

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	R15-
WATER POLLUTION: PROPOSED	)	(Rulemaking- Water)
AMENDMENTS TO 35 Ill. Adm. Code	)	
Part 309	)	

**MOTION FOR ACCEPTANCE**

NOW COMES the Illinois Environmental Protection Agency (Illinois EPA), by one of its attorneys, and pursuant to 35 Ill. Adm. Code 102.106, 102.200, and 102.202, moves that the Illinois Pollution Control Board accept for hearing the Illinois EPA's proposal for the adoption of amendments to 35 Ill. Adm. Code Part 309. This regulatory proposal includes:

- 1) Notice of Filing;
- 2) Appearance;
- 3) Certification of Origination;
- 4) Statement of Reasons;
- 5) Proposed Amendments; and
- 6) Certificate of Service

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/Sara G. Terranova  
Sara G. Terranova  
Assistant Counsel  
Division of Legal Counsel

DATED: 6/1/2015  
1021 N. Grand Ave. East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(217) 782-5544

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	R15-
WATER POLLUTION: PROPOSED	)	(Rulemaking- Water)
AMENDMENTS TO 35 Ill. Adm. Code	)	
Part 309	)	

**NOTICE OF FILING**

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

Matthew Dunn, Chief  
Environmental Enforcement/Asbestos  
Litigation Division  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

Office of Legal Services  
Illinois Department of Natural Resources  
One Natural Resources Way  
Springfield, IL 62702

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the Motion for Acceptance; Appearance; Certificate of Origination; Statement of Reasons; and Proposed Amendments to 35 Ill. Adm. Code Part 309 by the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

**ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY**

By: /s/Sara G. Terranova  
Sara G. Terranova  
Assistant Counsel  
Division of Legal Counsel

DATED: 6/1/2015  
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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
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WATER POLLUTION: PROPOSED ) R15-  
AMENDMENTS TO 35 Ill. Adm. Code ) (Rulemaking- Water)  
Part 309 )

**APPEARANCE**

The undersigned hereby enters her appearance as an attorney on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/Sara G. Terranova  
Sara G. Terranova  
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IN THE MATTER OF: )  
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WATER POLLUTION: PROPOSED ) R15-  
AMENDMENTS TO 35 Ill. Adm. Code ) (Rulemaking- Water)  
Part 309 )

**CERTIFICATION OF ORIGINATION**

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (Illinois EPA), by one of its attorneys, and pursuant to 35 Ill. Adm. Code 102.202(i), the Illinois EPA certifies that the regulatory proposal in the above captioned matter amends the most recent version of Part 309 of the Illinois Pollution Control Board's regulations, as published on the Board's website.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/Sara G. Terranova  
Sara G. Terranova  
Assistant Counsel  
Division of Legal Counsel

DATED: 6/1/2015  
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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
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PERMITS: PROPOSED ) R15-  
AMENDMENTS TO ) (Rulemaking – Water)  
35 Ill. Adm. Code 309 )

**STATEMENT OF REASONS**

NOW COMES the Illinois Environmental Protection Agency, (Illinois EPA or Agency) by and through its counsel, and hereby submits this Statement of Reasons to the Illinois Pollution Control Board (Board) pursuant to sections 12, 13, 27, and 28 of the Environmental Protection Act (Act) (415 ILCS 5/13, 27, and 28 (2014)) and 35 Ill. Adm. Code 102.200 and 102.202.

The proposal seeks to amend:

- 1.) Part 309 Subpart A, Section 104, NPDES renewal requirements (35 Ill. Adm. Code 309.104), and
- 2.) Part 309 Subpart B, the basic rules for the issuance of permits for the construction, modification and operation of treatment works, pretreatment works, sewers, wastewater sources, and other discharges that are not required to have NPDES Permits (35 Ill. Adm. Code 309 Subpart B).

**I. STATUTORY BASIS AND LEGAL FRAMEWORK  
PART 309 SUBPART A**

**A. The Clean Water Act**

The Clean Water Act (CWA) is the cornerstone of surface water quality protection in the United States. The statute employs, among other things, various regulatory tools to reduce direct pollutant discharges into waterways, establish ambient water quality standards, and manage

polluted runoff. 33 U.S.C. §1251. These tools are employed to achieve the broader goal of restoring and maintaining the chemical, physical, and biological integrity of the nation's waters so that they can support the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water. 33 U.S.C. §1251. The basis of the CWA was enacted in 1948 and was called the Federal Water Pollution Control Act, but the act was significantly reorganized and expanded in 1972. Since then, "Clean Water Act" became the act's common name with amendments in 1977.

### ***NPDES Permitting Program***

One of the central features of the CWA is the National Pollutant Discharge Elimination System (NPDES), a permitting program which transforms the general regulatory standards established under the CWA into enforceable requirements for point source dischargers. The NPDES permit program is the primary mechanism under the CWA for regulating discharges of pollutants into the nation's surface waters from a point source. 33 U.S.C. §1342(a)(1). NPDES permits are issued and enforced by USEPA, unless there is a USEPA-approved state program that has been delegated NPDES authority.<sup>1</sup>

CWA Section 402(b)(1)(B) provides that NPDES permits "are for fixed terms not exceeding five years." 33 U.S.C. §1342(b)(1)(B). Permittees that wish to continue discharging beyond the five-year term must submit an application for permit renewal at least 180 days prior to the expiration date of their permit. If the permitting authority receives the application prior to 180 days of the date the permit is expiring, but does not reissue the permit prior to the expiration date, the existing permit is generally "administratively continued." During this administratively

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<sup>1</sup> Illinois was granted approval to administer its own NPDES permit program on October 23, 1977. 42 Fed. Reg. 58566 (November 10, 1977).

continued period, the conditions of an expired NPDES permit remain in effect until the new permit is issued.

