

SUBTITLE D

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

**PART 405
STATE AND NPDES PERMITS**

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AUTHORITY: Implementing Sections 12 and 13 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1983, ch. 111 1/2, pars. 1012, 1013 and 1027).

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 32 Ill. Reg. 14978, effective September 8, 2008).

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Section 405.100 Preamble

Part 405 governs the issuance of both state and NPDES permits and contains substantive rules governing mining activities and construction of mine related facilities.

Section 405.101 Special Conditions: Agency Guidance Document

- a) In addition to the standards and conditions required by this Subtitle D, Chapter I, the Agency may in granting permits impose such conditions as may be necessary to accomplish the purposes of the Act and which are not inconsistent with Subtitle D, Chapter I. All NPDES permits shall contain those terms and conditions, including but not limited to schedules of compliance, which may be required to accomplish the purposes and provisions of the Act.
- b) The Agency shall adopt such procedures as are necessary for permit issuance under this Subtitle D, Chapter I. Such procedures shall be included in an Agency guidance document. 35 Ill. Admin. Code Part 450 et seq.
- c) The Agency may adopt criteria for the design, operation, maintenance and abandonment of mine related facilities and other wastewater sources. Such criteria as are adopted shall be set forth in an Agency guidance document and shall be revised from time to time to reflect current engineering judgment and advances in the state of the art. 35 Ill. Admin. Code Part 450 et seq.
- d) In adopting new or revised criteria or procedures, the Agency shall comply with the requirements of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1979, ch. 127, pars. 1001 et seq.
- e) To the extent the Agency adopts such criteria, they will represent a formal Agency interpretation of what is consistent with the Act and Subtitle D, Chapter I and necessary to accomplish the purposes of the Act.
- f) In adopting new or revised criteria the Agency shall consider other applicable state and federal statutes and regulations and shall avoid issuing criteria which conflict with such.

Section 405.102 Standard for Permit Issuance or Certification

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- a) The Agency shall issue or certify a permit if and only if the operator submits adequate proof that the mine related facilities and mining activities will be constructed, prepared and operated so as not to cause a violation of the Act or Subtitle D, Chapter I.
- b) If an Agency guidance document is promulgated and if it contains criteria with regard to any condition of a permit, then for purposes of permit issuance proof of conformity with the Agency guidance document shall be prima facie evidence of no violation. However, nonconformity with the Agency guidance document shall not be grounds for permit denial if the condition of subsection (a) of this Section is met.
- c) The Agency may issue under Section 405.107 an experimental permit, subsection (a) of this Section notwithstanding.

Section 405.103 Permit Modification When New Regulations are Adopted

If the Board adopts new regulations affecting the terms and conditions of an outstanding permit, the Agency may issue to the permittee a new or supplemental permit setting forth the affected terms and conditions as modified.

Section 405.104 Permit Applications

- a) Plans, reports, specifications and application forms submitted to the Agency as part of a state or NPDES permit application shall be certified by a registered professional engineer when required by the Illinois Professional Engineering Act, Ill. Rev. Stat., 1979, ch. 111, par. 5101 et seq.
- b) An application for a state or NPDES permit shall include:
 - 1) Location of the affected land and the maximum extent of the affected land during the term of the requested permit;
 - 2) Activities on the affected land to prepare the site for mining activities, including all earth moving, grading activities, construction and any other preparatory activity;
 - 3) Measures to be taken to avoid violation of the Act and Subtitle D, Chapter I.
 - 4) The location of all streams, creeks, bodies of water and aquifers which receive drainage from the affected land;

