

ILLINOIS POLLUTION CONTROL BOARD
January 21, 2015

IN THE MATTER OF:)
)
WATER POLLUTION: PROPOSED) R15-24
AMENDMENTS TO 35 ILL. ADM. CODE) (Rulemaking – Water)
PART 309)

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by G.M. Keenan):

INTRODUCTION

On June 1, 2015, the Illinois Environmental Protection Agency (IEPA) proposed to amend Part 309 of the Board’s water pollution regulations (35 Ill. Adm. Code 309). On November 5, 2015, the Board gave first notice of proposed amendments to Part 309 that incorporated most of IEPA’s proposed changes. The Board also made its own changes and included changes that commenters suggested. The Board’s proposed amendments appeared for first notice in the *Illinois Register* on November 20, 2015. The Board now submits proposed amendments to the Joint Committee on Administrative Rules (JCAR) for second-notice review.

Part 309 comprises Subpart A and Subpart B. Subpart A concerns permits issued under the Federal National Pollutant Discharge Elimination System (NPDES) program (which Illinois has authority to administer). Subpart B concerns water pollution permits that the state issues outside of the NPDES program. The proposed amendments change both subparts.

The proposed amendments change only one subsection in Subpart A: 35 Ill. Adm. Code 309.104, which concerns administrative continuance of NPDES permits. If the expiration date of a NPDES permit passes while IEPA is in the process of considering a permit renewal application, the existing permit remains in effect—is administratively continued—until IEPA completes its review of the renewal application. Under existing Board rules, a permit may only be administratively continued if the permit holder applies for renewal 180 days or more before the existing permit expires. The proposed revision would allow IEPA to waive this requirement and accept a renewal application at any time up to the expiration date of the existing permit and administratively continue the existing permit.

The proposed amendments change several subsections in Subpart B. They make explicit certain permitting exemptions that IEPA states already exist in practice, create new exemptions for certain facilities that IEPA states do not warrant technical review, allow IEPA to grant lifetime operating permits for certain facilities that IEPA states pose no likelihood of violating applicable water quality standards, and make other modifications intended to streamlining the permitting process.

The Board's November 5, 2015 first-notice opinion provided a background of the statutes and regulations that relate to Part 309. The opinion also summarized each section of IEPA's proposed amendments. This order does not duplicate discussion of those subjects.

This order discusses this proceeding's procedural history and the changes that the Board made to the first-notice proposal for this second-notice proposal. The order also discusses the technical feasibility and economic reasonableness of the proposal.

PROCEDURAL HISTORY

On June 1, 2015, IEPA filed a proposal to amend Part 309 of the Board's water pollution regulations and filed a Statement of Reasons (SR) supporting the proposal. *See* 35 Ill. Adm. Code 102.202 (Proposal Contents for Regulations of General Applicability). On June 4, 2015, the Board accepted the proposal for hearing. On June 29, 2015, the hearing officer issued an order scheduling two hearings: the first on August 25, 2015 in Chicago and the second on September 24, 2015 in Springfield. The hearing officer issued an order on September 14, 2015 that changed the second hearing's format to a video conference between Chicago and Springfield.

On July 24, 2015, IEPA filed the written testimony of Darin LeCrone in preparation for the first hearing. On August 13, 2015, the Illinois Environmental Regulatory Group (IERG) filed questions for IEPA. The Board also posed questions in a hearing officer order issued on August 14, 2015. The first hearing took place as scheduled and the Board received the transcript on August 31, 2015 (Tr. 1). During the hearing, the hearing officer admitted three exhibits into the record: the pre-filed testimony of Darin LeCrone, IEPA's written responses to the Board's questions, and IEPA's written responses to IERG's questions.

IEPA did not file written testimony before the second hearing. The Board again posed questions to IEPA before the second hearing in a hearing officer order dated September 17, 2015. The second hearing took place as scheduled and the Board received the transcript on October 1, 2015 (Tr. 2). IEPA answered the Board's second set of questions at the hearing and also filed its answers in written form on September 24, 2015. At the hearing, the hearing officer set a deadline of October 15, 2015 to file post-hearing comments. IERG filed post-hearing comments on October 15, 2015. IEPA did not file post-hearing comments.

The Board adopted its first-notice opinion and order on November 5, 2015 (First Notice). The first-notice proposal appeared in the *Illinois Register* on November 20, 2015. 39 Ill. Reg. 15,103 (Nov. 20, 2015). The deadline for comments to the proposal was January 4, 2016, 45 days after publication. First Notice at 8. The Board did not receive any comments to its first-notice opinion.

CHANGES AT SECOND NOTICE

The Board did not receive any comments after publication of its first-notice opinion. As a result, the proposed amendments in this second-notice opinion contain no substantive changes from the first-notice opinion.