***Components of the NPDES Permit***

While permit terms and conditions vary depending upon the characteristics of the individual discharge and upon whether United States Environmental Protection Agency (USEPA) or the State is the permit authority, USEPA has established certain minimum requirements which all permits must incorporate. Many permit conditions are standardized, boilerplate terms applicable to all NPDES permittees. For example, permit terms requiring the permittee: to properly operate and maintain the treatment system; to conduct monitoring representative of the regulated activity and keep complete records of the monitoring activities for three years; and to comply with the permit. The permit also will include standard reporting requirements which compel the permittee to submit monthly discharge monitoring reports (DMRs) and to notify the permitting authority of its discharges.

In addition to these boilerplate terms, in most cases, the permit contains specialized requirements applicable to the particular discharger. For instance, permits for dischargers belonging to a major industrial category must contain limits based upon nationally uniform technology-based effluent limitation standards or new source performance standards developed by USEPA under Sections 304 and 306 of the CWA. These standards, which reflect the levels of pollutant reduction that a given technology can achieve, limit the amount of pollutants a facility may discharge. The standards in turn become the basis for NPDES permit limitations.

**B. Federal Regulations – NPDES Permit Renewal**

Standard conditions in an NPDES permit, specified in Title 40 of the Code of Federal Regulations (CFR) 122.41 and 122.42, delineate various legal, administrative, and procedural

requirements of the permit, playing an important supporting role to effluent limitations, monitoring and reporting requirements, and special conditions. Standard conditions cover various topics, one of which is the Duty to Reapply. 40 CFR 122.41(b). The Duty to Reapply provision states “[a] permittee wishing to continue permitted activities after the permit expiration date must reapply for and obtain a new permit. 40 CFR 122.41(b).

The regulations in Section 122.21(d) specify the time to reapply for NPDES permits. Any person with a currently effective individual permit must submit an application to the permitting authority at least 180 days before the expiration of its existing permit unless permission for a later date has been granted in accordance with § 122.21(d). 40 CFR 122.21(d).

According to Section 122.6, the conditions of an expired NPDES permit remain in effect until the new permit is issued, as long as the discharger submitted an application in accordance with the timeframes prescribed in the regulations (or in accordance with state law, in the case of state-administered NPDES programs). If a state law does not allow expired permits to remain in effect until a permit is reissued or if the permit application is not on time, the facility may be considered to be discharging without a permit from the time the permit expired until the effective date of the new permit.<sup>2</sup> 40 CFR 122.6.

### **C. Illinois Environmental Protection Act**

Section 13(b)(1) of the Act, requiring the Board to promulgate regulations necessary or appropriate for federal approval, does not limit the Board’s rule-making power to that necessary to obtain federal approval of the NDPEs permit program, but rather to implement the goal of the CWA. *United States Steel Corporation v Illinois Pollution Control Board*, 52 Ill.App.3d 1 at 4-5

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<sup>2</sup> Illinois allows expired permits to remain in effect until a permit is reissued. 5 ILCS 100/10-65. The statute provides: “When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court.” 5 ILCS 100/10-65.

(1977) citing *Peabody Coal Co. v. PCB*, 344 N.E.2d 279, 285 (1976). Ensuring that conditions of an expired NPDES permit remain in effect until the new permit is issued clearly implements this goal. This Section enables the Board to adopt rules needed to implement the NPDES program (415 ILCS 5/13(b) (2014)) and to generally promote Title III's purposes and provisions. *Id* at 5/13(a). Part 309 was adopted under Section 13 of the Environmental Protection Act (Act). Accordingly, the Board has authority to adopt the proposed amendments in Section 309.104.

**D. 35 Ill. Adm. Code 309.104**

The Board adopted the original language of Section 309.104 in R73-11, 12, at 14 PCB 661, December 5, 1974. This language was a component of the new regulations adopted by the Board to enable Illinois to participate in the NPDES permit program. *Id* at 9. These provisions were adopted to comply with federal regulations which were then in effect. *Id* at 9 and 11. The language has been amended over time to keep the Board's procedural rules consistent with current federal practice. *In the Matter of: Amendments to Rule 902 of Chapter 3: Water Pollution*, R79-13, at 2 (May 15, 1980). The Illinois EPA is now proposing to modify the existing language in Section 309.104 to not only keep it consistent with federal regulations, but to also ensure Illinois maintains an efficient and effective NPDES program modeled on current federal practice.

***Current Language***

Presently, for a NPDES permit to remain effective and enforceable beyond its expiration date, the permittee must submit a complete renewal application at least 180 days *before* the permit expires. If the permittee fails to do so, the permit expires and all terms and conditions of the permit are no longer effective or enforceable after the date of the permit expiration. Consequently, if the permittee continues to discharge beyond the expiration date of the permit,

the Agency may seek enforcement actions against the permittee only for discharging without a current NPDES permit. The Agency, however, may not take enforcement actions against the former permittee for failing to comply with the terms and conditions of the expired permit.

