

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JAN 20 2004

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO)
PART 309 SUBPART A-)
35 Ill. Adm. Code 309.105, 309.7, 309.8,)
309.9, 309.10, 309.12, 309.13, 309.14)
309.117, 109.119, 309.143, 309.147; and)
PROPOSED 35 Ill. Adm. Code 120 through)
122-NPDES PERMITS AND PERMITTING)
PROCEDURES)

R03-19
(NPDES Rulemaking)

PC18

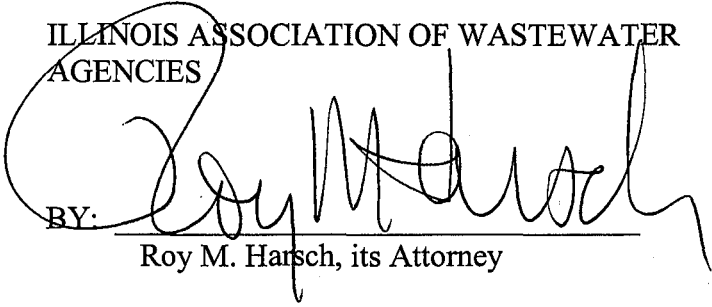
NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on Tuesday, January 20, 2004, we filed the attached Illinois Association of Wastewater Agencies' Comments to Proposed Revisions and Amendments with the Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ASSOCIATION OF WASTEWATER
AGENCIES

BY: 

Roy M. Harsch, its Attorney

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R03-19
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ILLINOIS ASSOCIATION OF WASTEWATER AGENCIES'
COMMENTS TO PROPOSED REVISIONS AND AMENDMENTS

The Illinois Association of Wastewater Agencies ("IAWA") submits the following comments concerning the proposed amendments to 35 Ill. Adm. Code Part 309, Subpart A, NPDES Permits and Permitting Procedures as proposed for First Notice by the Illinois Pollution Control Board ("IPCB") in its Order of the Board dated September 4, 2003. IAWA is an association comprised of 54 agencies principally consisting of units of local government including sanitary districts and municipalities throughout Illinois. These agencies provide wastewater treatment for 8.5 million people located throughout Illinois. IAWA's Affiliate Members include many of the Illinois firms that provide professional services to the wastewater treatment industry. IAWA greatly appreciates the effort and work of the IPCB that led to the revision of the original proposal that was filed by the proponents in this proceeding. As the Board knows from IAWA's testimony and prior comments, IAWA believed that the existing public participation regulations were adequate and that proponents did not present a compelling case to warrant revisions to the regulations. As previously explained by IAWA, "as public health agencies, IAWA's members are in favor of public participation in the NPDES Permitting process."

The IAWA member concerns regarding changing the procedural rules are two-fold. First, as wastewater treatment operators, they must obtain NPDES permits for their discharges and authorizations to construct and revised NPDES permits for new and expanded facilities. As the principal regulated public NPDES permit dischargers in the state, IAWA members have a keen interest in, and have first-hand knowledge of the Illinois Environmental Protection Agency's ("IEPA") ability to process NPDES permits and related Authorizations to Construct. Because of the current backlog in processing NPDES permits, and the delay associated with handling permit modifications and new permits, IAWA's members are extremely concerned about the adoption of any revised public participation rules which will increase the level of work required to issue NPDES permits. IAWA's members second level of concern, is that of the potential for some to use the public participation process, including commenting up on draft NPDES permits, requesting public hearings, and ultimately the appeal of NPDES permit decisions, not as a tool to arrive at NPDES permits in terms of achieving better drafted NPDES permits in conformance with existing regulations, but rather as a tool to attempt to stop or delay development by limiting a treatment plant's ability to provide necessary sanitary sewer service to serve the development. The other improper use of the public participation tool is as a bargaining chip to negotiate permit conditions not otherwise required by existing regulation. Unfortunately, IAWA believes that the existing NPDES public participation regulations and the NPDES permitting process itself have been so abused in the past.

On the whole, IAWA supports the proposed regulations that were authorized for First Notice in the IPCB's September 4, 2003 Opinion and Order. Representatives of IAWA participated in the stakeholder meetings that gave rise to the IEPA suggested changes to the original proposal. As stated during the last public hearing, IAWA generally supported the proposed revisions suggested by IEPA. IAWA believes that the current IPCB proposed

regulations by and large are workable revisions to the existing public participation regulations and should be adopted with some modification. Notwithstanding IAWA's concerns stated above, IAWA concurs in many of the comments raised at the November 19th hearing by the Illinois Environmental Regulatory Group ("IERG") through the testimony of Ms. Hodge. It is IAWA's understanding based upon the stakeholders meetings and the testimony presented by Mr. Toby Frevert in this matter that many, if not most, of the changes proposed by the Board are in fact merely codifications of the existing IEPA practice and as such are supportable by IAWA.

