

ILLINOIS POLLUTION CONTROL BOARD
July 26, 2018

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL. ADM. CODE) R18-24
SUBTITLE D: MINE RELATED WATER) (Rulemaking - Water)
POLLUTION)

Proposed Rule. Proposal for Public Comment.

ORDER OF THE BOARD (by C.M. Santos and B.K. Carter):

The Board opened this docket to amend its mine-related water pollution rules (35 Ill. Adm. Code 401-406). Today, the Board proposes amendments for public comment. In this order, the Board provides background on this rulemaking’s objectives, discusses proposed amendments, requests comment on five issues, and concludes with information on how the rulemaking will proceed.

BACKGROUND

In 2016, the Board began reviewing its rules to identify obsolete, repetitive, confusing, or otherwise unnecessary language. On January 10, 2018, the Illinois Environmental Protection Agency (IEPA) filed a proposal to update numerous provisions of the Board’s rules, including Parts 401-405 of the Board’s mine-related water pollution rules. Clean-Up Amendments to 35 Ill. Adm. Code Parts 201, 211, 212, 214, 215, 216, 217, 218, 219, 225, 228, 232, 237, 301, 302, 303, 304, 306, 309, 401, 402, 403, 404, 405, 501, 611, 615, 616, 617, 722, 811, 813, 855, and 1000, R18-21 (Jan. 10, 2018). Both IEPA and the Board intend the revisions to be non-substantive clarifications. In addition, both IEPA’s and the Board amendments are consistent with Executive Order 2016-13, which directs State agencies to review and update their rules. The amendments proposed by the Board in this order consist of both IEPA’s amendments and additional amendments identified by the Board.

SUMMARY OF PROPOSED AMENDMENTS

The Board’s mine-related water pollution rules generally address prevention of water pollution caused by mine discharges. The rules include definitions; permit requirements including standards for issuing both State and National Pollutant Discharge Elimination System (NPDES) permits; and water quality and effluent standards. 35 Ill. Adm. Code 401-406.

The Board’s proposes amendments to remove redundant or unnecessary language, replace outdated language, update statutory references, and reorganize provisions to clarify them. Throughout the mine-related water pollution rules, the Board proposes removing references to “Chapter I” because Subtitle D consists of a single chapter. In the following paragraphs, the Board addresses additional specific changes part-by-part.

In Part 401, IEPA proposes to repeal Section 401.101 because it unnecessary. IEPA argues that the authority note for Part 401 addresses the statutory source and scope of the Board's rulemaking authority. In Section 401.104, IEPA proposes updating the statutory reference to the Surface Coal Mining Land Conservation and Reclamation Act (225 ILCS 720). In Section 401.105, IEPA proposes updating the title to "Severability" to be consistent with Part 301. Lastly, IEPA proposes to repeal Section 401.106, which supersedes rules that took effect in 1972, because it is no longer necessary. Throughout Part 401, the Board proposes clarifying changes.

In Part 402, IEPA proposes to amend Section 402.100 by updating a statutory reference. In Section 402.101, the Board proposes updating the definition for "aquifer" to match the statutory definition, 415 ILCS 55/3(b) (2016). The Board also proposes clarifying the definition of "mine refuse area" by replacing "land" with "site" to include any kind of water resource.

In Part 403, IEPA in Section 403.101 proposes to remove an unnecessary reference, and the Board proposes additional changes to eliminate wordiness. In Section 403.103, IEPA proposes amending a reference to NPDES permit application forms to reflect that IEPA supplies them. IEPA also proposed to strike from Appendix A a duplicative reference to its effective date.

In Part 404, the Board proposes to repeal Section 404.100 entitled "Preamble" because it is unnecessary. The Board divides Section 404.105 into three subsections to clarify it. IEPA proposes to revise Section 404.106 to make its consistent with IEPA's current practice and with proposed changes to 35 Ill. Adm. Code 309.223. The Board re-drafts Section 404.111 to include specific permit review deadlines and procedures based on 35 Ill. Adm. Code 309.225 and also divides it into three subsections to clarify it. The Board proposes additional clarifying changes throughout this Part.

In Part 405, IEPA proposes to repeal Section 405.101 as unnecessary because IEPA does not have or provide the guidance documents identified in that section. IEPA also proposes removing references to the guidance documents from Sections 405.102(b) and 405.104(b)(10). The Board also clarifies Section 405.107(e), which addresses experimental permits. The Board proposes additional clarifying changes throughout this Part, including Appendix A.

In Part 406, the Board proposes to clarify subsections (a) and (b) of Section 406.102 by combining them. The Board also proposes separating the re-designated subsection (c) into two subsections to clarify reporting requirements. In Section 406.105, the Board proposes to strike the Source Note as unnecessary. In Part 406.Appendix A, the Board proposes striking as unnecessary a reference to the 1981 date on which the appendix was filed and took effect. The Board proposes additional clarifying changes throughout this Part, including Appendix A.

PUBLIC COMMENT ON SPECIFIC ISSUES

While the Board welcomes public comment from any participant on any aspect of its proposal, the Board specifically requests comments concerning three sections of the rules.

First, IEPA proposes to amend Section 404.106 on delivering applications for State permits. The Board requests that IEPA comment on the following:

1. Does IEPA allow or require an applicant to submit a permit application electronically, or does IEPA require an applicant to submit only by mail or hand-delivery?
2. If electronic submission is acceptable, please comment on any further revision of Section 404.106 that IEPA wishes to propose.
3. IEPA proposes updating this Section to be consistent with its current practice and its proposed change to 35 Ill. Adm. Code 309.223. Please comment on IEPA's current practice and describe how IEPA's proposal aligns Section 404.106 and Section 309.223 with one another.

Second, in Section 405.104 regarding permit applications, subsection (b)(10) requires the application to include "general characteristics of the mine refuse and spoil according to the classification." The Board requests that IEPA comment on the following:

4. Does IEPA rely on a specific classification or list of classifications for this purpose? If so, please comment on any further revision - listing one or more classifications - that IEPA wishes to propose.