## **SUBPART A: REGULATORY PROPOSAL**

### **A. Purpose and Effect**

The Illinois EPA now submits this regulatory proposal to amend Part 309.104 of title 35 of the Illinois Administrative Code. The purpose of the proposed amendments in Section 309.104 is two-fold. First, for administrative ease, the proposal seeks to update the existing regulations to model federal regulations at 40 CFR 122.6 and 122.21(d). The proposed amendments will bring the Board's NPDES permit renewal procedural rules into line with current federal regulation. Another neighboring state, Indiana, provides similar flexibility in granting NPDES permit applicants the option to submit an application after the 180 day deadline. 327 IAC 5-3-2.

The second purpose of the proposal is to give the Agency flexibility when a renewal application has been filed late for just causes. With such flexibility, the Agency may grant permission to a permittee to submit a NPDES renewal application less than 180 days before its permit expires. As a result, a permittee who obtains approval to submit a renewal application late may have the terms and conditions of the NPDES permit continued. This approach allows the permittee to maintain an effective permit after the permit expires. In turn, this allows the Agency to continue to enforce the terms of the permit until the Agency makes a final decision on the renewal of the application.

**B. The Proposed Amendments and Fact Supporting**

***Proposed Deletions and Additions Section 309.104(a)*** – The Agency proposes to delete the language requiring a permittee to apply for reissuance of the permit not less than 180 days prior to the expiration date of the permit. Instead, the Agency proposes to require the permittee to “timely” apply for reissuance of the permit. This change will authorize a permittee, with the approval of the Agency, to submit a complete renewal application *less* than 180 days before its permit expires. This language is modeled on 40 CFR 122.6(a)(1).

***Proposed New Section 309.104(a)(1)*** – Proposed Section 309.104(a)(1) clarifies when an NPDES permit renewal application will be considered timely. An application is considered timely when the permittee submits an application 180 days prior to the expiration date of the existing permit, unless a written waiver is granted by the Agency. The objective of this language is to allow the Agency the ability to grant a waiver to the strict 180 day application deadline in certain cases. As a result, a permittee who obtains approval to submit an NPDES permit renewal application less than 180 days before the expiration of that permit may continue to discharge, with the terms and conditions of the NPDES permit continued until the new permit is issued by the Agency. As the proposed language is modeled on 40 CFR 122.6 (a)(1) and 122.21(d)(1), it will bring the Board’s NPDES permit renewal rules into line with current federal regulation. While the Agency expects most permittees will continue to file renewal applications at least 180 days prior to expiration of their permit, occasionally a permittee may have difficulty meeting that deadline. Examples would include, but not be limited to, a change in personnel at the facility, a change in corporate ownership, the intermittent nature of a discharge which results in difficulty collecting samples necessary for including with the application, and difficulty gathering other information either required in the application or requested by the Agency. Many times these

delays would only result in the permittee filing their application a week or two late, but without the ability for the Agency to waive the 180 day deadline, the permit would not be administratively continued if it expires prior to reissuance. The Agency may deny a waiver request in such instances where a permittee has not made a good faith effort to file a renewal application on time, or has not provided justification for such a request.

***Proposed New Section 309.104(a)(2)(A) and (B)*** – Proposed Section 309.104(a)(2)(A) and (B) provides the circumstances in which the terms and conditions of an expiring permit will remain effective and enforceable pending issuance of a new NPDES permit. Section 309.104(a)(2)(A) requires the permittee to submit a timely application and Section 309.104(a)(2)(B) requires the Agency, through no fault of the permittee, to not have issued a new permit on or before the expiration date of the previous permit. As the proposed language is modeled on 40 CFR 122.6(a)(1) and (2) and 122.6(b), it will bring the Board’s NPDES permit renewal rules into line with current federal regulation.

***Proposed New Section 309.104(b)*** – Proposed Section 309.104(b) restates the requirement provided in the Environmental Protection Act Section 12.5, that “the Agency shall collect annual fees for all discharges that require an NPDES permit under subsection (f) of Section 12, from each person holding an NPDES permit authorizing those discharges (*including a person who continues to discharge under an expired permit pending renewal*),...” See 415 ILCS 5/12.5(a)(i) (emphasis added). The objective of this addition is simply to reinforce that all permittees that timely apply for NPDES permit renewal must pay an annual NPDES discharge fee.

**II. STATUTORY BASIS AND LEGAL FRAMEWORK  
PART 309 SUBPART B**

**A. The Environmental Protection Act**

Among other things, Section 13(a) of the Act provides that the Board may adopt standards for the issuance of permits for construction, installation, or operation of any equipment capable of causing or contributing to water pollution or designed to prevent water pollution, or for the construction or installation of any sewer or sewage treatment facility or any new outlet for contaminants into the waters of this State. 415 ILCS 5/13(a)(3) (2014). The proposed amendments in Part 309 Subpart B, relate directly to this provision as it includes the basic rules for the issuance of permits for the construction, modification and operation of treatment works, pretreatment works, sewers, wastewater sources, and other discharges that are not required to have NPDES Permits.

**B. 35 Ill. Adm. Code 309 Subpart B**

The Board adopted the original language of Subpart B in R71-14, March 7, 1972. The Board noted this Subpart was drafted to require permits for existing and proposed effluent sources, both as an enforcement device and as a source of necessary information on which to base such important matters as future basin studies. R71-14, at 22, March 7, 1972.

**SUBPART B: REGULATORY PROPOSAL**

**The Proposed Amendments and Fact Supporting**

**Section 309.201** – The proposed amendments in Section 309.201 are non-substantive, clean-up changes. These changes clarify the existing language that certain discharges are exempt from the operating permit requirement of Subpart B.

