

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
AMENDMENTS TO 35 ILL.ADM.CODE)	R18-23
SUBTITLE C: WATER POLLUTION)	(Rulemaking-Water)
)	
)	

NOTICE OF FILING

Don Brown, Clerk
 Illinois Pollution Control Board
 James R. Thompson Center
 100 West Randolph, Suite 11-500
 Chicago, Illinois 60601

Timothy Fox
 Hearing Officer
 Illinois Pollution Control Board
 James R. Thompson Center
 100 West Randolph, Suite 11-500
 Chicago, Illinois 60601

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board a NOTICE OF FILING, APPEARANCE AND THE ILLINOIS EPA'S RESPONSE TO THE BOARD'S NOVEMBER 4, 2021 QUESTIONS, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
 PROTECTION AGENCY

By: /s/Nicholas E. Kondelis
 Nicholas E. Kondelis
 Assistant Counsel
 Division of Legal Counsel

DATED: December 30, 2021

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) R18-23
AMENDMENTS TO 35 ILL. ADM. CODE)
SUBTITLE C: WATER POLLUTION:) (Rulemaking- Water)

APPEARANCE

The undersigned hereby enters their appearance as attorneys on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Nicholas E. Kondelis
Nicholas E. Kondelis
Assistant Counsel
Division of Legal Counsel

By: /s/ Sara Terranova
Sara Terranova
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
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AMENDMENTS TO 35 ILL ADM. CODE) R18-23
) (Rulemaking- Water)
SUBTITLE C: WATER POLLUTION)

ILLINOIS EPA’S RESPONSE TO THE BOARD’S NOVEMBER 4, 2021 QUESTIONS

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, ("Illinois EPA" or "Agency") by and through its counsel, and pursuant to an Illinois Pollution Control Board (“Board”) Order dated November 4, 2021, submits the following responses to the Board’s November 4, 2021 questions in the above captioned rulemaking.

I. Introduction

In 2016, the Board began reviewing its rules to identify obsolete, repetitive, confusing, or otherwise unnecessary language. In 2018, the Agency filed a proposal to update the Board’s environmental rules across multiple media and subject areas, including the water pollution rules in Subtitle C (35 Ill. Adm. Code 301-310, 312). The Board accepted the Agency’s proposal and split it into eight dockets—each dedicated to non-substantive amendments in a single subtitle of the Board’s rules. The Agency’s comments herein address only the Board’s Subtitle C water pollution regulations.

In its November 4, 2021 Order, the Board asked a series of questions concerning the Agency’s proposal. These responses will address the specific questions posed by the Board. The Agency did not propose and does not support any substantive changes to Subtitle C at this time.

II. Responses to Board Questions

Section 301.102

- 1) Please comment on the Board's proposed revision of Section 301.102, which replaces the first sentence with statutory language stating legislative findings on which it was based.

Agency Response: The Board's proposed revision of Section 301.102 is acceptable to the Agency.

Section 301.107

- 2) For Section 301.107, Severability, please comment on the Board's proposed revisions, which are based on the severability provision of its recently-adopted coal ash rules. See 35 Ill. Adm. Code 845.160.

Agency Response: The Board's proposed revision of Section 301.107 is acceptable to the Agency.

Section 301.340

- 3) In Section 301.340, the definition of "Pollutant", please comment on the Board's proposed update to the reference to the "Department of Mines and Minerals".

Agency Response: The Board's proposed update to Section 301.340 is acceptable to the Agency.

Section 301.370

- 4) For Section 301.370, please comment on the Board's proposed update of the statutory cross reference to the Public Utilities Act, 220 ILCS 5/1-1010 et seq.

Agency Response: The Board's proposed update to Section 301.370 is acceptable to the Agency.

Section 302.101

- 5) For Section 302.101, please comment on the Board's proposal to strike subsection (g). The Board notes that IEPA proposed to strike virtually identical language by repealing Section 301.105. Throughout Part 302, the Board revised numerous regulatory references to make them more precise and to make provisions such as subsection (g) unnecessary.

Agency Response: The Board's proposal to strike subsection (g) in Section 302.101 is acceptable to the Agency.

Section 302.211(f)

- 6) For Section 302.211(f), based on the effective date of the regulation, please comment on whether a deadline of “not less than 5 nor more than 6 years after the effective date of these deadlines” should be struck as obsolete or revised.

Agency Response: The deadline language of “not less than 5 nor more than 6 years after the effective date of these deadlines” should be struck as obsolete.

Section 303.100

- 7) For Section 303.100, please comment on the Board’s proposal to strike subsection (b). The Board notes that IEPA proposed to strike virtually identical language by repealing Section 301.105. Throughout Part 303, the Board revised numerous regulatory references to make them more precise and to make provisions such as subsection (b) unnecessary.

Agency Response: The Board’s proposal to strike subsection (b) in Section 303.100 is acceptable to the Agency.

Section 304.101

- 8) For Section 304.101, please comment on the Board’s proposal to strike subsection (b). The Board notes that IEPA proposed to strike virtually identical language by repealing Section 301.105. Throughout Part 304, the Board revised numerous regulatory references to make them more precise and to make provisions such as subsection (b) unnecessary.

