BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	R15-024
WATER POLLUTION: PROPOSED	)	(Rulemaking- Water)
AMENDMENTS TO 35 Ill. Adm. Code	)	
Part 309	)	

RESPONSE TO PRE-FILED QUESTIONS FROM THE POLLUTION CONTROL BOARD

Proposed Amendments to 35 Ill. Adm. Code 309 Subpart A

Just Causes for Waiver

Comments # 1, #2, and #3.

A permittee should be required to explicitly request the waiver in writing, along with the permittees reasons for making such a request. In order to clarify this requirement, Section 309.104(a)(1)(B) could be revised as follows:

(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:

(A) The permittee submits an application 180 days prior to the expiration date of the existing permit: or

(B) The permittee submits request for a waiver in writing to the Agency, and the Agency grants a written waiver to submit the application less than 180 days prior to the expiration date of the existing permit. Such a request for a waiver must include the permittees causes and/or justification for not meeting the 180 day timeframe.

The Agency shall not grant a waiver for applications to be submitted later than the expiration date of the existing permit.

4. The two examples given by the Board (USEPA's 1988 rulemaking and Kay v. Fed. Communications Comm'n,) discussed reasoning why the granting of a waiver for either intermittent discharges or a change in corporate ownership might not be prudent. These two cases address events that are foreseeable, and therefore the permittee should be expected to adequately plan for in advance. What the Agency is proposing to address are

those instances where unforeseeable circumstances arise that would prevent a permittee from filing their renewal application within the 180 day timeline.

In the case of intermittent discharges, USEPA is correct in that it is reasonable to expect permittees to plan sampling in advance. However, some wastestreams are highly intermittent and may only be generated once every several years. There may also be instances where sampling was planned, but an unexpected shutdown or production stoppage may force an instance where a scheduled or planned collection of samples is not possible due to a lack of wastewater generation. Such a stoppage could be due to market conditions, equipment failure, a safety issue, flooding, or some other situation which affects the normal operation of a facility and may inhibit the ability to collect samples which would have been available under normal operating conditions.

In the majority of cases of a change in ownership, there is a smooth transition in which the transfer of responsibilities is clearly assigned in advance. However, there have been cases where the complexity of the corporate structures of one or both parties has resulted in late renewal applications being filed. Sometimes this is due to a change in ownership of either an entire company, or even just certain facilities within a company. Other times it has been due to a corporate restructuring and a change in staff. While these instances are not routine, it does happen often enough to warrant some consideration in waiving the 180 day deadline for submittal of a renewal application

The USEPA NPDES Permit Writers Manual does not contain any detail concerning criteria for granting a waiver of the 180 day requirement. The Agency is not aware of any specific guidance documents from USEPA concerning the granting of such a waiver. 40 CFR 122.21(d) only states that permission may be granted to submit an application at a date later than the deadline otherwise applicable, but prior to the permit expiration date. Absent specific guidance, the Agency would review a request for a waiver to determine if a permittee made a good faith effort to submit the application on time, what unforeseen circumstances prevented the filing of the application 180 days in advance, and were those circumstances justifiable or valid.

Waiver Requests and Determinations

5. The intent of the Agency is for a permittee to be able to request a waiver of the 180 day deadline at any time prior to the expiration date of the permit.

6. The Agency would expect a waiver request to include an approximate date that an application would be submitted, and the waiver would be granted with a new application due date.

7. If the Board prefers that this section include a timeframe for an Agency decision on a request for a waiver, the Agency would be acceptable to a 21 day decision timeframe for all denials.

8. 35 Ill. Adm. Code 309.104(a) currently states that "Any permittee who wishes to continue to discharge after the expiration date of his NPDES Permit shall apply for reissuance of the permit not less than 180 days prior to the expiration date of the permit." Existing regulations govern what is required in an application for an NPDES permit, and current Agency practices ensure that this required information is submitted. In this rulemaking, the Agency is only seeking to address the 180 day submission deadline, to allow the permittee flexibility in submitting a renewal application when unforeseen circumstances prevent them from filing their renewal application within 180 days of permit expiration.

