board and be addressed to:

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Interested persons may request copies of the Board's opinion and order in R18-24 by calling the Clerk's office at 312/814-3620 or may download copies from the Board's website at www.pcb.illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: While the proposed amendments may affect a small business that engages in mining activities, the Board intends for the amendments to be non-substantive clarifications of existing rules.
- B) Reporting, bookkeeping or other procedures required for compliance: None beyond those required to comply with current rules.
- C) Types of professional skills necessary for compliance: None beyond those necessary to comply with current rules.

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

14) Small Business Impact Analysis:

A) Types of businesses subject to the proposed rulemaking:

21 Mining

B) Categories that the Agency reasonably believes the rulemaking will impact: The Board intends for the proposed amendments to be non-substantive clarifications of existing rules and does not expect them to have an impact in categories such as staffing, purchasing, equipment, or record keeping.

15) Regulatory Agenda on which this rulemaking was summarized: July 2018

The full text of the Proposed Amendments begins on the next page:

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE D: MINE RELATED WATER POLLUTION
3 CHAPTER I: POLLUTION CONTROL BOARD
4

5 PART 406
6 MINE WASTE EFFLUENT AND WATER QUALITY STANDARDS
7

8 SUBPART A: EFFLUENT STANDARDS
9

10	Section	
11	406.100	Preamble
12	406.101	Averaging
13	406.102	Sampling, Reporting and Monitoring
14	406.103	Background Concentrations
15	406.104	Dilution
16	406.105	Commingling of Waste Streams
17	406.106	Effluent Standards for Mine Discharges
18	406.107	Offensive Discharges
19	406.108	Non-point Point Source Mine Discharges
20	406.109	Effluent Standards for Coal Mine Discharges Discharge from Reclamation Areas
21	406.110	Alternate Effluent Standards for Coal Mine Discharges During Precipitation 22 Events
23		

24 SUBPART B: WATER QUALITY STANDARDS
25

26	Section	
27	406.201	Temporary Exemption from Section 406.105 (Repealed)
28	406.202	Violation of Water Quality Standards
29	406.203	TDS Related Permit Conditions (Repealed)
30	406.204	Good Mining Practices
31	406.205	Contact with Disturbed Areas
32	406.206	Retention and Control of Exposed Waters
33	406.207	Control of Discharge Waters
34	406.208	Unconventional Practices
35	406.209	Expiration of Former Exemptions (Repealed)
36		

37 406.APPENDIX A References to Previous Rules
38

39 AUTHORITY: Implementing Sections 12 and 13 and authorized by Section 27 of the
40 Environmental Protection Act [415 ILCS 5].
41

42 SOURCE: Adopted in R76-20, R77-10, 39 PCB 196, at 4 Ill. Reg. 34, p. 164, effective August
43 7, 1980; codified at 5 Ill. Reg. 8527; emergency amendment in R83-6B at 7 Ill. Reg. 8386,

44 effective July 5, 1983, for a maximum of 150 days; amended in R83-6B at 7 Ill. Reg. 14510,
45 effective October 19, 1983; amended in R83-6A at 8 Ill. Reg. 13239, effective July 16, 1984;
46 amended in R84-29 at 11 Ill. Reg. 12899, effective July 27, 1987; amended in R07-9 at 32 Ill.
47 Reg. 15009, effective September 8, 2008; amended in R18-24 at 43 Ill. Reg. _____, effective
48 _____.

49
50 SUBPART A: EFFLUENT STANDARDS
51

52 **Section 406.100 Preamble**
53

- 54 a) This Part 406 applies to mine discharges and non-point source mine discharges as
55 defined by 35 Ill. Adm. Code~~Section~~ 402.101.
- 56
57 b) Other discharges, including sanitary sewers, are regulated under Subtitle C,
58 Chapter I: Water Pollution.
- 59
60 c) A facility ~~that~~which has another discharge will be subject to both Subtitle C and
61 Subtitle D. Subtitle D governs mining activities, including mine discharges and
62 non-point source mine discharges. Subtitle C governs other discharges.
- 63
64 d) Except ~~as to the extent~~ provided in this Part 406, 35 Ill. Adm. Code~~Part~~ 304 of
65 Subtitles~~subtitle~~ C is inapplicable to mine discharges and non-point source mine
66 discharges.

67
68 (Source: Amended at 43 Ill. Reg. _____, effective _____)
69

70 **Section 406.101 Averaging**
71

- 72 a) Compliance with the numerical standards of this Part ~~must~~ part shall be
73 determined ~~based on the basis of~~ 24-hour composite samples averaged over any
74 calendar month. ~~A~~In addition, ~~no~~ single 24-hour composite sample must not ~~shall~~
75 exceed two times the numerical standards ~~prescribed in this Part~~, ~~and~~ ~~part~~ nor shall
76 any grab sample taken individually or as an aliquot of any composite sample must
77 not exceed five times the numerical standards ~~prescribed in this Part~~part.
- 78
79 b) ~~Despite subsection~~Subsection (a) ~~of this section notwithstanding~~, if a permittee
80 elects monitoring and reporting by grab samples under ~~as provided in~~ Section
81 406.102(f), then compliance with the numerical standards must ~~of this part shall~~ be
82 determined based on the basis of three or more grab samples averaged over a
83 calendar month. ~~A~~In addition, ~~no~~ single grab sample must not ~~shall~~ exceed two
84 times the numerical standards ~~prescribed in this Part~~part.
- 85
86 c) The numerical standards for settleable solids are maximum values not to be

87 exceeded at any time and are not subject to averaging.
 88

- 89 d) The numerical standards for pH ~~must~~ shall be within the specified range at all
 90 times and are not subject to averaging.
 91

92 (Source: Amended at 43 Ill. Reg. _____, effective _____)
 93

94 **Section 406.102 Sampling, Reporting and Monitoring**
 95

- 96 a) ~~When~~ Where treatment is provided for a discharge, effluent samples ~~must~~ shall be
 97 taken ~~at a point~~ after the final treatment process and before entry into or mixture
 98 with any waters of the State.
 99

- 100 b) ~~The~~ Where treatment is provided the permittee ~~must~~ shall design or modify
 101 structures ~~that allow so as to permit the taking of~~ effluent samples by the Agency
 102 at the required point. ~~e)~~ ~~When~~ Where treatment is not provided for a discharge,
 103 effluent samples ~~must~~ shall be taken at the nearest point of access to the discharge
 104 source at a point where the discharge leaves the mine, ~~or~~ mine area, or other
 105 portions of the affected land. ~~All, but in all cases~~ effluent samples ~~must~~ shall be
 106 taken before entry into or mixture with waters of the State.
 107

- 108 ~~cd)~~ The Agency will determine At a reasonable frequency ~~at which to be determined~~
 109 ~~by the Agency~~, the permittee ~~must~~ shall report the actual concentration or level of
 110 any parameter identified in the State or NPDES permit.
 111

- 112 1) Each report submitted ~~under~~ pursuant to this subsection (c) ~~must~~ shall
 113 include at least three samples taken from each pond discharge during three
 114 separate periods occurring during that reporting period in which the
 115 alternate limitations for precipitation events ~~under Sections of Section~~
 116 406.109 and 406.110 were in effect.
 117

- 118 2) If ~~such~~ alternate limitations under Sections 406.109 and 406.110 are in
 119 effect on fewer than three separate occasions during a reporting period,
 120 one sample ~~must~~ shall be taken ~~from of~~ each pond discharge on during each
 121 occasion during in that period when the alternate limitations are in effect.
 122 The operator ~~has~~ shall have the burden of proof that the applicable
 123 precipitation event caused the discharge or increase in discharge ~~was~~
 124 ~~caused by the applicable precipitation event~~.
 125

- 126 ~~de)~~ The Agency may ~~by permit condition~~ require monitoring and reporting based on
 127 ~~the basis of~~ 24-hour composite samples averaged over calendar months as a
 128 permit condition. The Agency may permit ~~However~~, grab samples or composite
 129 samples of shorter duration ~~may be permitted by the Agency after the permittee~~

130 ~~demonstrates demonstration~~ that ~~thesuch~~ samples reflect discharge levels over
 131 standard operating conditions.

132
 133 ~~ef)~~ Despite subsection~~Subsection (de) of this Section notwithstanding~~, if a permittee
 134 so requests, the Agency ~~may~~shall by permit condition require monitoring and
 135 reporting ~~based on the basis of~~ grab samples as a permit condition, in which case
 136 Section 406.101(b) will apply.

137
 138 ~~fg)~~ Monitoring ~~mustas required in this rule shall~~ continue after abandonment until the
 139 permittee has reasonably established that drainage complies with and will
 140 continue to comply with the requirements of the Act and this Subtitle D~~Chapter~~.

141
 142 ~~gh)~~ All methods of sample collection, preservation and analysis used in applying any
 143 ~~of the requirements of Subtitle D mustthis Chapter shall~~ be in accord with
 144 USEPA's~~the United States Environmental Protection Agency's~~ current practice
 145 ~~manual of practice or with other procedures acceptable to USEPA~~the United
 146 States Environmental Protection Agency and the Agency.