**Proposed New Section 309.201(b)** – The proposed language explicitly mentions three types of discharges that are exempt from the operating permit requirements of Subpart B.

***Proposed Additions Section 309.201(b)(1)*** – Subsection (b)(1) exempts discharges which are coming from a pretreatment system that has been approved by the Agency.<sup>3</sup>

***Proposed New Section 309.201(b)(2)*** – Discharges from a pretreatment system that have been permitted by the USEPA are also exempt from the operating permit requirements of Subpart B.

***Proposed Additions and Deletions Section 309.201(b)(3)*** – Exemptions are provided for those discharges that have received authorization from a Publicly Owned Treatment Works (POTW) that has a pretreatment program approved either by the Agency or USEPA.

***Proposed Additions Section 309.202(a)*** – The Agency is re-lettering the only exception to the existing rule from subsection (b) to subsection (c) to account for the new language that is being added in new subsection (b).

***Proposed Additions Section 309.202(b)*** – The proposed language requires groundwater remediation systems, with or without pretreatment, to obtain a construction permit for new sewer discharges to a publicly owned or publically regulated sanitary or combined sewer. A construction permit is also required for waste water sources discharging to a publicly owned or publicly regulated sanitary or combined sewer. While this is not a new requirement, the addition of this language is to provide notification and clarification that pretreatment systems related to groundwater remediation do not require a construction permit, but sewers and wastewater sources associated with groundwater remediation systems do require a construction permit.

***Proposed Deletions and Additions Section 309.202(c)*** – The Agency made edits deleting “or” from (c)(1) through (c)(4), and added “or” to (c)(5).

***Proposed New Section 309.202(c)(6)*** – The Agency is adding (c)(6) to pursue the purpose of the permit streamlining pursuant to Section 39.12 of the Act. The Agency does not believe a technical review by the Agency prior to the construction of cooling towers, oil/water separators,

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<sup>3</sup> As to date, the Agency has not sought delegation authority for this pretreatment program.

or pH adjustment facilities would result in significant environmental benefit. Thus, the Agency is proposing to exempt the construction of cooling towers, oil/water separators, and pH adjustment facilities from the requirement of a construction permit.

***Proposed Section 309.202(d)*** – The proposed amendments in Section 309.202(d) are non-substantive, clean-up changes. These changes simply allow for consistency with the language and wording found in subsection (a). In addition, the Agency is re-lettering the existing subsection (c) as a new subsection (d).

***Section 309.203*** – This Section applies to new or modified sources seeking an operating permit.

***Proposed Amendments Section 309.203(a)*** – The Agency is proposing the requirement that no person shall cause or allow the use or operation of a “pretreatment works” for which a construction permit is required under Section 309.202 without an Agency issued operating permit. This requirement for pretreatment works was erroneously omitted from the existing list of treatment works, sewers, and wastewater sources, which already must obtain an operating permit when a construction permit is required under 309.202.

***Proposed Amendments Section 309.203(b)*** – Section 309.203(b) lists discharges for which an operating permit is not required from the Agency.

***Proposed Amendments Section 309.203(b)(1)*** – The Agency is deleting “or” as more paragraphs were added to this subsection.

***Proposed Amendments Section 309.203(b)(2)*** - Section 309.203(b)(2) clarifies that a duplicate operating permit is not required if a discharge is covered under a pretreatment permit issued by the Agency consistent with requirements of 35 Il. Adm. Code Part 310.

***Proposed Amendments Section 309.203(b)(3)*** – The Agency clarifies that a duplicate operating permit is not required if a discharge is covered under a pretreatment permit issued by the USEPA consistent with requirements of federal law.

***Proposed Amendments Section 309.203(b)(4)*** - The proposed language clarifies that a duplicate operating permit is not required for a discharge that has been authorized by a POTW with a pretreatment program approved by either the Agency or USEPA.

***Section 309.204*** - This Section applies to existing sources that either must be covered by an operating permit or are exempt from the operating permit requirements.

***Proposed Amendments Section 309.204(b)*** – The Agency made changes identical to those in Section 309.203(b). The justification provided there also applies to changes in Section 309.204(b).

***Proposed Amendments Section 309.204(d)*** – The Agency is clarifying that the operating permit exemption also applies to wastewater which may be hauled directly to a POTW, and not just to those wastewaters discharged into the sewer system itself. In previous language, this exemption for dischargers that are hauled directly to the POTW was implied, but never clear. By adding this language that the exemption does apply to wastewaters hauled directly to the POTW, the Agency is ensuring that the intent is clear, and can be applied uniformly.

***Section 309.242*** - The Agency is adding subsections on termination requirements. The proposed language also adds and modifies provisions on duration of operating permits.

***Proposed Amendments Section 309.242(b)*** – The Agency is proposing to modify Section 309.242(b) to provide that all operating permits have a duration of five years unless an operating permit has been issued under Section 309.203. In that case, the duration is for the lifetime of the sewer or the pretreatment works. To eliminate the redundancy in subsection (b), the Agency is

deleting the existing language that provides that operating permits for newly constructed sewers have a duration of five years.

***Proposed New Section 309.242(c)*** – The Agency is adding Section 309.242(c) to allow lifetime operating permits for sewers and pretreatment works. Currently, any issued operating permit has a duration not to exceed five years and requires renewal. The Agency is seeking authority for lifetime permits for certain pretreatment works or wastewater sources.

