

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

**PART 309  
PERMITS**

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**AUTHORITY:** Implementing Sections 13 and 13.3 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/13, 13.3 and 27].

**SOURCE:** Adopted in R71-14, at 4 PCB 3, March 7, 1972; amended in R73-11, 12, at 14 PCB 661, December 5, 1974, at 16 PCB 511, April 24, 1975, and at 28 PCB 509, December 20, 1977; amended in R73-11, 12, at 29 PCB 477, at 2 Ill. Reg. 16, p. 20, effective April 20, 1978; amended in R79-13, at 39 PCB 263, at 4 Ill. Reg. 34, p. 159, effective August 7, 1980; amended in R77-12B, at 41 PCB 369, at 5 Ill. Reg. 6384, effective May 28, 1981; amended in R76-21, at 44 PCB 203, at 6 Ill. Reg. 563, effective December 24, 1981; codified at 6 Ill. Reg. 7818; amended in R82-5, 10, at 54 PCB 411, at 8 Ill. Reg. 1612, effective January 18, 1984; amended in R86-44 at 12 Ill. Reg. 2495, effective January 13, 1988; amended in R88-1 at 13 Ill. Reg. 5993, effective April 18, 1989; amended in R88-21(A) at 14 Ill. Reg. 2892, effective February 13, 1990; amended in R91-5 at 16 Ill. Reg. 7339, effective April 27, 1992; amended in R95-22 at 20 Ill. Reg. 5526, effective April 1, 1996; amended in R99-8 at 23 Ill. Reg. 11287, effective August 26, 1999; amended in R02-11 at 27 Ill. Reg. 202, effective December 20, 2002; amended in R03-19 at 28 Ill. Reg. 7310, effective May 7, 2004; amended in R07-9 at 32 Ill. Reg. 14978, effective September 8, 2008, amended at in R08-09(D) at 39 Ill. Reg. 9433, effective July 1, 2015; amended in R15-24 at 40 Ill. Reg. 8597, effective June 13, 2016.

## **SUBPART A: NPDES PERMITS**

### **Section 309.101 Preamble**

- a) Permits may be required under either of two subparts -- NPDES Permits, Subpart A, which regulate discharges into navigable waters as defined in the CWA, or Other Permits, Subpart B, which regulate certain structures and discharges therefrom that are not required to have an NPDES Permit.
- b) Unless the contrary is clearly indicated, all references to "Parts" or "Sections" are to Ill. Adm. Code, Title 35: Environmental Protection. For example, "Part 309" is 35 Ill. Adm. Code 309, and "Section 309.101" is 35 Ill. Adm. Code 309.101.

(Editor's Note: Paragraph (b) was added during the codification process to clarify references to other Parts or Sections of the Illinois Administrative Code.)

### **Section 309.102 NPDES Permit Required**

- a) Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit

issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

- b) Neither an NPDES permit nor a state permit is required for any discharge into a well which is authorized by a UIC (Underground Injection Control) permit issued by the Agency pursuant to 35 Ill. Adm. Code 702 and 704 of Subtitle G. For such wells, compliance with the UIC permit requirements of Section 12(g) is deemed compliance with the NPDES permit requirement of Section 12(f) of the Act.

(Source: Amended at 8 Ill. Reg. 1612, effective January 18, 1984)

### **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, 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 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 toxicants 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 subsection (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);
  - 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 subsection (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 III. 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 waste facility shall complete, sign, and submit an NPDES application in accordance with the provisions of 35 III. Adm. Code: Subtitle E, Chapter I.

c) Mining Activities

- 1) If, as defined by 35 III. 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 III. 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 III. 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 III. Adm. Code 403.101, except to the extent contradicted in 35 III. Adm. Code: Subtitle D, Chapter I, the rules contained in this Subpart apply only to 35 III. Adm. Code: Subtitle D, Chapter I NPDES Permits.
- 3) As provided by 35 III. Adm. Code 406.100, except to the extent provided in 35 III. Adm. Code: Subtitle D, Chapter I, the effluent standards of 35 III. Adm. Code 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 USC 1251 et seq), or with any other applicable water quality standards and applicable effluent standards and limitations.
- 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 32 Ill. Reg. 14978, effective September 8, 2008)

**Section 309.104      Renewal**

- a) Any permittee who wishes to continue to discharge after the expiration date of the NPDES Permit must timely apply for reissuance of the permit.
  - 1) A permittee has submitted a timely application for a new permit when:
    - A) The permittee submits:
      - i) an application 180 days prior to the expiration date of the existing permit; or
      - ii) a request for a waiver in writing to the Agency, the Agency grants a written waiver to submit the application less than 180 days prior to the expiration date of the existing permit, and the applicant submits an application within the timeframe listed in the waiver request. Such a

waiver request must include the permittee's reasonably justifiable causes for not meeting the 180 day timeframe. A waiver of the 180 day submittal requirement must be filed a minimum of 60 days prior to expiration of the permit, and shall include the date by which the permittee will submit the application.

- B) The Agency shall not grant a waiver for applications to be submitted later than the expiration date of the existing permit.
  - C) Any Agency decision to deny a waiver request must be made within 21 days after receipt of the waiver request.
- 2) The terms and conditions of an expiring permit remain effective and enforceable against the discharger until the Agency takes final action on the pending permit application, only if:
- A) the permittee has submitted a timely application pursuant to subsection (a)(1); and
  - B) the Agency, through no fault of the permittee, does not issue a new permit on or before the expiration date of the previous permit.
- b) All permittees that timely apply for an NPDES permit renewal must pay an annual NPDES discharge fee pursuant to Section 12.5 of the Act.
  - c) The Agency must circulate public notice and provide opportunity for public hearing, as provided for in this Subpart A, in the same manner as for a new permit application.

(Source: Amended at 40 Ill. Reg. 8597, effective June 13, 2016)

### **Section 309.105 Authority to Deny NPDES Permits**

No NPDES Permit may be issued in any case in which:

- a) The permit would authorize the discharge of a radiological, chemical or biological warfare agent or high-level radioactive waste;
- b) The discharge would, in the judgment of the Secretary of the Army acting through the Chief of Engineers, result in the substantial impairment of anchorage and navigation;

- c) The proposed permit is objected to in writing by the Administrator of the U.S. Environmental Protection Agency pursuant to any right to object given to the Administrator under Section 402(d) of the CWA;
- d) The permit would authorize a discharge from a point source which is in conflict with a plan approved under Section 208(b) of the CWA; or
- e) The applicant has not provided proof to the Agency that he will meet any schedule of compliance which may be established, in accordance with the Act and regulations, as a condition of his permit.

**Section 309.106 Access to Facilities and Further Information**

If the Agency determines that either further information or a site visit is necessary for the Agency to evaluate an NPDES Permit application, it shall notify the applicant and make arrangements to secure the additional information or make the site visit. If adequate information is not received within the period of time specified by the Agency, the permit shall either be issued on the basis of the information currently before the Agency or be denied, and the applicant so notified.

**Section 309.107 Distribution of Applications**

When the Agency determines that an application for an NPDES Permit is complete, it shall:

- a) Unless otherwise agreed, send a copy of the application to the District Engineer of the appropriate district of the U.S. Corps of Engineers with a letter requesting that the District Engineer provide, within 30 days or as otherwise stated in the Agency's letter, his evaluation of the impact of the discharge on anchorage and navigation. If the District Engineer responds that anchorage and navigation of any of the navigation waters would be substantially impaired by the granting of a permit, the permit will be denied and the Agency shall notify the applicant. If the District Engineer informs the Agency that the imposition of specified conditions upon the NPDES Permit is necessary to avoid any substantial impairment of any of the navigable waters, the Agency shall include in the permit those conditions specified by the District Engineer.
- b) Send two copies of the application to the Regional Administrator of the U.S. Environmental Protection Agency with a letter stating that the application is complete.
- c) Notify the Illinois Department of Natural Resources (DNR), subject to any memorandum of agreement between the Agency and the DNR.

(Source: Amended at 28 Ill. Reg. 7310, effective May 7, 2004)

### **Section 309.108 Tentative Determination and Draft Permit**

Following the receipt of a complete application for an NPDES Permit, the Agency shall prepare a tentative determination. Such determination shall include at least the following:

- a) A Statement regarding whether an NPDES Permit is to be issued or denied; and
- b) If the determination is to issue the permit, a draft permit containing:
  - 1) Proposed effluent limitations, consistent with federal and state requirements;
  - 2) A proposed schedule of compliance, if the applicant is not in compliance with applicable requirements, including interim dates and requirements consistent with the CWA and applicable regulations, for meeting the proposed effluent limitations;
  - 3) A brief description of any other proposed special conditions which will have a significant impact upon the discharge.
- c) A brief description of the basis for each of the permit conditions listed in Section 309.108(b), including a brief description of any mixing zones, how the conditions of the draft permit were derived, and the statutory or regulatory provisions and appropriate supporting references.
- d) Upon tentative determination to issue or deny an NPDES Permit:
  - 1) If the determination is to issue the permit the Agency shall notify the applicant in writing of the content of the tentative determination and draft permit and of its intent to circulate public notice of issuance in accordance with Sections 309.108 through 309.112;
  - 2) If the determination is to deny the permit, the Agency shall notify the applicant in writing of the tentative determination and of its intent to circulate public notice of denial, in accordance with Sections 309.108 through 309.112. In the case of denial, notice to the applicant shall include a statement of the reasons for denial, as required by Section 39(a) of the Act.

