



ILLINOIS POLLUTION CONTROL BOARD

203-19

GOVERNOR

Rod R. Blagojevich



CHAIRMAN

J. Philip Novak

February 24, 2004

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CLERK'S OFFICE

FEB 24 2004

STATE OF ILLINOIS
Pollution Control Board

Vickie Thomas
Executive Director
Joint Committee on Administrative Rules
700 Stratton Office Building
Springfield, IL 62706

Re: "Permits", 35 Ill. Adm. Code 309, 27 Ill. Reg. 14765 (September 19, 2003)

Dear Ms. Thomas:



Enclosed are the following with respect to the above-captioned rulemaking:

- 1) Second Notice for Part 309;
- 2) Agency Analysis of Economic and Budgetary Effects of Proposed Rulemaking; and
- 3) February 19, 2004 opinion and order of the Board in this rulemaking.

Sincerely,

Dorothy M. Gunn, Clerk

DMG(ecc); Enclosures

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SECOND NOTICE

- 1) Agency: Pollution Control Board
- 2) Title and Administrative Code Citation: "Permits", 35 Ill. Adm. Code 309
- 3) Date and Citation to Illinois Register: 27 Ill. Reg. 14765 (September 19, 2003)
- 4) Text and Location of any Changes from First Notice: See Attachment A
- 5) Response to Codification Recommendations: No changes were requested by the Secretary of State.
- 6) Incorporations by Reference: This rulemaking does not include any incorporations by reference.
- 7) Final Regulatory Flexibility Analysis:

A) Summary of Issues Raised By Small Business:

The Board received comments from several organizations that may include small businesses as members. Also the Board received a comment from Illinois American Water Company in support of the proposed rule.

B) Description of Actions and Alternatives Proposed by Small Business during First Notice:

None

8) Compliance with Section 5-30 of the APA and 1 Ill. Adm. Code 220.285:

The Board published notice of the hearings in this proceeding in two newspapers of general circulation in the State. The Board placed the hearing notice and the proposal on the Board's Web site. The Board also notified the public through the Board's Environmental Register. The Board did not receive a comment from the Small Business Office.

9) A) List of Commenters:

Illinois Environmental Regulatory Group (IERG)
Environmental Law and Policy Center of the Midwest (Proponent)
Illinois Chapter of the Sierra Club (Proponent)
Prairie Rivers Network (Proponent)
Illinois Environmental Protection Agency (IEPA)
Illinois American Water Company (IAWC)
Illinois Coal Association (IAC)
Illinois Association of Wastewater Agencies (IAWA)

B) Issues Raised

Issues raised during first notice focused on language in three Sections: 309.113(a)(5), 309.120, and 309.143.

In Section 309.113(a)(5) IEPA asked that the Board strike the provision requiring a summary of changes for reissued permits. IAWA and IERG also asked that this requirement be dropped, stating that it might be too burdensome for the IEPA to comply with and still issue permits in a timely manner. The Proponents of the rulemaking commented that the language asks only for a summary of changes, not an itemized listing, and that in cases of numerous changes the IEPA could simply note that much of the permit has changed and advise the public to review the old and new permit.

In Section 309.120 comments from ICA, IERG, and IAWA focused on the concern that reopening a comment period could delay the issuance of a permit. Subsection 309.120(a)(4) was also identified as being confusing. The proponents agreed that this subsection could be deleted.

In Section 309.143(a), ICA, IAWA, and IERG requested that the Board include federal language to explain an excursion or violation of a water quality standard. The Proponents agreed to the addition of the language.

C) Change in the Rule:

The Board did not make any changes to the language in Section 309.113(a)(5), as the proposed language clearly calls for a summary of the permit changes, and is not intended to require a detailed listing of all modifications.

In response to comments, the Board deleted the proposed subsection 309.120(a)(4).

The Board added additional language from 40 CFR 122.44(d)(1)(i) to the proposed language at 309.143(a).

D) Public Hearing Requests:

The Board held a hearing on November 19, 2003, in response to requests from the participants in this rulemaking.

10) Justification and Rationale:

A) Changes in Statutory Language: None

B) Changes in Board Policy, Procedures or Structure: None

C) Citations to Federal Laws, Rule or Regulations, or Finding Requirements:

None

D) Court Decisions: None

E) Other Reasons: This rulemaking was filed with the Board by the Environmental Law and Policy Center of the Midwest, Illinois Chapter of the Sierra Club, Prairie Rivers Network, and 225 citizen petitioners to clarify the rules 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.*), including provisions for public participation.

11) Name of Agency Representative:

Marie Tipsord
Illinois Pollution Control Board
100 West Randolph, Suite 11-500
Chicago, IL 60601
(312) 814-4925

**AGENCY ANALYSIS OF ECONOMIC AND
BUDGETARY EFFECTS OF PROPOSED RULEMAKING**

Agency: Illinois Pollution Control Board

Part/Title: "Permits", 35 Ill. Adm. Code 309

Illinois Register Citation: 27 Ill. Reg. 14765 (September 19, 2003)

Please attempt to provide as dollar-specific responses as possible and feel free to add any relevant narrative explanation.

1. Anticipated effect on State expenditures and revenues.

- (a) Current cost to the agency for this program/activity.

\$ Unknown, the Board does not break its costs down by case type or program

- (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.

None

- (c) Indicate the funding source, including Fund and appropriation lines, for this program/activity.

N/A

- (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.

The Illinois Environmental Protection Agency does not anticipate an increase or decrease in costs as a result of this rulemaking.

- (e) Will this rulemaking have any effect on State revenues or expenditures not already indicated above? Specify effects and amounts.

N/A

2. Economic effect on persons affected by the rulemaking.

- (a) Indicate the economic effect and specify the persons affected:

This rulemaking is not expected to have an economic effect on the holders of NPDES permits.

Persons affected: None

Dollar amount per person: None

Total Statewide cost: No increase in costs.

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

- (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? Compare to current requirements.

The IEPA has testified that the procedures codified in this rulemaking are substantially similar to procedures they already have incorporated into their permit review process. Therefore, IEPA will not require any additional filings, documentation, reporting or completion of forms from NPDES applicants.

FIRST NOTICE CHANGES

AGENCY: Pollution Control Board

RULEMAKING: "Permits", 35 Ill. Adm. Code 309; 27 Ill. Reg. 14765 (September 19, 2003)

1. In line 211, add a comma after "and"
2. In lines 222 and 224, change "States" to "states"
3. In line 280, add "or" after "issue;"
4. In line 282, change ";or" to "."
5. Delete the proposed text in lines 283 and 284.
6. In line 289, add "the" after "For"
7. In line 297, add "which" after "pollutants)"
8. In line 300, after "quality" add "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."
9. In line 328, add a closing parenthesis after "prescribed"
10. In line 348, after "data" add "which are"
11. In line 349, delete the comma after "activity"