

TITLE 35: ENVIRONMENTAL PROTECTION

SUBTITLE C: WATER POLLUTION

CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 351

PROCEDURES AND REQUIREMENTS FOR CONFLICT RESOLUTION
IN REVISING WATER QUALITY MANAGEMENT PLANS

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AUTHORITY: Authorized by Sections 4(m), 4(n) and 39 of the Environmental Protection Act (Ill. Rev. Stat. 1979, ch. 111 1/2, pars. 1004(m), 1004(n) and 1039) and implementing Section 303(e) of the Clean Water Act (33 U.S.C. 1313 (3)).

SOURCE: Adopted and Codified at 6 Ill. Reg. 2597, effective March 1, 1982.

SUBPART A: INTRODUCTION

<BSection 351.101 Preamble>>

Section 4(m) of the Illinois Environmental Protection Act (Ill. Rev. Stat. 1979, Ch. 111 1/2, Par. 1001 et seq.) (Act) designates the Illinois Environmental Protection Agency (Agency) as pollution control agency for the State of Illinois for all purposes of the federal Clean Water Act (33 U.S.C. 1251 et seq.). In addition, the Act specifically authorizes the Agency, for purposes of Section 303(e) of the Clean Water Act, <to engage in planning processes and activities, to develop plans in cooperation with units of local government, other state agencies and persons, and to promulgate procedural regulations for the holding of public hearings on the planning process.>> (Ill. Rev. Stat. 1979, Ch. 111 1/2, Par. 1004(n)). Section 303(e) requires Illinois to have a continuing planning process, approved by the United States Environmental Protection Agency (USEPA), resulting in Water Quality Management (WQM) Plans for all navigable waters in the state. These Plans must incorporate the elements of any areawide water quality management plan adopted under Section 208 of the Clean Water Act and must provide procedures for revision of the WQM Plans. Revisions to WQM Plans pursuant to these rules and to the Agency's continuing planning process are incorporated into the annual program plan submitted to USEPA and approved pursuant to Section 106 of the Clean Water Act.

<BSection 351.102 Purpose>>

These rules prescribe procedures and requirements for resolving conflicts

concerning point source discharges in the context of revising Illinois Water Quality Management Plans.

<BSection 351.103 Applicability>>

- a) These rules shall apply to the following revisions of WQM Plans:
 - 1) Amendments to population projections for the twenty-year planning period set forth in approved facilities plans that are greater than 10% for communities under 10,00 population or 5% for communities over 10,000 population;
 - 2) Amendments identifying new designated management agencies;
 - 3) Amendments terminating the status of designated management agencies for failure to implement the requirements of a WQM Plan;
 - 4) Amendments to Facility Planning Area boundaries;
 - 5) Amendments to include sewage treatment works not identified in a WQM Plan where a facility planning agency, designated management agency, or an areawide planning agency objects to the inclusion of the sewage treatment works within its boundaries. If there is no objection the WQM Plan shall be amended by issuance of the National Pollutant Discharge Elimination System (NPDES) permit for the treatment works;
 - 6) Other amendments where a significant degree of public interest exists to warrant the use of the conflict resolution procedures set forth in these rules. The provisions of Section 351.302 shall be considered in determining whether a significant degree of public interest exists.
- b) Unless the Director of the Agency determines otherwise, these rules shall not apply to the following revisions of WQM Plans:
 - 1) Amendments to the state Continuing Planning Process (CPP) document;
 - 2) Revisions contained in the annual program plan developed pursuant to Section 106 of the Clean Water Act or to the State/USEPA agreement;
 - 3) Revisions which update information or which bring WQM Plans into conformity with applicable laws and regulations.

<BSection 351.104 Definitions>>

- a) Unless specified otherwise, all terms shall have the meanings set forth in the Environmental Protection Act and the Clean Water Act and regulations adopted under those Acts.
- b) For purpose of these rules, the following definitions apply:

- 1) "Areawide planning agency" means an areawide planning agency identified in accordance with Section 208 of the Clean Water Act.
- 2) "Designated management agency" means a designated management agency identified in accordance with Section 208 of the Clean Water Act.
- 3) "Facility planning agency" means a facility planning agency identified in accordance with Section 201 of the Clean Water Act.

