



OFFICE OF THE SECRETARY OF STATE

JESSE WHITE • Secretary of State

09/27/2007

POLLUTION CONTROL BOARD

JAMES R THOMPSON CENTER 100 W RANDOLPH ST STE 11-500

DOROTHY GUNN

CHICAGO, IL 60601

RECEIVED
CLERK'S OFFICE
OCT 1 2007
STATE OF ILLINOIS
Pollution Control Board

Dear DOROTHY GUNN

Your rules Listed below met our codification standards and have been published in Volume 31, Issue 40 of the Illinois Register, dated 10/05/2007.

PROPOSED RULES

Permits

35 Ill. Adm. Code 309

Point Of Contact:Erin Conley

Page 13642

State and NPDES Permits

35 Ill. Adm. Code 405

Point Of Contact:Erin Conley

Page 13653

Mine Waste Effluent and Water Quality Standards

35 Ill. Adm. Code 406

Point Of Contact:Erin Conley

Page 13660

Compliance and Effective Dates (Repealer)

35 Ill. Adm. Code 407

Point Of Contact:Erin Conley

Page 13668

Water Quality Standards

35 Ill. Adm. Code 302

Point Of Contact:Erin Conley

Page 13624

If you have any questions, you may contact the Administrative Code Division at (217) 782 - 7017.

COPY

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

RECEIVED
CLERK'S OFFICE
OCT 1 2007
STATE OF ILLINOIS
Pollution Control Board

- 1) Heading of the Part: Water Quality Standards
- 2) Code Citation: 35 Ill. Adm. Code 302
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
302.102	Amend
302.208	Amend
- 4) Statutory Authority: Implementing Section 13 and authorized by Sections 11(b) and 27 of the Environmental Protection Act [415 ILCS 5/13, 11(b), and 27].
- 5) A Complete Description of the Subjects and Issues Involved:

For a more detailed discussion of these amendments, see the Board's September 20, 2007, opinion and order in docket R07-9: Triennial Review of Sulfate and Total Dissolved Solids Water Quality Standards: Proposed Amendments to 35 Ill. Adm. Code 302.102(b)(6), 302.102(b)(8), 302.102(b)(10), 302.208(g), 309.103(c)(3), 405.109(b)(2)(A), 409.109(b)(2)(B), 406.100(d); Repealer of 35 Ill. Adm. Code 406.203, 406.209, and Part 407; and Proposed New 35 Ill. Adm. Code 302.208(h). The amendments in this rulemaking propose changes to Parts 302, 309, 405, 406, and the repeal of Part 407 and the amendments to all of the Parts in this rulemaking should be read jointly. This rulemaking is intended to fulfill the requirement of the Federal Water Pollution Control Act, 33 USC §1251-1387, also known as the Clean Water Act (CWA), that states must triennially revise and update water quality standards to ensure that standards are protective of public health and welfare, enhance the quality of water and promote the purposes of the CWA. This update is known as a triennial water quality standards review.

Specifically, the amendments to Part 302 propose deletion of the existing general use water quality standards for sulfate and total dissolved solids and the addition of two acute aquatic toxicity criterion equations for sulfate at specified ranges of hardness and chlorides in the proposed new subsection 302.208(h). These equations allow for the calculation of site-specific sulfate standards based on water quality characteristics. In addition, the proposal includes a numeric chronic sulfate standard of 2000 mg/L applicable to areas where water is withdrawn or accessed for livestock watering. The amendments to Section 302.102 propose to allow mixing in certain low flow streams where adequate upstream dilution exists in the receiving stream at the time of discharge. However, the amendments allow mixing in no more than 50% of the flow for streams where the dilution ratio is less than 3 to 1.

RECEIVED
SEP 21 2007
SOS-CODE DIV.

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: The regulatory proposal included the Illinois EPA's Technical Support document, included with the Illinois EPA's original filing in this rulemaking, that relied on several published studies and reports. Copies of the reports that the Illinois EPA relied upon are available for review with the Pollution Control Board and are listed below.

Goodfellow, W.L., L.W. Ausley, D.T. Burton, D.L. Denton, P.B. Dorn, D.R. Grothe, M.A. Heber, T.J. Norberg-King, and J.H. Rodgers, Jr. 2000. Major ion toxicity in effluents: a review with permitting recommendations. *Environmental Toxicology and Chemistry*, 19:175-182.

Mount, D.R., D.D. Gulley, J.R. Hackett, T.D. Garrison, and J.M. Evans. 1997. Statistical models to predict the toxicity of major ions to *Ceriodaphnia dubia*, *Daphnia magna* and *Pimephales promelas* (Fathead Minnows). *Environmental Toxicology and Chemistry*, 16(10): 2009-2019.

Soucek, D.J. 2004a. Effects of hardness, chloride, and acclimation on the acute toxicity of sulfate to freshwater invertebrates. Illinois Natural History Survey. Final Report submitted to Illinois Environmental Protection Agency and Illinois Coal Association.

Soucek, D.J. 2004b. Effects of water quality on acute and chronic toxicity of sulfate to freshwater bivalves, *Ceriodaphnia dubia*, and *Hyalella azteca*. Illinois Natural History Survey. First Quarterly Report submitted to U.S. Environmental Protection Agency, Region 5.

Soucek, D.J. 2005a. Effects of water quality on acute and chronic toxicity of sulfate to freshwater bivalves, *Ceriodaphnia dubia*, and *Hyalella azteca*. Illinois Natural History Survey. Second Quarterly Report submitted to U.S. Environmental Protection Agency, Region 5.

Soucek, D.J. 2005b. Effects of water quality on acute and chronic toxicity of sulfate to freshwater bivalves, *Ceriodaphnia dubia*, and *Hyalella azteca*. Illinois Natural History Survey. Third Quarterly Report submitted to U.S. Environmental Protection Agency, Region 5.

Soucek, D.J. 2006. Effects of water quality on acute and chronic toxicity of sulfate to freshwater bivalves, *Ceriodaphnia dubia*, and *Hyalella azteca*. Illinois Natural History Survey. Final Report submitted to U.S. Environmental Protection Agency, Region 5.

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

CP96543701-0.

American Public Health Association. 1989. Standard Methods for the Examination of Water and Wastewater, 17th ed., Washington, D.C.

McKee, J .E. and H .W. Wolf 1963. Water Quality Criteria, 2nd ed., The Resources Agency of California, California State Water Quality Control Board, Sacramento, CA. Publication No. 3-A, p. 548.

Weeth, H .J. and D.L. Capps. 1972. Tolerance of growing cattle for sulfate water. Journal of Animal Science. 34(2): 256-260.

Loneragan, G .H., J .J. Wagner, D .H. Gould, F .B. Garry, and M .A. Thoren, 2001, Effects of water sulfate concentration on performance, water intake, and carcass characteristics of feedlot steers. Journal of Animal Science, 79:2941-2948.

Braul, L. and B . Kirychuk . 2001. Water Quality and Cattle. Prairie Farm Rehabilitation Office, Agriculture and Agri-Food Canada. Publication ENH- 1 11-2001-10.

Patterson, H.H., P.S. Johnson, E.H. Ward, and R .N. Gates. 2004. Effects of sulfates in water on performance of cow-calf pairs. Proceedings, Western Section, American Society of Animal Science. 55: 265-268.

Patterson, H .H ., P.S . Johnson, T .R. Patterson, D .B. Young, and R. Haigh. 2002. Effects of water quality on performance and health of growing steers. Proceedings, Western Section, American Society of Animal Science. 53: 217-220.

- 7) Will this proposed amendment replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed amendment contain incorporations by reference? No
- 10) Are there any other proposed amendments pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This proposed rule does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2002)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

rulemaking:

The Board will accept written public comment on this proposal for 45 days after the date of publication in the *Illinois Register*. Comments should reference Docket R07-9 and be addressed to:

Clerk's Office
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Interested persons may request copies of the Board's opinion and order by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

For more information contact hearing officer Marie Tipsord at 312/814-4925 or email at tipsordm@ipcb.state.il.us.

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: The amendments in this rulemaking could affect any small business, small municipality, and not-for-profit organization that has a permit to discharge wastes to waters of the State.
- B) Reporting, bookkeeping or other procedures required for compliance: The proposed amendments do not add any additional reporting or recordkeeping requirements beyond what is already established in the Board's rules.
- C) Types of Professional skills necessary for compliance: No professional skills beyond those currently required by the existing state and federal water pollution control regulations applicable to affected sources will be required.

