

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

AUG 30 2000

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
AMENDMENTS TO 35 Ill. Adm. Code)
302.105; and)
PROPOSED 35 Ill. Adm. Code 303.205, 303.206)
and 35 Ill. Adm. Code 106.990 through 106.995.)

REG-13
(Rulemaking)

NOTICE OF FILING

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

Illinois Department of Energy and Natural Resources
Attention: Legal Department
325 West Adams, Room 300
Springfield, Illinois 62706

Matthew Dunn
Illinois Attorney General's Office
Environmental Control Division
James R. Thompson Center,
188 West Randolph Street
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the **AGENCY REGULATORY PROPOSAL AND TABLE OF CONTENTS FOR REGULATORY PROPOSAL** 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
Associate Counsel
Division of Legal Counsel

DATED: August 29, 2000

Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AMENDMENTS TO 35 Ill. Adm. Code)
302.105; and)
PROPOSED 35 Ill. Adm. Code 303.205, 303.206)
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RO1-13
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APPEARANCE

The undersigned, as one of its attorneys, hereby enters her Appearance on behalf of Respondent, Illinois Environmental Protection Agency.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Connie L. Tonsor
Connie L. Tonsor
Associate Counsel
Division of Legal Counsel

DATED: August 29, 2000

Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
(217)782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD AUG 30 2000

IN THE MATTER OF:)
)
AMENDMENTS TO 35 Ill. Adm. Code) R 01-13
302.105; and) (Rulemaking)
PROPOSED 35 Ill. Adm. Code 303.205, 303.206)
and 35 Ill. Adm. Code 106.990 through 106.995.)

STATE OF ILLINOIS
Pollution Control Board

MOTION FOR ACCEPTANCE

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by and through its attorney, Connie L. Tonsor, and pursuant to 35 Ill. Adm. Code 102.120 and 102.121, moves that this Board accept for hearing the Illinois EPA's proposal for amendments of 35 Ill. Adm. Code, Part 302, 303 and 106. This regulatory proposal includes:

1. Notice
2. Appearance of attorney for the Illinois Environmental Protection Agency
3. Director Skinner's Statement of Submittal
4. Statement of Reasons
5. Agency Analysis of Economic and Budgetary Effects of Proposed Rulemaking
6. Exhibits including:

33 USC §1313
33 USC §1251
40 C.F.R. §131.2
40 C.F.R. §131.6
40 C.F.R. §131.12

Exhibit A: Water Quality Standards Handbook, Second Edition, EPA 823-B-94-005a, Chapter 4, Antidegradation, August 1994.

Exhibit B: Part 354, "Procedures for Antidegradation Demonstration Reviews".

Exhibit C: Excerpt from "FY 2000 Performance Partnership Agreement",
November 1999, pp. 98-99, IEPA/ENV/99-021.

7. Notice of Proposal and the Proposed Amendments
8. Computer disc containing the Notice of Proposal and the Proposed Amendments
9. Proof of Service

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: *Connie L. Tonsor*
Connie L. Tonsor
Associate Counsel
Division of Legal Counsel

DATED: August 29, 2000

Illinois Environmental Protection Agency
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
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302.105; and)
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R 61-13
(Rulemaking)

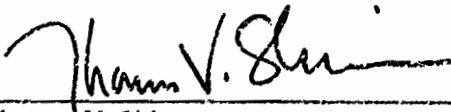
AGENCY PROPOSAL OF REGULATIONS

Pursuant to Section 27 of the Illinois Environmental Protection Act (415 ILCS 5/27), the Illinois Environmental Protection Agency ("Agency") hereby proposes that the Illinois Pollution Control Board adopt the attached proposed regulations.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: _____


Thomas V. Skinner
Director

DATED: August 29, 2000

Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
(217)782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

RECEIVED

CLERK'S OFFICE

AUG 30 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
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AMENDMENTS TO 35 Ill. Adm. Code)
302.105; and)
PROPOSED 35 Ill. Adm. Code 303.205, 303.206)
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R 01-13
(Rulemaking)

STATE OF ILLINOIS
Pollution Control Board

STATEMENT OF REASONS

The Illinois Environmental Protection Agency ("Illinois EPA") hereby submits its Statement of Reasons for the above-captioned proceeding to the Illinois Pollution Control Board ("Board") pursuant to Section 27 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/27 (1998), and 35 Ill. Adm. Code 102.120 and 102.121.

I. Statutory Basis

Pursuant to the Federal Water Pollution Control Act, 33 U.S.C. §§1251-1387 (1987), commonly known as the Clean Water Act ("CWA") §§101-607, States are required to revise and update their water quality standards to ensure that they are protective of public health and welfare, enhance the quality of water and promote the purposes of the CWA. 33 U.S.C. §1313(c)(2)(A). As revised federal policy and new scientific standards are established, the State must consider their use and value for public water supplies, propagation of fish and wildlife, and recreational, agricultural, industrial and navigational purposes. 33 U.S.C. §1313 (c)(2)(A). This process of reviewing a state's standards is commonly known as a "triennial water quality standards review". 33 U.S.C. §1313(c)(1).

One element of the Illinois EPA's current triennial water quality standards review is the antidegradation policy and procedures found at 35 Ill. Adm. Code 302.105. The

Illinois EPA proposes to amend that Section and propose new Sections at 35 Ill. Adm. Code 303.205, 303.206 and 35 Ill. Adm. Code 106.990 through 106.995.

The Board adopted the concept of nondegradation in 1972. The goal of nondegradation was to preserve, "...the present prohibition of unnecessary degradation of waters presently of better quality than that required by the standards, recognizing that the standards represent not optimum water quality but the worst we are prepared to tolerate if economic considerations so require." In the Matter of Effluent Criteria, R 70-8; In the Matter of Water Quality Standards Revisions, R71-14; In the Matter of Water Quality Standards Revisions For Intrastate Waters (SWB-14), R 71-20 (March 7, 1972). Presently, Section 302.105 applies once existing water quality is better than the established standards as of the date of those standards' adoption. After a water body reaches a quality above the established standards, then that existing quality must be maintained. However, it is not clear that waters outside this category of "better than established standards" are explicitly protected.

In addition to water quality based and technology based effluent limits, nondegradation or antidegradation is a tool to ensure that the objective of the CWA at Section 101(a), 33 U.S.C. §1251(a), "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" is achieved in Illinois. "Each State must develop, adopt, and retain a statewide antidegradation policy regarding water quality standards and establish procedures for its implementation through the water quality management process. The state antidegradation policy and implementation procedures must be consistent with the components detailed in 40 CFR 131.12." Water Quality Standards Handbook, Second Edition, EPA 823-B-94-005a, Chapter 4, Antidegradation,

p. 4-2, August 1994. (See Exhibit A) The first step in updating Illinois' nondegradation policy is to change the term "Nondegradation" to "Antidegradation" to parallel the federal antidegradation policy found at 40 C.F.R. §131.12. Then, Illinois must adopt regulations that closely track the tiers of the federal policy.

II. Regulatory Proposal

A. Purpose and Effect of Regulatory Proposal

The first concept within the Antidegradation policy found at 40 C.F.R. §131.12(a)(1), or Tier I, is based on achieving and maintaining existing stream uses. Tier I sets the minimum level of protection and is intended to be the absolute floor of water quality protection for all waters of the United States. (See Exhibit A at 4-1.) The Illinois EPA is proposing to explicitly ensure the protection of existing uses and Illinois' compliance with the CWA and federal regulations by offering Section 302.105 (a).

Tier 2, or 40 C.F.R. §131.12(a)(2), addresses waters whose quality exceeds the levels necessary to support the propagation of fish, shellfish and wildlife and recreation in and on the water. Water quality cannot be lowered below the level necessary to protect the "fishable/swimmable" uses and other existing use. However, maintaining a level of water quality above the "fishable/swimmable" level is not always required. "High Quality Waters", or Tier 2 waters, shall be protected by Illinois EPA's proposed Section 302.105 (c). (See Exhibit A at 4-6 through 4-9.) In cases where degradation of a high quality water is requested by a permit applicant, the Illinois EPA shall document its evaluation of the applicant's antidegradation demonstration by following Part 354, "Procedures for Antidegradation Demonstration Reviews" which will be filed by the

Illinois EPA with the Joint Committee On Administrative Rules ("JCAR") upon the Board's acceptance of this rulemaking for second notice. (See Exhibit B)

Section 131.12(a)(3), referred to as Tier 3, requires that high quality waters which constitute "Outstanding National Resource Waters" ("ONRW") (e.g., waters of National and state parks, wildlife refuges or waters of exceptional recreational or ecological significance) must be maintained and protected. To achieve the goals of Tier 3 the Illinois EPA is proposing the creation of a new designated use category, "Outstanding Resource Waters" or "ORWs" in Section 303.205. (See Exhibit A at 4-10.) The Illinois EPA is also proposing new procedural rules (Sections 106.990 through 106.995) for the nomination and classification of water bodies as ORWs. After the Board designates a water body as an ORW, it shall be listed in proposed Section 303.206. Although the general rule is that an ORW shall not be degraded, there are exceptions to that rule that are proposed and evaluated using the criteria established in Section 302.105(b). "States may allow some limited activities which result in temporary and short-term changes in water quality, but such changes in water quality should not impact existing uses or alter the essential character or special use that makes the water an ONRW." (See Exhibit A at 4-1)

The proposed regulations contain a short list of activities that would be considered compatible with antidegradation and would not require an individual demonstration as found in proposed Section 302.105(d). Proposed Section 302.105(e) contains a cross-reference to the Lake Michigan Basin.

B. Facts in Support

The minimum requirements for water quality standard submissions to the USEPA are detailed in 40 CFR 131.6. An antidegradation policy consistent with 40 CFR 131.12 is specified in 40 CFR 131.6(e). In addition, continued refinement of the State's antidegradation policy was also required in the FY 2000 Performance Partnership Agreement between Illinois EPA and USEPA, Region 5. (*See Exhibit C*)

C. Public Participation

The Illinois EPA established an Antidegradation Workgroup to begin to address antidegradation issues in 1998. The first meeting of the Workgroup was held in Chicago on September 24, 1998. Participants included members of the Illinois Environmental Regulatory Group, the Board, the Illinois Attorney General's Office, the Illinois Department of Natural Resources, USEPA, the Environmental Law and Policy Center, the Chemical Industry Council, the Northern Illinois Planning Commission, the Sierra Club and individuals representing various municipalities, industries and law firms. Subsequent meetings were held on:

- December 2, 1998
- January 19, 1999
- February 24, 1999
- May 21, 1999
- October 21, 1999
- December 7, 1999
- February 16, 2000

During this eighteen-month period numerous drafts of the antidegradation policy were reviewed and commented upon. A Representative from Ohio shared information about his States' experiences in implementing an antidegradation policy and other states' antidegradation regulations and policies were examined. Various language was proposed by many members of the Workgroup, some of which is included in this proposal. However, even after considering every suggestion submitted by every participant and after numerous reviews of the requirements of the CWA and federal antidegradation policy, the Illinois EPA submits this proposed rule knowing that not every single issue raised could be completely satisfied. Nevertheless, the Illinois EPA is grateful to those workgroup participants for their assistance and perseverance.

D. Technical Feasibility and Economic Justification

This is not a new regulatory requirement within the State's water quality standards; it is a revision of an existing standard. This revision updates and clarifies the existing policy which, in turn, is expected to lessen the economic burden on the regulated community by listing activities that are already considered in compliance with the requirements without the need for an individual antidegradation review. The proposed standard also establishes criteria, which provide better guidance for determining compliance with the antidegradation standard. In addition, the Illinois EPA has developed procedures for applying the antidegradation standard in cases of NPDES applications and Section 401 Certifications which also lends to its technical feasibility.

III. Synopsis of Testimony

During the Board's proceedings the Illinois EPA will present one witness in support of the proposed rulemaking:

Toby Frevert is the Great Lakes Coordinator for the Illinois EPA. He works within the Bureau of Water. His duties include coordination of water quality standards activities. He has lead the development of this proposal and has chaired the advisory workgroup that was assembled to assist the Illinois EPA in its development.

IV. Supporting Documents

33 USC §1313

33 USC §1251

40 C.F.R. §131.2

40 C.F.R. §131.6

40 C.F.R. §131.12

Exhibit A: Water Quality Standards Handbook, Second Edition, EPA 823-B-94-005a, Chapter 4, Antidegradation, August 1994.

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Exhibit C: Excerpt from "FY 2000 Performance Partnership Agreement", November 1999, pp. 98-99, IEPA/ENV/99-021.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Connie L. Tonsor

Connie L. Tonsor
Associate Counsel
Division of Legal Counsel

ILLINOIS REGISTER

ILLINOIS POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

AGENCY ANALYSIS OF ECONOMIC AND BUDGETARY EFFECTS
OF PROPOSED RULEMAKING:

Agency: Pollution Control Board

Part/Title: 35 Ill. Adm. Code Part 302, Antidegradation
35 Ill. Adm. Code Part 303, Outstanding Resource Waters
35 Ill. Adm. Code Part 106, Outstanding Resource Waters Determination

Illinois Register Citation: _____

1. Anticipated effect on State expenditures and revenues.
 - a. Current cost to the agency for this program/activity.
[Costs for appeals to the Board]
 - b. If this rulemaking will result in an increase or decrease in cost, specify the fiscal year in which this change will first occur and the dollar amount of the effect.
[Board projection for increase due to rulemaking]
 - c. Indicate the funding source, including Fund and appropriation lines, for this program/activity.
[Board's appropriations]
 - d. If an increase or decrease in the costs of another State agency is anticipated, specify the fiscal year in which this change will first occur and the estimated dollar amount of the effect.
There may be some incremental increase in the cost to the Illinois EPA in the administration of the National Pollutant Discharge Elimination System ("NPDES") permit program and the Federal Water Pollution Control Act §1342 (Clean Water Act §401) state water quality certification program. There is no dollar estimate at this time.
 - e. Will this rulemaking have any effect on State revenues or expenditures not already indicated above?

No

ILLINOIS REGISTER

ILLINOIS POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

2. Economic effect on persons affected by the rulemaking:

a. Indicate the economic effect and specify the persons affected:

Positive X Negative X No effect X

Persons affected:

Persons affected will be those proposing to discharge new or increased pollutant loads to the waters of the state in a manner that requires either an NPDES permit or a Clean Water Act §401 certification. These proposed amendments are an update to an existing requirement therefore the economic effect on an individual activity may be positive, negative or neutral.

Dollar amount per person:

There is no dollar estimate at this time.

Total statewide cost:

There is no dollar estimate at this time.

b. If an economic effect is predicted, please briefly describe how the effect will occur.