- e) For the purposes of Title X of the Act [415 ILCS 5/Title X], the documents supporting the Agency's tentative decision to issue or deny an NPDES permit under this Section shall be either identified in or made part of the Agency record.

(Source: Amended at 28 Ill. Reg. 7310, effective May 7, 2004)

**Section 309.109      Public Notice**

- a) Upon tentative determination to issue or deny an NPDES Permit, completion of the draft permit, if any, and not earlier than 10 days following notice to the applicant pursuant to Section 309.108(d), the Agency shall circulate public notice of the completed application for an NPDES Permit in a manner designed to inform interested and potentially interested persons of the discharge or proposed discharge and of the proposed determination to issue or deny an NPDES Permit for the discharge or proposed discharge. Procedures for the circulation of public notice shall include at least the following concurrent actions:
  - 1) Notice shall be mailed to the applicant;
  - 2) Notice shall be circulated within the geographical area of the proposed discharge; such circulation may include any or all of the following:
    - A) Posting in the post office and public places of the municipality nearest the premises of the applicant in which the effluent source is located;
    - B) Posting near the entrance to the applicant's premises and in nearby places;
    - C) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation; and
    - D) Any other notice requirements necessary to meet the requirements of the Act and the CWA;
  - 3) Notice shall be mailed to any person or group upon request;
  - 4) The Agency shall add the name of any person or group upon request to a mailing list to receive copies of notices for all NPDES applications within the State of Illinois or within a certain geographical area.

- b) The Agency shall provide a period of not less than 30 days following the date of first publication of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the NPDES application. All comments shall be submitted to the Agency and to the applicant. All written comments submitted during the 30-day comment period shall be retained by the Agency and considered in the formulation of its final determinations with respect to the NPDES application. The period for comment may be extended at the discretion of the Agency by publication as provided in Section 309.109.

(Source: Amended at 2 Ill. Reg. no. 16, page 20, effective April 20, 1978.)

### **Section 309.110      Contents of Public Notice of Application**

The contents of public notice of applications for NPDES Permits shall include at least the following:

- a) Name, address, and telephone number of the Agency;
- b) Name and address of the applicant;
- c) Brief description of the applicant's activities or operations which result in the discharge described in the NPDES application (e.g., municipal waste treatment plant, steel manufacturing, drainage from mine activities);
- d) Name, if any, of the waterway to which the discharge is made and a short description of the location of the discharge indicating whether it is a new or an existing discharge;
- e) A statement of the tentative determination to issue or deny an NPDES Permit for the discharge described in the application;
- f) A brief description of the procedures for the formulation of final determinations, including the procedures for submitting comments and expiration date of the comment period; and
- g) Address and telephone number of Agency premises at which interested persons may obtain further information, request a copy of the fact sheet, and inspect and copy NPDES forms and related documents.

(Source: Amended at 2 Ill. Reg. no.16, page 20, effective April 20, 1978.)

### **Section 309.111      Combined Notices**

- a) The Agency may circulate public notice of applications for more than one NPDES Permit at a time. If a public notice deals with more than one NPDES Permit application, the information required by Section 309.109 above shall be included in the notice for each application.
- b) To expedite the administrative disposition of NPDES Permit applications, the Agency may publish, for one or more NPDES Permit applications at a time, combined public notices and notices of public hearing as required by Sections 309.115 through 309.119 hereof. Any such combined public notice and notice of hearing shall contain all the information which would be required and shall be circulated to all the persons to whom each notice would be required to be sent if the notices were published separately.

(Source: Amended at 2 Ill. Reg. no.16, page 20, effective April 20, 1978.)

### **Section 309.112 Agency Action After Comment Period**

Subject to Section 309.120, if, after the comment period provided, no public hearing is held with respect to the permit, the Agency shall, after evaluation of any comments which may have been received, either issue or deny the permit.

(Source: Amended at 28 Ill. Reg. 7310, effective May 7, 2004)

### **Section 309.113 Fact Sheets**

- a) For every discharge which has a total volume of more than 500,000 gallons (1.9 megaliters) on any day of the year, the Agency shall prepare and, following public notice, shall send upon request to any person a fact sheet with respect to the application described in the public notice. The contents of such fact sheets shall include at least the following information:
  - 1) A sketch or detailed description of the location of the discharge described in the application;
  - 2) A quantitative description of the proposed discharge described in the application which includes at least the following:
    - A) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow;
    - B) For thermal discharges subject to limitation under the Act, the average monthly temperatures for the discharge;

- C) The average daily mass discharged and average concentration in milligrams per liter, or other applicable units of measurement, of any contaminants which are present in significant quantities or which are subject to limitations or prohibitions under applicable provisions of the CWA or the Act or regulations adopted thereunder;
  - 3) The tentative determinations required under Section 309.108;
  - 4) A brief citation, including an identification of the uses for which the receiving waters have been classified, of the water quality standards and effluent standards and limitations applicable to the proposed discharge;
  - 5) In the case of modified and reissued permits, a summary of changes between the public noticed permit and the previous permit;
  - 6) Summary of the antidegradation analysis, including characterization of the receiving waters and the existing uses of the receiving waters;
  - 7) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice, including:
    - A) The beginning and ending dates of the comment period and address where comments will be received;
    - B) Procedures for requesting a public hearing and the nature thereof; and
    - C) Any other procedures by which the public may participate in the formulation of the final determination; and-
  - 8) Information on how to obtain the Agency record.
- b) The Agency shall add the name of any person or group, upon request, to a mailing list to receive copies of fact sheets.

(Source: Amended at 28 Ill. Reg. 7310, effective May 7, 2004)

**Section 309.114      Notice to Other Governmental Agencies**

At the time of issuance of public notice pursuant to Sections 309.109 through 309.112, the Agency shall:

- a) Send a fact sheet, if one has been prepared, to any other states whose waters may be affected by the issuance of the proposed permit and, upon request, provide such states with a copy of the application and a copy of the draft permit. Each affected State shall be afforded an opportunity to submit written recommendations within a stated number of days to the Agency and to the Regional Administrator of the U.S. Environmental Protection Agency, which the Agency may incorporate into the permit if issued. Should the Agency decline to incorporate any written recommendations thus received, it shall provide to the affected state or states (and to the Regional Administrator) a written explanation of its reasons for declining to accept any of the written recommendations.
- b) Following the procedure set forth in subsection (a), notify and receive recommendations from any interstate agency having water quality control authority over waters which may be affected by the permit.
- c) Unless otherwise agreed, in accordance with 40 CFR 124.34(c), send a copy of the fact sheet, if one has been prepared, to the appropriate District Engineer of the Army Corps of Engineers for discharges (other than minor discharges) into navigable waters.
- d) Upon request, send a copy of the public notice and a copy of the fact sheet for NPDES Permit applications to any other Federal, states, or local agency, or any affected country, and provide such agencies an opportunity to respond, comment, or request a public hearing pursuant to Sections 309.115-309.119. Such agencies shall include at least the following:
  - 1) The agency responsible for the preparation of an approved plan pursuant to Section 208(b) of the CWA; and
  - 2) The State or interstate agency responsible for the preparation of a plan pursuant to an approved continuous planning process under Section 303(e) of the CWA.
- e) Send notice to, and coordinate with, appropriate public health agencies for the purpose of assisting the applicant in integrating the relevant provisions of the CWA with any applicable requirements of such public health agencies.

(Source: Amended at 28 Ill. Reg. 7310, effective May 7, 2004)

**Section 309.115      Public Hearings on NPDES Permit Applications**

- a) 1) The Agency shall hold a public hearing on the issuance or denial of the an NPDES Permit or group of permits whenever the Agency determines that there exists a significant degree of public interest in the proposed permit or group of permits (instances of doubt shall be resolved in favor of holding the hearing), to warrant the holding of such a hearing.
- 2) Any person, including the applicant, may submit to the Agency a request for a public hearing or a request to be a party at such a hearing to consider the proposed permit or group of permits. Any such request for public hearing shall be filed within the 30-day public comment period and shall indicate the interest of the part filing such a request and the reasons why a hearing is warranted.
- b) When the Agency has determined under paragraphs (a) and (b) that a public hearing is required, the Director shall appoint one or more employees of the Agency to serve as a Hearing Board and shall designate one to serve as Chairman.
- c) The Chairman of the hearing board shall promptly schedule the matter for hearing to be held within 60 days from the filing of the first request for public hearing, or as may be otherwise agreed among the parties.
- d) Hearings held pursuant to this Section shall be held in the geographical area in which the discharges or proposed discharges are located, or other appropriate location, as determined by the Chairman. Consideration shall be give to facilitating attendance of interested or affected persons and organizations and to accessibility of hearing sites to public transportation. The Chairman shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear and complete hearing file.