Agency Response: The Board’s proposal to strike subsection (b) in Section 304.101 is acceptable to the Agency.

Section 304.120

- 9) For Section 304.120, is it appropriate to delete the STORET numbers?

Agency Response: Yes, it is appropriate to delete the STORET numbers.

Section 304.124

- 10) For Section 304.124, is it appropriate to delete the STORET numbers as proposed in Section 302.407(h)?

Agency Response: Yes, it is appropriate to delete the STORET numbers.

Section 304.125

11) For Section 304.125, is it appropriate to delete the STORET number?

Agency Response: Yes, it is appropriate to delete the STORET number.

Section 304.126

12) For Section 304.126, is it appropriate to delete the STORET number?

Agency Response: Yes, it is appropriate to delete the STORET number.

Section 304.201

13) For Section 304.201, is it appropriate to delete the STORET numbers?

Agency Response: Yes, it is appropriate to delete the STORET numbers.

Section 304.204

14) For Section 304.204, is it appropriate to delete the STORET numbers?

Agency Response: Yes, it is appropriate to delete the STORET numbers.

Section 304.207

15) For Section 304.207, is it appropriate to delete the STORET numbers?

Agency Response: Yes, it is appropriate to delete the STORET numbers.

Section 304.208

16) For Section 304.208, is it appropriate to delete the STORET numbers?

Agency Response: Yes, it is appropriate to delete the STORET numbers.

Section 304.209

17) For Section 304.209, please comment on whether this site-specific limit correctly refers to the current owner of the site, whether this section is consistent with the recently-adopted rules for coal combustion residual surface impoundments at 35 Ill. Adm. Code 845, and whether it requires any revision.

Agency Response: With regard to Section 304.209, the site-specific language of "Illinois Power Company" should be replaced with the name of the current owner, "CTI Development LLC".

Section 304.210

18) For Section 304.210, is it appropriate to delete the STORET numbers?

Agency Response: Yes, it is appropriate to delete the STORET numbers.

Section 304.216

19) For Section 304.216, please comment on whether this site-specific limit currently refers to the current owner of the site, whether the section is consistent with the recently adopted rules for coal combustion residual surface impoundments at 35 Ill. Adm. Code 845, and whether it requires any revision.

Agency Response: With regard to Section 304.216, the site-specific language should be changed from “Central Illinois Public Service Company” to the current owner, “Illinois Power Generation Company”.

Section 304.219

20) For Section 304.219, please comment on whether the deadlines in subsections (c), (d), and (e), each of which passed approximately 30 years, should be struck as obsolete.

Agency Response: The listed deadlines in subsections (c), (d), and (e), should remain as is.

21) For Section 304.219(g), the third requirement includes a deadline of April 1, 1992, to submit a “comprehensive study.” Please comment on whether that requirement and deadline should be struck as obsolete. If so, is it appropriate also to strike the requirements to “embark on a program ofmonitoring” and to “periodically submit the data from such monitoring” that are the basis for the study?

Agency Response: In Section 304.219(g), a period should be inserted after the word “Agency”. Then, the language of “and must submit a comprehensive study of this date and monitoring for period 1987 through 1991 to the Board and the Agency before April 1, 1992” should be deleted.

Section 304.220

22) Section 304.220 expired by its own terms on January 1, 1992. Please comment on whether it is appropriate to strike this section.

Agency Response: It is appropriate to strike Section 304.220.

Section 305.101

- 23) For Section 305.101, please comment on the Board's proposal to strike the second and third sentences. The Board notes that IEPA proposed to strike similar language by repealing Section 301.105. In Part 305, the Board revised numerous regulatory references to make them more precise and to make provisions such as subsection (b) unnecessary.

Agency Response: The Board's proposal to strike the second and third sentences in Section 305.101 is acceptable to the Agency.

Section 306.101

- 24) For Section 306.101, please comment on the Board's proposal to strike the second and third sentences. The Board notes that IEPA proposed to strike similar language by repealing Section 301.105. Throughout Part 306, the Board revised numerous regulatory references to make them more precise and to make provisions such as subsection (b) unnecessary.

Agency Response: The Board's proposal to strike the second and third sentences in Section 306.101 is acceptable to the Agency.

Section 306.305

- 25) For the preamble of Section 306.305, please comment on whether it is appropriate to strike the reference to Subpart D, which IEPA proposes to repeal, and which IEPA has proposed to strike from subsection (d). Please comment also on whether it should be replaced with a reference to another provision.

Agency Response: The reference to "Subpart D" should be stricken and should not be replaced with a reference to another provision.

Section 306.306

- 26) For Section 306.306(d), subsections (1), (2) and (3) are based on a grant program with an application deadline of March 1, 1977. Please comment on whether it is appropriate to strike those three subsections as obsolete or whether other revisions are appropriate.

Agency Response: Subsections (1), (2) and (3) in Section 306.306(d) should remain as is.

Section 306.403

- 27) Please comment on the source of proposed Section 306.403(b), specifically whether the proposed new subsection is based on 35 Ill. Adm. Code 392.302.