The effect will occur in the amount of time and effort necessary to complete the NPDES or CWA §401 Certification application. This will depend on the particulars of the specific water body and the particular proposed discharge. In some applications, the effect may be minimal and in others the effect may require more time and detail to demonstrate that the water body will not be adversely effected by the proposed discharge.

c. Will the rulemaking have an indirect effect that may result in increased administrative costs? Will there be any change in requirements such as filing, documentation, reporting or completion of forms?

There will be additional criteria and guidance to permit applicants that will, in some cases increase and in other cases decrease, the complexity of permit application and review.

EXHIBITS

§2, 86 Stat. 846, and amended Feb. 4, 1987, Pub. L. 100-4, title III, §308(e), 101 Stat. 39.)

§ 1313. [FWPCA §303]

Water quality standards and implementation plans

(a) Existing water quality standards

(1) In order to carry out the purpose of this chapter, any water quality standard applicable to interstate waters which was adopted by any State and submitted to, and approved by, or is a waiting approval by, the Administrator pursuant to this Act as in effect immediately prior to October 18, 1972, shall remain in effect unless the Administrator determined that such standard is not consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972. If the Administrator makes such a determination he shall, within three months after October 18, 1972, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after the date of such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(2) Any State which, before October 18, 1972, has adopted, pursuant to its own law, water quality standards applicable to intrastate waters shall submit such standards to the Administrator within thirty days after October 18, 1972. Each such standard shall remain in effect, in the same manner and to the same extent as any other water quality standard established under this chapter unless the Administrator determines that such standard is inconsistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972. If the Administrator makes such a determination he shall not later than the one hundred and twentieth day after the date of submission of such standards, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(3)(A) Any State which prior to October 18, 1972, has not adopted pursuant to its own laws water quality standards applicable to intrastate waters shall, not later than one hundred and eighty days after October 18, 1972, adopt and submit such standards to the Administrator.

(B) If the Administrator determines that any such standards are consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, he shall approve such standards.

(C) If the Administrator determines that any such standards are not consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, he shall, not later than the ninetieth day after the date of submission of such standards, notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standards pursuant to subsection (b) of this section.

(b) Proposed regulations

(1) The Administrator shall promptly prepare and publish proposed regulations setting forth water quality standards for a State in accordance with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, if—

(A) the State fails to submit water quality standards within the times prescribed in subsection (a) of this section.

(B) a water quality standard submitted by such State under subsection (a) of this section is determined by the Administrator not to be consistent with the applicable requirements of subsection (a) of this section.

(2) The Administrator shall promulgate any water quality standard published in a proposed regulation not later than one hundred and ninety days after the date he publishes any such proposed standard, unless prior to such promulgation, such State has adopted a water quality standard which the Administrator determines to be in accordance with subsection (a) of this section.

(c) Review; revised standards; publication

(1) The Governor of a State or the State water pollution control agency of such State shall from time to time (but at least once each three year period beginning with October 18, 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator.

(2)(A) Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

(B) Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 1317(a)(1) of this title for which criteria have been published under section 1314(a) of this title, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants. Where such numerical criteria are not available, whenever a State reviews water quality standards pursuant to paragraph (1), or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 1314(a)(8) of this title. Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.

(3) If the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard meets the requirements of this chapter, such standard shall thereafter be the water quality standard for the applicable waters of that State. If the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this chapter, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standard pursuant to paragraph (4) of this subsection.

(4) The Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved—

(A) if a revised or new water quality standard submitted by such State under paragraph (3) of this subsection for such waters is determined by the Administrator not to be consistent with the applicable requirements of this chapter, or

(B) in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this chapter.

The Administrator shall promulgate any revised or new standard under this paragraph not later than ninety days after he publishes such proposed standards, unless prior to such promulgation, such State has adopted a revised or new water quality standard which the Administrator determines to be in accordance with this chapter.

(d) Identification of areas with insufficient controls; maximum daily load; certain effluent limitations revision

(1)(A) Each State shall identify those waters within its boundaries for which the effluent limitations required by section 1311(b)(1)(A) and section 1311(b)(1)(B) of this title are not stringent enough to implement any water quality standard applicable to

such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

(B) Each State shall identify those waters or parts thereof within its boundaries for which controls on thermal discharges under section 1311 of this title are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.

(C) Each State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

(D) Each State shall estimate for the waters identified in paragraph (1)(B) of this subsection the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for such protection and propagation in the identified waters or parts thereof.

(2) Each State shall submit to the Administrator from time to time, with the first such submission not later than one hundred and eighty days after the date of publication of the final identification of pollutants under section 1314(a)(2)(D) of this title, for his approval the waters identified and the loads established under paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) of this subsection. The Administrator shall either approve or disapprove such identification and load not later than thirty days after the date of submission. If the Administrator approves such identification and load, such State shall incorporate them into its current plan under subsection (e) of this section. If the Administrator disapproves such identification and load, he shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement the water quality standards applicable to such waters and upon such identification and establishment the State shall incorporate them into its current plan under subsection (e) of this section.

(3) For the specific purpose of developing information, each State shall identify all waters within its boundaries which it has not identified under paragraph (1)(A) and (1)(B) of this subsection and estimate for such waters the total maximum daily load with seasonal variations and margins of safety, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish, and wildlife.

(4) Limitations on revision of certain effluent limitations

(A) Standard not attained

For waters identified under paragraph (1)(A) where the applicable water quality standard has not yet been attained, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section may be revised only if (i) the cumulative effect of all such revised effluent limitations based on such total maximum daily load or waste load allocation will assure the attainment of such water quality standard, or (ii) the designated use which is not being attained is removed in accordance with regulations established under this section.

(B) Standard attained

For waters identified under paragraph (1)(A) where the quality of such waters equals or exceeds levels necessary to protect the

designated use for such waters or otherwise required by applicable water quality standards, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section, or any water quality standard established under this section, or any other permitting standard may be revised only if such revision is subject to and consistent with the antidegradation policy established under this section.

(e) Continuing planning process

(1) Each State shall have a continuing planning process approved under paragraph (2) of this subsection which is consistent with this chapter.

(2) Each State shall submit not later than 120 days after October 18, 1972, to the Administrator for his approval a proposed continuing planning process which is consistent with this chapter. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this chapter. The Administrator shall not approve any State permit program under subchapter IV of this chapter for any State which does not have an approved continuing planning process under this section.

(3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navigable waters within such State, which include, but are not limited to, the following:

(A) effluent limitations and schedules of compliance at least as stringent as those required by section 1311(b)(1), section 1311(b)(2), section 1316, and section 1317 of this title, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this section;

(B) the incorporation of all elements of any applicable area-wide waste management plans under section 1288 of this title, and applicable basin plans under section 1289 of this title;

(C) total maximum daily load for pollutants in accordance with subsection (d) of this section;

(D) procedures for revision;

(E) adequate authority for intergovernmental cooperation;

(F) adequate implementation, including schedules of compliance, for revised or new water quality standards, under subsection (c) of this section;

(G) controls over the disposition of all residual waste from any water treatment processing;

(H) an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of sections 1311 and 1312 of this title.

(f) Earlier compliance

Nothing in this section shall be construed to affect any effluent limitation, or schedule of compliance required by any State to be implemented prior to the dates set forth in sections 1311(b)(1) and 1311(b)(2) of this title nor to preclude any State from requiring compliance with any effluent limitation or schedule of compliance at dates earlier than such dates.

(g) Heat standards

Water quality standards relating to heat shall be consistent with the requirements of section 1326 of this title.

(h) Thermal water quality standards

For the purposes of this chapter the term "water quality standards" includes thermal water quality standards.

(June 30, 1948, ch. 758, title III, §303, as added Oct. 18, 1972, Pub. L. 92-510, §2, 86 Stat. 846, and amended Feb. 4, 1987, Pub. L. 100-4, title III, §308(d), title IV, §404(b), 101 Stat. 39, 68.)

References In Text

This Act, referred to in subsecs. (a)(1), (2), (3)(B), (C) and (b)(1), means act June 30, 1948, ch. 758, 62 Stat. 1155, prior to the superseding and reenactment of act June 30, 1948 by act Oct. 18, 1972, Pub. L. 92-500, 86 Stat. 816. Act June 30, 1948, ch. 758, as added by act Oct. 18, 1972, Pub. L. 92-500, 86 Stat. 816, enacted this chapter.

§ 1313a.

Revised water quality standards

The review, revision, and adoption or promulgation of revised or

new water quality standards pursuant to section 303(c) of the Federal Water Pollution Control Act [33 U.S.C. 1313(c)] shall be completed by the date three years after December 29, 1981. No grant shall be made under title II of the Federal Water Pollution Control Act [33 U.S.C. 1281 et seq.] after such date until water quality standards are reviewed and revised pursuant to section 303(c), except where the State has in good faith submitted such revised water quality standards and the Administrator has not acted to approve or disapprove such submission within one hundred and twenty days of receipt.

(Pub. L. 97-117, §24, Dec. 29, 1981, 95 Stat. 1632.)

Codification

Section was enacted as part of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

§ 1314. [FWPCA §304]

Information and guidelines

(a) Criteria development and publication

(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after October 18, 1972 (and from time to time thereafter revise) criteria for water quality accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after October 18, 1972 (and from time to time thereafter revise) information (A) on the factors necessary to restore and maintain the chemical, physical, and biological integrity of all navigable waters, ground waters, waters of the contiguous zone, and the oceans; (B) on the factors necessary for the protection and propagation of shellfish, fish, and wildlife for classes and categories of receiving waters and to allow recreational activities in and on the water; and (C) on the measurement and classification of water quality; and (D) for the purpose of section 1313 of this title, on and the identification of pollutants suitable for maximum daily load measurement correlated with the achievement of water quality objectives.

(3) Such criteria and information and revisions thereof shall be issued to the States and shall be published in the Federal Register and otherwise made available to the public.

(4) The Administrator shall, within 90 days after December 27, 1977, and from time to time thereafter, publish and revise as appropriate information identifying conventional pollutants, including but not limited to, pollutants classified as biological oxygen demanding, suspended solids, fecal coliform, and pH. The thermal component of any discharge shall not be identified as a conventional pollutant under this paragraph.

(5)(A) The Administrator, to the extent practicable before consideration of any request under section 1311(g) of this title and within six months after December 27, 1977, shall develop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and to allow recreational activities, in and on the water.

(B) The Administrator, to the extent practicable before consideration of any application under section 1311(h) of this title and within six months after December 27, 1977, shall develop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife, and to allow recreational activities, in and on the water.

(6) The Administrator shall, within three months after December 27, 1977, and annually thereafter, for purposes of section 1311(h) of this title publish and revise as appropriate information identifying each water quality standard in effect under this chapter or State law, the specific pollutants associated with such water quality standard, and the particular waters to which such water quality standard applies.

(7) Guidance to states

The Administrator, after consultation with appropriate State agencies and on the basis of criteria and information published under paragraphs (1) and (2) of this subsection, shall develop and publish, within 9 months after February 4, 1987, guidance to the States on performing the identification required by subsection (1)(1) of this section.

(8) Information on water quality criteria

The Administrator, after consultation with appropriate State agencies and within 2 years after February 4, 1987, shall develop and publish information on methods for establishing and measuring water quality criteria for toxic pollutants on other bases than pollutant-by-pollutant criteria, including biological monitoring and assessment methods.

(b) Effluent limitation guidelines

For the purpose of adopting or revising effluent limitations under this chapter the Administrator shall, after consultation with appropriate Federal and State agencies and other interested persons, publish within one year of October 18, 1972, regulations, providing guidelines for effluent limitations, and, at least annually thereafter, revise, if appropriate, such regulations. Such regulations shall—

(1)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best practicable control technology currently available for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the control measures and practices to be applicable to point sources (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best practicable control technology currently available to comply with subsection (b)(1) of section 1311 of this title shall include consideration of the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, and shall also take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

(2)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best control measures and practices achievable including treatment techniques, process and procedure innovations, operating methods, and other alternatives for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the best measures and practices available to comply with subsection (b)(2) of section 1311 of this title to be applicable to any point source (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best available technology shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

(3) identify control measures and practices available to eliminate the discharge of pollutants from categories and classes of point sources, taking into account the cost of achieving such elimination of the discharge of pollutants; and

Federal Water Pollution Control Act

33 U.S.C. §§1251-1387

Subchapter I—Research and Related Programs

§ 1251. [FWPCA §101]

Congressional declaration of goals and policy

(a) Restoration and maintenance of chemical, physical and biological integrity of Nation's waters; national goals for achievement of objective

The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this chapter—

(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State;

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans; and

(7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this chapter to be met through the control of both point and nonpoint sources of pollution.

(b) Congressional recognition, preservation, and protection of primary responsibilities and rights of States

It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter. It is the policy of Congress that the States manage the construction grant program under this chapter and implement the permit programs under sections 1342 and 1344 of this title. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

(c) Congressional policy toward Presidential activities with foreign countries

It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

(d) Administrator of Environmental Protection Agency to administer chapter

Except as otherwise expressly provided in this chapter, the Administrator of the Environmental Protection Agency (hereinafter in this chapter called "Administrator") shall administer this chapter.

(e) Public participation in development, revision, and enforcement of any regulation, etc.

Public participation in the development, revision, and enforcement

of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

(f) Procedures utilized for implementing chapter

It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

(g) Authority of States over water

It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this chapter. It is the further policy of Congress that nothing in this chapter shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

(June 30, 1948, ch. 758, title I, §101, as added Oct. 18, 1972, Pub. L. 92-500, §2, 86 Stat. 816, and amended Dec. 27, 1977, Pub. L. 95-217, §5(a), 26(b), 91 Stat. 1567, 1575; Feb. 4, 1987, Pub. L. 100-4, title III, §316(b), 101 Stat. 69.)

Codification

The Federal Water Pollution Control Act, comprising this chapter, was originally enacted by act June 30, 1948, ch. 758, 62 Stat. 1155, and amended by acts July 17, 1952, ch. 927, 66 Stat. 755; July 9, 1956, ch. 518, Sec. 1, 2, 70 Stat. 498-507; June 25, 1959, Pub. L. 86-70, 73 Stat. 141; July 12, 1960, Pub. L. 86-624, 74 Stat. 411; July 20, 1961, Pub. L. 87-88, 75 Stat. 204; Oct. 2, 1965, Pub. L. 89-234, 79 Stat. 903; Nov. 3, 1966, Pub. L. 89-753, 80 Stat. 1246; Apr. 3, 1970, Pub. L. 91-224, 84 Stat. 91; Dec. 31, 1970, Pub. L. 91-611, 84 Stat. 1818; July 9, 1971, Pub. L. 92-50, 85 Stat. 124; Oct. 13, 1971, Pub. L. 92-137, 85 Stat. 379; Mar. 1, 1972, Pub. L. 92-240, 86 Stat. 47, and was formerly classified first to section 466 et seq. of this title and later to section 1151 et seq. of this title. The act is shown herein, however, as having been added by Pub. L. 92-500 without reference to such intervening amendments because of the extensive amendment, reorganization, and expansion of the act's provisions by Pub. L. 92-500.

