

ILLINOIS POLLUTION CONTROL BOARD

February 19, 2004

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO:) R03-19
PUBLIC PARTICIPATION RULES IN 35) (NPDES Rulemaking)
ILL. ADM. CODE 309 NPDES PERMITS)
AND PERMITTING PROCEDURES)

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On September 4, 2003, the Board sent to first notice under the Illinois Administrative Procedure Act (5 ILCS 100/1-1 *et. seq.* (2002) (APA)) a proposal which amends the Board's regulations at 35 Ill. Adm. Code 309 for the issuance of National Pollutant Discharge Elimination System (NPDES) permits by the Illinois Environmental Protection Agency (IEPA) pursuant to the Clean Water Act (33 U.S.C. §1251 *et seq.*). Today the Board sends this matter to second notice under the APA (5 ILCS 100/1-1 *et. seq.* (2002)).

PROCEDURAL BACKGROUND

On January 13, 2003, the Environmental Law and Policy Center of the Midwest, Illinois Chapter of the Sierra Club, Prairie Rivers Network, and 225 citizen petitioners (collectively "the proponents") filed a proposal for rulemaking (Prop.). The petition was filed pursuant to Section 28 of the Environmental Protection Act (Act) (415 ILCS 5/28 (2002)). On January 23, 2003, the Board accepted this matter for hearing.

Pre-First Notice

Prior to first notice, two hearings were held before Hearing Officer Marie Tipsord: in Chicago on March 17, 2003, and in Springfield on April 2, 2003. On March 17, 2003, representatives for the proponents testified including Beth Wentzel, Cynthia Skrukud, and Albert Ettinger. In addition, Toby Frevert testified about the IEPA's position on the proposal. On April 2, 2003, Mr. Frevert again testified as did Frederick Hubbard on behalf of the Vermillion Coal Company, Fred Andes on behalf of the Illinois Coal Association (ICA), Mark Johnson on behalf of the Illinois-American Water Company, and Roy Harsch on behalf of the Illinois Association of Wastewater Agencies (IAWA).

Also prior to first notice, the Board received 13 public comments on the proposal including additional comments from the proponents, the IEPA (PC 2), IAWA (PC 5), and ICA (PC 1). The Board also received comments from the Metropolitan Water Reclamation District of Greater Chicago (District) (PC 3), Starved Rock Audubon Society (PC 4), Openlands Project (PC 6), Larry Miller (PC 7), Illinois Environmental Regulatory Group (IERG) (PC 8), Thomas Lindblade (PC 9), Margaret Mitchell (PC 10), the Attainable Housing Alliance and the Home

Builders Association of Illinois (AHA/HBAI) (PC 12), and Illinois Stewardship Alliance (PC 13).

On September 4, 2004, the Board proceeded to first notice under the APA (5 ILCS 100/1-1 *et. seq.* (2002)). The first-notice proposal will be discussed in detail below. Generally, the Board's first-notice rule codified the IEPA's existing practice when reviewing and issuing NPDES permits, required additional information in NPDES permit fact sheets prepared for the public by IEPA, identified when the public comment period can be reopened, required control of pollutants and pollutant parameters that may potentially violate water quality standards, and required reports adequate to determine compliance with monitoring requirements.

First Notice Period

The Board held a third hearing in Chicago on November 19, 2003, before Hearing Officer Marie Tipsord. At that hearing, Katherine Hodge, Executive Director of IERG testified, as did Albert Ettinger on behalf of the proponents. Mr. Toby Frevert also answered questions on behalf of the IEPA. Additionally the hearing was held to fulfill the requirements of Section 27(b) of the Act. 415 ILCS 5/27(b) (2002).