Third, the Board proposes revisions intended to clarify Section 406.202. That section addresses violations of Subtitle C water quality standards by mine discharges and non-point source mine discharges, as well as related enforcement. The Board requests that IEPA comment on the following:

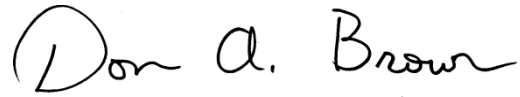
5. Is this section necessary for the enforceability of those standards? If not, should it be repealed? If so, should it be revised?

CONCLUSION

The Board proposes these amendments to the mine related water pollution rules for public comment without submitting them to first-notice publication in the *Illinois Register*. The proposed amendments appear in the addendum to this order. The Board invites public comments on all aspects of the proposal, particularly the five issues above. The Board intends to hold two hearings on the proposal, by videoconference in Chicago and Springfield. See 35 Ill. Adm. Code 101.600(b), 102.114. Interested persons are encouraged to contact the Clerk's Office (don.brown@illinois.gov) to be added to the Notice List for this docket.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 26, 2018, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, circular initial "D".

Don A. Brown, Clerk
Illinois Pollution Control Board

Addendum to Board Opinion of July 26, 2018

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

PART 401
GENERAL PROVISIONS

Section	
401.101	Authority (<u>Repealed</u>)
401.102	Policy
401.103	Purpose
401.104	Compliance with Other Laws Required
401.105	<u>Severability</u> Validity Not Affected
401.106	Repealer (<u>Repealed</u>)
401. <u>APPENDIX</u>	
<u>Appendix-A</u>	References to Previous Rules

AUTHORITY: Authorized by Section 27 and implementing Sections 12 and 13 of the Illinois Environmental Protection Act (415 ILCS 5/12, 13 and 27) (~~Ill. Rev. Stat., Ch. 111 1/2, pars. 1012, 1013 and 1027~~) ~~unless otherwise noted.~~

SOURCE: Adopted at 4 Ill. Reg. 34, p. 164, effective August 7, 1980; codified at 5 Ill. Reg. 34, p.8527, effective August 10, 1981; amended at 42 Ill. Reg. _____, effective _____. ~~unless otherwise noted.~~

Section 401.101 Authority (Repealed)

~~Pursuant to authority granted by Section 12 and 13 of the Environmental Protection Act (Act), which empower the Board to designate equipment or facilities capable of causing or contributing to water pollution; to set standards for the issuance of permits for the construction, installation and operation and for the inspection of said equipment or facility; to prohibit the sale, offer or use of articles for reasons of water pollution control; to set standards limiting the amounts or concentrations of contaminants that may be discharged into the waters of the State; to set standards for the filling or sealing of abandoned holes in order to protect groundwater; and to adopt requirements, standards and procedures to enable the state to implement and participate in the NPDES program established by the Federal Water Pollution Control Act of 1972 (FWPCA), as amended, (33 U.S.C. 1251 et seq.), the Board adopts the following rules and regulations.~~

(Source: Repealed at 42 Ill. Reg. _____, effective _____)

Section 401.102 Policy

A policy of the General Assembly in adopting the Act is to restore, maintain and enhance the purity of the water of Illinois ~~in order~~ to protect health, welfare, property and the quality of life. It is determined that mining activities including ~~the preparation, operation and abandonment of~~ preparing, operating, and abandoning mines, mine refuse areas and mine related facilities

Addendum to Board Opinion of July 26, 2018

without environmental planning and safeguards and ~~the use of~~ using certain refuse materials can cause, threaten or allow the discharge of contaminants into the waters of Illinois. ~~so as to~~ Causing, threatening, or allowing these discharges can cause or threaten to cause a nuisance or to render such waters harmful or detrimental to public health, safety or welfare or to domestic, commercial, industrial, agricultural, recreational or other legitimate uses including use by livestock, wild animals, birds, fish or other aquatic life and riparian vegetation.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 401.103 Purpose

The purpose of ~~this~~ Subtitle D is to prevent pollution of waters of Illinois caused by failure to plan proper environmental safeguards for the location, preparation, operation and abandonment of mining activities, mining and mine refuse operations. ~~A Subtitle D establishes a permit system is established to control the multitude of~~ contaminating point and non-point source discharges, visible and hidden, continuous and fluctuating, which are potentially present in mining activities, mining and mine refuse operations. ~~In order to~~ To ensure that such activities meet environmental standards, Subtitle D establishes water quality and effluent standards ~~are established to limit discharges from point sources as well as and~~ to protect waters for beneficial uses. ~~In addition, Subtitle D establishes procedural safeguards are established to ensure the protection of waters. Furthermore, it~~ is the purpose of this Subtitle ~~D~~ to meet the requirements of Section 402 of the FWPCA.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 401.104 Compliance with Other Laws Required

Nothing in this regulation is intended to be inconsistent with or impair the obligation to comply with the provisions of ~~an Act entitled, "The the Surface Coal Mining Land Conservation and Reclamation Act, 225 ILCS 720," of Illinois~~ or with any other state or federal law affecting the duties of an operator.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 401.105 Severability ~~Validity Not Affected~~

If any provision of ~~this~~ Subtitle D, ~~Chapter I~~ is adjudged invalid or if the application to any person or in any circumstances is adjudged invalid, ~~such the~~ the invalidity ~~will~~ shall not affect the validity of this Subtitle ~~D, Chapter I~~ as a whole or of any part, subpart, sentence or clause ~~thereof~~ not adjudged invalid.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 401.106 Repealer (Repealed)

Addendum to Board Opinion of July 26, 2018

~~Chapter 4: Mine Related Pollution, effective May 23, 1972, and all amendments thereto heretofore adopted are hereby superseded.~~

(Source: Repealed at 42 Ill. Reg. _____, effective _____)

Section 401. APPENDIX A References to Previous Rules REFERENCE TO PREVIOUS RULES

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

Chapter 4, Mine Related Pollution Part I, 35 Ill. Admin. Code Part 401
General Provisions

Rule 101	Section 401.101
Rule 102	Section 401.102
Rule 103	Section 401.103
Rule 104	Section 401.104
Rule 105	Section 401.105
Rule 106	Section 401.106

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Addendum to Board Opinion of July 26, 2018

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

PART 402
 DEFINITIONS

Section	
402.100	Terms Defined Elsewhere
402.101	Definitions
402.	<u>APPENDIX</u>
Appendix A	References to Previous Rules

~~AUTHORITY~~~~Authority~~ ~~Note:~~ Authorized by Section 27 and Implementing Sections 12 and 13 of the Environmental Protection Act (415 ILCS 5/12, 13 and 27) ~~(Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1012, 1013 and 1027)~~ unless otherwise noted.

