

SUBTITLE D

**TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE D: MINE RELATED WATER POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD**

**PART 404  
STATE PERMITS**

**Section**

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404.APPENDIX A References to Previous Rules

AUTHORITY: Authorized by Section 27 and implementing Sections 12 and 13 of the Illinois Environmental Protection Act [415 ILCS 5].

SOURCE: Adopted at 4 Ill. Reg. 34, p. 164, effective August 7, 1980; codified at 5 Ill. Reg. 34, p. 8527; effective August 10, 1981; amended in R18-24 at 43 Ill. Reg. 11597, effective September 25, 2019.

**Section 404.100 Preamble**

Part 404 governs mining activities, including construction of mine related facilities, and establishes rules for the issuance of state permits.

**Section 404.101 Construction and Operating Permits: State Permits**

- a) Except as provided in 35 Ill. Adm. Code 404.102 and 404.103, a person must obtain:
  - 1) A construction permit before preparing land for mining activities or constructing a mine related facility that could generate refuse, result in a discharge, or potentially cause water pollution; and

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- 2) An operating permit before carrying out mining activities.
- b) The Agency may issue joint construction and operating permits. Whether a State permit is construction, operating, or joint must be determined from the document's language. The permit title is not determinative.

(Source: Amended at 43 Ill. Reg. 11597, effective September 25, 2019)

**Section 404.102 Exemption from State Permit: NPDES Holder**

- a) A permittee who holds an NPDES permit for a facility need not have a State permit for that facility.
- b) This exemption is inapplicable if the Agency ceases to administer the NPDES permit program. If this occurs, the Agency must notify permittees that State permits are required and must determine deadlines, of at least 45 days after notification, by which the Agency must receive State permit applications.

(Source: Amended at 43 Ill. Reg. 11597, effective September 25, 2019)

**Section 404.103 Exemption from State Permit: Coal Piles and Small Mines**

- a) Unless the Agency determines that the facility will cause or threaten water pollution or violate applicable regulations, the following facilities need not obtain State permits:
  - 1) Domestic retail sales yards;
  - 2) Consumer stockpiles located at the consuming facility, including power plants and steel mills; or
  - 3) Any facility where mining occurs that affects less than ten acres of land per year and does not include a coal, fluorspar, lead or zinc mine related facility.
- b) A facility operator claiming exemption under subsection (a)(3) must notify the Agency in writing of the facility's location and the basis for exemption. The exemption takes effect once the notice is mailed.
- c) If the Agency determines that a facility will cause or threaten water pollution or violate applicable regulations, or that a facility claiming exemption is not exempt, the Agency must notify the operator that a permit is required. If the Agency has determined that an exempt facility will cause or threaten water pollution or violate applicable regulations, the

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exemption continues for 45 days after notification that the facility requires a permit and during the pendency of a permit application before the Agency.

(Source: Amended at 43 Ill. Reg. 11597, effective September 25, 2019)

**Section 404.104 Applications: Deadline to Apply**

A person required to have a State permit must file an application with the Agency at least 90 days before the date the permit is required.

(Source: Amended at 43 Ill. Reg. 11597, effective September 25, 2019)

**Section 404.105 Permit Application: Signatures and Authorizations Required**

- a) If submitted by a corporation, the permit application must be signed by a principal executive officer of at least the level of vice president or his or her duly authorized representative, if the representative is responsible for the overall operation of the facility where the discharge originates.
- b) If submitted by a partnership or a sole proprietorship, the permit application must be signed by a general partner or the proprietor, respectively.
- c) For all other persons, the permit application must be signed by either a principal executive officer, ranking elected official, or other duly authorized employee.

(Source: Amended at 43 Ill. Reg. 11597, effective September 25, 2019)

**Section 404.106 Permit Applications: Registered or Certified Mail or Hand Delivery Required**

- a a) All State permit applications must be mailed or delivered to the appropriate address designated by the Agency. Any application or revised application sent by mail must be sent by registered or certified mail, return receipt requested.
- b) Any application or revised application hand delivered to the Agency must be delivered to an authorized employee of the Agency's permit section or the Agency's Mine Pollution Control Program, and the authorized employee must provide the applicant with a delivery receipt.

(Source: Amended at 43 Ill. Reg. 11597, effective September 25, 2019)

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**Section 404.107 Supplemental State Permits**

- a) A permittee may apply for a new or supplemental State permit whenever there could be a violation of its previous permit or in other appropriate circumstances.
- b) Applications for new or supplemental State permits are subject to the rules on applications in general.

(Source: Amended at 43 Ill. Reg. 11597, effective September 25, 2019)

**Section 404.108 Violation of Conditions and Standards in a Permit**

- a) A permittee must not violate the conditions and standards contained in its State permit.
- b) In addition to other sanctions under the Act and Subtitle D, the Board may revoke a State permit in appropriate circumstances, including the following:
  - 1) Due to existing geological conditions, an operator cannot carry out mining activities without causing a violation of the Act or Subtitle D;
  - 2) A permittee's history of chronic disregard for the Act or Board regulations;
  - 3) Obtaining a permit by misrepresentation or failure to disclose all relevant facts; or
  - 4) Other circumstances in which it is affirmatively shown that the general standard for permit issuance under 35 Ill. Adm. Code 405.102 would not be met if the permittee submitted a new permit application.

(Source: Amended at 43 Ill. Reg. 11597, effective September 25, 2019)

**Section 404.109 State Permit Term**

State permits will have a duration not exceeding five years.

(Source: Amended at 43 Ill. Reg. 11597, effective September 25, 2019)

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**Section 404.110 Permit No Defense to Certain Violations**

Possessing a State permit is not a defense to violation of the Act or Subtitle D, except for a complaint alleging mining activity without a permit.

(Source: Amended at 43 Ill. Reg. 11597, effective September 25, 2019)

**Section 404.111 Permit Review**

- a) If the Agency fails to notify the applicant within 30 days after filing an application that the application is incomplete and the reason the Agency deems it incomplete, the application will be deemed to have been filed on the date of the purported filing. The applicant may treat the Agency's notification that an application is incomplete as a denial of the application for purposes of review.
- b) If the Agency fails to take final action by granting or denying the permit as requested or modifying it with conditions within 90 days after the filing of the application, the applicant may deem the permit granted for a one year period beginning on the 91<sup>st</sup> day after the application was filed.
- c) If the Agency notifies an applicant that a permit application is incomplete or inadequate, modifies any condition or term of a State permit, or revokes an existing permit, it is considered a permit denial for purposes of appealing the Agency's decision to the Board under Section 40 of the Act.

(Source: Amended at 43 Ill. Reg. 11597, effective September 25, 2019)

**Section 404.APPENDIX A REFERENCES TO PREVIOUS RULES**

The following table is provided to correlate previous Board rule numbers with current Illinois Administrative Code Section numbers.

Chapter 4, Mine Related Pollution Part IV, State Permits	35 Ill. Adm. Code 404
Rule 400	Section 404.100
Rule 401	Section 404.101
Rule 402	Section 404.102
Rule 403	Section 404.103
Rule 404	Section 404.104
Rule 405	Section 404.105
Rule 406	Section 404.106
Rule 407	Section 404.107
Rule 408	Section 404.108

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Rule 409

Section 404.109

Rule 410

Section 404.110

Rule 411

Section 404.111

(Source: Amended at 43 Ill. Reg. 11597, effective September 25, 2019)