147
 148 (Source: Amended at 43 Ill. Reg. _____, effective _____)
 149

150 **Section 406.103 Background Concentrations**
 151

152 Because the effluent standards in this Part~~part~~ are based upon concentrations achievable with
 153 conventional treatment technology that is largely unaffected by ordinary levels of contaminants
 154 in intake water, they are absolute standards that must be met without subtracting background
 155 concentrations. ~~This Part~~However, it is not the intent of these regulations is not intended
 156 require users to clean up contamination caused ~~essentially~~ by upstream sources or to require
 157 treatment when only traces of contaminants are added to the background. Complying
 158 ~~Compliance~~ with the numerical effluent standards is ~~therefore~~ not required when effluent
 159 concentrations ~~exceeding in excess of~~ the standards result entirely from the ~~contamination of~~
 160 influent contamination before it enters the affected land. Background concentrations or
 161 discharges upstream from affected land are rebuttably presumed not to have caused a violation of
 162 this Part~~part~~.

163
 164 (Source: Amended at 43 Ill. Reg. _____, effective _____)
 165

166 **Section 406.104 Dilution**
 167

168 a) Dilution of an effluent from a treatment works or from any wastewater source is
 169 not acceptable as a wastewater treatment method ~~of treatment of wastes in order~~
 170 to meet the effluent standards set forth in this Subpart D. Rather, it shall be the
 171 ~~obligation of any person discharging contaminants of any kind to the waters of the~~
 172 State~~state~~ must to provide the best degree of wastewater treatment ~~of wastewater~~

173 consistent with technological feasibility, economic reasonableness, and sound
 174 engineering judgment.

175
 176 b) ~~When determining~~In making determinations as to what kind of treatment is the
 177 best degree of treatment ~~under~~within the meaning of this Section, the following
 178 will be considered;

179
 180 1) ~~The~~What degree of waste reduction ~~that~~ can be achieved by process
 181 change, improved housekeeping, and recovery of individual waste
 182 components for reuse; and

183
 184 2) Whether individual process wastewater streams should be segregated or
 185 combined.

186
 187 c) Concentrations measured for ~~the purpose of~~determining compliance with Section
 188 406.106 ~~must~~shall be recomputed to exclude the effect of any dilution that is
 189 improper under this Section.

190
 191 (Source: Amended at 43 Ill. Reg. _____, effective _____)

192
 193 **Section 406.105 Commingling of Waste Streams**

194
 195 ~~When~~Where waste streams from any facility described in this Part are combined for treatment or
 196 discharge, ~~pollutants with other waste streams from another facility, the concentration of each~~
 197 ~~pollutant~~ in the combined discharge may not exceed the most stringent limitations for that
 198 pollutant applicable to any component waste stream of the discharge.

199
 200 (Source: Amended at 43 Ill. Reg. _____, effective _____)

201
 202 **Section 406.106 Effluent Standards for Mine Discharges**

203
 204 a) The effluent limitations ~~contained~~in 35 Ill. Adm. Code 304 ~~do~~shall not apply to
 205 mine discharges or non-point source mine discharges.

206
 207 b) Except as provided in Sections 406.109 and 406.110, a mine discharge effluent
 208 ~~must~~shall not exceed the following levels ~~of contaminants~~:

209

Constituent	Storet Number	Concentration
Acidity	00435	(total acidity must shall not exceed total alkalinity)
Iron (total)	01045	3.5 mg/L

Lead (total)	01051	1 mg/L †
Ammonia Nitrogen (as N)	00610	5 mg/L †
pH (range)	00400	(range 6- to 9)
Zinc (total)	01092	5 mg/L †
Fluoride (total)	00951	15 mg/L †
Total suspended solids	00530	35 mg/L †
Manganese	01055	2.0 mg/L †

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- 1) The ammonia nitrogen standard ~~applies~~ ~~is applicable~~ only to an operator ~~using~~ ~~utilizing~~ ammonia in wastewater treatment.
- 2) The manganese effluent limitation ~~applies~~ ~~is applicable~~ only to discharges from facilities where chemical addition is required to meet the iron or pH effluent limitations. The upper limit of pH ~~must~~ ~~shall~~ be 10 for any such facility ~~that is unable to comply with the manganese limit at pH 9. The manganese standard is not applicable to mine discharges which are associated with areas where no active mining, processing, or refuse disposal has taken place since May 13, 1976.~~
- c) New source coal mines ~~are~~ ~~shall be~~ subject to a total iron limitation of 3.0 mg/L~~†~~ in addition to the requirements of subsection (b) ~~above~~.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 406.107 Offensive Discharges

In addition to the other requirements of ~~Subtitle D~~ ~~this Chapter~~, no mine discharge effluent ~~must~~ ~~not~~ ~~shall~~ contain settleable solids, floating debris, visible oil, grease, scum, or sludge solids. Color, odor, and turbidity ~~must~~ ~~shall~~ be reduced to below obvious levels.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 406.108 Non-point Source Mine Discharges

Surface drainage from the affected land of a coal mine, including disturbed areas ~~that~~ ~~which~~ have been graded, seeded, or planted, ~~must pass~~ ~~shall be passed~~ through a sedimentation pond or a series of sedimentation ponds before leaving the facility.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 406.109 Effluent Standards for Coal Mine Discharges from Reclamation Areas

- a) The effluent limitations ~~are~~ ~~contained in~~ 35 Ill. Adm. Code 304 and Section

246 406.106 ~~do~~ shall not apply to mine discharges from reclamation areas.

247
 248 b) A mine discharge effluent from a reclamation area ~~must~~ shall not exceed the
 249 following levels of contaminants:
 250

Constituent	Storet Number	Concentration
Settleable solids	00400	0.5 ml/L
pH (range)		(range 6-9)

251
 252 c) Notwithstanding ~~subsection (b), above,~~ any discharge, or increase in ~~discharge~~ the
 253 volume of ~~discharge~~ caused by precipitation within ~~any~~ 24 hour period greater
 254 than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume)
 255 ~~is~~ shall be subject only to a pH limitation (range of 6-9).
 256

257 (Source: Amended at 43 Ill. Reg. _____, effective _____)
 258

259 **Section 406.110 Alternate Effluent Standards for Coal Mine Discharges During**
 260 **Precipitation Events**

261
 262 a) ~~Discharges of alkaline mine drainage (except discharges from underground mines~~
 263 ~~that are not commingled with other discharges eligible for these alternate limits),~~
 264 ~~discharges from mountaintop removal areas operations, discharges from steep~~
 265 ~~slope areas, and discharges from coal preparation plants and plant associated~~
 266 ~~areas, and discharges of alkaline mine drainage except for drainage from coal~~
 267 ~~refuse disposal piles are eligible for alternate effluent limitations during~~
 268 ~~precipitation events. Discharges ineligible for alternate effluent limitations during~~
 269 ~~precipitation events include drainage from coal refuse piles and discharges of~~
 270 ~~alkaline mine drainage from underground mines that are not commingled with~~
 271 ~~other eligible discharges. Any discharge or increase in discharge~~ the volume of a
 272 discharge caused by precipitation within any 24-hour period less than or equal to
 273 the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may
 274 comply with the following limitations instead of those in Section 406.106(b):
 275

Constituent	Storet Number	Concentration
Settleable solids	00400	0.5 ml/L
pH (range)		(range 6-9)

276
 277 b) Discharges of acid or ferruginous mine discharge from coal refuse disposal piles
 278 are eligible for alternate effluent limitations during precipitation events. Any
 279 discharge or increase in ~~discharge~~ the volume of a ~~discharge~~ caused by
 280 precipitation within any 24-hour period greater than the 1-year, 24-hour
 281 precipitation event and less than or equal to the 10-year, 24-hour precipitation

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event (or snowmelt of equivalent volume) may comply with the following limitations instead of those in Section 406.106(b):

Constituent	Storet Number	Concentration
Settleable solids		0.5 ml/L
pH (range)	00400	(range 6-9)

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c) Discharges of acid or ferruginous mine drainage (~~excluding~~ except for discharges in subsection (b), ~~above~~, mountaintop removal area discharges, steep slope area discharges, controlled surface mines discharges, and discharges from underground workings) caused by precipitation:

1) ~~Within~~ Caused by precipitation within any 24-hour period less than or equal to the 2-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitations instead of those in Section 406.109(b):

Constituent	Storet Number	Concentration
Settleable solids		0.5 ml/L
Iron (total)	101045	3.5 mg/L
pH (range)	00400	(range 6-9)

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2) ~~Within~~ Caused by precipitation within any 24-hour period greater than the 2-year, 24-hour precipitation event but less than or equal to the 10-year, 24-hour precipitation event must comply with ~~shall be subject to the requirements of~~ subsection (c)(1), ~~above~~, except for the total iron effluent standard.

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d) All discharges mentioned in subsections (a), (b), and (c) ~~of this section~~, discharges of acid or ferruginous mine drainage from underground workings that ~~which~~ are commingled with other discharges, and controlled acid or ferruginous surface mine discharges caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) are ~~shall be~~ subject only to a pH limitation (range 6-9).