~~SOURCES~~~~Source~~ ~~Note:~~ Adopted at 4 Ill. Reg. 34, page 164, effective August 7, 1980; codified 5 Ill. Reg. 34, page 8527 effective August 10, 1981, amended in R84-29 at 11 Ill. Reg. 12890, effective July 27, 1987; amended in R18-24 at 42 Ill. Reg. _____, effective _____.

Section 402.100 Terms Defined Elsewhere

Unless otherwise stated or unless the context clearly indicates a different meaning, the definition of terms used in ~~this Subtitle D~~ ~~Chapter~~ are the same as those found in the Illinois Environmental Protection Act (Act), (415 ILCS 5/) ~~(Ill. Rev. Stat. 1979, ch. 111 1/2, Section 1001 et seq.)~~ ~~the 35 Ill Adm. Code Subtitle C, Chapter I, Water Pollution Regulations of the Illinois Pollution Control Board (subtitle C, chapter I)~~ and the Federal Water Pollution Control Act of 1972 (FWPCA), (33 U.S.C. 1251 et seq., 1972 as amended). ~~The following definitions which apply to this Chapter can be found in the Act, Subtitle C, Chapter I or the FWPCA: Administrator, Agency, Board, Contaminant, Effluent, Federal Water Pollution Control Act (FWPCA), National Pollutant Discharge Elimination System (NPDES), Point Source Discharge, Pollutant, Refuse, Storet, Treatment Works, Underground Waters, Wastewater, Wastewater Source, Water Pollution and Waters.~~

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 402.101 Definitions

For purposes of this ~~Subtitle~~ ~~Chapter~~ the following terms are defined:

"Abandon": to transfer ownership of or to close down mining activities, a mine or mine refuse area with no intention by that operator to reopen the affected land. A mine or mine refuse area ~~which~~ ~~that~~ has been inoperative for one year ~~shall be~~ is rebuttably presumed ~~to be~~ abandoned.

Addendum to Board Opinion of July 26, 2018

"Acid or Ferruginous Mine Drainage": mine drainage which, before any treatment, has a pH of less than 6.0 or a total iron concentration greater than 10 mg/L.

"Acid-producing Material": material ~~which~~ that when exposed to air and water is ~~capable of~~ may cause ~~ing~~ drainage containing sulfuric acid. In determining whether material is acid-producing, consideration ~~must~~ shall be given to the sulfur content of the material, the size and spatial distribution of pyritic compounds and other compounds of sulfur, the neutralizing effect of surrounding intermixed materials and the quality of drainage produced by mining on sites with similar soils.

"Affected Land": any land owned, ~~or~~ controlled, or otherwise used by the operator in connection with mining activities except the surface area above underground mine workings that is not otherwise used for mining activities. The term does not include offsite office buildings and farming operations or recreational activities on undisturbed land. Land described in a certificate of abandonment issued by the Agency under ~~Section~~ 35 Ill. Adm. Code 405.110(e) is no longer part of the affected land.

"Alkaline Mine Drainage": mine drainage which, prior to treatment, has a pH equal to or greater than 6.0 and a total iron concentration of less than 10 mg/L.

"Aquifer": ~~A zone, stratum or group of strata which can store and transmit water in sufficient quantities for a specific use.~~ saturated (with groundwater) soils and geologic materials which are sufficiently permeable to readily yield economically useful quantities of water to wells, springs, or streams under ordinary hydraulic gradients. [415 ILCS 55/3(b)].

"Base Flow": any flow which is not a result of immediate runoff from precipitation. It includes, ~~but is not limited to,~~ groundwater flow, mechanical pumpages, springs, discharges from subsurface drainage systems, and controlled outfalls from other treatment works. It is normally any flow beyond 24 hours after the rainfall ceases.

"Coal Preparation Plant": a facility where coal is subjected to cleaning, concentrating, or other processing or preparation ~~in order~~ to separate coal from its impurities.

"Coal Preparation Plant Associated Areas": coal preparation plant yards, immediate access roads, coal refuse piles, and coal storage piles and facilities.

"Coal Refuse Disposal Pile": any coal refuse permanently deposited on the earth or stored for more than 180 days. It does not include coal refuse deposited within the active mining area or coal refuse never removed from the active mining area.

Addendum to Board Opinion of July 26, 2018

"Coal Transfer Facility or Coal Storage Yard": any area where coal is transferred from one mode of transportation to another or where coal is dumped, piled, stored or blended. The term includes ~~but is not limited to~~ coal docks, blending yards, conveyor belts and pipelines. As used in this ~~Subtitle Chapter~~, the terms mining activity and mine-related facility ~~shall~~ include coal transfer facilities and coal storage yards.

"Construction Authorization": authorization under ~~Section 35 Ill. Adm. Code~~ 403.104 to prepare land for mining activities or to construct mine-related facilities. Construction authorization is issued to a person who holds or is required to have an NPDES permit.

"Construction Permit": a state permit issued under ~~Section 35 Ill. Adm. Code~~ 404.101 which allows the operator to prepare land for mining activities or to construct mine-related facilities.

"Controlled Surface Mine Drainage": any surface mine drainage that is pumped or siphoned from a mine area or mined area.

"Domestic Retail Sales Yard": a business which stockpiles coal or other minerals solely ~~for the purpose of supplying to supply~~ homeowners, small businesses, small industries or other institutions with ~~the minerals for their~~ individual consumption. The term does not include any sales yard located at a mine.

"Drainage Course": any natural or man-made channel or ditch ~~which serves the purpose of that~~ directing the flow of water into a natural waterway.

"Facility": a contiguous area of land, including all structures above or below the ground, ~~which is~~ owned or controlled by one person.