Short Title Of 1994 Amendments

Pub. L. 103-431, §1, Oct. 31, 1994, 108 Stat. 4396, provided that: "This Act [amending section 1311 of this title] may be cited as the 'Ocean Pollution Reduction Act.'"

Short Title Of 1990 Amendment

Pub. L. 101-596, Sec. 1, Nov. 16, 1990, 104 Stat. 3000, provided that: "This Act [enacting sections 1269 and 1270 of this title, amending sections 1268, 1324, and 1416 of this title, and enacting provisions set out as notes under this section and section 1270 of this title] may be cited as the 'Great Lakes Critical Programs Act of 1990.'"

Pub. L. 101-596, title II, Sec. 201, Nov. 16, 1990, 104 Stat. 3004, provided that: "This part [probably means title, enacting section 1269 of this title and amending section 1416 of this title] may be cited as the 'Long Island Sound Improvement Act of 1990.'"

Pub. L. 101-596, title III, Sec. 301, Nov. 16, 1990, 104 Stat. 3006, provided that: "This title [enacting section 1270 of this title, amending section 1324 of this title, and enacting provisions set out as a note under section 1270 of this title] may be cited as the 'Lake Champlain Special Designation Act of 1990.'"

Short Title Of 1988 Amendment

Pub. L. 100-653, title X, Sec. 1001, Nov. 14, 1988, 102 Stat. 3835, provided that: "This title [amending section 1330 of this title and enacting provisions set out as notes under section 1330 of this title] may be cited as the 'Massachusetts Day Protection Act of 1988.'"

Short Title Of 1987 Amendment

Section 1(a) of Pub. L. 100-4 provided that: "This Act [enacting sections 1254a, 1267, 1268, 1281b, 1329, 1330, 1377, 1381 to 1387, and 1414a of this title, amending this section and sections 1254, 1256, 1262, 1281, 1282 to 1285, 1287, 1288, 1291, 1311 to 1313, 1314, 1317 to 1322, 1324, 1344, 1345, 1361, 1362, 1365, 1369, 1375, and 1376 of this title, and enacting provisions set out as notes under this section, sections 1284, 1311, 1317, 1319, 1330, 1342, 1345, 1362, 1375, and 1414a of this title, and section 1962d-20 of Title 42, The Public Health and Welfare] may be cited as the 'Water Quality Act of 1987.'"

Short Title Of 1981 Amendment

Pub. L. 97-117, Sec. 1, Dec. 29, 1981, 95 Stat. 1623, provided that: "This Act [enacting sections 1298, 1299, and 1313a of this title, amending sections 1281 to 1285, 1287, 1291, 1292, 1296, 1311, and 1314 of this title, and enacting provisions set out as notes under

sections 1311 and 1375 of this title) may be cited as the 'Municipal Wastewater Treatment Construction Grant Amendments of 1981.'

Short Title Of 1977 Amendment

Section 1 of Pub. L. 95-217 provided: "That this Act [enacting sections 1281a, 1294 to 1296, and 1297 of this title, amending this section and sections 1252, 1254 to 1256, 1259, 1262, 1263, 1281, 1282 to 1288, 1291, 1292, 1311, 1314, 1315, 1317 to 1319, 1321 to 1324, 1328, 1341, 1342, 1344, 1345, 1362, 1364, 1375, and 1376 of this title, enacting provisions set out as notes under this section and sections 1284, 1286, 1314, 1321, 1342, 1344, and 1376 of this title; and amending provisions set out as a note under this section] may be cited as the 'Clean Water Act of 1977.'"

Short Title

Section 1 of Pub. L. 92-500 provided that: "That this Act [enacting this chapter, amending section 24 of Title 12, Banks and Banking, sections 633 and 636 of Title 15, Commerce and Trade, and section 711 of former Title 31, Money and Finance, and enacting provisions set out as notes under this section and sections 1231 and 1361 of this title] may be cited as the 'Federal Water Pollution Control Act Amendments of 1972.'"

Section 519, formerly section 518, of Act June 30, 1948, ch. 758, title V, as added Oct. 18, 1972, Pub. L. 92-500, Sec. 2, 86 Stat. 896, and amended Dec. 27, 1977, Pub. L. 95-217, Sec. 2, 91 Stat. 1566, and renumbered Sec. 519, Feb. 4, 1987, Pub. L. 100-4, title V, Sec. 506, 101 Stat. 76, provided that: "This Act [this chapter] may be cited as the 'Federal Water Pollution Control Act' (commonly referred to as the Clean Water Act)."

Savings Provisions

Section 4 of Pub. L. 92-500 provided that:

"(a) No suit, action, or other proceeding lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972] shall abate by reason of the taking effect of the amendment made by section 2 of this Act [which enacted this chapter]. The court may, on its own motion or that of any party made at any time within twelve months after such taking effect, allow the same to be maintained by or against the Administrator or such officer or employee.

"(b) All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972], and pertaining to any functions, powers, requirements, and duties under the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972] shall continue in full force and effect after the date of enactment of this Act [Oct. 18, 1972] until modified or rescinded in accordance with the Federal Water Pollution Control Act as amended by this Act [this chapter].

"(c) The Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972] shall remain applicable to all grants made from funds authorized for the fiscal year ending June 30, 1972, and prior fiscal years, including any increases in the monetary amount of any such grant which may be paid from authorizations for fiscal years beginning after June 30, 1972, except as specifically otherwise provided in section 202 of the Federal Water Pollution Control Act as amended by this Act [section 1282 of this title] and in subsection (c) of section 3 of this Act."

Separability

Section 512 of act June 30, 1948, ch. 758, title V, as added Oct. 18, 1972, Pub. L. 92-500, Sec. 2, 86 Stat. 894, provided that: "If any provision of this Act [this chapter], or the application of any provision of this Act [this chapter] to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act [this chapter], shall not be affected thereby."

Limitation On Payments

Section 2 of Pub. L. 100-4 provided that: "No payments may be made under this Act [see Short Title of 1987 Amendment note above] except to the extent provided in advance in appropriation Acts."

Seafood Processing Study; Submittal Of Results To Congress Not Later Than January 1, 1979

Pub. L. 95-217, Sec. 74, Dec. 27, 1977, 91 Stat. 1609, provided that the Administrator of the Environmental Protection Agency conduct a study to examine the geographical, hydrological, and biological characteristics of marine waters to determine the effects of seafood processes which dispose of untreated natural wastes into such waters and to include in this study an examination of technologies which may be used in such processes to facilitate the use of the nutrients in these wastes or to reduce the discharge of such wastes into the marine environment and to submit the result of this study to Congress not later than Jan. 1, 1979.

Standards

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

Oversight Study

Section 5 of Pub. L. 92-500 authorized the Comptroller General of the United States to conduct a study and review of the research, pilot, and demonstration programs related to prevention and control of water pollution conducted, supported, or assisted by any Federal agency pursuant to any Federal law or regulation and assess conflicts between these programs and their coordination and efficacy, and to report to Congress thereon by Oct. 1, 1973.

International Trade Study

Section 6 of Pub. L. 92-500 provided that:

"(a) The Secretary of Commerce, in cooperation with other interested Federal agencies and with representatives of industry and the public, shall undertake immediately an investigation and study to determine—

"(1) the extent to which pollution abatement and control programs will be imposed on, or voluntarily undertaken by, United States manufacturers in the near future and the probable short- and long-range effects of the costs of such programs (computed to the greatest extent practicable on an industry-by-industry basis) on (A) the production costs of such domestic manufacturers, and (B) the market prices of the goods produced by them;

"(2) the probable extent to which pollution abatement and control programs will be implemented in foreign industrial nations in the near future and the extent to which the production costs (computed to the greatest extent practicable on an industry-by-industry basis) of foreign manufacturers will be affected by the costs of such programs;

"(3) the probable competitive advantage which any article manufactured in a foreign nation will likely have in relation to a comparable article made in the United States if that foreign nation—

"(A) does not require its manufacturers to implement pollution abatement and control programs.

"(B) requires a lesser degree of pollution abatement and control in its programs, or

"(C) in any way reimburses or otherwise subsidizes its manufacturers for the costs of such program;

"(4) alternative means by which any competitive advantage accruing to the product of any foreign nation as a result of any factor described in paragraph (3) may be (A) accurately and quickly determined, and (B) equalized, for example, by the imposition of a surcharge or duty, on a foreign product in an amount necessary to compensate for such advantage; and

"(5) the impact, if any, which the imposition of a compensating tariff of other equalizing measure may have in encouraging foreign nations to implement pollution abatement control programs.

"(b) The Secretary shall make an initial report to the President and Congress within six months after the date of enactment of this section (Oct. 18, 1972) of the results of the study and investigation carried out pursuant to this section and shall make additional reports thereafter at such times as he deems appropriate taking into account the development of relevant data, but not less than once every twelve months."

International Agreements

Section 7 of Pub. L. 92-500 provided that: "The President shall undertake to enter into international agreement to apply uniform standards of performance for the control of the discharge and emission of pollutants from new sources, uniform controls over the discharge and emission of toxic pollutants, and uniform controls over the discharge of pollutants into the ocean. For this purpose the President shall negotiate multilateral treaties, conventions, resolutions, or other agreements, and formulate, present, or support proposals at the United Nations and other appropriate international forums."

National Policies And Goal Study

Section 10 of Pub. L. 92-500 authorized the President to make a full and complete investigation and study of all national policies and goals established by law to determine what the relationship should be between these policies and goals, taking into account the resources of the Nation, and to report the results of his investigation and study together with his recommendations to Congress not later than two years after Oct. 18, 1972.

Efficiency Study

Section 11 of Pub. L. 92-500 authorized the President, by utilization of the General Accounting Office, to conduct a full and complete investigation and study of ways and means of most effectively using all of the various resources, facilities, and personnel of the Federal Government in order to most efficiently carry out the provisions of this chapter and to report the results of his investigation and study together with his recommendations to Congress not later than two hundred and seventy days after Oct. 18, 1972.

Sex Discrimination

Section 13 of Pub. L. 92-500 provided that: "No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this Act [see Short Title note above] the Federal Water Pollution Control Act (this chapter), or the Environmental Financing Act (set out as a note under section 1281 of this title). This section shall be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964 (section 2000d et seq. of Title 42, The Public Health and Welfare). However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee."

Definition Of "Administrator"

Section 1(d) of Pub. L. 100-4 provided that: "For purposes of this Act (see Short Title of 1987 Amendment note above), the term 'Administrator' means the Administrator of the Environmental Protection Agency."

National Shellfish Indicator Program

Pub. L. 102-567, §308, Oct. 29, 1992, 106 Stat. 4286, 4287, 4288, provided that:

"(a) Establishment of a research program.—The Secretary of Commerce, in cooperation with the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency, shall establish and administer a 5-year national shellfish research program (hereafter in this section referred to as the "Program") for the purpose of improving existing classification systems for shellfish growing waters using the latest technological advancements in microbiology and epidemiological methods. Within 12 months after the date of enactment of this Act, the Secretary of Commerce, in cooperation with the advisory committee established under subsection (b) and the Co-

sortium, shall develop a comprehensive 5-year plan for the Program which shall at a minimum provide for—

"(1) an environmental assessment of commercial shellfish growing areas in the United States, including an evaluation of the relationships between indicators of focal contamination and human enteric pathogens;

"(2) the evaluation of such relationships with respect to potential health hazards associated with human consumption of shellfish;

"(3) a comparison of the current microbiological methods used for evaluating indicator bacteria and human enteric pathogens in shellfish and shellfish growing waters with new technological methods designed for this purpose;

"(4) the evaluation of current and projected systems for human sewage treatment in eliminating viruses and other human enteric pathogens which accumulate in shellfish;

"(5) the design of epidemiological studies to relate microbiological data, sanitary survey data, and human shellfish consumption data to actual hazards to health associated with such consumption; and

"(6) recommendations for revising Federal shellfish standards and improving the capabilities of Federal and State agencies to effectively manage shellfish and ensure the safety of shellfish intended for human consumption.

"(b) **Advisory committee.**—(1) For the purpose of providing oversight of the Program on a continuing basis, an advisory committee (hereafter in this section referred to as the 'Committee') shall be established under a memorandum of understanding between the Interstate Shellfish Sanitation Conference and the National Marine Fisheries Service.

"(2) The Committee shall—

"(A) identify priorities for achieving the purpose of the Program;

"(B) review and recommend approval or disapproval of Program work plans and plans of operation;

"(C) review and comment on all subcontracts and grants to be awarded under the Program;

"(D) receive and review progress reports from the Consortium and program subcontractors and grantees; and

"(E) provide such other advice on the Program as is appropriate.

"(3) The Committee shall consist of at least ten members and shall include—

"(A) three members representing agencies having authority under State law to regulate the shellfish industry, of whom one shall represent each of the Atlantic, Pacific, and Gulf of Mexico shellfish growing regions;

"(B) three members representing persons engaged in the shellfish industry in the Atlantic, Pacific, and Gulf of Mexico shellfish growing regions (who shall be appointed from among at least six recommendations by the Industry members of the Interstate Shellfish Sanitation Conference Executive Board), of whom one shall represent the shellfish industry in each region;

"(C) three members, of whom one shall represent each of the following Federal agencies: the National Oceanic and Atmospheric Administration, the Environmental Protection Agency, and the Food and Drug Administration; and

"(D) one member representing the Shellfish Institute of North America.

"(4) The Chairman of the Committee shall be selected from among the Committee members described in paragraph (3)(A).

"(5) The Committee shall establish and maintain a subcommittee of scientific experts to provide advice, assistance, and information relevant to research funded under the Program, except that no individual who is awarded, or whose application is being considered for, a grant or subcontract under the Program may serve on such subcommittee. The membership of the subcommittee shall, to the extent practicable, be regionally balanced with experts who have scientific knowledge concerning each of the Atlantic, Pacific, and Gulf of Mexico shellfish growing regions. Scientists from the National Academy of Sciences and appropriate Federal agencies (including the National Oceanic and Atmospheric Administration, Food and Drug Administration, Centers for Disease Control, National Institutes of Health, Environmental Protection Agency, and National Science Foundation) shall be considered for membership on the subcommittee.