Section 27(b) of the Act (415 ILCS 5/27(b) (2002)) requires the Board to request the Department of Commerce and Community Affairs, now known as Department of Commerce and Economic Opportunity (DCEO) to conduct an economic impact study (EcIS) on certain proposed rules prior to adoption of those rules. If DCEO chooses to conduct the EcIS, DCEO has 30 to 45 days after such request to produce a study of the economic impact of the proposed rules. The Board must then make the EcIS, or DCEO's explanation for not conducting the study, available to the public at least 20 days before a public hearing on the economic impact of the proposed rules. In accordance with Section 27(b) of the Act, the Board has requested, by letter dated April 9, 2003, that DCEO conduct an economic impact study for the above-referenced rulemakings. On April 17, 2003, DCEO responded that DCEO does not have the staff resources to perform EcIS studies on Board rulemakings.

The Board received six additional public comments during the first-notice period. Illinois American Water Company filed a comment (PC 14), as did ICA (PC 15). IAWA, IERG and the IEPA all filed additional comments (PC 18, PC 17, PC 19, respectively). The proponents also filed final comments (PC 16).

FIRST-NOTICE PROPOSAL

The following discussion will summarize the first-notice proposal on a section-by-section basis.

Section 309.107

Section 309.107 was amended to require that the IEPA notify Illinois Department of Natural Resources (IDNR) when an NPDES permit application is complete, subject to a

memorandum of agreement with IDNR. The IEPA supports this addition and is developing a memorandum of agreement with IDNR.

Section 309.108

Proposed language for Section 309.108(c) adds specific items to be included in the IEPA's tentative determination on an NPDES permit. As proposed, new subsection (e) requires that all documents related to the IEPA's tentative decision on a permit application become a part of the IEPA's record. The IEPA could either identify the document for the record or include the document in the record.

Sections 309.112 and 309.119

At first notice, the Board added a cross-reference to Section 309.120 to clarify when a public comment period will be reopened.

Section 309.113

Existing Section 309.113 specifies information to be included in public information fact sheets for dischargers exceeding 500,000 gallons in one day. The language that was proposed for Section 309.113 would require the inclusion of additional information in the fact sheets prepared by the IEPA during the NPDES permitting process.

Section 309.114

The first-notice proposal corrects a typographical error in Section 309.114(c).

Section 309.120

At first notice, the Board proposed a new section that requires the IEPA to reopen the public comment period if the final permit is not a logical outgrowth of the draft permit. In determining if the final permit is a natural outgrowth, the IEPA must consider four things: (1) whether the interested parties could anticipate the final permit (Section 309.120(a)(1)); (2) whether a new round of notice and comment would present an interested party the first opportunity to comment on the issue (Section 309.120(a)(2)); (3) whether provisions in the final permit deviate from the concepts in the draft permit or suggested by the commenters (Section 309.120(a)(3)); and, (4) whether the changes made represent an attempt by the IEPA to respond to commenters (Section 309.120(a)(4)).

Section 309.120(b) limits the scope of the extended public comment period to identified issues. Section 309.120(c) sets forth the notification process.

Section 309.143

Section 309.143 as proposed requires the control of pollutants or pollutant parameters that may potentially cause a violation of the water quality standards. The language is identical to

federal language and IEPA is currently prohibited from issuing an NPDES permit that is not in compliance with federal law (*see* 35 Ill. Adm. Code 309.141).

Section 309.146

The first-notice proposal adds language to require that reports made by permit holders are adequate to determine compliance and to require permit to include specifications concerning monitoring.

ISSUES RAISED DURING FIRST NOTICE

In general the commenters support the Board's first-notice proposal and offer only a few additional comments. The comments offered center around the language of Section 309.120, 309.143 and 309.113(a)(5). In Section 309.120, ICA, IERG and IAWA seek additional clarification concerning the reopening of the public comment period and IAWA suggested deleting Section 309.120(a)(4). Additionally, those three groups also ask that further federal language be added to 309.143 in order to insure consistency with the Code of Federal Regulations. Finally, IAWA, IERG and IEPA ask that the Board reconsider the first-notice decision to include proposed Section 309.113(a)(5). The Board will summarize the comments and discuss the Board's position on each of these suggestions below.

Section 309.113(a)(5)

In the first-notice opinion and order, the Board specifically asked that the IEPA provide more comment on the first-notice language requiring the IEPA to include a summary of the changes in a reissued permit when compared to the previous permit. The pertinent language included in the Board's first-notice order states:

In the case of . . . reissued permits, a summary of changes between the public noticed permit and the previous permit. Section 309.113(a)(5).

