

## SUBTITLE D

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

**PART 405  
STATE AND NPDES PERMITS**

**Section**

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## 405.APPENDIX A References to Previous Rules

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

SOURCE: Adopted in R76-20, R77-10, 39 PCB 196, at 4 Ill. Reg. 34, p. 164, effective August 7, 1980; codified at 5 Ill. Reg. 8527; amended in R83-6A at 8 Ill. Reg. 13267, effective July 16, 1984; amended in R07-9 at 32 Ill. Reg. 15004, effective September 8, 2008; amended in R18-24 at 43 Ill. Reg. 11606, effective September 25, 2019.

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**Section 405.100 Preamble**

Part 405 governs the issuance of both state and NPDES permits and contains substantive rules governing mining activities and construction of mine related facilities.

**Section 405.101 Special Conditions**

In addition to the standards and conditions required by this Subtitle D, the Agency may, in granting permits, impose conditions necessary to accomplish the purposes of the Act that are not inconsistent with Subtitle D. All NPDES permits must contain terms and conditions, including schedules of compliance, which may be required to accomplish the purposes and provisions of the Act.

(Source: Amended at 43 Ill. Reg. 11606, effective September 25, 2019)

**Section 405.102 Standard for Permit Issuance or Certification**

- a) The Agency will issue or certify a permit if the operator submits adequate proof that the mine related facilities and mining activities will be constructed, prepared and operated without causing a violation of the Act or Subtitle D.
- b) The Agency may issue an experimental permit under 35 Ill. Adm. Code 405.107 despite subsection (a).

(Source: Amended at 43 Ill. Reg. 11606, effective September 25, 2019)

**Section 405.103 Permit Modification When New Regulations are Adopted**

If the Board adopts new regulations affecting the terms and conditions of a permit that is in effect, the Agency may issue a new, modified, or supplemental permit including terms and conditions reflecting the new regulations.

(Source: Amended at 43 Ill. Reg. 11606, effective September 25, 2019)

**Section 405.104 Permit Applications**

- a) Plans, reports, specifications and application forms submitted to the Agency as part of a State or NPDES permit application must be certified by a registered professional engineer when required by the Illinois Professional Engineering Act [225 ILCS 325].

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- b) An application for a State or NPDES permit must include:
- 1) The location and the maximum extent of the affected land during the term of the requested permit;
  - 2) Activities on the affected land to prepare the site for mining activities, including all earth moving, grading activities, construction and any other preparatory activity;
  - 3) Measures to be taken to avoid violating the Act and Subtitle D;
  - 4) The location of all streams, creeks, bodies of water, and aquifers that receive drainage from the affected land;
  - 5) The location of all private water supplies on or within one mile of the affected land;
  - 6) The name, type and location of all public water supplies within ten miles of the affected land;
  - 7) Plans for surface drainage control under Section 405.105;
  - 8) Affected land areas where mining will occur;
  - 9) Affected land areas where mine refuse and spoil will be deposited;
  - 10) The general characteristics of the mine refuse and spoil;
  - 11) The proposed method of mining;
  - 12) A refuse disposal plan under Section 405.106 or 405.107;
  - 13) The location of all bore holes, mine shafts, and wells on the affected land;
  - 14) An estimate certified by an engineer of the quality and quantity of drainage from the mine area and mine refuse area, including estimated concentrations of chloride, sulfate, and all Section 406.106 contaminants with an explanation for the basis of the estimates;
  - 15) The location of all mine discharges and non-point source mine discharges, method or type of sediment basins, erosion control devices and wastewater treatment facilities for all mine related

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facilities, including identifying collection points for water discharged from all mechanical pumping or gravity flow systems used for draining the mine and mine refuse area;

- 16) An abandonment plan under Section 405.109; and
  - 17) If the applicant intends to use acid-producing mine refuse, a plan under Section 405.108.
- c) The Agency may require other necessary information when considering the permit application. This may be done through an application form and through requests for information directed to the applicant.
  - d) This Section does not limit the Agency's authority to enter into an agreement with the Illinois Department of Natural Resources, Office of Mines and Minerals for joint permit applications.