"(6) Members of the Committee and its scientific subcommittee established under this subsection shall not be paid for serving on the Committee or subcommittee, but shall receive travel expenses as authorized by section 5703 of title 5, United States Code.

"(c) **Contract with consortium.**—Within 30 days after the date of enactment of this Act, the Secretary of Commerce shall seek to enter into a cooperative agreement or contract with the Consortium under which the Consortium will—

"(1) be the academic administrative organization and fiscal agent for the Program;

"(2) award and administer such grants and subcontracts as are approved by the Committee under subsection (b);

"(3) develop and implement a scientific peer review process for evaluating grant and subcontractor applications prior to review by the Committee;

"(4) in cooperation with the Secretary of Commerce and the Committee, procure the services of a scientific project director;

"(5) develop and submit budgets, progress reports, work plans, and plans of operation for the Program to the Secretary of Commerce and the Committee; and

"(6) make available to the Committee such staff, information, and assistance as the Committee may reasonably require to carry out its activities.

"(d) **Reporting requirements.**—Within 3 months after the date of enactment of this Act and within each of the next three consecutive 3-month intervals, the Secretary of Commerce shall provide Congress with written assessments of Federal efforts to implement this section. In addition, the Secretary of Commerce shall submit an annual report to Congress on the Program, including a description of the research funded under the Program and the results of such research.

"(e) **Authorization of appropriations.**—(1) Of the sums authorized under section

4(a) of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210; 97 Stat. 1409), there are authorized to be appropriated to the Secretary of Commerce \$5,200,000 for each of the fiscal years 1993 through 1997 for carrying out the Program. Of the amounts appropriated pursuant to this authorization, not more than 5 percent of such appropriation may be used for administrative purposes by the National Oceanic and Atmospheric Administration. The remaining 95 percent of such appropriation shall be used to meet the administrative and scientific objectives of the Program.

"(2) The Interstate Shellfish Sanitation Conference shall not administer appropriations authorized under this section, but may be reimbursed from such appropriations for its expenses in arranging for travel, meetings, workshops, or conferences necessary to carry out the Program.

"(f) **Definitions.**—As used in this section, the term—

"(1) 'Consortium' means the Louisiana Universities Marine Consortium; and

"(2) 'shellfish' means any species of oyster, clam, or mussel that is harvested for human consumption."

§ 1252. [FWPCA §102]

Comprehensive programs for water pollution control

(a) Preparation and development

The Administrator shall, after careful investigation, and in cooperation with other Federal agencies, State water pollution control agencies, interstate agencies, and the municipalities and industries involved, prepare or develop comprehensive programs for preventing, reducing, or eliminating the pollution of the navigable waters and ground waters and improving the sanitary condition of surface and underground waters. In the development of such comprehensive programs due regard shall be given to the improvements which are necessary to conserve such waters for the protection and propagation of fish and aquatic life and wildlife, recreational purposes, and the withdrawal of such waters for public water supply, agricultural, industrial, and other purposes. For the purpose of this section, the Administrator is authorized to make joint investigations with any such agencies of the condition of any waters in any State or States, and of the discharges of any sewage, industrial wastes, or substance which may adversely affect such waters.

(b) Planning for reservoirs; storage for regulation of streamflow

(1) In the survey or planning of any reservoir by the Corps of Engineers, Bureau of Reclamation, or other Federal agency, consideration shall be given to inclusion of storage for regulation of streamflow, except that any such storage and water releases shall not be provided as a substitute for adequate treatment or other methods of controlling waste at the source.

(2) The need for and the value of storage for regulation of streamflow (other than for water quality) including but not limited to navigation, salt water intrusion, recreation, esthetics, and fish and wildlife, shall be determined by the Corps of Engineers, Bureau of Reclamation, or other Federal agencies.

(3) The need for, the value of, and the impact of, storage for water quality control shall be determined by the Administrator, and his views on these matters shall be set forth in any report or presentation to Congress proposing authorization or construction of any reservoir including such storage.

(4) The value of such storage shall be taken into account in determining the economic value of the entire project of which it is a part, and costs shall be allocated to the purpose of regulation of streamflow in a manner which will insure that all project purposes, share equitably in the benefit of multiple-purpose construction.

(5) Costs of regulation of streamflow features incorporated in any Federal reservoir or other impoundment under the provisions of this chapter shall be determined and the beneficiaries identified and if the benefits are widespread or national in scope, the costs of such features shall be nonreimbursable.

(6) No license granted by the Federal Energy Regulatory Commission for a hydroelectric power project shall include storage for regulation of streamflow for the purpose of water quality control unless the Administrator shall recommend its inclusion and such reservoir storage capacity shall not exceed such proportion of the total storage required for the water quality control plan as the drainage area of such reservoir bears to the drainage area of the river basin or basins involved in such water quality control plan.

§ 130.12 Coordination with other programs.

(a) Relationship to the National Pollutant Discharge Elimination System (NPDES) program. In accordance with section 208(e) of the Act, no NPDES permit may be issued which is in conflict with an approved Water Quality Management (WQM) plan where a State has assumed responsibility for the administration of the permit program under section 402. It shall assure consistency with the WQM plan.

(b) Relationship to the municipal construction grants program. In accordance with sections 205(j), 216 and 303(e)(3)(H) of the Act, each State shall develop a system for setting priorities for funding construction of municipal wastewater treatment facilities under section 201 of the Act. The State, or the agency to which the State has delegated WQM planning functions, shall review each facility plan in its area for consistency with the approved WQM plan. Under section 208(d) of the Act, after a waste treatment management agency has been designated and a WQM plan approved, section 201 construction grant funds may be awarded only to those agencies for construction of treatment works in conformity with the approved WQM plan.

(c) Relationship to Federal activities—Each department, agency or instrumentality of the executive, legislative and judicial branches of the Federal Government having jurisdiction over any property or facility or engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants shall comply with all Federal, State, interstate and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner and extent as any non-governmental entity in accordance with section 313 of the CWA.

§ 130.15 Processing application for Indian tribes.

The Regional Administrator shall process an application of an Indian Tribe submitted under § 130.6(d) in a timely manner. He shall promptly no-

tify the Indian Tribe of receipt of the application.

154 FR 14360, Apr. 11, 1989, as amended at § FR 13818, Mar. 23, 1994]

PART 131—WATER QUALITY STANDARDS

Subpart A—General Provisions

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Authority: 33 U.S.C. 1251 *et seq.*

Source: 48 FR 51405, Nov. 8, 1983, unless otherwise noted.

Environmental Protection Agency

Subpart A—General Provisions

§ 131.1 Scope.

This part describes the requirements and procedures for developing, reviewing, revising, and approving water quality standards by the States as authorized by section 303(c) of the Clean Water Act. Additional specific procedures for developing, reviewing, revising, and approving water quality standards for Great Lakes States or Great Lakes Tribes (as defined in 40 CFR 132.2) to conform to section 118 of the Clean Water Act and 40 CFR part 132, are provided in 40 CFR part 132.

160 FR 15396, Mar. 23, 1995]

§ 131.2 Purpose.

A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses. States adopt water quality standards to protect public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act (the Act). "Serve the purposes of the Act" (as defined in sections 101(a)(2) and 303(c) of the Act) means that water quality standards should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water and take into consideration their use and value of public water supplies, propagation of fish, shellfish, and wildlife, recreation in and on the water, and agricultural, industrial, and other purposes including navigation.

Such standards serve the dual purposes of establishing the water quality goals for a specific water body and serve as the regulatory basis for the establishment of water-quality-based treatment controls and strategies beyond the technology-based levels of treatment required by sections 301(b) and 306 of the Act.

§ 131.3 Definitions.

(a) *The Act* means the Clean Water Act (Pub. L. 92-500, as amended (33 U.S.C. 1251 *et seq.*)).

(b) *Criteria* are elements of State water quality standards, expressed as

constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use.

(c) *Section 304(a) criteria* are developed by EPA under authority of section 304(a) of the Act based on the latest scientific information on the relationship that the effect of a constituent concentration has on particular aquatic species and/or human health. This information is issued periodically to the States as guidance for use in developing criteria.

(d) *Toxic pollutants* are those pollutants listed by the Administrator under section 307(a) of the Act.

(e) *Existing uses* are those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.

(f) *Designated uses* are those uses specified in water quality standards for each water body or segment whether or not they are being attained.

(g) *Use attainability analysis* is a structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in § 131.10(g).

(h) *Water quality limited segment* means any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by sections 301(b) and 306 of the Act.

(i) *Water quality standards* are provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act.

(j) *States* include: The 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana

Islands, and Indian Tribes that EPA determines to be eligible for purposes of water quality standards program.

(k) *Federal Indian Reservation, Indian Reservation, or Reservation* means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

(l) *Indian Tribe or Tribe* means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

[48 FR 51405, Nov. 8, 1983, as amended at 56 FR 64893, Dec. 12, 1991; 59 FR 61344, Dec. 14, 1994]

§ 131.4 State authority.

(a) States (as defined in § 131.3) are responsible for reviewing, establishing, and revising water quality standards. As recognized by section 510 of the Clean Water Act, States may develop water quality standards more stringent than required by this regulation. Consistent with section 101(g) and 518(a) of the Clean Water Act, water quality standards shall not be construed to supersede or abrogate rights to quantities of water.

(b) States (as defined in § 131.3) may issue certifications pursuant to the requirements of Clean Water Act section 401. Revisions adopted by States shall be applicable for use in issuing State certifications consistent with the provisions of § 131.21(c).

(c) Where EPA determines that a Tribe is eligible to the same extent as a State for purposes of water quality standards, the Tribe likewise is eligible to the same extent as a State for purposes of certifications conducted under Clean Water Act section 401.

[56 FR 64893, Dec. 12, 1991, as amended at 59 FR 64844, Dec. 14, 1994]

§ 131.5 EPA authority.

(a) Under section 303(c) of the Act, EPA is to review and to approve or disapprove State-adopted water quality standards. The review involves a determination of:

(1) Whether the State has adopted water uses which are consistent with the requirements of the Clean Water Act;

(2) Whether the State has adopted criteria that protect the designated water uses;

(3) Whether the State has followed its legal procedures for revising or adopting standards;

(4) Whether the State standards which do not include the uses specified in section 101(a)(2) of the Act are based upon appropriate technical and scientific data and analyses, and

(5) Whether the State submission meets the requirements included in § 131.6 of this part and, for Great Lakes States or Great Lakes Tribes (as defined in 40 CFR 132.2) to conform to section 118 of the Act, the requirements of 40 CFR part 132.

(b) If EPA determines that the State's or Tribe's water quality standards are consistent with the factors listed in paragraphs (a)(1) through (a)(5) of this section, EPA approves the standards. EPA must disapprove the State's or Tribe's water quality standards and promulgate Federal standards under section 303(c)(4), and for Great Lakes States or Great Lakes Tribes under section 113(c)(2)(C) of the Act, if State or Tribal adopted standards are not consistent with the factors listed in paragraphs (a)(1) through (a)(5) of this section. EPA may also promulgate a new or revised standard when necessary to meet the requirements of the Act.

(c) Section 401 of the Clean Water Act authorizes EPA to issue certifications pursuant to the requirements of section 401 in any case where a State or interstate agency has no authority for issuing such certifications.

[48 FR 51405, Nov. 8, 1983, as amended at 56 FR 64894, Dec. 12, 1991; 60 FR 15387, Mar. 23, 1995]

§ 131.6 Minimum requirements for water quality standards submission.

The following elements must be included in each State's water quality standards submitted to EPA for review:

(a) Use designations consistent with the provisions of sections 101(a)(2) and 303(c)(2) of the Act.

(b) Methods used and analyses conducted to support water quality standards revisions.

(c) Water quality criteria sufficient to protect the designated uses.

(d) An antidegradation policy consistent with § 131.12.

(e) Certification by the State Attorney General or other appropriate legal authority within the State that the water quality standards were duly adopted pursuant to State law.

(f) General information which will aid the Agency in determining the adequacy of the scientific basis of the standards which do not include the uses specified in section 101(a)(2) of the Act as well as information on general policies applicable to State standards which may affect their application and implementation.

§ 131.7 Dispute resolution mechanism.

(a) Where disputes between States and Indian Tribes arise as a result of differing water quality standards on common bodies of water, the lead EPA Regional Administrator, as determined based upon OMB circular A-105, shall be responsible for acting in accordance with the provisions of this section.

(b) The Regional Administrator shall attempt to resolve such disputes where:

(1) The difference in water quality standards results in unreasonable consequences;

(2) The dispute is between a State (as defined in § 131.3(f)) but exclusive of all Indian Tribes) and a Tribe which EPA has determined is eligible to the same extent as a State for purposes of water quality standards;

(3) A reasonable effort to resolve the dispute without EPA involvement has been made;

(4) The requested relief is consistent with the provisions of the Clean Water Act and other relevant law;

(5) The differing State and Tribal water quality standards have been adopted pursuant to State and Tribal law and approved by EPA; and

(6) A valid written request has been submitted by either the Tribe or the State.

(c) Either a State or a Tribe may request EPA to resolve any dispute which satisfies the criteria of para-

graph (b) of this section. Written requests for EPA involvement should be submitted to the lead Regional Administrator and must include:

(1) A concise statement of the unreasonable consequences that are alleged to have arisen because of differing water quality standards;

(2) A concise description of the actions which have been taken to resolve the dispute without EPA involvement;

(3) A concise indication of the water quality standards provision which has resulted in the alleged unreasonable consequences;

(4) Factual data to support the alleged unreasonable consequences; and

(5) A statement of the relief sought from the alleged unreasonable consequences.

(d) Where, in the Regional Administrator's judgment, EPA involvement is appropriate based on the factors of paragraph (b) of this section, the Regional Administrator shall, within 30 days, notify the parties in writing that he/she is initiating an EPA dispute resolution action and solicit their written response. The Regional Administrator shall also make reasonable efforts to ensure that other interested individuals or groups have notice of this action. Such efforts shall include but not be limited to the following:

(1) Written notice to responsible Tribal and State Agencies, and other affected Federal agencies;

(2) Notice to the specific individual or entity that is alleging that an unreasonable consequence is resulting from differing standards having been adopted on a common body of water;

(3) Public notice in local newspapers, radio, and television, as appropriate;

(4) Publication in trade journal newsletters, and

(5) Other means as appropriate.

(e) If in accordance with applicable State and Tribal law an Indian Tribe and State have entered into an agreement that resolves the dispute or establishes a mechanism for resolving a dispute, EPA shall defer to this agreement where it is consistent with the Clean Water Act and where it has been approved by EPA.

(f) EPA dispute resolution actions shall be consistent with one or a combination of the following options:

and by implementing cost-effective and reasonable best management practices for nonpoint source control.