Mr. Frevert testified at hearing that there can be fundamental changes from the old permit to the new permit because of: (1) ongoing federal requirements that are changed; (2) operational changes and expansions at facilities; and, (3) the fact that a renewed permit may be based on a new permit application. Tr.3 at 17-18. For these reasons, Mr. Frevert testified that the more accurate and beneficial focus is to draft the new permit based on current circumstances, not to redraft an old permit. Tr.3 at 18. Mr. Frevert concedes that there are cases where nothing has changed, however, for major or significant sources there is always something different from the old permit. Tr.3 at 18.

In the IEPA's final comment, IEPA asks the Board to reconsider requiring the IEPA to provide a summary of changes for reissued permits. PC 19 at 1. The IEPA believes the requirement is exceedingly burdensome given IEPA's manpower. PC 19 at 1-2. Both IAWA and IERG agree with the IEPA and ask the Board to strike this requirement. PC 17 at 2; PC 18 at 3.

The proponents disagree that the inclusion of a summary of changes for a reissued permit is an imposition for the IEPA. PC 16 at 6. The proponent argues that in most cases summarized changes will be no more difficult for a reissued permit than for a permit modification. *Id.* The proponents suggest that in cases where large portions of the permit have changed, the IEPA can simply note in the summary that much of the permit has changed and the public should review the old and new permit. *Id.* The proponent argues that such information will be very helpful to the public and in reality is very little additional work for the IEPA. PC 16 at 6-7.

Board Discussion

The specific language of the proposal states that the IEPA's fact sheet shall include a *summary* of changes. The Board intends that the proposed regulation be interpreted using the common definition of the word, summary, which means to present a topic in a condensed, concise form. A detailed listing of specific changes would not be a summary. The Board does not anticipate that the IEPA will be listing multiple changes if the reissued permit is substantially different. In that case, the Board intends that the IEPA's summary would simply note that there are substantial differences. The Board agrees with the proponents that the summary of changes will generally be similar to those of a modified permit. Therefore, the Board will not delete the reissued permit requirement.

Section 309.120

ICA, IERG, and IAWA all raised issues with regards to the first notice language of Section 309.120 and the proponents responded to those issues. The first notice language in Section 309.120 authorizes the IEPA to reopen the public comment period when the IEPA significantly modifies the draft permit or the final permit is not a logical outgrowth of the draft permit. The IEPA is directed to consider four conditions when determining whether or not the final permit is a logical outgrowth of the draft permit. The Board will summarize each commenters' positions on the Board's first notice language and follow with a Board discussion.

ICA's Comments

ICA is still not convinced of the need for language to allow for the reopening of the public comment period; however, generally ICA believes the proposed language is well drafted and will not cause confusion. PC 15 at 2. ICA is seeking clarification on one point and that is that while IEPA will be required to reopen the comment period if the final permit is not a logical outgrowth of the draft permit, that decision is left to the IEPA's sound discretion. PC 15 at 2-3. ICA's understanding is that the IEPA need not make specific findings on each of the factors listed in Section 309.120(a)(1)-(4). PC 15 at 3. ICA's concern is that the proposed revision will be used to create additional procedural delays for permit issuance. *Id.*

IERG's Comments

In both the final comments and the testimony of Ms. Hodge, IERG expressed general support for the Board's proposal while noting that some areas of the proposal need further illumination. Tr.3 at 6-7. IERG still holds reservations concerning the justification for the

proposal and the overall need. Tr.3 at 7. More specifically, IERG had concerns with the language which would allow for the reopening of the public comment since the inception of the proposal. PC 17 at 3. Many of the questions have been addressed, however, IERG is still concerned with one issue. *Id.* IERG asks if the IEPA must reopen the public comment period if the applicant submits material to the IEPA, after the close of the comment period, in response to public comment. *Id.*

At hearing, Mr. Toby Frevert responded to IERG's concern indicating that the IEPA will solicit information from an applicant in response to comments received and in some instances additional hearings may be required. Tr.3 at 21-23. Mr. Frevert further stated that in his view, such additional information from the applicant was a permit supplement and not a public comment. Tr.3 at 23.