**Section 309.116      Notice of Agency Hearing**

The Agency shall issue public notice of such hearing not less than 30 days prior to the date of such hearing, in the manner described by Sections 309.109 through 309.112 for public notice. The Agency shall send notices of the hearing to all persons and governmental agencies who had received notice of the application under Sections 309.109 through 309.112 and 309.114. Such notice shall include at least the following:

- a) Name, address, and telephone number of the Agency;

- b) Name and address of each applicant whose application will be considered at the hearing;
- c) Name of waterway to which each applicant's discharge is to be made and a short description of the location of each such discharge on the waterway;
- d) A brief reference to the public notice issued for the NPDES application, including identification number (if any) and date of issuance;
- e) Information regarding the time and location of the hearing;
- f) The purpose of the hearing;
- g) A concise statement of the issues to be considered at the hearing;
- h) Address and telephone number of premises at which interested persons may obtain further information, request a copy of the draft permit, request a copy of the fact sheet, request a copy of the regulations governing the conduct of the hearing, and inspect and copy NPDES forms and related documents; and
- i) A statement that the hearing will be conducted in accordance with the provisions of Sections 309.115 through 309.119.

**Section 309.117 Agency Hearing**

The applicant or any person shall be permitted to submit oral or written statements and data concerning the proposed permit or group of permits. The Chairman shall have authority to fix reasonable limits upon the time allowed for oral statements, and may require statements in writing.

**Section 309.118 Agency Hearing File**

- a) Following the public hearing, the Chairman shall prepare a hearing file, which shall include:
  - 1) Copies of statements submitted in writing;
  - 2) A summary of the statements submitted orally;
  - 3) A report of the major issues raised at the hearing;
  - 4) An estimate of the number of persons present; and

- 5) His recommendations concerning actions to be taken of the proposed permit or permits as a result of the hearing.
- b) The hearing file shall be available upon request to any member of the public and to representatives of the U.S. Environmental Protection Agency.

**Section 309.119 Agency Action After Hearing**

Subject to Section 309.120, following the public hearing, the Agency may make such modifications in the terms and conditions of proposed permits as may be appropriate and shall transmit to the Regional Administrator for his approval a copy of the permit proposed to be issued unless the Regional Administrator has waived his right to receive and review permits of its class. The Agency shall provide a notice of such transmission to the applicant, to any person who participates in the public hearing, to any person who requested a public hearing, and to appropriate persons on the mailing list established under Sections 309.109 through 309.112. Such notice shall briefly indicate any significant changes which were made from terms and conditions set forth in the draft permit. All permits become effective when issued unless a different date is specified in the permit.

(Source: Amended at 28 Ill. Reg. 7310, effective May 7, 2004)

**Section 309.120 Reopening the Record to Receive Additional Written Comment**

- a) The Agency shall order the public comment period reopened to receive additional written comments where the Agency significantly modifies the draft permit and the final permit is not a logical outgrowth of the proposed draft permit. In determining if the final permit is a logical outgrowth of the draft permit, the Agency shall consider the following:
  - 1) Whether the interested parties could not have reasonably anticipated the final permit from the draft permit;
  - 2) Whether a new round of notice and comment would provide interested parties the first opportunity to offer comments on the issue; or
  - 3) Whether the provisions in the final permit deviate sharply from the concepts included in the draft permit or suggested by the commenters.
- b) The public notice of any comment period extended under this Section shall identify the issues as to which the public comment period is being

reopened. Comments filed during the reopened period shall be limited to the substantial new issues that caused its reopening.

- c) For the purposes of the notification required by subsection (b), the Agency shall follow the public notice requirements of Section 309.109.

(Source: Added at 28 Ill. Reg. 7310, effective May 7, 2004)

## **SUBPART A: NPDES PERMITS**

### **Section 309.141 Terms and Conditions of NPDES Permits**

In establishing the terms and conditions of each issued NPDES Permit, the Agency shall apply and ensure compliance with all of the following, whenever applicable:

- a) Effluent limitations under sections 301 and 302 of the CWA;
- b) Standards of performance for new sources under section 306 of the CWA;
- c) Effluent standards, effluent prohibitions, and pretreatment standards under section 307 of the CWA;
- d) Any more stringent limitation, including those:
  - 1) necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any Illinois statute or regulation (under authority preserved by section 510 of the CWA),
  - 2) necessary to meet any other federal law or regulation, or
  - 3) required to implement any applicable water quality standards, such limitations to include any legally applicable requirements necessary to implement total maximum daily loads established pursuant to section 303(d) of the CWA and incorporated in the continuing planning process approved under section 303(e) of the CWA and any regulations or guidelines issued pursuant to that statute;
- e) Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to section 208(b) of the CWA;
- f) Prior to promulgation by the Administrator of the U.S. Environmental Protection Agency of applicable effluent standards and limitations pursuant to sections 301, 302, 306 and 307 of the CWA, such conditions

as the Agency determines are necessary to carry out the provisions of the CWA;

- g) If the NPDES Permit is for the discharge of pollutants into navigable waters from a vessel or other floating craft (except that no NPDES Permit shall be issued for the discharge of pollutants from a vessel or other floating craft into Lake Michigan), any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage and stowage of pollutants; and
- h) If the NPDES Permit is for the discharge of pollutants from other than wet weather point sources into the Lake Michigan Basin as defined at 35 Ill. Adm. Code 303.443:
  - 1) Total Maximum Daily Loads (TMDLs) and Waste Load Allocation (WLA) will be established through either the LaMP or a RAP for an Area of Concern. If a LaMP or RAP has not been completed and adopted, effluent limits shall be established consistent with the other provisions of this Section, including, but not limited to, Additivity, Intake Pollutants, Loading Limits, Level of Detection/Level of Quantification and Compliance Schedules. When calculation of TMDLs or a WLA is incomplete and it is expected that limits established through other provisions will be superseded upon completion of the TMDL or WLA process, those limits shall be identified as interim and the permit shall include a reopener clause triggered by completion of a TMDL or WLA determination. Any new limits brought about through exercise of the reopener clause shall be eligible for delayed compliance dates and compliance schedules consistent with Section 39(b) of the Act [415 ILCS 5/39(b)], Section 309.148 of this Part, and 35 Ill. Adm. Code 352.Subpart H.
  - 2) 35 Ill. Adm. Code 302.590 establishes an acceptable additive risk level of one in 100,000 ( $10^5$ ) for establishing Tier I criteria and Tier II values for combinations of substances exhibiting a carcinogenic or other nonthreshold toxic mechanism. For those discharges containing multiple nonthreshold substances application of this additive standard shall be consistent with this subsection (h).
    - A) For discharges in the Lake Michigan Basin containing one or more 2,3,7,8-substituted chlorinated dibenzo-p-dioxins or 2,3,7,8-substituted dibenzofurans, the tetrachloro dibenzo-p-dioxin 2,3,7,8-TCDD toxicity equivalence

concentration ( $TEC_{TCDD}$ ) shall be determined as outlined in subsection (h)(2)(B).

- B) The values listed in the following Table shall be used to determine the 2,3,7,8-TCDD toxicity equivalence concentrations using the following equation:

$$(TEC)_{TCDD} = \sum (C)_x (TEF)_x (BEF)_x$$

WHERE:

$(TEC)_{TCDD}$	=	2,3,7,8-TCDD toxicity equivalence concentration in effluent
$(C)_x$	=	Concentration of total chemical x in effluent
$(TEF)_x$	=	TCDD toxicity equivalency factor for x
$(BEF)_x$	=	TCDD bioaccumulation equivalency factor for x

TABLE

Congener	TEF	BEF
2,3,7,8-TCDD	1.0	1.0
1,2,3,7,8-PeCDD	0.5	0.9
1,2,3,4,7,8-HxCDD	0.1	0.3
1,2,3,6,7,8-HxCDD	0.1	0.1
1,2,3,7,8,9-HxCDD	0.1	0.1
1,2,3,4,6,7,8-HpCDD	0.01	0.0
OCDD	0.001	0.0
2,3,7,8-TCDF	0.1	0.8
1,2,3,7,8-PeCDF	0.05	0.2
2,3,4,7,8-PeCDF	0.5	1.6
1,2,3,4,7,8-HxCDF	0.1	0.0
1,2,3,6,7,8-HxCDF	0.1	0.2
2,3,4,6,7,8-HxCDF	0.1	0.7
1,2,3,7,8,9-HxCDF	0.1	0.6
1,2,3,4,6,7,8-HpCDF	0.01	0.0
1,2,3,4,7,8,9-HpCDF	0.01	0.4
OCDF	0.001	0.0

- C) Any combination of carcinogenic or otherwise nonthreshold toxic substances shall be assessed on a case-by-case basis. The Agency shall only consider such additivity for chemicals that exhibit the same type of effect and the same mechanism of toxicity, based on available scientific information that supports a reasonable assumption of additive effects.

3) Reasonable potential to exceed.