The Board made a small number of non-substantive changes to the proposed amendments for this order. These non-substantive changes clarify rule language.

TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

As required by Section 27(b) of the Act (415 ILCS 5/27(b) (2014)), the Board's June 30, 2015 letter requested that the Department of Commerce and Economic Opportunity (DCEO) determine by July 10, 2015 whether it would conduct an economic impact study of the proposed amendments. The Board has received no response from DCEO to this request. During each hearing, those present had an opportunity to address the Board's request for a study and DCEO's lack of a response. Tr. 1 at 28:2-5; Tr. 2 at 20:2-24. No participant addressed either. *Id.*

According to IEPA, the amendments will reduce the administrative burden of permit requirements and do not impose new technical requirements or "add any additional costs to the regulated community." SR at 15-16. For the same reasons, IEPA argued that the rules are economically reasonable. SR at 15-16. Neither do the Board's changes to IEPA's proposal impose new technical requirements or affect economic reasonableness.

Therefore, the Board finds that the amendments proposed for second notice are technically feasible and economically reasonable.

ORDER

The Board directs the Clerk to submit the following proposed amendments to Part 309 of the Board's water pollution regulations to JCAR for second-notice review. Proposed additions to Part 309 are underlined and proposed deletions are stricken.

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

PART 309
PERMITS

SUBPART A: NPDES PERMITS

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309.101	Preamble
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309.104	Renewal
309.105	Authority to Deny NPDES Permits
309.106	Access to Facilities and Further Information
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309.108	Tentative Determination and Draft Permit
309.109	Public Notice

309.110	Contents of Public Notice of Application
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309.116	Notice of Agency Hearing
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309.119	Agency Action After Hearing
309.120	Reopening the Record to Receive Additional Written Comment
309.141	Terms and Conditions of NPDES Permits
309.142	Water Quality Standards and Waste Load Allocation
309.143	Effluent Limitations
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309.145	Duration of Permits
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309.147	Authority to Apply Entry and Inspection Requirements
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309.151	Maintenance and Equipment
309.152	Toxic Pollutants
309.153	Deep Well Disposal of Pollutants (Repealed)
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309.181	Appeal of Final Agency Action on a Permit Application
309.182	Authority to Modify, Suspend or Revoke Permits
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309.185	Public Access to Information
309.191	Effective Date

SUBPART B: OTHER PERMITS

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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	<u>Duration and Termination</u> 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	<u>Modification or Renewal</u> 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 28 Ill. Reg. 7310, effective May 7, 2004; amended in R07-9 at 32 Ill. Reg. 14995, effective September 8, 2008; amended in R08-09(D) at 39 Ill. Reg. 9433, effective June 26, 2015; amended in R15-24 at 40 Ill. Reg. _____, effective _____.

SUBPART A: NPDES PERMITS

Section 309.104 Renewal

- a) Any permittee who wishes to continue to discharge after the expiration date of ~~the~~^{this} NPDES Permit ~~shall~~^{must} ~~timely~~^{timely} apply for reissuance of the permit ~~not less than 180 days prior to the expiration date of the permit.~~
- 1) A permittee has submitted a timely application for a new permit when:
- A) The permittee submits:
- i) an application 180 days prior to the expiration date of the existing permit; or
- ii) a request for a waiver in writing to the Agency, the Agency grants a written waiver to submit the application less than 180 days prior to the expiration date of the existing permit, and the applicant submits an application within the timeframe listed in the waiver request. Such a waiver request must include the permittee's reasonably justifiable causes for not meeting the 180 day timeframe. A waiver of the 180 day submittal requirement must be filed a minimum of 60 days prior to expiration of the permit, and shall include the date by which the permittee will submit the application.
- B) The Agency shall not grant a waiver for applications to be submitted later than the expiration date of the existing permit.
- C) Any Agency decision to deny a waiver request must be made within 21 days after receipt of the waiver request.
- 2) The terms and conditions of an expiring permit remain effective and enforceable against the discharger until the Agency takes final action on the pending permit application, only if:
- A) ~~The~~ permittee has submitted a timely application pursuant to subsection (a)(1) of this Section; and
- B) ~~The~~ Agency, through no fault of the permittee, does not issue a new permit on or before the expiration date of the previous permit.
- b) All permittees that timely apply for an NPDES permit renewal must pay an annual NPDES discharge fee pursuant to Section 12.5 of the Act.
- ~~c~~b) The Agency ~~must~~^{shall} circulate public notice and provide opportunity for public hearing, as provided for in this Subpart A, in the same manner as for a new permit application.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART B: OTHER PERMITS