IERG concurs with Mr. Frevert's assessment but is still concerned that the language of Section 309.120 could be misinterpreted. PC 17 at 3. IERG asks that the Board include additional language to insure that Section 309.120 is consistent with Mr. Frevert's testimony. PC 17 at 3.

IAWA's Comments

IAWA is concerned that the proposed changes not be used: (1) to further delay the IEPA's evaluation of NPDES permits; or (2) as a tool attempt to stop or delay development of treatment plants. PC 18 at 2. IAWA concurs with the testimony of Ms. Hodge. PC 18 at 3. More specifically, IAWA asks that the Board delete Section 309.120(a)(4). *Id.*

Proponents' Comments

The proponents agree that the language of Section 309.120 is still the subject of some confusion. PC 16 at 2-5. Concerning the reopening of the comment period, the proponents maintain that a disparity exists between the IEPA's view of its authority and the regulated community's opinion of the IEPA's authority. The proponents assert that IEPA clearly believes IEPA may reopen the comment period and, based on Ms. Hodge's testimony, the regulated community may disagree. PC 16 at 2-3. Proponents ask that the Board include language which clearly gives the IEPA the authority to reopen the comment period to avoid potential issues in later permit appeals. PC 16 at 4.

Board Discussion

The Board is not convinced that additional language is necessary regarding whether or not the IEPA will reopen the public comment period after the applicant submits additional information. The language of the rule sets forth the criteria the IEPA will use in determining whether or not to reopen the comment period. Mr. Frevert's testimony indicates that in some instances submission of additional information from the applicant may require additional public comment. *See* Tr.3 at 21-23. Thus, if the submission of additional information from an applicant results in a permit which is not the logical outgrowth of the draft permit, IEPA will

reopen the comment period pursuant to Section 309.120(a)(1)-(3). The Board is satisfied that the language as drafted addresses such a circumstance.

The Board is also not convinced that language setting forth the IEPA's authority to reopen a comment period is necessary. The Board is authorized under the Act to adopt regulations implementing the NPDES permit program, including procedures for implementation of the program. 415 ILCS 5/13 (2002). The proposal specifically allows the IEPA to reopen the public comment period and includes standards to determine when the comment period shall be reopened. The Board finds the language sufficient and declines to amend the proposal.

Section 309.120(a)(4) was discussed extensively at hearing. *See e.g.* Tr.3 at 25-26, 34-40. The discussion by the participants and questions from the Board established that the subsection could lead to confusion. Further, the proponents agreed that the subsection could be deleted. PC 16 at 5; Tr.3 at 40. Therefore, the Board will delete the first notice language of Section 309.120(a)(4) in the second notice order.

Section 309.143

The Board's first notice order added language at Section 309.143(a). The proposed language specified that effluent limitations must control all pollutants that have a reasonable potential to cause or contribute to an excursion above a State water quality standard. ICA, IAWA, and IERG all suggest that the Board add to Section 309.143 additional federal language which further explains an excursion or violation of a water quality standard. Tr.3 at 11, PC 17 at 1-2; PC 18 at 3; PC 15 at 3. The IEPA did not comment on this section during first notice and the proponents agree with the suggestion (Tr.3 at 13, PC 16 at 5). Therefore, the Board will add language from 40 C.F.R. § 122.44(d)(1)(i) to the proposed language at Section 309.143(a).

ICA also seeks "clarification that the language" added in Section 309.143(a) is not intended to affect or supercede Section 309.103 or 35 Ill. Adm. Code 406.203. PC 15 at 4. Those two sections deal with the application of water quality standards to NPDES discharges from mining activities. *Id.* The Board sees nothing in the proposed language which alters the relationship of Section 309.143 with the existing rules as Section 309.103 and 35 Ill. Adm. Code 406.203.