14) Regulatory Agenda on which this rulemaking was summarized:

July 2007

The full text of the Proposed Amendment begins on the next page:

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE C: WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
PART 302
WATER QUALITY STANDARDS

SUBPART A: GENERAL WATER QUALITY PROVISIONS

Section	
302.100	Definitions
302.101	Scope and Applicability
302.102	Allowed Mixing, Mixing Zones and ZIDs
302.103	Stream Flows
302.104	Main River Temperatures
302.105	Antidegradation

SUBPART B: GENERAL USE WATER QUALITY STANDARDS

Section	
302.201	Scope and Applicability
302.202	Purpose
302.203	Offensive Conditions
302.204	pH
302.205	Phosphorus
302.206	Dissolved Oxygen
302.207	Radioactivity
302.208	Numeric Standards for Chemical Constituents
302.209	Fecal Coliform
302.210	Other Toxic Substances
302.211	Temperature
302.212	Total Ammonia Nitrogen
302.213	Effluent Modified Waters (Ammonia)(Repealed)

SUBPART C: PUBLIC AND FOOD PROCESSING WATER SUPPLY STANDARDS

Section	
302.301	Scope and Applicability
302.302	Algicide Permits

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

- 302.303 Finished Water Standards
- 302.304 Chemical Constituents
- 302.305 Other Contaminants
- 302.306 Fecal Coliform

SUBPART D: SECONDARY CONTACT AND INDIGENOUS AQUATIC LIFE STANDARDS

- Section
- 302.401 Scope and Applicability
- 302.402 Purpose
- 302.403 Unnatural Sludge
- 302.404 pH
- 302.405 Dissolved Oxygen
- 302.406 Fecal Coliform (Repealed)
- 302.407 Chemical Constituents
- 302.408 Temperature
- 302.409 Cyanide
- 302.410 Substances Toxic to Aquatic Life

SUBPART E: LAKE MICHIGAN BASIN WATER QUALITY STANDARDS

- Section
- 302.501 Scope, Applicability, and Definitions
- 302.502 Dissolved Oxygen
- 302.503 pH
- 302.504 Chemical Constituents
- 302.505 Fecal Coliform
- 302.506 Temperature
- 302.507 Thermal Standards for Existing Sources on January 1, 1971
- 302.508 Thermal Standards for Sources Under Construction But Not In Operation on January 1, 1971
- 302.509 Other Sources
- 302.510 Incorporations by Reference
- 302.515 Offensive Conditions
- 302.520 Regulation and Designation of Bioaccumulative Chemicals of Concern (BCCs)
- 302.521 Supplemental Antidegradation Provisions for Bioaccumulative Chemicals of Concern (BCCs)
- 302.525 Radioactivity

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

- 302.530 Supplemental Mixing Provisions for Bioaccumulative Chemicals of Concern (BCCs)
- 302.535 Ammonia Nitrogen

- 302.540 Other Toxic Substances
- 302.545 Data Requirements
- 302.550 Analytical Testing
- 302.553 Determining the Lake Michigan Aquatic Toxicity Criteria or Values - General Procedures
- 302.555 Determining the Tier I Lake Michigan Acute Aquatic Toxicity Criterion (LMAATC): Independent of Water Chemistry
- 302.560 Determining the Tier I Lake Michigan Basin Acute Aquatic Life Toxicity Criterion (LMAATC): Dependent on Water Chemistry
- 302.563 Determining the Tier II Lake Michigan Basin Acute Aquatic Life Toxicity Value (LMAATV)
- 302.565 Determining the Lake Michigan Basin Chronic Aquatic Life Toxicity Criterion (LMCATC) or the Lake Michigan Basin Chronic Aquatic Life Toxicity Value (LMCATV)
- 302.570 Procedures for Deriving Bioaccumulation Factors for the Lake Michigan Basin
- 302.575 Procedures for Deriving Tier I Water Quality Criteria and Values in the Lake Michigan Basin to Protect Wildlife
- 302.580 Procedures for Deriving Water Quality Criteria and Values in the Lake Michigan Basin to Protect Human Health – General
- 302.585 Procedures for Determining the Lake Michigan Basin Human Health Threshold Criterion (LMHHTC) and the Lake Michigan Basin Human Health Threshold Value (LMHHTV)
- 302.590 Procedures for Determining the Lake Michigan Basin Human Health Nonthreshold Criterion (LMHHNC) or the Lake Michigan Basin Human Health Nonthreshold Value (LMHHNV)
- 302.595 Listing of Bioaccumulative Chemicals of Concern, Derived Criteria and Values

SUBPART F: PROCEDURES FOR DETERMINING WATER QUALITY CRITERIA

- Section
- 302.601 Scope and Applicability
- 302.603 Definitions
- 302.604 Mathematical Abbreviations
- 302.606 Data Requirements

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

- 302.612 Determining the Acute Aquatic Toxicity Criterion for an Individual Substance – General Procedures
- 302.615 Determining the Acute Aquatic Toxicity Criterion - Toxicity Independent of Water Chemistry
- 302.618 Determining the Acute Aquatic Toxicity Criterion - Toxicity Dependent on Water Chemistry
- 302.621 Determining the Acute Aquatic Toxicity Criterion - Procedure for Combinations of Substances
- 302.627 Determining the Chronic Aquatic Toxicity Criterion for an Individual Substance - General Procedures
- 302.630 Determining the Chronic Aquatic Toxicity Criterion - Procedure for Combinations of Substances
- 302.633 The Wild and Domestic Animal Protection Criterion
- 302.642 The Human Threshold Criterion
- 302.645 Determining the Acceptable Daily Intake
- 302.648 Determining the Human Threshold Criterion
- 302.651 The Human Nonthreshold Criterion
- 302.654 Determining the Risk Associated Intake
- 302.657 Determining the Human Nonthreshold Criterion
- 302.658 Stream Flow for Application of Human Nonthreshold Criterion
- 302.660 Bioconcentration Factor
- 302.663 Determination of Bioconcentration Factor
- 302.666 Utilizing the Bioconcentration Factor
- 302.669 Listing of Derived Criteria

APPENDIX A References to Previous Rules

APPENDIX B Sources of Codified Sections

APPENDIX C Maximum total ammonia nitrogen concentrations allowable for certain combinations of pH and temperature

TABLE A pH-Dependent Values of the AS (Acute Standard)

TABLE B Temperature and pH-Dependent Values of the CS (Chronic Standard) for Fish Early Life Stages Absent

TABLE C Temperature and pH-Dependent Values of the CS (Chronic Standard) for Fish Early Life Stages Present

AUTHORITY: Implementing Section 13 and authorized by Sections 11(b) and 27 of the Environmental Protection Act [415 ILCS 5/13, 11(b), and 27]

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

SOURCE: Filed with the Secretary of State January 1, 1978; amended at 2 Ill. Reg. 44, p. 151, effective November 2, 1978; amended at 3 Ill. Reg. 20, p. 95, effective May 17, 1979; amended at 3 Ill. Reg. 25, p. 190, effective June 21, 1979; codified at 6 Ill. Reg. 7818; amended at 6 Ill. Reg. 11161, effective September 7, 1982; amended at 6 Ill. Reg. 13750, effective October 26, 1982; amended at 8 Ill. Reg. 1629, effective January 18, 1984; peremptory amendments at 10 Ill. Reg. 461, effective December 23, 1985; amended at R87-27 at 12 Ill. Reg. 9911, effective May 27, 1988; amended at R85-29 at 12 Ill. Reg. 12082, effective July 11, 1988; amended in R88-1 at 13 Ill. Reg. 5998, effective April 18, 1989; amended in R88-21(A) at 14 Ill. Reg. 2899, effective February 13, 1990; amended in R88-21(B) at 14 Ill. Reg. 11974, effective July 9, 1990; amended in R94-1(A) at 20 Ill. Reg. 7682, effective May 24, 1996; amended in R94-1(B) at 21 Ill. Reg. 370, effective December 23, 1996; expedited correction at 21 Ill. Reg. 6273, effective December 23, 1996; amended in R97-25 at 22 Ill. Reg. 1356, effective December 24, 1997; amended in R99-8 at 23 Ill. Reg. 11249, effective August 26, 1999; amended in R01-13 at 26 Ill. Reg. 3505, effective February 22, 2002; amended in R02-19 at 26 Ill. Reg. 16931, effective November 8, 2002; amended in R02-11 at 27 Ill. Reg. 166, effective December 20, 2002; amended in R07-9 at 31 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL WATER QUALITY PROVISIONS

Section 302.102 Allowed Mixing, Mixing Zones and ZIDs

- a) Whenever a water quality standard is more restrictive than its corresponding effluent standard, or where there is no corresponding effluent standard specified at 35 Ill. Adm. Code 304, an opportunity shall be allowed for compliance with 35 Ill. Adm. Code 304.105 by mixture of an effluent with its receiving waters, provided the discharger has made every effort to comply with the requirements of 35 Ill. Adm. Code 304.102.
- b) The portion, volume and area of any receiving waters within which mixing is allowed pursuant to subsection (a) shall be limited by the following:
 - 1) Mixing must be confined in an area or volume of the receiving water no larger than the area or volume which would result after incorporation of outfall design measures to attain optimal mixing efficiency of effluent and receiving waters. Such measures may include, but are not limited to, use of diffusers and engineered location and configuration of discharge points.