Many of the operating permits are reissued with the same conditions and requirements in each permit cycle. The option of issuing a lifetime operating permit would reduce the burden on both the Agency and the regulated industry to renew operating permits every five years for discharges which are consistent in both concentration of pollutants and volume of the discharge. The issuance of a lifetime operating permit is further justified because these discharges pose no likelihood of causing conditions which would violate the pretreatment standards of 35 Ill. Adm. Code 307, or otherwise cause upsets or operation concerns in the receiving sewer systems or POTW. Communities and/or POTW's also have local sewer use ordinances which regulate dischargers to sewer systems, and are protective of collection systems, treatment plants, worker safety, and water quality. The Agency does want to retain authority to modify these permits in case USEPA or the Board establishes new effluent guidelines for these facilities.

***Proposed New Section 309.242(d)*** – The proposed language provides that an operating permit expires once a permit has been modified or renewed by the Agency.

***Proposed New Section 309.242(e)*** – The Agency is proposing to add subsections (e) and (f) to provide clarity on how to terminate a construction or operating permit. Subsection (e) allows a permittee to request termination of its permit. However, the request must be on a form and in a format proscribed by the Agency. Under the proposed rule, the Agency is required to provide a

written notification of its decision to terminate the permit to the permittee by certified or registered mail. Termination is effective on the date of the Agency's written confirmation.

***Proposed New Section 309.242(f)*** – This subsection allows the Agency to terminate operating permits for those facilities that no longer exist or operate. However, prior to terminating the permit, the Agency must send written notification of its intent to the last known address on the permit. If the Agency receives no communication back from the permittee within 60 days, the Agency may terminate the permit. As the Agency has to submit reports to USEPA of accurate and current operating facilities, terminating facilities that no longer exist or operate would allow the Agency to maintain a more accurate and up-to-date database.

***Proposed Amending Section 309.263*** – The Agency expands the scope of Section 309.263 to include renewal permits. The proposed language makes the requirements of Section 309.263 applicable to both the modification and the renewal of permits.

***Proposed Amending Section 309.263(a)*** – This subsection is not only applicable to modified permits but also to renewed permits.

***Proposed New Section 309.263(b)*** – This subsection places an obligation on the holder of the operating permit to seek a modification of the permit for one of the following reasons:

1. A modification of permitted wastewater characteristics, quantity, or quality;
2. A change in facility ownership, name, or address, that will result in the existing permit being inaccurate; or
3. A change in operations that will result in the permittee's noncompliance with the Act, a Board Regulation, or an existing permit condition.

The person must obtain the modified permit prior to making any of the changes mentioned above. This subsection was added to clarify when a permittee is required to file an application

requiring modification of their operating permit. Previous language in this subsection was vague as to the conditions which would trigger such a modification request by the permittee.

***Proposed New Section 309.263(c)*** – Under proposed Section 309.263(c), the Agency may require modification or renewal of the existing permit for numerous reasons. To provide clarity to the permittee, the Agency lists three possible reasons that would initiate the modification or renewal of the operation permit. Previous language in this subsection was vague as to the possible conditions which might trigger the Agency to require a modification or renewal of an existing permit.

### **III. AFFECTED SOURCES AND ECONOMIC IMPACT**

The proposal would potentially affect any entity subject to permitting actions with the Agency's Division of Water Pollution Control, but would not result in a negative economic impact to the regulated facilities. Many of the proposed revisions are meant to lessen the administrative and regulatory burden on certain types of discharges or facilities, which would lessen the cost of complying with these regulations.

Also, many of the revisions are proposed pursuant to Section 39.12 of the Act. This Section was enacted to reduce the administrative burden which often accompanies the construction and operation of wastewater sources, pretreatment systems, and treatment systems. The proposal makes minor revisions to the regulations governing the permit renewal, which would not increase the regulatory burden, but would instead clarify what constitutes the timely application for renewal of a NPDES permit, and allows the Agency flexibility to extend protection of an administrative continuance to applications that were filed late but for just cause(s).

Additionally, the proposal seeks to streamline the regulatory burden by clarifying construction and operating permit requirements, and by extending existing exemptions to these requirements to treatment and pretreatment systems which typically utilize “off the shelf” technologies for the treatment of common wastestreams. Exempting these common “off the shelf” type systems from certain permitting requirements would lessen the regulatory burden on the affected facilities, without any risk to the environment. Many of these technologies do not require a technical review by the Agency, and exempting them from certain permitting requirements would not be counter to Federal law or regulations. The proposal would also allow the Agency the flexibility to issue lifetime operating permits for certain sewers and/or pretreatment systems. These systems would also be subject to local sewer use ordinance restrictions; therefore lifetime operating permits would lessen the burden on the regulated entity as well as the Agency, without any additional risk to downstream facilities or the environment.

Additional revisions are proposed to clarify the process for terminating a state operating permit. Such a process is currently not specified, so these revisions would outline when and how an operating permit could be terminated.

As outlined above, the proposed revisions would not be expected to add any additional costs to the regulated community, but would instead reduce administrative and regulatory burdens on certain dischargers by exempting certain activities from permitting requirements, and allowing the option of lifetime operating permits for others.

