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STATE OF ILLINOIS  
Pollution Control Board

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
)  
REVISIONS TO ANTIDegradation ) R01-13  
RULES: 35 ILL. ADM. CODE 302.105, ) (Rulemaking-Water)  
303.205, 303.206, and 102.800-102.830 )  
) *P.C. #50*  
)

**NOTICE OF FILING**

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
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100 West Randolph Street, Suite. 11-500  
Chicago, Illinois 60601

Marie E. Tipsord  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
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Chicago, Illinois 60601

And the Attached Service List

**PLEASE TAKE NOTICE** that I have today filed with the Office of the Clerk of the Pollution Control Board the Comment of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ENVIRONMENTAL PROTECTION AGENCY  
OF THE STATE OF ILLINOIS

By: *Connie L. Tonsor*  
Connie L. Tonsor  
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DATED: October 5, 2001

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STATE OF ILLINOIS  
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REVISIONS TO ANTIDEGRADATION ) R01-13  
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303.205, 303.206, and 102.800-102.830 )  
 )

COMMENT

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by its attorney, Connie L. Tonsor, and hereby submits comments in the above rulemaking.

The Illinois EPA appreciates the Illinois Pollution Control Board's ("Board") efforts in this rulemaking to amend the water quality standard, Section 302.105, antidegradation, formulate a mechanism for the designation of waters as Outstanding Resource Waters and provide guidance on the implementation process. The Board's attention and efforts have facilitated an amended antidegradation standard that the Illinois EPA believes will meet federal requirements and will continue to assure protection of the water resources of the State of Illinois, while recognizing the need for continued development and utilization of the water resources of the State of Illinois.

The Illinois EPA welcomes the opportunity to make these supplemental comments, which will focus on further refining the water quality standard and implementation process proposed for first notice.

On June 21, 2001, the Board issued an opinion and order proposing the revisions to the antidegradation rules for first notice. On July 13, 2001, the amendments were published in the Illinois Register.<sup>1</sup> On August 10, 2001, the Illinois EPA submitted a comment and testimony prior to the Board's fourth hearing, held on August 24, 2001. The Illinois EPA specifically incorporates the comments dated August 10, 2001<sup>2</sup> into this comment (Attachment A) and supplements the August 10, 2001 comments with the following:

#### GENERAL COMMENTS

- 1) The Board in its opinion and order, *In the Matter of: Revisions to Antidegradation Rules: 35 Ill. Adm. Code 302.105, 303.205, 303.206, and 102.800-102.830*, (R01-13, June 21, 2001), incorporated the Illinois EPA's, Exhibit B, Part 354, Implementation Rules, into the amendment of Section 302.105 as Section 302.105(f). The Illinois Environmental Regulatory Group ("ERG") in its comments had requested that the Board incorporate the procedural rules because they were "inextricably" linked to achieving the goals of the antidegradation standard.<sup>3</sup>
- 2) Several concerns arose when the Board proposed inclusion of Exhibit B into the water quality standard. First, as previously discussed in August and specifically incorporated into this comment, the Illinois EPA proposes deletion of reference to implementation of the antidegradation standard in the Section 401 of the Clean Water Act, 33 U.S.C. §1341, ("Section 401 of the CWA") certification

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<sup>1</sup> 25 Ill. Reg. 8739, 8750 (July 13, 2001).

<sup>2</sup> Postmarked August 13, 2001.

<sup>3</sup> See Public Comment 44 at page 10.

process. The Illinois EPA reiterates the need for further coordination of the antidegradation review process with the federal permitting programs for which the Illinois EPA will complete a certification of compliance with water quality standards pursuant to Section 401 of the CWA. Various portions of the implementation process may conflict with federal permitting processes, and the Illinois EPA must coordinate its process with the primary permitting agencies. Additionally, Illinois EPA rules, adopted pursuant to the authority of Section 4(m) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/4(m), address the Section 401 water quality certification process. Therefore, references to the implementation of the antidegradation standard in the Section 401 water quality certification process should be deleted from the first notice proposal as was indicated in the August 10, 2001 comment. The Illinois EPA restates its commitment to a timely review of 35 Ill. Adm. Code 395 and initiation of a rulemaking to address the incorporation of any needed amendments to implement the antidegradation standard in the Section 401 of the CWA process.

3) Second, as indicated in paragraph 2 of the August 10, 2001 comment, a portion of the proposed part 354 should not be Board regulations. The ERG comment and the Board's first notice opinion noted that the manner in which the Illinois EPA received information from an applicant, revised that information and made it known to the public were "inextricably linked to achieving the antidegradation standard."<sup>4</sup> First notice proposal subsections 302.105(f)(2)(A)(i), (f)(2)(B) and (f)(2)(C) simply addressed the Illinois EPA's commitment to the

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<sup>4</sup> R01-13 at 24; Comment 44 at 10.

regulated community to interact with it in a preliminary fashion *prior to an application* for a NPDES permit or a Section 401 of the CWA water quality certification request. The preliminary review does not result in a permit and is not subject to appeal outside of the formal NPDES application and denial process. It was basically a commitment to communicate with the regulated community in a timely fashion that would facilitate long-range planning by the regulated community. This communication process does not in itself result in a permit. It is not mandatory upon any applicant and is a primary example of an optional procedure that might be utilized to facilitate a pre-permitting review. Although the Illinois EPA remains committed to proposing a pre-application review as Illinois EPA rules, the Illinois EPA urges the Board to delete these subsections from the implementation rules.

Additionally, the Illinois Environmental Protection Act ("Act") states the basic authority of the Board to adopt water quality standards, effluent standards, standards for the issuance of permits and standards and procedures necessary to enable the State to implement the NPDES program and substantive regulations as described in the Act, 415 ILCS 5/1, 5/13, 5/27. The Board may adopt implementation directives for the Illinois EPA.<sup>5</sup> Section 39 of the Act, 415 ILCS 5/39, provides that the Illinois EPA shall adopt such procedures as are necessary to carry out its permitting responsibilities. The pre-application process is not a water quality standard, effluent standard, standard for the issuance of a

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<sup>5</sup> See generally, *In the Matter of Permitting Procedures for the Lake Michigan Basin*, R99-8 (March 4, 1999); *Granite City Division of National Steel Company v. Illinois Pollution Control Board*, 155 Ill. 2d 149, 613 N.E. 2d 719 (1993).

permit or a procedure necessary to implement the NPDES permit program. It is not required to obtain federal approval for the antidegradation program revisions. It was simply and remains a commitment from the Illinois EPA to interact with the regulated community at a time and through a process that will facilitate its long-range planning. Thus, the pre-application process, in which the Illinois EPA committed to respond in writing if the preliminary inquiry were in writing and to respond verbally if the preliminary inquiry was a verbal one, should not be giving the status of a substantive environmental regulation or directive from the Board placed upon the Illinois EPA in the implementation process.

The Illinois EPA has discussed its concerns about the inclusion of the pre-application process within first notice Section 302.105(f) with ERG. ERG indicated its agreement that proposed subsections 302.105(f)(2)(A)(i), (f)(2)(B) and (f)(2)(C) should remain Illinois EPA rules.

4) Third, under the organizational pattern set forth in Subtitle C of the Illinois Administrative Procedure Act, 35 Ill. Adm. Code Subtitle C, the requirements for permitting are set forth in Part 309. The Illinois EPA reviewed first notice 35 Ill. Adm. Code 302.105(f) and 35 Ill. Adm. Code 309. Since the codification of the environmental regulations, the Board has followed the practice of centrally locating permit regulations by media. Part 309, Subpart A contains the NPDES permit requirements. Centrally locating the Board's regulations for the permitting process decreases the potential for confusion among the regulated community and facilitates the permitting process. The applicant need look in only one Part in the regulations to find the requirements for the application, tentative

determination, notice, and conditions of the permit.<sup>6</sup> The Illinois EPA urges the Board to continue its process of centrally locating permit requirements in Part 309 and relocate first notice subsection 302.105(f) to the applicable sections of Part 309. The Illinois EPA has provided complete text of its proposal as an Attachment B to this document.

### SPECIFIC COMMENTS

Specific comments on a section-by-section basis and suggested language changes follow.

#### **Section 302.105(b)(4)**

5) The Illinois EPA notes that the deletion of the implementation of the Section 401 of the CWA certification process from the Board's first notice proposal, for the reasons stated above and in the August 10, 2001 comment, will require an adjustment as follows in the language of first notice subsection 302.105(b)(4).

- 4) Any proposed increase in pollutant loading requiring an NPDES permit ~~toor a CWA 401 certification~~ for an ORW must be assessed pursuant to a 35 Ill. Adm. Code 309.141(i) subsection (f) to determine compliance with this Section.
- 5) Any activity requiring a CWA Section 401 certification for an ORW must be assessed during the Section 401 certification process to determine compliance with this section.

