

ILLINOIS POLLUTION CONTROL BOARD  
March 24, 1983

IN THE MATTER OF: )  
 )  
REVIEW OF EXISTING REGULATIONS, ) R81-17  
35 ILL. ADM. CODE 306.103 )  
[RULE 602 OF CHAPTER 3: WATER POLLUTION )  
(COMBINED SEWER OVERFLOW)] )

Adopted Rule.            Final Order.

FINAL OPINION AND ORDER OF THE BOARD (by J. Anderson):

The Board's Initial Opinion of April 1, 1982 and Proposed Opinion of December 2, 1982, which recite the lengthy procedural history and the conceptual evolution of this rulemaking, total 25 pages. In the interests of economy, the Board, in this its Final Opinion, hereby incorporates them by reference, rather than attempting to either reproduce them in their entirety or to risk a misleading synopsis of a lengthy and complex proceeding.

On December 2, 1982 the Board directed that second notice of the rules as contained in its Order be submitted to the Joint Committee on Administrative Rules (JCAR). At its March 22, 1983 meeting, JCAR determined that no objection would be made to the proposed rules.

The Board did, however, agree to make certain changes in the rules as contained in its December 2 Order, in response to JCAR problems and questions during the second notice period.

CHANGES DURING SECOND NOTICE

SECTION 306.305(c) Treatment of Overflows and Bypasses

Direct reference was inserted to Section 302.203, the water quality standard for unnatural sludge.

SECTION 306.351 Notification and Submittals by Dischargers

The third sentence was amended to provide that the Agency shall request further information, but the request may extend only to information listed in Sections 306.361 and 306.363.

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The Board appreciates the efforts of administrative assistant Kathleen M. Crowley, who acted as hearing officer during these extensive proceedings and provided invaluable assistance in developing these rules.

SECTION 306.352 Notification by Agency

This formerly three-sentence section was broken into three subsections. In Section 306.352(a), the Agency is mandated to notify a discharger in writing of its determination not to propose an exception, and to indicate its basis. A sentence has been added exemplifying permissible bases.

In Section 306.352(c), a sentence has been added charging the Agency to adopt criteria to insure Agency consistency of review. (This requires the Agency to do only what it had testified it would do at hearing.)

SECTION 306.361 Justification of Joint Petition

Section 306.361(a) has been amended to indicate what may be included in a thorough stream chemical analysis. A new sentence has been added to Section 306.361(c) reflecting the Board's usual practice in assessing the reliability of mathematical models. In Section 306.361(d), guidance has been provided concerning assertion of justifications that any particular information is inapplicable.

SECTION 306.371 Opinion and Order

This formerly two-sentence section has been broken into two subsections. The section as amended in effect restates statutory requirements concerning Board Opinions and Orders. The Board agreed to incorporate this redundancy only because of the hybrid regulatory/adjudicatory nature of the exception procedure proposed rulemaking.

SECTION 306.372 Transcripts

The phrase "good cause shown" has been deleted from the second sentence, and a third sentence has been added reflecting the elements of the good cause showing which the Board has traditionally considered in deliberating petitions to assume costs.

The rules, as reflected in the Order below, are adopted by the Board as final. The Clerk is directed to cause them to be filed with the Secretary of State.

ORDERTITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE C: WATER POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARDPART 306  
PERFORMANCE CRITERIASUBPART A: SYSTEMS RELIABILITY

- Section 306.101 Preamble (no change)
- Section 306.102 Systems Reliability (no change)
- ~~Section-306-103~~ ~~Combined-Sewers-and-Treatment-Plant-Bypasses~~  
(renumbered as Subpart C, Sections 306.302-306.306)
- ~~Section-306-104~~ ~~Intake-Structures~~  
(renumbered as Subpart B, Section 306.201)
- ~~Section-306-105~~ ~~New-Connections~~  
(renumbered as Subpart E, Sections 306.401-306.406)

SUBPART B: INTAKE STRUCTURES

- Section 306.201 Intake Structures  
(no change from text of 306.104)

SUBPART C: COMBINED SEWERS AND TREATMENT PLANT BYPASSES

- ~~Section-306-103~~  
Section 306.302 Expansion of Combined Sewers

a) The expansion of existing or establishment of new combined sewer service areas is prohibited, except where the Agency has determined from the permit application the following:

- 1a) The combined sewer service area has adequate treatment or retention capacity to ensure that the effluent limitations of Part 35 Ill. Adm. Code 304 and the provisions of the Act are not violated;
- 2b) Any anticipated increased flow will not overload connecting segments of the combined sewer system;

- 3c) Increased flow shall not aggravate combined sewer overflow problems; including, but not limited to, combined sewer surcharges, basement back-ups and street flow;
- 4d) The new combined sewer service area will be tributary to an existing combined sewer system.

Section 306.303 Excess Infiltration

b) Excess infiltration into sewers shall be eliminated, and the maximum practicable flow shall be conveyed to treatment facilities.

Section 306.304 Overflows

Overflows from sanitary sewers are expressly prohibited.