"Mine Area or Mined Area": the surface and subsurface land where mining has occurred or is occurring. The term does not include the unmined surface land directly above underground mine workings which is not otherwise disturbed by mining activities.

"Mine Discharge": any point source discharge, whether natural or man-made, from a mine related facility. Such discharges include ~~but are not limited to~~ mechanical pumpages, pit overflows, spillways, drainage ditches, seepage from mine or mine refuse areas, effluent from processing and milling or mineral preparation plants. Other discharges including ~~but not limited to~~ sanitary sewers and sewage treatment works are not mine discharges. The term mine discharge includes surface runoff discharged from a sedimentation pond but does not include non-point source mine discharges.

"Mine Refuse": gob, coal, rock, slate, shale, mill tailings, boney, clay, pyrites and other unmerchantable solid or slurry material intended to be discarded which is

Addendum to Board Opinion of July 26, 2018

~~connected with the~~ result from cleaning and ~~preparation of~~ preparing mined materials at a preparation plant or washery. It includes sludge or other precipitated matter produced by the treatment of acid mine drainage but does not ~~otherwise~~ generally include sediment from alkaline mine drainage. The term also includes acid-producing spoil.

"Mine Refuse Area": any ~~land~~ site used for dumping, ~~storage~~ storing, or ~~disposal~~ disposing of mine refuse.

"Mine Refuse Pile": any deposit of solid mine refuse ~~which is intended to serve as~~ for permanent disposal of such material.

"Mine-Related Facility": a portion of a facility which is related to mining activities. The term includes, ~~but is not limited to~~, the following:

- Affected land;
- Coal storage yard or transfer facility;
- Mine;
- Mine drainage treatment facility;
- Mine refuse area; and
- Processing or mineral preparation plant.

"Mining": the surface or underground extraction or processing of natural deposits of coal, clay, fluorspar, gravel, lead bearing ores, peat, sand, stone, zinc bearing ores or other minerals ~~by the use of~~ using any mechanical operation or process. The term also includes ~~the recovery~~ recovering or processing ~~of the~~ minerals from a mine refuse area. It does not include drilling for oil or natural gas.

"Mining Activities": all activities on a facility which ~~are directly in furtherance of~~ further mining, including activities before, during and after mining. The term does not include land acquisition, exploratory drilling, surveying and similar activities. The term includes, ~~but is not limited to~~, the following:

- Preparation of land for mining activities;
- Construction of mine related facilities which could generate refuse, result in a discharge or have the potential to cause water pollution;
- Ownership or control of a mine related facility;
- Ownership or control of a coal storage yard or transfer facility;
- Generation or disposal of mine refuse;
- Mining;
- Opening a mine;
- Production of a mine discharge or non-point source mine discharge;
- Surface drainage control; and
- Use of acid-producing mine refuse.

Addendum to Board Opinion of July 26, 2018

"Mountaintop Removal": surface coal mining and reclamation operations that remove entire coal seams running through the upper fraction of a mountain, ridge, or hill by removal of all of the overburden and create a level plateau or gently rolling contour with no highwalls remaining.

"New Source Coal Mine": a coal mine, including an abandoned mine which is being remined, at which:

Construction commenced after May 4, 1984; or

A major alteration has resulted in a new, altered or increased discharge of pollutants. Major alterations are:

Extraction from a coal seam not previously extracted by that mine;

Discharge into a drainage area not previously affected by wastewater discharge from that mine;

Extensive new surface disruption at the mining operation; and

Construction of a new shaft, slope or drift.

"Non-point Source Mine Discharge": surface runoff from the affected land. The term does not include surface runoff ~~which is~~ discharged from a sedimentation pond or seepage from a mine or mine refuse area.

"Opening a Mine": any construction activity related to preparation for mining on a facility.

"Operating Permit": a state permit required of a person carrying out mining activities.

"Operator": a person who carries out mining activities.

"Permittee": a person who holds a state or NPDES permit issued under ~~this Subtitle D, Chapter I.~~ In some contexts, the term permittee also includes a permit applicant.

"Person": any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

"Processing or Mineral Preparation Plant": a facility used ~~for the sizing or separation from the ore or raw mineral of~~ to size or separate coal, clay, fluorspar, gravel, lead bearing ores, peat, sand, stone, zinc bearing ores or other materials from the ore or raw mineral.

"Reclamation Area": the surface area of a coal mine ~~which has been~~ returned to the contour required by permit and on which revegetation work has ~~commenced~~ begun.

Addendum to Board Opinion of July 26, 2018

"Slurry": mine refuse separated from the mineral in the cleaning process consisting of readily pumpable fines, ~~and~~ clays and other materials in the preparation plant effluent. This term includes mill tailings.

"Spoil": the accumulation of excavated overburden or other earth, dirt or rock overlying the mineral seam or other deposit excavated from its original location by surface or underground mining.

"State Permit": a construction permit or operating permit issued by the Agency. NPDES permits are not state permits.

"Steep Slope": any slope of more than 20 degrees.

"Surface Drainage Control": control of surface water on the affected land by a person ~~who is~~ engaging in mining activities. Control of surface water includes ~~diverting~~ ~~of~~ surface waters around or away from the active mining area or mine refuse area and ~~diverting~~ ~~ion~~, ~~redirecting~~ ~~ion~~ or ~~impounding~~ ~~ment~~ of a stream or ~~impoundment~~ of impounding water ~~for to augment flow~~ ~~augmentation~~ or controlled release of effluents.

"Surface Mining": mining conducted in an open pit including area and contour strip mining.

"Underground Mining": mining conducted below the surface by means of constructing an access facility to the mineral deposit. The term includes slope, drift, shaft mines and auger or punch mining.

