

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	
AMENDMENTS TO 35 ILL. ADM. CODE	)	R18-23
SUBTITLE C: WATER- RELATED	)	Rulemaking - Water
POLLUTION	)	

**NOTICE OF FILING**

TO: See Service List

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

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Nicholas Kondelis  
Nicholas Kondelis  
Assistant Counsel  
Division of Legal Counsel

DATED: June 22, 2022

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**ILLINOIS EPA’S FIRST NOTICE COMMENTS**

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, ("Illinois EPA" or "Agency") by and through its counsel and hereby submits its first notice comments.

**I. Background**

On January 10, 2018, the Agency filed Clean-Up Amendments to various portions of Subtitle C, 35 Ill. Adm. Code Parts 301-310, 312. On November 4, 2021, the Board proposed amendments to Subtitle C for public comment and issued a list of questions to the Agency in response. On December 30, 2021, the Agency filed its answers to the Board’s questions. The Agency did not propose and does not support any substantive changes to Subtitle C at this time.

The Board held its first hearing in this matter on January 6, 2022. A second hearing was scheduled for February 3, 2022, but the hearing was cancelled due to severe winter weather and a weather-related disaster proclamation by the Governor. Said second hearing was rescheduled to March 17, 2022. On March 17, 2022, the second hearing was held, and the Board ordered the Agency to submit its Post-Hearing Comments on or before April 7, 2022. On April 5, 2022, the Agency filed its post-hearing comments. On April 7, 2022, the Board issued its first-notice opinion and order. On May 13, 2022, the Board’s first notice opinion and order was published in *The Illinois Register*. The Agency now submits its first notice comments to the Board.

## II. Agency's First Notice Comments

### PART 301

#### **Section 301.106(b):**

**Agency Comment:** The 2005, 21st edition, of Standard Methods for the Examination of Water and Wastewater, written by the American Public Health Association, should be replaced by the most recent version, which is the following: Standard Methods for the Examination of Water and Wastewater, 23<sup>rd</sup> Edition, 2017.

#### **Section 301.106(c):**

**Agency Comment:** The Board's revised incorporations are acceptable to the Agency.

#### **Section 301.260:**

**Agency Comment:** The Board's cross-reference to Section 306.102 is acceptable to the Agency.

#### **Section 301.340:**

**Agency Comment:** The Board's revision of the definition of "Pollutant", which includes a cross-reference to IDNR regulations, is acceptable to the Agency.

### PART 302

#### **Section 302.102(d):**

**Agency Comment:** In order to maintain consistency with the Board's revisions to Section 302.102(e), the beginning of Section 302.102(d) should read as follows: "Under Pursuant to the procedures of Section 39 of the Act....."

#### **Section 302.211:**

**Agency Comment:** With regard to Section 302.211(i)(4), there are two references to "subsection (j)(3)". Each one should be changed to: "subsection (i)(3)."

#### **Section 302.212**

**Agency Comment:** The Board should retain "(as N)" in subsections (a) and (b).

**Section 302.407**

**Agency Comment:** Since the chloride standard in subsection (g)(3) is now in effect, that standard should be added to the standards already listed in subsection (g)(1). In addition, Section 302.407(f) should be written in a table format, similar to what is contained in Section 302.407(g).

**Section 302.408**

**Agency Comment:** Since the more stringent standards in subsections (c) through (i) are now in effect, the second sentence of subsection (b) should be removed.

**Section 302.521**

**Agency Comment:** Given the reference to 40 CFR 25 in subsection (a)(5), that federal regulation should be incorporated by reference in Section 301.106.

**Section 302.530**

**Agency Comment:** The Agency recommends that Section 302.530 only contain the following provision: No mixing shall be allowed for BCCs. All other provisions of Section 302.530 should be deleted. The Agency is not aware of any mixing zones for BCCs in the Lake Michigan Basin.

**Section 302.535**

**Agency Comment:** The designation “(as N)” should be retained, as suggested by subsection (c) and the key to its equation.