Section 306.305 Treatment of Overflows and Bypasses

e) All combined sewer overflows and treatment plant bypasses shall be given sufficient treatment to prevent pollution, or the violation of applicable water quality standards, unless an exception has been granted by the Board pursuant to Subpart D. Sufficient treatment shall consist of the following:

- 1a) All dry weather flows, and the first flush of storm flows as determined by the Agency, shall meet the applicable effluent standards; and
- 2b) Additional flows, as determined by the Agency but not less than ten times the average dry weather flow for the design year, shall receive a minimum of primary treatment and disinfection with adequate retention time; and

~~3.---To-the-extent-necessary-to-prevent-accumulations-of-sludge deposits-or-depression-of-oxygen-levels,-flows-in-excess of-these-described-under-paragraph-(e)-(2)-above-shall-be treated-by-retention-and-return-to-the-treatment-works-or otherwise.--When-the-Agency-finds-it-necessary,-part-of-all such-excess-flow-shall-be-treated-to-substantially-remove floating-debris-and-solids.--~~

- c) Flows in excess of those described in subsection (b) shall be treated, in whole or in part, to the extent necessary to prevent accumulations of sludge deposits, floating debris and solids in accordance with 35 Ill. Adm. Code 302.203, and to prevent depression of oxygen levels; or

- d) Compliance with a treatment program authorized by the Board in an exception granted pursuant to Subpart D.

Section 306.306 Compliance Dates

~~d)~~ Compliance with ~~paragraph-e)~~ Section 306.305 shall be achieved on or before the following dates:

- 1a) All treatment plant bypasses, by the applicable date for improvement of treatment works under ~~Part~~ 35 Ill. Adm. Code 304.
- 2b) All combined sewer overflows within the Metropolitan Sanitary District of Greater Chicago, by December 31, 1977;
- 3c) All other combined sewer overflows, by December 31, 1975.
- 4d) The compliance dates set by ~~(d)(2)-and-(d)(3)~~ paragraph subsections (b) and (c) shall be met unless:
- A1) The discharger's combined sewer overflow is eligible for a construction grant under Section 201(g) of the CWA; and,
- B2) The discharger has filed an application for a construction grant on or before March 1, 1977; and,
- E3) The discharger has timely taken all appropriate pre-grant and post-grant actions necessary to the specific grant step for which the discharger is then eligible, or
- 4) The discharger has been granted an exception by the Board pursuant to Subpart D, an exception procedure is pending, or the Agency has not notified the discharger pursuant to Section 306.352.
- 5e) Nothing in ~~paragraph subsection (d)(4)~~ shall limit the power of the Board to enter an abatement order pursuant to Section 46 of the Act necessary to abate pollution of waters of the State, when the Board has found, as the result of an enforcement or variance case initiated under Titles VIII or IX of the Act, that the discharger is causing a violation of the Act or regulations.
- 6f) The exemption provided by subsection (d)(4)-above shall terminate upon completion of construction under the grant provided. ~~and-compliance-with-the-provisions-of-this Section-shall-thereafter-be-required.~~

SUBPART D: EXCEPTION PROCEDURESection 306.350 Preamble

Exceptions to Section 306.305 or 306.306 shall be granted by the Board based upon water quality effects, actual and potential stream uses, and economic considerations including those of the discharger and those affected by the discharge. The following procedures shall be used for petitions for exceptions to the otherwise applicable water quality standards of this Chapter, and the sufficient treatment provisions contained in Section 305.306, 306.305(a), 306.305(b), and 306.305(c).

Section 306.351 Notification and Submittals by Discharger

No later than July 1, 1983, any discharger which has an interest in requesting Agency assistance in initiating an exception proceeding shall so advise the Agency. No later than October 1, 1983 the discharger shall assemble and submit to the Agency any background information in the discharger's possession relevant to its combined sewer overflows, including any analyses of treatment options. The Agency after a review of its files and the discharger's submittal, shall request such further information as listed in Section 306.361 and 306.363 as it deems necessary for its determination pursuant to Section 306.352.

Section 306.352 Notification by Agency

- a) The Agency shall notify the discharger of any Agency proposal for exception, including any necessary treatment conditions and the provisions of Section 306.305 and 306.306 that would be modified or eliminated.
- b) The Agency shall promptly notify the discharger in writing of any discretionary determination that it will not propose an exception and shall indicate the basis for such determination. Such basis may include but not be limited to a judgment that the information submitted is insufficient, that due to the nature of the discharge and the receiving stream relief from Section 306.305 or 306.306 would be environmentally unsound, or that a specific alternative control strategy suggested by the discharger is infeasible from either an engineering or pollutant removal standpoint.
- c) All Agency determinations, shall reflect a consistency of review among dischargers or their individual discharges. To insure such consistency, the Agency shall adopt criteria for evaluation and review of dischargers' submittals pursuant to Section 306.351.

