

ILLINOIS POLLUTION CONTROL BOARD
September 12, 2013

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STATE OF ILLINOIS
Pollution Control Board



ORIGINAL

IN THE MATTER OF:)
)
PROCEDURAL RULES FOR)
ALTERNATIVE THERMAL EFFLUENT)
LIMITATIONS UNDER SECTION 316(a) OF) R13-20
THE CLEAN WATER ACT: PROPOSED) (Rulemaking - Water)
NEW 35 ILL. ADM. CODE PART 106,)
SUBPART K AND AMENDED SECTION)
304.141(c))

HEARING OFFICER ORDER

On June 20, 2013, the Illinois Environmental Protection Agency (Agency) filed a rulemaking proposing procedural rules for establishing alternative thermal effluent limitations under Section 316(a) of the Clean Water Act and 35 Ill. Adm. Code 304.141. The proposal will also update Section 304.141 of the Board's regulations to include a cross-reference to the new Subpart K and to update language to reflect the United States Environmental Protection Agency delegation of permitting authority to the Agency.

Two hearings have been scheduled in this rulemaking. The first hearing was held on August 27, 2013 in Springfield. The second hearing will take place at 11:00 a.m. on October 16, 2013 in Chicago. Pre-filed testimony for the second hearing is due on October 11, 2013.

On September 5, 2013, the Board received the First Notice Comments of Citizens Against Ruining the Environment (CARE) (PC1). In the interests of a complete record, to ensure a productive second hearing, and in the interest of expediting any second notice proposal, the Agency is directed to submit its position on the six comments raised by CARE in PC1 by the pre-filed testimony deadline of October 11, 2013. The Board notes that, due to the short period of time between the deadline and the second hearing, the Board's mail box rule does not apply.

Additionally, attached to this order are Board staff questions for the Agency witnesses. The Agency is also directed to respond to these questions by October 11, 2013, for the same reasons stated above.

IT IS SO ORDERED.

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ATTACHMENT TO HEARING OFFICER ORDER
SEPTEMBER 12, 2013
Board Staff Questions for Second Hearing, October 16, 2013

Section 106.1160 **Burden of Proof**

1. Attachment C to the Illinois Environmental Protection Agency's Statement of Reasons (SR) refers to USEPA's 1977 "Interagency 316(a) Technical Guidance Manual And Guide For Thermal Effects Sections of Nuclear Facilities Environmental Impact Statements" (1977 USEPA Manual) as "valuable technical information on conducting 316(a) demonstrations, useful to both facilities and permitting authorities." SR Att. C at 2. The 1977 USEPA Manual was entered as Agency Exhibit 2 at the August 27, 2013 hearing. The first notice comments of Citizens Against Ruining the Environment (PC1) notes several factors from the 1977 USEPA Manual that should be addressed in a successful demonstration. PC1 at 9-10.

To assist petitioners in preparing demonstrations and the Board in its review, should the proposed language under Section 106.1160 include any additional language derived from the 1977 USEPA Manual?

Section 106.1170 **Opinion and Order**

2. In its response to question 16 posed in the August 15, 2013 Hearing Officer Order (Agency Hearing Exhibit 1), the Agency stated that it "prefers that the 316(a) thermal relief be expressed in the NPDES permit as an end-of-pipe effluent limitation because of the ease of administration and compliance demonstration." Agency Hearing Exh. 1 at 12. The Agency also stated, "This demonstration is sufficient and accomplishes the same goals as mixing zone rules in Section 302.102. For these reasons, the Illinois EPA believes the petitioner should not be required to show that it is entitled to mixing zone pursuant to 35 Ill. Adm. Code 302.102 as part of its 316(a) demonstration." Agency Hearing Exh. 1 at 12.
 - (a) For thermal relief that is expressed as an end-of-pipe effluent limitation, is there a provision in the proposed rule language that defines the point of compliance as the edge of a mixing zone for the generally applicable water quality standards in addition to the effluent limitation at the end of the pipe? If not, should additional language be proposed?
 - (b) Should the proposed rule contain language specifically stating that the 316(a) demonstration is sufficient to cover the mixing zone rules in Section 302.102 such that the discharger does not need to make a separate demonstration under Section 302.102? If not, how is a discharger or other person to know?

Section 106.1180 **Renewal of Alternative Thermal Effluent Limitations**

3. In its Statement of Reasons, the Agency states, “[Section 106.1180] provides a process for streamlined renewal of alternative thermal effluent limitations granted pursuant to this Subpart. The Agency’s proposal provides for a screening process where the Agency can evaluate whether conditions on which the prior relief was based have changed.” SR at 10. As such, the proposed language requires dischargers requesting continuation of an alternative thermal effluent limitation to make a demonstration by providing “sufficient information for the Agency to compare the nature of the permittee’s thermal discharge and the balanced, indigenous population” and “documentation based upon the discharger’s actual operation experience.” Proposed 106.1180(b).

In its response to question 17 posed in the August 15, 2013 Hearing Officer Order, the Agency stated that it “does not believe Section 316(c) of the Clean Water Act [CWA] has any implication on proposed Section 106.1180.” Agency Hearing Exh. 1 at 13.

- (a) Please describe why the Agency does not believe Section 316(c) of the CWA has any implication on proposed Section 106.1180.
- (b) If a discharger is eligible for the 10-year period of protection under 316(c) of the CWA, does the proposed rule language recognize that the discharger is entitled to retain its alternative thermal effluent limitation or shall not be subject to any more stringent thermal effluent limitation during the 10-year period of protection?
- (c) If a discharger is eligible for the 10-year period of protection under 316(c) of the CWA, please explain why the discharger would need to make a demonstration as required by proposed section 106.1180(b) under the renewal process if the request to retain the alternative thermal effluent limitation does not extend beyond the 10-year period?
- (d) If a discharger is eligible for the 10-year period of protection under 316(c) of the CWA on Section 316(c) of the CWA, please explain if the Agency action under 106.1180(c) or (d) would be applicable.
- (e) Please propose language addressing the implication of Section 316(c) of the Act on proposed Section 106.1180.