Section 309.201 Preamble

- a) This Subpart B establishes basic rules for the issuance of permits for the construction, modification and operation of treatment works, pretreatment works, sewers, wastewater sources and other discharges ~~that~~ which are not required to have NPDES Permits.
- b) The following discharges are exempt from the operating permit requirement of this Subpart. However, these discharges may be subject to the construction permit requirement.
- 1) ~~D~~ischarges for which a pretreatment permit has been issued by the Agency; pursuant to 35 Ill. Adm. Code 310;
 - 2) ~~D~~ischarges for which a pretreatment permit has been issued by USEPA pursuant to the federal Clean Water Act; or
 - 3) ~~D~~ischarges for which an authorization to discharge has been issued by a publicly owned treatment works (POTW) with an ~~an approved~~ pretreatment program approved by the Agency, pursuant to 35 Ill. Adm. Code 310, or approved by USEPA pursuant to federal law. ~~are exempt from the operating permit requirement of this Subpart. However, such discharges may be subject to the construction permit requirement.~~

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 309.202 Construction Permits

Except for treatment works or wastewater sources which have or will have discharges for which NPDES Permits are required, and for which NPDES Permits have been issued by the Agency:

- a) No person shall cause or allow the construction of any new treatment works, sewer or wastewater source or cause or allow the modification of any existing treatment works, sewer or wastewater source without a construction permit issued by the Agency, except as provided in subsections (c) and (d) paragraph b).
- b) For groundwater remediation systems, with or without pretreatment, a permit is required for construction of:
- 1) ~~A~~a new sewer to a publicly owned or publicly regulated sanitary or combined sewer; or
 - 2) a wastewater source that discharges to a publicly owned or publicly regulated sanitary or combined sewer.

- c) Construction permits shall not be required for the following:
- 1) ~~S~~storm sewers that transport only land runoff; ~~or~~
 - 2) ~~A~~ny treatment works, sewer or wastewater source designed and intended to serve a single building and eventually treat or discharge less than an average of 1500 gallons per day (5700 l/day) of domestic sewage and which will discharge, if at all, directly to a publicly owned or publicly regulated sanitary or combined sewer; ~~or~~
 - 3) ~~A~~ny sewer required by statute to secure a permit pursuant to Section 3 of the Mobile Home Park Act [210 ILCS 115]; ~~"An Act to provide for, license and regulate mobile homes and mobile home parks", P.A. 77-1472, (Ill. Rev. Stat. 1981, ch. 111 1/2, par. 713); or~~
 - 4) ~~A~~ny treatment works, pretreatment works, sewer or wastewater source that, on the effective date of this Subpart B, is being constructed or will be constructed under the authorization of a permit already issued by the Agency or its predecessors; provided however, that all construction must be completed within four years from the effective date of this Subpart B; ~~or~~
 - 5) ~~P~~rivately owned sewers tributary to industrial treatment works owned by the same person if the additional waste load does not exceed the permitted design capacity of the industrial treatment works; ~~or~~
 - 6) ~~C~~ooling towers, oil/water separators, pH adjustment facilities without additional pretreatment, groundwater remediation system pretreatment, reverse osmosis treatment for industrial source water, multi-media filtration for industrial source water, disposable cartridge type (or similar) filtration systems, ion-exchange systems for industrial source waters, and all associated pipes, pumps, and appurtenances necessary for the installation and operation of these permit exempt treatment systems.
- d) No person ~~without a construction permit issued by the Agency~~ shall cause or allow the construction of any pretreatment works or cause or allow the modification of any existing pretreatment works without a construction permit issued by the Agency, unless exempt pursuant to Section 309.202(c) if such those pretreatment works, after construction or modification, will:
- 1) ~~D~~ischarge toxic pollutants, as defined in Section 502(13) of the CWA, or pollutants which may interfere with the treatment process into the receiving treatment works or be subject to regulations promulgated under ~~Section~~section 307 of the Clean Water Act (CWA); ~~or~~

- 2) ~~D~~ischarge 15% or more of the total hydraulic flow received by the treatment works; or
- 3) ~~D~~ischarge 15% or more of the total biological loading received by the treatment works as measured by the 5-day biochemical oxygen demand;

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 309.203 Operating Permits; New or Modified Sources

- a) No person shall cause or allow the use or operation of any treatment works, sewer, pretreatment works or wastewater source for which a construction permit is required under Section 309.202 without an operating permit issued by the Agency, except as may be authorized by the construction permit.
- b) No operating permit is required under this Section for any discharge:
 - 1) ~~F~~or which an NPDES permit is required; ~~or~~
 - 2) ~~F~~or which a pretreatment permit has been issued by the Agency, pursuant to 35 Ill. Adm. Code 310;
 - 3) ~~F~~or which a pretreatment permit has been issued by USEPA pursuant to federal law; or
 - 4) ~~F~~or which an authorization to discharge has been issued by a POTW with ~~an approved~~ pretreatment program approved by the Agency, pursuant to 35 Ill. Adm. Code 310, or approved by USEPA under federal law.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 309.204 Operating Permits; Existing Sources

