

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

PART 309
PERMITS

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309.Appendix A References to Previous Rules

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

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

SUBPART A: NPDES PERMITS

Section 309.103 Application - General

- a) Application Forms
 - 1) An applicant for a National Pollution Discharge Elimination System (NPDES) Permit shall file an application, in accordance with Section 309.223, 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 in Section 301.106 (including no later amendments or editions).~~

- 4) All POTWs with approved pretreatment programs shall provide the following information to the Agency: a written technical evaluation of the need to revise local limits pursuant to 35 Ill. Adm. Code 310.210.

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

b) Animal Waste Facilities

An applicant for an NPDES Permit in connection with the operation of an animal waste facility shall complete, sign, and submit an NPDES application in accordance with the provisions of 35 Ill. Adm. Code: Subtitle E, Chapter I.

c) Mining Activities

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

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 ~~one~~ 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 ___ Ill. Reg. _____, effective _____)

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(e), 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) ~~Unless otherwise waived~~ Upon request, send a copy of the public notice and a copy of the fact sheet for NPDES Permit applications to any other Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources, the Advisory Council on Historic Preservation, state Historic Preservation Officers, and other appropriate government authorities, including affected States, 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.
- d)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 ___ Ill. Reg. _____, effective _____)

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, adjusted standards, or time-limited water quality standard 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.

- ~~f)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.
- ~~g)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 ___ Ill. Reg. _____, effective _____)

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) ~~Site specific metals translators shall be determined~~~~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: Amended at ___ Ill. Reg. _____, effective _____)

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 ~~3530~~ days after final Agency action.

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

Section 309.184 Regulatory Relief Permit Modification Pursuant to Variance

To the extent authorized by the CWA and the Act, the Board may grant variances, adjusted standards, or time limited water quality standards 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, adjusted standard or time-limited water quality standard 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~~)

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

Section 309.185 Public Access to Information (Repealed)

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

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

Section 309.191 Effective Date (Repealed)

- 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 ___ Ill. Reg. _____, effective _____)

SUBPART B: OTHER PERMITS

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.~~

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

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 ___ Ill. Reg. _____, effective _____)

Section 309.262 Design, Operation and Maintenance Criteria (Repealed)

- 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 ___ Ill. Reg. _____, effective _____)

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, adjusted standard or time-limited water quality standard under Title IX of the Act, or is in compliance with all terms and conditions of an NPDES Permit.

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

Section 309.266 Procedures (Repealed)

~~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.~~

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

Section 309.281 Effective Date (Repealed)

- ~~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 at ___ Ill. Reg. _____, effective _____)

Section 309.282 Severability (Repealed)

~~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.~~

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

APPENDIX

REFERENCES TO PREVIOUS RULES

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

Chapter 3: Water Pollution Part IX, Permits 35 Ill. Admin. Code Part 309

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
Rule 910(k)	Section 309.151
Rule 910(l)	Section 309.152
Rule 910(m)	Section 309.153
Rule 910(n)	Section 309.154
Rule 911	Section 309.181
Rule 912	Section 309.182
Rule 913	Section 309.183
Rule 914	Section 309.184
Rule 915	Section 309.185
Rule 916	Section 309.191
Rule 918	Section 309.156
Rule 949	Section 309.155
Unnumbered Preamble	Section 309.201
Rule 950	Section 309.208
Rule 951	Section 309.202
Rule 952	Section 309.203
Rule 953	Section 309.204
Rule 954	Section 309.205
Rule 955	Section 309.206
Rule 956	Section 309.207
Rule 957	Section 309.221
Rule 958	Section 309.222
Rule 959	Section 309.223

Rule 960	Section 309.224
Rule 961	Section 309.225
Rule 962	Section 309.241
Rule 963	Section 309.242
Rule 964	Section 309.243
Rule 965	Section 309.244
Rule 966	Section 309.261
Rule 967	Section 309.262
Rule 968	Section 309.263
Rule 969	Section 309.264
Rule 970	Section 309.265
Rule 971	Section 309.266
Rule 972	Section 309.281
Rule 973	Section 309.282

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