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

- 2) Mixing is not allowed in waters which include a tributary stream entrance if such mixing occludes the tributary mouth or otherwise restricts the movement of aquatic life into or out of the tributary.
- 3) Mixing is not allowed in water adjacent to bathing beaches, bank fishing areas, boat ramps or dockages or any other public access area.
- 4) Mixing is not allowed in waters containing mussel beds, endangered species habitat, fish spawning areas, areas of important aquatic life habitat, or any other natural features vital to the well being of aquatic life in such a manner that the maintenance of aquatic life in the body of water as a whole would be adversely affected.
- 5) Mixing is not allowed in waters which contain intake structures of public or food processing water supplies, points of withdrawal of water for irrigation, or watering areas accessed by wild or domestic animals.
- 6) Mixing must allow for a zone of passage for aquatic life in which water quality standards are met. However, a zone of passage is not required in receiving streams that have zero flow for at least seven consecutive days recurring on average in nine years out of ten.
- 7) The area and volume in which mixing occurs, alone or in combination with other areas and volumes of mixing, must not intersect any area of any body of water in such a manner that the maintenance of aquatic life in the body of water as a whole would be adversely affected.
- 8) The area and volume in which mixing occurs, alone or in combination with other areas and volumes of mixing must not contain more than 25% of the cross-sectional area or volume of flow of a stream except for those streams where the dilution ratio is less than 3:1. The area and volume in which mixing occurs, alone or in combination with other areas and volumes of mixing must not contain more than 25% of the cross-sectional area or volume of flow of a stream except for those streams where the dilution ratio is less than 3:1. In streams where the dilution ratio is less than 3:1, other than streams that have a zero flow for at least seven consecutive days recurring on average in nine years out of ten, the volume in which mixing occurs, alone or in combination with other volumes of mixing must not contain more than 50% of the volume flow. Mixing is

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

~~not allowed in receiving waters which have a zero minimum seven day low flow which occurs once in ten years.~~

- 9) No mixing is allowed where the water quality standard for the constituent in question is already violated in the receiving water.
 - 10) No body of water may be used totally for mixing of single outfall or combination of outfalls, except as provided in Section 302.102(b)(6).
 - 11) Single sources of effluents which have more than one outfall shall be limited to a total area and volume of mixing no larger than that allowable if a single outfall were used.
 - 12) The area and volume in which mixing occurs must be as small as is practicable under the limitations prescribed in this subsection, and in no circumstances may the mixing encompass a surface area larger than 26 acres.
- c) All water quality standards of this Part must be met at every point outside of the area and volume of the receiving water within which mixing is allowed. The acute toxicity standards of Sections 302.208 and 302.210 must be met within the area and volume within which mixing is allowed, except as provided in subsection (e).
 - d) Pursuant to the procedures of Section 39 of the Act and 35 Ill. Adm. Code 309, a person may apply to the Agency to include as a condition in an NPDES permit formal definition of the area and volume of the waters of the State within which mixing is allowed for the NPDES discharge in question. Such formally defined area and volume of allowed mixing shall constitute a "mixing zone" for the purposes of 35 Ill. Adm. Code: Subtitle C. Upon proof by the applicant that a proposed mixing zone conforms with the requirements of Section 39 of the Act, this Section and any additional limitations as may be imposed by the Clean Water Act (CWA) (33 U.S.C 1251 et seq.), the Act or Board regulations, the Agency shall, pursuant to Section 39(b) of the Act, include within the NPDES permit a condition defining the mixing zone.
 - e) Pursuant to the procedures of Section 39 of the Act and 35 Ill. Adm. Code 309, a person may apply to the Agency to include as a condition in an NPDES permit a ZID as a component portion of a mixing zone. Such ZID shall, at a minimum, be

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

limited to waters within which effluent dispersion is immediate and rapid. For the purposes of this subsection, "immediate" dispersion means an effluent's merging with receiving waters without delay in time after its discharge and within close proximity of the end of the discharge pipe, so as to minimize the length of exposure time of aquatic life to undiluted effluent, and "rapid" dispersion means an effluent's merging with receiving waters so as to minimize the length of exposure time of aquatic life to undiluted effluent. Upon proof by the applicant that a proposed ZID conforms with the requirements of Section 39 of the Act and this Section, the Agency shall, pursuant to Section 39(b) of the Act, include within the NPDES permit a condition defining the ZID.

- f) Pursuant to Section 39 of the Act and 35 Ill. Adm. Code 309.103, an applicant for an NPDES permit shall submit data to allow the Agency to determine that the nature of any mixing zone or mixing zone in combination with a ZID conforms with the requirements of Section 39 of the Act and of this Section. A permittee may appeal Agency determinations concerning a mixing zone or ZID pursuant to the procedures of Section 40 of the Act and 35 Ill. Adm. Code 309.181.
- g) Where a mixing zone is defined in an NPDES permit, the waters within that mixing zone, for the duration of that NPDES permit, shall constitute the sole waters within which mixing is allowed for the permitted discharge. It shall not be a defense in any action brought pursuant to 35 Ill. Adm. Code 304.105 that the area and volume of waters within which mixing may be allowed pursuant to subsection (b) is less restrictive than the area or volume or waters encompassed in the mixing zone.
- h) Where a mixing zone is explicitly denied in a NPDES permit, no waters may be used for mixing by the discharge to which the NPDES permit applies, all other provisions of this Section notwithstanding.
- i) Where an NPDES permit is silent on the matter of a mixing zone, or where no NPDES permit is in effect, the burden of proof shall be on the discharger to demonstrate compliance with this Section in any action brought pursuant to 35 Ill. Adm. Code 304.105.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

SUBPART B: GENERAL USE WATER QUALITY STANDARDS

Section 302.208 Numeric Standards for Chemical Constituents

- a) The acute standard (AS) for the chemical constituents listed in subsection (e) shall not be exceeded at any time except as provided in subsection (d).

- b) The chronic standard (CS) for the chemical constituents listed in subsection (e) shall not be exceeded by the arithmetic average of at least four consecutive samples collected over any period of at least four days, except as provided in subsection (d). The samples used to demonstrate attainment or lack of attainment with a CS must be collected in a manner that assures an average representative of the sampling period. For the metals that have water quality based standards dependent upon hardness, the chronic water quality standard will be calculated according to subsection (e) using the hardness of the water body at the time the metals sample was collected. To calculate attainment status of chronic metals standards, the concentration of the metal in each sample is divided by the calculated water quality standard for the sample to determine a quotient. The water quality standard is attained if the mean of the sample quotients is less than or equal to one for the duration of the averaging period.

- c) The human health standard (HHS) for the chemical constituents listed in subsection (f) shall not be exceeded when the stream flow is at or above the harmonic mean flow pursuant to Section 302.658 nor shall an annual average, based on at least eight samples, collected in a manner representative of the sampling period, exceed the HHS except as provided in subsection (d).

- d) In waters where mixing is allowed pursuant to Section 302.102, the following apply:
 - 1) The AS shall not be exceeded in any waters except for those waters for which the Agency has approved a zone of initial dilutions (ZID) pursuant to Section 302.102.
 - 2) The CS shall not be exceeded outside of waters in which mixing is allowed pursuant to Section 302.102.
 - 3) The HHS shall not be exceeded outside of waters in which mixing is allowed pursuant to Section 302.102.

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

e) Numeric Water Quality Standards for the Protection of Aquatic Organisms

Constituent	STORET Number	AS ($\mu\text{g/L}$)	CS ($\mu\text{g/L}$)
Arsenic (trivalent, dissolved)	22680	$360 \times 1.0^* = 360$	$190 \times 1.0^* = 190$
Cadmium (dissolved)	01025	$\exp[A+B\ln(H)] \times$ $\{1.138672-$ $[(\ln H)(0.041838)]\}^*$, where $A=-2.918$ and $B=1.128$	$\exp[A+B\ln(H)] \times$ $\{1.101672-$ $[(\ln H)(0.041838)]\}^*$, where $A=-3.490$ and $B=0.7852$
Chromium (hexavalent, total)	01032	16	11
Chromium (trivalent, dissolved)	80357	$\exp[A+B\ln(H)] \times$ 0.316^* , where $A=3.688$ and $B=0.8190$	$\exp[A+B\ln(H)] \times$ 0.860^* , where $A=1.561$ and $B=0.8190$
Copper (dissolved)	01040	$\exp[A+B\ln(H)] \times$ 0.960^* , where $A=-1.464$ and $B=0.9422$	$\exp[A+B\ln(H)] \times$ 0.960^* . where $A=-1.465$ and $B=0.8545$
Cyanide	00718	22	5.2
Lead (dissolved)	01049	$\exp[A+B\ln(H)] \times$ $\{1.46203-$ $[(\ln H)(0.145712)]\}^*$, where $A=-1.301$ and $B=1.273$	$\exp[A+B\ln(H)] \times$ $\{1.46203-$ $[(\ln H)(0.145712)]\}^*$, where $A=-2.863$ and $B=1.273$
Mercury (dissolved)	71890	$2.6 \times 0.85^* = 2.2$	$1.3 \times 0.85^* = 1.1$
Nickel (dissolved)	01065	$\exp[A+B\ln(H)] \times$	$\exp[A+B\ln(H)] \times$

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

		0.998*,	0.997*,
		where A=0.5173 and B=0.8460	where A=-2.286 and B=0.8460
TRC	500600	19	11
Zinc (dissolved)	01090	$\exp[A+B\ln(H)] X$	$\exp[A+B\ln(H)] X$
		0.978*,	0.986*,
		where A=0.9035 and B=0.8473	where A=-0.8165 and B=0.8473
Benzene	78124	4200	860
Ethylbenzene	78113	150	14
Toluene	78131	2000	600
Xylene(s)	81551	920	360

where: $\mu\text{g/L}$ = microgram per liter,

$\exp[x]$ = base natural logarithms raised to the x- power,

$\ln(H)$ = natural logarithm of Hardness (STORET 00900), and

* = conversion factor multiplier for dissolved metals

f) Numeric Water Quality Standard for the Protection of Human Health

Constituent	STORET Number	($\mu\text{g/L}$)
Mercury	71900	0.012
Benzene	78124	310

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

where: $\mu\text{g/L}$ = micrograms per liter

- g) Concentrations of the following chemical constituents shall not be exceeded except in waters for which mixing is allowed pursuant to Section 302.102.