- A) The first step in determining if a reasonable potential to exceed the water quality standard exists for any particular pollutant parameter is the estimation of the maximum expected effluent concentration for that substance. That estimation will be completed for both acute and chronic exposure periods and is termed the PEQ. The PEQ shall be derived from representative facility-specific data to reflect a 95 percent confidence level for the 95th percentile value. These data will be presumed to adhere to a lognormal distribution pattern unless the actual effluent data demonstrates a different distribution pattern. If facility-specific data in excess of 10 data values is available, a coefficient of variation that is the ratio of the standard deviation to the arithmetic average shall be calculated by the Agency. The PEQ is derived as the upper bound of a 95 percent confidence bracket around the 95th percentile value through a multiplier from the following table applied to the maximum value in the data set that has its quality assured consistent with 35 Ill. Adm. Code 352.410 as appropriate for acute and chronic data sets.

$$\text{PEQ} = (\text{maximum data point})(\text{statistical multiplier})$$

Coefficient of Variation

No. Samples	0.1	0.2	0.3	0.4	0.5	0.6	0.7	0.8	0.9	1.0	1.1	1.2	1.3
1	1.4	1.9	2.6	3.6	4.7	6.2	8.0	10.1	12.6	15.5	18.7	22.3	26.4
2	1.3	1.6	2.0	2.5	3.1	3.8	4.6	5.4	6.4	7.4	8.5	9.7	10.9
3	1.2	1.5	1.8	2.1	2.5	3.0	3.5	4.0	4.6	5.2	5.8	6.5	7.2
4	1.2	1.4	1.7	1.9	2.2	2.6	2.9	3.3	3.7	4.2	4.6	5.0	5.5
5	1.2	1.4	1.6	1.8	2.1	2.3	2.6	2.9	3.2	3.6	3.9	4.2	4.5
6	1.1	1.3	1.5	1.7	1.9	2.1	2.4	2.6	2.9	3.1	3.4	3.7	3.9
7	1.1	1.3	1.4	1.6	1.8	2.0	2.2	2.4	2.6	2.8	3.1	3.3	3.5
8	1.1	1.3	1.4	1.6	1.7	1.9	2.1	2.3	2.4	2.6	2.8	3.0	3.2
9	1.1	1.2	1.4	1.5	1.7	1.8	2.0	2.1	2.3	2.4	2.6	2.8	2.9
10	1.1	1.2	1.3	1.5	1.6	1.7	1.9	2.0	2.2	2.3	2.4	2.6	2.7
11	1.1	1.2	1.3	1.4	1.6	1.7	1.8	1.9	2.1	2.2	2.3	2.4	2.5
12	1.1	1.2	1.3	1.4	1.5	1.6	1.7	1.9	2.0	2.1	2.2	2.3	2.4
13	1.1	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.9	2.0	2.1	2.2	2.3
14	1.1	1.2	1.3	1.4	1.4	1.5	1.6	1.7	1.8	1.9	2.0	2.1	2.2
15	1.1	1.2	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.8	1.9	2.0	2.1

16	1.1	1.1	1.2	1.3	1.4	1.5	1.6	1.6	1.7	1.8	1.9	1.9	2.0
17	1.1	1.1	1.2	1.3	1.4	1.4	1.5	1.6	1.7	1.7	1.8	1.9	1.9
18	1.1	1.1	1.2	1.3	1.3	1.4	1.5	1.6	1.6	1.7	1.7	1.8	1.9
19	1.1	1.1	1.2	1.3	1.3	1.4	1.5	1.5	1.6	1.6	1.7	1.8	1.8
20	1.1	1.1	1.2	1.2	1.3	1.4	1.4	1.5	1.5	1.6	1.6	1.7	1.7
30	1.0	1.1	1.1	1.1	1.2	1.2	1.2	1.3	1.3	1.3	1.3	1.4	1.4
40	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2
50	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.1	1.1
60 or greater	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0

- i) If the PEQ is less than or equal to the water quality standard, there is no reasonable potential and no limit will be established in the permit.
  - ii) If the PEQ is more than the water quality standard, the Agency will proceed to consideration of dilution and mixing pursuant to subsection (h)(4).
- B) If facility-specific data of 10 or less data values is available, an alternative PEQ shall be derived using the table in subsection (h)(3)(A) assuming a coefficient of variation of 0.6, applied to the maximum value in the data set that has its quality assured consistent with 35 Ill. Adm. Code 352.410.
  - i) If the PEQ is less than or equal to the water quality standard, there is no reasonable potential and no limit will be established in the permit.
  - ii) If the PEQ exceeds the water quality standard, an alternative PEQ will be calculated using the maximum value in the data set and a multiplier of 1.4. If the alternative PEQ also exceeds the water quality standard, the Agency will proceed to consider dilution and mixing pursuant to subsection (h)(4).
  - iii) If the PEQ exceeds the water quality standard but the alternative PEQ is less than or equal to the standard, the Agency will either proceed to consider dilution and mixing pursuant to subsection (h)(4), or will incorporate a monitoring requirement and reopener clause to reassess the potential to exceed within a specified time schedule, not to exceed one

year. In determining which of these options to use in any individual application, the Agency shall consider the operational and economic impacts on the permittee and the effect, if any, deferral of a final decision would have on an ultimate compliance schedule if a permit limit were subsequently determined to be necessary.

- C) The Agency shall compare monthly average effluent data values, when available, with chronic aquatic life, human health and wildlife standards to evaluate the need for monthly average water quality based effluent limitations (WQBELs). The Agency shall use daily effluent data values to determine whether a potential exists to exceed acute aquatic life water quality standards.
  - D) The Agency may apply other scientifically defensible statistical methods for calculating PEQ for use in the reasonable potential analysis as provided for in Procedure 5.b.2 of appendix F to 40 CFR 132, incorporated by reference at 35 Ill. Adm. Code 301.106.
  - E) Regardless of the statistical procedure used, if the PEQ for the parameter is less than or equal to the water quality standard for that parameter, the Agency shall deem the discharge not to have a reasonable potential to exceed, and a WQBEL shall not be required unless otherwise required under 35 Ill. Adm. Code 352.430.
- 4) If the PEQ for a parameter is greater than the particular water quality standard, criteria or value for that parameter, the Agency will assess the level of treatment being provided by the discharger. If the discharger is providing (or will be providing) a level of treatment consistent with the best degree of treatment required by 35 Ill. Adm. Code 304.102(a), the PEQ derived under subsection (h)(3) shall be compared to a preliminary effluent limitation (PEL) determined by applying an appropriate mixing zone or a default mixing zone to the discharge. Mixing opportunity and dilution credit will be considered as follows:
- A) Discharges to tributaries of the Lake Michigan Basin shall be considered to have no available dilution for either acute or chronic exposures, and the PEL will be set equivalent to

the water quality standard unless dilution is documented through a mixing zone study.

- B) Bioaccumulative chemicals of concern (BCCs):
- i) No mixing shall be allowed for new discharges of BCCs commencing on or after December 24, 1997. The PEL will be set equivalent to the water quality standard.
  - ii) Mixing shall be allowed for discharges of BCCs that existed as of December 24, 1997 in accordance with the requirements of 35 Ill. Adm. Code 302.530.
- C) Direct discharges to the Open Waters of Lake Michigan shall have a default mixing allowance of 2:1 for acute standards, criteria or values and 10:1 for chronic standards, criteria or values if the discharge configuration indicates that the effluent readily and rapidly mixes with the receiving waters. If ready and rapid mixing is in doubt the Agency shall deny any default dilution or mixing allowance and require a mixing or dispersion study to determine the proper dilution allowance. If the discharger applies for more than the default dilution or mixing allowance, it must submit a mixing or dispersion study to justify its request. Whenever a mixing or dispersion study is available, it shall be used to determine dilution or mixing allowance in lieu of the default allowance.

5) Preliminary effluent limitations calculations.

- A) The preliminary effluent limitation (PEL) is calculated in a simple mass balance approach reflecting the dilution allowance established in subsection (h)(4):

$$\begin{aligned} \text{WQS} &= [(Q_e)(\text{PEL}) + (Q_d)(C_d)] / [Q_e + Q_d] \text{ or} \\ \text{PEL} &= [\text{WQS}(Q_e + Q_d) - (Q_d)(C_d)] / Q_e \end{aligned}$$

WHERE:

$$\begin{aligned} \text{WQS} &= \text{applicable water quality standard, criteria} \\ &\quad \text{or value} \\ Q_e &= \text{effluent flowrate} \\ Q_d &= \text{allowable dilution flowrate} \end{aligned}$$

Cd = background pollutant concentration in dilution water

- B) The representative background concentration of pollutants to develop TMDLs and WLAs calculated in the absence of a TMDL shall be established as follows:
- i) "Background" represents all pollutant loadings, specifically loadings that flow from upstream waters into the specified watershed, water body, or water body segment for which a TMDL or WLA in the absence of a TMDL is being developed and enter the specified watershed, water body, or water body segment through atmospheric deposition, chemical reaction, or sediment release or resuspension.
  - ii) When determining what available data are acceptable for use in calculating background, the Agency shall use its best professional judgment, including consideration of the sampling location and the reliability of the data through comparison, in part, to detection and quantification levels. When data in more than 1 of the data sets or categories described in subsection (h)(5)(B)(iii) exists, best professional judgment shall be used to select the data that most accurately reflects or estimates background concentrations. Pollutant degradation and transport information may be considered when using pollutant loading data to estimate a water column concentration.
  - iii) The representative background concentration for a pollutant in the specified watershed, water body, or water body segment shall be established on a case-by-case basis as the geometric mean of: acceptable water column data; water column concentrations estimated through use of acceptable caged or resident fish tissue data; or water column concentrations estimated through the use of acceptable or projected pollutant loading data. When determining the geometric mean of the data for a pollutant that includes values both above and below the detection level, commonly accepted statistical techniques shall be used to evaluate the data. If all of the acceptable data in a data set are

below the detection level for a pollutant, then all the data for the pollutant in that data set shall be assumed to be zero.