(i) Where existing water quality standards specify designated uses less than those which are presently being attained, the State shall revise its standards to reflect the uses actually being attained.

(j) A State must conduct a use attainability analysis as described in § 131.3(f) whenever:

(1) The State designates or has designated uses that do not include the uses specified in section 101(a)(2) of the Act, or

(2) The State wishes to remove a designated use that is specified in section 101(a)(2) of the Act or to adopt subcategories of uses specified in section 101(a)(2) of the Act which require less stringent criteria.

(k) A State is not required to conduct a use attainability analysis under this regulation whenever designating uses which include those specified in section 101(a)(2) of the Act.

§ 131.11 Criteria.

(a) *Inclusion of pollutants:* (1) States must adopt those water quality criteria that protect the designated use. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use.

(2) *Toxic pollutants:* States must review water quality data and information on discharges to identify specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern and must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use. Where a State adopts narrative criteria for toxic pollutants to protect designated uses, the State must provide information identifying the method by which the State intends to regulate point source discharges of toxic pollutants on water quality limited segments based on such narrative criteria. Such information may be in-

cluded as part of the standards or may be included in documents generated by the State in response to the Water Quality Planning and Management Regulations (40 CFR part 35).

(b) *Form of criteria:* In establishing criteria, States should:

(1) Establish numerical values based on:

(i) 304(a) Guidance; or

(ii) 304(a) Guidance modified to reflect site-specific conditions; or

(iii) Other scientifically defensible methods;

(2) Establish narrative criteria or criteria based upon biomonitoring methods where numerical criteria cannot be established or to supplement numerical criteria.

§ 131.12 Antidegradation policy.

(a) The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

(1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(2) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(3) Where high quality waters contain an outstanding National and source, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(4) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Act.

§ 131.13 General policies.

States may, at their discretion, include in their State standards, policies generally affecting their application and implementation, such as mixing zones, low flows and variances. Such policies are subject to EPA review and approval.

Subpart C—Procedures for Review and Revision of Water Quality Standards

§ 131.20 State review and revision of water quality standards.

(a) *State review.* The State shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Any water body segment with water quality standards that do not include the uses specified in section 101(a)(2) of the Act shall be re-examined every three years to determine if any new information has become available. If such new information indicates that the uses specified in section 101(a)(2) of the Act are attainable, the State shall revise its standards accordingly. Procedures States establish for identifying and reviewing water bodies for review should be incorporated into their Continuing Planning Process.

(b) *Public participation.* The State shall hold a public hearing for the purpose of reviewing water quality standards, in accordance with provisions of State law, EPA's water quality management regulation (40 CFR 130.3(b)(6)) and public participation regulation (40

CFR part 25). The proposed water quality standards revision and supporting analyses shall be made available to the public prior to the hearing.

(c) *Submittal to EPA.* The State shall submit the results of the review, any supporting analysis for the use attainability analysis, the methodologies used for site-specific criteria development, any general policies applicable to water quality standards and any revisions of the standards to the Regional Administrator for review and approval, within 30 days of the final State action to adopt and certify the revised standard, or if no revisions are made as a result of the review, within 30 days of the completion of the review.

§ 131.21 EPA review and approval of water quality standards.

(a) After the State submits its officially adopted revisions, the Regional Administrator shall either:

(1) Notify the State within 60 days that the revisions are approved, or

(2) Notify the State within 90 days that the revisions are disapproved. Such notification of disapproval shall specify the changes needed to assure compliance with the requirements of the Act and this regulation, and shall explain why the State standard is not in compliance with such requirements. Any new or revised State standard must be accompanied by some type of supporting analysis.

(b) The Regional Administrator's approval or disapproval of a State water quality standard shall be based on the requirements of the Act as described in §§ 131.5 and 131.6, and, with respect to Great Lakes States or Tribes (as defined in 40 CFR 132.2), 40 CFR part 132.

(c) A State water quality standard remains in effect, even though disapproved by EPA, until the State revises it or EPA promulgates a rule that supersedes the State water quality standard.

(d) EPA shall, at least annually, publish in the FEDERAL REGISTER a notice of approvals under this section.

(48 FR 51405, Nov. 8, 1983, as amended at 60 FR 15387, Mar. 23, 1995)

EXHIBIT A

EXHIBIT B

ILLINOIS REGISTER

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

TITLE 35: ENVIRONMENTAL PROTECTION

SUBTITLE C: WATER POLLUTION

CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 354

PROCEDURES FOR ANTIDegradation DEMONSTRATION REVIEWS

Section

- 354.101 Introduction
- 354.102 Antidegradation Reviews
- 354.103 Required Information for Antidegradation Review
- 354.104 Demonstration Review Process
- 354.105 Public Participation

AUTHORITY: Section 39 of the Environmental Protection Act (415 ILCS 5/39) and §1341 of the Federal Water Pollution Control Act (33 USC §1341; Clean Water Act Section 401).

ILLINOIS REGISTER

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Section 354.101 Introduction

- a) This Subpart details procedures the Agency shall follow to apply the antidegradation requirements of 35 Ill. Adm. Code 302.105 in its administration of the National Pollutant Discharge Elimination System (NPDES) program and Clean Water Act (CWA) Section 401 water quality certifications. An application for a new, renewed or modified NPDES permit proposing an increase in pollutant loading that necessitates the issuance of a new NPDES permit, modification of an existing NPDES permit or involves an activity subject to Agency certification pursuant to Section 401 of the CWA, shall be reviewed by the Agency to assure compliance with 35 Ill. Adm. Code 302.105.
- b) Additional antidegradation provisions found in 35 Ill. Adm. Code 302.521 apply to those surface waters within the Lake Michigan Basin as designated in 35 Ill. Adm. Code 303.443. Implementation procedures for the Lake Michigan requirements are found in 35 Ill. Adm. Code 352.900.

Section 354.102 Antidegradation Reviews

The permit applicant shall provide in its NPDES permit application, request for modification or certification pursuant to Section 401 of the CWA, information that demonstrates to the Agency that a new or modified NPDES permit application proposing any increase in pollutant loading that necessitates the issuance of a new NPDES permit, modification of an existing NPDES permit or involves an activity subject to Agency certification pursuant to Section 401 of the CWA meets the requirements of 35 Ill. Adm. Code 302.105.

Section 354.103 Required Information for Antidegradation Review

A permit application for a new or modified NPDES permit that proposes any increase in pollutant loading that necessitates the issuance of a new NPDES permit, modification of an existing NPDES permit or involves an activity subject to Agency certification pursuant to Section 401 of the CWA must include, but is not limited to:

- 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;

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- c) The purpose and anticipated benefits of the proposed activity. Such benefits may include, but are not limited to:
- 1) Providing a centralized wastewater collection and treatment system for a previously unsewered community;
 - 2) Expansion to provide service for anticipated residential or industrial growth consistent with a community's long range urban planning;
 - 3) Addition of a new product line or production increase or modification at an industrial facility; or
 - 4) 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 may include, but are not limited to:
- 1) Additional treatment levels including no discharge alternatives;
 - 2) Discharge of waste to alternate locations including publicly-owned treatment works and streams with greater assimilative capacity; or
 - 3) Manufacturing practices that incorporate pollution prevention techniques.

Section 354.104 Demonstration Review

- a) The antidegradation demonstration review pursuant to 35 Ill. Adm. Code 302.105 is a part of the NPDES permitting process or the CWA Section 401 certification process. However, applicants should initiate communication with the Agency, preferably during the planning stage for any load increase. Communication will help assure the adequacy of information necessary to constitute an antidegradation demonstration and avoid or minimize delays and requests for supplemental information during the permitting stage. The Agency review process shall be initiated by:
- 1) an informal or preliminary request of a proponent of a project prior to filing of a permit application; or

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- 2) receipt of an application for an NPDES permit issuance, renewal or modification, or a CWA Section 401 certification.

A proponent seeking an immediate review of the results of the Agency's review pursuant to subsection (b)(1) must do so within the NPDES permit process or the CWA Section 401 certification process.

b) Results of Review Process

- 1) After a review pursuant to subsection (a)(1), the Agency shall consult with the proponent and respond:
 - A) in writing to written requests;
 - B) verbally to verbal requests; or
 - C) in a manner otherwise agreed upon.

The written response will include a statement by the Agency indicating whether the demonstration, based upon the information provided or information acquired by the Agency during the review process, meets the criteria of 35 Ill. Adm. Code 302.105.

- 2) After a review pursuant to subsection (a)(2), the Agency shall produce a written analysis addressing the requirements of 35 Ill. Adm. Code 302.105 and provide a decision yielding one of the following results:
 - A) If the demonstration meets the requirements of 35 Ill. Adm. Code 302.105, then the Agency shall 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 demonstration does not meet the requirements of 35 Ill. Adm. Code 302.105, then the Agency shall provide a written analysis to the applicant and shall 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;

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- C) If the demonstration does not meet the requirements of 35 Ill. Adm. Code 302.105, but some lowering of water quality is allowable, then the Agency will contact the applicant with the results of the review.
 - i) If the reduced loading increase is acceptable to the applicant, upon the receipt of an amended demonstration, the Agency will proceed to public notice; or
 - ii) If the reduced loading increase is not acceptable to the applicant, the Agency will transmit its written review to the applicant in the context of a NPDES permit denial or a CWA Section 401 certification denial.

Section 354.105 Public Participation

When the Agency initially determines to authorize a load increase, public notice and public participation will be achieved through the public notice procedures found in 35 Ill. Adm. Code 309.109 or CWA Section 401 certifications. The Agency shall incorporate the following information into a fact sheet accompanying the public notice:

- a) A description of the activity, including identification of water quality parameters 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 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.

EXHIBIT C



Illinois
Environmental
Protection Agency

Environmental Policy
P.O. Box 19276
Springfield, IL 62794-9276

November 1999

IEPA/ENV/99-021

FY 2000
Performance
Partnership Agreement



November 1999

2000. IEPA will review and develop an appropriate implementation strategy within six months of adoption.

Federal Role - USEPA is in the process of issuing a 1999 SSO/SCO Enforcement Strategy, which provides direction on prioritizing inspections and enforcement of industrial and construction requirements for phase 1 industrial stormwater dischargers.

- Pollution Prevention Initiatives - A number of new and ongoing pollution prevention activities will focus on municipal operations. Completion of a "P2 for POTWs" fact sheet is scheduled for FY 2000; upon completion, the document will be promoted and distributed through professional organizations and operator groups as well as through routine field inspections. Training will be developed for POTWs interested in incorporating pollution prevention in their industrial user inspections. A partnership with the Village of Addison and its industrial users to provide pollution prevention training and on-site assistance will be continued, and efforts will be made to expand the concept to additional POTWs. Field staff will continue to take advantage of training opportunities and to incorporate pollution prevention into routine field inspections. A field staff person in the Maywood region will assist in these activities on a part time basis.

See the Bureau of Water program outputs in the Attachment.

Federal Role -USEPA will provide information on P2 and AFOs to Illinois EPA.

- Water Quality Standards Activities - Illinois EPA is currently involved in numerous standards initiatives that will carry into FY 2000, several are multi-year efforts that will extend well beyond FY 2000. We hope to complete the federal review and approval process for the Lake Michigan water quality standards revisions adopted in December 1996. Implementation procedures for the general use ammonia standard were adopted in June 1999 and promptly submitted to Region 5 to complete the submission of the new state general use ammonia standard. Refinement of the state's anti-degradation policies, mixing zone application procedures for setting water quality based effluent limitations (WQBEL's) are priority activities for FY 2000. The Agency will continue with its development of biocriteria, participation in the regional nutrient criteria workgroups and revisions of water quality standards for constituents listed below.

To the extent that staff resources permit, the Agency will also complete review of water quality standards for selenium, cadmium, zinc, nickel, barium, benzene, toluene, ethyl benzene, xylene, and weak acid dissociable cyanide. This review is partially underway. IEPA will also finalize the standards revisions and proceed with filing the changes with the Pollution Control Boards. IEPA will also begin the assessment for making a change from the fecal coliform standard to E.coli and submit a schedule for completing the revisions to ensure that the 2003 goal for revising the standard is met.

The secondary contact use designation for the Des Plaines River from the confluence with the Chicago Sanitary and Ship Canal to the Interstate 55 Bridge will be reviewed for possible upgrade. The review will probably be segmented into two reaches (the segment above Brandon Road Lock and Dam and the segment below Brandon Road Lock and Dam) with a possibility of different outcomes for each segment. The review will include evaluation of upgrade of each segment to general use designation and other possible partial upgrades if general use designation is deemed inappropriate.

Review and revision of the State's anti-degradation policy is under way. Illinois will develop and adopt procedures to implement Illinois' anti-degradation policy once the review is complete. The implementation procedures will identify how water quality necessary to support existing uses will be protected, how high quality waters will be identified, how water quality in high quality waters will be protected, the circumstances under which water quality in high quality waters may be lowered, how Illinois will evaluate proposed actions that could lower water quality to determine whether or not the proposed lowering of water quality is necessary to support important social and economic development and how water quality in Outstanding Resource Waters (ORW) can be maintained and protected.

Federal Role - USEPA will work closely with the Agency during the process of developing revisions to water quality standards and any changes to use designations to insure that proposals submitted to the Illinois Pollution Control Board are approvable. USEPA will provide IEPA with Regional and national technical support and necessary data through the Clearinghouse. USEPA will consult with U.S. Fish and Wildlife Service (USFWS) on new or revised WQS adopted by Illinois. USEPA will provide timely review and approve or disapprove new or revised WQS adopted by Illinois.

- Great Lakes Water Quality Initiative - The water quality standards revision and permitting procedures mandated under the Great Lakes Initiative were completed and submitted to Region 5 in February 1998. The state submittal is currently under review. Activity during FY2000 will center around implementation of the GLI, coordination and support of Region 5 in their review of the Illinois GLI package and completion of the supplemental regulatory proposal.

See the Bureau of Water program outputs in the Attachment.

Federal Role - Hearings have been completed. The Board has issued a proposed order (second notice) for review by the Joint Committee for Administrative Rules. Upon final adoption by the Board, any changes to the original GLI procedures will be forwarded to Region 5 as an update/modification of the February 1998 submittal.