Constituent	Unit	STORET Number	Standard
Barium (total)	mg/L	01007	5.0
Boron (total)	mg/L	01022	1.0
Chloride (total)	mg/L	00940	500
Fluoride	mg/L	00951	1.4
Iron (dissolved)	mg/L	01046	1.0
Manganese (total)	mg/L	01055	1.0
Phenols	mg/L	32730	0.1
Selenium (total)	mg/L	01147	1.0
Silver (total)	$\mu\text{g/L}$	01077	5.0
Sulfate	mg/L	00945	500
Total Dissolved Solids	mg/L	70300	1000

where: mg/L = milligram per liter and
 $\mu\text{g/L}$ = microgram per liter

- h) The following concentrations for sulfate must not be exceeded except in receiving waters for which mixing is allowed pursuant to Section 302.102:
- 1) At any point where water is withdrawn or accessed for purposes of livestock watering, the average of sulfate concentrations must not exceed 2,000 mg/L when measured at a representative frequency over a 30 day period.

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

2) The results of the following equations provide sulfate water quality standards in mg/L for the specified ranges of hardness (in mg/L as CaCO₃) and chloride (in mg/L) and must be met at all times:

A) If the hardness concentration of receiving waters is greater than or equal to 100 mg/L but less than or equal to 500 mg/L, and if the chloride concentration of waters is greater than or equal to 25 mg/L but less than or equal to 500 mg/L, then:

$$C = [1276.7 + 5.508 (\text{hardness}) - 1.457 (\text{chloride})] * 0.65$$

Where, C = sulfate concentration

B) If the hardness concentration of waters is greater than or equal to 100 mg/L but less than or equal to 500 mg/L, and if the chloride concentration of waters is greater than or equal to 5 mg/L but less than 25 mg/L, then:

$$C = [-57.478 + 5.79 (\text{hardness}) + 54.163 (\text{chloride})] * 0.65$$

Where C = sulfate concentration

3) The following sulfate standards must be met at all times when hardness (in mg/L as CaCO₃) and chloride (in mg/L) concentrations other than specified in (h)(2) are present:

A) If the hardness concentration of waters is less than 100 mg/L or chloride concentration of waters is less than 5 mg/L, the sulfate standard is 500 mg/L.

B) If the hardness concentration of waters is greater than 500 mg/L and the chloride concentration of waters is 5 mg/L or greater, the sulfate standard is 2,000 mg/L.

C) If the combination of hardness and chloride concentrations of existing waters are not reflected above, the sulfate standard will be determined on a case-by-case basis in conjunction with an applicable NPDES permitting process.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

COPY

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

RECEIVED
CLERK'S OFFICE
SEP 11 2007
STATE OF ILLINOIS
Pollution Control Board

- 1) Heading of the Part: Permits
- 2) Code Citation: 35 Ill. Adm. Code 309
- 3) Section Numbers: 309.103 Proposed Action: Amend
- 4) Statutory 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]
- 5) A Complete Description of the Subjects and Issues Involved:

For a more detailed discussion of these amendments, see the Board's September 20, 2007, opinion and order in docket R07-9: Triennial Review of Sulfate and Total Dissolved Solids Water Quality Standards: Proposed Amendments to 35 Ill. Adm. Code 302.102(b)(6), 302.102(b)(8), 302.102(b)(10), 302.208(g), 309.103(c)(3), 405.109(b)(2)(A), 409.109(b)(2)(B), 406.100(d); Repealer of 35 Ill. Adm. Code 406.203, 406.209, and Part 407; and Proposed New 35 Ill. Adm. Code 302.208(h). The amendments in this rulemaking propose changes to Parts 302, 309, 405, 406, and the repeal of Part 407 and the amendments to all of the Parts in this rulemaking should be read jointly. This rulemaking is intended to fulfill the requirement of the Federal Water Pollution Control Act, 33 USC §1251-1387, also known as the Clean Water Act (CWA), that states must triennially revise and update water quality standards to ensure that standards are protective of public health and welfare, enhance the quality of water and promote the purposes of the CWA. This update is known as a triennial water quality standards review.

Specifically, the amendments to Part 309 propose conforming amendments to clarify that mine discharges are now subject to the water quality standards of Parts 302 and 303.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: The regulatory proposal included the Illinois EPA's Technical Support document, included with the Illinois EPA's original filing in this rulemaking, that relied on several published studies and reports. Copies of the reports that the Illinois EPA relied upon are available for review with the Pollution Control Board and are listed below.

Goodfellow, W.L., L.W. Ausley, D .T. Burton, D. L. Denton, P .B. Dorn, D .R. Grothe, M .A. Heber, T.J. Norberg-King, and J.H. Rodgers, Jr. 2000. Major ion toxicity in

RECEIVED
SEP 21 2007
SOS-CODE DIV

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

effluents: a review with permitting recommendations. *Environmental Toxicology and Chemistry*, 19:175-182.

Mount, D.R., D.D. Gulley, J .R. Hackett, T .D. Garrison, and J .M. Evans. 1997. Statistical models to predict the toxicity of major ions to *Ceriodaphnia dubia*, *Daphnia magna* and *Pimephales promelas* (Fathead Minnows). *Environmental Toxicology and Chemistry*, 16(10): 2009-2019.

Soucek, D .J. 2004a. Effects of hardness, chloride, and acclimation on the acute toxicity of sulfate to freshwater invertebrates. Illinois Natural History Survey. Final Report submitted to Illinois Environmental Protection Agency and Illinois Coal Association.

Soucek, D .J. 2004b. Effects of water quality on acute and chronic toxicity of sulfate to freshwater bivalves, *Ceriodaphnia dubia*, and *Hyaella azteca*. Illinois Natural History Survey. First Quarterly Report submitted to U.S. Environmental Protection Agency, Region 5.

Soucek, D .J. 2005a. Effects of water quality on acute and chronic toxicity of sulfate to freshwater bivalves, *Ceriodaphnia dubia*, and *Hyaella azteca*. Illinois Natural History Survey. Second Quarterly Report submitted to U.S. Environmental Protection Agency, Region 5.

Soucek, D .J. 2005b. Effects of water quality on acute and chronic toxicity of sulfate to freshwater bivalves, *Ceriodaphnia dubia*, and *Hyaella azteca*. Illinois Natural History Survey. Third Quarterly Report submitted to U.S. Environmental Protection Agency, Region 5.

Soucek, D .J. 2006. Effects of water quality on acute and chronic toxicity of sulfate to freshwater bivalves, *Ceriodaphnia dubia*, and *Hyaella azteca*. Illinois Natural History Survey. Final Report submitted to U.S. Environmental Protection Agency, Region 5. CP96543701-0.

American Public Health Association. 1989. Standard Methods for the Examination of Water and Wastewater, 17th ed., Washington, D.C.

McKee, J .E. and H .W. Wolf 1963. Water Quality Criteria, 2nd ed., The Resources Agency of California, California State Water Quality Control Board, Sacramento, CA. Publication No. 3-A, p. 548.

Weeth, H .J. and D.L. Capps. 1972. Tolerance of growing cattle for sulfate water.

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

Journal of Animal Science. 34(2): 256-260.

Loneragan, G .H., J .J. Wagner, D .H. Gould, F .B. Garry, and M .A. Thoren, 2001, Effects of water sulfate concentration on performance, water intake, and carcass characteristics of feedlot steers. Journal of Animal Science, 79:2941-2948.

Braul, L. and B . Kirychuk . 2001. Water Quality and Cattle. Prairie Farm Rehabilitation Office, Agriculture and Agri-Food Canada. Publication ENH- 1 11-2001-10.

Patterson, H.H., P.S. Johnson, E.H. Ward, and R .N. Gates. 2004. Effects of sulfates in water on performance of cow-calf pairs. Proceedings, Western Section, American Society of Animal Science. 55: 265-268.

Patterson, H .H ., P.S . Johnson, T .R. Patterson, D .B. Young, and R. Haigh. 2002. Effects of water quality on performance and health of growing steers. Proceedings, Western Section, American Society of Animal Science. 53: 217-220.