- 6) Water quality based effluent limitations.
  - A) If the PEQ is less than or equal to the PEL, it will be concluded that there is no reasonable potential to exceed. Under such circumstances a permit limit for that contaminant will not be set unless otherwise justified under one or more provisions of 35 Ill. Adm. Code 352.430.
  - B) If the PEQ is equal to or greater than the PEL, and the PEQ was calculated using a data set of more than 10 values, a WQBEL will be included in the permit. If the PEQ was calculated using a data set of less than or equal to 10 values, and the alternative PEQ calculated under subsection (h)(3) (B) also exceeds the PEL, a WQBEL will be included in the permit.
  - C) If the PEQ was calculated using a data set of less than or equal to 10 values, and the PEQ is greater than the PEL but the alternative PEQ is less than the PEL, the Agency will either establish a WQBEL in the permit or incorporate a monitoring requirement and reopener clause to reassess potential to exceed within a specified time schedule, not to exceed one year. In determining which of these options to use in any individual application, the Agency shall consider the operational and economic impacts on the permittee and the effect, if any, deferral of a final decision would have on an ultimate compliance schedule if a permit limit were subsequently determined to be necessary.
  - D) The WQBEL will be set at the PEL, unless the PEL is appropriately modified to reflect credit for intake pollutants when the discharged water originates in the same water body to which it is being discharged. Consideration of intake credit will be limited to the provisions of 35 Ill. Adm. Code 352.425.
  - E) The reasonable potential analysis shall be completed separately for acute and chronic aquatic life effects. When WQBELs are based on acute impacts, the limit will be expressed as a daily maximum. When the WQBEL is based

on chronic effects, the limit will be expressed as a monthly average. Human health and wildlife based WQBELs will be expressed as monthly averages. If circumstances warrant, the Agency shall consider alternatives to daily and monthly limits.

- i) Best management practices (BMPs) to control or abate the discharge of chloride when:
  - 1) Authorized under section 402(p) of the CWA for the control of storm water discharges;
  - 2) Numeric effluent limitations are infeasible; or
  - 3) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.

(Source: Amended at 39 Ill. Reg. 9433, effective July 1, 2015)

#### **Section 309.142 Water Quality Standards and Waste Load Allocation**

In any case in which an NPDES Permit includes as conditions the effluent standards and limitations described in Sections 309.141, 309.142, and 309.143, the Agency shall have determined and verified that the discharge authorized by the permit will not violate applicable water quality standards or a schedule of compliance to achieve applicable water quality standards contained in the NPDES Permit. In any case in which an NPDES Permit applies any more stringent effluent limitation based on applicable water quality standards, a waste load allocation shall be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.

#### **Section 309.143 Effluent Limitations**

- a) Effluent limitations must control all pollutant or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Agency determines are, or may be, discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality. When determining whether a discharge causes, has the reasonable potential to cause or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the Agency shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity

testing (when evaluating whole effluent toxicity), and, where appropriate, the dilution of the effluent in the receiving water.

- b) In the application of effluent standards and limitations, water quality standards and other applicable requirements, the Agency shall, for each permit, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight, and except for discharges whose constituents cannot be appropriately expressed by weight). The Agency may, in its discretion, in addition to specification of daily quantitative limitations by weight, specify other limitations, such as average or maximum concentration limits, for the level of pollutants in the authorized discharge. Effluent limitations for multiproduct operations shall provide for appropriate waste variations from such plants. Where a schedule of compliance is included as a condition in a permit, effluent limitations shall be included for the interim period as well as for the period following the final compliance date.

(Source: Amended at 28 Ill. Reg. 7310, effective May 7, 2004)

#### **Section 309.144 Federal New Source Standards of Performance**

Notwithstanding any other provisions of these regulations, any point source, the construction of which is commenced after the date of enactment of the CWA and which is so constructed as to meet all applicable federal standards of performance as defined in Section 306 of the CWA and Section 301.400 of this Chapter, shall not be subject to any more stringent federal standard of performance during:

- a) A 10-year period beginning on the date of completion of such construction, or
- b) The period of depreciation or amortization of such facility for the purposes of Section 167 or 169 (or both) of the Internal Revenue Code of 1954 (26 U.S.C. 167 and 169), whichever period ends first.

#### **Section 309.145 Duration of Permits**

All NPDES Permits shall be issued for fixed terms not to exceed five years.

#### **Section 309.146 Authority to Establish Recording, Reporting, Monitoring and Sampling Requirements**

- a) The Agency shall require every holder of an NPDES Permit, as a condition of the NPDES Permit issued to the holder, to:
  - 1) Establish, maintain and retain records;
  - 2) Make reports adequate to determine the compliance or lack of compliance with all effluent limits and special conditions in the permit;
  - 3) Install, calibrate, use and maintain monitoring equipment or methods (including where appropriate biological monitoring methods);
  - 4) Take samples of effluents (in accordance with such methods, at such locations, at such intervals, and in such a manner as may be prescribed); and
  - 5) Provide such other information as may reasonably be required.
  
- b) The Agency may require every holder of an NPDES Permit for a publicly owned and publicly regulated treatment works, as a condition of the NPDES Permit, to require industrial users of such a treatment works to:
  - 1) Establish, maintain and retain records;
  - 2) Make reports;
  - 3) Install, calibrate, use and maintain monitoring equipment or methods (including where appropriate biological monitoring methods);
  - 4) Take samples of effluents (in accordance with such methods, at such locations, at such intervals, and in such a manner as may be prescribed); and
  - 5) Provide such other information as may reasonably be required.
  
- c) All such requirements shall be included as conditions of the NPDES Permit issued to the discharger, and shall be at least as stringent as those required by applicable federal regulations when these become effective.
  
- d) All permits shall specify requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate); required monitoring including type, interval, and frequency sufficient to

yield data which are representative of the monitored activity including, when appropriate, continuous monitoring.

(Source: Amended at 28 Ill. Reg. 7310, effective May 7, 2004)

**Section 309.147 Authority to Apply Entry and Inspection Requirements**

- a) Any holder of an NPDES Permit and any industrial user of a publicly owned or publicly regulated sewage treatment plant, shall be required as a condition of the NPDES Permit issued to the holder, and in accordance with constitutional limitations, to allow any authorized representative of the Agency, upon presentation of his credentials, to:
  - 1) Enter any premises of a permittee or of an industrial user of a publicly owned or publicly regulated treatment works in which premises an effluent source is located or in which any applicable records are located that are required to be maintained;
  - 2) At reasonable times have access to and copy any records required to be maintained;
  - 3) Inspect any monitoring equipment or method which is required;
  - 4) Have access to and sample any discharge of contaminants to State waters or to publicly owned or publicly regulated treatment works resulting from the activities or operations of the permittee or industrial user; and
  - 5) Inspect, sample, photograph or otherwise investigate any part of the facilities or equipment of the permit holder or industrial user which the Agency may deem necessary in order to determine the possibility of a present or future violation of the Act, applicable regulations or any NPDES Permit conditions.
- b) The requirements set forth in subsections (a)(1) through (a)(5) above shall be set forth in all NPDES Permits as terms and conditions thereof.

**Section 309.148 Schedules of Compliance**

The Agency shall establish schedules of compliance in NPDES Permits in the following manner:

- a) With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards or other legally applicable requirements, the permittee shall be required to

take specific steps to achieve compliance therewith in the shortest reasonable period of time consistent with the guidelines and requirements of CWA and the Act.

- b) In any case where the period of time for compliance specified in Subsection (a) above exceeds 9 months, a schedule of compliance shall be specified in the permit which will set forth interim requirements and the dates for their achievement; in no event shall more than 9 months elapse between interim dates. If the time necessary for completion of the interim requirements is more than 9 months and is not readily divided into stages for completion, interim dates shall be specified for the submission of reports of progress toward completion of the interim requirement. For each NPDES Permit schedule of compliance, interim dates and the final date for compliance shall, to the extent practicable, fall on the last day of the months of March, June, September, and December.
- c) Not later than 14 days following each interim date and the final date of compliance, the permittee shall provide the Agency with written notice of the permittee's compliance or noncompliance with the interim or final requirement.
- d) Interim and final compliance dates in NPDES permits shall be enforceable without otherwise showing a violation of an effluent limitation or injury to water quality.
- e) The Agency shall make available for public inspection and copying at its Springfield and Chicago offices a copy of the quarterly list as filed with the Regional Administrator in accordance with 40 CFR 124.44(d).
- f) The Agency may establish schedules of compliance in NPDES permits pursuant to applicable federal requirements which may be earlier or later than deadlines established by otherwise applicable regulations of the Board, provided that all schedules of compliance shall require compliance at the earliest reasonable date. However, the Agency shall not issue an NPDES Permit containing a schedule of compliance beyond July 1, 1977, or any other compliance date established by federal law, to any applicant who is not in compliance with, or who has not obtained a variance from applicable Illinois Water Pollution Regulations, or who has not been ordered to apply for and obtain all necessary permits in an appropriate Board enforcement action, for which the deadline for compliance occurred before the effective date of these NPDES Regulations.
- g) In any case in which an NPDES permit includes a schedule of compliance, the Agency shall include in its final determination a statement of the factual basis for such schedule.

