



OFFICE OF THE SECRETARY OF STATE

JESSE WHITE • Secretary of State

March 10, 2014

RECEIVED
MAR 14 2014

STATE OF ILLINOIS
Pollution Control Board

POLLUTION CONTROL BOARD
JOHN THERRIAULT ASSISTANT CLERK
100 W RANDOLPH ST, STE 11-500
CHICAGO, IL 60601

Dear JOHN THERRIAULT ASSISTANT CLERK

Your rules Listed below met our codification standards and have been published in Volume 38, Issue 11 of the Illinois Register, dated 3/14/2014.

ADOPTED RULES

Proceedings Pursuant to Specific Rules or Statutory Provisions	
35 Ill. Adm. Code 106	6086
Point of Contact: Nancy Miller	
Effluent Standards	
35 Ill. Adm. Code 304	6107
Point of Contact: Nancy Miller	

If you have any questions, you may contact the Administrative Code Division at (217) 782 - 7017.

COPY

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Proceedings Pursuant to Specific Rules or Statutory Provisions
- 2) Code Citation: 35 Ill. Adm. Code 106
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
106.1100	New
106.1105	New
106.1110	New
106.1115	New
106.1120	New
106.1125	New
106.1130	New
106.1135	New
106.1140	New
106.1145	New
106.1150	New
106.1155	New
106.1160	New
106.1165	New
106.1170	New
106.1175	New
106.1180	New
- 4) Statutory Authority: Implementing Section 13 of the Environmental Protection Act [415 ILCS 5/13] and authorized by Sections 26 and 28 of the Environmental Protection Act [415 ILCS 5/26, 28].
- 5) Effective Date of Amendments: FEB 26 2014
- 6) Does this rulemaking contain an automatic repeal date? No.
- 7) Do these amendments contain incorporations by reference? No.
- 8) The text of the adopted amendments is on file in the Board's Chicago office at the James R. Thompson Center, 100 W. Randolph Street, Suite 11-500, and is available there for public inspection.
- 9) Notice of Proposal Published in Illinois Register: July 26, 2013; 37 Ill. Reg. 11843.
- 10) Has JCAR issued a Statement of Objections to this amendment? No.

RECEIVED

FEB 26 2014

SOS-CODE DIV.

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- 11) Differences between proposal and final version: The Board made certain changes responsive to concerns raised by public commenters, as detailed in the Board's January 23, 2014 opinion and order.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes.
- 13) Will these amendments replace emergency amendments currently in effect? No.
- 14) Are there any amendments pending on this Part? No.
- 15) Summary and Purpose of Amendments: The amendments adopt a new Subpart K of Part 106 of the Illinois Pollution Control Board (Board) procedural rules. Specifically, the amendments provide procedural rules for establishing alternative thermal effluent limitations under Section 316(a) of the Clean Water Act and 35 Ill. Adm. Code 304.141. A complete description of the amendments can be found in the Board's R13-20 opinion and order dated February 20, 2014.
- 16) Information and questions regarding these adopted amendments shall be directed to:

Daniel Robertson
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
Chicago, IL 60601

312-814-6931
daniel.robertson@illinois.gov

Copies of the Board's opinions and orders may be requested from the Clerk of the Board at the address listed in #8 above or by calling 312-814-3620. Please refer to the docket number, R13-20, in your request. The Board's opinions and orders are also available from the Board's website (www.ipcb.state.il.us).

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

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD

PART 106

PROCEEDINGS PURSUANT TO SPECIFIC RULES OR STATUTORY PROVISIONS

SUBPART A: GENERAL PROVISIONS

Section	
106.100	Applicability
106.102	Severability
106.104	Definitions

SUBPART B: HEATED EFFLUENT, ARTIFICIAL COOLING LAKE, AND SULFUR
DIOXIDE DEMONSTRATIONS

Section	
106.200	General
106.202	Petition Requirements
106.204	Additional Petition Requirements in Sulfur Dioxide Demonstrations
106.206	Notice
106.208	Recommendation and Response
106.210	Burden of Proof

SUBPART C: WATER WELL SETBACK EXCEPTION PROCEDURES

Section	
106.300	General
106.302	Initiation of Proceeding
106.304	Petition Content Requirements
106.306	Response and Reply
106.308	Hearing
106.310	Burden of Proof

