

ILLINOIS POLLUTION CONTROL BOARD
May 15, 1980

IN THE MATTER OF:)
)
AMENDMENTS TO RULE 902 OF) R79-13
CHAPTER 3: WATER POLLUTION)

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

On December 13, 1979 the Board proposed amendments to Rule 902 of Chapter 3: Water Pollution. The Proposed Order was published in Environmental Register No. 207 on December 24, 1979 and in the Illinois Register on January 11, 1980. The Board received only one comment, that of the Environmental Protection Agency (Agency), which supported the proposed deletion of Rule 902(i)(1)(i), (ii) and (iii).

Rule 902(c)(1) states the relationship between NPDES permits required under Chapter 3 and those required under Chapter 4: Mine Related Pollution. If mining activities take place on a facility, then a Chapter 4 application must be submitted. If the facility has a discharge other than a mine discharge or a non-point source mine discharge, a Chapter 3 application must also be submitted if an NPDES permit is required for the other discharge. Under the provisions of Part III of Chapter 4, a single Chapter 3/Chapter 4 NPDES permit will be issued for the facility.

References to "non-point source mine discharges" have been added to Rule 902(c). Point and non-point source mine discharges have been differentiated in the Final Order of this date in R76-20, R77-10.

Rule 902(c)(2) repeats Rule 301 of Chapter 4. Rules 901 through 916 of Chapter 3 are generally applicable to Chapter 4 NPDES permits, except to the extent contradicted in Chapter 4.

Rule 902(c)(3) repeats Rule 600 of Chapter 4. Parts II, III and IV of Chapter 3 are generally inapplicable to mine discharges and non-point source mine discharges except to the extent provided in Chapter 4. Subparts (2) and (3) thus state opposite rules of incorporation: Chapter 3 procedural rules are generally applicable to Chapter 4 permits, but Chapter 3 effluent and water quality standards are not generally applicable. The relationship between Chapter 3 and Chapter 4 is more fully discussed in the Board's Proposed Opinion of December 13, 1979 (R76-20 and R77-10).

Effective dates and transitional rules have been deleted from Rules 902(d), (e), (f) and (g). In deleting this the Board does not intend to enact a retroactive repeal: the actions which were required by these rules are still required. However, the required actions either took place or did not take place at times long since past. If there are unresolved cases dating from this period, the parties will have to refer to old copies of Chapter 3. The probability of this is such that it is not worth the trouble of carrying the language in subsequent editions of Chapter 3.

Federal regulations on NPDES permit reissuance which were then in effect were included in old Rule 902(i) at the time of its adoption (40 C.F.R. §124.52, now repealed). The United States Environmental Protection Agency (USEPA) recently published new federal NPDES regulations (40 C.F.R. §§122-125; 44 Fed. Reg. 32,854, 32,899). These rules no longer differentiate reissuance of NPDES permits which have expired from other permit issuances. Nowhere is there language which requires that the reissuance be conditioned on compliance with previous permit limitations. (Agency Comment of February 25, 1980). Deletion of Rule 902(i)(1)(i), (ii) and (iii) will bring the Board's NPDES procedural rules into line with the current federal practice.

Under Rule 912(b)(1) of Chapter 3 the Board can revoke a permit because of violation of its terms or conditions. The Agency can refuse to issue a permit where the applicant does not show that the facility will be operated without violation of the Act and rules. A history of inability, failure, refusal or neglect to comply with the conditions of the previous permit is evidence to be considered in an action to revoke a permit or in an application for reissuance. However, the deleted parts of Rule 902(i)(1) appear to create a more stringent standard for permit reissuance: substantial compliance with the conditions of the expiring permit.

Application of Rule 902(i) has led to a class of permits which cannot be reissued even though the extent of non-compliance is insufficient to warrant an enforcement action. Under the Illinois Administrative Procedure Act these permits continue in effect beyond their expiration dates where timely reapplication is made [Ill. Rev. Stat. (1977) ch. 127, §1016(b)]. It would be preferable if these permittees could be issued new permits reflecting any changes in the permitted facility and based on regulations currently in effect. Under Rule 902(i)(1)(i) the Agency has been unable to renew permits issued to municipal dischargers whose compliance plans cannot meet the 1983 deadline imposed by Congress, even though the cause of the delay is unavailability of construction grant funds.

Rule 902(i) (1) (ii) requires up-to-date information on discharge levels, etc. The Agency can require this by application form under Rule 902(a). Absence of such information will be treated under rules applicable to deficient applications in general. Deletion from Rule 902(i) will avoid the possible interpretation that a more stringent rule applies to reapplications.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

Rules 902(c), (d), (e), (f), (g) and (i) of Chapter 3: Water Pollution are deleted and the language below is substituted. Changes from the Proposed Order of December 13, 1979 are indicated by underlining. This Final Order of the Board is subject to modification or withdrawal in the event of comment or objection by the Joint Committee on Administrative Rules.

902(c) Mining Activities

- (1) If, as defined by Rule 201 of Chapter 4, 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 Rule 303, 304 and 504 of Chapter 4. If the facility will have a discharge other than a mine discharge or non-point source mine discharge as defined by Rule 201 of Chapter 4, the applicant shall also submit an NPDES permit application in accordance with Rule 959 on forms supplied by the Agency.
- (2) As provided by Rule 301 of Chapter 4, except to the extent contradicted in Chapter 4, the rules contained in this subpart A of Part IX apply to Chapter 4 NPDES permits.
- (3) As provided by Rule 600 of Chapter 4, except to the extent provided in Chapter 4, the effluent and water quality standards of Parts II, III and IV of Chapter 3 are inapplicable to mine discharges and non-point source mine discharges.

902(d) Deleted.

902(e) Deleted.

902(f) Deleted.

902(g) 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 FWPCA, or with any applicable zoning or siting requirements established pursuant to Section 208(b)(2)(C) of the FWPCA, and any other applicable water quality standards and applicable effluent standards and limitations.

902(i) Renewal

- (1) Any permittee who wishes to continue to discharge after the expiration date of his NPDES Permit shall apply for reissuance of the permit not less than 180 days prior to the expiration date of the permit.
- (2) The Agency shall circulate public notice and provide opportunity for public hearing, as provided for in this Subpart A, in the same manner as for a new permit application.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 15th day of May, 1980 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board