- h) Schedules of compliance established by the Agency in NPDES Permits shall be subject to review by the Pollution Control Board in accordance with Sections 309.181 and 309.182 herein.

(Source: Amended at 2 Ill. Reg. no.16, page 20, effective April 20, 1978.)

**Section 309.149 Authority to Require Notice of Introduction of Pollutants into Publicly Owned Treatment Works**

The Agency shall include in all NPDES Permits issued to publicly owned or publicly regulated treatment works conditions requiring the permittee to give notice to the Agency of the following:

- a) Any new introduction of pollutants into such treatment works from a source which would be a new source as defined in Section 306 of the CWA if such source were discharging pollutants directly to the waters of the State;
- b) Except as to such categories and classes of point sources or discharges which may be specified by the Agency, any new introduction of pollutants into such treatment works from a source which would be a point source subject to Section 301 of the CWA if it were discharging such pollutants directly to the waters of the State;
- c) Any substantial change in volume or character of pollutants being introduced into such treatment works by a source introducing pollutants into such works at the time of issuance of the permit; and
- d) All notices required of publicly owned or publicly regulated treatment works pursuant to this section shall be in such form and content as the Agency may require, and shall include information on:
  - 1) The quality and quantity of wastewater to be introduced into such treatment works, and
  - 2) Any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned or publicly regulated treatment works.

(Source: Amended at 2 Ill. Reg. no.16, page 20, effective April 20, 1978.)

**Section 309.150 Authority to Ensure Compliance by Industrial Users with Sections 204(b), 307 and 308 of the Clean Water Act**

- a) Any NPDES Permit issued to a publicly owned or publicly regulated treatment works shall include as a condition that the permittee shall require that any industrial user of such treatment works will comply with federal requirements concerning:
  - 1) User charges and recovery of construction costs pursuant to Section 204(b) of the CWA and applicable regulations appearing in 40 CFR 35;
  - 2) Toxic pollutant effluent standards and pretreatment standards pursuant to Section 307 of the CWA; and
  - 3) Inspection, monitoring and entry pursuant to Section 308 of the CWA.
- b) As a means of ensuring such compliance, the permittee shall require each industrial user subject to the requirements of Section 307 of the CWA to comply with this Section. The permittee shall send to the Agency periodic notice (over intervals not to exceed 9 months) of progress toward full compliance with the requirements of Section 307 of the CWA.

**Section 309.151 Maintenance and Equipment**

Any NPDES Permit issued shall include as a condition that the permittee shall at all times maintain in good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit.

**Section 309.152 Toxic Pollutants**

Any NPDES Permit issued shall include as a condition that if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the CWA for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the NPDES Permit, the Agency shall revise or modify the permit in accordance with the more stringent standard or prohibition and shall so notify the permittee.

**Section 309.153 Deep Well Disposal of Pollutants (Repealed)**

(Source: Repealed at 8 Ill. Reg. 1612, effective January 18, 1984.)

**Section 309.154 Authorization to Construct**

- a) No person shall cause or allow the construction of any new treatment works, disposal well or wastewater source for which an NPDES Permit is required or cause or allow the modification of any existing treatment works, disposal well or wastewater source for which an NPDES Permit is required unless such NPDES Permit contains an authorization to construct as a condition of such permit.
- b) Any holder of a valid NPDES Permit who proposes or is required as a condition of such NPDES Permit or of any order of the Pollution Control Board to construct or modify any treatment works, disposal well, wastewater source, or process modification which results in new or increased discharges of pollutants, shall complete, sign and submit an NPDES application for such construction or modification, in accordance with the instructions provided with the form, no later than 180 days in advance of the date on which construction or modification is to begin. No person shall commence construction until the holder of the NPDES Permit shall have received a modification to the NPDES Permit, or a new NPDES Permit if required, which contains an authorization to construct as a condition of such permit.
- c) The Agency shall not issue any authorization to construct unless the applicant submits adequate proof, including any of the information or documents set forth in Section 309.221 as the Agency may require, which ensures that the proposed construction, modification or operation
  - 1) Either conforms to the criteria promulgated by the Agency under Section 309.221 or is based on other criteria which the applicant proves will produce consistently satisfactory results; and
  - 2) Will not cause a violation of the conditions of the NPDES Permit.

**Section 309.155 Sewage Sludge Disposal**

In establishing the terms and conditions of each issued NPDES Permit, the Agency shall apply and ensure compliance with applicable regulations promulgated under Section 405 of the CWA governing the disposal of sewage sludge from treatment works.

(Source: Added at 5 Ill. Reg. 6384, effective May 28, 1981.)

**Section 309.156 Total Dissolved Solids Reporting and Monitoring**

The Agency shall by permit condition require monitoring and reporting levels of total dissolved solids in effluents unless it finds that such reporting and monitoring is not required to accomplish the purposes of the Act. Monitoring of total dissolved solids levels shall be by any reasonably reliable method.

(Source: Added at 6 Ill. Reg. 563, effective December 24, 1981.)

**Section 309.157 Permit Limits for Total Metals**

- a) The NPDES permit limits for metals must be expressed in total metals form even though the water quality standards for metals specified in Sections 302.208(e), 302.504(a), and 304.105 are in their dissolved form. The total metals permit limit shall be determined by multiplying the dissolved metals concentration and the appropriate metals translator.
- b) The Agency shall adopt procedures for determining site-specific metals translator in accordance with “The Metals Translator: Guidance for Calculating a Total Recoverable Permit Limit from a Dissolved Criterion,” incorporated by reference at 35 Ill. Adm. Code 301.106.
- c) Except as otherwise specified in subsection (d) of this Section, the reciprocal of the conversion factor multiplier used for obtaining the dissolved metals standards at Sections 302.208(e) and 302.504(a) becomes the metals translator and the resulting total metals value becomes the NPDES permit limit.
- d) A permittee may request the Agency, in accordance with the procedures adopted pursuant to subsection (b) of this Section, to calculate a total metals permit limit based on a site-specific metals translator. Upon review and approval of the information submitted by the permittee, the Agency will calculate a total metals permit limit that is protective of the dissolved metals water quality standard.

(Source: Added at 27 Ill. Reg. 202, effective December 20, 2002)

**Section 309.181 Appeal of Final Agency Action on a Permit Application**

- a) If any NPDES Permit has been issued or denied by the Agency, any appeal of the issuance or denial of the permit, or of any of the terms or conditions thereof, shall be to the Pollution Control Board in accordance with its Procedural Rules.
- b) Such appeal shall be filed within 30 days after final Agency action.

**Section 309.182 Authority to Modify, Suspend or Revoke Permits**

- a) Any person, whether or not a party to or participant at any earlier proceeding before the Agency or the Board, may file a complaint for modification, suspension, or revocation of an NPDES Permit in

accordance with this Section and Part 103.

(Note: Prior to codification, Part III of Procedural Rules.)

- b) The Pollution Control Board, after complaint and hearing in accordance with the Act and its Procedural Rules, may modify, suspend or revoke any NPDES permit in whole or in part in any manner consistent with the Act, applicable Board regulations and federal requirements, upon proof of cause including, but not limited to, the following:
  - 1) Violation of any terms or conditions of the permit (including, but not limited to, schedules of compliance and conditions concerning monitoring, entry and inspection);
  - 2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or
  - 3) A change in any circumstance that mandates either a temporary or permanent reduction or elimination of the permitted discharge.
- c) The provisions of this Section shall be included as terms and conditions of each issued NPDES Permit.

#### **Section 309.183 Revision of Schedule of Compliance**

- a) The Agency may, upon request of the applicant, revise or modify a schedule of compliance in an issued NPDES Permit if it determines good and valid cause (such as an Act of God, strike, flood, materials shortage or other event over which the permittee has little or no control) exists for such revision and if within 30 days following receipt of notice from the Agency, the Regional Administrator of the U.S. Environmental Protection Agency does not object in writing.
- b) Such Agency revision shall only be made when the Agency has determined that the final compliance date shall not be extended beyond a total of 90 days as originally contained in the permit.

#### **Section 309.184 Permit Modification Pursuant to Variance**

To the extent authorized by the CWA and the Act, the Board may grant variances from standards, limitations, and requirements imposed by these NPDES Regulations upon a showing that compliance would impose an arbitrary and unreasonable hardship on the applicant or permittee. Any request for such relief shall be commenced in accordance with Section 104.101 and Part 104 shall govern the proceeding. If such a variance is

granted the Board shall order the Agency to issue or modify an NPDES Permit consistent with the Board Order, the CWA, Federal NPDES Regulations and the Act.  
(Note: Prior to codification, Rule 401 and Part IV of Procedural Rules)

### **Section 309.185 Public Access to Information**

The Agency and Board shall assure public access to information pursuant to Section 7(b) of the Act.

