

ILLINOIS POLLUTION CONTROL BOARD
November 5, 2015

IN THE MATTER OF:)
)
WATER POLLUTION: PROPOSED) R15-24
AMENDMENTS TO 35 ILL. ADM. CODE) (Rulemaking - Water)
PART 309)

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by G.M. Keenan):

INTRODUCTION

On June 1, 2015, the Illinois Environmental Protection Agency (IEPA) proposed to amend Part 309 of the Board’s water pollution regulations (35 Ill. Adm. Code 309), which concerns water pollution permits. IEPA also filed reasons to accept the proposal and a motion for acceptance.

Part 309 comprises two subparts: Subpart A and Subpart B. Subpart A concerns permits issued under the Federal National Pollutant Discharge Elimination System (NPDES) program (which Illinois has the authority to administer). Subpart B concerns other state water pollution permits, *i.e.*, those that Illinois issues independent of the NPDES program. IEPA proposes to amend both subparts.

IEPA proposes to amend only one subsection in Subpart A: 35 Ill. Adm. Code 309.104, which concerns administrative continuance of NPDES permits. If the expiration date of a NPDES permit passes while IEPA is in the process of considering a permit renewal application, the existing permit remains in effect—is administratively continued—until IEPA completes its review of the renewal application. Under existing Board rules, a permit may only be administratively continued if the permit holder applies for renewal 180 days or more before the existing permit expires. The proposed revision would allow IEPA to waive this requirement and accept a renewal application at any time up to the expiration date of the existing permit and administratively continue the existing permit.

IEPA proposes to amend several subsections in Subpart B. The proposed amendments make explicit certain permitting exemptions that IEPA states already exist in practice, create new exemptions for certain facilities that IEPA states do not warrant technical review, allow IEPA to grant lifetime operating permits for certain facilities that IEPA states pose no likelihood of violating applicable water quality standards, and make other modifications aimed at streamlining the permitting process.

Today, the Board proposes the amendments, with the changes noted below, for first notice publication in the *Illinois Register*.

PROCEDURAL BACKGROUND

On June 1, 2015, IEPA filed a proposal (Prop.) to amend Part 309 of the Board's water pollution rules. A Statement of Reasons (SR) accompanied the proposal. *See* 35 Ill. Adm. Code 102.202 (Proposal Contents for Regulations of General Applicability). On June 4, 2015, the Board accepted the proposal for hearing. On June 29, 2015, the hearing officer issued an order scheduling two hearings: the first on August 25, 2015 in Chicago and the second on September 24, 2015 in Springfield. A hearing office order issued on September 14, 2015 changed the second hearing's format to a video conference between Chicago and Springfield.

On July 24, 2015, IEPA filed the testimony of Darin LeCrone in preparation for the first hearing. On August 13, 2015, the Illinois Environmental Regulatory Group (IERG) filed questions for IEPA (IERG Questions). The Board also posed questions in a hearing officer order issued on August 14, 2015 (Aug. Bd. Questions). The first hearing took place as scheduled and the Board received the transcript on August 31, 2015 (Tr. 1). During the hearing, the hearing officer admitted into the record three exhibits, the pre-filed testimony of Darin LeCrone (Exh. 1), IEPA's written responses to the Board's questions (Exh. 2), and IEPA's written responses to IERG's questions (Exh. 3).

IEPA did not file testimony in preparation for the second hearing. The Board again posed questions to IEPA before the second hearing in a hearing officer order dated September 17, 2015 (Sept. Bd. Questions). The second hearing also took place as scheduled and the Board received the transcript on October 1, 2015 (Tr. 2). IEPA answered these questions at the hearing and also filed its answers in written form on September 24, 2015 (Sept. IEPA Responses). At the hearing, the hearing officer set a deadline of October 15, 2015 to file post-hearing comments. IERG filed post-hearing comments on October 15, 2015 (IERG Comments). The Board did not receive post-hearing comments from IEPA.

