

ILLINOIS POLLUTION CONTROL BOARD

August 15, 2013

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
PROCEDURAL RULES FOR)
ALTERNATIVE THERMAL EFFLUENT)
LIMITATIONS UNDER SECTION 316(a) OF) R13-20
THE CLEAN WATER ACT: PROPOSED) (Rulemaking - Water)
NEW 35 ILL. ADM. CODE PART 106,)
SUBPART K AND AMENDED SECTION)
304.141(c))

 ORIGINAL

HEARING OFFICER ORDER

On June 20, 2013, the Illinois Environmental Protection Agency (Agency) filed a rulemaking proposing procedural rules for establishing alternative thermal effluent limitations under Section 316(a) of the Clean Water Act and 35 Ill. Adm. Code 304.141. The proposal will also update Section 304.141 of the Board's regulations to include a cross-reference to the new Subpart K and to update language to reflect the United States Environmental Protection Agency delegation of permitting authority to the Agency.

Two hearings have been scheduled in this rulemaking. The first hearing will take place at 11:00 a.m. on August 27, 2013 in Springfield. Pre-filed testimony for the first hearing is due on August 16, 2013. The second hearing will take place at 11:00 a.m. on October 16, 2013 in Chicago. Pre-filed testimony for the second hearing is due on October 11, 2013.

Attached to this order are Board staff questions for the witnesses of the Agency. These questions will be taken up at the first hearing. The Agency is not required to provide written responses to these questions before or at the hearing. Opportunities for other participants attending the hearing to ask questions will be provided.

IT IS SO ORDERED.



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ATTACHMENT TO HEARING OFFICER ORDER

AUGUST 15, 2013

Board Staff Questions for First Hearing

The following questions have been prepared for the Illinois Environmental Protection Agency (Agency) based on the Board's review of the Agency's proposal. The Board asks that the Agency please respond to the following questions.

Section 106.1100 **Purpose**

1. This section states, "[t]his Subpart describes the factors, criteria, and standards for the establishment of alternative thermal effluent limitations under 35 Ill. Adm. Code 304.141(c) and Section 316(a) of the Clean Water Act and in permits issued under 35 Ill. Adm. Code 309."

Please clarify if the word "and" between the words "Clean Water Act" and "in permits" should be deleted to track the federal rule language under 40 CFR 125.70.

Section 106.1105 **General**

2. Section 106.1105(a) states, in part, "[t]his Subpart applies to any point source that discharges pollutants to waters of the United States."

Please explain why the applicability of the proposed rules is defined by discharges to "waters of the United States" instead of discharges to "waters of the state." The Board notes that the National Pollutant Discharge Elimination System (NPDES) permit regulations refer to "navigable waters" and "waters of the state." See 35 Ill. Adm. Code 309.101 and 309.102.

3. The proposed language at Section 106.1105(a) states, "that any effluent limit."

Should "limit" be "limitation" to be consistent with the subsequent wording in the same subsection, "will require effluent limitations more stringent," as well as 316(a) of the Clean Water Act (CWA) and 40 CFR 125.70?

Section 106.1100 **Definitions**

4. The definition of "[b]alanced, indigenous community" sets forth in part that a balanced community "may not include species whose presence or abundance is attributable to alternative thermal effluent limitations imposed pursuant to this Subpart or through regulatory relief from otherwise applicable thermal limitations or standards granted by the Board."

Please clarify whether "otherwise applicable thermal limitations" are those under Chapter I, Subtitle C of Title 35. If so, would it be acceptable to the Agency if a

citation is included in the rule language similar to the one proposed under Section 106.1160(b)?

Section 106.1115 **Early Screening**

5. The proposed early screening provision at Section 106.1115(a)(4) requires a petitioner to submit a proposed representative important species (RIS) list for the Agency's approval.

Please clarify whether the proposed intent of subsection (a)(4) is to allow the Agency to review the proposed RIS list and recommend changes if necessary. If so, please comment on whether it be acceptable to the Agency if the wording of subsection (a)(4) is revised as shown below.

(a)(4) A proposed representative important species list and such data and information as may be available to assist the Agency in reviewing ~~approving~~ the selection of the appropriate representative important species.

6. Section 106.1115(b) sets forth that the petitioner must consult with the Agency "[w]ithin 30 days from receipt of the early screening information."

Please comment on whether it would be acceptable to the Agency if the wording of subsection (b) is changed as shown below to be consistent with the timeframe specified under Section 106.1120(a).

b) Within 30 days after from receipt of the early screening information is submitted under subsection (a) of this Section, the petitioner shall consult with the Agency to discuss the petitioner's early screening information.

Section 106.1120 **Detailed Plan of Study**

7. Section 106.1120(a) requires the petitioner to submit "for the Agency's approval a detailed plan of study that the petitioner will undertake to support its alternative thermal effluent limitation demonstration."

Please clarify whether the submission of the detailed plan of study is intended for the Agency to review the plan and recommend revisions if necessary. If so, please comment on whether the Agency is amenable to the following revisions to subsections (a), (f) and (g):

a) Within 60 days after the early screening information is submitted pursuant to Section 106.1115 of this Part, the petitioner shall submit for the Agency's review approval ~~approval~~ a detailed plan of study

that the petitioner will undertake to support its alternative thermal effluent limitation demonstration.

- f) Within 90 days of petitioner's submittal of its detailed plan of study, the Agency shall review ~~approve~~ the plan, and notify the petitioner of the completion of the review along with ~~or specify~~ any recommended revisions to the plan.
 - g) After receiving ~~obtaining~~ Agency notification under subsection (f) ~~approval or the Agency's recommended revisions~~, the petitioner shall complete the plan of study prior to filing the petition for an alternative thermal effluent limitation with the Board.
8. Please comment on whether a petitioner is free to file a petition for alternative thermal effluent limitations with the Board after receiving the Agency's notification pursuant to Section 106.1120(f), above, if the petitioner rejects any of the Agency's recommendations.
 9. Section 106.1120(c) states, "[i]n selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards."