SUBPART D: REVOCATION AND REOPENING OF
CLEAN AIR ACT PERMIT PROGRAM (CAAPP) PERMITS

Section	
106.400	General

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

106.402	Definitions
106.404	Initiation of Proceedings
106.406	Petition Content Requirements
106.408	Response and Reply
106.410	Hearing
106.412	Burden of Proof
106.414	Opinion and Order
106.416	USEPA Review of Proposed Determination

SUBPART E: MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY
DETERMINATIONS

Section	
106.500	General
106.502	Definitions
106.504	Initiation of Proceedings
106.506	Petition Content Requirements
106.508	Response and Reply
106.510	Hearing
106.512	Burden of Proof
106.514	Board Action

SUBPART F: CULPABILITY DETERMINATIONS FOR PARTICULATE MATTER LESS
THAN OR EQUAL TO 10 MICRONS (PM-10)

Section	
106.600	General
106.602	Initiation of Proceedings
106.604	Petition Content Requirements
106.606	Response and Reply
106.608	Hearing
106.610	Burden of Proof

SUBPART G: INVOLUNTARY TERMINATION OF ENVIRONMENTAL MANAGEMENT
SYSTEM AGREEMENTS (EMSAs)

Section	
106.700	Purpose
106.702	Applicability
106.704	Termination Under Section 52.3-4(b) or (b-5) of the Act
106.706	Who May Initiate, Parties

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

106.707	Notice, Statement of Deficiency, Answer
106.708	Service
106.710	Notice of Hearing
106.712	Deficient Performance
106.714	Board Decision
106.716	Burden of Proof
106.718	Motions, Responses
106.720	Intervention
106.722	Continuances
106.724	Discovery, Admissions
106.726	Subpoenas
106.728	Settlement Procedure
106.730	Authority of Hearing Officer, Board Members, and Board Assistants
106.732	Order and Conduct of Hearing
106.734	Evidentiary Matters
106.736	Post-Hearing Procedures
106.738	Motion After Entry of Final Order
106.740	Relief from Final Orders

SUBPART H: AUTHORIZATIONS UNDER THE REGULATION OF PHOSPHORUS IN
DETERGENTS ACT

Section	
106.800	General
106.802	Definitions
106.804	Initiation of Proceeding
106.806	Petition Content Requirements
106.808	Response and Reply
106.810	Hearing
106.812	Burden of Proof

SUBPART I: AUTHORIZATIONS FOR CERTAIN LANDSCAPE WASTE AND COMPOST
APPLICATIONS AND ON-FARM COMPOSTING FACILITIES

Section	
106.900	General
106.902	Initiation of Proceeding
106.904	Petition Content Requirements
106.906	Petition Notice Requirements
106.908	Proof of Petition Notice Requirements
106.910	Response and Reply
106.912	Hearing

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

106.914 Burden of Proof

SUBPART J: TEMPORARY LANDFILL BAN WAIVERS UNDER
THE ELECTRONIC PRODUCTS RECYCLING AND REUSE ACT

Section

106.1000 General
106.1002 Definitions
106.1004 Initiation of Proceeding
106.1006 Petition Content Requirements
106.1008 Response and Reply
106.1010 Burden of Proof
106.1012 Board Decision

SUBPART K: ALTERNATIVE THERMAL EFFLUENT LIMITATIONS PURSUANT TO
SECTION 316(a) OF THE CLEAN WATER ACT AND 35 ILL. ADM. CODE 304.141(c)

Section

106.1100 Purpose
106.1105 General
106.1110 Definitions
106.1115 Early Screening
106.1120 Detailed Plan of Study
106.1125 Initiation of Proceeding
106.1130 Contents of Petition
106.1135 Petition Notice Requirements
106.1140 Proof of Petition Notice Requirements
106.1145 Recommendation and Response
106.1150 Request for Public Hearing
106.1155 Notice and Conduct of Hearing
106.1160 Burden of Proof
106.1165 Evidentiary Matters
106.1170 Opinion and Order
106.1175 Post-Hearing Procedures
106.1180 Renewal of Alternative Thermal Effluent Limitations

106.APPENDIX A Comparison of Former and Current Rules (Repealed)

AUTHORITY: Implementing and authorized by Sections 5, 14.2(c), 21(q), 22.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3 of the Environmental Protection Act (the Act) [415 ILCS 5/5, 14.2(c), 21(q), 22.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3], and Section

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

5 of the Regulation of Phosphorus in Detergents Act [415 ILCS 92/5] and Section 95 of the Electronic Products Recycling and Reuse Act [415 ILCS 150/95].

SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186, effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg. 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4, 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579, effective July 11, 1994; amended in R99-9 at 23 Ill. Reg. 2697, effective February 16, 1999; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 550, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8817, effective June 8, 2005; amended in R10-19 at 34 Ill. Reg. 11486, effective July 23, 2010; amended in R12-21 at 36 Ill. Reg. 9236, effective June 7, 2012; amended in R12-11 at 36 Ill. Reg. 16581, effective November 5, 2012; amended in R13-20 at 38 Ill. Reg. _____, effective _____.

SUBPART K: ALTERNATIVE THERMAL EFFLUENT LIMITATIONS PURSUANT TO SECTION 316(a) OF THE CLEAN WATER ACT AND 35 ILL. ADM. CODE 304.141(c)

Section 106.1100 Purpose

This 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 (33 USC 1251) in permits issued under 35 Ill. Adm. Code 309.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 106.1105 General

- a) Description. This Subpart applies to any point source that discharges pollutants to waters of the United States who seeks to demonstrate, pursuant to 35 Ill. Adm. Code 304.141(c) and section 316(a) of the Clean Water Act that any effluent limitation proposed for the control of a thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made.
- b) Parties. The person making the demonstration must be named the petitioner. The

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

Agency must be named as a respondent. Any interested person may become a participant in the alternative thermal effluent limitation demonstration proceeding in accordance with 35 Ill. Adm. Code 101.110 and 101.628.

- c) Filing and Service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C apply to the proceedings of this Subpart.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 106.1110 Definitions

In addition to these definitions, all definitions of the Illinois Environmental Protection Act [415 ILCS 5], and 35 Ill. Adm. Code 301, apply to this Subpart. For the purpose of this Subpart:

"Alternative thermal effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge that are established under 35 Ill. Adm. Code 304.141(c), Section 316(a) of the CWA and this Subpart.

"CWA" means the Federal Water Pollution Control Act, as amended, (33 USC 1251 et seq., Public Law 92-500 enacted by Congress October 18, 1972, as amended by the Clean Water Act, Public Law 95-217, enacted December 12, 1977, as amended).

"Representative important species" means species that are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish, and wildlife in the body of water into which a discharge of heat is made.

"Balanced, indigenous community" is synonymous with the term "balanced, indigenous population" in the CWA and means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and by a lack of domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modifications. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with section 301(b)(2) of the CWA; and 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 under Chapter I of Subtitle C or standards granted by the Board.

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 106.1115 Early Screening

- a) Prior to filing a petition for an alternative thermal effluent limitation, the petitioner must submit the following early screening information to the Agency:
- 1) A description of the alternative thermal effluent limitation requested;
 - 2) A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;
 - 3) A general description of the type of data, studies, experiments and other information that the discharger intends to submit for the demonstration; and
 - 4) A proposed representative important species list and supporting data and information.
- b) Within 30 days after the early screening information is submitted under subsection (a), the petitioner shall consult with the Agency to discuss the petitioner's early screening information.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 106.1120 Detailed Plan of Study

- a) Within 60 days after the early screening information is submitted pursuant to Section 106.1115, the petitioner shall submit to the Agency a detailed plan of study that the petitioner will undertake to support its alternative thermal effluent limitation demonstration.
- b) The petitioner shall specify the nature and extent of the following types of information to be included in the plan of study:
- 1) biological, hydrographical, and meteorological data;
 - 2) physical monitoring data;