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(Source: Amended at 43 Ill. Reg. _____, effective _____)

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SUBPART B: WATER QUALITY STANDARDS

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Section 406.202 Violation of Water Quality Standards

316

In addition to the other requirements of this Part, ~~no~~ mine discharges and ~~discharge~~ or non-point

317 source mine ~~discharges~~ discharge shall, alone or in combination with other sources, must not
 318 cause a violation of any water quality standards under of 35 Ill. Adm. Code 302 or 303. ~~If~~ When
 319 the Agency finds that a discharge ~~that~~ which would comply with Subtitle D effluent standards
 320 ~~contained in this Part~~ would cause or is causing a violation of water quality standards, the
 321 Agency ~~will~~ shall take appropriate action under Section 31 or 39 of the Environmental Protection
 322 Act ~~[415 ILCS 5]~~ and to require the discharge to meet ~~whatever~~ effluent limits ~~are~~ necessary to
 323 ~~comply~~ ensure compliance with the water quality standards. When ~~such~~ a violation is caused by
 324 the cumulative effect of more than one source, several sources may be joined in an enforcement
 325 or variance proceeding, and measures for necessary effluent reductions will be determined based
 326 ~~on the basis of~~ technical feasibility, economic reasonableness, and fairness to all dischargers.

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 328 (Source: Amended at 43 Ill. Reg. _____, effective _____)
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330 **Section 406.204 Good Mining Practices**

331
 332 Good ~~In determining whether an operator is utilizing good mining practices are~~ designed to
 333 minimize discharge of total dissolved solids, chloride, sulfate, iron, and manganese. ~~The,~~ the
 334 Agency shall consider whether the operator is using ~~utilizing~~ the following good mining
 335 practices, ~~further defined in the Sections indicated:~~

- 336
 337 a) Practices ~~that~~ which may stop or minimize water from coming into contact with
 338 disturbed areas (Section 406.205);
 339
 340 b) Retention and control ~~within the site of~~ waters exposed to disturbed materials
 341 (Section 406.206);
 342
 343 c) Control and treatment of waters discharged from the site (Section 406.207);
 344
 345 d) Unconventional practices (Section 406.208).

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 347 (Source: Amended at 43 Ill. Reg. _____, effective _____)
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349 **Section 406.205 Contact with Disturbed Areas**

350
 351 ~~The~~ In considering whether an operator is utilizing practices which may stop or minimize water
 352 ~~from coming into contact with disturbed areas,~~ the Agency shall consider whether the operator's
 353 practices stop or minimize water from coming into contact with disturbed areas by
 354 considering the extent to which the operator is utilizing erosion controls, including:

- 355
 356 a) Diversions
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 358 1) Bypass diversions to collect and convey around or through disturbed areas
 359 to a receiving stream waters that would otherwise flow over or through

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disturbed areas.

- 2) On-site diversions to convey water around or over: disturbed areas; or, undermined areas connected to the surface.
- 3) Interception diversions to isolate on-site critical areas, including, but not limited to: raw spoils, partially stabilized spoils, and highway access roads.

b) Runoff Controls

- 1) ~~Clearing~~ Staging of clearing, grubbing, scalping, grading and reclamation to keep operations so that the various stages of the mining operation are kept concurrent with extraction operations, and to allow only a minimum disturbed surface area to be exposed at any one time.
- 2) Keeping gradients and inclines to the active pit as short as possible in order to minimize the amount of drainage going to the active pit.
- 3) Soil stabilization through measures such as revegetation and mulching to reduce the potential for exposing materials that which may produce dissolved solids.
- 4) Sealing of boreholes acting as conduits allowing which allow the uncontrolled entrance of water to underground mines or to active pit areas of surface mines.
- 5) Leaving sufficient barriers whenever mining adjacent to abandoned underground workings that may be inundated with water.
- 6) Prompt disposal Disposal of potential contaminant producing materials as soon as possible in areas that will prohibit or minimize contact with surface and groundwater.
- 7) Covering or treating potential contaminant-producing materials so as to minimize adverse effects on water quality.
- 8) Sealing of water-yielding fracture zones encountered during underground mining to reduce the flow of high total dissolved solids waters when geologic conditions permit successful sealing and when the flow from the fracture zone contributes significantly to the total dissolved solids load in the mine discharge.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 406.206 Retention and Control of Exposed Waters

~~The~~In considering whether an operator is utilizing practices leading to the retention and control within the site of waters exposed to disturbed materials, the Agency shall consider the following to determine whether the operator's practices retain and control waters exposed to disturbed materials extent to which the operator is utilizing:

- a) Erosion Controls: grading, sloping, and ~~revegetating~~revegetation of disturbed soil surfaces to reduce and detain runoff.
- b) Sedimentation Controls: routing and ~~segregating~~segregation or ~~combining~~combination of wastewater and mine runoff water to minimize any effect on the receiving stream's quality ~~of the receiving stream~~.
- c) Reuse of Discharges: ~~reusing~~Reuse of water ~~with~~bearing high concentrations of total dissolved solids, whenever possible, including:
 - 1) Recirculation ponds to recycle water to the preparation plant.
 - 2) Recirculation ponds to provide water for underground dust control.
 - 3) Holding ponds to provide irrigation waters to reclaimed land ~~and/or adjacent crop land~~ tolerating~~with tolerances to accept~~ higher concentrations of total dissolved solids.
- d) Minimum Exposure of Waters to Disturbed Materials:
 - 1) ~~Applying~~Application of water management practices, either continuously or at frequent intervals, ~~in order to~~ minimize water contact with disturbed materials.
 - 2) ~~Preventing water~~Prevention of accumulation of waters in active pits, benches, terraces, roads, processing areas, surface depressions, and underground mine workings and cavities where ~~the dissolution of~~ contaminants will be dissolved~~facilitated~~.
 - 3) ~~Promptly removing~~Removal of water to diversions and appropriate impoundments ~~as soon as possible~~ to minimize additional loadings of total dissolved solids.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

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Section 406.207 Control of Discharge Waters

~~The~~In considering whether an operator is utilizing practices leading to control and treatment of waters discharged from the site containing elevated levels of total dissolved solids, chloride or sulfate, the Agency shall consider the following practices to determine whether an operator is controlling and treating waters containing elevated levels of total dissolved solids, chloride, or sulfate discharged from the site ~~extent to which the operator is utilizing:~~

- a) ~~Regulating~~Regulation of discharges when other control methods are insufficient and chemical treatment is economically unfeasible, including:
 - 1) Regulating the flow of discharges high in total dissolved solids according to in accordance with fluctuating or intermittent stream flows so that the ~~concentration of~~ total dissolved solids concentration remains within established water quality standards; or
 - 2) Regulating the flow or fluctuation of receiving streams by timely discharge of water from existing impoundments ~~that~~which have suitable discharge control structures.
- b) Rerouting over economically feasible distances, involving collecting discharges and conveying them to more suitable discharge points, such as large holding ponds located adjacent to more suitable receiving streams where dilution ~~and/or~~ water quality is better.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 406.208 Unconventional Practices

~~The~~In considering whether an operator is utilizing unconventional practices to prevent production or discharge of elevated levels of total dissolved solids, chloride and sulfate, the Agency shall consider the following unconventional practices in considering whether an operator's practices prevent producing or discharging elevated levels of total dissolved solids, chloride, and sulfate ~~extent to which the operator is utilizing:~~

- a) ~~Diverting~~Diversion of groundwater by intercepting the flow path ~~before~~prior to entering a surface or underground mine when ~~it is determined by the mine operator determined it~~ to be economically preferable to treating contaminated water after it passes through a mine.
- b) Dewatering practices that remove clean formation water before contacting dissolved solids-producing materials, including techniques used~~which can be~~

489 employed to tap nonpolluted aquifers in order to reduce the amount of water
490 entering a mine.

491

492 c) Any additional practices ~~which the operator~~ uses effectively to
493 reducedemonstrates to be effective in reducing levels of total dissolved solids,
494 chloride, sulfate, iron and manganese in discharges.

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496 (Source: Amended at 43 Ill. Reg. _____, effective _____)

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498 **Section 406.APPENDIX A References to Previous Rules**

499

500 The following table is provided to ~~correlate previous~~ ~~aid in referencing old~~ Board rule numbers
501 ~~with~~ current Illinois Administrative Code Section ~~section numbers pursuant to codification.~~

502

503

Chapter 4, Mine Related
Pollution Part VI, Effluent and
Water Quality Standards

35 Ill. AdmAdmin. Code
Part 406

Rule 600	Section 406.100
Rule 601	Section 406.101
Rule 602	Section 406.102
Rule 603	Section 406.103
Rule 604	Section 406.104
Rule 605	Section 406.105
Rule 605.1	Section 406.201
Rule 606	Section 406.106
Rule 607	Section 406.107
Rule 608	Section 406.108

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(Source: Amended at 43 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE D: MINE RELATED WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 406
MINE WASTE EFFLUENT AND WATER QUALITY STANDARDS

SUBPART A: EFFLUENT STANDARDS

Section	
406.100	Preamble
406.101	Averaging
406.102	Sampling, Reporting and Monitoring
406.103	Background Concentrations
406.104	Dilution
406.105	Commingling of Waste Streams
406.106	Effluent Standards for Mine Discharges
406.107	Offensive Discharges
406.108	Non-Pointpoint Source Mine Discharges
406.109	Effluent Standards for Coal Mine Discharge <u>Discharges</u> from Reclamation Areas
406.110	Alternate Effluent Standards for Coal Mine Discharges During Precipitation Events

SUBPART B: WATER QUALITY STANDARDS

Section	
406.201	Temporary Exemption from Section 406.105 (Repealed)
406.202	Violation of Water Quality Standards
406.203	TDS Related Permit Conditions (Repealed)
406.204	Good Mining Practices
406.205	Contact with Disturbed Areas
406.206	Retention and Control of Exposed Waters
406.207	Control of Discharge Waters
406.208	Unconventional Practices
406.209	Expiration of Former Exemptions (Repealed)

406.APPENDIX A References to Previous Rules

AUTHORITY: Implementing Sections 12 and 13 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/~~12, 13 and 27~~].