"Use of Acid-producing Mine Refuse": use of acid-producing mine refuse includes any use, offer for sale, sale or offer for use in roadway projects, mine roads, mine yards or elsewhere.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 402. APPENDIX A References to Previous Rules REFERENCES TO PREVIOUS RULES

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

Chapter 4, Mine Related Pollution Part II, Definitions	35 Ill. Admin. Code Part 402
Rule 200	Section 402.100
Rule 201	Section 402.101

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Addendum to Board Opinion of July 26, 2018

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

PART 403
 NPDES PERMITS

Section

403.100	Preamble
403.101	Incorporation of NPDES Water Rules
403.102	NPDES Permits Required of Certain Dischargers
403.103	Application
403.104	Construction Authorization
<u>403.APPENDIX</u>	References to Previous Rules
Appendix A	

AUTHORITY: Authorized by Section 27 and implementing Sections 12 and 13 of the Illinois Environmental Protection Act (415 ILCS 5/12, 13 and 27) ~~(Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1012, 1013 and 1027) unless otherwise noted.~~

SOURCE: Adopted at 4 Ill. Reg. 34, p. 164, effective August 7, 1980; codified at 5 Ill. Reg. 34, p. 8527, effective August 10, 1981; amended in R18-24 at 42 Ill. Reg. _____, effective _____. ~~unless otherwise noted.~~

Section 403.100 Preamble

- a) Part 403 governs mining activities and permit issuance for ~~with respect to holders of an NPDES permit holders~~ and persons required to obtain an NPDES permit for a facility.
- b) ~~Under As provided by Section 404.102, those facilities which operating~~ under an NPDES Permit need not obtain a state permit so long as the Agency administers the NPDES permit program.
- c) Under Section 404.102, Part 404 ~~is inapplicable~~ does not apply to NPDES permit holders, ~~as provided by Section 404.102.~~

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 403.101 Incorporation of NPDES Water Rules

~~The rules contained in Subpart A, Part 309, Subtitle C: Water Pollution shall apply to NPDES permits required under this Subtitle D, Chapter I, except for Section 309.154*, Authorization to Construct; provided, however, that in the event conflict arises between Subtitle D, Chapter I and Subpart A, Part 309, Subtitle C, Chapter I, the requirements of Subtitle D, Chapter I shall apply to Mine related facilities.~~

Addendum to Board Opinion of July 26, 2018

Except for Section 309.154, 35 Ill. Adm. Code 309.Subpart A applies to NPDES permits required by Subtitle D. In the event of a conflict between Subtitle D and 35 Ill. Adm. Code 309.Subpart A, Subtitle D applies to mine-related facilities.

~~*Prior to codification, Rule 910(n) of Chapter 3.~~

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 403.102 NPDES Permits Required of Certain Dischargers

~~Except as in compliance with the provisions of the Act, Board regulations, the FWPCA and the provisions and conditions of the NPDES permit issued to the discharger, t~~The discharge of any contaminants or pollutants by any person into the waters of the state from a point source or into a well shall be unlawful, except when complying with provisions of the Act, Board regulations, the FWPCA, and the provisions and conditions of the discharger's NPDES permit.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 403.103 Application

- a) A person required to obtain an NPDES permit ~~must~~shall file an application ~~complying in accordance with Section 405.104 on forms provided by the Agency or the United States Environmental Protection Agency as applicable.~~
- b) A person who holds an NPDES permit ~~for a facility~~ or who submits an NPDES permit application for ~~that a~~ facility need not apply for a state permit unless ~~and until~~ the Agency notifies them that ~~person that~~ a state permit is required ~~for that facility.~~
- c) Application for a renewed or supplemental NPDES permit is governed by the rules on NPDES applications ~~in general.~~

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 403.104 Construction Authorization

- a) If an NPDES permit is required to ~~No person shall~~ prepare land for mining activities or construct a mine related facility, a person must before preparing land or constructing a facility for which an NPDES permit is required unless:
 - 1) ~~The person holds~~ Hold an NPDES permit ~~containing as including~~ a condition authorizing the permit holder to prepare land or construct a facility ~~a construction authorization for the preparation or construction;~~ or

Addendum to Board Opinion of July 26, 2018

- 2) ~~The person holds~~ Hold a construction permit under Section 404.101 to prepare land or construct a facility for the preparation or construction issued pursuant to Section 404.101.
- b) ~~No~~ A permittee ~~must not shall cause or allow the construction of~~ a new mine related facility or ~~modification of~~ a mining activity or mine related facility for which ~~the permittee holds~~ an NPDES permit ~~is held~~ unless the NPDES permit includes as a condition ~~authorizing a construction authorization for such construction or modification;~~ provided, however, that construction authorization is not No condition authorizing modification is required if the for modification which would not violate cause a violation of conditions of the existing permit conditions.
- c) Any person required to obtain a construction authorization ~~must~~ shall make application at least 180 days ~~before in advance of the date on which construction or modification is to begin.~~
- d) Any person seeking a construction authorization ~~must~~ shall furnish information and complete submit an application as ~~provided in under~~ Section 405.104. ~~Issuance of a construction authorization shall be governed by~~ The rules which govern issuance of an governing NPDES permit issuance, including Sections 405.101 and 405.102, also apply to issuing a construction authorization.

Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 403. APPENDIX A References to Previous Rules REFERENCES TO PREVIOUS RULES

The following table is provided to ~~refer aid in referencing old previous~~ Board rule numbers to current ~~Section numbers under~~ pursuant to codification.

Chapter 4, Mine Related Pollution Part III, 35 Ill. Admin. Code Part 403
NPDES Permits

Rule 300	Section 403.100
Rule 301	Section 403.101
Rule 302	Section 403.102
Rule 303	Section 403.103
Rule 304	Section 403.104

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

Source: Amended at 42 Ill. Reg. _____, effective _____)

Addendum to Board Opinion of July 26, 2018

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

PART 404
 STATE PERMITS

Section

404.100	Preamble (<u>Repealed</u>)
404.101	Construction and Operating Permits: State Permits
404.102	Exemption from State Permit: NPDES Holder
404.103	Exemption from State Permit: Coal Piles and Small Mines
404.104	Applications: Deadline to Apply
404.105	Permit Application: Signatures and Authorizations Required
404.106	Permit Applications: Registered or Certified Mail or Hand Delivery Required
404.107	Supplemental State Permits
404.108	Violation of Conditions and Standards in a Permit
404.109	State Permit Term
404.110	Permit No Defense to Certain Violations
404.111	Permit Review
<u>404.APPENDIX</u>	References to Previous Rules
<u>Appendix A</u>	

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

SOURCE: Adopted at 4 Ill. Reg. 34, p. 164, effective August 7, 1980; codified at 5 Ill. Reg. 34, 8527, effective August 10, 1981 unless otherwise noted.