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<sup>6</sup> The Board followed this practice during its recent amendments to the water quality standard and permitting process for the Great Lakes Initiative.



**Section 302.105(c)(2)**

6) At the August 24, 2001, hearing ERG presented testimony requesting that the Board include a concept that the Illinois EPA's assessment must be made on a case-by-case basis. On October 2, 2001, the Illinois EPA, ERG, and the Environmental Groups indicated that they would jointly propose the addition of this concept to the Board regulations. The Illinois EPA proposes adding a sentence to subsection 302.105(c) and subsection 309.141(i) to indicate that the assessments must be conducted on a case-by-case basis. The Illinois EPA does not support the addition of any other provisional or restricting language to first notice Section 302.105. Provisional or restricting language would tend to make less clear the water quality protection provided by the Board's first notice subsection 302.105(c).

**Recommended language:**

- 2) The Agency must assess any proposed increase in pollutant loading that necessitates a new, renewed or modified NPDES permit or any activity requiring a CWA Section 401 certification to determine compliance with this Section 302.105. **The assessment to determine compliance with this Section 302.105 must be made on a case-by-case basis.** In making this assessment, the Agency must....

**Section 302.105(d)(5)**

7) During the August 24, 2001, hearing ERG proposed that the Board add a limited exception to first notice subsection 302.105(d) for new or increased

discharges of non-contact cooling water with chlorine as an additive in those circumstances when the non-contact cooling water is returned to the same body of water from which it was taken, is treated to remove residual chlorine levels and complies with applicable thermal standards. The Illinois EPA clarified that this limited proposed exception was for increases in non-contact cooling water in situations in which the chlorine had been previously approved as an additive. The Illinois EPA indicated that it thought this goal could be achieved and may or may not require a change to the language of the proposal.<sup>7</sup> The Illinois EPA has reviewed language and notes that the following language would present minimal environmental impact, due to the technical reliability of de-chlorination processes, and provide a benefit to the regulated community:

**Section 302.105(d)(5)**

New or increased discharges of non-contact cooling water:

- A) without additives, except as provided in subsection (d)(5)(B), and returned to the same body of water from which it was taken as defined by 35 Ill. Adm. Code 352.104, provided that the discharge complies with applicable Illinois thermal standards; or
- B) containing chlorine when the non-contact cooling water is treated to remove residual chlorine, and returned to the same body of water from which it was taken, as defined in 35 Ill. Adm. Code 352.104, provided that the discharge

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<sup>7</sup> Transcript August 24, 2001, pp. 33-36,

complies with applicable Illinois thermal and effluent standards.

**Section 302.105(d)(6)**

7) The Section 401 certification process does not use the phrase “general” Section 401 certification. In order to eliminate any potential confusion, the Illinois EPA suggests that the phrase “general CWA, Section 401 certification” be replaced with the phrase: “for nationwide or regional Section 404 of the CWA permit.” The Agency, the ERG, and the Environmental Groups also suggest that the language be clarified to better reflect the certification process when an activity is subject to a nationwide permit. That process will not involve an individual certification, once the Illinois EPA has agreed to the nationwide or regional permit.

**Recommended language:**

Discharges permitted under a current general NPDES permit as provided by 415 ILCS 5/39(b) or a general CWA, Section 401 certification **nationwide or regional Section 404 of the CWA permit** are not subject to facility-specific antidegradation review; however, the Agency must assure that individual permits or certifications are required prior to all new pollutant loadings or hydrological modifications that necessitate a new, renewed or modified NPDES permit or CWA, Section 401 certification that affect waters of particular biological significance; or...

**Section 302.105(f)**

8) In first notice subsection 302.105(f)(1), the phrase “for any proposed increase in pollutant loading that necessitates a new, renewed, or modified NPDES permit *with a new or increased permit limit*” is utilized by the Board. The Illinois EPA urges the Board to delete the phrase “with a new or increased permit limit” from the implementation rules. The phrase restricts the antidegradation assessment to a subset of parameters that may have a degrading impact on the receiving stream and which are covered by the language of the antidegradation standard in first notice Section 302.105(a) through (e).

Throughout this rulemaking the Illinois EPA has testified that it is the increased pollutant loading that triggers the antidegradation review. Limits are not placed in permits for many parameters when the Illinois EPA has determined that no reasonable potential to exceed a water quality standard exists.<sup>8</sup> Nevertheless, an increase in pollutant loading, over the loading that authorized in a prior permit, may have an impact on the receiving stream and should be assessed to determine compliance with 35 Ill. Adm. Code 302.105. Thus, the phrase, “with a new or increased permit limit,” reduces the scope of first notice Section 302.105(a) through (e) by restricting an antidegradation assessment to increases in pollutant loading only for parameters that have permit limits. The Illinois EPA notes that ERG and the Environmental Groups discussed the deletion of this phrase. ERG and the Environmental Groups agreed to the

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<sup>8</sup> Ammonia is an example of a parameter for which an effluent limit would not be placed in a permit once the Illinois EPA has determined that no reasonable potential to exceed a water quality standard existed.

deletion of the phrase with the understanding that the Illinois EPA clarify that it is the increase in pollutant loading that triggers the antidegradation assessment. If the Illinois EPA has authorized a pollutant loading in a prior permit, whether or not the loading is reflected in a permit limit, but the applicant has not discharged up to that loading, an antidegradation assessment would not be triggered by increasing the loading to the previously permitted loading level. When a limit is in an existing permit, increasing the pollutant loading to a level that does not cause exceedence of the permit limit will not result in an antidegradation assessment.

9) Section 309.103 addresses applications for NPDES permits. It contains requirements that are common to all permits and individual requirements for specific activities. First notice subsection 302.105(f)(1) states the application requirements for any proposed increase in pollutant loading that necessitates a new, renewed or modified NPDES permit. The Illinois EPA urges the Board to move first notice subsection 302.105(f)(1) to new Section 309.103(a)(5). Please note that first notice subsection 302.105(f)(1)(F) was deleted from the proposed subsection 309.103(a)(5), application requirements. This subsection in essence required the applicant to provide any of the information sources identified in subsection 302.105(d)(3). Initially, the Illinois EPA notes that the cross-reference should have been to subsection 302.105(c)(2)(C) of the first notice document.<sup>9</sup> Although the Illinois EPA agrees that the applicant should provide additional information if the Illinois EPA needs the information, the references was to

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<sup>9</sup> See August 10, 2001 comment.

information sources that the Board required the Illinois EPA consider in completing the antidegradation assessment.

10) Section 309.108 provides that the Illinois EPA will make tentative determinations on permits that are subject to the public notice requirements. That a determination would be made after an antidegradation review and the results placed in a fact sheet in compliance with the public notice requirements of Part 309 was part of the first notice subsections 302.105(f)(2)(D) and 302.105(f)(3). The Illinois EPA suggests adding the following language to Section 309.108:

d) **For any proposed increase in pollutant loading that necessitates a new, renewed, or modified NPDES permit, subject to review pursuant to 35 Ill. Adm. Code 302.105, the tentative determination of the Agency with regard to 35 Ill. Adm. Code 302.105.**

1) After its assessment pursuant to Section 309.141(i) ~~(f)(2)(A)(ii)~~ review, the Agency must produce a written analysis addressing the requirements of **35 Ill. Adm. Code 302.105** ~~this Section~~ and provide a decision yielding one of the following results.

A) If the proposed activity demonstration meets the requirements of **35 Ill. Adm. Code 302.105** ~~this Section~~, then the Agency must proceed with public notice of the NPDES permit or CWA Section 401

certification and include the written analysis as a part of the fact sheet accompanying the public notice;

- B) If the proposed activity demonstration does not meet the requirements of **35 Ill. Adm. Code 302.105**~~this Section~~, then the Agency must provide a written analysis to the applicant and must be available to discuss the deficiencies that led to the disapproval. The Agency may suggest methods to remedy the conflicts with the requirements of **35 Ill. Adm. Code 302.105**~~this Section~~.
- C) If the proposed activity demonstration does not meet the requirements of **35 Ill. Adm. Code 302.105**~~this Section~~, but some lowering of water quality is allowable, then the Agency will contact the applicant with the results of the review. If the reduced loading increase is acceptable to the applicant, upon the receipt of an amended application demonstration, the Agency will proceed to public notice ~~;~~ or
- 2) If the reduced loading increase is not acceptable to the applicant, the Agency will transmit its written analysis review to the applicant in the context of a NPDES permit denial or a CWA Section 401 certification denial.