SOURCE: Adopted in R76-20, R77-10, 39 PCB 196, at 4 Ill. Reg. 34, p. 164, effective August 7, 1980; codified at 5 Ill. Reg. 8527; emergency amendment in R83-6B at 7 Ill. Reg. 8386, effective July 5, 1983, for a maximum of 150 days; amended in R83-6B at 7 Ill. Reg. 14510, effective October 19, 1983; amended in R83-6A at 8 Ill. Reg. 13239, effective July 16, 1984; amended in R84-29 at 11 Ill. Reg. 12899, effective July 27, 1987; amended in R07-9 at 32 Ill. Reg. ~~14978, 15009~~, effective September 8, 2008; amended in R18-24 at 43 Ill. Reg. , effective .

SUBPART A: EFFLUENT STANDARDS

Section 406.100 Preamble

- a) This Part 406 applies to mine discharges and non-point source mine discharges as defined by 35 Ill. Adm. ~~CodeSectionCode~~ 402.101.
- b) Other discharges, including sanitary sewers, are regulated under Subtitle C, Chapter I: Water Pollution.
- c) A facility ~~which~~that has another discharge will be subject to both Subtitle C and Subtitle D. Subtitle D governs mining activities, including mine discharges and non-point source mine discharges. Subtitle C governs other discharges.
- d) Except ~~asto the extentas~~ provided in this Part 406, 35 Ill. Adm. ~~CodePartCode~~ 304 of ~~Subtitlesubtitle~~Subtitle C is inapplicable to mine discharges and non-point source mine discharges.

(Source: Amended at 43 Ill. Reg. ~~—~~_____, effective _____)

Section 406.101 Averaging

- a) Compliance with the numerical standards of this ~~Partpart-~~Part ~~mustshall~~must be determined based on ~~the basis of~~ 24-hour composite samples averaged over any calendar month. ~~A~~In addition, no single 24-hour composite sample must ~~notshallnot~~ exceed two times the numerical standards ~~prescribed~~ in this ~~PartpartPart,~~ and ~~nor shall~~ any grab sample taken individually or as an aliquot of any composite sample must not exceed five times the numerical standards ~~prescribed~~ in this ~~Partpart-~~Part.
- b) Despite ~~subsectionSubsection (a) of this section-~~subsection (a), if a permittee elects monitoring and reporting by grab samples ~~underas provided in~~under Section 406.102(f), then compliance with the numerical standards ~~of this part mustshall~~must be determined based on ~~the basis of~~ three or more grab samples averaged over a calendar month. ~~A~~In addition, no single grab sample must ~~notshallnot~~ exceed two times the numerical standards ~~prescribed~~ in this ~~Partpart-~~Part.
- c) The numerical standards for settleable solids are maximum values not to be exceeded at any time and are not subject to averaging.
- d) The numerical standards for pH ~~mustshall~~must be within the specified range at all times and are not subject to averaging.

(Source: Amended at 43 Ill. Reg. ~~—~~_____, effective _____)

Section 406.102 Sampling, Reporting and Monitoring

a) ~~Where~~When treatment is provided for a discharge, effluent samples ~~mustshall~~must be taken ~~at a point~~ after the final treatment process and before entry into or mixture with any waters of the ~~state~~State.

b) ~~TheWhere treatment is provided the~~The permittee ~~mustshall~~must design or modify structures ~~to that allow~~permit the taking of the Agency to take that allow effluent samples ~~by the Agency~~ at the required point.

e) ~~Where~~When treatment is not provided for a discharge, effluent samples ~~mustshall~~must be taken at the nearest point of access to the discharge source at a point where the discharge leaves the mine, ~~or mine area, or other portions of the affected land.~~, ~~but in all cases~~ All effluent samples ~~mustshall~~must be taken before entry into or mixture with waters of the ~~state~~State.

~~ed)c~~ The Agency will ~~determineAt~~determine a reasonable frequency at ~~which to be determined by the Agency, which~~ the permittee ~~mustshall~~must report the actual concentration or level of any parameter identified in the ~~state~~State or NPDES permit.

1) Each report submitted ~~underpursuant to~~under this subsection ~~mustshall~~(c) must include at least three samples taken from each pond discharge during three separate periods occurring during that reporting period in which the alternate limitations for precipitation events under ~~SectionsSection~~Sections 406.109 and 406.110 were in effect.

2) If ~~such~~ alternate limitations under Sections 406.109 and 406.110 are in effect on fewer than three separate occasions during a reporting period, one sample ~~mustshall~~must be taken ~~fromoff~~from each pond discharge ~~enduringon~~ each occasion ~~duringin~~during that period when the alternate limitations are in effect. The operator ~~has~~shall have the burden of proof that the applicable precipitation event caused the discharge or increase in discharge ~~was caused by the applicable precipitation event~~.

~~ed)~~ The Agency may ~~by permit condition~~ require monitoring and reporting based on ~~the basis of~~ 24-hour composite samples averaged over calendar months as a permit condition. The Agency may ~~permit~~However, permit grab samples or composite samples of shorter duration ~~may be permitted by the Agency~~ after the permittee ~~demonstratedemonstration~~demonstrates that ~~thesuch~~the samples reflect discharge levels over standard operating conditions.

~~efg)~~ Despite ~~subsectionSubsection (e) of this Section notwithstanding~~subsection (d), if a permittee so requests, the Agency ~~mayshall~~by permit condition may require monitoring and reporting based on ~~the basis of~~ grab samples as a permit condition, in which case Section 406.101(b) will apply.

~~fgf)~~ Monitoring ~~as required in this rule~~mustshallmust continue after abandonment until the permittee has reasonably established that drainage complies with and will continue to comply with the requirements of the Act and ~~this Subtitle~~ ~~Dthis Chapter~~D.

ghg) All methods of sample collection, preservation, and analysis used in applying ~~any of~~ the requirements of Subtitle ~~D this Chapter must shall~~ D must be in accord with ~~the United States Environmental Protection Agency~~ USEPA's current practice manual ~~of practice or with other~~ procedures acceptable to ~~the United States Environmental Protection Agency~~ USEPA and the Agency.

(Source: Amended at 43 Ill. Reg. , effective)

Section 406.103 Background Concentrations

Because the effluent standards in this ~~part~~ Part are based upon concentrations achievable with conventional treatment technology that is largely unaffected by ordinary levels of contaminants in intake water, they are absolute standards that must be met without subtracting background concentrations. ~~These~~ However, it is not the intent of these regulations are This Part is not intended to require users to clean up contamination caused ~~essentially~~ by upstream sources or to require treatment when only traces of contaminants are added to the background. ~~Complying~~ Compliance Complying with the numerical effluent standards is ~~therefore~~ not required when effluent concentrations ~~exceeding in excess of~~ exceeding the standards result entirely from ~~the contamination of~~ influent contamination before it enters the affected land. Background concentrations or discharges upstream from affected land are rebuttably presumed not to have caused a violation of this ~~Part~~ part. Part.

(Source: Amended at 43 Ill. Reg. , effective)

Section 406.104 Dilution

a) Dilution of an effluent from a treatment works or from any wastewater source is not acceptable as a wastewater treatment method ~~of treatment of wastes in order to~~ meet the effluent standards ~~set forth in~~ this Subpart D. Rather, ~~it shall be the obligation of~~ any person discharging contaminants ~~of any kind to~~ the waters of the ~~state~~ State must provide the best degree of wastewater treatment ~~of wastewater~~ consistent with technological feasibility, economic reasonableness, and sound engineering judgment.

b) When ~~determining~~ In making determinations as to what kind of treatment is determining the best degree of treatment ~~under within the meaning of~~ under this Section, the following will be considered;

- 1) ~~The~~ What The degree of waste reduction that can be achieved by process change, improved housekeeping, and recovery of individual waste components for reuse; and
- 2) Whether individual process wastewater streams should be segregated or combined.

c) Concentrations measured for ~~the purpose of~~ determining compliance with Section 406.106 ~~must~~shall~~must~~ be recomputed to exclude the effect of any dilution that is improper under this Section.