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- 3) engineering or diffusion models;
 - 4) laboratory studies;
 - 5) representative important species; and
 - 6) other relevant information.
- c) In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards.
- d) The petitioner shall provide any additional information or studies that the Agency subsequently determines necessary to support the alternative thermal effluent limitation demonstration, including such field or other studies as may be necessary to select representative important species.
- e) In making the alternative thermal effluent limitation demonstration, the petitioner shall consider any information or guidance published by USEPA to assist in making such demonstrations.
- f) Within 90 days after petitioner's submittal of its detailed plan of study, the Agency shall respond in writing, either approving the detailed plan of study and representative important species, or recommending necessary revisions.
- g) After receiving the Agency's response pursuant to subsection (f), or after 90 days have passed with no Agency response, the petitioner may proceed with the plan of study with or without making 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.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 106.1125 Initiation of Proceeding

After completion of the plan of study pursuant to Section 106.1120, the petitioner may file a petition for an alternative thermal effluent limitation with the Clerk of the Board and must serve one copy on the Agency and one copy on the Illinois Department of Natural Resources.

(Source: Added at 38 Ill. Reg. _____, effective _____)

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

Section 106.1130 Contents of Petition

A petition for an alternative thermal effluent limitation must include the following:

- a) Information providing a general plant description, including, as applicable:
 - 1) Generating capacity;
 - 2) Type of fuel used;
 - 3) Operating characteristics of the condenser cooling system;
 - 4) History of the load factor of the plant for the last 5 years;
 - 5) Projected load factors of the plant for the next 5 years;
 - 6) Estimated date of retirement for each unit at the plant and any plans for additional units at the plant;
 - 7) History of plant shutdowns for the last 5 years;
 - 8) Planned and emergency shutdowns with frequency and duration for the last 5 years; and
 - 9) Planned and projected shutdowns with frequency and duration for the next five years;

- b) Description of Method for Heat Dissipation:
 - 1) Type of system used (such as once-through, mechanical, and draft cooling towers) in narrative form; and
 - 2) Summary information on temperature of discharge to receiving waters in narrative form;

- c) A summary of compliance or non-compliance with thermal requirements at the facility in the past five years;

- d) The detailed plan of study submitted to the Agency pursuant to Section 106.1120(a) and the Agency's written response pursuant to Section 106.1120(f);

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- e) The results of the studies conducted pursuant to the detailed plan of study submitted under Section 106.1120, including, but not limited to:
 - 1) background on the proposed thermal standards;
 - 2) information on data collection program and methodologies;
 - 3) summaries of physical, chemical, biological and technical data supporting the demonstration, along with a discussion of the data; and
 - 4) criteria or methodology used to assess whether a balanced indigenous community of shellfish, fish and wildlife will be maintained in the receiving waters and the protection of threatened and endangered species;
- 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; and
- g) A statement of the requested relief, including:
 - 1) the alternative thermal effluent limitation;
 - 2) any relief from the mixing zone regulations in 35 Ill. Adm. Code 302.102, if applicable; and
 - 3) any other relief sought.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 106.1135 Petition Notice Requirements

- a) Within 14 days after the filing of the petition, the petitioner must publish notice of the filing of the petition by advertisement in a newspaper of general circulation in the county where the facility is located.
- b) The notice must contain the name and address of the petitioner and it must state that the petitioner has filed with the Board a petition for an alternative thermal effluent limitation. The notice must also provide the date on which the petition was filed, the Board docket number, the regulatory standard (with appropriate Administrative Code citation) from which the alternative thermal effluent

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

limitation is sought, the proposed alternative thermal effluent limitation, a general description of the petitioner's activity that is the subject of the alternative thermal effluent limitation proceeding, and the location of the facility. The concluding portion of the notice must read 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 the Clerk of the Board, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601."

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 106.1140 Proof of Petition Notice Requirements

Within 30 days after the filing of the petition, the petitioner must file a certificate of publication with the Clerk of the Board, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601. This certification must be issued by the newspaper that published the notice and must certify when the notice was published and the information the notice contained.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 106.1145 Recommendation and Response

- a) Unless otherwise ordered by the hearing officer or the Board, the Agency must file with the Board a recommendation within 45 days after the filing of a petition or amended petition for an alternative thermal effluent limitation, or when a hearing has been scheduled, at least 30 days before hearing, whichever is earlier.
- b) The recommendation must state the following:
 - 1) whether the Board should grant the petitioner's requested alternative thermal effluent limitation;
 - 2) the rationale for the Agency's position;
 - 3) whether the plan of study sufficiently addresses the Agency's response pursuant to Section 106.1120(f) of this Part;