Please clarify whether "applicable water quality standards" are those under Chapter I, Subtitle C, Part 302 of Title 35. If so, would it be acceptable to the Agency if a citation is included in the rule language? If not, please provide citations to the "applicable water quality standards."

Section 106.1130 **Contents of Petition**

10. Please comment on whether it would acceptable to the Agency if the petitioner is required to include a copy of the detailed plan and any Agency recommendations pursuant to Section 106.1120 in the petition.
11. Section 106.1130(d) requires a petitioner to submit the "results of the studies conducted pursuant to the detailed plan of study submitted under Section 106.1120".

Please comment on whether the rules should provide more specificity regarding the types of information that the "results" report must include. In this regard, would it be acceptable to the Agency if subsection (d) is revised to require the petitioner to submit a detailed report on studies conducted pursuant to the detailed plan under Section 106.1120 that includes: background on the proposed thermal standards; information on data collection program and methodologies; summaries of physical, chemical, biological and technical data supporting the demonstration along with a discussion of the data; and criteria or methodology used to

assess whether a balanced indigenous community of shellfish, fish and wildlife will be maintained in the receiving waters; protection of threatened and endangered species; and results of prospective and retrospective assessments.

12. Section 106.1130(e) allows a petitioner to submit “[a]ny information or guidance published by USEPA to assist in making alternative thermal effluent limitation demonstrations that the Board should consider in evaluating the petition.”

Please comment on whether a petitioner would be able to submit any United States Environmental Protection Agency (USEPA) guidance under the proposed requirement under Section 106.1130(f), which allows the petitioner to submit “[any] additional information or studies that the petitioner judges to be appropriate to support the alternative thermal effluent limitation demonstration.” Please comment on whether the following revisions would be acceptable to the Agency:

- e) ~~Any information or guidance published by USEPA to assist in making alternative thermal effluent limitation demonstrations that the Board should consider in evaluating the petition; and~~
- f) ~~Any additional information or studies, including information or guidance published by USEPA, that the petitioner judges to be appropriate to support the alternative thermal effluent limitation demonstration.~~

Section 106.1135 **Petition Notice Requirements**

13. Please comment whether it would be acceptable to the Agency if the word “filed” is used instead of “mailed” in the concluding portion of the notice in subsection (b) as follows:

“Any person may cause a public hearing to be held in the above-described proceeding by filing a hearing request with the Illinois Pollution Control Board within 21 days after the date of the publication of this notice. The hearing request should clearly indicate the docket number for the proceeding, as found in this notice, and must be filed with ~~mailed to~~ the Clerk of the Board, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601.”

Section 106.1140 **Proof of Petition Notice Requirements**

14. This section requires petitioner to file a certificate of publication within 30 days after filing of the petition, but does not specify where such a certificate must be filed.

Please comment on whether it would be acceptable to the Agency if the rule language is clarified to indicate that the certificate of publication must be filed with the Board.

Section 106.1145 **Recommendation and Response**

15. This section sets forth the time frames similar to the Board's adjusted standard procedures under 35 Ill. Adm. Code 106.416(a) for the Agency's recommendation (within 45 days of filing of the petition), and any response by the petitioner or participants (within 21 days of the filing of the Agency's recommendation). However, the proposed provision does not require the Agency to file its recommendation at least 30 days before hearing, if one is required to be held. *See* 35 Ill. Adm. Code 106.416. Additionally, Section 106.1145 does not specify the information to be included in the Agency's recommendation similar to the adjusted standard provision under Section 106.416(a).

Please comment on whether the following revisions to Section 106.1145 that track the existing adjusted standard procedural rules are acceptable to the Agency:

Unless otherwise ordered by the hearing officer or the Board, the Agency must file with the Board a recommendation ~~W~~ within 45 days after the filing of a petition or amended petition for an alternative thermal effluent limitation, or where a hearing has been scheduled, at least 30 days before hearing, whichever is earlier. ~~the Agency must file with the Board a r~~The recommendation ~~must state as to~~ whether the Board should grant the petitioner's requested alternative thermal effluent limitation. ~~The recommendation must set forth the rationale for the Agency's position and may present any information which the Agency believes is relevant to the Board's consideration of the proposed alternative thermal effluent limitation. If the Agency recommends a denial of the petition due to informational deficiencies within the petition, the recommendation must identify the types of information needed to correct the deficiencies.~~

Section 106.1170 **Opinion and Order**

16. If a petitioner is granted an alternative thermal effluent limitation and the Agency includes it in the petitioner's NPDES permit, please describe how the limitation would be implemented in the permit and how a discharger would demonstrate compliance with the thermal water quality standards in the receiving stream. If the permit would entail designation of a mixing zone, should the alternative thermal effluent demonstration also address the provisions of 35 Ill. Adm. Code 302.102?

Section 106.1180 **Renewal of Alternative Thermal Effluent Limitations**

17. The proposed language of Section 106.1180 provides that “[t]he permittee may request continuation of an alternative thermal effluent limitation . . . as part of its NPDES permit renewal application” and that “[a]ny application for renewal should include sufficient information.”

Section 316(c) of the CWA provides a 10-year “[p]eriod of protection from more stringent [thermal] effluent limitations following discharge point source modification.” Please comment on the implications of Section 316(c) on the proposed Section 106.1180, and if necessary propose additional language.