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- 5) The location of all private water supplies on or within one mile of the affected land;
- 6) The name, type and location of all public water supplies within ten miles of the affected land;
- 7) Plans for surface drainage control as required by Section 405.105.
- 8) Areas of the affected land where mining will occur;
- 9) Areas of the affected land where mine refuse and spoil will be deposited.
- 10) The general characteristics of the mine refuse and spoil according to the classification scheme set forth in the Agency Guidance Document or any other general soil classification system acceptable to the Agency;
- 11) The proposed method of mining;
- 12) A refuse disposal plan as required by Section 405.106 or Section 405.107;
- 13) The location of all bore holes, mine shafts and wells on the affected land;
- 14) An estimate certified by an engineer of the quality and quantity of drainage from the mine area and mine refuse area, including estimates of concentrations of chloride, sulfate, total dissolved solids and all contaminants regulated under Section 406.106, together with a statement of the basis of the estimates;
- 15) The location of all mine discharge points and non-point source mine discharge sources, method or type of sediment basins, erosion control devices and wastewater treatment facilities for all mine related facilities including designation of collection points for water discharged from all mechanical pumping or gravity flow systems used for draining the mine and mine refuse area;
- 16) An abandonment plan as required by Section 405.109; and
- 17) If the applicant intends to use acid-producing mine refuse, a plan as required by Section 405.108.

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- c) The Agency may specify other information necessary for consideration of the permit application. This may be done by way of an application form, through the Agency guidance document and through requests for information directed to the applicant.
- d) This section shall not be construed as limiting the Agency's authority to enter into an agreement with the Illinois Department of Mines and Minerals for joint permit applications.

Section 405.105 Surface Drainage Control

- a) A state or NPDES permit shall include a plan for surface drainage control as a condition.
- b) The applicant's plan for surface drainage control shall be incorporated into a permit by reference if it meets the standard of Section 405.102; otherwise, the Agency shall either deny the permit or issue it with a plan modified by conditions subject to the provisions of Section 405.101.
- c) Mining activities and the deposition of mine refuse shall be planned and conducted so as to avoid contact or interference with waters of the state where such contact can reasonably be expected to cause or allow pollution of such waters.
- d) Diversion, redirection or impoundment of streams shall not be undertaken where the Agency demonstrates that there is an economically reasonable alternative.

Section 405.106 Refuse Disposal

- a) A state or NPDES permit shall include a refuse disposal plan as a condition.
- b) The applicant's refuse disposal plan shall be incorporated into the permit by reference if it meets the standard of Section 405.102; otherwise the Agency shall either deny the permit or issue it with a plan modified by conditions subject to the provisions of Section 405.101.
- c) Seepage from a refuse disposal area is a mine discharge as defined by Section 402.101 which is subject to the standards contained in Part 406 of this Subtitle D.
- d) The refuse area shall not be located in an area of natural springs or an aquifer recharge area or intercept a drainage course unless special

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provisions have been made to protect such. The burden of proof shall be on the Agency to show that an area is an aquifer recharge area.

- e) Acid-producing solid mine refuse shall be immediately spread and compacted in layers and covered as necessary with suitable non-acid-producing material. If wetness prohibits immediate spreading, the refuse shall be spread and compacted as soon as possible and prior to the deposition of a subsequent layer of refuse or cover material. However, the Agency may permit alternate refuse disposal methods.
- f) Any refuse disposal plan constituting a change from the permitted refuse disposal plan is a revised refuse disposal plan.
- g) Implementation of a revised refuse disposal plan shall require a new or revised or supplemental NPDES or state permit. Application shall be made within the time limits prescribed for the respective permits as provided by Sections 403.104 and 404.104.
- g) Subsection (e) shall not apply to acid-producing solid mine refuse disposed of underground or in strip pits where disposal is below the level of natural drainage; however, a layer of at least two feet of suitable non-acid-producing material shall be applied no later than one year after completion of a refuse pile in an open pit.

Section 405.107 Experimental Permits for Refuse Disposal

- a) To promote the development of the technology of mine refuse pollution control, the Agency may issue experimental permits for refuse disposal not satisfying the requirements of Section 405.102 if the applicant demonstrates that the process, technique or system has a reasonable chance for compliance with the Act and Subtitle D, Chapter I.
- b) During operation, drainage from an experimental refuse area shall be monitored to determine compliance with the Act and Subtitle D, Chapter I.
- c) The Agency may require as a permit condition that the permittee submit performance data and cost information during the operation of an experimental refuse area.
- d) Applications for experimental permits shall comply with the requirements of Section 405.104 of this Subtitle D.
- e) Agency approval of an experimental permit may be terminated at any time and the requirements of Section 405.102 reimposed within forty-five days

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whenever data or maintenance practices indicate that the experimental method no longer appears likely to meet the requirements of the Act and Subtitle D, Chapter I.