(Source: Amended at 43 Ill. Reg. ~~_____~~, effective ~~_____~~)

Section 406.105 Commingling of Waste Streams

~~Where~~When waste streams from any facility ~~described in this Part~~ are combined for treatment or discharge, pollutants ~~with other waste streams from another facility, the concentration of each pollutant~~ in the combined discharge may not exceed the most stringent limitations for that pollutant applicable to any component waste stream of the discharge. ~~(Source: Former Section 406.105 renumbered to Section 406.202 at 8 Ill. Reg. 13239, effective July 16, 1984; new Section adopted at 11 Ill. Reg. 12899, effective July 27, 1987)~~

(Source: Amended at 43 Ill. Reg. ~~_____~~, effective ~~_____~~)

Section 406.106 Effluent Standards for Mine Discharges

a) The effluent limitations ~~contained~~ in 35 Ill. Adm. Code 304 ~~shall~~do not apply to mine discharges or non-point source mine discharges.

b) Except as provided in Sections 406.109 and 406.110, a mine discharge effluent ~~must~~shall~~must~~ not exceed the following levels ~~of~~ ~~contaminants~~:

Constituent	Storet	Number	Concentration	Acidity	00425	Constituent	Concentration	Acidity
						(total acidity must <u>shall</u> must not exceed total alkalinity)		
Iron						(total) 010453 <u>53.5</u> mg/L	Lead	
							(total) 010511 <u>1</u> mg/L	Ammonia
								Ammonia
Nitrogen (as N)						006105 <u>5</u> mg/L	pH	
							(range) 00400 (range 6 to 6-9)	Zinc
						(total) 010925 <u>5</u> mg/L	Fluoride	
							(total) 009511 <u>5</u> mg/L	Total
suspended solids						0053035 mg/L	Manganese	
							010552 <u>0</u> mg/L	Manganese
								<u>2.0</u> mg/L

1) The ammonia nitrogen standard ~~applies~~~~is applicable~~applies only to an operator ~~using~~~~utilizing~~using ammonia in wastewater treatment.

2) The manganese effluent limitation ~~applies~~~~is applicable~~applies only to discharges from facilities where chemical addition is required to meet the iron or pH effluent limitations. The upper limit of pH ~~must~~shall~~must~~ be 10 for any ~~such~~ facility ~~that is~~ unable to comply with the manganese limit at pH 9. The manganese standard is not applicable to mine discharges ~~which are~~ associated with areas where no active mining, processing, or refuse disposal has taken place since May 13, 1976.

c) New source coal mines ~~are~~~~shall be~~are subject to a total iron limitation of 3.0 mg/L ~~in~~ addition to the requirements of subsection (b) ~~above~~.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 406.107 Offensive Discharges

In addition to the other requirements of Subtitle ~~D~~this Chapter, ~~no-~~mine discharge effluent must ~~not~~shall not contain settleable solids, floating debris, visible oil, grease, scum, or sludge solids. Color, odor, and turbidity ~~must~~shall ~~must~~ be reduced to below obvious levels.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 406.108 Non-~~Point~~point Source Mine Discharges

Surface drainage from the affected land of a coal mine, including disturbed areas ~~which~~that have been graded, seeded, or planted, must ~~pass~~shall be passed ~~pass~~ through a sedimentation pond or a series of sedimentation ponds before leaving the facility.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 406.109 Effluent Standards for Coal Mine Discharges from Reclamation Areas

a) The effluent limitations ~~are contained in~~at 35 Ill. Adm. Code 304 and Section 406.106 ~~do~~shall do not apply to mine discharges from reclamation areas.

b) A mine discharge effluent from a reclamation area ~~must~~shall ~~must~~ not exceed the following levels of contaminants:

~~Constituent~~Settleable ~~Number~~Constituent ~~Settleable~~Concentration ~~Concentration~~Settleable solids 0.5 ml/~~l~~pH ~~pH~~ (range) ~~00400~~(range 6-9)

c) Notwithstanding subsection (b), ~~above,~~ any discharge, or increase in ~~discharge~~the volume of discharge ~~volume~~ caused by precipitation within ~~any~~a 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) ~~is~~shall be ~~is~~ subject only to a pH limitation ~~(range of 6-9)~~9.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 406.110 Alternate Effluent Standards for Coal Mine Discharges During Precipitation Events

a) Discharges ~~of alkaline mine drainage (except discharges from underground mines that are not commingled with other discharges eligible for these alternate limits), discharges from mountaintop removal areas operations, discharges from areas,~~ steep slope areas, and ~~discharges from~~ coal preparation plants and plant associated areas, and discharges

of alkaline mine ~~drainage except for drainage from coal refuse disposal piles~~ are eligible for alternate effluent limitations during precipitation events. Discharges ineligible for alternate effluent limitations during precipitation events include drainage from coal refuse piles and discharges of alkaline mine drainage from underground mines ~~which that~~ are not commingled with other eligible discharges. Any discharge or increase in ~~discharge the volume of a discharge~~ volume caused by precipitation within any 24-hour period less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitations instead of those in Section 406.106(b):

~~Constituent Storet Number~~
~~Concentration Settleable~~ Constituent Concentration Settleable solids 0.5 ml/~~Ll~~ pH pH (range) ~~00400 (range 6-9)~~

b) Discharges of acid or ferruginous mine discharge from coal refuse disposal piles are eligible for alternate effluent limitations during precipitation events. Any discharge or increase in ~~discharge the volume of a discharge~~ volume caused by precipitation within any 24-hour period greater than the 1-year, 24-hour precipitation event and less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitations instead of those in Section 406.106(b):

~~Constituent Storet Number Storet~~
~~Concentration Settleable~~ Constituent Concentration Settleable solids 0.5 ml/~~Ll~~ pH pH (range) ~~00400 (range 6-9)~~

c) Discharges of acid or ferruginous mine drainage (~~excluding except for~~ excluding discharges in subsection (b) ~~), above~~, mountaintop removal area ~~discharges areas discharges~~, steep slope area ~~discharges areas discharges~~, controlled surface mines discharges, and discharges from underground workings) caused by precipitation:

1) ~~Within~~ Within any 24-hour period less than or equal to the 2-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitations instead of those in Section 406.109(b):

~~Constituent Storet Number Storet Concentration~~
~~Settleable~~ Constituent Concentration Settleable solids 0.5 ml/~~Ll~~
~~Iron Ll Iron~~ (total) ~~101045~~ 3.5 mg/~~Ll~~ ~~pH~~ pH (range) ~~00400 (range 6-9)~~

2) ~~Within~~ Caused by precipitation within Within any 24-hour period greater than the 2-year, 24-hour precipitation event but less than or equal to the 10-year, 24-hour precipitation event must comply ~~with~~ shall ~~be subject to the requirements of~~ subsection (c)(1) ~~), above~~, except for the total iron effluent standard.

d) All discharges mentioned in subsections (a), (b), and (c) ~~of this section~~, discharges of acid or ferruginous mine drainage from underground workings ~~which that~~ are commingled with other discharges, and controlled acid or ferruginous surface mine discharges caused by precipitation within any 24-hour period greater than the 10-year,

24-hour precipitation event (or snowmelt of equivalent volume) ~~are shall~~
~~be are~~ subject only to a pH limitation (range 6-9).

(Source: Amended at 43 Ill. Reg. ~~_____~~, effective ~~_____~~)

SUBPART B: WATER QUALITY STANDARDS

Section 406.202 Violation of Water Quality Standards

In addition to the other requirements of this Part, ~~no~~ mine discharges ~~and~~ non-point source mine discharges ~~shall~~, alone or in combination with other sources, must not cause a violation of any water quality standards ~~under of~~ ~~under~~ 35 Ill. Adm. Code 302 or 303. ~~If~~ ~~When~~ ~~If~~ the Agency finds that a discharge ~~which that~~ would comply with Subtitle D effluent standards ~~contained in this Part~~ would cause or is causing a violation of water quality standards, the Agency ~~will shall~~ ~~will~~ take appropriate action under Section 31 or 39 of the Environmental Protection Act ~~and to~~ ~~[415 ILCS 5] and~~ require the discharge to meet ~~whatever~~ effluent limits ~~are~~ necessary to ~~comply ensure compliance~~ ~~comply~~ with the water quality standards. ~~When such~~ a violation is caused by the cumulative effect of more than one source, several sources may be joined in an enforcement or variance proceeding, and measures for necessary effluent reductions will be determined based on ~~the basis of~~ technical feasibility, economic reasonableness, and fairness to all dischargers.

(Source: Amended at 43 Ill. Reg. ~~_____~~, effective ~~_____~~)

Section 406.204 Good Mining Practices

~~In determining whether an operator is utilizing good~~ Good mining practices are designed to minimize discharge of total dissolved solids, chloride, sulfate, iron, and manganese. ~~The the~~ ~~The~~ The Agency ~~will shall~~ ~~shall~~ consider whether the operator is ~~using utilizing~~ ~~using~~ the following good mining practices, ~~further defined in the Sections~~ ~~indicated~~:

- a) Practices ~~which that~~ may stop or minimize water from coming into contact with disturbed areas (Section 406.205);
- b) Retention and control ~~within the site~~ of waters exposed to disturbed materials (Section 406.206);
- c) Control and treatment of waters discharged from the site (Section 406.207);
- d) Unconventional practices (Section 406.208).

(Source: Amended at 43 Ill. Reg. ~~_____~~, effective ~~_____~~)

Section 406.205 Contact with Disturbed Areas

~~The In considering whether an operator is utilizing practices which may stop or minimize water from coming into contact with disturbed areas, the Agency will shall.~~ The Agency shall consider whether the operator's practices stop or minimize water from coming into contact with disturbed areas by ~~considering the extent to which the operator is utilizing~~ considering erosion controls, including:

a) Diversions

1) Bypass diversions to collect and convey around or through disturbed areas ~~to a~~ receiving stream waters that would otherwise flow over or through disturbed areas.

2) On-site diversions to convey water around or over ~~+~~ disturbed areas ~~+~~ or ~~+~~ undermined areas connected to the surface.