- 7) Will this proposed amendment replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed amendment contain incorporations by reference? No
- 10) Are there any other proposed amendments pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This proposed rule does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2002)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:
The Board will accept written public comment on this proposal for 45 days after the date of publication in the *Illinois Register*. Comments should reference Docket R07-9 and be addressed to:

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

Clerk's Office
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Interested persons may request copies of the Board's opinion and order by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

For more information contact hearing officer Marie Tipsord at 312/814-4925 or email at tipsordm@ipcb.state.il.us.

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: The amendments in this rulemaking could affect any small business, small municipality, and not-for-profit organization that has a permit to discharge mine related wastes to waters of the State.
- B) Reporting, bookkeeping or other procedures required for compliance: The proposed amendments do not add any additional reporting or recordkeeping requirements beyond what is already established in the Board's rules.
- C) Types of Professional skills necessary for compliance: No professional skills beyond those currently required by the existing state and federal water pollution control regulations applicable to affected sources will be required.

14) Regulatory Agenda on which this rulemaking was summarized:

July 2007

The full text of the Proposed Amendment begins on the next page:

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

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
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

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

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

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

309.265	Approval of Federal Permits
309.266	Procedures
309.281	Effective Date
309.282	Severability

Appendix 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 R07-9 at 31 Ill. Reg. _____, effective _____.

SUBPART A: NPDES PERMITS

Section 309.103 Application - General

a) Application Forms

- 1) An applicant for a National Pollution Discharge Elimination System (NPDES) Permit shall file an application, in accordance with Section 309.223 hereof, on forms provided by the Illinois Environmental Protection Agency (Agency). Such forms shall comprise the NPDES application forms promulgated by the U.S. Environmental Protection Agency for the type of discharge for which an NPDES Permit is being sought and such additional information as the Agency may reasonably

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

require in order to determine that the discharge or proposed discharge will be in compliance with applicable state and federal requirements.

- 2) In addition to the above application forms, the Agency may require the submission of plans and specifications for treatment works and summaries of design criteria.
- 3) Effluent toxicity monitoring
 - A) In addition to the above application forms, the Agency may require, pursuant to Section 39 of the Act, the installation, use, maintenance and reporting of results from monitoring equipment and methods, including biological monitoring. The Agency may require, pursuant to Section 39 of the Act, effluent toxicity testing to show compliance with 35 Ill. Adm. Code 302.621 and 302.630. If this toxicity testing shows the effluent to be toxic, the Agency may require pursuant to Section 39 of the Act further testing and identification of the toxicant(s) pursuant to 35 Ill. Adm. Code 302.210(a).
 - B) The following POTWs shall provide the results of valid whole effluent biological toxicity testing to the Agency:
 - i) All POTWs with design influent flows equal to or greater than one million gallons per day;
 - ii) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program pursuant to 35 Ill. Adm. Code 310.Subpart E;
 - C) In addition to the POTWs listed in (a)(3)(B), the Agency may require other POTWs to submit the result of toxicity tests with their permit applications, based on consideration of the following factors.
 - i) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment facility, and types of industrial contributors);

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

- ii) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow);
 - iii) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the waterbody segment and the relative contribution of the POTW;
 - iv) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, one of the Great Lakes, or a water designated as an outstanding natural resource; or
 - v) Other considerations (including but not limited to the history of toxic impact and compliance problems at the POTW), which the Agency determines could cause or contribute to adverse water quality impacts.
- D) The POTWs required under subsections (a)(3)(B) or (a)(3)(C) to conduct toxicity testing shall use the methods prescribed at 35 Ill. Adm. Code 302.Subpart F. Such testing must have been conducted since the later of the last NPDES permit reissuance or permit modification pursuant to Section 309.182, 309.183 or 309.184 for any of the reasons listed at 40 CFR 122.62(a) (1994), as amended at 60 Fed. Reg. 33926 effective June 29, 1995, herein incorporated by reference (including no later amendments or editions).
- 4) All POTWs with approved pretreatment programs shall provide the following information to the Agency: a written technical evaluation of the need to revise local limits pursuant to 35 Ill. Adm. Code 310.210.

BOARD NOTE: Subsections (a)(3)(B) through (a)(4) are derived from 40 CFR 122.21(j) (1994).

b) Animal Waste Facilities

An applicant for an NPDES Permit in connection with the operation of an animal

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

waste facility shall complete, sign, and submit an NPDES application in accordance with the provisions of 35 Ill. Adm. Code: Subtitle E, Chapter I.

c) Mining Activities

- 1) If, as defined by 35 Ill. Adm. Code 402.101, mining activities are to be carried out on a facility for which an NPDES Permit is held or required, the applicant must submit a permit application as required by 35 Ill. Adm. Code 403.103, 403.104 and 405.104. If the facility will have a discharge other than a mine discharge or non-point source mine discharge as defined by 35 Ill. Adm. Code 402.101, the applicant shall also submit an NPDES Permit application in accordance with Section 309.223 on forms supplied by the Agency.
- 2) As provided by 35 Ill. Adm. Code 403.101, except to the extent contradicted in 35 Ill. Adm. Code: Subtitle D, Chapter I, the rules contained in this Subpart apply only to 35 Ill. Adm. Code: Subtitle D, Chapter I NPDES Permits.
- 3) As provided by 35 Ill. Adm. Code 406.100, except to the extent provided in 35 Ill. Adm. Code: Subtitle D, Chapter I, the effluent ~~and water quality~~ standards of 35 Ill. Adm. Code ~~302, 303 and~~ 304 are inapplicable to mine discharges and non-point source mine discharges.

d) New Discharges

Any person whose discharge will begin after the effective date of this Subpart A or any person having an NPDES Permit issued by the U.S. Environmental Protection Agency for an existing discharge which will substantially change in nature, or increase in volume or frequency, must apply for an NPDES Permit either:

- 1) No later than 180 days in advance of the date on which such NPDES Permit will be required; or
- 2) In sufficient time prior to the anticipated commencement of the discharge to insure compliance with the requirements of Section 306 of the Clean Water Act (CWA) (33 U.S.C. 1251 et seq), or with any other applicable water quality standards and applicable effluent standards and limitations.

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

e) Signatures

An application submitted by a corporation shall be signed by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the application form originates. In the case of a partnership or a sole proprietorship, the application shall be signed by a general partner or the proprietor, respectively. In the case of a publicly owned facility, the application shall be signed by either the principal executive officer, ranking elected official, or other duly authorized employee.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: State and NPDES Permits
- 2) Code Citation: 35 Ill. Adm. Code 405
- 3) Section Numbers: 405.109 Proposed Action: Amend
- 4) Statutory Authority: Implementing Sections 12 and 13 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/12, 13, and 27 (2006)].
- 5) A Complete Description of the Subjects and Issues Involved:

RECEIVED
CLERK'S OFFICE
OCT 1 2007
STATE OF ILLINOIS
Pollution Control Board

For a more detailed discussion of these amendments, see the Board's September 20, 2007, opinion and order in docket R07-9: Triennial Review of Sulfate and Total Dissolved Solids Water Quality Standards: Proposed Amendments to 35 Ill. Adm. Code 302.102(b)(6), 302.102(b)(8), 302.102(b)(10), 302.208(g), 309.103(c)(3), 405.109(b)(2)(A), 409.109(b)(2)(B), 406.100(d); Repealer of 35 Ill. Adm. Code 406.203, 406.209, and Part 407; and Proposed New 35 Ill. Adm. Code 302.208(h). The amendments in this rulemaking propose changes to Parts 302, 309, 405, 406, and the repeal of Part 407 and the amendments to all of the Parts in this rulemaking should be read jointly. This rulemaking is intended to fulfill the requirement of the Federal Water Pollution Control Act, 33 USC §1251-1387, also known as the Clean Water Act (CWA), that states must triennially revise and update water quality standards to ensure that standards are protective of public health and welfare, enhance the quality of water and promote the purposes of the CWA. This update is known as a triennial water quality standards review.

Specifically, the amendments to Part 405 are conforming amendments that are intended to ensure that discharges from abandoned mine related facilities and mining activities are subject to the applicable Subtitle C water quality standards.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: The regulatory proposal included the Illinois EPA's Technical Support document, included with the Illinois EPA's original filing in this rulemaking, that relied on several published studies and reports. Copies of the reports that the Illinois EPA relied upon are available for review with the Pollution Control Board and are listed below.

Goodfellow, W.L., L.W. Ausley, D .T. Burton, D. L. Denton, P .B. Dorn, D .R. Grothe,

RECEIVED

SEP 21 2007

SOS-CODE DIV.

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

M .A. Heber, T.J. Norberg-King, and J.H. Rodgers, Jr. 2000. Major ion toxicity in effluents: a review with permitting recommendations. *Environmental Toxicology and Chemistry*, 19:175-182.

Mount, D.R., D.D. Gulley, J .R. Hackett, T .D. Garrison, and J .M. Evans. 1997. Statistical models to predict the toxicity of major ions to *Ceriodaphnia dubia*, *Daphnia magna* and *Pimephales promelas* (Fathead Minnows). *Environmental Toxicology and Chemistry*, 16(10): 2009-2019.