IAWA does however believe that Section 309.113(a)(5) as proposed by the IPCB is not required and would be potentially costly and burdensome to the IEPA. IAWA concurs with Mr. Frevert that the focus on reissued permits should be upon the current draft permit, not changes from permits that may be five or more years old. IEPA's limited resources can be better used. The requirement to summarize changes from the previous permit should be deleted. (*See transcript at pps. 9-10, 17, 18, 19*).

IAWA also would concur in the need to provide the additional language from the Federal Regulations to the proposed Section 309.143(b). The remaining portions of 40 CFR 122.44(d)(1)(ii) as testified to by Ms. Hodge should be included. (*See transcript pps. 11 and 12*).

IAWA would also request that the IPCB modify proposed Rule 309.120(a) by deleting subpart (iv). IAWA believes that this was discussed and basically conceded as acceptable by the proponents, IEPA, IERG and IAWA at the November 19, 2003 hearing. IAWA understands from the testimony of Mr. Frevert that the remaining three subsections would be potentially useful in the very limited circumstances to allow the Agency to reopen a record where there had been a significant modification in the final permit from what was originally sent to Public

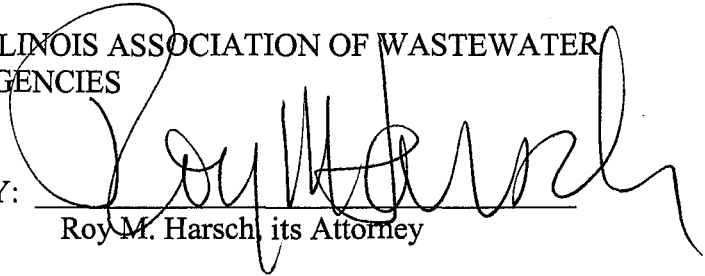
Notice. Subsection (iv) does not really provide any additional guidance and as such should be deleted.

In summary, with the exception of these three specific points, IAWA would request that IPCB proceed to adopt for Second Notice, the rules as sent to First Notice. IAWA's position is predicated upon its understanding that the regulations as so adopted would be essentially a codification of IEPA's current procedure and would involve little or no additional work on IEPA's part. IAWA understands that the provisions of the proposed changes to 309.120 would only be sparingly used in an extraordinary circumstance where the final permit had been significantly modified from the draft permit. Therefore, it is IAWA's understanding that the proposed changes would not result in any increased ability to utilize the public participation process for what IAWA believes to be improper purposes of either stopping or delaying the issuance of NPDES permits and authorizations to Construct to service new growth, or attempting to negotiate inclusion of permit conditions not required by regulations.

Respectfully submitted,

ILLINOIS ASSOCIATION OF WASTEWATER
AGENCIES

BY:


Roy M. Harsch, its Attorney

DATED: January 20, 2004

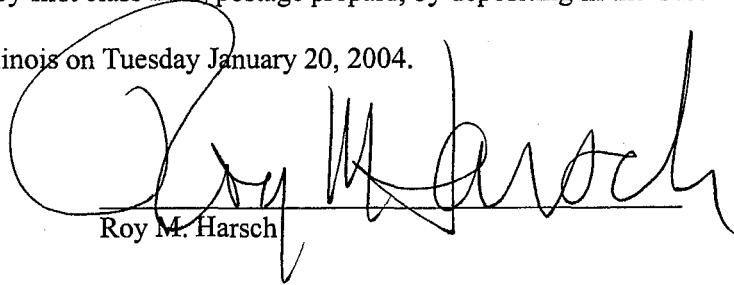
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THIS FILING IS SUBMITTED ON RECYCLED PAPER

CH01/12294166.2

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **Notice of Filing – Illinois Association of Wastewater Agencies’ Comments to Proposed Revisions and Amendments** were filed by hand delivery with the Clerk of the Illinois Pollution Control Board and served upon the parties to whom said Notice is directed by first class mail, postage prepaid, by depositing in the U.S. Mail at 191 North Wacker Drive, Chicago, Illinois on Tuesday January 20, 2004.


Roy M. Harsch

DATED: January 20, 2004

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CH01/12330575.1

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