

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL ADM. CODE) R18-24
) (Rulemaking- Water)
SUBTITLE D: MINE RELATED)
WATER POLLUTION)

NOTICE OF FILING

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board ILLINOIS EPA'S COMMENTS, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/Stefanie N. Diers
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Date: November 29, 2018

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ILLINOIS EPA’S COMMENTS

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, ("Illinois EPA" or "Agency") by and through its counsel, and pursuant to an Illinois Pollution Control Board ("Board") Order dated July 26, 2018, submits the following comments in the above captioned rulemaking.

I. Introduction

On January 10, 2018, the Agency proposed revision to Subtitle D. The revisions proposed were clean-up amendments to remove obsolete, repetitive, confusing or otherwise unnecessary language only. The Board also stated in its Order of July 26, 2018, they too were reviewing its rules to identify obsolete, repetitive, confusing, or otherwise unnecessary language. In its July 26, 2018 Order, the Board proposed additional amendments to Subtitle D and asked several questions concerning the Agency’s proposal. These comments will address the specific questions posed by the Board as well as the proposed amendments generally. The Agency based its review of the Board’s proposal by reviewing the language proposed and focusing only on obsolete, repetitive, confusing or otherwise unnecessary and non-substantive changes. The Agency did not propose and does not support any substantive changes to Subtitle D at this time.

II. Response to Board Questions

A) Section 404.106

- 1) Does IEPA allow or require an applicant to submit a permit application electronically, or does IEPA require an applicant to submit only by mail or hand-delivery?

Agency Response: The Agency currently does not accept electronic submittals of permit applications for coal mine related facilities seeking an NPDES permit.

- 2) If electronic communication is acceptable, please comment on any further revision of Section 404.106 that IEPA wishes to purpose.

Agency Response: SEE ABOVE RESONSE.

- 3) IEPA proposes updating this Section to be consistent with its current practice and its propose to 35 Ill. Adm. Code 309.223. Please comment on IEPA's current practice and describe how IEPA's proposal aligns with Section 404.106 and Section 309.223 with one another.

Agency Response: The Agency's current practice is to allow for an application to be mailed or delivered to the address designated by the Agency. With coal mine permits, many of the facilities prefer to hand deliver their permit applications. Therefore, these two sections are consistent with the current practice.

B) Section 405.104(b)(10)

- 4) Does the IEPA rely on a specific classification or list of classifications for this purpose? If so, please comment on any further revision-listing one or more classifications-that IEPA wishes to propose?

Agency Response: No, the Agency does not. After reviewing the language, the Agency proposes the following:

10) The general characteristics of the mine refuse and spoil, ~~according to the classification and scheme set for in the Agency Guidance Document or any other general soil classification system acceptable by the Agency.~~

C) Section 406.202

- 5) Is this Section necessary for the enforceability of those standards? If not, should they be repealed? If so, should it be revised?

Agency Response: Agency believes his section is necessary and would like to retain it. This section has historically been part of the regulations and provides a reminder that mining facilities cannot violate water quality standards. Also, this provision and the identical one found at 35 Ill. Adm. Code 304.105, work to preclude a permit holder from utilizing the “permit as a shield” argument to defend against a water quality violation allegation by countering that its discharge complied with its permit. This provision maintains the “cornerstone” provision of the Clean Water Act, which states that water quality standards must be met at all times.

III. Proposed Amendments by the Board

In its July 26, 2018 Order, the Board also proposed to remove obsolete, repetitive, confusing or otherwise unnecessary rule language. The Agency believes that some of the Board’s proposed amendments go beyond what the Agency proposed, leads to confusion or changes the meaning of the Sections, and therefore should not adopted at this time. The Agency provides the following comments with respect to the amendments proposed by the Board:

Part 401

Section 401.102- The Agency does ask the Board to retain the original language of “the preparation, operation and abandonment”. These terms are historical terms in mining and represent the phases a mine goes through. Therefore, those terms should not be changed.

Part 402

Section 402.101- The Agency does have concerns about some of the proposed amendments in Section 402.101. The Agency notes the following:

- (a) “base flow”; “but is not limited to”, should remain in the definition. This is a substantive change to the regulatory language and the language is needed in case the Agency needs more information.
- (b) “coal transfer facility or coal storage yard”, “but in not limited to” should remain in the definition. This is a substantive change to the regulatory language and the language is needed in case the Agency needs more information.