11) Section 309.113 addresses fact sheets. First notice subsection 302.105(f)(3) states the contents of fact sheets specific to the antidegradation analysis. The Illinois EPA proposes that the Board shift first notice subsection 302.105(f)(3) into subsection 309.113(a)(6). The substantive language has not changed. However, the Illinois EPA made citation form adjustments.

12) First notice subsection 302.105(f)(2) essentially states the permitting procedures for discharges that propose an increase in pollutant loading necessitating a new, renewed, or modified NPDES permit, subject to the provisions of 35 Ill. Adm. Code 302.105(a) through (e). The Illinois EPA's completion of an assessment of the proposed discharge and determination of compliance with the 35 Ill. Adm. Code 302.105(a) through (e) is, in essence, a term for issuance of an NPDES permit. Section 309.141 states the terms of issuance of NPDES permits. The special requirements of an antidegradation assessment, similar to the procedures for permitting discharges in the Lake Michigan Basin, are more appropriately housed in a new subsection to Section 309.141. The Illinois EPA proposes moving first notice subsection 302.105(f)(2)(A), the requirement that the Illinois EPA conduct an antidegradation assessment, to proposed Section 309.141(i). The Illinois EPA proposes moving the contents of the written analysis to proposed Section 309.108(d), as the contents of the written analysis and the process involved are part of the steps necessary for the Illinois EPA to make a tentative determination regarding the permit.



13) The Illinois EPA believes that relocating the portions of first notice Section 302.105(f) to 35 Ill. Adm. Code 309 is not a substantive change in the proposal, but is a structural change that will maintain a consistent regulatory format. The Illinois EPA did not propose the implementation rules as a portion of this rulemaking but would have initiated agency rulemaking to keep the antidegradation assessment procedures in a separate part of the administrative code. Nevertheless, the Illinois EPA does not object to the regulatory community's expressed desire that the appropriate implementation regulations be Board rules. However, the Illinois EPA feels strongly that the permitting procedures should be in the most appropriate part of the administrative code, 35 Ill. Adm. Code 309.

However, a concern may exist due to the fact that Part 309 has not been opened in this rulemaking. The Illinois EPA notes that the rulemaking is still in First Notice and although the comment period will close on October 4, 2001, the Board may reopen the first notice comment period for a limited time to allow further comments on the appropriate placement of the implementation regulations. The Illinois EPA has been in contact with the ERG and the Environmental Groups. Both have indicated that they support the placement of first notice Section 302.105(f) in the appropriate sections of 35 Ill. Adm. Code 309, as suggested in this comment. A complete text of the recommended relocation follows in Attachment B.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: *Connie L. Tonsor*  
Connie L. Tonsor

October 5, 2001

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## ATTACHMENT B

### Section 302.105(b)(4)

#### Recommended language:

13) Any proposed increase in pollutant loading requiring an NPDES permit ~~to or a CWA 401 certification~~ for an ORW must be assessed pursuant to a 35 Ill. Adm. Code 309.141(i) subsection (f) to determine compliance with this Section.

14) Any activity requiring a CWA Section 401 certification for an ORW must be assessed during the Section 401 certification process to determine compliance with this section.

### Section 302.105(c)(2)

#### Recommended language:

- 2) The Agency must assess any proposed increase in pollutant loading that necessitates a new, renewed or modified NPDES permit or any activity requiring a CWA Section 401 certification to determine compliance with this Section 302.105. **The assessment to determine compliance with this Section 302.105 must be made on a case-by-case basis.** In making this assessment, the Agency must....

### Section 302.105(d)(6)

#### Recommended language:

Discharges permitted under a current general NPDES permit as provided by 415 ILCS 5/39(b) or a ~~general CWA, Section 401 certification~~ nationwide or regional Section 404 of the CWA permit are not subject to facility-specific antidegradation review; however, the Agency must assure that individual permits or certifications are required prior to all new pollutant loadings or hydrological modifications that necessitate a new, renewed or modified NPDES permit or CWA, Section 401 certification that affect waters of particular biological significance; or

**Section 302.105(d)(5)**

**Recommended language:**

New or increased discharges of non-contact cooling water:

- C) without additives, except as provided in subsection (d)(5)(B), returned to the same body of water from which it was taken as defined by 35 Ill. Adm. Code 352.104, provided that the discharge complies with applicable Illinois thermal standards; or
- B) containing chlorine when the non-contact cooling water is treated to remove residual chlorine, returned to the same body of water from which it was taken, as defined in 35 Ill. Adm. Code 352.104, provided that the discharge complies with applicable Illinois thermal and effluent standards.

**Section 302.105(f)(1) Recommended language:** (Note: smaller typeface denotes existing regulatory language; **bold type face denotes new language.**)

Section 309.103      Application - General

a)      Application Forms

- 1)      An applicant for a National Pollution Discharge Elimination System (NPDES) Permit shall file an application, in accordance with Section 309.223 hereof, on forms provided by the Illinois Environmental Protection Agency (Agency). Such forms shall comprise the NPDES application forms promulgated by the U.S. Environmental Protection Agency for the type of discharge for which an NPDES Permit is being sought and such additional information as the Agency may reasonably require in order to determine that the discharge or proposed discharge will be in compliance with applicable state and federal requirements.
- 2)      In addition to the above application forms, the Agency may require the submission of plans and specifications for treatment works and summaries of design criteria.
- 3)      Effluent toxicity monitoring
  - A)      In addition to the above application forms, the Agency may require, pursuant to Section 39 of the Act, the installation, use, maintenance and reporting of results from monitoring equipment and methods, including biological monitoring. The Agency may require, pursuant to Section 39 of the Act, effluent toxicity testing to show compliance with 35 Ill. Adm. Code 302.621 and 302.630. If this toxicity testing shows the effluent to be toxic, the Agency may require pursuant to Section 39 of the Act further testing and identification of the toxicant(s) pursuant to 35 Ill. Adm. Code 302.210(a).
  - B)      The following POTWs shall provide the results of valid whole effluent biological toxicity testing to the Agency:
    - i)      All POTWs with design influent flows equal to or greater than one million gallons per day;
    - ii)     All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment

program pursuant to 35 Ill. Adm. Code 310.Subpart E;

- C) In addition to the POTWs listed in (a)(3)(B), the Agency may require other POTWs to submit the result of toxicity tests with their permit applications, based on consideration of the following factors.
- i) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment facility, and types of industrial contributors);
  - ii) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow);
  - iii) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the waterbody segment and the relative contribution of the POTW;
  - iv) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, one of the Great Lakes, or a water designated as an outstanding natural resource; or
  - v) Other considerations (including but not limited to the history of toxic impact and compliance problems at the POTW), which the Agency determines could cause or contribute to adverse water quality impacts.
- D) The POTWs required under subsections (a)(3)(B) or (a)(3)(C) to conduct toxicity testing shall use the methods prescribed at 35 Ill. Adm. Code 302.Subpart F. Such testing must have been conducted since the later of the last NPDES permit reissuance or permit modification pursuant to Section 309.182, 309.183 or 309.184 for any of the reasons listed at 40 CFR 122.62(a) (1994), as amended at 60 Fed. Reg. 33926 effective June 29, 1995, herein incorporated by reference (including no later amendments or editions).

- 4) All POTWs with approved pretreatment programs shall provide the following information to the Agency: a written technical

evaluation of the need to revise local limits pursuant to 35 Ill. Adm. Code 310.210.

BOARD NOTE: Subsections (a)(3)(B) through (a)(4) are derived from 40 CFR 122.21(j) (1994).

- 5) A permit application for any proposed increase in pollutant loading that necessitates a new, renewed, or modified NPDES permit, with a new or increased permit limiter a CWA Section 401 certification, must include, to the extent necessary for the Agency to determine that the proposed activity permit application meets the requirements of Section 35 Ill. Adm. Code 302.105, the following information:
- A) Identification and characterization of the waters affected by the proposed load increase or proposed activity and their existing uses. Characterization must address physical, biological and chemical conditions of the waters;
  - B) Identification and quantification of the proposed load increases for the applicable parameters and of the potential impacts of the proposed activity on the affected waters;
  - C) The purpose and anticipated benefits of the proposed activity. Such benefits may include, **but are not limited to:**

- i) Providing a centralized wastewater collection and treatment system for a previously unsewered community;
- ii) Expansion to provide service for anticipated residential or industrial growth consistent with a community's long range urban planning;
- iii) Addition of a new product line or production increase or modification at an industrial facility;  
or
- iv) An increase or the retention of current employment levels at a facility.

D) Assessments of alternatives to proposed increases in pollutant loading or activities subject to Agency certification pursuant to Section 401 of the CWA that result in less of a load increase, no load increase or minimal environmental degradation. Such alternatives include, but are not limited to:

- i) Additional treatment levels including no discharge alternatives;
- ii) Discharge of waste to alternate locations including publicly-owned treatment works and streams with greater assimilative capacity; or



iii) Manufacturing practices that incorporate pollution prevention techniques.