#### IV. SYNOPSIS OF TESTIMONY

The Illinois EPA anticipates presenting one witness during the Board's hearing on this proposal. Darin LeCrone is the Manager of the Industrial Unit, Permit Section, Division of Water Pollution Control. The duties of the Industrial Unit include the review and issuance of construction and operating permits for industrial wastewater sources, pretreatment and treatment systems, and the land application of industrial sludge. The Unit is also responsible for issuing NPDES permits for industrial discharges. Mr. LeCrone has been with the Agency for over 22 years, has a B.S. degree in Mechanical Engineering from Southern Illinois University at Carbondale, and is a Licensed Professional Engineer in Illinois.

#### V. CONCLUSION

WHEREFORE, for the reasons stated above, the Illinois EPA asks the Board to accept this Statement of Reasons and proceed to hearings on the above-captioned rulemaking proposal.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/Sara G. Terranova  
Sara G. Terranova  
Assistant Counsel  
Division of Legal Counsel

DATED: 6/1/2015

1021 N. Grand Ave. East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(217) 782-5544

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

**PART 309  
PERMITS**

**SUBPART A: NPDES PERMITS**

<b>Section</b>	
309.101	Preamble
309.102	NPDES Permit Required
309.103	Application - General
309.104	Renewal
309.105	Authority to Deny NPDES Permits
309.106	Access to Facilities and Further Information
309.107	Distribution of Applications
309.108	Tentative Determination and Draft Permit
309.109	Public Notice
309.110	Contents of Public Notice of Application
309.111	Combined Notices
309.112	Agency Action After Comment Period
309.113	Fact Sheets
309.114	Notice to Other Governmental Agencies
309.115	Public Hearings on NPDES Permit Applications
309.116	Notice of Agency Hearing
309.117	Agency Hearing
309.118	Agency Hearing File
309.119	Agency Action After Hearing
309.120	Reopening the Record to Receive Additional Written Comment
309.141	Terms and Conditions of NPDES Permits
309.142	Water Quality Standards and Waste Load Allocation
309.143	Effluent Limitations
309.144	Federal New Source Standards of Performance
309.145	Duration of Permits
309.146	Authority to Establish Recording, Reporting, Monitoring and Sampling Requirements
309.147	Authority to Apply Entry and Inspection Requirements
309.148	Schedules of Compliance
309.149	Authority to Require Notice of Introduction of Pollutants into Publicly Owned Treatment Works
309.150	Authority to Ensure Compliance by Industrial Users with Sections 204(b), 307 and 308 of the Clean Water Act
309.151	Maintenance and Equipment
309.152	Toxic Pollutants
309.153	Deep Well Disposal of Pollutants (Repealed)

309.154	Authorization to Construct
309.155	Sewage Sludge Disposal
309.156	Total Dissolved Solids Reporting and Monitoring
309.157	Permit Limits for Total Metals
309.181	Appeal of Final Agency Action on a Permit Application
309.182	Authority to Modify, Suspend or Revoke Permits
309.183	Revision of Schedule of Compliance
309.184	Permit Modification Pursuant to Variance
309.185	Public Access to Information
309.191	Effective Date

#### SUBPART B: OTHER PERMITS

Section	
309.201	Preamble
309.202	Construction Permits
309.203	Operating Permits; New or Modified Sources
309.204	Operating Permits; Existing Sources
309.205	Joint Construction and Operating Permits
309.206	Experimental Permits
309.207	Former Permits (Repealed)
309.208	Permits for Sites Receiving Sludge for Land Application
309.221	Applications - Contents
309.222	Applications - Signatures and Authorizations
309.223	Applications - Registered or Certified Mail
309.224	Applications - Time to Apply
309.225	Applications - Filing and Final Action By Agency
309.241	Standards for Issuance
309.242	Duration <u>and Termination</u> of Permits Issued Under Subpart B
309.243	Conditions
309.244	Appeals from Conditions in Permits
309.261	Permit No Defense
309.262	Design, Operation and Maintenance Criteria
309.263	Modification <u>or Renewal</u> of Permits
309.264	Permit Revocation
309.265	Approval of Federal Permits
309.266	Procedures
309.281	Effective Date
309.282	Severability

#### 309 Appendix A References to Previous Rules

**AUTHORITY:** Implementing Sections 13 and 13.3 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/13, 13.3 and 27].

**SOURCE:** Adopted in R71-14, at 4 PCB 3, March 7, 1972; amended in R73-11, 12, at 14 PCB 661, December 5, 1974, at 16 PCB 511, April 24, 1975, and at 28 PCB 509, December 20, 1977; amended in R73-11, 12, at 29 PCB 477, at 2 Ill. Reg. 16, p. 20,

effective April 20, 1978; amended in R79-13, at 39 PCB 263, at 4 Ill. Reg. 34, p. 159, effective August 7, 1980; amended in R77-12B, at 41 PCB 369, at 5 Ill. Reg. 6384, effective May 28, 1981; amended in R76-21, at 44 PCB 203, at 6 Ill. Reg. 563, effective December 24, 1981; codified at 6 Ill. Reg. 7818; amended in R82-5, 10, at 54 PCB 411, at 8 Ill. Reg. 1612, effective January 18, 1984; amended in R86-44 at 12 Ill. Reg. 2495, effective January 13, 1988; amended in R88-1 at 13 Ill. Reg. 5993, effective April 18, 1989; amended in R88-21(A) at 14 Ill. Reg. 2892, effective February 13, 1990; amended in R91-5 at 16 Ill. Reg. 7339, effective April 27, 1992; amended in R95-22 at 20 Ill. Reg. 5526, effective April 1, 1996; amended in R99-8 at 23 Ill. Reg. 11287, effective August 26, 1999; amended in R02-11 at 27 Ill. Reg. 202, effective December 20, 2002; amended in R03-19 at 28 Ill. Reg. 7310, effective May 7, 2004; amended in R07-9 at 32 Ill. Reg. 14978, effective September 8, 2008.