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- 4) whether the petition has met the requirements of this Part;
 - 5) any information the Agency believes is relevant to the Board's consideration of the proposed alternative thermal effluent limitation; and
 - 6) whether the Agency communicated with or received comments from the Illinois Department of Natural Resources, the United States Fish and Wildlife Service, or USEPA and the content of those communications.
- c) The petitioner, any party to the proceeding, or any interested person may file a response to the Agency recommendation within 21 days after the Agency files its recommendation.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 106.1150 Request for Public Hearing

Any person can request that a public hearing be held in a proceeding under this Subpart. The requests must be filed with the Clerk of the Board no later than 21 days after the date of the publication of the petition notice in accordance with Section 106.1135. Requests for hearing should make reference to the Board docket number assigned to the proceeding.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 106.1155 Notice and Conduct of Hearing

- a) The Board shall hold a public hearing on the petition and alternative thermal effluent limitation demonstration when one is requested in accordance with Section 106.1150, when requested by the petitioner, or if the Board, in its discretion, determines that a hearing would be advisable.
- b) The hearing officer will schedule the hearing to be held in the county likely to be affected by the petitioner's activity.
- c) The Clerk will give notice of the hearing in accordance with 35 Ill. Adm. Code 101. The proceedings will be conducted in accordance with 35 Ill. Adm. Code 101. Subpart F.

(Source: Added at 38 Ill. Reg. _____, effective _____)

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

Section 106.1160 Burden of Proof

- a) The burden of proof is on the petitioner.
- b) The petitioner must demonstrate to the satisfaction of the Board that the otherwise applicable effluent limitations under Chapter I of Subtitle C are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made.
- c) The demonstration must show that the alternative thermal effluent limitation desired by the petitioner, considering the cumulative impact of its thermal discharge, together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made.
- d) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies.
 - 1) When the petitioner bases the alternative thermal effluent limitation demonstration upon the absence of prior appreciable harm, the demonstration must show:
 - A) That no appreciable harm has resulted from the normal component of the discharge, taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge has been made; or
 - B) That despite the occurrence of such previous harm, the desired alternative thermal effluent limitation (or appropriate modifications thereof) will nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made.
 - 2) In determining whether prior appreciable harm has occurred, the Board shall consider the length of time during which the petitioner has been discharging and the nature of the discharge.

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 106.1165 Evidentiary Matters

- a) The provisions of 35 Ill. Adm. Code 101 regarding admissible evidence, written narrative testimony, official notice, viewing premises, admitting business records, examining adverse parties or agents and hostile witnesses and compelling them to appear at hearing, and amendment and variance of pleadings and proof will apply to proceedings under this Subpart.
- b) In determining whether the protection and propagation of the affected species will be assured, the Board may consider any information contained or referenced in any applicable thermal water quality criteria and thermal water quality information published by the USEPA under section 304(a) of the CWA, or any other information in the record the Board deems relevant.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 106.1170 Opinion and Order

- a) After an opportunity for a public hearing and upon a satisfactory alternative thermal effluent limitation demonstration, the Board may order the Agency to include thermal discharge effluent limitations or standards in the petitioner's NPDES permit that are less stringent than those required by applicable standards and limitations if the thermal component of the discharge, taking into account the interaction of such thermal component with other pollutants, will assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water.
- b) In granting an alternative thermal effluent limitation, the Board may impose such conditions as may be necessary to accomplish the purposes of the Act.
- c) If the petitioner intends for the alternative thermal effluent limitation granted by the Board pursuant to this Subpart to continue beyond the expiration of the petitioner's NPDES permit, the petitioner must apply for renewal of the alternative thermal effluent limitation pursuant to Section 106.1180.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 106.1175 Post-Hearing Procedures