CONCLUSION

The Board will proceed to second notice with proposed rules amending the Board's regulations at 35 Ill. Adm. Code 309 for the issuance of NPDES permits by the IEPA pursuant to the Clean Water Act (33 U.S.C. §1251 *et seq.*). The Board has made two substantive changes to the proposal in response to comments in Section 309.143 and 309.120. Further, the Board has held a hearing on the economic impact of the proposal and the Board finds that the proposal is economically reasonable and technically feasible. Therefore the Board will adopt the proposal for second notice.

ORDER

The Board directs the Clerk to cause the filing of the following rule with the Joint Committee on Administrative Rules:

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

PART 309
 PERMITS

SUBPART A: NPDES PERMITS

Section	
309.101	Preamble
309.102	NPDES Permit Required
309.103	Application - General
309.104	Renewal
309.105	Authority to Deny NPDES Permits
309.106	Access to Facilities and Further Information
309.107	Distribution of Applications
309.108	Tentative Determination and Draft Permit
309.109	Public Notice
309.110	Contents of Public Notice of Application
309.111	Combined Notices
309.112	Agency Action After Comment Period
309.113	Fact Sheets
309.114	Notice to Other Governmental Agencies
309.115	Public Hearings on NPDES Permit Applications
309.116	Notice of Agency Hearing
309.117	Agency Hearing
309.118	Agency Hearing File
309.119	Agency Action After Hearing
<u>309.120</u>	<u>Reopening the Record to Receive Additional Written Comment</u>
309.141	Terms and Conditions of NPDES Permits
309.142	Water Quality Standards and Waste Load Allocation
309.143	Effluent Limitations
309.144	Federal New Source Standards of Performance
309.145	Duration of Permits
309.146	Authority to Establish Recording, Reporting, Monitoring and Sampling Requirements
309.147	Authority to Apply Entry and Inspection Requirements
309.148	Schedules of Compliance
309.149	Authority to Require Notice of Introduction of Pollutants into Publicly Owned Treatment Works
309.150	Authority to Ensure Compliance by Industrial Users with Sections 204(b),

	307 and 308 of the Clean Water Act
309.151	Maintenance and Equipment
309.152	Toxic Pollutants
309.153	Deep Well Disposal of Pollutants (Repealed)
309.154	Authorization to Construct
309.155	Sewage Sludge Disposal
309.156	Total Dissolved Solids Reporting and Monitoring
309.157	Permit Limits for Total Metals
309.181	Appeal of Final Agency Action on a Permit Application
309.182	Authority to Modify, Suspend or Revoke Permits
309.183	Revision of Schedule of Compliance
309.184	Permit Modification Pursuant to Variance
309.185	Public Access to Information
309.191	Effective Date

SUBPART B: OTHER PERMITS

Section	
309.201	Preamble
309.202	Construction Permits
309.203	Operating Permits; New or Modified Sources
309.204	Operating Permits; Existing Sources
309.205	Joint Construction and Operating Permits
309.206	Experimental Permits
309.207	Former Permits (Repealed)
309.208	Permits for Sites Receiving Sludge for Land Application
309.221	Applications - Contents
309.222	Applications - Signatures and Authorizations
309.223	Applications - Registered or Certified Mail
309.224	Applications - Time to Apply
309.225	Applications - Filing and Final Action By Agency
309.241	Standards for Issuance
309.242	Duration of Permits Issued Under Subpart B
309.243	Conditions
309.244	Appeals from Conditions in Permits
309.261	Permit No Defense
309.262	Design, Operation and Maintenance Criteria
309.263	Modification of Permits
309.264	Permit Revocation
309.265	Approval of Federal Permits
309.266	Procedures
309.281	Effective Date
309.282	Severability
309.Appendix A	References to Previous Rules

AUTHORITY: Implementing Sections 13 and 13.3 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/13, 13.3 and 27].