E) Any additional information that the Agency may request.

b) Animal Waste Facilities

An applicant for an NPDES Permit in connection with the operation of an animal waste facility shall complete, sign, and submit an NPDES application in accordance with the provisions of 35 Ill. Adm. Code: Subtitle E, Chapter I.

c) Mining Activities

- 1) If, as defined by 35 Ill. Adm. Code 402.101, mining activities are to be carried out on a facility for which an NPDES Permit is held or required, the applicant must submit a permit application as required by 35 Ill. Adm. Code 403.103, 403.104 and 405.104. If the facility will have a discharge other than a mine discharge or non-point source mine discharge as defined by 35 Ill. Adm. Code 402.101, the applicant shall also submit an NPDES Permit application in accordance with Section 309.223 on forms supplied by the Agency.
- 2) As provided by 35 Ill. Adm. Code 403.101, except to the extent contradicted in 35 Ill. Adm. Code: Subtitle D, Chapter I, the rules contained in this Subpart apply only to 35 Ill. Adm. Code: Subtitle D, Chapter I NPDES Permits.
- 3) As provided by 35 Ill. Adm. Code 406.100, except to the extent provided in 35 Ill. Adm. Code: Subtitle D, Chapter I, the effluent and water quality standards of 35 Ill. Adm. Code 302, 303 and 304 are inapplicable to mine discharges and non-point source mine discharges.

d) New Discharges

Any person whose discharge will begin after the effective date of this Subpart A or any person having an NPDES Permit issued by the U.S. Environmental Protection Agency for an existing discharge which will substantially change in nature, or increase in volume or frequency, must apply for an NPDES Permit either:

- 1) No later than 180 days in advance of the date on which such NPDES Permit will be required; or
- 2) In sufficient time prior to the anticipated commencement of the discharge to insure compliance with the requirements of Section 306 of the Clean Water Act (CWA) (33 U.S.C. 1251 et seq), or with any other applicable water quality standards and applicable effluent standards and limitations.

e) Signatures

An application submitted by a corporation shall be signed by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the application form originates. In the case of a partnership or a sole proprietorship, the application shall be signed by a general partner or the proprietor, respectively. In the case of a publicly owned facility, the application shall be signed by either the principal executive officer, ranking elected official, or other duly authorized employee.

(Source: Amended at 20 Ill. Reg. 5526, effective April 1, 1996; Amended at Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, 2002.)

Section 309.108 Tentative Determination and Draft Permit

Following the receipt of a complete application for an NPDES Permit, the Agency shall prepare a tentative determination. Such determination shall include at least the following:

- a) A Statement regarding whether an NPDES Permit is to be issued or denied; and
- b) If the determination is to issue the permit, a draft permit containing:
  - 1) Proposed effluent limitations, consistent with federal and state requirements;
  - 2) A proposed schedule of compliance, if the applicant is not in compliance with applicable requirements, including interim dates and requirements consistent with the CWA and applicable regulations, for meeting the proposed effluent limitations;

- 3) A brief description of any other proposed special conditions which will have a significant impact upon the discharge.
- c) A statement of the basis for each of the permit conditions listed in Section 309.108(b).
- d) **For any proposed increase in pollutant loading that necessitates a new, renewed, or modified NPDES permit, with a new or increased permit limit subject to review pursuant to 35 Ill. Adm. Code 302.105, the tentative determination of the Agency with regard to 35 Ill. Adm. Code 302.105.**
- 1) **After its assessment pursuant to Section 309.141(i)**  
~~(f)(2)(A)(ii)~~ review, the Agency must produce a written analysis addressing the requirements of **35 Ill. Adm. Code 302.105** ~~this Section~~ and provide a decision yielding one of the following results.
- A) If the ~~proposed activity demonstration~~ meets the requirements of **35 Ill. Adm. Code 302.105** ~~this Section~~, then the Agency must proceed with public notice of the NPDES permit ~~or CWA Section 401 certification~~ and include the written analysis as a part of the fact sheet accompanying the public notice;
- B) If the ~~proposed activity demonstration~~ does not meet the requirements of **35 Ill. Adm. Code 302.105** ~~this Section~~, then the Agency must provide a written analysis to the applicant and must be available to discuss the deficiencies that led to

the disapproval. The Agency may suggest methods to remedy the conflicts with the requirements of **35 Ill. Adm. Code 302.105**~~this Section~~.

- C) If the ~~proposed activity demonstration~~ does not meet the requirements of **35 Ill. Adm. Code 302.105**~~this Section~~, but some lowering of water quality is allowable, then the Agency will contact the applicant with the results of the review. If the reduced loading increase is acceptable to the applicant, upon the receipt of an amended ~~application demonstration~~, the Agency will proceed to public notice; ~~or~~
- 2) If the reduced loading increase is not acceptable to the applicant, the Agency will transmit its written analysis~~review~~ to the applicant in the context of a NPDES permit denial ~~or a CWA Section 401 certification denial~~.
- e) Upon tentative determination to issue or deny an NPDES Permit:
- 1) If the determination is to issue the permit the Agency shall notify the applicant in writing of the content of the tentative determination and draft permit and of its intent to circulate public notice of issuance in accordance with Sections 309.108 through 309.112;
  - 2) If the determination is to deny the permit, the Agency shall notify the applicant in writing of the tentative determination and of its intent to circulate public notice of denial, in accordance with Sections 309.108 through 309.112. In the case of denial, notice to the applicant shall include a statement of the reasons for denial, as required by Section 39(a) of the Act.

(Source: Amended at Ill. Reg. , effective , 2001.)

- a) For every discharge which has a total volume of more than 500,000 gallons (1.9 megaliters) on any day of the year, the Agency shall prepare and, following public notice, shall send upon request to any person a fact sheet with respect to the application described in the public notice. The contents of such fact sheets shall include at least the following information:
- 1) A sketch or detailed description of the location of the discharge described in the application;
  - 2) A quantitative description of the discharge described in the application which includes at least the following:
    - A) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow;
    - B) For thermal discharges subject to limitation under the Act, the average monthly temperatures for the discharge;
    - C) The average daily mass discharged and average concentration in milligrams per liter, or other applicable limitations or prohibitions under applicable provisions of the CWA or the Act or regulations adopted thereunder;
  - 3) The tentative determinations required under Section 309.108;
  - 4) A brief citation, including an identification of the uses for which the receiving waters have been classified, of the water quality standards and effluent standards and limitations applicable to the proposed discharge; and
  - 5) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice, including:
    - A) The 30-day comment period;
    - B) Procedures for requesting a public hearing and the nature thereof; and
    - C) Any other procedures by which the public may participate in the formulation of the final determination.

- 6) For any proposed increase in pollutant loading that necessitates a new, renewed, or modified NPDES permit, with a new or increased permit limit subject to review pursuant to 35 Ill. Adm. Code 302.105, the following information:
- A) A description of the activity, including identification of water quality parameters for which there will be ~~an~~ which will experience the increased pollutant loading;
  - B) Identification of the affected water segment, any downstream water segment also expected to experience a lowering of water quality, characterization of the designated and current uses of the affected segments and identification of which uses are most sensitive to the proposed load increase;
  - C) A summary of any review comments and recommendations provided by the Illinois Department of Natural Resources, local or regional planning commissions, zoning boards and any other entities the Agency consults regarding the proposal;
  - D) An overview of alternatives considered by the applicant and identification of any provisions or alternatives imposed to lessen the load increase associated with the proposed activity; and
  - E) The name and telephone number of a contact person at the Agency who can provide additional information.
- b) The Agency shall add the name of any person or group, upon request, to a mailing list to receive copies of fact sheets.

(Source: Amended at \_\_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, 2001.)