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- a) The provisions of 35 Ill. Adm. Code 101 regarding default, transcripts, the record, motions, briefs, and oral arguments apply to proceedings under this Subpart.
- b) In addition to the provisions of 35 Ill. Adm. Code 101.520 and 101.902, if USEPA objects pursuant to 40 CFR 123.44 to issuance in the petitioner's NPDES permit of the alternative thermal effluent limitation ordered by the Board, the Agency is given leave to file a motion for reconsideration of the Board's order granting the effluent limitation pursuant to 35 Ill. Adm. Code 101.520 within 35 days after the Agency's receipt of USEPA's objection.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 106.1180 Renewal of Alternative Thermal Effluent Limitations

- a) The permittee may request continuation of an alternative thermal effluent limitation granted by the Board, pursuant to this Subpart, as part of its NPDES permit renewal application.
- b) Any application for renewal should include sufficient information for the Agency to compare the nature of the permittee's thermal discharge and the balanced, indigenous population of shellfish, fish, and wildlife at the time the Board granted the alternative thermal effluent limitation and the current nature of the petitioner's thermal discharge and the balanced, indigenous population of shellfish, fish, and wildlife. The permittee should be prepared to support this comparison with documentation based upon the discharger's actual operation experience during the previous permit term.
- c) If the permittee demonstrates that the nature of the thermal discharge has not changed and the alternative thermal effluent limitation granted by the Board has not caused appreciable harm to a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is made, the Agency may include the alternative thermal effluent limitation in the permittee's renewed NPDES permit.
- d) If the nature of the thermal discharge has changed materially or the alternative thermal effluent limitation granted by the Board has caused appreciable harm to a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is made, the Agency may not include the thermal relief granted by the Board in the permittee's renewed NPDES permit. The permittee must file a new petition and make the required demonstration

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

pursuant to this Subpart before the alternative thermal effluent limitation may be included in the permittee's renewed NPDES permit.

(Source: Added at 38 Ill. Reg. _____, effective _____)

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Effluent Standards
- 2) Code Citation: 35 Ill. Adm. Code 304
- 3) Section Numbers: 304.141 Proposed Action: Amend
- 4) Statutory Authority: Implementing Section 13 of the Environmental Protection Act [415 ILCS 5/13] and authorized by Sections 26 and 28 of the Environmental Protection Act [415 ILCS 5/26, 28].
- 5) Effective Date of Amendment: FEB 26 2014
- 6) Does this rulemaking contain an automatic repeal date? No.
- 7) Do these amendments contain incorporations by reference? No.
- 8) The text of the adopted amendments is on file in the Board's Chicago office at the James R. Thompson Center, 100 W. Randolph Street, Suite 11-500, and is available there for public inspection.
- 9) Notice of Proposal Published in Illinois Register: July 26, 2013; 37 Ill. Reg. 11861.
- 10) Has JCAR issued a Statement of Objections to this amendment? No.
- 11) Differences between proposal and final version: The Board made certain changes responsive to concerns raised by public commenters, as detailed in the Board's January 23, 2014 opinion and order.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes.
- 13) Will these amendments replace emergency amendments currently in effect? No.
- 14) Are there any amendments pending on this Part? No.
- 15) Summary and Purpose of Amendments: The amendments adopt a new Subpart K of Part 106 of the Illinois Pollution Control Board (Board) procedural rules. Specifically, the amendments provide procedural rules for establishing alternative thermal effluent limitations under Section 316(a) of the Clean Water Act and 35 Ill. Adm. Code 304.141.

RECEIVED

FEB 26 2014

SOS.CODE.DIV

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENT

A complete description of the amendments can be found in the Board's R13-20 opinion and order dated February 20, 2014.

- 16) Information and questions regarding these adopted amendments shall be directed to:

Daniel Robertson
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
Chicago, IL 60601

312-814-6931
daniel.robertson@illinois.gov

Copies of the Board's opinions and orders may be requested from the Clerk of the Board at the address listed in #8 above or by calling 312-814-3620. Please refer to the docket number, R13-20, in your request. The Board's opinions and orders are also available from the Board's website (www.ipcb.state.il.us).