SOURCE: Adopted in R71-14, at 4 PCB 3, March 7, 1972; amended in R73-11, 12, at 14 PCB 661, December 5, 1974, at 16 PCB 511, April 24, 1975, and at 28 PCB 509, December 20, 1977; amended in R73-11, 12, at 29 PCB 477, at 2 Ill. Reg. 16, p. 20, effective April 20, 1978; amended in R79-13, at 39 PCB 263, at 4 Ill. Reg. 34, p. 159, effective August 7, 1980; amended in R77-12B, at 41 PCB 369, at 5 Ill. Reg. 6384, effective May 28, 1981; amended in R76-21, at 44 PCB 203, at 6 Ill. Reg. 563, effective December 24, 1981; codified at 6 Ill. Reg. 7818; amended in R82-5, 10, at 54 PCB 411, at 8 Ill. Reg. 1612, effective January 18, 1984; amended in R86-44 at 12 Ill. Reg. 2495 effective January 13, 1988; amended in R88-1 at 13 Ill. Reg. 5993, effective April 18, 1989; amended in R88-21(A) at 14 Ill. Reg. 2892, effective February 13, 1990; amended in R91-5 at 16 Ill. Reg. 7339, effective April 27, 1992; amended in R95-22 at 20 Ill. Reg. 5526, effective April 1, 1996; amended in R99-8 at 23 Ill. Reg. 11287, effective August 26, 1999; amended in R02-11 at 27 Ill. Reg. 202, effective December 20, 2002; amended in R03-19 at _____ Ill. Reg. _____, effective _____.

SUBPART A: NPDES PERMITS

Section 309.107 Distribution of Applications

When the Agency determines that an application for an NPDES Permit is complete, it shall:

- a) Unless otherwise agreed, send a copy of the application to the District Engineer of the appropriate district of the U.S. Corps of Engineers with a letter requesting that the District Engineer provide, within 30 days or as otherwise stated in the Agency's letter, his evaluation of the impact of the discharge on anchorage and navigation. If the District Engineer responds that anchorage and navigation of any of the navigation waters would be substantially impaired by the granting of a permit, the permit will be denied and the Agency shall notify the applicant. If the District Engineer informs the Agency that the imposition of specified conditions upon the NPDES Permit is necessary to avoid any substantial impairment of any of the navigable waters, the Agency shall include in the permit those conditions specified by the District Engineer.
- b) Send two copies of the application to the Regional Administrator of the U.S. Environmental Protection Agency with a letter stating that the application is complete.
- c) Notify the Illinois Department of Natural Resources (IDNR), subject to any memorandum of agreement between the Agency and the IDNR.

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

Section 309.108 Tentative Determination and Draft Permit

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

- a) A Statement regarding whether an NPDES Permit is to be issued or denied; and
- b) If the determination is to issue the permit, a draft permit containing:
 - 1) Proposed effluent limitations, consistent with federal and state requirements;
 - 2) A proposed schedule of compliance, if the applicant is not in compliance with applicable requirements, including interim dates and requirements consistent with the CWA and applicable regulations, for meeting the proposed effluent limitations;
 - 3) A brief description of any other proposed special conditions which will have a significant impact upon the discharge.
- c) A brief description ~~statement~~ of the basis for each of the permit conditions listed in Section 309.108(b), including a brief description of any mixing zones, how the conditions of the draft permit were derived, and the statutory or regulatory provisions and appropriate supporting references.
- d) Upon tentative determination to issue or deny an NPDES Permit:
 - 1) If the determination is to issue the permit the Agency shall notify the applicant in writing of the content of the tentative determination and draft permit and of its intent to circulate public notice of issuance in accordance with Sections 309.108 through 309.112;
 - 2) If the determination is to deny the permit, the Agency shall notify the applicant in writing of the tentative determination and of its intent to circulate public notice of denial, in accordance with Sections 309.108 through 309.112. In the case of denial, notice to the applicant shall include a statement of the reasons for denial, as required by Section 39(a) of the Act.
- e) For the purposes of Title X of the Act [415 ILCS 5/Title X], the documents supporting the Agency's tentative decision to issue or deny an NPDES permit under this Section shall be either identified in or made part of the Agency record.

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

Section 309.112 Agency Action After Comment Period

Subject to Section 309.120, if~~if~~, after the comment period provided, no public hearing is held with respect to the permit, the Agency shall, after evaluation of any comments which may have been received, either issue or deny the permit.