(Source: Amended at 43 Ill. Reg. 11606, effective September 25, 2019)

**Section 405.105      Surface Drainage Control**

- a) A State or NPDES permit must include a plan for surface drainage control as a condition.
- b) The applicant's plan for surface drainage control must be incorporated into a permit by reference if it meets the standard of Section 405.102(a); otherwise, the Agency must deny the permit or issue it with a modified plan.
- c) Mining activities and depositing mine refuse must be planned and conducted so as to avoid contact or interference with waters of the State that could reasonably cause water pollution.
- d) Stream diversion, redirection or impoundment must not be undertaken when the Agency demonstrates that there is an economically reasonable alternative.

(Source: Amended at 43 Ill. Reg. 11606, effective September 25, 2019)

**Section 405.106      Refuse Disposal**

- a) A State or NPDES permit must include a refuse disposal plan as a condition.

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- b) The applicant's refuse disposal plan must be incorporated into the permit by reference if it meets the standard of Section 405.102(a); otherwise the Agency must deny the permit or issue it with a modified plan.
- c) Seepage from a refuse disposal area is considered a mine discharge and is subject to 35 Ill. Adm. Code 406.
- d) The mine refuse area must not encompass natural springs or an aquifer recharge area or intercept a drainage course unless special provisions protect them. The Agency has the burden to prove that an area is an aquifer recharge area.
- e) Acid-producing solid mine refuse must be immediately spread, compacted in layers, and covered with suitable non-acid-producing material as necessary. If wetness prohibits immediate spreading, the refuse must be spread and compacted as soon as possible and prior to depositing a subsequent layer of refuse or cover material. The Agency may permit alternate refuse disposal methods.
- f) Any refuse disposal plan constituting a change from the permitted refuse disposal plan is a revised refuse disposal plan.
- g) Implementing a revised refuse disposal plan requires a new, modified, or supplemental NPDES or State permit. Applications must be submitted within the time limits in 35 Ill. Adm. Code 403.104 and 404.104 for the respective permits.
- h) Subsection (e) does not apply to acid-producing solid mine refuse disposed of underground or in strip pits where disposal is below the level of natural drainage; however, a layer containing at least two feet of suitable non-acid-producing material must be applied no later than one year after completion of a refuse pile in an open pit.

(Source: Amended at 43 Ill. Reg. 11606, effective September 25, 2019)

**Section 405.107 Experimental Permits for Refuse Disposal**

- a) To promote technological development of mine refuse pollution control, the Agency may issue experimental permits for refuse disposal not satisfying the requirements of Section 405.102 if the applicant demonstrates that the process, technique, or system has a reasonable chance of complying with the Act and Subtitle D.

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- b) During operation, drainage from an experimental refuse area must be monitored for compliance with the Act and Subtitle D.
- c) As a permit condition, the Agency may require the permittee to submit performance data and cost information while operating an experimental refuse area.
- d) Applications for experimental permits must comply with Section 405.104.
- e) After the Agency approves an experimental permit, it may terminate the permit if data or maintenance practices indicate that the experimental method is no longer likely to meet the requirements of the Act and Subtitle D. Within 45 days after termination, the Agency will reimpose the requirements of Section 405.102.
- f) Within 12 months after terminating an experimental permit, the permittee must complete the abandonment plan in the permitted mine refuse disposal area unless otherwise approved by the Agency.

(Source: Amended at 43 Ill. Reg. 11606, effective September 25, 2019)

**Section 405.108 Permit for Use of Acid-producing Mine Refuse**

- a) Using acid-producing mine refuse requires, as a permit condition, an adequate plan within a State or NPDES permit.
- b) Using acid-producing mine refuse is a mining activity that may require a permit under 35 Ill. Adm. Code 404.101.