Section 404.100 Preamble (Repealed)

~~Part 404 governs mining activities, including construction of mine related facilities, and establishes rules for the issuance of state permits.~~

(Source: Repealed at 42 Ill. Reg. _____, effective _____)

Section 404.101 Construction and Operating Permits: State Permits

- a) Except as provided in Sections 404.102 and 404.103, ~~no person shall~~ a person must obtain a permit before:
- 1) ~~Preparing~~ Preparing land for mining activities or ~~constructing~~ constructing a mine related facility which could generate refuse, result in a discharge, ~~or have the potential to~~ potentially cause water pollution ~~without a construction permit;~~ or

Addendum to Board Opinion of July 26, 2018

- 2) Carrying out mining activities without an operating permit.
- b) ~~For administrative convenience~~ The Agency may issue joint construction and operating permits. Whether a state permit is construction, operating, or joint will shall be determined from the document's language of the entire document. The permit title given it by the Agency shall is not be determinative.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 404.102 Exemption from State Permit: NPDES Holder

- a) A permittee who holds an NPDES permit for a facility need not have a state permit for that facility.
- b) This exemption ~~shall be~~ is inapplicable ~~if in the event~~ the Agency ceases to administer the NPDES permit program. If this occurs, In this event the Agency ~~shall~~ will notify permittees that state permits are required and will determine deadlines set dates, not less than forty five at least 45 days after notification, ~~on~~ by which the Agency must receive state permit applications ~~are to be received.~~

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 404.103 Exemption from State Permit: Coal Piles and Small Mines

- a) Unless the Agency determines that the facility will cause or threaten ~~to cause~~ water pollution or ~~violation of~~ violate applicable regulations, the following facilities need not obtain state permits:
- 1) Domestic retail sales yards;
 - 2) Consumer stockpiles located at the consuming facility, including ~~but not limited to~~ power plants and steel mills; or
 - 3) Any facility where mining occurs ~~takes place~~ which affects less than ten acres of land per year and ~~which~~ does not include a coal, fluorspar, lead or zinc mine related facility.
- b) ~~An facility operator of a facility~~ shall ~~must~~ notify the Agency in writing of the facility's location ~~of the facility~~ and the basis for exemption. The exemption ~~shall be of no~~ takes effect ~~prior to the time such~~ once the notice is mailed.
- c) ~~In the event~~ If the Agency determines that a facility will cause or threaten ~~to cause~~ water pollution or ~~violation of~~ violate applicable regulations, or that a facility claiming exemption is not exempt, the Agency ~~will~~ shall notify the operator that a permit is required. ~~An exemption which is valid except that~~ If the Agency has

Addendum to Board Opinion of July 26, 2018

determined that ~~the an exempt~~ facility will cause or threaten to cause water pollution or ~~violation of~~ violate applicable regulations, the exemption shall continue for ~~forty-five~~ 45 days after notification that the facility requires a permit and during the pendency of a permit application before the Agency.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 404.104 Applications: Deadline to Apply

A person required to have a state permit ~~must shall~~ file an application with the Agency at least ~~ninety~~ 90 days before the date ~~on which~~ the permit is required.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 404.105 Permit Application: Signatures and Authorizations Required

- a) If An application submitted by a corporation, the permit application must shall be signed by a principal executive officer of at least the level of vice president or his or her duly authorized representative, if the such representative is responsible for the overall operation of the facility where from which the discharge ~~described in the application form~~ originates.
- b) If submitted by ~~In the case of~~ a partnership or a sole proprietorship, the permit application must shall be signed by a general partner or the proprietor respectively.
- c) For all other persons, the permit application must shall be signed by either a principal executive officer, ranking elected official, or other duly authorized employee.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 404.106 Permit Applications: Registered or Certified Mail or Hand Delivery Required

- a) All state permit applications must shall be mailed or delivered to the appropriate address designated by the Agency. Any application or revised application sent by mail must shall be sent by registered or certified mail, return receipt requested.
- b) ~~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 Mine Pollution Control Program.~~ Any application or revised application hand delivered to the Agency must be delivered to an authorized employee of the permit section of the Agency's Mine Pollution Control Program, and the authorized employee must provide the applicant with a delivery receipt.

Addendum to Board Opinion of July 26, 2018

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 404.107 Supplemental State Permits

- a) A permittee may apply for a new or supplemental state permit whenever ~~circumstances arise such that~~ there could be a violation of its previous permit or in other appropriate circumstances.
- b) Applications for new or supplemental state permits ~~shall be~~ are subject to the rules on applications in general.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 404.108 Violation of Conditions and Standards in a Permit

- a) ~~No p~~ Permittees ~~must not~~ shall violate the conditions and standards contained in its state permit.
- b) In addition to ~~the other sanctions under provided by the a~~ Act and ~~this~~ Subtitle D, ~~Chapter I,~~ the Board may revoke a state permit in appropriate circumstances, including ~~but not limited to~~ the following:
 - 1) ~~Due to~~ Because of existing geological conditions, an operator cannot carry out mining activities ~~without causing so as not to cause~~ a violation of the Act or ~~this~~ Subtitle D, ~~Chapter I,~~ or
 - 2) A permittee's history of chronic disregard ~~by the permittee~~ for the Act or Board regulations; or
 - 3) Obtaining a permit by misrepresentation or failure to disclose ~~fully~~ all relevant facts; or
 - 4) Other circumstances where it is affirmatively shown that the general standard for permit issuance ~~under contained in~~ Section 405.102 would not be met if the permittee submitted a new permit application ~~for permit were made~~.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 404.109 State Permit Term

State permits will ~~shall have a duration~~ not to exceed five years as ~~specified in the permit~~.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 404.110 Permit No Defense to Certain Violations