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

Section 309.113 Fact Sheets

- a) For every discharge which has a total volume of more than 500,000 gallons (1.9 megaliters) on any day of the year, the Agency shall prepare and, following public notice, shall send upon request to any person a fact sheet with respect to the application described in the public notice. The contents of such fact sheets shall include at least the following information:
 - 1) A sketch or detailed description of the location of the discharge described in the application;
 - 2) A quantitative description of the proposed discharge described in the application which includes at least the following:
 - A) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow;
 - B) For thermal discharges subject to limitation under the Act, the average monthly temperatures for the discharge;
 - C) The average daily mass discharged and average concentration in milligrams per liter, or other applicable units of measurement, of any contaminants which are present in significant quantities or which are subject to limitations or prohibitions under applicable provisions of the CWA or the Act or regulations adopted thereunder;
 - 3) The tentative determinations required under Section 309.108;
 - 4) A brief citation, including an identification of the uses for which the receiving waters have been classified, of the water quality standards and effluent standards and limitations applicable to the proposed discharge;
~~and~~
 - 5) In the case of modified and reissued permits, a summary of changes between the public noticed permit and the previous permit;
 - 6) Summary of the antidegradation analysis, including characterization of the receiving waters and the existing uses of the receiving waters;

7) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice, including:

- A) The beginning and ending dates of the comment period and address where comments will be received; ~~The 30-day comment period;~~
- B) Procedures for requesting a public hearing and the nature thereof; and
- C) Any other procedures by which the public may participate in the formulation of the final determination; and,

8) Information on how to obtain the Agency record.

- b) The Agency shall add the name of any person or group, upon request, to a mailing list to receive copies of fact sheets.

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

Section 309.114 Notice to Other Governmental Agencies

At the time of issuance of public notice pursuant to Sections 309.109 through 309.112, the Agency shall:

- a) Send a fact sheet, if one has been prepared, to any other states ~~States~~ whose waters may be affected by the issuance of the proposed permit and, upon request, provide such states ~~States~~ with a copy of the application and a copy of the draft permit. Each affected State shall be afforded an opportunity to submit written recommendations within a stated number of days to the Agency and to the Regional Administrator of the U.S. Environmental Protection Agency, which the Agency may incorporate into the permit if issued. Should the Agency decline to incorporate any written recommendations thus received, it shall provide to the affected state ~~State~~ or states ~~States~~ (and to the Regional Administrator) a written explanation of its reasons for declining to accept any of the written recommendations.
- b) Following the procedure set forth in subsection (a) ~~above~~, notify and receive recommendations from any interstate agency having water quality control authority over waters which may be affected by the permit.
- c) Unless otherwise agreed, in accordance with 40 CFR 124.34(c), send a copy of the fact sheet, if one has been prepared, to the appropriate District Engineer of the Army Corps of Engineers for discharges (other than minor discharges) into navigable ~~navigable~~ waters.

- d) Upon request, send a copy of the public notice and a copy of the fact sheet for NPDES Permit applications to any other Federal, state, or local agency, or any affected country, and provide such agencies an opportunity to respond, comment, or request a public hearing pursuant to Sections 309.115-309.119. Such agencies shall include at least the following:
- 1) The agency responsible for the preparation of an approved plan pursuant to Section 208(b) of the CWA; and
 - 2) The State or interstate agency responsible for the preparation of a plan pursuant to an approved continuous planning process under Section 303(e) of the CWA.
- e) Send notice to, and coordinate with, appropriate public health agencies for the purpose of assisting the applicant in integrating the relevant provisions of the CWA with any applicable requirements of such public health agencies.