- a) No person shall cause or allow the use or operation of any treatment works, pretreatment works or wastewater source without an operating permit issued by the Agency, except as provided in subsections (b), (c) and (d).
- b) No operating permit is required under this Section for any discharge:
 - 1) ~~F~~or or which an NPDES permit is required; ~~or~~
 - 2) ~~F~~or or which a pretreatment permit has been issued by the Agency, pursuant to 35 Ill. Adm. Code 310;
 - 3) ~~F~~or or which a pretreatment permit has been issued by USEPA pursuant to federal law; or

- 4) ~~For~~ or which an authorization to discharge has been issued by a POTW with ~~an approved~~ pretreatment program approved by the Agency, pursuant to 35 Ill. Adm. Code 310, or approved by USEPA under federal law.
- c) Operating permits are not required for treatment works and wastewater sources that are designed and intended to serve a single building and eventually treat or discharge less than an average of 1500 gallons per day (5700 l/day) of domestic sewage and ~~which~~ that will discharge, if at all, directly to a publicly owned or publicly regulated sanitary or combined sewer.
- d) Operating permits are not required for those pretreatment works or wastewater sources discharging to a sewer tributary to a treatment works, or directly to a treatment works, that ~~which~~ will not:
- 1) ~~Discharge~~ toxic pollutants, as defined in ~~section~~ Section 502(13) of the CWA, or pollutants that ~~which~~ may interfere with the treatment process into the receiving treatment works or be subject to regulations promulgated under ~~section~~ Section 307 of the ~~Clean Water Act (CWA); or~~
 - 2) ~~Discharge~~ 15% or more of the total hydraulic flow received by the treatment works; or
 - 3) ~~Discharge~~ 15% or more of the total biological loading received by the treatment works as measured by the 5-day biochemical oxygen demand.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 309.242 Duration and Termination of Permits Issued Under Subpart B

- a) Construction permits for sewers and wastewater sources ~~must~~ shall require that construction be completed within two years. Construction permits for treatment works and pretreatment works ~~must~~ shall require that construction be completed within three years. In situations in which ~~where~~ the magnitude and complexity of the project require it, the Agency may issue a construction permit, requiring completion within a period not to exceed five years.
- b) Except as indicated in subsection (c), no ~~No~~ operating permit shall have duration in excess of five years. ~~All operating permits other than those issued under Section 309.203 for newly constructed sewers shall have a duration not to exceed five years.~~ The Agency may issue operating permits for as short a period of time as may be necessary in order to facilitate basin planning, to coordinate operating permits with future compliance deadlines, to maintain intensive control over new or experimental processes and to provide for emergency situations.

- c) The Agency may issue operating permits under Section 309.203 for sewers, wastewater sources, and pretreatment works for the lifetime of the sewer or the pretreatment works.
- d) Notwithstanding subsections (b) and (c), any operating permit subject to this Subpart must expire upon the issuance of a modified or renewed permit issued by the Agency.
- e) A permittee may request termination of a permit by submitting the request in writing to the Agency ~~on a form and~~ in a format prescribed by the Agency. The Agency must send written confirmation of the termination to the permittee by certified or registered mail. Termination is effective on the date of written confirmation from the Agency.
- f) A permit may be terminated by the Agency upon determination that a facility is no longer in operation or existence. The Agency must send written notice via certified or registered mail to the last known address on the permit stating that the permitted system appears no longer in operation or existence. The permit must terminate 60 days after the date of notification unless the permittee communicates the desire for the permit to stay in effect.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 309.263 Modification or Renewal of Permits


- a) Any permit issued by the Agency under this Subpart B may be modified or renewed to make its provisions compatible with any new regulation adopted by the Board.
- b) Persons with operating permits for pretreatment works subject to this Subpart must obtain a modified permit prior to any of the following changes at the facility:
 - 1) ~~A~~a modification of permitted wastewater characteristics, quantity, or quality;
 - 2) ~~A~~a change in facility ownership, name, or address, so that the application or existing permit is no longer accurate; or
 - 3) ~~A~~a change in operations that will result in the permittee's noncompliance with the Act, a Board Regulation, or an existing permit condition.
- c) The Agency may require the modification or renewal of any operating permit subject to this Subpart for reasons including, but not limited to:
 - 1) ~~A~~a change in the requirements applicable to the permittee;
 - 2) ~~T~~he information on the permittee's application is inaccurate; or

- 3) Information that the permittee may not be in compliance with the Act, a Board regulation, or an existing permit condition.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 21, 2016, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board