The full text of the Adopted Amendment begins on the next page:

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENT

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE C: WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 304
EFFLUENT STANDARDS

SUBPART A: GENERAL EFFLUENT STANDARDS

Section	
304.101	Preamble
304.102	Dilution
304.103	Background Concentrations
304.104	Averaging
304.105	Violation of Water Quality Standards
304.106	Offensive Discharges
304.120	Deoxygenating Wastes
304.121	Bacteria
304.122	Total Ammonia Nitrogen (as N: STORET number 00610)
304.123	Phosphorus (STORET number 00665)
304.124	Additional Contaminants
304.125	pH
304.126	Mercury
304.140	Delays in Upgrading (Repealed)
304.141	NPDES Effluent Standards
304.142	New Source Performance Standards (Repealed)

SUBPART B: SITE SPECIFIC RULES AND EXCEPTIONS NOT OF GENERAL
APPLICABILITY

Section	
304.201	Wastewater Treatment Plant Discharges of the Metropolitan Water Reclamation District of Greater Chicago
304.202	Chlor-alkali Mercury Discharges in St. Clair County
304.203	Copper Discharges by Olin Corporation
304.204	Schoenberger Creek: Groundwater Discharges
304.205	John Deere Foundry Discharges
304.206	Alton Water Company Treatment Plant Discharges
304.207	Galesburg Sanitary District Deoxygenating Wastes Discharges
304.208	City of Lockport Treatment Plant Discharges
304.209	Wood River Station Total Suspended Solids Discharges
304.210	Alton Wastewater Treatment Plant Discharges

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENT

- 304.211 Discharges From Borden Chemicals and Plastics Operating Limited Partnership Into an Unnamed Tributary of Long Point Slough
- 304.212 Sanitary District of Decatur Discharges
- 304.213 PDV Midwest Refining, L.L.C. Refinery Ammonia Discharge
- 304.214 Mobil Oil Refinery Ammonia Discharge
- 304.215 City of Tuscola Wastewater Treatment Facility Discharges
- 304.216 Newton Station Suspended Solids Discharges
- 304.218 City of Pana Phosphorus Discharge
- 304.219 North Shore Sanitary District Phosphorus Discharges
- 304.220 East St. Louis Treatment Facility, Illinois-American Water Company
- 304.221 Ringwood Drive Manufacturing Facility in McHenry County
- 304.222 Intermittent Discharge of TRC
- 304.224 Effluent Disinfection

SUBPART C: TEMPORARY EFFLUENT STANDARDS

Section

- 304.301 Exception for Ammonia Nitrogen Water Quality Violations (Repealed)
- 304.302 City of Joliet East Side Wastewater Treatment Plant
- 304.303 Amerock Corporation, Rockford Facility

304.APPENDIX A References to Previous Rules

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

SOURCE: Filed with the Secretary of State January 1, 1978; amended at 2 Ill. Reg. 30, p. 343, effective July 27, 1978; amended at 2 Ill. Reg. 44, p. 151, effective November 2, 1978; amended at 3 Ill. Reg. 20, p. 95, effective May 17, 1979; amended at 3 Ill. Reg. 25, p. 190, effective June 21, 1979; amended at 4 Ill. Reg. 20, p. 53, effective May 7, 1980; amended at 6 Ill. Reg. 563, effective December 24, 1981; codified at 6 Ill. Reg. 7818; amended at 6 Ill. Reg. 11161, effective September 7, 1982; amended at 6 Ill. Reg. 13750, effective October 26, 1982; amended at 7 Ill. Reg. 3020, effective March 4, 1983; amended at 7 Ill. Reg. 8111, effective June 23, 1983; amended at 7 Ill. Reg. 14515, effective October 14, 1983; amended at 7 Ill. Reg. 14910, effective November 14, 1983; amended at 8 Ill. Reg. 1600, effective January 18, 1984; amended at 8 Ill. Reg. 3687, effective March 14, 1984; amended at 8 Ill. Reg. 8237, effective June 8, 1984; amended at 9 Ill. Reg. 1379, effective January 21, 1985; amended at 9 Ill. Reg. 4510, effective March 22, 1985; peremptory amendment at 10 Ill. Reg. 456, effective December 23, 1985; amended at 11 Ill. Reg. 3117, effective January 28, 1987; amended in R84-13 at 11 Ill. Reg. 7291, effective April 3, 1987; amended in R86-17(A) at 11 Ill. Reg. 14748, effective August 24,