Section 309.141 Terms and Conditions of NPDES Permits

SUBPART A: NPDES PERMITS

Section 309.141 Terms and Conditions of NPDES Permits

In establishing the terms and conditions of each issued NPDES Permit, the Agency shall apply and ensure compliance with all of the following, whenever applicable:

- a) Effluent limitations under Sections 301 and 302 of the CWA;
- b) Standards of performance for new sources under Section 306 of the CWA;
- c) Effluent standards, effluent prohibitions, and pretreatment standards under Section 307 of the CWA;
- d) Any more stringent limitation, including those:
  - 1) necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any Illinois statute or regulation (under authority preserved by Section 510 of the CWA),
  - 2) necessary to meet any other federal law or regulation, or
  - 3) required to implement any applicable water quality standards; such limitations to include any legally applicable requirements necessary to implement total maximum daily loads established pursuant to Section 303(d) of the CWA and incorporated in the continuing planning process approved under Section 303(e) of the CWA and any regulations or guidelines issued pursuant thereto;
- e) Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to Section 208(b) of the CWA;
- f) Prior to promulgation by the Administrator of the U.S. Environmental Protection Agency of applicable effluent standards and limitations pursuant to Sections 301, 302, 306 and 307 of the CWA, such conditions as the Agency determines are necessary to carry out the provisions of the CWA;
- g) If the NPDES Permit is for the discharge of pollutants into navigable waters from a vessel or other floating craft (except that no NPDES Permit shall be issued for the discharge of pollutants from a vessel or other floating craft into Lake Michigan) any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage and stowage of pollutants; and
- h) If the NPDES Permit is for the discharge of pollutants from other than wet weather point sources into the Lake Michigan Basin as defined at 35 Ill. Adm. Code 303.443:

- 1) Total Maximum Daily Loads (TMDLs) and Waste Load Allocation (WLA) will be established through either the LaMP or a RAP for an Area of Concern. If a LaMP or RAP has not been completed and adopted, effluent limits shall be established consistent with the other provisions of this Section, including, but not limited to, Additivity, Intake Pollutants, Loading Limits, Level of Detection/Level of Quantification and Compliance Schedules. When calculation of TMDLs or a Waste Load Allocation is incomplete and it is expected that limits established through other provisions will be superseded upon completion of the TMDL or Waste Load Allocation process, those limits shall be identified as interim and the permit shall include a reopener clause triggered by completion of a TMDL or WLA determination. Any new limits brought about through exercise of the reopener clause shall be eligible for delayed compliance dates and compliance schedules consistent with Section 39(b) of the Act [415 ILCS 5/39(b)], 35 Ill. Adm. Code 309.148, and 35 Ill. Adm. Code 352.Subpart H.
  
- 2) 35 Ill. Adm. Code 302.590 establishes an acceptable additive risk level of one in 100,000 (10<sup>-5</sup>) for establishing Tier I criteria and Tier II values for combinations of substances exhibiting a carcinogenic or other nonthreshold toxic mechanism. For those discharges containing multiple nonthreshold substances application of this additive standard shall be consistent with this subsection.
  - A) For discharges in the Lake Michigan basin containing one or more 2,3,7,8-substituted chlorinated dibenzo-p-dioxins or 2,3,7,8-substituted dibenzofurans, the tetrachloro dibenzo-p-dioxin 2,3,7,8-(TCDD) toxicity equivalence concentration (TEC<sub>TCDD</sub>) shall be determined as outlined in subsection (h)(2)(B).
  
  - B) The values listed in the following Table shall be used to determine the 2,3,7,8-TCDD toxicity equivalence concentrations using the following equation:

$$(TEC)_{TCDD} = \text{Sigma}(C)_x (TEF)_x (BEF)_x$$

WHERE:

(TEC)<sub>TCDD</sub> = 2,3,7,8-TCDD toxicity equivalence concentration in effluent

(C)<sub>x</sub> = Concentration of total chemical x in effluent

(TEF)<sub>x</sub> = TCDD toxicity equivalency factor for x

(BEF)<sub>x</sub> - TCDD bioaccumulation equivalency factor for x



TABLE

| Congener            | TEF   | BEF |
|---------------------|-------|-----|
| 2,3,7,8-TCDD        | 1.0   | 1.0 |
| 1,2,3,7,8-PeCdd     | 0.5   | 0.9 |
| 1,2,3,4,7,8-HxCDD   | 0.1   | 0.3 |
| 1,2,3,6,7,8-HxCDD   | 0.1   | 0.1 |
| 1,2,3,7,8,9-HxCDD   | 0.1   | 0.1 |
| 1,2,3,4,6,7,8-HpCDD | 0.01  | 0.0 |
| OCDD                | 0.001 | 0.0 |
| 2,3,7,8-TCDF        | 0.1   | 0.8 |
| 1,2,3,7,8-PeCDF     | 0.05  | 0.2 |
| 2,3,4,7,8-PeCDF     | 0.5   | 1.6 |
| 1,2,3,4,7,8-HxCDF   | 0.1   | 0.0 |
| 1,2,3,6,7,8-HxCDF   | 0.1   | 0.2 |
| 2,3,4,6,7,8-HxCDF   | 0.1   | 0.7 |
| 1,2,3,7,8,9-HxCDF   | 0.1   | 0.6 |
| 1,2,3,4,6,7,8-HpCDF | 0.01  | 0.0 |
| 1,2,3,4,7,8,9-HpCDF | 0.01  | 0.4 |
| OCDF                | 0.001 | 0.0 |

- C) Any combination of carcinogenic or otherwise nonthreshold toxic substances shall be assessed on a case by case basis. The Agency shall only consider such additivity for chemicals that exhibit the same type of effect and the same mechanism of toxicity, based on available scientific information that supports a reasonable assumption of additive effects.
- 3) Conversion factors for determining the dissolved concentration of metals from the total recoverable concentration.
- A) The numeric standards for certain metal parameters in 35 Ill. Adm. Code 302.504 are established as dissolved forms of the substance since the dissolved form more closely relates to the toxicology literature utilized in deriving the standard. However, most discharge monitoring data used in deriving a PEQ will be from a total recoverable analytical method and permit limits if and when established will be set at total recoverable to accommodate the total recoverable analytical method. The Agency will use a conversion factor to determine the amount of total metal corresponding to dissolved metal for each metal with a water quality standard set at dissolved concentration. In the absence of facility specific data the following default conversion factors will be used for both PEQ derivation and establishing WQBELs. The conversion factor

represents the portion of the total recoverable metal presumed to be in dissolved form. The conversion values given in the following table are multiplied by the appropriate total recoverable metal concentration to obtain a corresponding dissolved concentration that then may be compared to the acute or chronic standard. A dissolved metal concentration may be divided by the conversion factor to obtain a corresponding total metal value that will generally be the metal form regulated in NPDES permits.

| Metal                 | Conversion Factor |                  |
|-----------------------|-------------------|------------------|
|                       | Acute Standard    | Chronic Standard |
| Arsenic               | 1.000             | 1.000            |
| Cadmium               | 0.850             | 0.850            |
| Chromium (Trivalent)  | 0.316             | 0.860            |
| Chromium (Hexavalent) | 0.982             | 0.962            |
| Copper                | 0.960             | 0.960            |
| Mercury               | 0.850             | 0.850            |
| Nickel                | 0.998             | 0.997            |
| Selenium              | 0.922             | 0.922            |
| Zinc                  | 0.978             | 0.986            |

- B) A permittee may propose an alternate conversion factor for any particular site specific application. The request must contain sufficient site specific data, or other data that is representative of the site, to identify a representative ratio of the dissolved fraction to the total recoverable fraction of the metal in the receiving water body at the edge of the mixing zone. If a site specific conversion factor is approved, that factor will be used for PEQ derivation and establishment of a WQBEL in lieu of its default counterpart in subsection (h)(3)(A).
- 4) Reasonable potential to exceed.
- A) The first step in determining if a reasonable potential to exceed the water quality standard exists for any particular pollutant parameter is the estimation of the maximum expected effluent concentration for that substance. That estimation will be completed for both acute and chronic exposure periods and is termed the PEQ. The PEQ shall be derived from representative facility specific data to reflect a 95 percent confidence level for the 95th percentile value.

These data will be presumed to adhere to a lognormal distribution pattern unless the actual effluent data demonstrates a different distribution pattern. If facility specific data in excess of 10 data values is available, a coefficient of variation that is the ratio of the standard deviation to the arithmetic average shall be calculated by the Agency. The PEQ is derived as the upper bound of a 95 percent confidence bracket around the 95th percentile value through a multiplier from the following table applied to the maximum value in the data set that has its quality assured consistent with 35 Ill. Adm. Code 352.410 as appropriate for acute and chronic data sets.