- f) Within twelve months of the termination of the experimental permit, the permittee shall complete the abandonment plan in the permitted mine refuse disposal area unless otherwise approved by the Agency.

Section 405.108 Permit for Use of Acid-producing Mine Refuse

- a) A state or NPDES permit shall include as a condition an adequate plan for use of acid-producing mine refuse if the operator is to use such.
- b) As defined by Section 402.101, use of acid-producing mine refuse is a mining activity for which a permit may be required under Section 404.101.

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:
 - 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;
- c) If the abandonment plan does not meet the standard of subsection (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 subsection (b)(1) is inapplicable to abandonment plans for surface coal mines which are approved as

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reclamation plans under the Surface Coal Mining Land Conservation and Reclamation Act, [225 ILCS 720].

- e) Any abandonment plan constituting a substantial change from the permitted abandonment plan is a revised abandonment plan.
- 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).

(Source: Amended at 32 Ill. Reg. 14978, effective September 8, 2008)

Section 405.110 Cessation, Suspension or Abandonment

- a) A permittee shall notify the Agency in writing by certified mail within thirty days of any of the following:
 - 1) Abandonment; or
 - 2) Cessation or suspension of active mining for thirty days or more unless caused by a labor dispute.
- b) During cessation or suspension of active mining, whether caused by a labor dispute or not, the permittee shall provide whatever interim impoundment, drainage diversion and wastewater treatment is necessary to avoid violations of the Act or this Chapter.
- c) Upon abandonment the permittee shall execute and complete the permitted abandonment plan; provided, however, that the permittee need not execute and complete the permitted abandonment plan if the abandonment arises solely from transfer of ownership to a responsible party.
- d) A responsible party is a person who holds a state or NPDES permit and all other necessary permits for the same facility. If such a permit is issued subsequent to the transfer it shall relieve the transferor of the obligation of further executing the abandonment plan.
- e) Upon request by the permittee the Agency shall issue a certificate of abandonment whenever the permittee demonstrates that:
 - 1) The abandonment plan has been satisfactorily executed; and
 - 2) The requirements of Sections 405.109(b)(2)(A) and (b)(2)(B) have been met.

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- f) Refusal to issue a certificate of abandonment is a permit denial for purposes of appeal.

(Source: Amended at 8 Ill. Reg. 13267, effective July 16, 1984)

Section 405.111 Emergency Procedures To Control Pollution

- a) A permittee shall notify the Agency within one hour of becoming aware of an emergency situation concerning mining activities which causes or threatens to cause a discharge of contaminants into the waters of Illinois. The permittee shall initially notify the Agency by telephone and follow this with written notice including a description of corrective measures taken. The permittee shall immediately undertake necessary corrective measures consistent with Agency approval under paragraph (b) of this Section. Emergency situations, likely to cause a violation of the Act or this Chapter I, include but are not limited to the following:
 - 1) Dike, levee, dam or pipeline rupture;
 - 2) Flooded pit containing waters which do not meet the standards of Part 406;
 - 3) Power failure or mechanical breakdown of any wastewater treatment facility.
- b) The Agency may temporarily suspend the requirement that a permit be obtained to install and operate any device or facility necessary to correct the emergency situation.

Section 405.112 Mine Entrances

Bore holes, openings, drill holes, entrances to underground mines and auger or punch mine entries shall be plugged and sealed to the extent necessary to avoid the threat of water pollution.

Section 405.113 Permit Area

A state or NPDES permit shall specify a permit area. During the permit term no portion of the affected land shall be outside the permit area.

Section 405.APPENDIX A REFERENCES TO PREVIOUS RULES

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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 V, 35 Ill. Admin. Code Part 405
State and NPDES Permits

Rule 500	Section 405.100
Rule 501	Section 405.101
Rule 502	Section 405.102
Rule 503	Section 405.103
Rule 504	Section 405.104
Rule 505	Section 405.105
Rule 506	Section 405.106
Rule 507	Section 405.107
Rule 508	Section 405.108
Rule 509	Section 405.109
Rule 510	Section 405.110
Rule 511	Section 405.111
Rule 512	Section 405.112
Rule 513	Section 405.113

(filed August 10, 1981, effective August 10, 1981)