STATUTORY AND REGULATORY BACKGROUND OF PROPOSAL

Subpart A

Federal Clean Water Act

The Federal Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* (2014), reduces direct discharges of pollutants into waterways, establishes ambient water quality standards, and manages polluted runoff in order to restore and maintain the chemical, physical, and biological integrity of the nation's waters to support wildlife and water recreation. The Federal Water Pollution Control Act, enacted in 1948, became commonly known as the Clean Water Act after a significant reorganization in 1972 and amendments in 1977.

NPDES Permit Program

NPDES permits contain the Clean Water Act's enforceable requirements for point source dischargers into the nation's surface waters. 33 U.S.C. § 1342(a)(1) (2014). Illinois was delegated authority to administer its own NPDES program; in states where authority has not been

delegated, the U.S. Environmental Protection Agency (USEPA) issues and enforces NPDES permits. *See* 42 Fed. Reg. 58,566 (Nov. 10, 1977).

NPDES permits “are for fixed terms not exceeding five years.” 33 U.S.C. § 1342(b)(1)(B) (2014). However, if a permit holder applies to renew a permit and the regulator has not resolved the request before the original permit expires, the original remains effective until the renewal application has been acted upon. This ‘administrative continuance’ is required by the Federal Administrative Procedure Act, 5 U.S.C. § 558(c) (2014), is reflected in Federal NPDES regulations, 40 C.F.R. § 122.6(a) (2014), and applies to NPDES permits issued by states. *See also* Natural Resources Def. Council v. USEPA, 859 F.2d 156, 211-15 (D.C. Cir. 1988).

In order for a permit to be administratively continued, the permit holder must timely apply for renewal. Federal regulations state that a renewal application is timely when filed at least 180 days before the existing permit expires or, with permission of the regulator, at a later date. 40 C.F.R. § 122.21(d) (2014).

Illinois Environmental Protection Act

The Illinois Environmental Protection Act states that the Board shall adopt regulations “necessary or appropriate” for Illinois to implement the NPDES program, 415 ILCS 5/13(b)(1) (2014), but this provision does not strictly limit the Board’s actions to the bare minimum necessary to obtain USEPA approval. Instead, the statute grants the Board the broader authority to adopt regulations that help achieve “the true goal of the NPDES permit system.” U.S. Steel Corp. v. IPCB, 52 Ill. App. 3d 1, 4, 367 N.E.2d 327, 330-331 (2d Dist. 1977).

35 Ill. Adm. Code 309 Subpart A

The Board originally adopted Section 309.104 in 1974, In the Matter of National Pollutant Discharge Elimination System Regulations, R73-11 and R73-12 (consol.) slip op. at 11 (Dec. 5, 1974), and most recently revised that provision in 1980, In the Matter of Amendments to Rule 902 of Chapter 3: Water Pollution, R79-13 slip op. at 4 (May 15, 1980). The existing provision allows permit holders to obtain an administrative continuance only when a renewal application is filed at least 180 days before the permit expires.

IEPA Proposal

IEPA proposes to add a waiver provision to Section 309.104, allowing a permit holder to obtain an administrative continuance when there are circumstances preventing the permit holder from filing a renewal application 180 days before permit expiry. SR at 6-8. These circumstances are examined in greater detail in the section-by-section summary below. The existing provision does not give permit holders in Illinois the opportunity to obtain administrative continuance if a renewal application is filed less than 180 days prior to expiration of the original permit. The proposal will newly provide permit holders the opportunity to file renewal applications at later dates while triggering administrative continuance of the existing permit during IEPA’s review of the renewal application. As described above, Federal rules allow regulators to grant such permission. 40 C.F.R. § 122.21(d) (2014).

Subpart B

Illinois Environmental Protection Act

The Illinois Environmental Protection Act grants the Board authority to adopt standards “for the issuance of permits for construction, installation, or operation of any equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution...” 415 ILCS 5/13(a)(3) (2014). These standards adopted under § 13(a) are independent of those found in the NPDES program discussed above.

35 Ill Adm. Code 309 Subpart B

The Board originally adopted Subpart B in R71-14, In the Matter of Water Quality Standards Revisions (Mar. 7, 1972) (consol. with R70-8 and R71-20). The subpart generally concerns permits for “construction, modification, and operation of treatment works, pretreatment works, sewers, wastewater sources, and other discharges which are not required to have NPDES permits.” 35 Ill. Adm. Code 309.201 (2014).