(Source: Amended at 43 Ill. Reg. 11606, effective September 25, 2019)

**Section 405.109 Abandonment Plan**

- a) A State or NPDES permit must include, as a condition, an abandonment plan.
- b) An abandonment plan must be incorporated into the permit by reference if it:
  - 1) Contains a time schedule for executing and completing the plan within a reasonable time after abandonment considering any potential adverse environmental impact pending the plan's completion and the amount of time necessary to complete all steps

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within it. One year is assumed to be a reasonable time unless the operator demonstrates that a longer time is reasonable; and

- 2) Shows that the mine related facilities and mining activities will be abandoned without violating the Act or Subtitle D.
- c) If the abandonment plan does not meet subsection (b) requirements, the Agency may either deny the permit or issue it with a modified abandonment plan.
- d) The time limit under subsection (b)(1) is inapplicable to abandonment plans for surface coal mines that are approved as reclamation plans under the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].
- e) Any abandonment plan constituting a substantial change from the permitted abandonment plan is a revised abandonment plan.
- f) A permittee must apply for a new, modified, or supplemental NPDES or State permit before implementing a revised abandonment plan within the time limits of 35 Ill. Adm. Code 403.104(c).

(Source: Amended at 43 Ill. Reg. 11606, effective September 25, 2019)

**Section 405.110 Cessation, Suspension or Abandonment**

- a) A permittee must notify the Agency in writing by certified mail within 30 days after the following:
  - 1) Abandonment; or
  - 2) Cessation or suspension of active mining for 30 days or more unless caused by a labor dispute.
- b) Regardless of the cause, cessation or suspension of active mining requires the permittee to undertake whatever interim impoundment, drainage diversion, or wastewater treatment is necessary to avoid violating the Act or Subtitle D.
- c) Upon abandonment, the permittee must execute and complete the permitted abandonment plan, unless the abandonment arises solely from transfer of ownership to a responsible party.

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- d) A responsible party is a person who holds a State or NPDES permit and all other necessary permits for the same facility. If a permit is issued following the transfer, it must relieve the transferor of any further obligation to execute the abandonment plan.
- e) Upon request by the permittee, the Agency must issue a certificate of abandonment whenever the permittee demonstrates that:
  - 1) The abandonment plan has been satisfactorily executed; and
  - 2) The requirements of Section 405.109(b)(2)(A) and (b)(2)(B) have been met.
- f) Refusal to issue a certificate of abandonment is a permit denial for purposes of appeal.

(Source: Amended at 43 Ill. Reg. 11606, effective September 25, 2019)

**Section 405.111      Emergency Procedures To Control Pollution**

- a) A permittee must notify the Agency within one hour of becoming aware of an emergency situation concerning mining activities that causes or threatens a discharge of contaminants into the waters of Illinois. The permittee must initially notify the Agency by telephone and then by written notice, including a description of corrective measures taken. The permittee must immediately undertake necessary corrective measures consistent with Agency approval under subsection (b). Emergency situations likely to violate the Act or Subtitle D include:
  - 1) Dike, levee, dam or pipeline rupture;
  - 2) Flooded pit containing waters that do not meet the standards of 35 Ill. Adm. Code 406;
  - 3) Power failure or mechanical breakdown of any wastewater treatment facility.
- b) The Agency may temporarily suspend the permit requirement to install and operate any device or facility necessary to correct the emergency situation.

(Source: Amended at 43 Ill. Reg. 11606, effective September 25, 2019)

**Section 405.112      Mine Entrances**

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Bore holes, openings, drill holes, entrances to underground mines, and auger or punch mine entries must be plugged and sealed to the extent necessary to avoid the threat of water pollution.

(Source: Amended at 43 Ill. Reg. 11606, effective September 25, 2019)

**Section 405.113 Permit Area**

A State or NPDES permit must specify a permit area. During the permit term, the affected land, or any portion of it, must not be outside the permit area.

(Source: Amended at 43 Ill. Reg. 11606, effective September 25, 2019)

**Section 405.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	35 Ill. Adm. Code 405
Part V, State and NPDES Permits	

Rule 500	Section 405.100
Rule 501	Section 405.101
Rule 502	Section 405.102
Rule 503	Section 405.103
Rule 504	Section 405.104
Rule 505	Section 405.105
Rule 506	Section 405.106
Rule 507	Section 405.107
Rule 508	Section 405.108
Rule 509	Section 405.109
Rule 510	Section 405.110
Rule 511	Section 405.111
Rule 512	Section 405.112
Rule 513	Section 405.113

(Source: Amended at 43 Ill. Reg. 11606, effective September 25, 2019)