- Development of Biocriteria Water Quality Standards - Illinois EPA will continue to work with the Region on the development of biocriteria in FY 2000. The

STATE OF ILLINOIS

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COUNTY OF SANGAMON

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached **AGENCY REGULATORY PROPOSAL AND TABLE OF CONTENTS FOR REGULATORY PROPOSAL** upon the person to whom it is directed, by placing a copy in an envelope addressed to:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
(FIRST CLASS MAIL)

Illinois Department of Energy and Natural Resources
Attention: Legal Department
325 West Adams, Room 300
Springfield, Illinois 62706
(FIRST CLASS MAIL)

Matthew Dunn
Illinois Attorney General's Office
Environmental Control Division
James R. Thompson Center,
188 West Randolph Street
Chicago, Illinois 60601
(FIRST CLASS MAIL)

and mailing it from Springfield, Illinois on August 29, 2000 with sufficient postage affixed as indicated above.

Nancy J. D. Lambert

SUBSCRIBED AND SWORN TO BEFORE ME
this 29th day of Aug., 2000

Brenda Boehner

Notary Public



ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of Part: Water Quality Standards
- 2) Code Citation: 35 Ill. Adm. Code 302
- 3) Section Number: 302.105 Proposed Action:
Amend
- 4) Statutory Authority: 415 ILCS 5/13, and 27
- 5) A Complete Description of the Subjects and Issues Involved:

This proposed amendment is part of a proceeding entitled, Amendments to 35 Ill. Adm. Code 302.105 and Proposed 35 Ill. Adm. Code 303.205, 303.206 and 35 Ill. Adm. Code 106.990 through 106.995. Other related amendments are proposed in Part 303 and 35 Ill. Adm. Code 106 and are contained in separate notices pertaining to those Parts. This amendment establishes the criteria to be used by the Illinois Environmental Protection Agency in ensuring compliance with the federal antidegradation requirements at 40 CFR 131.12 when issuing National Pollutant Discharge Elimination System permits pursuant to 415 ILCS 5/39(b) and water quality certifications required by 33 U.S.C. §1341.

- 6) Will this proposed amendment replace an emergency amendment currently in effect?
 Yes No
- 7) Does this rulemaking contain an automatic repeal date?
 Yes No
- 8) Does this proposed amendment contain incorporations by reference?
 Yes No
- 9) Are there any other proposed amendments pending on this part?
 Yes No
- 10) Statement of State wide Policy Objectives:

This proposed amendment is consistent with the policy objectives set out in the Environmental Protection Act, 415 ILCS 5/11(b).

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference Docket R00-___ and be addressed to:

Ms. Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph Street
Chicago, Illinois 60601

- 12) Initial Regulatory Flexibility Analysis:

- A) Types of small business affected:

Anyone proposing to discharge contaminants into waters of the state.

- B) Reporting, book keeping or other procedures required for compliance:

Determination of compliance with this proposed rules will be approved through the existing federal permitting program.

- C) Types of professional skills necessary for compliance:

None

The full text of the Proposed Amendments begins on the next page:

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

**TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE C: WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD**

**PART 302
WATER QUALITY STANDARDS**

SUBPART A: GENERAL WATER QUALITY PROVISIONS

Section	
302.100	Definitions
302.101	Scope and Applicability
302.102	Allowed Mixing, Mixing Zones and ZIDS
302.103	Stream Flows
302.104	Main River Temperatures
302.105	<u>Antidegradation</u> <u>Nondegradation</u>

SUBPART B: GENERAL USE WATER QUALITY STANDARDS

Section	
302.201	Scope and Applicability
302.202	Purpose
302.203	Offensive Conditions
302.204	pH
302.205	Phosphorus
302.206	Dissolved Oxygen
302.207	Radioactivity
302.208	Numeric Standards for Chemical Constituents
302.209	Fecal Coliform
302.210	Other Toxic Substances
302.211	Temperature
302.212	Ammonia Nitrogen and Un-ionized Ammonia
302.213	Effluent Modified Waters (Ammonia)

SUBPART C: PUBLIC AND FOOD PROCESSING WATER SUPPLY STANDARDS

Section	
302.301	Scope and Applicability
302.302	Algicide Permits
302.303	Finished Water Standards

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

302.304	Chemical Constituents
302.305	Other Contaminants
302.306	Fecal Coliform

SUBPART D: SECONDARY CONTACT AND INDIGENOUS AQUATIC LIFE STANDARDS

Section	
302.401	Scope and Applicability
302.402	Purpose
302.403	Unnatural Sludge
302.404	pH
302.405	Dissolved Oxygen
302.406	Fecal Coliform (Repealed)
302.407	Chemical Constituents
302.408	Temperature
302.409	Cyanide
302.410	Substances Toxic to Aquatic Life

SUBPART E: LAKE MICHIGAN BASIN WATER QUALITY STANDARDS

Section	
302.501	Scope, Applicability, and Definitions
302.502	Dissolved Oxygen
302.503	pH
302.504	Chemical Constituents
302.505	Fecal Coliform
302.506	Temperature
302.507	Thermal Standards for Existing Sources on January 1, 1971
302.508	Thermal Standards for Sources under Construction But Not in Operation on January 1, 1971
302.509	Other Sources
302.510	Incorporations by Reference
302.515	Offensive Conditions
302.520	Regulation and Designation of Bioaccumulative Chemicals of Concern (BCCs)
302.521	Supplemental Antidegradation Provisions for BCCs
302.525	Radioactivity
302.530	Supplemental Mixing Provisions for BCCs
302.535	Ammonia Nitrogen
302.540	Other Toxic Substances

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NOTICE OF PROPOSED AMENDMENTS

- 302.545 Data Requirements
- 302.550 Analytical Testing
- 302.553 Determining the Lake Michigan Aquatic Toxicity Criteria or Values - General Procedures
- 302.555 Determining the Tier I Lake Michigan Basin Acute Aquatic Life Toxicity Criterion (LMAATC):
Independent of Water Chemistry
- 302.560 Determining the Tier I Lake Michigan Basin Acute Aquatic Life Toxicity Criterion (LMAATC):
Dependent on Water Chemistry
- 302.563 Determining the Tier II Lake Michigan Basin Acute Aquatic Life Toxicity Value (LMAATV)
- 302.565 Determining the Lake Michigan Basin Chronic Aquatic Life Toxicity Criterion (LMCATC) or the
Lake Michigan Basin Chronic Aquatic Life Toxicity Value (LMCATV)
- 302.570 Procedures for Deriving Bioaccumulation Factors for the Lake Michigan Basin
- 302.575 Procedures for Deriving Tier I Water Quality Criteria in the Lake Michigan Basin to Protect Wildlife
- 302.580 Procedures for Deriving Water Quality Criteria and Values in the Lake Michigan Basin to Protect
Human Health – General
- 302.585 Procedures for Determining the Lake Michigan Basin Human Health Threshold Criterion (LMHHTC) and the Lake Michigan Basin Human Health Threshold Value (LMHHTV)
- 302.590 Procedures for Determining the Lake Michigan Basin Human Health Nonthreshold Criterion (LMHHNC) or the Lake Michigan Basin Human Health Nonthreshold Value (LMHHNV)
- 302.595 Listing of Bioaccumulative Chemicals of Concern, Derived Criteria and Values

SUBPART F: PROCEDURES FOR DETERMINING WATER QUALITY CRITERIA

- Section
- 302.601 Scope and Applicability
- 302.603 Definitions
- 302.604 Mathematical Abbreviations
- 302.606 Data Requirements
- 302.612 Determining the Acute Aquatic Toxicity Criterion for an Individual Substance –
General Procedures

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- 302.615 Determining the Acute Aquatic Toxicity Criterion - Toxicity Independent of Water Chemistry
- 302.618 Determining the Acute Aquatic Toxicity Criterion - Toxicity Dependent on Water Chemistry
- 302.621 Determining the Acute Aquatic Toxicity Criterion - Procedures for Combinations of Substances
- 302.627 Determining the Chronic Aquatic Toxicity Criterion for an Individual Substance - General Procedures
- 302.630 Determining the Chronic Aquatic Toxicity Criterion - Procedure for Combination of Substances
- 302.633 The Wild and Domestic Animal Protection Criterion
- 302.642 The Human Threshold Criterion
- 302.645 Determining the Acceptable Daily Intake
- 302.648 Determining the Human Threshold Criterion
- 302.651 The Human Nonthreshold Criterion
- 302.654 Determining the Risk Associated Intake
- 302.657 Determining the Human Nonthreshold Criterion
- 302.658 Stream Flow for Application of Human Nonthreshold Criterion
- 302.660 Bioconcentration Factor
- 302.663 Determination of Bioconcentration Factor
- 302.666 Utilizing the Bioconcentration Factor
- 302.669 Listing of Derived Criteria

APPENDIX A References to Previous Rules

APPENDIX B Sources of Codified Sections

AUTHORITY: Implementing Section 13 and authorized by Sections 11(b) and 27 of the Environmental Protection Act [415 ILCS 5/13 11(b), and 27]

SOURCE: Filed with the Secretary of State January 1, 1978; amended at 2 Ill. Reg. 44, p. 151, effective November 2, 1978; amended at 3 Ill. Reg. 20, p. 95, effective May 17, 1979; amended at 3 Ill. Reg. 25, p. 190, effective June 21, 1979; codified at 6 Ill. Reg. 7818; amended at 6 Ill. Reg. 11161, effective September 7, 1982; amended at 6 Ill. Reg. 13750, effective October 26, 1982; amended at 8 Ill. Reg. 1629, effective January 18, 1984; peremptory amendments at 10 Ill. Reg. 461, effective December 23, 1985; amended at R87-27 at 12 Ill. Reg. 9911, effective May 27, 1988; amended at R85-29 at 12 Ill. Reg. 12082, effective July 11, 1988; amended in R88-1 at 13 Ill. Reg. 5998, effective April 18, 1989; amended in R88-21(A) at 14 Ill. Reg. 2899, effective February 13, 1990; amended in R88-21(B) at 14 Ill. Reg. 11974, effective July 9, 1990; amended in R94-1(A) at 20 Ill. Reg. 7682, effective May 24, 1996; amended in R94-1(B) at 21 Ill. Reg. 370, effective December 23, 1996; expedited correction at 21 Ill. Reg. 6273, effective December

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NOTICE OF PROPOSED AMENDMENTS

23, 1996; amended in R97-25 at 21 Ill. Reg. 1356, effective December 24, 1997; amended in _____ at _____ Ill. Reg. _____, effective _____.

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

Section 302.105 Antidegradation

The purpose of this Section is to maintain high quality waters and to prevent unnecessary deterioration of waters of the State.

a) Existing Uses

Uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards, must be maintained and protected. Examples of degradation of existing uses of the waters of the State include but are not limited to:

- 1) an action that would result in the deterioration of the existing aquatic community, such as a shift from a community of predominantly pollutant-sensitive species to pollutant-tolerant species or a loss of species diversity; or
- 2) an action that would result in a loss of a resident or indigenous species whose presence is necessary to sustain commercial or recreational activities.

b) Outstanding Resource Waters

- 1) Waters that are classified as an Outstanding Resource Water (ORW) pursuant to 35 Ill. Adm. Code 303.205 must not be lowered in quality except as provided below:
 - A) An activity that results in short-term, temporary (i.e., weeks or months) lowering of water quality; or
 - B) Existing site stormwater discharges that comply with applicable federal and state storm water management regulations and do not result in a violation of any water quality standards; and
 - C) The proponent of any activity requiring a National Pollutant Discharge Elimination System (NPDES) or a Clean Water Act (CWA) Section 401 certification must also submit a demonstration to the Agency meeting the requirements of subsections b(2) and c(2) of this Section.

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NOTICE OF PROPOSED AMENDMENTS

- 2) Any activity listed in subsection (b)(1) or proposed increase in pollutant loading must also meet the following requirements:
 - A) All existing uses of the water will be fully protected;
 - B) The proposed increase in pollutant loading is necessary for an activity that will improve water quality in the ORW; and
 - C) The improvement could not be practicably achieved without the proposed increase in pollutant loading.
- 3) Any proposed increase in pollutant loading requiring an NPDES permit or a CWA 401 certification for an ORW must be assessed pursuant to 35 Ill. Adm. Code Part 354 to determine compliance with this Section.

c) High Quality Waters

- 1) Except as otherwise provided in subsection (d) of this Section, waters of the State whose existing quality exceeds established standards of this Part must be maintained in their present high quality, unless the proponent can demonstrate pursuant to subsection (c)(2) of this Section, that allowing the lowering of water quality, is necessary to accommodate important economic or social development.
- 2) Any proposed increase in pollutant loading subject to a NPDES permit or CWA Section 401 certification must be assessed pursuant to 35 Ill. Adm. Code Part 354 to determine compliance with this Section.
 - A) The Agency shall consider the fate and effect of any parameters proposed for an increased pollutant loading.
 - B) The proponent of an increased pollutant loading shall demonstrate the following:
 - i) The applicable numeric or narrative water quality standard must not be exceeded as a result of the proposed activity;
 - ii) All existing uses must be fully protected;

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- iii) All technically and economically reasonable measures to avoid or minimize the extent of the proposed load increase have been incorporated into the proposed activity; and
- iv) The activity that results in an increased pollutant loading must benefit the community at large.

d) Activities Not Subject to an Antidegradation Demonstration

The following activities will not be subject to an antidegradation demonstration pursuant to subsection (c) of this Section.

- 1) Short-term, temporary (i.e., weeks or months) lowering of water quality;
- 2) Bypasses that are not prohibited at 40 CFR 122.41(m);
- 3) Response actions pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, or similar federal or State authority, taken to alleviate a release into the environment of hazardous substances, pollutants or contaminants which may pose a danger to public health or welfare;
- 4) A thermal discharge that has been approved through a CWA Section 316(a) demonstration;
- 5) New or increased discharges of a non-contact cooling water, without additives, 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
- 6) Discharges permitted under a current general NPDES permit as provided by 415 ILCS 5/39(b), are not subject to facility-specific antidegradation review.

e) Lake Michigan Basin

Waters in the Lake Michigan basin as identified in 35 Ill. Adm. Code 303.443 are also subject to the requirements applicable to bioaccumulative chemicals of concern found at Section 302.521 of this Part.

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

Section 302.105 Nondegradation

~~Except as otherwise provided in Section 202.520, waters whose existing quality is better than the established standards at their date of their adoption will be maintained in their present high quality. Such waters will not be lowered in quality unless and until it is affirmatively demonstrated that such change will not interfere with or become injurious to any appropriate beneficial uses made of, or presently possible in, such waters and that such change is justifiable as a result of necessary economic or social development.~~

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of Part: Water Use Designations and Site Specific Water Quality Standards
- 2) Code Citation: 35 Ill. Adm. Code 303
- 3)

<u>Section Number:</u>	<u>Proposed:</u>
303.205	New Section
303.206	New Section

4) Statutory Authority 415 ILCS 5/13 and 27

5) A Complete Description of the Subjects and Issues Involved:

This proposed amendment is part of a proceeding entitled, Amendments to 35 Ill. Adm. Code 302.105 and Proposed 35 Ill. Adm. Code 303.205, 303.206 and 35 Ill. Adm. Code 106.990 through 106.995. Other related amendments are proposed in part 303 and 35 Ill. Adm. Code 106 and are contained in separate notices pertaining to those parts. These new sections establish a water use designation for high quality waters that may be of exceptional recreational or ecological significance.