IEPA Proposal

IEPA’s proposed revisions to Subpart B aim to streamline the state’s water permitting process in several different ways. First, IEPA proposed to codify certain exemptions that, it states, are presently applied in practice but are not explicit in the existing regulations. SR at 9-12. IEPA also proposed to allow issuance of lifetime permits for sewer or pretreatment works. Under existing regulations, these types of facilities may only be given five-year permits. SR 12-14. Lastly, IEPA proposed to modify a subsection that outlines requirements for modifications to permits to also apply its provisions to renewal of permits. SR at 14-15. Each of these proposals is examined in detail below.

SECTION-BY-SECTION SUMMARY OF IEPA PROPOSAL

Subpart A

Section 309.104

Under the existing provision, in order for the holder of an NPDES permit to obtain an administrative continuance after the permit’s expiration date, the permit holder must apply for renewal of that permit 180 days or more before the expiration date. The existing provision does not contain any other explicit avenues for a permit holder to obtain an administrative continuance. 35 Ill. Adm. Code 309.104(a) (2014).

IEPA’s original proposal would allow the permit holder to obtain an administrative continuance with a “timely” renewal application. SR at 7. This new approach would retain the existing provision’s general requirement to submit a renewal application 180 days or more before a permit’s expiration date, but would also afford permit holders the opportunity to submit

a request to waive the 180 day requirement. If IEPA grants the waiver request, the permit holder may submit a renewal application less than 180 days before the permit expiration date and still receive an administrative continuance. This approach, according to IEPA, follows the example of federal NPDES regulations. *Id.*, citing 40 C.F.R. 122.6(a)(1), 122.21(d)(1) (2014).

The timing and content of the waiver request was discussed at hearing. IEPA explained that a waiver request can be made at any time before the permit expiration date, including less than 180 days before the expiration date. Exh. 2 at ¶ 5. The waiver request must include a new renewal application due date. Tr. 1 at 12:7-24. IEPA may not accept a permit renewal application submitted after the original permit expires. Exh. 2 at 1. The Board has added a provision to the proposed rule making clear that IEPA has 21 days after receiving a waiver request to deny it; otherwise the waiver is deemed granted. This determination may be appealed. *See* Exh. 2 at ¶¶ 7, 9.

IEPA also discussed how it would review the legitimacy of waiver requests. IEPA stated that it would grant a waiver when a permit holder has a legitimate difficulty filing a renewal application 180 days before permit expiry. Legitimate difficulties include intermittent discharges, a change in personnel at the facility, or a change in corporate ownership. SR at 7-8. Waiver requests not made in good faith or without justification would not be granted. *Id.* IEPA accepted a revision to the proposal suggested by the Board to issue waivers only for “justifiable causes.” IEPA Response to Sept. Bd. Questions at 1.

The Board observed ambiguity in the regulatory language that IEPA originally proposed and suggested revisions in order to make IEPA’s intent, as described above, explicit. Aug. Bd. Questions at ¶1, Sept. Bd. Questions at ¶ 17. In response, IEPA accepted and proposed alternate language that did not modify the substance of the rule. Exh. 2 at 1, IEPA Response to Sept. Bd. Questions at 1-3. The Board accepts the alternate language IEPA proposed.

Subpart B

Section 309.201

The proposal’s revisions to Section 309.201 explicitly exempt discharges from a pretreatment system approved by IEPA, discharges from a pretreatment system permitted by USEPA, and discharges authorized by a Publicly Owned Treatment Works (POTW) with a pretreatment program approved by either IEPA or USEPA discharges from Subpart B’s operating permit requirement. SR at 9-10. IEPA states that making these exemptions explicit only clarifies existing practice and does not newly exempt discharges that previously required permits. *Id.* IEPA accepted the Board’s revisions clarifying the rule language without altering its substance. Exh. 2 at ¶ 10.

Section 309.202

The proposal explicitly requires groundwater remediation systems “to obtain a construction permit for new sewer discharges to a publicly owned or publicly regulated sanitary or combined sewer.” SR at 10. This provision only clarifies that a pretreatment system

associated with groundwater remediation does not require a construction permit and is not a new requirement.