$$\text{PEQ} = (\text{maximum data point})(\text{statistical multiplier})$$

#### Coefficient of Variation

| No. Samples   | 0.1 | 0.2 | 0.3 | 0.4 | 0.5 | 0.6 | 0.7 | 0.8  | 0.9  | 1.0  | 1.1  | 1.2  | 1.3  |
|---------------|-----|-----|-----|-----|-----|-----|-----|------|------|------|------|------|------|
| 1             | 1.4 | 1.9 | 2.6 | 3.6 | 4.7 | 6.2 | 8.0 | 10.1 | 12.6 | 15.5 | 18.7 | 22.3 | 26.4 |
| 2             | 1.3 | 1.6 | 2.0 | 2.5 | 3.1 | 3.8 | 4.6 | 5.4  | 6.4  | 7.4  | 8.5  | 9.7  | 10.9 |
| 3             | 1.2 | 1.5 | 1.8 | 2.1 | 2.5 | 3.0 | 3.5 | 4.0  | 4.6  | 5.2  | 5.8  | 6.5  | 7.2  |
| 4             | 1.2 | 1.4 | 1.7 | 1.9 | 2.2 | 2.6 | 2.9 | 3.3  | 3.7  | 4.2  | 4.6  | 5.0  | 5.5  |
| 5             | 1.2 | 1.4 | 1.6 | 1.8 | 2.1 | 2.3 | 2.6 | 2.9  | 3.2  | 3.6  | 3.9  | 4.2  | 4.5  |
| 6             | 1.1 | 1.3 | 1.5 | 1.7 | 1.9 | 2.1 | 2.4 | 2.6  | 2.9  | 3.1  | 3.4  | 3.7  | 3.9  |
| 7             | 1.1 | 1.3 | 1.4 | 1.6 | 1.8 | 2.0 | 2.2 | 2.4  | 2.6  | 2.8  | 3.1  | 3.3  | 3.5  |
| 8             | 1.1 | 1.3 | 1.4 | 1.6 | 1.7 | 1.9 | 2.1 | 2.3  | 2.4  | 2.6  | 2.8  | 3.0  | 3.2  |
| 9             | 1.1 | 1.2 | 1.4 | 1.5 | 1.7 | 1.8 | 2.0 | 2.1  | 2.3  | 2.4  | 2.6  | 2.8  | 2.9  |
| 10            | 1.1 | 1.2 | 1.3 | 1.5 | 1.6 | 1.7 | 1.9 | 2.0  | 2.2  | 2.3  | 2.4  | 2.6  | 2.7  |
| 11            | 1.1 | 1.2 | 1.3 | 1.4 | 1.6 | 1.7 | 1.8 | 1.9  | 2.1  | 2.2  | 2.3  | 2.4  | 2.5  |
| 12            | 1.1 | 1.2 | 1.3 | 1.4 | 1.5 | 1.6 | 1.7 | 1.9  | 2.0  | 2.1  | 2.2  | 2.3  | 2.4  |
| 13            | 1.1 | 1.2 | 1.3 | 1.4 | 1.5 | 1.6 | 1.7 | 1.8  | 1.9  | 2.0  | 2.1  | 2.2  | 2.3  |
| 14            | 1.1 | 1.2 | 1.3 | 1.4 | 1.4 | 1.5 | 1.6 | 1.7  | 1.8  | 1.9  | 2.0  | 2.1  | 2.2  |
| 15            | 1.1 | 1.2 | 1.2 | 1.3 | 1.4 | 1.5 | 1.6 | 1.7  | 1.8  | 1.8  | 1.9  | 2.0  | 2.1  |
| 16            | 1.1 | 1.1 | 1.2 | 1.3 | 1.4 | 1.5 | 1.6 | 1.6  | 1.7  | 1.8  | 1.9  | 1.9  | 2.0  |
| 17            | 1.1 | 1.1 | 1.2 | 1.3 | 1.4 | 1.4 | 1.5 | 1.6  | 1.7  | 1.7  | 1.8  | 1.9  | 1.9  |
| 18            | 1.1 | 1.1 | 1.2 | 1.3 | 1.3 | 1.4 | 1.5 | 1.6  | 1.6  | 1.7  | 1.7  | 1.8  | 1.9  |
| 19            | 1.1 | 1.1 | 1.2 | 1.3 | 1.3 | 1.4 | 1.5 | 1.5  | 1.6  | 1.6  | 1.7  | 1.8  | 1.8  |
| 20            | 1.1 | 1.1 | 1.2 | 1.2 | 1.3 | 1.4 | 1.4 | 1.5  | 1.5  | 1.6  | 1.6  | 1.7  | 1.7  |
| 30            | 1.0 | 1.1 | 1.1 | 1.1 | 1.2 | 1.2 | 1.2 | 1.3  | 1.3  | 1.3  | 1.3  | 1.4  | 1.4  |
| 40            | 1.0 | 1.0 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1  | 1.2  | 1.2  | 1.2  | 1.2  | 1.2  |
| 50            | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.1  | 1.1  | 1.1  | 1.1  | 1.1  | 1.1  |
| 60 or greater | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0  | 1.0  | 1.0  | 1.0  | 1.0  | 1.0  |

- i) If the PEQ is less than or equal to the water quality standard, there is no reasonable potential and no limit will be established in the permit.
  - ii) If the PEQ is more than the water quality standard, the Agency will proceed to consideration of dilution and mixing pursuant to subsection (h)(5).
- B) If facility-specific data of 10 or less data values is available, an alternative PEQ shall be derived using the table in subsection (h)(4)(A) assuming a coefficient of variation of 0.6, applied to the maximum value in the data set that has its quality assured consistent with 35 Ill. Adm. Code 352.410.
- i) If the PEQ is less than or equal to the water quality standard, there is no reasonable potential and no limit will be established in the permit.
  - ii) If the PEQ exceeds the water quality standard, an alternative PEQ will be calculated using the maximum value in the data set and a multiplier of 1.4. If the alternative PEQ also exceeds the water quality standard, the Agency will proceed to consider dilution and mixing pursuant to subsection (h)(5).
  - iii) If the PEQ exceeds the water quality standard but the alternative PEQ is less than or equal to the standard, the Agency will either proceed to consider dilution and mixing pursuant to subsection (h)(5), or will incorporate a monitoring requirement and reopener clause to reassess the potential to exceed within a specified time schedule, not to exceed one year. In determining which of these options to use in any individual application, the Agency shall consider the operational and economic impacts on the permittee and the effect, if any, deferral of a final decision would have on an ultimate compliance schedule if a permit limit were subsequently determined to be necessary.
- C) The Agency shall compare monthly average effluent data values, when available, with chronic aquatic life, human health and wildlife standards to evaluate the need for monthly average WQBELs. The Agency shall use daily

effluent data values to determine whether a potential exists to exceed acute aquatic life water quality standards.

- D) The Agency may apply other scientifically defensible statistical methods for calculating PEQ for use in the reasonable potential analysis as provided for in Procedure 5.b.2 of Appendix F to 40 CFR 132, incorporated by reference at 35 Ill. Adm. Code 301.106.
  - E) Regardless of the statistical procedure used, if the PEQ for the parameter is less than or equal to the water quality standard for that parameter, the Agency shall deem the discharge not to have a reasonable potential to exceed, and a water quality based effluent limit (WQBEL) shall not be required unless otherwise required under 35 Ill. Adm. Code 352.430.
- 5) If the PEQ for a parameter is greater than the particular water quality standard, criteria or value for that parameter, the Agency will assess the level of treatment being provided by the discharger. If the discharger is providing (or will be providing) a level of treatment consistent with the best degree of treatment required by 35 Ill. Adm. Code 304.102(a), the PEQ derived under subsection (h)(4) shall be compared to a preliminary effluent limitation (PEL) determined by applying an appropriate mixing zone or a default mixing zone to the discharge. Mixing opportunity and dilution credit will be considered as follows:
- A) Discharges to tributaries of the Lake Michigan Basin shall be considered to have no available dilution for either acute or chronic exposures, and the PEL will be set equivalent to the water quality standard unless dilution is documented through a mixing zone study.
  - B) Bioaccumulative chemicals of concern (BCCs):
    - i) No mixing shall be allowed for new discharges of BCCs commencing on or after December 24, 1997. The PEL will be set equivalent to the water quality standard.
    - ii) Mixing shall be allowed for discharges of BCCs which existed as of December 24, 1997 in accordance with the requirements of 35 Ill. Adm. Code 302.530.

C) Direct discharges to the Open Waters of Lake Michigan shall have a default mixing allowance of 2:1 for acute standards, criteria or values and 10:1 for chronic standards, criteria or values if the discharge configuration indicates that the effluent readily and rapidly mixes with the receiving waters. If ready and rapid mixing is in doubt the Agency shall deny any default dilution or mixing allowance and require a mixing or dispersion study to determine the proper dilution allowance. If the discharger applies for more than the default dilution or mixing allowance, it must submit a mixing or dispersion study to justify its request. Whenever a mixing or dispersion study is available, it shall be used to determine dilution or mixing allowance in lieu of the default allowance.

6) Preliminary effluent limitations calculations.

(A) The preliminary effluent limitation (PEL) is calculated in a simple mass balance approach reflecting the dilution allowance established in subsection (h)(5):

$$WQS = [(Q_e)(PEL) + (Q_d)(C_d)] / [Q_e + Q_d] \text{ or}$$
$$PEL = [WQS(Q_e + Q_d) - (Q_d)(C_d)] / Q_e$$

WHERE:

WQS = applicable water quality standard, criteria or value

Q<sub>e</sub> = effluent flowrate

Q<sub>d</sub> = allowable dilution flowrate

C<sub>d</sub> = background pollutant concentration in dilution water

B) The representative background concentration of pollutants to develop TMDLs and WLAs calculated in the absence of a TMDL shall be established as follows:

i) "Background" represents all pollutant loadings, specifically loadings that flow from upstream waters into the specified watershed, water body, or water body segment for which a TMDL or WLA in the absence of a TMDL is being developed and enter the specified watershed, water body, or water body segment through atmospheric deposition,

chemical reaction, or sediment release or resuspension.