6) Will this proposed amendment replace an emergency amendment currently in effect?

Yes No

7) Does this rulemaking contain an automatic repeal date?

Yes No

8) Does this proposed amendment contain incorporations by reference?

Yes No

9) Are there any other proposed amendments pending on this part?

Yes No

10) Statement of State wide Policy Objectives:

This proposed amendment is consistent with the policy objectives set out in the Environmental Protection Act, 415 ILCS 5/11(b).

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference Docket R00-___ and be addressed to:

Ms. Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph Street
Chicago, Illinois 60601

- 12) Initial Regulatory Flexibility Analysis:

- A) Types of small business affected:

Anyone proposing to discharge contaminants into waters of the state.

- B) Reporting, book keeping or other procedures required for compliance:

Determination of compliance with this proposed rules will be approved through the existing federal permitting program.

- C) Types of professional skills necessary for compliance:

None

The full text of the Proposed Amendments begins on the next page:

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION

SUBTITLE C: WATER POLLUTION

CHAPTER I: POLLUTION CONTROL BOARD

PART 303

**WATER USE DESIGNATIONS AND SITE SPECIFIC WATER QUALITY
STANDARDS**

SUBPART A: GENERAL PROVISIONS

Section	
303.100	Scope and Applicability
303.101	Multiple Designations
303.102	Rulemaking Required

SUBPART B: NONSPECIFIC WATER USE DESIGNATIONS

Section	
303.200	Scope and Applicability
303.201	General Use Waters
303.202	Public and Food Processing Water Supplies
303.203	Underground Waters
303.204	Secondary Contact and Indigenous Aquatic Life Waters
303.205	

**SUBPART C: SPECIFIC USE DESIGNATIONS AND SITE
SPECIFIC WATER QUALITY STANDARDS**

Section	
303.300	Scope and Applicability
303.301	Organization
303.311	Ohio River Temperature
303.312	Waters Receiving Fluorspar Mine Drainage
303.321	Wabash River Temperature
303.322	Unnamed Tributary of the Vermilion River
303.323	Sugar Creek and Its Unnamed Tributary
303.331	Mississippi River North Temperature
303.341	Mississippi River North Central Temperature
303.351	Mississippi River South Central Temperature
303.352	Unnamed Tributary of Wood River Creek

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NOTICE OF PROPOSED AMENDMENTS

- 303.353 Schoenberger Creek; Unnamed Tributary of Cahokia Canal
- 303.361 Mississippi River South Temperature
- 303.400 Bankline Disposal Along the Illinois Waterway/River
- 303.430 Unnamed Tributary to Dutch Creek
- 303.431 Long Point Slough and Its Unnamed Tributary
- 303.441 Secondary Contact Waters
- 303.442 Waters Not Designated for Public Water Supply
- 303.443 Lake Michigan Basin
- 303.444 Salt Creek, Higgins Creek, West Branch of the DuPage River, Des Plaines River

SUBPART D: THERMAL DISCHARGES

- Section
- 303.500 Scope and Applicability
- 303.502 Lake Sangchris Thermal Discharges

APPENDIX A References to Previous Rules

APPENDIX B Sources of Codified Sections

AUTHORITY: Implementing Section 13 and authorized by Sections 11(b) and 27 of the Environmental Protection Act [415 ILCS 5/13, 11(b), and 27].

SOURCE: Filed with the Secretary of State January 1, 1978; amended at 2 Ill. Reg. 27, p. 221, effective July 5, 1978; amended at 3 Ill. Reg. 20, p. 95, effective May 17, 1979; amended at 5 Ill. Reg. 11592, effective October 19, 1981; codified at 6 Ill. Reg. 7818; amended at 6 Ill. Reg. 11161 effective September 7, 1982; amended at 7 Ill. Reg. 8111, effective June 23, 1983; amended in R87-27 at 12 Ill. Reg. 9917, effective May 27, 1988; amended in R87-2 at 13 Ill. Reg. 15649, effective September 22, 1989; amended in R87-36 at 14 Ill. Reg. 9460, effective May 31, 1990; amended in R86-14 at 14 Ill. Reg. 20724, effective December 18, 1990; amended in R89-14(C) at 16 Ill. Reg. 14684, effective September 10, 1992; amended in R92-17 at 18 Ill. Reg. 2981, effective February 14, 1994; amended in R91-23 at 18 Ill. Reg. 13457, effective August 19, 1994; amended in R93-13 at 19 Ill. Reg. 1310, effective January 30, 1995; amended in R95-14 at 20 Ill. Reg. 3534, effective February 8, 1996; amended in R97-25 at 22 Ill. Reg. 1403, effective December 24, 1997; amended in _____ at _____ Ill. Reg. _____, effective _____.

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NOTICE OF PROPOSED AMENDMENTS

Section 303.205 Outstanding Resource Waters

An Outstanding Resource Water (ORW) is a water body or water body segment that is of uniquely high biological or recreational quality and shall be designated by the Board pursuant to 35 Ill. Adm. Code 106, Subpart L.

- a) Outstanding Resource Waters ("ORW") shall be listed in Section 303.206 of this Part. In addition to all other applicable use designations and water quality standards contained in this Subtitle, an ORW is subject to the antidegradation provision of Section 302.105(b).
- b) Stream segments that have a 7Q10 low flow of zero will generally not be considered a candidate for this designation.
- c) A petition to designate a water or water segment as an ORW must be submitted to the Illinois Pollution Control Board pursuant to the procedural rules found in 35 Ill. Adm. Code 106, Subpart L.

Section 303.206 List of Outstanding Resource Waters (Reserved)

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

1) Heading of Part: Hearings Pursuant to Specific Rules

2) Code Citation: 35 Ill. Adm. Code 106

<u>Section Number:</u>	<u>Proposed Actions</u>
106.990	New Section
106.991	New Section
106.992	New Section
106.993	New Section
106.994	New Section
106.995	New Section

4) Statutory Authority 415 ILCS 5/5 and 27

5) A Complete Description of the Subjects and Issues Involved:

This proposed amendment is part of a proceeding entitled, Amendments to 35 Ill. Adm. Code 302.105 and Proposed 35 Ill. Adm. Code 303.205, 303.206 and 35 Ill. Adm. Code 106.990 through 106.995. Other related amendments are proposed in part 303 and 35 Ill. Adm. Code 106 and are contained in separate notices pertaining to those parts. These new sections establish the procedures to be followed by anyone requesting that a water body be designated as an Outstanding resource Water.

6) Will this proposed amendment replace an emergency amendment currently in effect?

Yes No

7) Does this rulemaking contain an automatic repeal date?

Yes No

8) Does this proposed amendment contain incorporations by reference?

Yes No

9) Are there any other proposed amendments pending on this part?

Yes No

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

10) Statement of State wide Policy Objectives:

- This proposed amendment is consistent with the policy objectives set out in the
- Environmental Protection Act, 415 ILCS 5/11(b).

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference Docket R00-___ and be addressed to:

Ms. Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph Street
Chicago, Illinois 60601

12) Initial Regulatory Flexibility Analysis:

A) Types of small business affected:

None

B) Reporting, book keeping or other procedures required for compliance:

None

C) Types of professional skills necessary for compliance:

None

The full text of the Proposed Amendments begins on the next page:

**TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD**

**PART 106
HEARINGS PURSUANT TO SPECIFIC RULES**

SUBPART A: HEATED EFFLUENT DEMONSTRATIONS

Section	
106.101	Petition
106.102	Requirements for Petition
106.103	Parties
106.104	Recommendation
106.105	Notice and Hearing
106.106	Transcripts
106.107	Opinion and Order

SUBPART B: ARTIFICIAL COOLING LAKE DEMONSTRATIONS

Section	
106.201	Petition
106.202	Notice and Hearing
106.203	Transcripts
106.204	Effective Date

SUBPART C: SULFUR DIOXIDE DEMONSTRATIONS

Section	
106.301	Petition
106.302	Requirements for Petition
106.303	Parties
106.304	Recommendation
106.305	Notice and Hearing
106.306	Transcripts

SUBPART D: RCRA ADJUSTED STANDARD PROCEDURES

Section	
106.401	Petition (Repealed)
106.402	Notice of Petition (Repealed)
106.403	Recommendation (Repealed)
106.404	Response (Repealed)
106.405	Public Comment (Repealed)
106.406	Public Hearings (Repealed)

106.407	Decision (Repealed)
106.408	Appeal (Repealed)
106.410	Scope and Applicability
106.411	Joint or Single Petition
106.412	Request to Agency to Join as Co-Petitioner
106.413	Contents of Petition
106.414	Response and Reply
106.415	Notice and Conduct of Hearing
106.416	Opinions and Orders

SUBPART E: AIR ADJUSTED STANDARD PROCEDURES

Section	
106.501	Scope and Applicability
106.502	Joint or Single Petition
106.503	Request to Agency to Join As Co-Petitioner
106.504	Contents of Petition
106.505	Response and Reply
106.506	Notice and Conduct of Hearing
106.507	Opinions and Orders

SUBPART F: WATER WELL SETBACK EXCEPTION PROCEDURES

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APPENDIX A Old Rule Numbers Referenced

AUTHORITY: Implementing Sections 5, 14.2(c), 22.4, 27, 28, 28.1, 28.5, 39.5 and 52.3 and authorized by Sections 26, 39.5 and 52.3 of the Environmental Protection Act [415 ILCS 5/5, 14.2(c), 22.4, 27, 28, 28.1, 28.5, 26, 39.5 and 52.3]

SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186, effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg. 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4, 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579, effective July 11, 1994; amended in R99-9 at 23 Ill. Reg. 2697, effective February 16, 1999; amended in at Ill. Reg. , effective .

Section 106.990 Applicability

The procedures set forth in this Subpart apply to any person seeking an Outstanding Resource Water “ORW” designation for a surface water or any segment thereof as provided by 35 Ill. Adm. Code 303.205. This Subpart shall be read in conjunction with 35 Ill. Adm. Code 102 that contains procedures generally applicable to regulatory and informational hearings and proceedings. In a proceeding held pursuant to this Subpart, the requirements of this Subpart shall apply in the event of conflict between the requirements of 35 Ill. Adm. Code 102 and those of this Subpart.

Section 106.991 Definitions

For the purpose of this Subpart, words and terms shall have the meanings as defined in 35 Ill. Adm. Code 102.101, unless otherwise provided.

Section 106.992 Petition

Any person may submit a written petition for the adoption, amendment or repeal of an ORW designation. The original and nine (9) copies of each petition shall be filed with the Clerk and one copy each served upon the Agency, Illinois Department of Natural Resources (IDNR), the Attorney General, the States Attorney of each county in which the waters or water segment runs, the Chairman of the County Board of each county in which the waters or water segment runs, to each member of the General Assembly from the legislative district in which the waters or water segment runs, to current NPDES permit holders and NPDES permit applicants, applicants for federally permitted activities that require a certification from the Agency pursuant to Section 401 of the Clean Water Act, and to other persons as required by law.

Section 106.993 Publication

A person that submits a written petition for the adoption, amendment or repeal of an ORW designation shall, within 10 days after the petition is filed, publish notice of such petition in a newspaper of general circulation in the county or counties in which the effected water body flows.

Section 106.994 Petition Contents

The petition must be captioned in accordance with 35 Ill. Adm. Code Section 101.ILLUSTRATION A General Rulemaking. The petition must contain headings corresponding to the informational requirements of each subsection of this Section. The following information shall be contained in the petition:

- a) The proponent shall identify the waters or water segment, which is to be addressed by the proposed amendment and the language to be added, deleted or repealed. Underscoring must indicate language being added and strikeouts must indicate language being deleted.
- b) A statement describing the specific surface water or segment thereof for which the ORW designation is requested and that waters' or segment's present designation;
- c) A statement describing the area in which the specific surface water or segment thereof exists including, but not limited to:
 - 1) the existence of wetlands or natural areas;
 - 2) the life contained within that area including endangered or threatened species of plants, aquatic life or wildlife listed pursuant to the Endangered Species Act, 16 USC 1531 et seq. or the Illinois Endangered Species Protection Act, 41 ILCS 10.
- d) A statement supporting the designation including, but not limited to, the health, environmental, recreational, aesthetic or economic benefits of the designation;
- e) A statement identifying the ORW designation's anticipated impact on economic and social development. This statement should be supported by current, verifiable information including, but not limited to:
 - 1) impacts on the regional economy;
 - 2) impacts on regional employment;
 - 3) impacts on the community;
 - 4) a comparison of the health and environmental impacts to the economic impact of an ORW designation;
- f) A statement describing the existing and anticipated uses of the specific surface water or segment thereof for which the ORW designation is requested;
- g) A statement describing the existing and anticipated quality of the specific surface water or segment thereof warranting the ORW designation;
- h) A synopsis of all testimony to be presented by the proponent at hearing;

- i) Copies of any material to be incorporated by reference within the proposed designation pursuant to Section 5-75 of the Administrative Procedures Act;
- j) Proof of service upon all persons required to be served pursuant to Section 106.942 of this Part and proof of publication required by Section 106.943 of this Part;
- k) Unless the proponent is the Agency, Illinois Department of Natural Resources or receives a waiver by the Board, a petition signed by at least 200 persons, pursuant to Section 28 of the Act and Section 102.160(a); and
- l) Where any information required by this Section is inapplicable or unavailable, a complete justification for such inapplicability or unavailability.

Section 106.995 Board Action

- a) Dismissal
 - 1) Failure of the proponent to satisfy the content requirements for petitions under this Subpart or failure to respond to Board requests for additional information will render a petition subject to dismissal for inadequacy.
 - 2) Failure of the proponent to pursue disposition of the petition in a timely manner will render a petition subject to dismissal. In making this determination, the Board shall consider factors including but not limited to, the history of the proceeding and the proponent's compliance with any Board or hearing officer orders.
 - 3) Any person may file a motion challenging the sufficiency of the petition pursuant to 35 Ill. Adm. Code 101.243.
 - 4) The Board shall dismiss a petition for inadequacy in cases in which the Board, after evaluating the petition, cannot determine the jurisdictional basis on which the petition is made. In all such cases, a statement informing the proponent of the Board's basis for dismissal will be made. Dismissal of the petition does not bar a proponent from re-submitting a petition in the absence of any deadline imposed by the Act or Board regulations.

b) Designation of ORW

A) The Board shall designate a water body or water body segment as an ORW and list it in Ill. Adm. Code 303.206 if it finds:

2) the water body or water body segment is of uniquely high biological or recreational quality; and

3) the benefits of protection of the water from future degradation outweigh the benefits of economic or social opportunities that will be lost if the water is designated as an ORW.

**TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE C: WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD**

**PART 302
WATER QUALITY STANDARDS**

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302.105	<u>Antidegradation</u> Nondegradation

SUBPART B: GENERAL USE WATER QUALITY STANDARDS

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- 302.403 Unnatural Sludge
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SUBPART E: LAKE MICHIGAN BASIN WATER QUALITY STANDARDS

- Section
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- 302.502 Dissolved Oxygen
- 302.503 pH
- 302.504 Chemical Constituents
- 302.505 Fecal Coliform
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- 302.507 Thermal Standards for Existing Sources on January 1, 1971
- 302.508 Thermal Standards for Sources under Construction But Not in Operation on
January 1, 1971
- 302.509 Other Sources
- 302.510 Incorporations by Reference
- 302.515 Offensive Conditions
- 302.520 Regulation and Designation of Bioaccumulative Chemicals of Concern (BCCs)
- 302.521 Supplemental Antidegradation Provisions for BCCs
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- 302.530 Supplemental Mixing Provisions for BCCs
- 302.535 Ammonia Nitrogen
- 302.540 Other Toxic Substances
- 302.545 Data Requirements
- 302.550 Analytical Testing

- 302.553 Determining the Lake Michigan Aquatic Toxicity Criteria or Values - General Procedures
- 302.555 Determining the Tier I Lake Michigan Basin Acute Aquatic Life Toxicity Criterion (LMAATC): Independent of Water Chemistry
- 302.560 Determining the Tier I Lake Michigan Basin Acute Aquatic Life Toxicity Criterion (LMAATC): Dependent on Water Chemistry
- 302.563 Determining the Tier II Lake Michigan Basin Acute Aquatic Life Toxicity Value (LMAATV)
- 302.565 Determining the Lake Michigan Basin Chronic Aquatic Life Toxicity Criterion (LMCATC) or the Lake Michigan Basin Chronic Aquatic Life Toxicity Value (LMCATV)
- 302.570 Procedures for Deriving Bioaccumulation Factors for the Lake Michigan Basin
- 302.575 Procedures for Deriving Tier I Water Quality Criteria in the Lake Michigan Basin to Protect Wildlife
- 302.580 Procedures for Deriving Water Quality Criteria and Values in the Lake Michigan Basin to Protect Human Health – General
- 302.585 Procedures for Determining the Lake Michigan Basin Human Health Threshold Criterion (LMHHTC) and the Lake Michigan Basin Human Health Threshold Value (LMHHTV)
- 302.590 Procedures for Determining the Lake Michigan Basin Human Health Nonthreshold Criterion (LMHHNC) or the Lake Michigan Basin Human Health Nonthreshold Value (LMHHNV)
- 302.595 Listing of Bioaccumulative Chemicals of Concern, Derived Criteria and Values

SUBPART F: PROCEDURES FOR DETERMINING WATER QUALITY CRITERIA

- Section
- 302.601 Scope and Applicability
- 302.603 Definitions
- 302.604 Mathematical Abbreviations
- 302.606 Data Requirements
- 302.612 Determining the Acute Aquatic Toxicity Criterion for an Individual Substance – General Procedures
- 302.615 Determining the Acute Aquatic Toxicity Criterion - Toxicity Independent of Water Chemistry

302.618	Determining the Acute Aquatic Toxicity Criterion - Toxicity Dependent on Water Chemistry
302.621	Determining the Acute Aquatic Toxicity Criterion - Procedures for Combinations of Substances
302.627	Determining the Chronic Aquatic Toxicity Criterion for an Individual Substance - General Procedures
302.630	Determining the Chronic Aquatic Toxicity Criterion - Procedure for Combination of Substances
302.633	The Wild and Domestic Animal Protection Criterion
302.642	The Human Threshold Criterion
302.645	Determining the Acceptable Daily Intake
302.648	Determining the Human Threshold Criterion
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302.654	Determining the Risk Associated Intake
302.657	Determining the Human Nonthreshold Criterion
302.658	StreamFlow for Application of Human Nonthreshold Criterion
302.660	Bioconcentration Factor
302.663	Determination of Bioconcentration Factor
302.666	Utilizing the Bioconcentration Factor
302.669	Listing of Derived Criteria

APPENDIX A References to Previous Rules

APPENDIX B Sources of Codified Sections

AUTHORITY: Implementing Section 13 and authorized by Sections 11(b) and 27 of the Environmental Protection Act [415 ILCS 5/13 11(b), and 27]

SOURCE: Filed with the Secretary of State January 1, 1978; amended at 2 Ill. Reg. 44, p. 151, effective November 2, 1978; amended at 3 Ill. Reg. 20, p. 95, effective May 17, 1979; amended at 3 Ill. Reg. 25, p. 190, effective June 21, 1979; codified at 6 Ill. Reg. 7818; amended at 6 Ill. Reg. 11161, effective September 7, 1982; amended at 6 Ill. Reg. 13750, effective October 26, 1982; amended at 8 Ill. Reg. 1629, effective January 18, 1984; peremptory amendments at 10 Ill. Reg. 461, effective December 23, 1985; amended at R87-27 at 12 Ill. Reg. 9911, effective May 27, 1988; amended at R85-29 at 12 Ill. Reg. 12082, effective July 11, 1988; amended in R88-1 at 13 Ill. Reg. 5998, effective April 18, 1989; amended in R88-21(A) at 14 Ill. Reg. 2899, effective February 13, 1990; amended in R88-21(B) at 14 Ill. Reg. 11974, effective July 9, 1990; amended in R94-1(A) at 20 Ill. Reg. 7682, effective May 24, 1996; amended in R94-1(B) at 21 Ill. Reg. 370, effective December 23, 1996; expedited correction at 21 Ill. Reg. 6273, effective December 23, 1996; amended in R97-25 at 21 Ill. Reg. 1356, effective December 24, 1997; amended in _____ at _____ Ill. Reg. _____, effective _____.

Section 302.105 Antidegradation

The purpose of this Section is to maintain high quality waters and to prevent unnecessary deterioration of waters of the State.

a) Existing Uses

Uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards, must be maintained and protected. Examples of degradation of existing uses of the waters of the State include but are not limited to:

- 1) an action that would result in the deterioration of the existing aquatic community, such as a shift from a community of predominantly pollutant-sensitive species to pollutant-tolerant species or a loss of species diversity;
or
- 2) an action that would result in a loss of a resident or indigenous species whose presence is necessary to sustain commercial or recreational activities.

b) Outstanding Resource Waters

- 1) Waters that are classified as an Outstanding Resource Water (ORW) pursuant to 35 Ill. Adm. Code 303.205 must not be lowered in quality except as provided below:
 - A) An activity that results in short-term, temporary (i.e., weeks or months) lowering of water quality; or
 - B) Existing site stormwater discharges that comply with applicable federal and state storm water management regulations and do not result in a violation of any water quality standards; and
 - C) The proponent of any activity requiring a National Pollutant Discharge Elimination System (NPDES) or a Clean Water Act (CWA) Section 401 certification must also submit a demonstration to the Agency meeting the requirements of subsections b(2) and c(2) of this Section.

- 2) Any activity listed in subsection (b)(1) or proposed increase in pollutant loading must also meet the following requirements:
 - A) All existing uses of the water will be fully protected;
 - B) The proposed increase in pollutant loading is necessary for an activity that will improve water quality in the ORW; and
 - C) The improvement could not be practicably achieved without the proposed increase in pollutant loading.
- 3) Any proposed increase in pollutant loading requiring an NPDES permit or a CWA 401 certification for an ORW must be assessed pursuant to 35 Ill. Adm. Code Part 354 to determine compliance with this Section.

c) High Quality Waters

- 1) Except as otherwise provided in subsection (d) of this Section, waters of the State whose existing quality exceeds established standards of this Part must be maintained in their present high quality, unless the proponent can demonstrate pursuant to subsection (c)(2) of this Section, that allowing the lowering of water quality, is necessary to accommodate important economic or social development.
- 2) Any proposed increase in pollutant loading subject to a NPDES permit or CWA Section 401 certification must be assessed pursuant to 35 Ill. Adm. Code Part 354 to determine compliance with this Section.
 - A) The Agency shall consider the fate and effect of any parameters proposed for an increased pollutant loading.
 - B) The proponent of an increased pollutant loading shall demonstrate the following:
 - i) The applicable numeric or narrative water quality standard must not be exceeded as a result of the proposed activity;
 - ii) All existing uses must be fully protected;

- iii) All technically and economically reasonable measures to avoid or minimize the extent of the proposed load increase have been incorporated into the proposed activity; and
- iv) The activity that results in an increased pollutant loading must benefit the community at large.

d) Activities Not Subject to an Antidegradation Demonstration

The following activities will not be subject to an antidegradation demonstration pursuant to subsection (c) of this Section.

- 1) Short-term, temporary (i.e., weeks or months) lowering of water quality;
- 2) Bypasses that are not prohibited at 40 CFR 122.41(m);
- 3) Response actions pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, or similar federal or State authority, taken to alleviate a release into the environment of hazardous substances, pollutants or contaminants which may pose a danger to public health or welfare;
- 4) A thermal discharge that has been approved through a CWA Section 316(a) demonstration;
- 5) New or increased discharges of a non-contact cooling water, without additives, 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
- 6) Discharges permitted under a current general NPDES permit as provided by 415 ILCS 5/39(b), are not subject to facility-specific antidegradation review.

e) Lake Michigan Basin

Waters in the Lake Michigan basin as identified in 35 Ill. Adm. Code 303.443 are also subject to the requirements applicable to bioaccumulative chemicals of concern found at Section 302.521 of this Part.

Section 302.105 Nondegradation

~~Except as otherwise provided in Section 302.520, waters whose existing quality is better than the established standards at their date of their adoption will be maintained in their present high quality. Such waters will not be lowered in quality unless and until it is affirmatively demonstrated that such change will not interfere with or become injurious to any appropriate beneficial uses made of, or presently possible in, such waters and that such change is justifiable as a result of necessary economic or social development.~~

**TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE C: WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD**

**PART 303
WATER USE DESIGNATIONS AND SITE SPECIFIC WATER QUALITY
STANDARDS**

SUBPART A: GENERAL PROVISIONS

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303.100	Scope and Applicability
303.101	Multiple Designations
303.102	Rulemaking Required

SUBPART B: NONSPECIFIC WATER USE DESIGNATIONS

Section	
303.200	Scope and Applicability
303.201	General Use Waters
303.202	Public and Food Processing Water Supplies
303.203	Underground Waters
303.204	Secondary Contact and Indigenous Aquatic Life Waters
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**SUBPART C: SPECIFIC USE DESIGNATIONS AND SITE
SPECIFIC WATER QUALITY STANDARDS**

Section	
303.300	Scope and Applicability
303.301	Organization
303.311	Ohio River Temperature
303.312	Waters Receiving Fluorspar Mine Drainage
303.321	Wabash River Temperature
303.322	Unnamed Tributary of the Vermilion River
303.323	Sugar Creek and Its Unnamed Tributary
303.331	Mississippi River North Temperature
303.341	Mississippi River North Central Temperature
303.351	Mississippi River South Central Temperature
303.352	Unnamed Tributary of Wood River Creek
303.353	Schoenberger Creek; Unnamed Tributary of Cahokia Canal

- 303.361 Mississippi River South Temperature
- 303.400 Bankline Disposal Along the Illinois Waterway/River
- 303.430 Unnamed Tributary to Dutch Creek
- 303.431 Long Point Slough and Its Unnamed Tributary
- 303.441 Secondary Contact Waters
- 303.442 Waters Not Designated for Public Water Supply
- 303.443 Lake Michigan Basin
- 303.444 Salt Creek, Higgins Creek, West Branch of the DuPage River, Des Plaines River

SUBPART D: THERMAL DISCHARGES

Section

- 303.500 Scope and Applicability
- 303.502 Lake Sangchris Thermal Discharges

APPENDIX A References to Previous Rules

APPENDIX B Sources of Codified Sections

AUTHORITY: Implementing Section 13 and authorized by Sections 11(b) and 27 of the Environmental Protection Act [415 ILCS 5/13, 11(b), and 27].

SOURCE: Filed with the Secretary of State January 1, 1978; amended at 2 Ill. Reg. 27, p. 221, effective July 5, 1978; amended at 3 Ill. Reg. 20, p. 95, effective May 17, 1979; amended at 5 Ill. Reg. 11592, effective October 19, 1981; codified at 6 Ill. Reg. 7818; amended at 6 Ill. Reg. 11161 effective September 7, 1982; amended at 7 Ill. Reg. 8111, effective June 23, 1983; amended in R87-27 at 12 Ill. Reg. 9917, effective May 27, 1988; amended in R87-2 at 13 Ill. Reg. 15649, effective September 22, 1989; amended in R87-36 at 14 Ill. Reg. 9460, effective May 31, 1990; amended in R86-14 at 14 Ill. Reg. 20724, effective December 18, 1990; amended in R89-14(C) at 16 Ill. Reg. 14684, effective September 10, 1992; amended in R92-17 at 18 Ill. Reg. 2981, effective February 14, 1994; amended in R91-23 at 18 Ill. Reg. 13457, effective August 19, 1994; amended in R93-13 at 19 Ill. Reg. 1310, effective January 30, 1995; amended in R95-14 at 20 Ill. Reg. 3534, effective February 8, 1996; amended in R97-25 at 22 Ill. Reg. 1403, effective December 24, 1997; amended in _____ at _____ Ill. Reg. _____, effective _____.

Section 303.205 Outstanding Resource Waters

An Outstanding Resource Water (ORW) is a water body or water body segment that is of uniquely high biological or recreational quality and shall be designated by the Board pursuant to 35 Ill. Adm. Code 106, Subpart L.

- a) Outstanding Resource Waters (“ORW”) shall be listed in Section 303.206 of this Part. In addition to all other applicable use designations and water quality standards contained in this Subtitle, an ORW is subject to the antidegradation provision of Section 302.105(b).
- b) Stream segments that have a 7Q10 low flow of zero will generally not be considered a candidate for this designation.
- c) A petition to designate a water or water segment as an ORW must be submitted to the Illinois Pollution Control Board pursuant to the procedural rules found in 35 Ill. Adm. Code 106, Subpart L.

Section 303.206 List of Outstanding Resource Waters (Reserved)