The proposal also exempts cooling towers, oil/water separators, and pH adjustment facilities from construction permit requirements because, according to IEPA, technical review of these facilities would not create any environmental benefit. SR at 10-11. IERG proposed to exempt reverse osmosis systems, multi-media filtration systems, and ion exchange systems. IERG Questions at 1-3. IERG argued that these facilities similarly need not go through technical review. *Id.* IEPA partially agreed and modified its proposal to exempt those systems, but only where used for industrial source waters. Those systems are not exempt when they are used for purposes other than raw or source water treatment. Exh. 3 at ¶ 1. IEPA also accepted IERG's proposal to explicitly exempt pipes, pumps, and appurtenances associated with exempt equipment. Exh 3 at ¶ 2. The Board incorporates IERG's proposed revisions with IEPA's caveats into the rule.

IEPA accepted the Board's proposed revisions to clarify rule language without altering the rule's substance by specifying that a wastewater source that discharges to a publicly owned or publicly regulated sanitary or combined sewer requires a construction permit. Exh. 2 at ¶¶ 11, 14.Tr 1 at 16.

Section 309.203

The proposal requires an operating permit for those pretreatment works that require a construction permit under Section 309.202. This requirement was erroneously omitted from the existing regulation. SR at 11.

The proposal also exempts discharges at new or modified sources covered by a pretreatment permit issued by IEPA or USEPA from operating permit requirements. Similarly, it exempts such discharges authorized by a POTW with an agency-approved pretreatment program. IEPA argues that requiring such a permit would be duplicative. SR at 11-12.

Section 309.204

The proposal exempts discharges at existing pretreatment sources from operating permit requirements if they are already covered by a permit as described in the summary to Section 309.203. SR at 12.

The proposal also exempts wastewater hauled directly to a POTW from operating permit requirements. This amendment, according to IEPA, clarifies its interpretation of the previous regulations and does not add a new exemption. *Id.*

Section 309.242

The proposal allows sewers or pretreatment works to obtain operating permits that last for the entire lifetime of the facility. Existing regulations only allow such operating permits to last for five years. IEPA states this approach is appropriate because discharges from these

facilities are not likely to violate applicable pretreatment standards. SR at 13. All other operating permits continue to last for five years. SR at 12-13. The proposal preserves IEPA's authority to reopen a lifetime permit where circumstances warrant, such as a change of rules. Tr. 1 at 10:7-11:16.

Additional proposed provisions outline how IEPA terminates a construction or operating permit, either at a permit holder's request or for nonexistent or inoperative facilities. SR at 14.

Section 309.263

The existing Section 309.263 outlined how permit holders can modify permits. The proposal extends this section to describe how permit holders can renew permits. The proposal also specifies circumstances where a permit holder must seek a permit modification. The existing regulations are unclear on this issue. Lastly, the proposal adds provisions outlining when IEPA may require a permit modification or renewal. SR at 14-15.

BOARD DISCUSSION

Subpart A: Waiver of 180-Day Deadline

In response to Board questions concerning Section 309.104, IEPA described several circumstances where submitting permit renewal applications less than 180 days before the original permit's expiration date would be warranted. Exh. 2 at ¶ 4; Sept. IEPA Responses at ¶ 18. The Board agrees that it is appropriate to grant waivers to permit holders facing unusually difficult circumstances. At the same time, most permit holders should be expected to meet the established deadline for a renewal application in most instances. Case law interpreting the Federal Administrative Procedure Act, the statute that underlies administrative continuances, supports this position, *e.g.*, Kay v. Fed. Communications Comm'n, 525 F.3d 1277 (D.C. Cir. 2008).

The 180-day deadline for submitting permit renewal applications should continue to be the standard. The newly proposed waiver provision should not lead every permittee to seek a waiver at the slightest inconvenience. To this end, IEPA proposed to modify the amended Section 309.104 to stipulate that IEPA would only grant waivers for "justifiable causes." Sept. 24 IEPA Responses at ¶ 18. To add further assurance that permit holders only seek waivers when they cannot reasonably meet the original deadline, at first notice the Board proposes an amended provision that allows waivers for "reasonably justifiable causes."