- (ii) When determining what available data are acceptable for use in calculating background, the Agency shall use its best professional judgment, including consideration of the sampling location and the reliability of the data through comparison, in part, to detection and quantification levels. When data in more than 1 of the data sets or categories described in subsection (h)(6)(B)(iii) exists, best professional judgment shall be used to select the data that most accurately reflects or estimates background concentrations. Pollutant degradation and transport information may be considered when using pollutant loading data to estimate a water column concentration.
- (iii) The representative background concentration for a pollutant in the specified watershed, water body, or water body segment shall be established on a case-by-case basis as the geometric mean of: acceptable water column data; water column concentrations estimated through use of acceptable caged or resident fish tissue data; or water column concentrations estimated through the use of acceptable or projected pollutant loading data. When determining the geometric mean of the data for a pollutant that includes values both above and below the detection level, commonly accepted statistical techniques shall be used to evaluate the data. If all of the acceptable data in a data set are below the detection level for a pollutant, then all the data for the pollutant in that data set shall be assumed to be zero.

7) Water quality based effluent limitations.

- A) If the PEQ is less than or equal to the PEL, it will be concluded that there is no reasonable potential to exceed. Under such circumstances a permit limit for that contaminant will not be set unless otherwise justified under one or more provisions of 35 Ill. Adm. Code 352.430.
- B) If the PEQ is equal to or greater than the PEL, and the PEQ was calculated using a data set of more than 10 values, a water quality based effluent limitation (WQBEL) will be

included in the permit. If the PEQ was calculated using a data set of less than or equal to 10 values, and the alternative PEQ calculated under subsection (h)(4)(B) also exceeds the PEL, a WQBEL will be included in the permit.

- C) If the PEQ was calculated using a data set of less than or equal to 10 values, and the PEQ is greater than the PEL but the alternative PEQ is less than the PEL, the Agency will either establish a WQBEL in the permit or incorporate a monitoring requirement and reopener clause to reassess potential to exceed within a specified time schedule, not to exceed one year. In determining which of these options to use in any individual application, the Agency shall consider the operational and economic impacts on the permittee and the effect, if any, deferral of a final decision would have on an ultimate compliance schedule if a permit limit were subsequently determined to be necessary.
- D) The WQBEL will be set at the PEL, unless the PEL is appropriately modified to reflect credit for intake pollutants when the discharged water originates in the same water body to which it is being discharged. Consideration of intake credit will be limited to the provisions of 35 Ill. Adm. Code 352.425.
- E) The reasonable potential analysis shall be completed separately for acute and chronic aquatic life effects. When WQBELs are based on acute impacts, the limit will be expressed as a daily maximum. When the WQBEL is based on chronic effects, the limit will be expressed as a monthly average. Human health and wildlife based WQBELs will be expressed as monthly averages. If circumstances warrant, the Agency shall consider alternatives to daily and monthly limits.

(Source: Amended at 23 Ill. Reg. 11287, effective August 26, 1999)

- i) If the NPDES permit is for a discharge that constitutes an increase in pollutant loading that necessitates a new, renewed or modified NPDES permit, the Agency must complete an antidegradation assessment demonstration review in accordance with the provisions of this subsection to determine compliance with 35 Ill. Adm. Code 302.105. The



**assessment to determine compliance with 35 Ill. Adm. Code 302.105**

**must be made on a case-by-case basis.** The Agency must consider

the:

- 1) criteria stated in 35 Ill. Adm. Code 302.105(c)(2); and
- 2) the following information:
  - A) Identification and characterization of the waters affected by the proposed load increase or proposed activity and their existing uses. Characterization must address physical, biological and chemical conditions of the waters;
  - B) Identification and quantification of the proposed load increases for the applicable parameters and of the potential impacts of the proposed activity on the affected waters;
  - C) The purpose and anticipated benefits of the proposed activity. Such benefits may include, **but are not limited to:**
    - i) Providing a centralized wastewater collection and treatment system for a previously unsewered community;
    - ii) Expansion to provide service for anticipated residential or industrial growth consistent with a community's long range urban planning;

iii) Addition of a new product line or production increase or modification at an industrial facility;

or

iv) An increase or the retention of current employment levels at a facility.

D) Assessments of alternatives to proposed increases in pollutant loading or activities subject to Agency certification pursuant to Section 401 of the CWA that result in less of a load increase, no load increase or minimal environmental degradation. Such alternatives include, but are not limited to:

i) Additional treatment levels including no discharge alternatives;

ii) Discharge of waste to alternate locations including publicly-owned treatment works and streams with greater assimilative capacity; or

iii) Manufacturing practices that incorporate pollution prevention techniques; and

E) Any of the information sources identified in subsection 302.105 (d)(3)35 Ill. Adm. Code 302.105(c)(2)(C).

3) The Agency will conduct public notice and public participation through the public notice procedures found in 35 Ill. Adm. Code 309.109 or CWA Section 401 certification denial.

BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
 )  
REVISIONS TO ANTIDEGRADATION ) R01-13  
RULES: 35 ILL. ADM. CODE 302.105, ) (Rulemaking-Water)  
303.205, 303.206, and 102.800-102.830 )  
 )

COMMENT OF ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (Illinois EPA), by its attorney, Connie L. Tonsor, and hereby submits comments in the above rulemaking.

GENERAL COMMENT

1) The Illinois EPA appreciates the Illinois Pollution Control Board's ("Board") efforts in this rulemaking to amend the water quality standard, Section 302.105, antidegradation. The Board's attention and efforts have facilitated an amended antidegradation standard that the Illinois EPA believes will continue to assure protection of the waters of the State of Illinois while recognizing the need for continued development and utilization of the water resources of the State. As a result, the Illinois EPA has very few substantive comments or concerns with regard to Section 302.105 (a) through (e) of the rulemaking.

Although the Illinois EPA did not propose the Part 354 implementation regulations to be a part of the Board's water quality standard but proposed them as the process that the Illinois EPA would follow in interacting with proposal applicants, the inclusion of the draft Part 354 agency rules as they relate to the

NPDES permitting process is, as it testified at hearing, acceptable to the Illinois EPA.

However, the new subsection 302.105(f) is applicable to the permit process as well as to the review of activities requiring a Section 401 of the Clean Water Act ("Section 401"), 33 U.S.C § 1341, water quality certification prior to federal permit issuance. In contrast to the NPDES permitting program, the Illinois EPA is not the delegated permitting agency for federal permits but must work with several federal permitting agencies in the Section 401 certification process. The Illinois EPA needs to coordinate the procedural aspects of the antidegradation review and the public notice aspects of the review with the U. S. Army Corps of Engineers, the Federal Energy Regulatory Commission, and Nuclear Regulatory Commission. The review and coordination with the federal regulatory processes is not complete. Therefore, it is important that the implementation procedures for the Section 401 certification remain Agency rules. Adoption by the Board of Section 401 certification procedures as a part of the water quality standard prior to full coordination with the federal agencies may cause conflicts with the federal process.

The Agency notes that it has developed agency procedural rules for the Section 401 certification process pursuant to Section 4(m) of the Act, 415 ILCS 5/4(m), and Section 401(e) of the CWA, 33 U.S.C. § 1341. It will work toward the adoption of antidegradation assessment rules as part of the revision of Part 395.

2) Many of the proposed agency regulations, now Section 302.105(f) address day-to-day communication between the permit applicant and the Illinois

EPA. The substantive requirements of the antidegradation water quality standard are contained within Section 302.105 (a) through (e) of the first notice document. Several of the aspects of the day-to-day operation, such as how the Illinois EPA will respond to informal inquiries, seem inappropriate to be contained within the water quality standard for the State. These are the operational aspects reaching a decision with regard to a permit. The Illinois EPA would suggest that the communicational aspects not be a part of the Board's regulations. Additionally, the Illinois EPA, with regard to the National Pollutant Discharge Elimination System ("NPDES") portion of Section 302.105(f), urges the Board to place the permitting procedures in 35 Ill. Adm. Code 309, which addresses procedures for permit issuance.