#### Section 309.104      **Renewal**

- a) Any permittee who wishes to continue to discharge after the expiration date of the NPDES Permit shall timely apply for reissuance of the permit ~~not less than 180 days prior to the expiration date of the permit.~~
  - 1) A permittee has submitted a timely application for a new permit when the permittee submits an application 180 days prior to the expiration date of the existing permit, unless a written waiver is granted by the Agency.
  - 2) The terms and conditions of an expiring permit remain effective and enforceable against the discharger until the Agency takes final action on the pending permit application, only if:
    - A) The permittee has submitted a timely application pursuant to subsection (1) of this Section; and
    - B) The Agency, through no fault of the permittee, does not issue a new permit on or before the expiration date of the previous permit.
- b) All permittees that timely apply for an NPDES permit renewal must pay an annual NPDES discharge fee pursuant to Section 12.5 of the Act.
- c) ~~b)~~ The Agency shall circulate public notice and provide opportunity for public hearing, as provided for in this Subpart A, in the same manner as for a new permit application.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART B: OTHER PERMITS

### Section 309.201 Preamble

- a) This Subpart B establishes basic rules for the issuance of permits for the construction, modification and operation of treatment works, pretreatment works, sewers, wastewater sources and other discharges which are not required to have NPDES Permits.
- b) The following discharges are exempt from the operating permit requirement of this Subpart. However, such discharges may be subject to the construction permit requirement.
  - 1) Discharges for which a pretreatment permit has been issued by the Agency; pursuant to 35 Ill. Adm. Code 310;
  - 2) Discharges for which a pretreatment permit has been issued by USEPA pursuant to federal law; or
  - 3) Discharges for which an authorization to discharge has been issued by a publicly owned treatment works (POTW) with a ~~an~~ approved pretreatment program approved by the Agency, pursuant to 35 Ill. Adm. Code 310, or approved by USEPA pursuant to federal law. are exempt from the operating permit requirement of this Subpart. However, such discharges may be subject to the construction permit requirement.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 309.202 Construction Permits

Except for treatment works or wastewater sources which have or will have discharges for which NPDES Permits are required, and for which NPDES Permits have been issued by the Agency:

- a) No person shall cause or allow the construction of any new treatment works, sewer, or wastewater source or cause or allow the modification of any existing treatment works, sewer, or wastewater source without a construction permit issued by the Agency, except as provided in paragraph (c)(b) and (d).
- b) For groundwater remediation systems, with or without pretreatment, a permit is required for construction of:
  - 1) A new sewer to a publicly owned or publicly regulated sanitary or combined sewer; or

2) a wastewater source to a publicly owned or publicly regulated sanitary or combined sewer.

c)b) Construction permits shall not be required for the following:

- 1) Storm sewers that transport only land runoff; ~~or~~
- 2) Any treatment works, sewer, or wastewater source designed and intended to serve a single building and eventually treat or discharge less than an average of 1500 gallons per day (5700 l/day) of domestic sewage and which will discharge, if at all, directly to a publicly owned or publicly regulated sanitary or combined sewer; ~~or~~
- 3) Any sewer required by statute to secure a permit pursuant to Section 3 of "An Act to provide for, license and regulate mobile homes and mobile home parks", P.A. 77-1472,(Ill. Rev. Stat. 1981, ch. 111 1/2, par.713); ~~or~~
- 4) Any treatment works, pretreatment works, sewer or wastewater source that, on the effective date of this Subpart B, is being constructed or will be constructed under the authorization of a permit already issued by the Agency or its predecessors; provided however, that all construction must be completed within four years from the effective date of this Subpart B; ~~or~~
- 5) Privately owned sewers tributary to industrial treatment works owned by the same person if the additional waste load does not exceed the permitted design capacity of the industrial treatment work; or-
- 6) Cooling towers, oil/water separators, pH adjustment facilities without additional pretreatment, and groundwater remediation system pretreatment.

(d)e) No person ~~without a construction permit issued by the Agency~~ shall cause or allow the construction of any pretreatment works or cause or allow the modification of any existing pretreatment works without a construction permit issued by the Agency, if such pretreatment works, after construction or modification, will:

- 1) Discharge toxic pollutants, as defined in Section 502(13) of the CWA, or pollutants which may interfere with the treatment process into the receiving treatment works or be subject to regulations promulgated under Section 307 of the Clean Water Act (CWA);or

- 2) Discharge 15% or more of the total hydraulic flow received by the treatment works; or
- 3) Discharge 15% or more of the total biological loading received by the treatment works as measured by the 5-day biochemical oxygen demand.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 309.203 Operating Permits; New or Modified Sources**

- a) No person shall cause or allow the use or operation of any treatment works, sewer, pretreatment works, or wastewater source for which a construction permit is required under Section 309.202 without an operating permit issued by the Agency, except as may be authorized by the construction permit.
- b) No operating permit is required under this Section for any discharge:
  - 1) For which an NPDES permit is required; ~~or~~
  - 2) For which a pretreatment permit has been issued by the Agency, pursuant to 35 Ill. Adm. Code 310;
  - 3) For which a pretreatment permit has been issued by USEPA pursuant to federal law; or
  - 4) For ~~for~~ which an authorization to discharge has been issued by a POTW with a ~~an approved~~ pretreatment program approved by the Agency, pursuant to 35 Ill. Adm. Code 310, or approved by USEPA under federal law.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 309.204 Operating Permits; Existing Sources**