The Board otherwise proposes to adopt the amendment to Section 309.104 as proposed by IEPA, modified for procedural clarity as described in the section-by-section summary above.

Subpart B

The Board holds that the newly added exemptions to Subpart B permit requirements either clarify existing practice or are technologically justified, as described in the section-by-section summary above. The lifetime permit provision added to Section 309.242 is likewise

justifiable. For these reasons, the Board will propose to adopt IEPA's proposed amendments to Subpart B with the minor non-substantive modifications for clarity of language described above.

Technical Feasibility and Economic Reasonableness

As required by Section 27(b) of the Act (415 ILCS 5/27(b) (2014)), the Board's June 30, 2015 letter requested that the Department of Commerce and Economic Opportunity (DCEO) determine by July 10, 2015 whether it would conduct an economic impact study of the proposed amendments. The Board has received no response from DCEO to this request. During each hearing, the hearing officer afforded those present an opportunity to address the Board's request for a study and DCEO's lack of a response. Tr. 1 at 28:2-5; Tr. 2 at 20:2-24. No participant offered testimony or comment on the request or lack of response. *Id.*

The rule revisions are intended to reduce the administrative burden of permit requirements and do not impose new technical requirements or "add any additional costs to the regulated community." SR at 15-16. For the same reasons, IEPA argues that the rules are economically reasonable. SR at 15-16.

The Board has reviewed the record in this proceeding on the issues of technical feasibility and economic reasonableness. The Board finds that IEPA's proposal, with the changes described above, implements statutory and regulatory revisions and amends the Board's public water supply rules in a manner that is technically feasible and economically reasonable.

Conclusion

The Board proposes for first notice amendments to Part 309 of the Board's water pollution regulations. These proposed amendments will be published in an upcoming *Illinois Register*. Anyone may file a comment with the Board for at least 45 days following publication in the *Illinois Register*, regardless of whether the person has already filed a public comment. 5 ILCS 100/5-40(b) (2014).

The Board encourages public comments on the proposed amendments. The docket number for this rulemaking, R15-24, should be indicated on the public comment. Public comments may be filed with the Clerk of the Board at the following address:

Pollution Control Board
 John Therriault, Clerk
 James R. Thompson Center
 100 W. Randolph Street, Suite 11-500
 Chicago, IL 60601

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website, www.ipcb.state.il.us. Questions about electronic filing should be directed to the Clerk's Office at (312) 814-3629. Public comments and all other filings with the Clerk must be served on the hearing officer and on those persons on the Service List for this rulemaking. The current version of the Service List for R15-24 is available on COOL.

ORDER

The Board directs the Clerk to publish for first notice the following proposed amendments to Part 309 the Board's water pollution regulations in the *Illinois Register*. Proposed additions to Part 309 are underlined and proposed deletions are stricken.

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

PART 309
PERMITS

SUBPART A: NPDES PERMITS

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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	<u>Duration 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	<u>Modification 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; amended in R08-09(D) at 39 Ill. Reg. 9433, effective June 26, 2015; amended in R15-24 at 40 Ill. Reg. _____, effective _____.

SUBPART A: NPDES PERMITS

Section 309.104 Renewal

- a) Any permittee who wishes to continue to discharge after the expiration date of the NPDES Permit ~~shall~~must 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 a request for a waiver in writing to the Agency, 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 request must include the permittee's reasonably 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.
- 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 ~~must~~ 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 40 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 the federal Clean Water Act; or
- 3) Discharges for which an authorization to discharge has been issued by a publicly owned treatment works (POTW) with 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 40 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 that discharges 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, 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.
- de) 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, unless exempt pursuant to Section 309.202(c) 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 40 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~~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 40 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~~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 40 Ill. Reg. _____, effective _____)

Section 309.242 Duration and Termination of Permits Issued Under Subpart B

- a) Construction permits for sewers and wastewater sources ~~must~~ shall require that construction be completed within two years. Construction permits for treatment works and pretreatment works ~~must~~ 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 ~~No~~ 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 must 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 must 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 must 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 must terminate 60 days after the date of notification unless the permittee communicates the desire for the permit to stay in effect.

(Source: Amended at 40 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 40 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 5, 2015, by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board