Soucek, D .J. 2004a. Effects of hardness, chloride, and acclimation on the acute toxicity of sulfate to freshwater invertebrates. Illinois Natural History Survey. Final Report submitted to Illinois Environmental Protection Agency and Illinois Coal Association.

Soucek, D .J. 2004b. Effects of water quality on acute and chronic toxicity of sulfate to freshwater bivalves, *Ceriodaphnia dubia*, and *Hyalella azteca*. Illinois Natural History Survey. First Quarterly Report submitted to U.S. Environmental Protection Agency, Region 5.

Soucek, D .J. 2005a. Effects of water quality on acute and chronic toxicity of sulfate to freshwater bivalves, *Ceriodaphnia dubia*, and *Hyalella azteca*. Illinois Natural History Survey. Second Quarterly Report submitted to U.S. Environmental Protection Agency, Region 5.

Soucek, D .J. 2005b. Effects of water quality on acute and chronic toxicity of sulfate to freshwater bivalves, *Ceriodaphnia dubia*, and *Hyalella azteca*. Illinois Natural History Survey. Third Quarterly Report submitted to U.S. Environmental Protection Agency, Region 5.

Soucek, D .J. 2006. Effects of water quality on acute and chronic toxicity of sulfate to freshwater bivalves, *Ceriodaphnia dubia*, and *Hyalella azteca*. Illinois Natural History Survey. Final Report submitted to U.S. Environmental Protection Agency, Region 5. CP96543701-0.

American Public Health Association. 1989. *Standard Methods for the Examination of Water and Wastewater*, 17th ed., Washington, D.C.

McKee, J .E. and H .W. Wolf 1963. *Water Quality Criteria*, 2nd ed., The Resources Agency of California, California State Water Quality Control Board, Sacramento, CA. Publication No. 3-A, p. 548.

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

Weeth, H .J. and D.L. Capps. 1972. Tolerance of growing cattle for sulfate water. *Journal of Animal Science*. 34(2): 256-260.

Loneragan, G .H., J .J. Wagner, D .H. Gould, F .B. Garry, and M .A. Thoren, 2001, Effects of water sulfate concentration on performance, water intake, and carcass characteristics of feedlot steers. *Journal of Animal Science*, 79:2941-2948.

Braul, L. and B . Kirychuk . 2001. Water Quality and Cattle. Prairie Farm Rehabilitation Office, Agriculture and Agri-Food Canada. Publication ENH- 1 11-2001-10.

Patterson, H.H., P.S. Johnson, E.H. Ward, and R .N. Gates. 2004. Effects of sulfates in water on performance of cow-calf pairs. *Proceedings, Western Section, American Society of Animal Science*. 55: 265-268.

Patterson, H .H ., P.S . Johnson, T .R. Patterson, D .B. Young, and R. Haigh. 2002. Effects of water quality on performance and health of growing steers. *Proceedings, Western Section, American Society of Animal Science*. 53: 217-220.

- 7) Will this proposed amendment replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed amendment contain incorporations by reference? No
- 10) Are there any other proposed amendments pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This proposed rule does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2002)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:
The Board will accept written public comment on this proposal for 45 days after the date of publication in the *Illinois Register*. Comments should reference Docket R07-9 and be addressed to:

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

Clerk's Office
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Interested persons may request copies of the Board's opinion and order by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

For more information contact hearing officer Marie Tipsord at 312/814-4925 or email at tipsordm@ipcb.state.il.us.

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: The amendments in this rulemaking could affect any small business, small municipality, and not-for-profit organization that has a permit to discharge mine related wastes to waters of the State.
- B) Reporting, bookkeeping or other procedures required for compliance: The proposed amendments do not add any additional reporting or recordkeeping requirements beyond what is already established in the Board's rules.
- C) Types of Professional skills necessary for compliance: No professional skills beyond those currently required by the existing state and federal water pollution control regulations applicable to affected sources will be required.

14) Regulatory Agenda on which this rulemaking was summarized:

July 2007

The full text of the Proposed Amendment begins on the next page:

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE D: MINE RELATED WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 405
STATE AND NPDES PERMITS

Section	
405.100	Preamble
405.101	Special Conditions: Agency Guidance Document
405.102	Standard for Permit Issuance or Certification
405.103	Permit Modification When New Regulations are Adopted
405.104	Permit Applications
405.105	Surface Drainage Control
405.106	Refuse Disposal
405.107	Experimental Permits for Refuse Disposal
405.108	Permit for Use of Acid-producing Mine Refuse
405.109	Abandonment Plan
405.110	Cessation, Suspension or Abandonment
405.111	Emergency Procedures To Control Pollution
405.112	Mine Entrances
405.113	Permit Area
Appendix A	References to Previous Rules

AUTHORITY: Implementing Sections 12 and 13 and authorized by Section 27 of the Environmental Protection Act (415 ILCS 5/12, 13, and 27 (2006)).

SOURCE: Adopted in R76-20, R77-10, 39 PCB 196, at 4 Ill. Reg. 34, p. 164, effective August 7, 1980; codified at 5 Ill. Reg. 8527; amended in R83-6A at 8 Ill. Reg. 13267, effective July 16, 1984; amended in R07-9 at 31 Ill. Reg. _____, effective _____.

Section 405.109 Abandonment Plan

- a) A state or NPDES permit shall include an abandonment plan as a condition.
- b) An abandonment plan shall be incorporated into the permit by reference if it:

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

- 1) Includes a time schedule establishing that the abandonment plan will be executed and completed within a reasonable time after abandonment considering any potential adverse impact on the environment pending completion of the plan and the amount of time required to carry out the steps in the plan; one year is assumed to be a reasonable time unless the operator demonstrates that a longer time is reasonable; and
- 2) Shows that the mine related facilities and mining activities will be abandoned so as not to cause a violation of the Act or this Chapter;
 - A) ~~If the plan includes a discharge which will remain after abandonment which will not meet the requirements of 35 Ill. Adm. Code 406.202, and if the permit included water quality based conditions under 35 Ill. Adm. Code 406.203 during active mining, the discharge shall be deemed to meet 35 Ill. Adm. Code 406.202 with respect to total dissolved solids, chloride, sulfate, iron and manganese if it will meet the requirements of 35 Ill. Adm. Code 406.106 and 406.203(e)(1) and (e)(2); or~~
 - B) ~~If the plan includes impoundments which will remain after abandonment and which will not meet the water quality standards of 35 Ill. Adm. Code 302.204 or 302.208, with respect to total dissolved solids, chloride, sulfate, iron, manganese and pH, such fact shall not prevent approval of the plan if the impoundment will meet the requirements of 35 Ill. Adm. Code 406.106 and 406.203(e)(1) and (e)(2).~~
- c) If the abandonment plan does not meet the standard of paragraph (b) the Agency may either deny the permit or issue it with an abandonment plan modified by conditions subject to Section 405.101.
- d) The time limit provided by paragraph (b)(1) is inapplicable to abandonment plans for surface coal mines which are approved as reclamation plans under the Surface Coal Mining Land Conservation and Reclamation Act, (Ill. Rev. Stat. 1983, ch. 96 1/2, par. 7902.03).
- e) Any abandonment plan constituting a substantial change from the permitted abandonment plan is a revised abandonment plan.

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

- f) A permittee shall apply for a new or revised or supplemental NPDES or state permit prior to implementation of a revised abandonment plan within the time limits provided by 35 Ill. Adm. Code 403.104(c).
- ~~g) An abandonment plan incorporated into a permit pursuant to showing under 35 Ill. Adm. Code 406.203 shall include conditions pursuant to 35 Ill. Adm. Code 406.203(e)(1) and (e)(2).~~

(Source: Amended at 31 Ill. Reg. _____, effective _____)

COPY

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Mine Waste Effluent and Water Quality Standards
- 2) Code Citation: 35 Ill. Adm. Code 406
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
406.100	Amend
406.203	Repeal
406.209	Repeal
- 4) Statutory Authority: Implementing Sections 12 and 13 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/12, 13, and 27 (2006)]
- 5) A Complete Description of the Subjects and Issues Involved:

RECEIVED
CLERK'S OFFICE
OCT 1 2007
STATE OF ILLINOIS
Pollution Control Board

For a more detailed discussion of these amendments, see the Board's September 20, 2007, opinion and order in docket R07-9: Triennial Review of Sulfate and Total Dissolved Solids Water Quality Standards: Proposed Amendments to 35 Ill. Adm. Code 302.102(b)(6), 302.102(b)(8), 302.102(b)(10), 302.208(g), 309.103(c)(3), 405.109(b)(2)(A), 409.109(b)(2)(B), 406.100(d); Repealer of 35 Ill. Adm. Code 406.203, 406.209, and Part 407; and Proposed New 35 Ill. Adm. Code 302.208(h). The amendments in this rulemaking propose changes to Parts 302, 309, 405, 406, and the repeal of Part 407 and the amendments to all of the Parts in this rulemaking should be read jointly. This rulemaking is intended to fulfill the requirement of the Federal Water Pollution Control Act, 33 USC §1251-1387, also known as the Clean Water Act (CWA), that states must triennially revise and update water quality standards to ensure that standards are protective of public health and welfare, enhance the quality of water and promote the purposes of the CWA. This update is known as a triennial water quality standards review.