- a) No person shall cause or allow the use or operation of any treatment works, pretreatment works or wastewater source without an operating permit issued by the Agency, except as provided in subsections (b), (c) and (d).
- b) No operating permit is required under this Section for any discharge:
  - 1) For which an NPDES permit is required; ~~or~~

- 2) For which a pretreatment permit has been issued by the Agency, pursuant to 35 Ill. Adm. Code 310;
  - 3) For which a pretreatment permit has been issued by USEPA pursuant to federal law; or
  - 4) For ~~for~~ which an authorization to discharge has been issued by a POTW with a an-approved pretreatment program approved by the Agency, pursuant to 35 Ill. Adm. Code 310, or approved by USEPA under federal law.
- c) Operating permits are not required for treatment works and wastewater sources that are designed and intended to serve a single building and eventually treat or discharge less than an average of 1500 gallons per day (5700 l/day) of domestic sewage and which will discharge, if at all, directly to a publicly owned or publicly regulated sanitary or combined sewer.
- d) Operating permits are not required for those pretreatment works or wastewater sources discharging to a sewer tributary to a treatment works, or directly to a treatment works, which will not:
- 1) Discharge toxic pollutants, as defined in Section 502(13) of the CWA, or pollutants which may interfere with the treatment process into the receiving treatment works or be subject to regulations promulgated under Section 307 of the Clean Water Act (CWA); or
  - 2) Discharge 15% or more of the total hydraulic flow received by the treatment works; or
  - 3) Discharge 15% or more of the total biological loading received by the treatment works as measured by the 5-day biochemical oxygen demand.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 309.242      Duration and Termination of Permits Issued Under Subpart B**

- a) Construction permits for sewers and wastewater sources shall require that construction be completed within two years. Construction permits for treatment works and pretreatment works shall require that construction be completed within three years. In situations where the magnitude and complexity of the project require it, the Agency may issue a construction permit, requiring completion within a period not to exceed five years.

- b) Except as indicated in subsection (c) below, no ~~Ne~~ operating permit shall have duration in excess of five years. ~~All operating permits other than those issued under Section 309.203 for newly constructed sewers shall have a duration not to exceed five years.~~ The Agency may issue operating permits for as short a period of time as may be necessary in order to facilitate basin planning, to coordinate operating permits with future compliance deadlines, to maintain intensive control over new or experimental processes and to provide for emergency situations.
- c) The Agency may issue operating permits under Section 309.203 for sewers, wastewater sources, and pretreatment works for the lifetime of the sewer or the pretreatment works.
- d) Notwithstanding subsection (b) and (c) above, any operating permit subject to this Subpart shall expire upon the issuance of a modified or renewed permit issued by the Agency.
- e) A permittee may request termination of a permit by submitting the request in writing to the Agency on a form and in a format prescribed by the Agency. The Agency shall send written confirmation of the termination to the permittee by certified or registered mail. Termination is effective on the date of written confirmation from the Agency.
- f) A permit may be terminated by the Agency upon determination that a facility is no longer in operation or existence. The Agency shall send written notice via certified or registered mail to the last known address on the permit stating the permitted system appears no longer in operation or existence. The permit shall terminate 60 days after the date of notification unless the permittee communicates the desire for the permit to stay in effect.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 309.263      Modification or Renewal of Permits**

- a) Any permit issued by the Agency under this Subpart B may be modified or renewed to make its provisions compatible with any new regulation adopted by the Board.
- b) Persons with operating permits for pretreatment works subject to this Subpart must obtain a modified permit prior to any of the following changes at the facility:
  - 1) A modification of permitted wastewater characteristics, quantity, or quality;
  - 2) A change in facility ownership, name, or address, so that the application or existing permit is no longer accurate; or

- 3) A change in operations that will result in the permittee's noncompliance with the Act, a Board Regulation, or an existing permit condition.
- c) The Agency may require the modification or renewal of any operating permit subject to this Subpart for reasons including, but not limited to:
- 1) A change in the requirements applicable to the permittee;
  - 2) The information on the permittee's application is inaccurate; or
  - 3) Information that the permittee may not be in compliance with the Act, a Board regulation, or an existing permit condition.

(Source: Amended at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	R15-
WATER POLLUTION: PROPOSED	)	(Rulemaking- Water)
AMENDMENTS TO 35 Ill. Adm. Code	)	
Part 309	)	

**CERTIFICATE OF SERVICE**

I, the undersigned, an attorney, state that I have served the attached REGULATORY PROPOSAL entitled "WATER POLLUTION: PROPOSED AMENDMENTS TO 35 Ill. Adm. Code Part 309," containing the Illinois EPA's Motion for Acceptance, Appearance, Certificate of Origination, Statement of Reasons; and Proposed Amendments, upon the following persons,

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

Matthew Dunn, Chief  
Environmental Enforcement/Asbestos  
Litigation Division  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

Office of Legal Services  
Illinois Department of Natural Resources  
One Natural Resources Way  
Springfield, IL 62702

by mailing a true copy thereof in an envelope duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois on June 1, 2015.

**ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY**

By: /s/Sara G. Terranova  
Sara G. Terranova  
Assistant Counsel  
Division of Legal Counsel