Agency Response: The proposed Section 306.403(b) is based on 35 Ill. Adm. Code 392.302.

Section 307.1815

- 28) For Section 307.1815, Sewer Discharge Criteria for the Fish Meal Processing Subcategory, please comment on whether the Board should repeal it as unnecessary. The applicability provision of that section indicates that it does not apply to any discharge in Illinois.

Agency Response: The Board should repeal Section 307.1815, since it does not apply to any discharge in Illinois.

Section 307.2006

- 29) Section 307.2006, Carpet Fishing, refers to “Subpart C of this Part,” which Part 307 does not include. Please comment on a revision that would provide an appropriate cross reference.

Agency Response: The appropriate cross-reference that should be included in Section 307.2006 is 35 Ill. Adm. Code 307.2003.

Section 308.101

- 30) For Section 308.101, please comment on the Board’s proposal to strike the second and third sentences. The Board notes that IEPA proposed to strike similar language by repealing Section 301.105. In Part 308, the Board revised regulatory references to make them more precise and to make language such as these two sentences unnecessary.

Agency Response: The Board’s proposal to strike the second and third sentences in Section 308.101 is acceptable to the Agency.

Section 308.102

- 31) Section 308.102(a) refers to a subsection (d) that the section does not include. Please comment on whether this reference should be struck or corrected to refer to a different provision.

Agency Response: With regard to Section 308.102(a), the Agency recommends a period be inserted after “(c)”. And then delete: “and (d) of this Section”.

Section 309.101

- 32) For Section 309.101, please comment on the Board’s proposal to strike subsection (b) and the “Editor’s Note.” The Board notes that IEPA proposed to strike similar language by repealing Section 301.105. In Part 309, the Board revised regulatory references to make them more precise and to make language such as these two sentences unnecessary.

Agency Response: The Agency has no objection to the Board’s proposal to strike subsection (b) and the “Editor’s Note.”

Section 309.107(a)

- 33) In Section 107(a), please comment on whether the word “navigation” in the second sentence should instead be “navigable” as in third.

Agency Response: The word “navigation” in the second sentence should in fact be changed to “navigable”, as in the third sentence.

Section 309.154(d)

- 34) Section 309.154(d) refers to criteria under Section 309.221, which lists required elements of a permit application. Please comment on whether this cross-reference should be amended.

Agency Response: The cross-reference should be “Section 309.1549(c)”, not Section 309.154(d).

Section 309.183(b)

- 35) Please comment on whether it would clarify Section 309.183(b) by revising it to provide that, “[u]nder subsection (a), the Agency must not extend a final compliance date more than 90 days.”

Agency Response: Such a proposed clarification is acceptable to the Agency.

Section 309.202(d)

- 36) Based on the four-year construction deadline and the 1972 effective date under Section 309.281, please comment on whether it would be appropriate to strike subsection (d) of Section 309.202 as obsolete.

Agency Response: It would not be appropriate to strike Section 309.202(d) as obsolete. No other section defines the construction/modification of any pretreatment works based on the discharge of toxic pollutants, hydraulic flow received, or biological loading received.

Section 309.208(a)(3)

- 37) For Section 309.208(a)(3), please comment on whether the Board should revise and clarify the cross reference to “Parts 700 et seq.”

Agency Response: Since Part 700 has been repealed, the reference to “Parts 700 et seq” should be removed.

Section 309.221

- 38) In Section 309.221, please comment on whether it is appropriate to update the statutory cross reference to the “Professional Engineering Practice Act of 1989”.

Agency Response: Given that the Illinois Compiled Statutes replaced the older Illinois Revised Statutes in 1993, it is appropriate to update the citation to the Professional Engineering Practice Act of 1989 to the current ILCS citation of 225 ILCS 325.

Section 309.223

- 39) In Section 309.223, IEPA’s proposed revision strikes specific reference to registered and certified mail. Please comment on whether the heading of the section should be revised to reflect IEPA’s proposed revision of the rule language and if so, include a proposed revision.

Agency Response: The heading in Section 309.223 should be revised to: “Applications—Delivery”.

Section 309.262

- 40) IEPA proposed to repeal Section 309.262, Design, Operation, and Maintenance Criteria, “because it has been determined to be unnecessary.” Please comment on that determination and the basis on which it was reached.

Agency Response: Upon further examination and analysis, Section 309.262 should not be repealed.

Section 312.100

- 41) Please comment on the Board's proposal to strike Section 312.100. The Board notes that IEPA proposed to strike similar language by repealing Section 301.105. In Part 312, the Board revised regulatory references to make them more precise and to make language such as these two sentences unnecessary.

Agency Response: The Board's proposal to strike Section 312.100 is acceptable to the Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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December 30, 2021

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CERTIFICATE OF SERVICE

Nicholas E. Kondelis, Assistant Counsel for the Illinois EPA, herein certifies that he has served a copy of the foregoing NOTICE OF FILING, APPEARANCES and ILLINOIS EPA'S RESPONSE TO THE BOARD'S NOVEMBER 4, 2021 QUESTIONS upon persons listed on the Service List, by electronic service sent to the designated email addresses on December 30, 2021 .

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
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