Specifically, the amendments to Part 406 propose changes to clarify that mine related discharges are now subject to the Board's general water quality standards. In conformance with the other amendments in the general R07-9 rulemaking, the amendments to Part 406 propose to repeal the total dissolved solids standards in Section 406.203. The Board is proposing to repeal Section 406.209 as that Section becomes obsolete with the repeal of Section 406.203.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: The regulatory proposal included the Illinois EPA's Technical Support document, included with the Illinois EPA's original filing in this rulemaking, that relied

RECEIVED

SEP 27

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

on several published studies and reports. Copies of the reports that the Illinois EPA relied upon are available for review with the Pollution Control Board and are listed below.

Goodfellow, W.L., L.W. Ausley, D.T. Burton, D.L. Denton, P.B. Dorn, D.R. Grothe, M.A. Heber, T.J. Norberg-King, and J.H. Rodgers, Jr. 2000. Major ion toxicity in effluents: a review with permitting recommendations. *Environmental Toxicology and Chemistry*, 19:175-182.

Mount, D.R., D.D. Gulley, J.R. Hackett, T.D. Garrison, and J.M. Evans. 1997. Statistical models to predict the toxicity of major ions to *Ceriodaphnia dubia*, *Daphnia magna* and *Pimephales promelas* (Fathead Minnows). *Environmental Toxicology and Chemistry*, 16(10): 2009-2019.

Soucek, D.J. 2004a. Effects of hardness, chloride, and acclimation on the acute toxicity of sulfate to freshwater invertebrates. Illinois Natural History Survey. Final Report submitted to Illinois Environmental Protection Agency and Illinois Coal Association.

Soucek, D.J. 2004b. Effects of water quality on acute and chronic toxicity of sulfate to freshwater bivalves, *Ceriodaphnia dubia*, and *Hyalella azteca*. Illinois Natural History Survey. First Quarterly Report submitted to U.S. Environmental Protection Agency, Region 5.

Soucek, D.J. 2005a. Effects of water quality on acute and chronic toxicity of sulfate to freshwater bivalves, *Ceriodaphnia dubia*, and *Hyalella azteca*. Illinois Natural History Survey. Second Quarterly Report submitted to U.S. Environmental Protection Agency, Region 5.

Soucek, D.J. 2005b. Effects of water quality on acute and chronic toxicity of sulfate to freshwater bivalves, *Ceriodaphnia dubia*, and *Hyalella azteca*. Illinois Natural History Survey. Third Quarterly Report submitted to U.S. Environmental Protection Agency, Region 5.

Soucek, D.J. 2006. Effects of water quality on acute and chronic toxicity of sulfate to freshwater bivalves, *Ceriodaphnia dubia*, and *Hyalella azteca*. Illinois Natural History Survey. Final Report submitted to U.S. Environmental Protection Agency, Region 5. CP96543701-0.

American Public Health Association. 1989. *Standard Methods for the Examination of Water and Wastewater*, 17th ed., Washington, D.C.

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

McKee, J .E. and H .W. Wolf 1963. Water Quality Criteria, 2"d ed., The Resources Agency of California, California State Water Quality Control Board, Sacramento, CA. Publication No. 3-A, p. 548.

Weeth, H .J. and D.L. Capps. 1972. Tolerance of growing cattle for sulfate water. Journal of Animal Science. 34(2): 256-260.

Loneragan, G .H., J .J. Wagner, D .H. Gould, F .B. Garry, and M .A. Thoren, 2001, Effects of water sulfate concentration on performance, water intake, and carcass characteristics of feedlot steers. Journal of Animal Science, 79:2941-2948.

Braul, L. and B . Kirychuk . 2001. Water Quality and Cattle. Prairie Farm Rehabilitation Office, Agriculture and Agri-Food Canada. Publication ENH- 1 11-2001-10.

Patterson, H.H., P.S. Johnson, E.H. Ward, and R .N. Gates. 2004. Effects of sulfates in water on performance of cow-calf pairs. Proceedings, Western Section, American Society of Animal Science. 55: 265-268.

Patterson, H .H ., P.S . Johnson, T .R. Patterson, D .B. Young, and R. Haigh. 2002. Effects of water quality on performance and health of growing steers. Proceedings, Western Section, American Society of Animal Science. 53: 217-220.

- 7) Will this proposed amendment replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed amendment contain incorporations by reference? No
- 10) Are there any other proposed amendments pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This proposed rule does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2002)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:
The Board will accept written public comment on this proposal for 45 days after the date of publication in the *Illinois Register*. Comments should reference Docket R07-9 and be addressed to:

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

Clerk's Office
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Interested persons may request copies of the Board's opinion and order by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

For more information contact hearing officer Marie Tipsord at 312/814-4925 or email at tipsordm@ipcb.state.il.us.

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: The amendments in this rulemaking could affect any small business, small municipality, and not-for-profit organization that has a permit to discharge mine related wastes to waters of the State.
- B) Reporting, bookkeeping or other procedures required for compliance: The proposed amendments do not add any additional reporting or recordkeeping requirements beyond what is already established in the Board's rules.
- C) Types of Professional skills necessary for compliance: No professional skills beyond those currently required by the existing state and federal water pollution control regulations applicable to affected sources will be required.

14) Regulatory Agenda on which this rulemaking was summarized:

July 2007

The full text of the Proposed Amendment begins on the next page:

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE D: MINE RELATED WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 406
MINE WASTE EFFLUENT AND WATER QUALITY STANDARDS

SUBPART A: EFFLUENT STANDARDS

Section	
406.100	Preamble
406.101	Averaging
406.102	Sampling, Reporting and Monitoring
406.103	Background Concentrations
406.104	Dilution
406.105	Commingling of Waste Streams
406.106	Effluent Standards for Mine Discharges
406.107	Offensive Discharges
406.108	Non-Point Source Mine Discharges
406.109	Effluent Standards for Coal Mine Discharge from Reclamation Areas
406.110	Alternate Effluent Standards for Coal Mine Discharges During Precipitation Events

SUBPART B: WATER QUALITY STANDARDS

Section	
406.201	Temporary Exemption from Section 406.105 (Repealed)
406.202	Violation of Water Quality Standards
406.203	TDS Related Permit Conditions (<u>Repealed</u>)
406.204	Good Mining Practices
406.205	Contact with Disturbed Areas
406.206	Retention and Control of Exposed Waters
406.207	Control of Discharge Waters
406.208	Unconventional Practices
406.209	Expiration of Former Exemptions (<u>Repealed</u>)

Appendix A References to Previous Rules

AUTHORITY: Implementing Sections 12 and 13 and authorized by Section 27 of the Environmental Protection Act (415 ILCS 5/12, 13, and 27 (2006)).

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

SOURCE: Adopted in R76-20, R77-10, 39 PCB 196, at 4 Ill. Reg. 34, p. 164, effective August 7, 1980; codified at 5 Ill. Reg. 8527; emergency amendment in R83-6B at 7 Ill. Reg. 8386, effective July 5, 1983, for a maximum of 150 days; amended in R83-6B at 7 Ill. Reg. 14510, effective October 19, 1983; amended in R83-6A at 8 Ill. Reg. 13239, effective July 16, 1984; amended in R84-29 at 11 12899, effective July 27, 1987; amended in R07-9 at _____ Ill. Reg. _____.

SUBPART A: EFFLUENT STANDARDS

Section 406.100 Preamble

- a) Part 406 applies to mine discharges and non-point source mine discharges as defined by Section 402.101.
- b) Other discharges, including sanitary sewers, are regulated under Subtitle C, Chapter I: Water Pollution.
- c) A facility which has another discharge will be subject to both Subtitle C and Subtitle D. Subtitle D governs mining activities, including mine discharges and non-point source mine discharges. Subtitle C governs other discharges.
- d) Except to the extent provided in this Part 406, Parts ~~302, 303 and~~ 304 of subtitle C ~~is are~~ inapplicable to mine discharges and non-point source mine discharges.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

SUBPART B: WATER QUALITY STANDARDS

Section 406.203 TDS Related Permit Conditions (Repealed)

- ~~a) This Section sets forth procedures by which water quality based permit conditions for total dissolved solids, chloride, sulfate, iron and manganese may be established by the Agency for coal mine discharges. These procedures apply instead of Section 406.202 whenever a permit applicant elects to proceed under this Section. A permittee must comply with water quality based permit conditions for total dissolved solids, chloride, sulfate, iron and manganese established pursuant to this Section instead of Section 406.202. Public hearings may be required pursuant to 35 Ill. Adm. Code 309.115.~~

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

- b) ~~An applicant may elect to proceed under this Section by providing the required information as part of a new or renewed or supplemental state or NPDES permit application.~~