Addendum to Board Opinion of July 26, 2018

~~Possessing~~ ~~The possession~~ of a state permit is not a defense to violation of the Act or Subtitle D, Chapter I except for a complaint alleging mining activity without a permit.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 404.111 Permit Review

~~Any condition or term in a state permit or Agency notification that a permit application is incomplete or inadequate or Agency notification of modification or revocation of an existing permit is a permit denial entitling a person to appeal the Agency's decision to the Board under Section 40 of the Act.~~

- a) If the Agency fails to notify the applicant within 30 days after filing an application that the application is incomplete and the reason the Agency deems it incomplete, the application will be deemed to have been filed on 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 modifying it with conditions, within 90 days after the filing of the application, the applicant may deem the permit granted for a one year period beginning on the 91st day after the application was filed.
- c) If the Agency notifies an applicant that a permit application is incomplete or inadequate, modifies any condition or term of a state permit, or revokes an existing permit, it is considered a permit denial for purposes of appealing the Agency's decision to the Board under Section 40 of the Act.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 404.~~APPENDIX A~~ References to Previous Rules~~REFERENCES TO PREVIOUS RULES~~

The following table is provided to ~~refer aid in referencing old~~ refer ~~aid in referencing old~~ Board rule numbers to current ~~s~~ Section numbers pursuant to codification.

Chapter 4, Mine Related Pollution Part IV, 35 Ill. Admin. Code Part 404
State Permits

Rule 400	Section 404.100
Rule 401	Section 404.101
Rule 402	Section 404.102
Rule 403	Section 404.103
Rule 404	Section 404.104
Rule 405	Section 404.105
Rule 406	Section 404.106

Addendum to Board Opinion of July 26, 2018

Rule 407	Section 404.107
Rule 408	Section 404.108
Rule 409	Section 404.109
Rule 410	Section 404.110
Rule 411	Section 404.111

Source: Amended at 42 Ill. Reg. _____, effective _____)

Addendum to Board Opinion of July 26, 2018

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

PART 405
 STATE AND NPDES PERMITS

Section

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

405. APPENDIX

~~Appendix~~-A References to Previous Rules

AUTHORITY: Implementing Sections 12 and 13 and authorized by Section 27 of the Environmental Protection Act (415 ILCS 5/12, 13 and 27) (~~Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1012, 1013 and 1027~~).

SOURCE: Adopted in R76-20, R77-10, 39 PCB 196, at 4 Ill. Reg. 34, p. 164, effective August 7, 1980; codified at 5 Ill. Reg. 8527; amended in R83-6A at 8 Ill. Reg. 13267, effective July 16, 1984; amended in R07-9 at 32 Ill. Reg. 14978, effective September 8, 2008; amended in R18-24 at 42 Ill. Reg. _____, effective _____.

Section 405.101 Special Conditions: Agency Guidance Document (Repealed)

- a) ~~In addition to the standards and conditions required by this Subtitle D, Chapter I, the Agency may in granting permits impose such conditions as may be necessary to accomplish the purposes of the Act and which are not inconsistent with Subtitle D, Chapter I. All NPDES permits shall contain those terms and conditions, including but not limited to schedules of compliance, which may be required to accomplish the purposes and provisions of the Act.~~
- b) ~~The Agency shall adopt such procedures as are necessary for permit issuance under this Subtitle D, Chapter I. Such procedures shall be included in an Agency guidance document. 35 Ill. Admin. Code Part 450 et seq.~~

Addendum to Board Opinion of July 26, 2018

- e) ~~The Agency may adopt criteria for the design, operation, maintenance and abandonment of mine related facilities and other wastewater sources. Such criteria as are adopted shall be set forth in an Agency guidance document and shall be revised from time to time to reflect current engineering judgment and advances in the state of the art. 35 Ill. Admin. Code Part 450 et seq.~~
- d) ~~In adopting new or revised criteria or procedures, the Agency shall comply with the requirements of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1979, ch. 127, pars. 1001 et seq.~~
- e) ~~To the extent the Agency adopts such criteria, they will represent a formal Agency interpretation of what is consistent with the Act and Subtitle D, Chapter I and necessary to accomplish the purposes of the Act.~~
- f) ~~In adopting new or revised criteria the Agency shall consider other applicable state and federal statutes and regulations and shall avoid issuing criteria which conflict with such.~~

(Source: Repealed at 42 Ill. Reg. _____, effective _____)

Section 405.102 Standard for Permit Issuance or Certification

- a) ~~The Agency will ~~shall~~ issue or certify a permit if ~~and only if~~ the operator submits adequate proof that the mine related facilities and mining activities will be constructed, prepared, and operated without causing so as not to cause a violation of the Act or Subtitle D, Chapter I.~~
- b) ~~If an Agency guidance document is promulgated and if it contains criteria with regard to any condition of a permit, then for purposes of permit issuance proof of conformity with the Agency guidance document shall be prima facie evidence of no violation. However, nonconformity with the Agency guidance document shall not be grounds for permit denial if the condition of subsection (a) of this Section is met.~~
- be) ~~The Agency may issue under Section 405.107 an experimental permit, under Section 405.107 despite subsection (a) ~~of this Section notwithstanding.~~~~

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 405.103 Permit Modification When New Regulations are Adopted

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

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 405.104 Permit Applications

- a) Plans, reports, specifications and application forms submitted to the Agency as part of a state or NPDES permit application ~~must~~ shall be certified by a registered professional engineer when required by the Illinois Professional Engineering Act, 225 ILCS 325 ~~Ill. Rev. Stat., 1979, ch. 111, par. 5101 et seq.~~
- b) An application for a state or NPDES permit ~~must~~ shall include:
 - 1) ~~The Location of the affected land~~ and the maximum extent of the affected land during the term of the requested permit;
 - 2) Activities on the affected land to prepare the site for mining activities, including all earth moving, grading activities, construction and any other preparatory activity;
 - 3) Measures to be taken to avoid violating ~~on~~ of the Act and Subtitle D; ~~Chapter I.~~
 - 4) The location of all streams, creeks, bodies of water and aquifers which receive drainage from the affected land;
 - 5) The location of all private water supplies on or within one mile of the affected land;
 - 6) The name, type and location of all public water supplies within ten miles of the affected land;
 - 7) Plans for surface drainage control ~~under as required by~~ Section 405.105.
 - 8) Affected land ~~Areas of the affected land~~ where mining will occur;
 - 9) Affected land ~~Areas of the affected land~~ where mine refuse and spoil will be deposited.
 - 10) The general characteristics of the mine refuse and spoil according to the classification scheme ~~set forth in the Agency Guidance Document or any other general soil classification system acceptable to the Agency;~~
 - 11) The proposed method of mining;
 - 12) A refuse disposal plan ~~under as required by~~ Section 405.106 or Section 405.107;