**Section 302.648**

**Agency Comment:** Additional clarification of this Section is unnecessary.

**Section 302. Appendix A**

**Agency Comment:** The Agency has no objection to the Board’s proposed repeal of Appendix A.

**Section 302. Appendix B**

**Agency Comment:** The Agency has no objection to the Board’s proposed repeal of Appendix B.

**PART 303**

**Section 303.322:**

**Agency Comment:** The site-specific standard referred to in this Section is no longer necessary because the toe drains no longer discharge to the unnamed tributary of the Vermillion River. Therefore, the Agency recommends that this Section be deleted in its entirety since it is now obsolete.

**Section 303.445:**

**Agency Comment:** Since the total dissolved solids standard has been replaced by a chloride and sulfate standard for the “secondary contact and indigenous aquatic life use” and general use waters, this Section is now obsolete and therefore the Agency proposes that this Section be deleted in its entirety.

**Section 303.446**

**Agency Comment:** The Agency has proposed the removal of subsections (b), (c), and (d) of 35 Ill. Adm. Code 303.446 because the relief granted (4.5 mg/L, 1.6 ml/L, and 1.3 mg/L) was below the acute and chronic water quality standard for boron, and therefore the relief is not needed. The Agency proposes to retain subsection (a) because the relief granted (11.0 mg/L) was less than the acute water quality standard of 40.1 mg/L, but above the chronic water quality standard of 7.6 mg/L. The Agency does not have sufficient information to determine if relief is needed to meet the chronic water quality standard.

**Section 303.353**

**Agency Comment:** With regard to subsection (b), the Agency proposes to insert a space between the words “total” and “concentration” in the second sentence.

**Appendix A:**

**Agency Comment:** The Agency has no objection to the Board’s proposed repeal of Appendix A in Part 303.

**Appendix B:**

**Agency Comment:** The Agency has no objection to the Board’s proposed repeal of Appendix B in Part 303.

**PART 309**

**Section 309.114:**

**Agency Comment:** Under 40 CFR 124.59, the Agency is required to send a copy of the fact sheet to the U.S. Army Corp. of Engineers, as well as to other federal agencies. Therefore, The Agency proposes to modify the Board's amendments to Section 309.114(c) as follows:

~~Unless otherwise agreed, in accordance with 40 CFR 124.34(c), send a copy of the fact sheet if one has been prepared, to the appropriate District Engineer of the Army of Engineers, for discharges (other than minor discharges) into navigable waters.~~

“Unless otherwise waived, and in accordance with 40 CFR 124.59, 40 CFR 124.10(c)(1)(iii) and 40 CFR 124.10(c)(1)(iv), send a copy of the public notice and a copy of the fact sheet for NPDES Permit applications to the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, to any other federal or state agency with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, State Historic Preservation Offices, including any affected States (Indian Tribes), and provide the agencies an opportunity to respond, comment, or request a public hearing under 35 Ill. Adm. Code 309.115-309.119. The recipient agencies must also include the following:

- 1) The agency responsible for preparing ~~the preparation~~ an approved plan under Section 208(b) of the CWA, and
- 2) The State or interstate agency responsible for preparing ~~the preparation~~ of a plan under an approved, continuous planning process under Section 303(e) of the CWA.”

**Section 309.183:**

**Agency Comment:** The Board's amendments to Section 309.183(b) form an incomplete sentence. The Agency recommends the following revisions: “Under subsection (a), the Agency must not extend a final compliance date more than a total of 90 days as originally contained in the permit.”

**Section 309.202:**

**Agency Comment:** The Board's amendment to the first line in Section 309.202(c) is grammatically incorrect. The Agency proposes the following instead: “Construction permits are not required for the following:”

Wherefore, the Agency requests the Board accept its First Notice Comments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Nicholas Kondelis  
Nicholas Kondelis  
Assistant Counsel  
Division of Legal Counsel

DATE: June 22, 2022

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**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on June 22, 2022, I served true and correct copies of the ILLINOIS EPA'S FIRST NOTICE COMMENTS upon the persons and by the methods pursuant to the service list hereto attached.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/Nicholas E. Kondelis  
Nicholas E. Kondelis  
Assistant Counsel  
Division of Legal Counsel

DATED: June 22, 2022

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