#### SPECIFIC COMMENTS

1) Section 302.105(b)(4)

The new subsection reference "must be assessed pursuant to subsection (f)" is applicable to the permit process as well as to the review of activities requiring a Section 401, water quality certification prior to federal permit issuance. The Illinois EPA must work with several federal agencies in the Section 401 certification process. The Illinois EPA needs to coordinate the procedural aspects of the antidegradation review with those agencies. Therefore, it is important that the implementation process of the Section 401 of review remain Agency rules. The Agency notes that it has developed agency procedural rules for the Section 401 certification process pursuant to Section 4(m) of the Act, 415

ILCS 5/4(m), and Section 401(e) of the CWA, 33 U.S.C. §1341 for the CWA certification.

**Recommended language:**

- 4) "Any proposed increase in pollutant loading requiring an NPDES permit ~~or a CWA 401 certification~~ for an ORW must be assessed pursuant to a subsection (f) to determine compliance with this Section.
- 5) "Any activity requiring a CWA Section 401 certification for an ORW must be assessed during the Section 401 certification process to determine compliance with this section."

2) Section 302.105(d)(6)

The Section 401 certification process does not use the phrase "general" Section 401 certification. In order to eliminate any potential confusion, the Illinois EPA suggests that the term "general" be replaced with the phrase: "for nationwide or regional Section 404 permits."

**Recommended language:**

"Discharges permitted under a current general NPDES permit as provided by 415 ILCS 5/39(b) or a ~~general CWA~~, Section 401 certification for nationwide or regional Section 404 permits are not subject to facility-specific antidegradation review; however, the Agency must assure that individual permits or certifications are required prior to all new pollutant loadings or hydrological modifications that necessitate a new, renewed or

modified NPDES permit or CWA, Section 401 certification that affect waters of particular biological significance; or”

3) Section 302.105(f)

The Illinois EPA has three overall comments with regard to Section 302.105(f).

A) The Illinois EPA strongly urges the Board to delete references to the Section 401 certification process from the new Section 302.105(f) for the reasons stated in the testimony of Toby Frevert and incorporated into this comment by reference and for the reasons stated in the General Comments.

B) The Illinois EPA is currently reviewing the language of first notice 302.105(f) for the purpose of streamlining the language and placing the portions that concern the substantive review process into 35 Ill. Adm. Code 309. The Illinois EPA has not yet completed this process but will have language available at the hearing in this matter. Preliminarily, the Illinois EPA believes that the communicational aspects of Section 302.105(f), 302.105(f)(2)(A) and (C), should be removed from Board regulations. Therefore, the Board regulations would address reviews that are a part of the formal permit process.

However, the Illinois EPA notes that a lack of clarity in the language may have occurred in the draft implementation rules, which are now Section 302.105(f) of the water quality standard. It offers language corrections to address the lack of clarity in this comment. The “demonstration review” language developed when the proponent of the activity was required to provide information that demonstrated that its proposal would meet the requirements of the Section

302.105. During the rulemaking process and hearing process, the Illinois EPA generally agreed that the “demonstration by the proponent” concept should be replaced with an “assessment of the proposed activity” by the Illinois EPA concept. The Part 354 language was not changed to reflect this agreement, and the language in Section 302.105(f) should be modified to reflect this change.

C) During the formulation of the antidegradation regulations, concerns arose that the Agency not create a situation in which several appeals of parts of a permit decision or certification decision could occur. However, the workgroup and the Agency agreed that a need existed for the Agency to review projects in a preliminary stage and prior to the filing of an application. This would facilitate planning for the regulated community. The Agency made a commitment to the regulated community to conduct this preliminary review.

Therefore, in the Proposed Part 354 rules, the Agency set out a two-tiered review and stated that it would initiate the review process based on an informal inquiry. However, the Agency emphasized that no appeal of the decision on a preliminary inquiry could occur outside of the permit denial or certification process and the formality of its response would depend upon the formality of the inquiry.

This two-tiered process has become mingled in Section 302.105(f)(2)(B). Currently, Section 302.105(f)(2)(B), the cross-reference is to subsection (f)(2)(A)(i). Therefore, no immediate appeal is available of the decision after receipt of an application. However, an immediate appeal arguably could be brought after the Agency’s assessment of an informal or preliminary inquiry



pursuant to Section 302.105(f)(2)(A)(i). Originally, the Agency intended that no separate appeal of an assessment decision, based on a request for a review of a project prior to the submission of a permit application or Section 401 certification application or the formal permit application was available. The proponent could appeal the decision only in the context of a permit denial or certification denial. This prevented multiple appeals of issues in a permit.

Therefore, the Agency suggests that the Board change the cross-reference in Section 302.105(f)(2)(B) to "(f)(2)(A)". The Agency further suggests that a cross-reference be added in Section 302.105(f)(2)(D) to subsection (f)(2)(A)(ii). The language would read: "After its review, pursuant to subsection (f)(2)(A)(ii), the Agency must produce a written analysis addressing the requirements of this Section and provide a decision yielding one of the following results:"

**Recommended language:**

- f) In conducting an antidegradation assessment pursuant to this Section, the Agency, must comply with the following procedures.
  - 1) A permit application for any proposed increase in pollutant loading that necessitates a new, renewed, or modified NPDES permit, with a new or increased permit limiter-a ~~CWA Section 401 certification~~, must include, to the extent necessary for the Agency to determine that the proposed activity~~permit application~~ meets the requirements of Section 302.105, the following information:...

D) Assessments of alternatives to proposed increases in pollutant loading ~~or activities subject to Agency certification pursuant to Section 401 of the CWA~~ that result in less of a load increase, no load increase or minimal environmental degradation. Such alternatives include...

2) The Agency must complete an antidegradation assessment demonstration review in accordance with the provisions of this Section.

A) The antidegradation assessment pursuant to this Section is a part of the NPDES permitting process ~~or the CWA Section 401 certification process~~. However, applicants may initiate communication with the Agency, preferably during the planning stage for any load increase. Communication will help assure the adequacy of information necessary to ~~complete an~~ constitute an antidegradation assessment demonstration and avoid or minimize delays and requests for supplemental information during the permitting stage. The Agency assessment review process must be initiated by:

i)....

- ii) receipt of application for an NPDES permit issuance, renewal or modification ~~or a CWA Section 401 certification.~~
- B) A proponent seeking an immediate review of the results of the Agency's assessment ~~review~~ pursuant to subsection (f)(2)(A) must do so within the NPDES permit process ~~or the CWA Section 401 certification process.~~
- C) After an assessment ~~review~~ pursuant to subsection (f)(2)(A)(i), the Agency must consult with the proponent and respond:
- i) in writing to written requests. The written response will include a statement by the Agency indicating whether the proposed activity ~~demonstration~~, based upon the information provided or information acquired by the Agency during the review process, meets the criteria of this Section.
  - ii)....
  - iii)...
- D) After its assessment ~~review~~ pursuant to subsection (f)(2)(A)(ii) ~~review~~, the Agency must produce a written analysis addressing the requirements of this Section and provide a decision yielding one of the following results.
- i) If the proposed activity ~~demonstration~~ meets the requirements of this Section, then the Agency must

proceed with public notice of the NPDES permit ~~or~~  
~~CWA Section 401 certification~~ and include the written  
analysis as a part of the fact sheet accompanying the  
public notice;

- ii) If the ~~proposed activity demonstration~~ does not meet  
the requirements of this Section, then the Agency  
must provide a written analysis to the applicant and  
must be available to discuss the deficiencies that led  
to the disapproval. The Agency may suggest  
methods to remedy the conflicts with the requirements  
of this Section.
- iii) If the ~~proposed activity demonstration~~ does not meet  
the requirements of this Section, but some lowering of  
water quality is allowable, then the Agency will  
contact the applicant with the results of the review. If  
the reduced loading increase is acceptable to the  
applicant, upon the receipt of an amended  
~~application demonstration~~, the Agency will proceed to  
public notice; or if the reduced loading increase is not  
acceptable to the applicant, the Agency will transmit  
its written ~~analysis review~~ to the applicant in the  
context of a NPDES permit denial ~~or a CWA Section~~  
~~401 certification denial~~.

- 3) The Agency will conduct public notice and public participation through the public notice procedures found in 35 Ill. Adm. Code 309.109 or CWA Section 401 certification. ....

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:   
Connie L. Tonsor

August 10, 2001

Illinois Environmental Protection Agency  
1021 North Grand Ave. East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

STATE OF ILLINOIS

COUNTY OF SANGAMON

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)  
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**PROOF OF SERVICE**

I, the undersigned, on oath state that I have served the attached COMMENT upon the person to whom it is directed, by placing a copy in an envelope addressed to:

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and mailing it from Springfield, Illinois on October 5, 2001 with sufficient postage affixed as indicated above.

*Nancy Lamport*

**SUBSCRIBED AND SWORN TO BEFORE ME**

this 5<sup>th</sup> day of October, 2001.

*Stephen C. Ewart*

Notary Public