SUBPART B: PROCEDURES FOR PROPOSING REVISIONS TO WATER QUALITY MANAGEMENT PLANS

<BSection 351.201 Initiation of a Revision>>

- a) A proposal to revise a WQM Plan shall be initiated by the filing of a petition by the Agency or by a facility planning agency, designated management agency, or areawide planning agency for the area that is the subject of the proceeding. The petition shall be filed with the Agency.
- b) Since an areawide planning agency may have procedures to be followed prior to its making any recommendation on a proposed revision, Petitioners are encouraged to follow such procedures prior to or concurrently with the procedures contained in these rules.

<BSection 351.202 Requirements of a Petition>>

- a) A petition filed under these rules shall include, as applicable:
 - 1) A clear, complete and concise statement of the revision(s) sought;
 - 2) If the petition is for a planning boundary change, it shall include:
 - A) A map of the existing and proposed boundaries;
 - B) A description of the existing uses and proposed future uses of:
 - i) The geographic area which is the subject of the proposed revision, and
 - ii) The areas adjacent to the geographic area in (i).
 - 3) An assessment, with supporting factual information, of the environmental impacts which may result from the proposed revision, including existing and proposed wasteloads and

- facilities to collect, transport and treat such wasteloads;
- 4) An assessment of the present worth analysis of alternatives to the proposed revision, including on-site and off-site treatment where applicable;
 - 5) If available, written evidence of concurrence or objection by other agencies or by other persons who may be affected by the proposed revision;
 - 6) Other information requested by the Agency.
- b) The Agency will consider a petition complete when all relevant information set forth in this section has been provided.

<BSection 351.203 Service and Parties>>

- a) The Petitioner shall serve a copy of its petition, either personally or by registered or certified mail, upon each governmental agency or other person who may be adversely affected by the revision to the WQM Plan. At a minimum, service shall be made on:
 - 1) Any facility planning agency which may be affected by the revision;
 - 2) Any designated management agency responsible for point source discharge control which may be affected by the revision;
 - 3) Any areawide planning agency which may be affected by the revision; and
 - 4) Additional persons whom the Agency identifies within 10 days of receipt of the petition.
- b) Any person who may be adversely affected by the proposed revision may file with the Agency a written request to be made a party. Such request shall be made within 30 days of receipt of the petition by the Agency. The Agency may extend this period when necessary for a complete presentation of the facts and anticipated effects of the proposed change.
- c) The Agency shall notify the Petitioner of persons who have been named parties. All such parties shall be deemed respondents.
- d) All pleadings and submittals subsequent to the Petition shall be served on all parties personally or by first class mail. One copy shall be filed with the Agency with proof of service.
- e) Service by first class mail shall be presumed complete four days after mailing.

<BSection 351.204 Public Comments>>

Any person may submit written comments on a petition filed under these

rules. In making the decision on the proposed revision(s), the Agency will consider all comments received within 30 days after the filing of the petition.

SUBPART C: PUBLIC HEARINGS

<BSection 351.301 Request for Hearing>>

- a) Any person may request a public hearing on the proposed revision within 30 days of the filing of the petition. The Agency may extend this period when necessary for a complete presentation of the facts and anticipated effects of the proposed change.
- b) The request shall include a statement of the person's interest in the proceedings and of the purposes to be served by the hearing.
- c) If the Petitioner does not request a hearing in the petition, it shall be deemed a request to rule upon the petition without a hearing.

<BSection 351.302 Scheduling of Public Hearing>>

- a) The Agency shall schedule a public hearing when it determines that there exists a significant degree of public interest in the proposed revision.
- b) In making this determination, the Agency shall consider:
 - 1) The public interest as indicated by written comments and requests for hearings on the proposed revision;
 - 2) The nature of the proposed revision and its significance to the WQM plan;
 - 3) The likelihood that a public hearing will elicit relevant information which is not otherwise part of the record before the Agency.
- c) The Agency may jointly sponsor a public hearing with another agency.

<BSection 351.303 Notice of Public Hearing>>

- a) The Agency shall serve notice of the public hearing, personally or by certified or registered mail, on all parties at least 45 days prior to the date of the hearing.
- b) The notice shall include:
 - 1) Information regarding the time, location and purpose of the hearing;

- 2) A statement of the legal authority and jurisdiction under which the hearing is held;
 - 3) A concise statement of the issues to be discussed at the hearing;
 - 4) A statement that the hearing will be conducted in accordance with these rules.
- c) The Agency may provide additional notices of the hearing when the circumstances and nature of the proposed revision warrant such notice.