### **Section 309.191 Effective Date**

- a) Except as otherwise provided, Subpart A became effective on October 24, 1977.
- b) The UIC permit exception of Section 309.102(b) will become effective upon filing with the Secretary of State of a letter from USEPA approving the UIC program for the State of Illinois.

(Source: Amended at 8 Ill. Reg. 1612, effective January 18, 1984.)

## **SUBPART B: OTHER PERMITS**

### **Section 309.201 Preamble**

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

(Source: Amended at 40 Ill. Reg. 8597, effective June 13, 2016)

## Section 309.202 Construction Permits

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

- a) No person shall cause or allow the construction of any new treatment works, sewer or wastewater source or cause or allow the modification of any existing treatment works, sewer or wastewater source without a construction permit issued by the Agency, except as provided in subsections (c) and (d).
- b) For groundwater remediation systems, with or without pretreatment, a permit is required for construction of:
  - 1) a new sewer to a publicly owned or publicly regulated sanitary or combined sewer; or
  - 2) a wastewater source that discharges to a publicly owned or publicly regulated sanitary or combined sewer.
- c) Construction permits shall not be required for the following:
  - 1) storm sewers that transport only land runoff;
  - 2) any treatment works, sewer or wastewater source designed and intended to serve a single building and eventually treat or discharge less than an average of 1500 gallons per day (5700 1/day) of domestic sewage and which will discharge, if at all, directly to a publicly owned or publicly regulated sanitary or combined sewer;
  - 3) any sewer required by statute to secure a permit pursuant to Section 3 of the Mobile Home Park Act [210 ILCS 115];
  - 4) any treatment works, pretreatment works, sewer or wastewater source that, on the effective date of this Subpart B, is being constructed or will be constructed under the authorization of a permit already issued by the Agency or its predecessors; provided however, that all construction must be completed within four years from the effective date of this Subpart B;
  - 5) privately owned sewers tributary to industrial treatment works owned by the same person if the additional waste load does not exceed the permitted design capacity of the industrial treatment works; or

- 6) cooling towers, oil/water separators, pH adjustment facilities without additional pretreatment, groundwater remediation system pretreatment, reverse osmosis treatment for industrial source water, multi-media filtration for industrial source water, disposable cartridge type (or similar) filtration systems, ion-exchange systems for industrial source waters, and all associated pipes, pumps, and appurtenances necessary for the installation and operation of these permit exempt treatment systems.
- d) No person shall cause or allow the construction of any pretreatment works or cause or allow the modification of any existing pretreatment works without a construction permit issued by the Agency, unless exempt pursuant to Section 309.202(c) if those pretreatment works, after construction or modification, will:
- 1) discharge toxic pollutants, as defined in Section 502(13) of the CWA, or pollutants which may interfere with the treatment process into the receiving treatment works or be subject to regulations promulgated under section 307 of the Clean Water Act (CWA); or
  - 2) discharge 15% or more of the total hydraulic flow received by the treatment works; or
  - 3) discharge 15% or more of the total biological loading received by the treatment works as measured by the 5-day biochemical oxygen demand.

(Source: Amended at 40 Ill. Reg. 8597, effective June 13, 2016)

### **Section 309.203 Operating Permits; New or Modified Sources**

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

- 3) for which a pretreatment permit has been issued by USEPA pursuant to federal law; or
- 4) for which an authorization to discharge has been issued by a POTW with a pretreatment program approved by the Agency, pursuant to 35 Ill. Adm. Code 310, or approved by USEPA under federal law.

(Source: Amended at 40 Ill. Reg. 8597, effective June 13, 2016)

### **Section 309.204 Operating Permits; Existing Sources**

- a) No person shall cause or allow the use or operation of any treatment works, pretreatment works or wastewater source without an operating permit issued by the Agency, except as provided in subsections (b), (c) and (d).
- b) No operating permit is required under this Section for any discharge:
  - 1) for which an NPDES permit is required;
  - 2) for which a pretreatment permit has been issued by the Agency pursuant to 35 Ill. Adm. Code 310;
  - 3) for which a pretreatment permit has been issued by USEPA pursuant to federal law; or
  - 4) for which an authorization to discharge has been issued by a POTW with a pretreatment program approved by the Agency, pursuant to 35 Ill. Adm. Code 310, or approved by USEPA under federal law.
- c) Operating permits are not required for treatment works and wastewater sources that are designed and intended to serve a single building and eventually treat or discharge less than an average of 1500 gallons per day 5 (5700 1/day) of domestic sewage and that will discharge, if at all, directly to a publicly owned or publicly regulated sanitary or combined sewer.
- d) Operating permits are not required for those pretreatment works or wastewater sources discharging to a sewer tributary to a treatment works, or directly to a treatment works, that will not:
  - 1) discharge toxic pollutants, as defined in section 502(13) of the CWA, or pollutants that may interfere with the treatment process into the receiving treatment works or be subject to regulations

promulgated under section 307 of the CWA;

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

(Source: Amended at 40 Ill. Reg. 8597, effective June 13, 2016)

### **Section 309.205      Joint Construction and Operating Permits**

In cases where the Agency determines that a proposed treatment works, pretreatment works, sewer or wastewater source is sufficiently standard so as to obviate the need for separate construction and operating permits, the Agency may issue a joint construction and operating permit.

### **Section 309.206      Experimental Permits**

- a) In order to promote the development of water pollution control technology, the Agency may issue experimental permits for treatment processes or techniques that do not satisfy the standards for issuance set forth in Section 309.241, provided that the applicant submits clear, cogent and convincing proof that the process or technique has a reasonable and substantial chance for success.
- b) The existence of a valid experimental permit shall constitute a prima facie defense to any action brought against the permittee for a violation of this Chapter, but only to the extent that such action is based on the failure of the process or technique, during the period of validity of the permit, to meet the effluent limitations of water quality standards of this Chapter.
- c) An experimental permit may not be issued in lieu of an NPDES Permit when an NPDES Permit is required.

### **Section 309.207      Former Permits (Repealed)**

(Source: Repealed at 8 Ill. Reg. 1612, effective January 18, 1984.)

### **Section 309.208      Permits for Sites Receiving Sludge for Land Application**

- a) A construction and an operating permit are required under this Chapter for any site receiving sludge for land application unless:
  - 1) The site receives only livestock wastes; or

- 2) The site receives only septic tank sludges generated from domestic sources; or
- 3) The site is regulated under Parts 700 et seq. of the Board's regulations; or

(Note: Prior to codification, Chapter 7: Solid Waste.)

- 4) The site is specifically identified in an approved sludge management scheme of an operating or NPDES permit issued by the Agency and receives sludge exclusively from the permittee; or

- 5) All of the following conditions are satisfied:

- A) The site is not specifically identified in an NPDES or operating permit of any treatment works or pretreatment works but receives sludge from a treatment works or pretreatment works which has a valid operating permit issued by the Agency, or an NPDES Permit with a management scheme approved by the Agency. The sludge generator shall inform the user that this requirement has been met; and
- B) The sludge user applies the sludge to less than 121 ha (300 acres) under common ownership or control in any year; and
- C) The sludge is transported, stored and applied by the user in compliance with the approved sludge management scheme of the generator from which the user receives the sludge. Any person who intends to transport, store or apply sludge in any manner other than that described in the approved sludge management scheme must apply for a permit.

- b) Notwithstanding subparagraphs (1) through (5) of paragraph (a), the Agency may require a user receiving sludge for land application to obtain a permit under this Section when the Agency determines that special circumstances exist such that a permit is required to protect the environment or the public health. In making its determination, the Agency shall consider the following factors:

- 1) Where the sludge will be stored;
- 2) The proposed rate and method of application of the sludge to the receiving site;

- 3) The quality (constituents and concentrations) of the sludge to be applied to the receiving site; and,
  - 4) The geological and hydrological characteristics of the receiving site, including proximity to waters of the State.
- c) No permit may be required under Subsection (b) for a user receiving sludge for land application unless the owner or operator is notified in writing of the requirement to apply for a permit. That notification shall include a statement of the special circumstances requiring the site to be permitted. The requirement of a permit is reviewable only in a permit appeal proceeding.
- d) Generators and haulers of municipal water or wastewater treatment plant sludge, which is to be applied to land and which is regulated under this Chapter, need not obtain a special waste hauling permit or prepare, carry and complete a manifest under Part 706 of the Board's Special Waste Hauling regulations.
- (Note: Prior to codification, Chapter 9: Special Waste.)
- e) The Agency may establish and revise criteria in accordance with Section 309.262 for the design, operation, and maintenance of facilities regulated under this Section.
- f) For purposes of permit issuance and approval of a sludge management scheme, proof of conformity with Agency criteria shall be prima facie evidence of no violation of the Act or this Chapter. However, nonconformity with Agency criteria shall not be grounds for permit denial, or for failure to approve a sludge management scheme, if the applicant submits adequate information showing that the sludge will be stored, transported and applied so as not to cause a violation of the Act or this Chapter.