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENT

1987; amended in R84-16 at 12 Ill. Reg. 2445, effective January 15, 1988; amended in R83-23 at 12 Ill. Reg. 8658, effective May 10, 1988; amended in R87-27 at 12 Ill. Reg. 9905, effective May 27, 1988; amended in R82-7 at 12 Ill. Reg. 10712, effective June 9, 1988; amended in R85-29 at 12 Ill. Reg. 12064, effective July 12, 1988; amended in R87-22 at 12 Ill. Reg. 13966, effective August 23, 1988; amended in R86-3 at 12 Ill. Reg. 20126, effective November 16, 1988; amended in R84-20 at 13 Ill. Reg. 851, effective January 9, 1989; amended in R85-11 at 13 Ill. Reg. 2060, effective February 6, 1989; amended in R88-1 at 13 Ill. Reg. 5976, effective April 18, 1989; amended in R86-17(B) at 13 Ill. Reg. 7754, effective May 4, 1989; amended in R88-22 at 13 Ill. Reg. 8880, effective May 26, 1989; amended in R87-6 at 14 Ill. Reg. 6777, effective April 24, 1990; amended in R87-36 at 14 Ill. Reg. 9437, effective May 31, 1990; amended in R88-21(B) at 14 Ill. Reg. 12538, effective July 18, 1990; amended in R84-44 at 14 Ill. Reg. 20719, effective December 11, 1990; amended in R86-14 at 15 Ill. Reg. 241, effective December 18, 1990; amended in R93-8 at 18 Ill. Reg. 267, effective December 23, 1993; amended in R87-33 at 18 Ill. Reg. 11574, effective July 7, 1994; amended in R95-14 at 20 Ill. Reg. 3528, effective February 8, 1996; amended in R94-1(B) at 21 Ill. Reg. 364, effective December 23, 1996; expedited correction in R94-1(B) at 21 Ill. Reg. 6269, effective December 23, 1996; amended in R97-25 at 22 Ill. Reg. 1351, effective December 24, 1997; amended in R97-28 at 22 Ill. Reg. 3512, effective February 3, 1998; amended in R98-14 at 23 Ill. Reg. 687, effective December 31, 1998; amended in R02-19 at 26 Ill. Reg. 16948, effective November 8, 2002; amended in R02-11 at 27 Ill. Reg. 194, effective December 20, 2002; amended in R04-26 at 30 Ill. Reg. 2365, effective February 2, 2006; amended in R08-9B at 36 Ill. Reg. 2586, effective February 2, 2012; amended in R13-20 at 38 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL EFFLUENT STANDARDS

Section 304.141 NPDES Effluent Standards

- a) No person to whom an NPDES Permit has been issued may discharge any contaminant in his effluent in excess of the standards and limitations for that contaminant which are set forth in his permit.
- b) No person may discharge any pollutant subject to, or which contributes or threatens to cause a violation of, any applicable federal or state water quality standard, effluent standard, guideline or other limitation, promulgated pursuant to the CWA or the Act, unless limitation for such a pollutant has been set forth in an applicable NPDES Permit. However, the Agency may, by permit condition, provide that the permittee may discharge pollutants present in its water supply intake sources in concentrations not greater than the concentrations in the intake sources, or which are added in trace amounts by normal domestic water usage.[†]

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENT

BOARD NOTE: Section 304.141(b) was declared invalid in Peabody Coal Co. v. PCB, 3 Ill. App. 3d 5 (5th District, 1976) and declared valid in U.S. Steel v. PCB, 52 Ill. App. 3d 1 (2d District, 1977).

- c) The standards of this Chapter shall apply to thermal discharges unless, after public notice and opportunity for public hearing, in accordance with ~~section~~Section 316 of the CWA, and applicable federal regulations, and procedures in 35 Ill. Adm. Code 106.Subpart K, ~~the Agency Administrator and the Board~~ have determined that different standards shall apply to a particular thermal discharge.

~~[†]Section 304.141(b) was declared invalid in Peabody Coal Co. v. PCB, 3 Ill. App. 3d 5 (5th District, 1976) and declared valid in U.S. Steel v. PCB, 52 Ill. App. 3d 1 (2d District, 1977).~~

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