9. If the Board considers a decision on a waiver to constitute a final Agency action, then the permittee would have the right to appeal the Agency's decision. Otherwise, the question of whether the granting or denial of a waiver was proper will remain open during the pendency of the permit application. Any appeal of the Agency's determination must be made as part of an NPDES permit appeal.

Amendments to 35 Ill. Adm. Code 309.201(b)(2)

10. Yes, Section 307 of the Clean Water Act.

11. This revision is acceptable to the Agency.

12. Publicly Regulated Treatment Works is defined by 35 Ill. Adm. Code 301.370 as: ".. those otherwise private companies which are regulated as public utilities engaged in the disposal of domestic and industrial wastes and regulated as such by the Illinois Commerce Commission, pursuant to "an Act concerning public utilities", effective July 21, 1921, as amended."

13. In the case of groundwater remediation systems, the Agency wants to continue to permit the source to the sewer, but not the equipment installed to pretreat the source prior to discharging to the sewer. The proposed Section 309.202(c)(6) was intended to address groundwater remediation pretreatment systems specifically. Section 309.202(b) addresses the need for a construction permit for new sewers or wastewater sources from groundwater remediation systems regardless of whether or not the discharge from a such a remediation system is pretreated or not. The Agency wants to continue to permit the actual discharge from such a remediation system to the sanitary sewer system. Section 309.202(c)(6) as originally proposed, would exempt the construction of a pretreatment system for such a source from the requirement to obtain a construction permit.

14. The intent of the Agency's proposed amendments was to exempt from the requirement to obtain a construction permit, those groundwater remediation systems which would otherwise be required to obtain a permit pursuant to 35 Ill. Adm. Code 309.202(d). The Agency would propose the following revision to the first paragraph of Section 309.202(d) as follows:

No person 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, unless exempt pursuant to Section 309.202(c), if such pretreatment works, after construction or modification will:

Amendments to 35 Ill. Adm. Code 309.242

15. The Agency is seeking this particular revision to allow the Agency the option of issuing a lifetime operating permit in all instances where circumstances warrant such a permit. These permits are currently issued for a maximum of five years, and must be renewed each time. As noted in the proposed rulemaking, the Agency is seeking the option of issuing a lifetime operating permit in order to reduce the burden on not only the Agency, but also the regulated industry. In many cases, discharges and/or pretreatment systems are consistent over time or over multiple permit cycles, in both concentration of pollutants and volume of the discharge, and pose minimal likelihood of causing conditions which would violate the pretreatment standards of 35 Ill. Adm. Code Part 307, or otherwise cause upsets or operational concerns in the receiving sewer systems or POTW. Attempting to define all criteria in which a lifetime operating permit could be granted, would likely cause confusion or uncertainty on the part of the permittee.

16. At this time, the Agency has not developed a termination form for use in termination of a State operating permit. The language was written to allow it to be made by letter at this time, or by use of a form when such a form is developed.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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DATED: AUGUST 25, 2015

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RESPONSE TO PRE-FILED QUESTIONS FROM IERG

The Agency has proposed the addition of 35 Ill. Adm. Code 309.202(c)(6), which would exempt certain treatment technologies from the requirement to obtain a construction permit. The Illinois Environmental Regulatory Group (IERG) has suggested inclusion of three different treatment technologies focusing on the potential of adding these technologies to the list of treatment technologies to be exempt from the requirement to obtain a construction permit. Specifically, IERG is proposing to include reverse osmosis systems, multi-media filtration, and ion exchange systems for source water to be included in the list of exempt technologies to be included in the proposed Section 309.202(c)(6).