3) Interception diversions to isolate on-site critical areas, including ~~+~~ ~~but not limited to~~ raw spoils, partially stabilized spoils, and highway access roads.

b) Runoff Controls

1) ~~Staging of clearing~~ Clearing Clearing, grubbing, scalping, grading and reclamation ~~operations so that the various~~ to keep stages of the mining operation ~~are kept~~ concurrent with extraction operations, and ~~to~~ allow only a minimum disturbed surface area ~~is exposed~~ to be exposed at any one time.

2) Keeping gradients and inclines to the active pit as short as possible ~~in order~~ to minimize the amount of drainage going to the active pit.

3) Soil stabilization ~~through~~ measures such as revegetation and mulching to reduce the potential for exposing materials ~~which~~ that may produce dissolved solids.

4) Sealing ~~of~~ boreholes acting as conduits ~~allowing~~ ~~which allow~~ ~~the~~ allowing uncontrolled entrance of water to underground mines or to active pit areas of surface mines.

5) Leaving sufficient barriers whenever mining adjacent to abandoned underground workings that may be inundated with water.

6) Prompt ~~disposal~~ Disposal disposal of potential contaminant producing materials ~~as soon as possible~~ in areas that will prohibit or minimize contact with surface and groundwater.

7) Covering or treating potential contaminant-producing materials ~~so~~ ~~as~~ to minimize adverse effects on water quality.

8) Sealing ~~of~~ water-yielding fracture zones encountered during underground mining to reduce the flow of high total dissolved solids

waters when geologic conditions permit successful sealing and when the flow from the fracture zone contributes significantly to the total dissolved solids load in the mine discharge.

(Source: Amended at 43 Ill. Reg. - _____, effective _____)

Section 406.206 Retention and Control of Exposed Waters

~~The In considering whether an operator is utilizing practices leading to the retention and control within the site of waters exposed to disturbed materials, the Agency will~~ shall ~~The Agency shall~~ consider the following to determine whether the operator's practices retain and control waters exposed to disturbed ~~material~~ extent to which the operator is utilizing materials:

a) Erosion Controls: grading, sloping, and ~~revegetating~~ revegetation ~~revegetating~~ of disturbed soil surfaces to reduce and detain runoff.

b) Sedimentation Controls: routing and ~~segregating~~ segregation or combining ~~combination of segregating or combining~~ wastewater and mine runoff water to minimize any effect on the receiving stream's quality ~~of the receiving stream.~~

c) Reuse of Discharges: ~~reusing~~ Reuse of reusing water ~~with bearing~~ with high concentrations of total dissolved solids, whenever possible, including:

- 1) Recirculation ponds to recycle water to the preparation plant.
- 2) Recirculation ponds to provide water for underground dust control.
- 3) Holding ponds to provide irrigation waters to reclaimed land ~~and/or adjacent crop land tolerating~~ with tolerances to accept tolerating higher concentrations of total dissolved solids.

d) Minimum Exposure of Waters to Disturbed Materials:

1) ~~Applying~~ Application of Applying water management practices, either continuously or at frequent intervals, ~~in order to~~ minimize water contact with disturbed materials.

2) ~~Preventing~~ Prevention of Preventing water accumulation ~~of waters~~ in active pits, benches, terraces, roads, processing areas, surface depressions, and underground mine workings and cavities where ~~the dissolution of~~ contaminants will be ~~dissolved~~ facilitated ~~dissolved.~~

3) Promptly ~~removing~~ Removal of removing water to diversions and appropriate impoundments ~~as soon as possible~~ to minimize additional loadings of total dissolved solids.

(Source: Amended at 43 Ill. Reg. - _____, effective _____)

Section 406.207 Control of Discharge Waters

~~The~~In ~~considering~~ whether an operator is utilizing practices leading to control and treatment of waters discharged from the site containing elevated levels of total dissolved solids, chloride or sulfate, ~~the Agency will~~shall~~The Agency will~~shall consider the following practices to determine whether an operator is controlling and treating waters containing elevated levels of total dissolved solids, chloride, or sulfate discharged from the ~~site~~extent to which the operator is utilizing~~site~~site:

a) ~~Regulating~~Regulation of~~Regulating~~ discharges when other control methods are insufficient and chemical treatment is economically unfeasible, including:

1) Regulating the flow of discharges high in total dissolved solids according ~~to in accordance with~~to fluctuating or intermittent stream flows so that the ~~concentration of~~ total dissolved solids concentration remains within established water quality standards; or

2) Regulating the flow or fluctuation of receiving streams by timely discharge of water from existing impoundments ~~which~~that have suitable discharge control structures.

b) Rerouting over ~~economically~~economically feasible distances, involving collecting discharges and conveying them to more suitable discharge points, such as large holding ponds located adjacent to more suitable receiving streams where dilution ~~and~~/or water quality is better.

(Source: Amended at 43 Ill. Reg. - _____, effective _____)

Section 406.208 Unconventional Practices

~~The~~In ~~considering~~ whether an operator is utilizing unconventional practices to prevent production or discharge of elevated levels of total dissolved solids, chloride and sulfate, ~~the Agency will~~shall~~The Agency will~~shall consider the following unconventional practices ~~to consider~~in ~~considering~~ whether an operator's practices prevent producing or discharging elevated levels of total dissolved solids, chloride, and ~~sulfate~~extent to which the operator is utilizing~~sulfate~~sulfate:

a) ~~Diverting~~Diversion of~~Diverting~~ groundwater by intercepting the flow path ~~before~~prior to~~before~~ entering a surface or underground mine when ~~it is determined by~~ the mine operator determined it to be economically preferable to treating contaminated water after it passes through a mine.

b) Dewatering practices that remove clean formation water before contacting dissolved solids-producing materials, including techniques

~~used~~ which can be employed used to tap nonpolluted aquifers ~~in order to~~ reduce the amount of water entering a mine.

c) Any additional practices ~~which~~ the operator uses effectively to reduce ~~demonstrates to be effective in reducing~~ levels of total dissolved solids, chloride, sulfate, iron and manganese in discharges.

(Source: Amended at 43 Ill. Reg. ~~_____~~, effective _____)

Section 406.APPENDIX A References to Previous Rules

The following table is provided to ~~refer previous~~ ~~aid in refereneing~~ ~~old~~ correlate previous Board rule numbers ~~to~~ with current ~~section~~ Illinois Administrative Code Section numbers ~~pursuant to codification.~~

Chapter 4, Mine Related Pollution Part VI, Effluent and Water Quality Standards 35 Ill. ~~Adm~~ Admin ~~Adm~~. Code ~~Part~~ 406 Rule 600 Section 406.100 Rule 601 Section 406.101 Rule 602 Section 406.102 Rule 603 Section 406.103 Rule 604 Section 406.104 Rule 605 Section 406.105 Rule 605.1 Section 406.201 Rule 606 Section 406.106 Rule 607 Section 406.107 Rule 608 Section 406.108

(Source: Amended at 43 Ill. Reg. ~~_____~~, effective _____)

~~ILLINOIS REGISTER~~

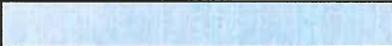
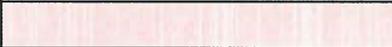
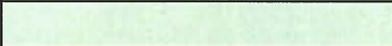
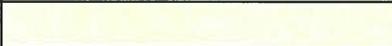
~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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Moved to	3
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Total changes	493

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: State Permits
- 2) Code Citation: 35 Ill. Adm. Code 404
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
404.101	Amendment
404.102	Amendment
404.103	Amendment
404.104	Amendment
404.105	Amendment
404.106	Amendment
404.107	Amendment
404.108	Amendment
404.109	Amendment
404.110	Amendment
404.111	Amendment
404.APPENDIX A	Amendment
- 4) Statutory Authority: Authorized by Section 27 and implementing Sections 12 and 13 of the Environmental Protection Act [415 ILCS 5/12, 13, and 27].
- 5) A Complete Description of the Subjects and Issues Involved: In 2016, the Board began reviewing its rules to identify obsolete or otherwise unnecessary language. On January 10, 2018, the Illinois Environmental Protection Agency (IEPA) filed a proposal to update provisions including Part 404. IEPA's proposal arose from Executive Order 2016-13, which required agencies to identify outdated, repetitive, confusing, or unnecessary rules and then amend or repeal them. These proposed amendments include those submitted by IEPA and those identified separately by the Board. Both IEPA and the Board intend the amendments to be non-substantive clarifications.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No

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NOTICE OF PROPOSED AMENDMENTS

- 11) Statement of Statewide Policy Objective: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments should refer to docket R18-24 and be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.pcb.illinois.gov. Comments may be filed with the Clerk of the Board and be addressed to:

Clerk's Office
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago IL 60601

Interested persons may request copies of the Board's opinion and order in R18-24 by calling the Clerk's office at 312/814-3620 or may download copies from the Board's website at www.pcb.illinois.gov.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: While the proposed amendments may affect a small business that engages in mining activities, the Board intends for the amendments to be non-substantive clarifications of existing rules.
- B) Reporting, bookkeeping or other procedures required for compliance: None beyond those required to comply with current rules.
- C) Types of professional skills necessary for compliance: None beyond those necessary to comply with current rules.
- 14) Small Business Impact Analysis:
- A) Types of businesses subject to the proposed rulemaking:

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

B) Categories that the Agency reasonably believes the rulemaking will impact: The Board intends for the proposed amendments to be non-substantive clarifications of existing rules and does not expect them to have an impact in categories such as staffing, purchasing, equipment, or record keeping.