Section 306.360 Joint or Single Petition for Exception

If the discharger accepts the Agency proposal for exception, an exception proceeding before the Board shall be commenced by the discharger by filing jointly with the Agency a petition for exception. If the Agency has declined to propose an exception or if the discharger declines to accept an Agency proposal, the discharger may commence singly an exception proceeding before the Board.

Section 306.361 Justification of Joint Petition

Except as provided otherwise in subsection (d) if the discharger and the Agency jointly file a petition for exception, exception justifications shall be established in the petition for exception as follows:

- a) An exception justification based upon minimal discharge impact shall include, as a minimum, an evaluation of receiving stream ratios, known stream uses, accessibility to stream and side land use activities (residential, commercial, agricultural, industrial, recreational), frequency and extent of overflow events, inspections of unnatural bottom deposits, odors, unnatural floating material or color, stream morphology and results of limited stream chemical analyses.
- b) Where a minimal impact exception justification cannot be established pursuant to subsection (a), or where an exception will include a modification of otherwise applicable water quality standards, an exception justification shall include, as a minimum, evaluations pursuant to subsection (a) and evaluations of stream sediment analyses, biological surveys (including habitat assessment), and thorough stream chemical analyses that may include but are not limited to analysis of parameters regulated in 35 Ill. Adm. Code 302, analysis of toxics or metals if the collection system tributary to the overflow receives wastes which might contain them, sediment oxygen demand, volatile solids, and diurnal monitoring under both dry and wet weather conditions.
- c) Exception justifications which include projections of the improvement from alternative control programs may include reasonably reliable mathematical models based upon information gathered pursuant to subsection (b). The reasonable reliability of a mathematical model shall be assessed by reference to factors including but not limited to the model's scientific validity and the consistency with which the model reflects conditions in the stream as determined by monitored data.

- d) Where special circumstances may render any evaluation inapplicable, for reasons of irrelevancy or expense of data collection in relation to the relevancy of the data, the petition shall include a justification for such inapplicability.

Section 306.362 Justification of Single Petition

If the discharger files singly a Petition for Exception, exception justifications shall be established by the discharger, pursuant to Section 306.361 (b), (c), and (d).

Section 306.363 Contents of Joint Petition

Requirements for jointly filed Petition. Ten copies of such petition shall be filed with the Clerk of the Board. The petition shall include the following information:

- a) A written statement, signed by the Petitioners or their authorized representatives outlining the scope of the evaluation, the nature of, the reasons for, and the basis for the justification for the exception; and
- b) The nature of the discharger's operations and control equipment; and
- c) Any Agency proposal for exception; and
- d) Citations to any final enforcement actions against the discharger, and any variances granted to the discharger where compliance has not been achieved.

Section 306.364 Contents of Single Petition

In addition to the information specified in Section 306.363, the petition shall include any necessary treatment conditions and the provisions of Section 306.305 and 306.306 that would be modified or eliminated.

Section 306.370 Notice and Hearing

The clerk shall give notice of the petition and shall schedule a hearing in accordance with 35 Ill. Adm. Code 103. The proceedings shall be in accordance with 35 Ill. Adm. Code 103.



Section 306.371 Opinion and Order

- a) In considering the proposed petition for exception and the hearing record, the Board shall take into account the factors contained in Section 27(a) of the Act. The Board shall issue and enter a written opinion stating the facts and reasons leading to its decision on a petition for exception.
- b) The Board shall issue and enter such orders concerning a petition for exception as are appropriate for the reasons stated in its written opinion. Such appropriate orders may include but are not limited to orders accepting or rejecting the petition, directing that further hearings be held to develop further information or to cure any procedural defects, or remanding the petition to the petitioners with suggested revisions. Another hearing shall be held on any revised petition for exception.

Section 306.372 Transcripts

In any proceeding brought pursuant to Subpart D, the discharger at its own cost shall furnish the Board within 15 days following completion of the hearing seven legible copies of a complete transcript of the proceedings of the hearing. Upon petition, the Board may assume such cost. In determining whether to assume such cost, the Board shall take into consideration transcript costs, the discharger's allegations of special circumstances of economic hardship, and any constraints upon the Board's budgetary ability to assume such costs.

Section 306.373 Final Date for Petitions

No petition for exception shall be accepted by the Board after January 1, 1986.

Section 306.374 Other Proceedings

Nothing in Subpart D shall impair any rights authorized in the Act or Board Regulations that the discharger or any other person may have to initiate or participate in regulatory proceedings, variance petitions, enforcement actions, or permit appeals. However, Agency determinations made pursuant to Section 306.352 may not be appealed to the Board.

SUBPART E: NEW CONNECTIONS

Section 306.401      Publication of Lists  
[no change from text of 306.105(a)]

Section 306.402      Restricted Status  
[no change from text of 306.105(b)]

Section 306.403      Critical Review  
[no change from text of 306.105(c)]


Section 306.404      Notification of Individuals  
[no change from text of 306.105(d)]

Section 306.405      Appeal  
[no change from text of 306.105(e)]

Section 306.406      Effective Dates  
[no change from text of 306.406(f)]

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 24<sup>th</sup> day of March, 1983 by a vote of 5-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board