- e) ~~The Agency shall establish permit conditions under this Section if all of the following conditions are met:~~
 - 1) ~~The applicant proves to the Agency that the discharge will not cause an adverse effect on the environment in and around the receiving stream, by either:
 - A) ~~Demonstrating that the discharge will contain a concentration less than or equal to 3500 mg/l sulfate and 1000 mg/l chloride; or,~~
 - B) ~~Through actual stream studies.~~~~

 - 2) ~~The applicant proves to the Agency that the discharge will not adversely affect any public water supply; and~~

 - 3) ~~The applicant proves to the Agency that it is utilizing good mining practices designed to minimize discharge of total dissolved solids, chloride, sulfate iron and manganese.~~

- d) ~~The Agency may promulgate under 35 Ill. Adm. Code 405.101(e) a code of good mining practices consistent with the definition in Section 406.204. Compliance with the code of good mining practices shall be prima facie evidence that the applicant is utilizing good mining practices within the meaning of paragraph (e)(3).~~

- e) ~~Whenever the Agency issues a permit based on this Section, it shall include such conditions as may be necessary to ensure that:~~
 - 1) ~~There is no adverse effect on the environment in and around the receiving stream;~~

 - 2) ~~The discharge does not adversely affect any public water supply; and~~

 - 3) ~~The permittee utilizes good mining practices designed to minimize discharge of total dissolved solids, chloride, sulfate, iron and manganese.~~

ILLINOIS REGISTER

NOTICE OF PROPOSED AMENDMENT

POLLUTION CONTROL BOARD

- ~~f) Whenever the Agency issues a permit pursuant to this Section, it may include as a condition a requirement that the permittee submit to the Agency effluent data for total dissolved solids, chloride, sulfate, iron and manganese.~~

(Source: Repealed at 31 Ill. Reg. _____, effective _____)

Section 406.209 Expiration of Former Exemptions (Repealed)

- ~~a) Exemptions from the water quality standards granted prior to the effective date of Section 406.203 shall continue until any of the following events occurs:~~
- ~~1) Any State or NPDES permit for the facility expires, or is revoked, renewed or reissued;~~
 - ~~2) Any State or NPDES permit for the facility is modified, unless the Agency expressly continues the exemption pending review pursuant to paragraph (b);~~
 - ~~3) An application period set pursuant to paragraph (b) expires with no application having been received;~~
 - ~~4) The Agency grants or denies a permit under Section 406.203; or~~
 - ~~5) January 1, 1987, the final date for continuation of former exemptions.~~
- ~~b) The Agency may require applications for review pursuant to Section 406.203 by notifying individual permittees and setting a date for application not less than 15 months after the date notice is given.~~
- ~~e) If an appeal to the Board is filed, exemptions continue until the Board enters a final order disposing of the appeal.~~

(Source: Repealed at 31 Ill. Reg. _____, effective _____)

COPY

ILLINOIS REGISTER

NOTICE OF PROPOSED REPEALER

POLLUTION CONTROL BOARD

1) Heading of the Part: Compliance and Effective Dates

2) Code Citation: 35 Ill. Adm. Code 407

<u>Section Numbers:</u>	<u>Proposed Action:</u>
407.101	Repeal
407.102	Repeal
407.103	Repeal
407.104	Repeal
407.APPENDIX A	Repeal

4) Statutory Authority: Authorized by Section 27 and implementing Sections 12 and 13 of the Illinois Environmental Protection Act [415 ILCS 5/12, 13, and 27]

5) A Complete Description of the Subjects and Issues Involved:

For a more detailed discussion of these amendments, see the Board's September 20, 2007, opinion and order in docket R07-9: Triennial Review of Sulfate and Total Dissolved Solids Water Quality Standards: Proposed Amendments to 35 Ill. Adm. Code 302.102(b)(6), 302.102(b)(8), 302.102(b)(10), 302.208(g), 309.103(c)(3), 405.109(b)(2)(A), 409.109(b)(2)(B), 406.100(d); Repealer of 35 Ill. Adm. Code 406.203, 406.209, and Part 407; and Proposed New 35 Ill. Adm. Code 302.208(h). The amendments in this rulemaking propose changes to Parts 302, 309, 405, 406, and the repeal of Part 407 and the amendments to all of the Parts in this rulemaking should be read jointly. This rulemaking is intended to fulfill the requirement of the Federal Water Pollution Control Act, 33 USC §1251-1387, also known as the Clean Water Act (CWA), that states must triennially revise and update water quality standards to ensure that standards are protective of public health and welfare, enhance the quality of water and promote the purposes of the CWA. This update is known as a triennial water quality standards review.

The Board is proposing to repeal Part 407, as it serves no purpose in the issuance of NPDES permits for mine related facilities and mining activities.

6) Will this rulemaking replace any emergency rulemaking currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this rulemaking contain incorporations by reference? No

9) Are there any other proposed rulemakings pending on this Part? No

RECEIVED
CLERK'S OFFICE
SEP 11 2007
STATE OF ILLINOIS
Pollution Control Board

RECEIVED
SEP 21 2007
SOS-CODE DIV.

ILLINOIS REGISTER

NOTICE OF PROPOSED REPEALER

POLLUTION CONTROL BOARD

10) Statement of Statewide Policy Objectives: This proposed repealed rule does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2002)].

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

The Board will accept written public comment on this proposal for 45 days after the date of publication in the *Illinois Register*. Comments should reference Docket R07-9 and be addressed to:

Clerk's Office
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Interested persons may request copies of the Board's opinion and order by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

For more information contact hearing officer Marie Tipsord at 312/814-4925 or email at tipsordm@ipcb.state.il.us.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected:

The repeal of this rule could affect any small business, small municipality, and not-for-profit organization that have a permit to discharge coal mine wastewater to waters of the State.

B) Reporting, bookkeeping or other procedures required for compliance:
None

C) Types of professional skills necessary for compliance:
None

13) Regulatory Agenda on which this rulemaking was summarized:
July 2007

The full text of the Proposed Repealer begins on the next page:

ILLINOIS REGISTER

NOTICE OF PROPOSED REPEALER

POLLUTION CONTROL BOARD

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE D: MINE RELATED WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 407
COMPLIANCE AND EFFECTIVE DATES (REPEALED)

Section	
407.101	Effective Date
407.102	Applications from Holders of Outstanding Permits
407.103	Expiration of Outstanding Permits
407.104	Abandonment Plan for Existing Permits
Appendix A	References to Previous Rules

AUTHORITY: Authorized by Section 27 and implementing Sections 12 and 13 and authorized by Section 27 of the Illinois Environmental Protection Act (Ill. Rev. Stat., ch. 111 1/2, pars. 1012, 1013 and 1027) unless otherwise noted.

SOURCE: Adopted at 4 Ill. Reg. 34, p. 164, effective August 7, 1980; codified at 5 Ill. Reg. 34, p. 8527, effective August 10, 1981; Repealed in R07-9 at 31 Ill. Reg. _____, effective _____.

Section 407.101 Effective Date

This Chapter is effective upon filing with the Secretary of State.

Section 407.102 Applications from Holders of Outstanding Permits

- a) A holder of an outstanding operating permit under the old Chapter 4 may apply for a state or NPDES permit at any time.
- b) The Agency may by notification require a holder of an outstanding operating permit to apply for a state or NPDES permit.
- c) Notification shall contain a date, not less than 180 days after notification, by which date an application must be received by the Agency.

Section 407.103 Expiration of Outstanding Permits

ILLINOIS REGISTER

NOTICE OF PROPOSED REPEALER

POLLUTION CONTROL BOARD

Compliance with the provisions of this Chapter is required on the effective date except that immediate compliance with the permit requirement of Section 404.101 is not required of holders of outstanding permits for mines opened prior to the effective date of this Subtitle D, Chapter I. For such facilities, compliance with Section 404.101 is required upon expiration of the outstanding operating permit. Such permits shall expire upon the occurrence of any of the following conditions, whichever occurs first:

- a) The lapse of three years after the effective date of this Chapter; or
- b) The expiration of any NPDES permit held by the permittee for the facility; or
- c) Issuance of a permit for the facility pursuant to Section 403.102 or Section 404.101; or
- d) The lapse of an application period fixed pursuant to Section 407.102(c) if an application is not received by the date given in the notification.

Section 407.104 Abandonment Plan for Existing Permits

The requirement of a permit to abandon contained in Rule 502 of old Chapter 4, effective May 23, 1972 shall continue to apply to operators of mines opened prior to the effective date of this Subtitle D, Chapter I, until such time as such operator shall have been issued under this Subtitle D, Chapter I a valid permit containing an abandonment plan.

Section 407.APPENDIX A REFERENCES TO PREVIOUS RULES

The following table is provided to aid in referencing old Board rule numbers to section numbers pursuant to codification.

Chapter 4, Mine Related Pollution Part VII, 35 Ill. Admin. Code Part 407
Compliance and Effective Dates

Rule 701	Section 407.101
Rule 702	Section 407.102
Rule 703	Section 407.103
Rule 704	Section 407.104