1. *Reverse Osmosis Systems*

The Agency agrees that reverse osmosis is a common treatment technology using "off the shelf" components. In the Agency's experience, it is more often used for the treatment of raw water for use as a high purity source water in production processes, food processing, or boiler make-up. While it can be and is used for the treatment of process wastewaters, it is much less common than for source water treatment. While exempting all reverse osmosis treatment systems from the requirement to obtain a construction permit would lessen the regulatory burden on the Agency, there is an environmental benefit to the Agency's continued review of these systems for wastewater treatment.

Reverse osmosis by design, removes whatever constituents are present in the water being treated. The technology then generates a concentrated backwash that then must be discharged or disposed of properly. In raw source water, which typically is fairly clean to begin with, the backwash wastestream would typically be able to meet discharge limits. However, reverse osmosis systems used for the treatment of process wastewaters may result in a backwash wastestream that contains pollutants in concentrations which may be of significant concern.

While the Agency is of the opinion that the use of reverse osmosis technology for wastewater treatment should still require a construction permit, the Agency would be amenable to adding an exemption for reverse osmosis systems used for raw or source water treatment.

Multi-Media Filtration Systems

The Agency agrees that multi-media filtration is a common treatment technology using "off the shelf" components. Multi-media filters (such as sand filters) are commonly used for both raw water and wastewater treatment. They are very effective at removing suspended solids by

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trapping the solids in the filter media. Multi-media filter must occasionally be backwashed to flush the collected solids from the media and maintain effectiveness. While exempting all multi-media filtration systems from the requirement to obtain a construction permit would lessen the regulatory burden on the Agency, there is an environmental benefit to the Agency's continued review of these systems for wastewater treatment.

Multi-media filtration removes whatever suspended constituents are present in the water being treated. The technology then generates a concentrated backwash that then must be discharged. Multi-media filtration systems used for the treatment of process wastewaters may result in a backwash wastestream that contains pollutants in concentrations which may be of significant concern.

While the Agency is of the opinion that the use of multi-media filtration technology for wastewater treatment should still require a construction permit, the Agency would be amenable to adding an exemption for multi-media filtration systems used for raw or source water treatment.

In addition, the Agency would be amenable to adding an exemption for disposable media filtration systems, such as cartridge filters. These types of filtration systems are "off the shelf" components and do not generate a backwash wastestream which must be discharged.

Ion Exchange Systems

The Agency agrees that ion exchange is a common treatment technology which would typically use "off the shelf" components designed for removing certain types of pollutants depending on the chosen resins. This type of treatment technology is used for treating both source waters and wastewaters. While exempting all ion exchange treatment systems from the requirement to obtain a construction permit would lessen the regulatory burden on the Agency, there is an environmental benefit to the Agency's continued review of these systems for wastewater treatment.

While the Agency is of the opinion that the use of ion exchange technology for wastewater treatment should still require a construction permit, the Agency would be amenable to adding an exemption for ion exchange systems used for raw or source water treatment.

2.

IERG states that each of these treatment technologies may require additional materials and equipment to use or install the exempted systems, and asks if the Agency would be amenable to adding some clarifying language. IERG proposes to add language to clarify that additional associated pipes, pumps, and appurtenances are included in the exemption

The Agency agrees that adding such clarifying language would be beneficial. The Agency typically includes similar language in construction permits to cover those types of materials or equipment needed to install or operate permitted treatment systems.

Conclusion

In order to address the proposed revisions made by IERG to which the Agency agrees, the Agency would propose revising 35 Ill. Adm. Code 309.202(c)(6) as follows:

6) Cooling towers, oil/water separators, pH adjustment facilities without additional pretreatment, groundwater remediation system pretreatment, reverse osmosis treatment for industrial source water, multi-media filtration for industrial source water, disposable cartridge type (or similar) filtration systems, ion-exchange systems for industrial source waters, and all associated pipes, pumps, and appurtenances necessary for the installation and operation of these permit exempt treatment systems.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
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