15) Regulatory Agenda on which this rulemaking was summarized: July 2018

The full text of the Proposed Amendments begins on the next page:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE D: MINE RELATED WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 404
STATE PERMITS

8	Section	
9	404.100	Preamble
10	404.101	Construction and Operating Permits: State Permits
11	404.102	Exemption from State Permit: NPDES Holder
12	404.103	Exemption from State Permit: Coal Piles and Small Mines
13	404.104	Applications: Deadline to Apply
14	404.105	Permit Application: Signatures and Authorizations Required
15	404.106	Permit Applications: Registered or Certified Mail or Hand Delivery Required
16	404.107	Supplemental State Permits
17	404.108	Violation of Conditions and Standards in a Permit
18	404.109	State Permit Term
19	404.110	Permit No Defense to Certain Violations
20	404.111	Permit Review

404.APPENDIX A References to Previous Rules

AUTHORITY: Authorized by Section 27 and implementing Sections 12 and 13 of the Illinois Environmental Protection Act [415 ILCS 5].

SOURCE: Adopted at 4 Ill. Reg. 34, p. 164, effective August 7, 1980; codified at 5 Ill. Reg. 34, p. 8527, effective August 10, 1981; amended in R18-24 at 43 Ill. Reg. _____, effective _____.

Section 404.101 Construction and Operating Permits: State Permits

- a) Except as provided in 35 Ill. Adm. Code Sections 404.102 and 404.103, a person must obtain no person shall:
- 1) A construction permit before preparing Prepare land for mining activities or constructing construct a mine related facility that which could generate refuse, result in a discharge, or potentially have the potential to cause water pollution without a construction permit; and or
 - 2) An operating permit before carrying Carry out mining activities without an operating permit.

- 44 b) ~~The~~ For administrative convenience the Agency may issue joint construction and
45 operating permits. Whether a ~~State~~state permit is construction, operating, or joint
46 shall be determined from the ~~document's language of the entire document~~. The
47 permit title is given it by the Agency shall not be determinative.
48

49 (Source: Amended at 43 Ill. Reg. _____, effective _____)
50

51 **Section 404.102 Exemption from State Permit: NPDES Holder**
52

- 53 a) A permittee who holds an NPDES permit for a facility need not have a ~~State~~state
54 permit for that facility.
55
56 b) This exemption ~~is~~shall be inapplicable ~~if in the event~~ the Agency ceases to
57 administer the NPDES permit program. ~~If this occurs, in this event~~ the Agency
58 shall notify permittees that ~~State~~state permits are required and shall determine
59 deadlines, of at least 45 set dates, not less than forty five days after notification,
60 by on which the Agency must receive Statestate permit applications ~~are to be~~
61 received.
62

63 (Source: Amended at 43 Ill. Reg. _____, effective _____)
64

65 **Section 404.103 Exemption from State Permit: Coal Piles and Small Mines**
66

- 67 a) Unless the Agency determines that the facility will cause or threaten ~~to cause~~
68 water pollution or ~~violate~~violation of applicable regulations, the following
69 facilities need not obtain ~~State~~state permits:
70
71 1) Domestic retail sales yards;
72
73 2) Consumer stockpiles located at the consuming facility, including ~~but not~~
74 limited to power plants and steel mills; or
75
76 3) Any facility where mining ~~occurs that takes place which~~ affects less than
77 10 ten acres of land per year and ~~which~~ does not include a coal, fluorspar,
78 lead or zinc mine related facility.
79
80 b) ~~A facility~~An operator of a facility claiming exemption under subsection (a)(3)
81 must of this Section shall notify the Agency in writing of the facility's location of
82 ~~the facility~~ and the basis for exemption. The exemption ~~takes~~shall be of no effect
83 once the prior to the time such notice is mailed.
84
85 c) ~~If in the event~~ the Agency determines that a facility will cause or threaten ~~to cause~~
86 water pollution or ~~violate~~violation of applicable regulations, or that a facility

87 claiming exemption is not exempt, the Agency shall notify the operator that a
88 permit is required. ~~If An exemption which is valid except that~~ the Agency has
89 determined that ~~an exempt~~the facility will cause or threaten to cause water
90 pollution or ~~violate~~violation of applicable regulations, the exemption continues
91 ~~shall continue~~ for ~~45~~forty-five days after notification that the facility requires a
92 permit and during the pendency of a permit application before the Agency.

93
94 (Source: Amended at 43 Ill. Reg. _____, effective _____)
95

96 **Section 404.104 Applications: Deadline to Apply**

97
98 A person required to have a ~~State~~state permit ~~must~~shall file an application with the Agency at
99 least ~~90~~ninety days before the date ~~on which~~ the permit is required.

100
101 (Source: Amended at 43 Ill. Reg. _____, effective _____)
102

103 **Section 404.105 Permit Application: Signatures and Authorizations Required**

- 104
- 105 a) ~~If An application~~ submitted by a corporation, the permit application must shall be
- 106 signed by a principal executive officer of at least the level of vice president or his
- 107 or her duly authorized representative, if ~~thesueh~~ representative is responsible for
- 108 the overall operation of the facility wherefrom which the discharge ~~described in~~
- 109 the application form originates.
- 110
- 111 b) If submitted byIn the case of a partnership or a sole proprietorship, the permit
- 112 application must shall be signed by a general partner or the proprietor,
- 113 respectively.
- 114
- 115 c) For all other persons, the permit application must shall be signed by either a
- 116 principal executive officer, ranking elected official, or other duly authorized
- 117 employee.
- 118

119 (Source: Amended at 43 Ill. Reg. _____, effective _____)
120

121 **Section 404.106 Permit Applications: Registered or Certified Mail or Hand Delivery**
122 **Required**

- 123
- 124 a) All ~~State~~state permit applications must shall be mailed or delivered to the
- 125 appropriate address designated by the Agency. Any application or revised
- 126 application sent by mail must shall be sent by registered or certified mail, return
- 127 receipt requested.
- 128
- 129 b) Any application or revised applicationApplications which are hand delivered to

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~~the Agency must be~~ shall be delivered to an authorized employee of the Agency's permit section ~~and received for by any authorized person employed in the permit section of the Agency's Mine Pollution Control Program, and the authorized employee must provide the applicant with a delivery receipt.~~

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 404.107 Supplemental State Permits

- a) A permittee may apply for a new or supplemental ~~State~~state permit whenever ~~circumstances arise such that there could be a violation of its previous permit or in other appropriate circumstances.~~
- b) Applications for new or supplemental ~~State~~state permits ~~are~~shall be subject to the rules on applications in general.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 404.108 Violation of Conditions and Standards in a Permit

- a) ~~A~~No permittee ~~must not~~shall violate the conditions and standards contained in its ~~State~~state permit.
- b) In addition to the other sanctions ~~under provided by the Act and this Subtitle D, Chapter I,~~ the Board may revoke a ~~State~~state permit in appropriate circumstances, including ~~but not limited to~~ the following:
 - 1) ~~Due to~~Because of existing geological conditions, an operator cannot carry out mining activities ~~without causing so as not to cause~~ a violation of the Act or ~~this Subtitle D, Chapter I;~~ or
 - 2) A ~~permittee's~~ history of chronic disregard ~~by the permittee~~ for the Act or Board regulations; ~~or~~
 - 3) Obtaining a permit by misrepresentation or failure to disclose ~~fully~~ all relevant facts; or
 - 4) Other circumstances ~~in which where~~ it is affirmatively shown that the general standard for permit issuance ~~under 35 Ill. Adm. Code contained in Section 405.102~~ would not be met if ~~the permittee submitted a new permit application for permit were made.~~

(Source: Amended at 43 Ill. Reg. _____, effective _____)

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Section 404.109 State Permit Term

State permits ~~will~~shall have a duration not ~~exceeding~~to exceed five years as specified in the permit.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 404.110 Permit No Defense to Certain Violations

~~Possessing~~The possession of a ~~State~~state permit is not a defense to violation of the Act or Subtitle D, Chapter I except for a complaint alleging mining activity without a permit.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 404.111 Permit Review

- a) If the Agency fails to notify the applicant within 30 days after filing an application that the application is incomplete and the reason the Agency deems it incomplete, the application will be deemed to have been filed on the date of the purported filing. The applicant may treat the Agency's notification that an application is incomplete as a denial of the application for purposes of review.
- b) If the Agency fails to take final action by granting or denying the permit as requested or modifying it with conditions within 90 days after the filing of the application, the applicant may deem the permit granted for a one year period beginning on the 91st day after the application was filed.
- c) If the Agency notifies an applicant that a permit application is incomplete or inadequate, modifies any condition or term of a State permit, or revokes an existing permit, it is considered a permit denial for purposes of appealing the Agency's decision to the Board under Section 40 of the Act.