<BSection 351.304 Hearing Officer>>

- a) The Agency shall appoint a Hearing Officer who shall be named in any notices of the hearing.
- b) The Hearing Officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear and complete record.

<BSection 351.305 Hearing Procedures>>

- a) All witnesses shall be sworn.
- b) A party may cross-examine any witness to promote a full and fair disclosure of the facts, subject to the evidentiary requirements of these rules. The Hearing Officer may also question witnesses within the same limits.
- c) The admission of evidence shall be guided by the following provisions:
 - 1) <IThe rules of evidence and privilege, as applied in civil cases in the circuit courts of Illinois, shall be followed. However, evidence not admissible under such rules may be admitted, except where precluded by statute, if the evidence is of the type commonly relied upon by reasonable persons in the conduct of their affairs.>>
 - 2) Irrelevant, immaterial and unduly repetitious evidence shall be excluded.
 - 3) Any part of the evidence may be received in written form when the hearing will be expedited and the interests of the parties will not be prejudiced.
 - 4) Objections to evidentiary offers may be made and shall be noted in the record.
- d) <IOfficial notice may be taken of:>>
 - 1) <IMatters of which the circuit courts of Illinois may take judicial notice:>>

- 2) <IGenerally recognized technical or scientific facts within the Agency's specialized knowledge.>>

<BSection 351.306 Transcript>>

- a) Within 15 days following completion of the public hearing, the Petitioner shall furnish a transcript of the hearing to the Agency.
- b) The transcript shall be available for examination and copying by any person, subject to the Agency's rules for public access to agency information.

SUBPART D: DECISION OF THE AGENCY

<BSection 351.401 Record>>

The record shall include:

- a) All pleadings, (including all notices and responses thereto), motions and rulings;
- b) Evidence received;
- c) Matters of which official notice was taken;
- d) The hearing transcript including offers of proof, objections and rulings thereon;
- e) Any report, opinion or decision by the Hearing Officer;
- f) Memoranda or data submitted by Agency staff in their consideration of the proposed revision;
- g) Written comments received under Section 351.204 of these rules;
- h) Recommendation of the designated areawide WQM planning agency and the record supporting its recommendation.

<BSection 351.402 Decision of the Agency>>

- a) After due consideration of the record, the Agency shall make a final decision on the proposed revision to the WQM Plan.
 - 1) In making its decision, the Agency shall consider all facts and circumstances bearing upon the reasonableness of the request including, but not limited to, the environmental effects and the cost-effectiveness of achieving water quality goals.
 - 2) <IThe Agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.>>
- b) The decision may grant or deny the proposed revision, in whole or in part, and may condition the revision upon the performance or

completion of activities specified in the decision.

- c) The final decision shall be in writing. Copies of the decision shall be served on all parties personally or by registered or certified mail.

<BSection 351.403 Review of Decision of the Agency>>

Any party may request that the Regional Administrator, United States Environmental Protection Agency, Region V, review the decision of the Agency pursuant to 40 CFR 35.1517(c).

SUBPART F: APPLICABILITY OF THESE RULES TO SPECIAL CASES

<BSection 351.501 Permit Issuance>>

- a) When the Agency determines that issuance of a permit may be inconsistent with an approved WQM Plan, the Agency may request that the areawide WQM Planning Agency, if any, review the application and identify any provisions of the WQM Plan with which the facility may be inconsistent.
- b) If, after receipt of the areawide agency's evaluation, the Agency determines that an inconsistency exists, the Agency shall deny the permit and shall notify the applicant of its decision.

<BSection 351.502 Exceptions to Boundaries for Facility Planning Areas>>

For purposes of issuing permits, other than NPDES permits, the Agency may recognize exceptions to boundaries of facility planning areas without revising the approved WQM Plan in the following circumstances.

- a) When the General Assembly, by legislation, authorizes the extension of sewer service to an area outside the facility planning area established by the Agency pursuant to federal regulations; or
- b) When all of the following conditions are present:
 - 1) The exception will not significantly impact wastewater planning in any facility planning area;
 - 2) A revision would otherwise be necessary because a proposed sewer would cross a facility planning boundary; and
 - 3) The designated facility planning agency, within whose facility planning area the area to be serviced by the sewer lies, has authorized such sewer extension by permit, agreement or other written document.