(Source: Added at 5 Ill. Reg. 6384, effective May 28, 1981.)

**Section 309.221 Applications -- Contents**

- a) All applications for any permit required under this Subpart B shall contain, where appropriate, the following information and documents:
  - 1) A complete description of the volume and nature of the wastewater influent and effluent to be transported, treated or discharged, including a statement as to presence or absence of all contaminants

for which effluent or water quality standards are set by this chapter;  
and

- 2) A description of the present condition of the receiving body of water and the effect of the wastewater on such receiving body of water; and
  - 3) A statement as to any projected changes in the volume or nature of the wastewater which the applicant desires to have included within the terms of the permit; and
  - 4) A description of the geographic location of the facility or source, and its interrelation with any existing or proposed treatment works, sewer or wastewater source which will transport, treat or discharge the same wastewater; and
  - 5) Plans and specifications, prepared by an Illinois Registered Professional Engineer when required by the provisions of the Illinois Professional Engineering Act (Ill. Rev. Stat. 1979 ch. 111, pars. 5101 et. seq.), fully describing the design, nature, function and interrelationship of each individual component of the facility or source, except that the Agency may waive this requirement for plans and specifications when the application is for a routine renewal; and
  - 6) A statement identifying and justifying any departure from current design criteria promulgated by the Agency.
- b) The Agency may adopt procedures requiring such additional information as is necessary to determine whether the treatment works, pretreatment works, sewer or wastewater source will meet the requirements of the Act and this Chapter.
  - c) The Agency may prescribe the form in which all information required under this Section shall be submitted.

**Section 309.222      Applications -- Signatures and Authorizations**

- a) An application submitted by a corporation must 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 must be signed by a general partner or the proprietor respectively. In the case of a publicly owned facility, the

application must be signed by either a principal executive officer, ranking elected official or other duly authorized employee.

- b) Permit applications for sewer construction or modification shall be accompanied by signed statements from the owners of all intermediate receiving sewers and the receiving treatment works certifying that their facilities have adequate capacity to transport and/or treat the wastewater that will be added through the proposed sewer without violating any provisions of the Act and this Chapter.

**Section 309.223 Applications -- Registered or Certified Mail**

All permit applications shall be mailed or delivered to the appropriate address designated by the Agency. Any application or revised application sent by mail shall be sent by registered or certified mail, return receipt requested. Applications which are hand-delivered shall be delivered to and receipted for by any authorized person employed in the Permit Section of the Agency's Division of Water Pollution Control.

**Section 309.224 Applications -- Time to Apply**

Any person required under this Subpart B to have a permit must file an application with the Agency at least 90 days before the date on which the permit is required.

**Section 309.225 Applications -- Filing and Final Action By Agency**

- a) An application for permit under this Subpart B shall not be deemed to be filed until the Agency has received, at the designated address, all information, documents and authorizations in the form and with the content required by Sections 309.221, 309.222 and 309.223 and related Agency procedures; provided, however, that if the Agency fails to notify the applicant within 30 days after the filing of a purported application that the application is incomplete and of the reason the Agency deems it incomplete, the application shall be deemed to have been filed as of the date of such purported filing. The applicant may treat the Agency's notification that an application is incomplete as a denial of the application for purposes of review.
- b) If the Agency fails to take final action, by granting or denying the permit as requested or with conditions, within 90 days from the filing of the application, the applicant may deem the permit granted for a one year period commencing on the 91st day after the application under this Subpart B was filed.

- c) Any applicant for a permit under this Subpart B may waive the requirement that the Agency must take final action within 90 days from the filing of the application.
- d) The Agency shall send written notice of final action taken.
- e) The Agency shall be deemed to have taken final action on the date that the notice is mailed.

**Section 309.241 Standards for Issuance**

- a) The Agency shall not grant any permit required by this Subpart B, except an experimental permit under Section 309.206, unless the applicant submits adequate proof that the treatment works, pretreatment works, sewer, or wastewater source will be constructed, modified, or operated so as not to cause a violation of the Act or of this Subtitle and
- b) If the Agency has promulgated, pursuant to Section 309.262, criteria with regard to any part or condition of a permit, then for purposes of permit issuance proof of conformity with the criteria shall be prima facie evidence of no violation. However, non-conformity with the criteria shall not be grounds for permit denial if the condition of subsection (a) of this section is met.

(Source: Amended at 8 Ill. Reg. 1612, effective January 18, 1984.)

**Section 309.242 Duration of Permits Issued Under Subpart B**  
**Section 309.242 Duration and Termination of Permits Issued Under Subpart B**

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

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

(Source: Amended at 40 Ill. Reg. 8597, effective June 13, 2016)

#### **Section 309.244 Appeals from Conditions in Permits**

An applicant may consider any condition imposed by the Agency in a permit issued pursuant to this Subpart B as a refusal by the Agency to grant the permit, which shall entitle the applicant to appeal the Agency's decision to the Board pursuant to Section 40 of the Act.

#### **Section 309.261 Permit No Defense**

Except as provided in Section 309.206, the issuance and possession of a permit under this Subpart B shall not constitute a defense to a violation of the Act or this Chapter, except for construction or operation without a permit.

#### **Section 309.262 Design, Operation and Maintenance Criteria**

- a) The Agency may adopt criteria for the design, operation, and maintenance of treatment works, pretreatment works, sewers, and wastewater sources. These criteria shall be revised from time to time to reflect current engineering judgment and advances in the state of the art. The Board notes that the Agency has adopted or is in the process of adopting "Design Criteria for Pressure Sewage Systems" 35 Ill. Adm. Code 374, "Recommended Standards for Sewage Works" 35 Ill. Adm. Code 370,

and "Requirements for Design and Operation Manuals" 35 Ill. Adm. Code 371.

- b) The Agency shall adopt such procedures as are necessary for permit issuance under this Subpart B of Part 309.

(Source: Amended at 8 Ill. Reg.1612, effective January 18, 1984.)

### **Section 309.263 Modification or Renewal of Permits**

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

(Source: Amended at 40 Ill. Reg. 8597, effective June 13, 2016)

### **Section 309.264 Permit Revocation**

- a) A permit issued under this Subpart B may be revoked for cause which includes, but is not limited to, the following:
  - 1) Cause as set forth in Section 309.182(b); or

- 2) Delinquency in payment of any charges which may be required to be paid under Section 204(b) of the Clean Water Act.
- b) Revocation may be sought by filing a complaint with the Board pursuant to Part 103 of the Procedural Rules.

(Source: Amended at 8 Ill. Reg. 1612, effective January 18, 1984.)

### **Section 309.265 Approval of Federal Permits**

The Agency shall not approve any effluent discharge for the purpose of any federal permit (other than an NPDES Permit issued by the Administrator), unless that discharge is in compliance with all provisions of the Act and this Chapter, has been granted a variance under Title IX of the Act, or is in compliance with all terms and conditions of an NPDES Permit.

### **Section 309.266 Procedures**

In addition to procedures specifically authorized under this Part, the Agency may adopt and promulgate all procedures reasonably necessary to perform its duties and responsibilities under this Chapter.

### **Section 309.281 Effective Date**

- a) The effective date of Subpart B is March 7, 1972.
- b) Notwithstanding (a) above, Section 309.208 became effective with adoption by the Agency of 35 Ill. Adm. Code 391 on December 14, 1983.

(Source: Amended in R88-1 at 13 Ill. Reg. 5993, effective April 18, 1989)

### **Section 309.282 Severability**

If any provision of this Part 309 is adjudged invalid, or if the application thereof to any person or in any circumstance is adjudged invalid, such invalidity shall not affect the validity of this Part 309 as a whole or of any part, subpart, sentence or clause thereof not adjudged invalid.

## **APPENDIX**

### **REFERENCES TO PREVIOUS RULES**

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

Unnumbered Preamble	Section 309.101
Rule 901	Section 309.102
Rule 902	Section 309.103
Rule 902(i)	Section 309.104
Rule 902(j)	Section 309.105
Rule 903	Section 309.106
Rule 904	Section 309.107
Rule 905	Section 309.108
Rule 906(a)	Section 309.109(a)
Rule 906(b)	Section 309.109(b)
Rule 906(c)	Section 309.110
Rule 906(d)	Section 309.111(a)
Rule 906(e)	Section 309.111(b)
Rule 906(f)	Section 309.112
Rule 907	Section 309.113
Rule 908	Section 309.114
Rule 909(a)	Section 309.115(a) and (b)
Rule 909(b)	Section 309.115(c)
Rule 909(c)	Section 309.115(d)
Rule 909(d)	Section 309.115(e)
Rule 909(e)	Section 309.116
Rule 909(f)	Section 309.117
Rule 909(g)	Section 309.118
Rule 909(h)	Section 309.119
Rule 910(a)	Section 309.141
Rule 910(b)	Section 309.142
Rule 910(c)	Section 309.143
Rule 910(d)	Section 309.144
Rule 910(e)	Section 309.145
Rule 910(f)	Section 309.146
Rule 910(g)	Section 309.147
Rule 910(h)	Section 309.148
Rule 910(i)	Section 309.149
Rule 910(j)	Section 309.150
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