

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 SEPTEMBER 17, 2015 PRE-FILED QUESTIONS FROM THE
ILLINOIS POLLUTION CONTROL BOARD**

Rule Language

17. *the Agency, in its August 25, 2015 Response to the Board's Pre-Filed Questions, proposed a change to Section 309.104(a)(1)(B). The proposed language says "A permittee has submitted a timely application for a new permit when ...[t]he permittee submits request for a waiver in writing to the Agency, and the Agency grants a written waiver..." Exh. 2 at 1. This appears to say that an application is timely submitted when the Agency grants a written waiver, but does not actually require a complete application. Should this provisions require that, to submit a timely application under Section 309.104(a)(1)(B), the applicant must submit a waiver request, the Agency must grant a waiver, **and** the applicant must submit an application within the timeframe listed in the waiver request?*

Response: Yes, in order to timely submit an application under Section 309.104(a)(1)(B) the Agency must grant a waiver and the applicant must submit an application within the timeframe listed in the waiver request.

18. *the Agency stated that unforeseeable circumstances can cause a permittee to submit a renewal application after the standard 180 day deadline. Exh. 1 at 1-2. Should the rule specify that the Agency will only grant waiver in unforeseeable circumstances?*

Response: The Agency's intent, was to provide a process by which a permittee may submit a renewal application past the normal 180 day deadline if circumstances occur preventing the permittee from filing the application within 180 days of expiration. "Justifiable causes" may have been a better description of the Agency's intent than "unforeseeable circumstances"

19. *The Agency stated that the rule allows waiver requests at any time before the permit expires and that the permittee will be notified of a waiver denial within 21 days of the waiver request. Exh. 2 at 1. How will the Agency treat a waiver request made less than 21 days before a permit's expiration date?*

For example, if a permittee requested a waiver on the permit's expiration date and the Agency denied it, would the permit then expire and not be administratively continued? Would the Agency consider the facility to be operating without a permit during this period after the permit's expiration date but before the Agency denies the waiver request?

Alternatively, is the 180 days prior to expiration the key date for when a waiver request must be filed with the Agency? With the possibility of obtaining a waiver within the 180 days prior to permit expiration, what, if any, consequences flow from the 180 days prior to expiration date passing without a renewal application filed? Will waiver requests filed within the 180 days prior to permit expiration be held to a different standard than those filed more than 180 days prior to permit expiration?

Response: If a permittee requested a waiver within 180 days of permit expiration and the Agency denied it, then the permittee would be discharging without a permit after the expiration date.

To obtain administrative continuance, the permittee must file a timely application. This circumstance exists now, and would not change with this proposed rulemaking. All waiver requests, regardless of when filed, would be required to provide justifiable causes for the requested delay in filing the application. The Agency does not wish to encourage the late filing of renewal applications, and is only seeking to allow a process to address those more limited number of instances where a permittee has justifiable causes for not meeting the otherwise applicable 180 day deadline.

In order to address the Board's concerns regarding waiver requests within 21 days of the expiration date, the Agency would propose requiring that a permittee file a waiver request at least 60 days prior to the expiration date of the permit. This timeframe would allow the Agency to process such a waiver request, and if denied, allow the permittee time to file an appeal with the Board. It should be noted that a permittee may file an application at any time, regardless of the status of a waiver request.

In order to address the concerns expressed in comments number 17 and 19, the Agency proposes the following language for Section 309.104 (a)(1)(B):

- (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, and the applicant submits an application within the timeframe listed in the waiver request. Such a waiver a request for a waiver must include the permittee's causes and/or justification justifiable causes for not meeting the 180 day timeframe.

A waiver of the 180 day submittal requirement must be filed a minimum of 60 days prior to expiration of the permit, and shall include the date by which the permittee will submit the application.

- (C) The Agency shall not grant a waiver for applications to be submitted later than the expiration date of the existing permit.
- (D) Any Agency decision to deny a waiver request, must be made within 21 days of receipt of the waiver request.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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