- (c) “mine discharge”- “but are not limited to” should stay in both sentences where struck by the Board. This is a substantive change to the regulatory language and the language is needed in case the Agency needs more information.
- (d) “mine refuse”- keep “preparation” to be consistent with how the term used in mining.
- (e) “mine refuse area”- Agency is unsure why the Board struck “land”.
- (f) “mine related facility”- “but is not limited to” should remain in the definition. This is a substantive change to the regulatory language and the language is needed in case the Agency needs more information.
- (g) “mining activities”- “but is not limited to” should remain in the definition. This is a substantive change to the regulatory language and the language is needed in case the Agency needs more information.
- (h) “slurry”- The “and” should not be struck between “fine” and “clays”. The original language is the correct language when referring to “fines and clays”.

Part 403

Section 403.103- The Agency proposes that in Section 403.103(c), that “supplemental” be deleted and replaced with “modified”. Modified is the correct term.

Section 403.104- The Agency proposes the following change to Section 403.104(b):

Strike: “~~No condition authorizing modification is required if the modification would not violate the existing permit conditions.~~ **Replace with the following**

language: “If the modification is already covered under the existing permit condition, a separate authorization from the Agency is not required”.

Part 404

Authority note- This note should be as the Agency proposed.

Section 404.100-The Agency is unsure why the Board is proposing to repeal this Section. The preamble was kept in Section 403.100. Therefore, the Agency believes this Section should remain in the regulations.

Section 404.101-The Agency believes the language should stay as proposed by the Agency in 404.101(a), so the difference between an operating and construction permit is clear.

Section 404.103- The “but not limited to” in Subsection (a)(2) should not be struck. This is a substantive change to the regulatory language and the language is needed in case the Agency needs more information.

Section 404.106- With respect to Subsection (b), the Agency suggest the following changes to the Board’s proposed language since the permit applications could be delivered to the Agency’s Springfield or Marion office:

(b) Any application or revised application hand delivered to the Agency must be delivered to an authorized employee of the ~~mine~~ Agency’s permit section or ~~of~~ the Agency’s Mine Pollution Control Program, and the authorized employee must provide the applicant with a delivery receipt.

Section 404.108- The “but not limited to” in (b) should not be struck. This is a substantive change to the regulatory language and the language is needed in case the Agency needs more information.

Part 405

Section 405.104- “Total dissolved solids” should be stricken in Subsection (b)(14). The Agency suggests the “specify” be changed to “require” in Subsection (c).

Section 405.106- Subsection (g) has two g’s. The last Subsection (g) should be changed to Subsection (h).

Section 405.110- The Board has proposed changing “cessation” to “stopping” in Subsections (a)(2) and (b). The Agency disagrees with these amendments. “Cessation” is the proper term in mining and keeping cessation is consistent with the name of this Section.

Section 405.111- The Agency disagrees with striking in Subsection (a) “becoming aware of”. This language should not be deleted from the rules because one could not report until becoming aware of the emergency situation. Also, one could argue this is a substantive change to the regulatory language and is not appropriate at this time. Therefore, the Agency asks that “becoming aware of” remain in the regulations.

Section 405.113- The Agency disagrees with striking “shall” and changing it to “may”. This proposed change will completely alter the meaning of the sentence because no portion of the affected area can be outside of the permit area. Therefore, “shall” is the proper term to have in this Section.

Part 406

The Agency did not propose any amendments to this Section and respectfully requests no amendments are made at this time. The Agency is also concerned that the proposed amendments would cause inconsistency and confusion with Part 304. However, if the Board moves forward with its proposed amendments the Agency provides the following comments:

Section 406.102- In Subsection (b), the Agency is unsure what is meant by “assist the Agency”. The Agency proposes that this language be struck from the proposal. In Subsection (c), “point of access” should remain in the regulations. It provides clearer guidance as to where the sample must be taken. In Subsection (d)(1), the Agency proposes leaving “occurring” in the regulations.

Section 406.105- The Agency is concerned with the addition of the phrase “different facility” and how the meaning of the sentence is being changed by using these terms. The Agency proposes that “any facility” should remain in the regulations.

Section 406.106- The Agency proposes the STORET numbers be stricken from the regulations.

Section 406.109- The Agency proposes the STORET numbers be stricken.

Section 406.110- The Agency proposes that the STORET numbers be stricken.

Section 406.202 -See previous comments from above in Section II Responses to the Board.

Section 406.205-The “but not limited to” in Subsection (a)(3) should not be struck. This is a substantive change to the regulatory language and the language is needed in case the Agency needs more information.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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CERTIFICATE OF SERVICE

Stefanie N. Diers, Assistant Counsel for the Illinois EPA, herein certifies that she has served a copy of the foregoing NOTICE OF FILING and ILLINOIS EPA'S COMMENTS upon persons listed on the Service List, by electronic service on sent to the email addresses designated below on November 29, 2018.

/s/Stefanie N. Diers
Stefanie N. Diers

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