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

Section 309.119 Agency Action After Hearing

Subject to Section 309.120, following ~~Following~~ the public hearing, the Agency may make such modifications in the terms and conditions of proposed permits as may be appropriate and shall transmit to the Regional Administrator for his approval a copy of the permit proposed to be issued unless the Regional Administrator has waived his right to receive and review permits of its class. The Agency shall provide a notice of such transmission to the applicant, to any person who participates in the public hearing, to any person who requested a public hearing, and to appropriate persons on the mailing list established under Sections 309.109 through 309.112. Such notice shall briefly indicate any significant changes which were made from terms and conditions set forth in the draft permit. All permits become effective when issued unless a different date is specified in the permit.

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

Section 309.120 Reopening the Record to Receive Additional Written Comment

- a) The Agency shall order the public comment period reopened to receive additional written comments where the Agency significantly modifies the draft permit and the final permit is not a logical outgrowth of the proposed draft permit. In determining if the final permit is a logical outgrowth of the draft permit, the Agency shall consider the following:
- 1) Whether the interested parties could not have reasonably anticipated the final permit from the draft permit;

- 2) Whether a new round of notice and comment would provide interested parties the first opportunity to offer comments on the issue; or
- 3) Whether the provisions in the final permit deviate sharply from the concepts included in the draft permit or suggested by the commenters.
- b) The public notice of any comment period extended under this Section shall identify the issues as to which the public comment period is being reopened. Comments filed during the reopened period shall be limited to the substantial new issues that caused its reopening.
- c) For the notification purposes, the Agency shall follow the public notice requirements of Section 309.109.

(Source: Added at _____ Ill. Reg. _____, effective _____)

Section 309.143 Effluent Limitations

- a) Effluent limitations must control all pollutant or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Agency determines are, or may be, discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any state water quality standard, including state narrative criteria for water quality. When determining whether a discharge causes, has the reasonable potential to cause or contributes to an in-stream excursion above a narrative or numeric criteria within a state water quality standard, the Agency shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.
- b) In the application of effluent standards and limitations, water quality standards and other applicable requirements, the Agency shall, for each permit, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight, and except for discharges whose constituents cannot be appropriately expressed by weight). The Agency may, in its discretion, in addition to specification of daily quantitative limitations by weight, specify other limitations, such as average or maximum concentration limits, for the level of pollutants in the authorized discharge. Effluent limitations for multiproduct operations shall provide for appropriate waste variations from such plants. Where a schedule of compliance is included as a condition in a permit, effluent limitations shall be included for the interim period as well as for the period following the final compliance date.

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

Section 309.146 Authority to Establish Recording, Reporting, Monitoring and Sampling Requirements

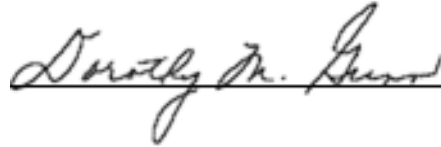
- a) The Agency shall require every holder of an NPDES Permit, as a condition of the NPDES Permit issued to the holder, to:
 - 1) Establish, maintain and retain records;
 - 2) Make reports adequate to determine the compliance or lack of compliance with all effluent limits and special conditions in the permit;
 - 3) Install, calibrate, use and maintain monitoring equipment or methods (including where appropriate biological monitoring methods);
 - 4) Take samples of effluents (in accordance with such methods, at such locations, at such intervals, and in such a manner as may be prescribed; and
 - 5) Provide such other information as may reasonably be required.
- b) The Agency may require every holder of an NPDES Permit for a publicly owned and publicly regulated treatment works, as a condition of the NPDES Permit, to require industrial users of such a treatment works to:
 - 1) Establish, maintain and retain records;
 - 2) Make reports;
 - 3) Install, calibrate, use and maintain monitoring equipment or methods (including where appropriate biological monitoring methods);
 - 4) Take samples of effluents (in accordance with such methods, at such locations, at such intervals, and in such a manner as may be prescribed); and
 - 5) Provide such other information as may reasonably be required.
- c) All such requirements shall be included as conditions of the NPDES Permit issued to the discharger, and shall be at least as stringent as those required by applicable federal regulations when these become effective.
- d) All permits shall specify requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate); required monitoring including type, interval, and frequency sufficient to yield data which are

representative of the monitored activity including, when appropriate, continuous monitoring.

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

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 19, 2004, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board