~~Any condition or term in a state permit or Agency notification that a permit application is incomplete or inadequate or Agency notification of modification or revocation of an existing permit is a permit denial entitling a person to appeal the Agency's decision to the Board under Section 40 of the Act.~~

(Source: Amended at 43 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE D: MINE RELATED WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 404
STATE PERMITS

Section

- 404.100 Preamble
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404.APPENDIX A References to Previous Rules

AUTHORITY: Authorized by Section 27 and implementing Sections 12 and 13 of the Illinois Environmental Protection Act ~~([415 ILCS 5/12, 13, 17]).~~

SOURCE: Adopted at 4 Ill. Reg. 34, p. 164, effective August 7, 1980; codified at 5 Ill. Reg. 34, p. 8527, effective August 10, 1981; amended in R18-24 at 43 Ill. Reg. _____, effective _____.

Section 404.101 Construction and Operating Permits: State Permits

a) Except as provided in 35 Ill. Adm. ~~Code Sections~~ Code 404.102 and 404.103, a person must ~~obtain~~ no person shall obtain:

1) A construction permit before ~~preparing~~ Prepare ~~preparing~~ land for mining activities or ~~constructing~~ construct ~~constructing~~ a mine related facility ~~that which~~ that could generate refuse, result in a discharge, or ~~potentially have the potential to~~ potentially cause water pollution ~~without a construction permit, and or; and~~

2) An operating permit before ~~carrying~~ Carry ~~carrying~~ out mining activities ~~without an operating permit.~~

b) ~~The~~ For administrative convenience the Agency may issue joint construction and operating permits. Whether a ~~state~~ State permit is construction, operating, or joint ~~will~~ shall be determined from the document's language ~~of the entire document.~~ The permit title ~~is given~~ it by the Agency shall is not ~~be~~ determinative.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 404.102 Exemption from State Permit: NPDES Holder

- a) A permittee who holds an NPDES permit for a facility need not have a ~~state~~State permit for that facility.
- b) This exemption ~~is shall be is~~ inapplicable ~~if in the event if~~ the Agency ceases to administer the NPDES permit program. If this occurs, ~~In this event~~ the Agency ~~will shall shall~~ notify permittees that ~~state~~State permits are required and ~~will shall~~ determine deadlines, ~~of~~ at least ~~45~~set dates, not less than forty five days after notification, ~~by on~~by which the Agency must receive ~~state~~State permit applications ~~are to be received~~.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 404.103 Exemption from State Permit: Coal Piles and Small Mines

- a) Unless the Agency determines that the facility will cause or threaten ~~to cause~~ water pollution or ~~violate violation of violate~~ applicable regulations, the following facilities need not obtain ~~state~~State permits:
- 1) Domestic retail sales yards;
 - 2) Consumer stockpiles located at the consuming facility, including ~~but not limited to~~ power plants and steel mills; or
 - 3) Any facility where mining ~~occurs takes place which occurs that~~ affects less than ~~ten~~10 acres of land per year and ~~which~~ does not include a coal, fluorspar, lead or zinc mine related facility.
- b) A ~~facility~~facility operator ~~of a facility~~ claiming exemption under subsection (a) (3) ~~of this Section shall~~ must notify the Agency in writing of the facility's location ~~of the facility~~ and the basis for exemption. The exemption ~~takes shall be of no~~takes effect once ~~the prior to the time such~~ notice is mailed.
- c) ~~If in the event if~~ the Agency determines that a facility will cause or threaten ~~to cause~~ water pollution or ~~violate violation of violate~~ applicable regulations, or that a facility claiming exemption is not exempt, the Agency ~~will~~ shall notify the operator that a permit is required. ~~If an exemption which is valid except that if~~ the Agency has determined that an ~~exempt the~~exempt facility will cause or threaten ~~to cause~~ water pollution or ~~violate violation of violate~~ applicable regulations, the exemption ~~continues shall continue~~continues for ~~45~~forty five days after notification that the facility requires a permit and during the pendency of a permit application before the Agency.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 404.104 Applications: Deadline to Apply

A person required to have a ~~state~~State permit must ~~shall~~ file an application with the Agency at least 90~~ninety~~ days before the date ~~on~~
~~which~~ the permit is required.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 404.105 Permit Application: Signatures and Authorizations Required

a) ~~If An application If~~ submitted by a corporation, the permit application ~~must~~shall~~must~~ be signed by a principal executive officer of at least the level of vice president or his or her duly authorized representative, if ~~the such the~~ representative is responsible for the overall operation of the facility ~~wherefrom which~~where the discharge ~~described in the application form~~ originates.

b) If submitted ~~by In the case of by~~ a partnership or a sole proprietorship, the permit application ~~must~~shall~~must~~ be signed by a general partner or the proprietor, respectively.

c) For all other persons, the permit application ~~must~~shall~~must~~ be signed by either a principal executive officer, ranking elected official, or other duly authorized employee.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 404.106 Permit Applications: Registered or Certified Mail or Hand Delivery Required

a) All ~~state~~State permit applications ~~must~~shall~~must~~ be mailed or delivered to the appropriate address designated by the Agency. Any application or revised application sent by mail ~~must~~shall~~must~~ be sent by registered or certified mail, return receipt requested.

b) Any application or revised ~~application~~Applications which ~~are~~application hand delivered to the Agency must be ~~shall be~~ delivered to an authorized employee of the Agency's permit section or ~~and~~
~~received for by any authorized person employed in the permit section of~~ the Agency's Mine Pollution Control Program, and the authorized employee must provide the applicant with a delivery receipt.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 404.107 Supplemental State Permits

a) A permittee may apply for a new or supplemental ~~state~~State permit whenever ~~circumstances arise such that~~ there could be a violation of its previous permit or in other appropriate circumstances.

b) Applications for new or supplemental ~~state~~State permits ~~are shall-~~
~~be~~are subject to the rules on applications in general.

(Source: Amended at 43 Ill. Reg. ~~—~~_____, effective _____)

Section 404.108 Violation of Conditions and Standards in a Permit

a) A permittee must not ~~shall~~violate the conditions and standards contained in its ~~state~~State permit.

b) In addition to ~~the~~other sanctions under ~~provided by the Act~~Act and ~~this~~Subtitle D, ~~Chapter I~~, the Board may revoke a ~~state~~State permit in appropriate circumstances, including ~~but not limited to~~the following:

1) Due to ~~Because of~~existing geological conditions, an operator cannot carry out mining activities without causing ~~so as not to cause a~~ violation of the Act or ~~this~~Subtitle D, ~~Chapter I~~; ~~or~~

2) A permittee's history of chronic disregard ~~by the permittee~~for the Act or Board regulations; ~~or~~

3) Obtaining a permit by misrepresentation or failure to disclose ~~fully~~all relevant facts; or

4) Other circumstances ~~wherein which~~ it is affirmatively shown that the general standard for permit issuance under ~~contained in~~ 35 Ill. Adm. ~~Code~~SectionCode 405.102 would not be met if the permittee submitted a new permit application ~~for permit were made~~.

(Source: Amended at 43 Ill. Reg. ~~—~~_____, effective _____)

Section 404.109 State Permit Term

State permits ~~will~~shallwill have a duration not ~~exceeding to~~
~~exceed~~exceeding five years ~~as specified in the permit~~.

(Source: Amended at 43 Ill. Reg. ~~—~~_____, effective _____)

Section 404.110 Permit No Defense to Certain Violations

Possessing ~~The possession of a state~~State permit is not a defense to violation of the Act or Subtitle D, ~~Chapter I~~except for a complaint alleging mining activity without a permit.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 404.111 Permit Review

~~Any condition or term in a state permit or Agency notification that a permit application is incomplete or inadequate or Agency notification of modification or revocation of an existing permit is a permit denial entitling a person to appeal the Agency's decision to the Board under Section 40 of the Act.~~

a) If the Agency fails to notify the applicant within 30 days after filing an application that the application is incomplete and the reason the Agency deems it incomplete, the application will be deemed to have been filed on the date of ~~such~~the purported filing. The applicant may treat the Agency's notification that an application is incomplete as a denial of the application for purposes of review.

b) If the Agency fails to take final action by granting or denying the permit as requested or modifying it with conditions within 90 days after the filing of the application, the applicant may deem the permit granted for a one year period beginning on the 91st day after the application was filed.

c) If the Agency notifies an applicant that a permit application is incomplete or inadequate, modifies any condition or term of a ~~state~~State permit, or revokes an existing permit, it is considered a permit denial for purposes of appealing the Agency's decision to the Board under Section 40 of the Act.

(Source: Amended at 43 Ill. Reg. _____, effective _____)

Section 404.APPENDIX A References to Previous ~~Rules~~REFERENCES TO PREVIOUS RULESRules

The following table is provided to ~~refer previous~~aid in refereneing-eldcorrelate previous Board rule numbers ~~to~~with current ~~Section~~sectionIllinois Administrative Code Section numbers ~~pursuant to~~codification.

Chapter 4, Mine Related Pollution

Part IV, State Permits 35 Ill. ~~Adm~~AdminAdm. Code ~~Part~~404Rule
400Section 404.100Rule 401Section 404.101Rule 402Section 404.102Rule
403Section 404.103Rule 404Section 404.104Rule 405Section 404.105Rule
406Section 404.106Rule 407Section 404.107Rule 408Section 404.108Rule
409Section 404.109Rule 410Section 404.110Rule 411Section 404.111

(Source: Amended at 43 Ill. Reg. _____, effective _____)

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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Description	35-404-r01(issue 17)
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Moved cell	
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Padding cell	

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Moved to	0
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Total changes	207