Addendum to Board Opinion of July 26, 2018

- 13) The location of all bore holes, mine shafts, and wells on the affected land;
 - 14) An estimate certified by an engineer of the quality and quantity of drainage from the mine area and mine refuse area, including estimates of ~~concentrations of chloride~~ concentrations, sulfate concentrations, total dissolved solids, and all Section 406.106 contaminants ~~regulated under Section 406.106~~, together with an explanation ~~statement of~~ for the basis of the estimates;
 - 15) The location of all mine discharges ~~points~~ and non-point source mine discharges ~~sources~~, method or type of sediment basins, erosion control devices, and wastewater treatment facilities for all mine related facilities including identifying ~~designation of~~ collection points for water discharged from all mechanical pumping or gravity flow systems used for draining the mine and mine refuse area;
 - 16) An abandonment plan under ~~as required by~~ Section 405.109; and
 - 17) If the applicant intends to use acid-producing mine refuse, a plan under ~~as required by~~ Section 405.108.
- c) The Agency may specify other necessary information when ~~necessary for~~ considering ~~of~~ the permit application. This may be done through ~~by way of~~ an application form; ~~through the Agency guidance document~~ and through information requests ~~for information directed to~~ the applicant.
 - d) This section does not limit ~~shall not be construed as limiting~~ the Agency's authority to enter into an agreement with the Illinois Department of Natural Resources, Office of Mines and Minerals for joint permit applications.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 405.105 Surface Drainage Control

- a) A state or NPDES permit must ~~shall~~ include a plan for surface drainage control as a condition.
- b) The applicant's plan for surface drainage control must ~~shall~~ be incorporated into a permit by reference if it meets the standard of Section 405.102(a); otherwise, the Agency must ~~shall either~~ deny the permit or issue it with a modified plan ~~modified by conditions subject to the provisions of Section 405.101~~.
- c) Mining activities and ~~the deposition of~~ depositing mine refuse must ~~shall~~ be planned and conducted ~~so as to~~ avoid contact or interference with waters of the state that could reasonably cause water pollution ~~where such contact can reasonably be expected to cause or allow pollution of such waters~~.

Addendum to Board Opinion of July 26, 2018

- d) ~~Stream D~~ diversion, redirection, or impoundment of streams ~~must~~ shall not be undertaken where the Agency demonstrates that there is an economically reasonable alternative.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 405.106 Refuse Disposal

- a) A state or NPDES permit ~~must~~ shall include a refuse disposal plan as a condition.
- b) The applicant's refuse disposal plan ~~must~~ shall be incorporated into the permit by reference if it meets the standard of Section 405.102(a); otherwise, the Agency ~~must~~ shall either deny the permit or issue it with a modified plan ~~modified by conditions subject to the provisions of Section 405.101.~~
- c) Seepage from a refuse disposal area is considered a mine discharge ~~as defined by Section 402.101 and which is subject to the standards contained in Part 406 of this Subtitle D.~~
- d) The mine refuse area ~~must~~ shall not encompass ~~be located in an area of natural springs or an aquifer recharge area or intercept a drainage course unless special provisions protect them have been made to protect such.~~ The Agency has the burden of proof ~~shall be on the Agency to show~~ to prove that an area is an aquifer recharge area.
- e) Acid-producing solid mine refuse ~~must~~ shall be immediately spread, ~~and~~ compacted in layers, and covered ~~as necessary~~ with suitable non-acid-producing material as necessary. If wetness prohibits immediate spreading, the refuse ~~must~~ shall be spread and compacted as soon as possible and prior to depositing the deposition of a subsequent layer of refuse or cover material. ~~However, t~~The Agency may permit alternate refuse disposal methods.
- f) Any refuse disposal plan constituting a change from the permitted refuse disposal plan is a revised refuse disposal plan.
- g) ~~Implementing~~ ation of a revised refuse disposal plan ~~shall~~ requires a new, ~~or~~ revised, or supplemental NPDES or state permit. Applications ~~must~~ shall be submitted ~~made~~ within the time limits in Sections 403.104 and 404.104 ~~prescribed for the respective permits as provided by Sections 403.104 and 404.104.~~
- g) Subsection (e) ~~shall~~ does not apply to acid-producing solid mine refuse disposed of underground or in strip pits where disposal is below the level of natural drainage; however, a layer containing ~~of~~ at least two feet of suitable non-acid-producing material ~~must~~ shall be applied no later than one year after completion of a refuse pile in an open pit.

Addendum to Board Opinion of July 26, 2018

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 405.107 Experimental Permits for Refuse Disposal

- a) To promote technological development ~~the development of the technology~~ of mine refuse pollution control, the Agency may issue experimental permits for refuse disposal not satisfying the requirements of Section 405.102 if the applicant demonstrates that the process, technique, or system has a reasonable chance of complying ~~for compliance~~ with the Act and Subtitle D, ~~Chapter I.~~
- b) During operation, drainage from an experimental refuse area must ~~shall~~ be monitored ~~to determine~~ for compliance with the Act and Subtitle D, ~~Chapter I.~~
- c) As a permit condition, ~~The~~ Agency may require ~~as a permit condition~~ that the permittee to submit performance data and cost information while operating ~~during the operation~~ of an experimental refuse area.
- d) Applications for experimental permits must ~~shall~~ comply with ~~the requirements of~~ Section 405.104 ~~of this Subtitle D.~~
- e) ~~Agency approval of an experimental permit may be terminated at any time and the requirements of Section 405.102 reimposed within forty five days whenever data or maintenance practices indicate that the experimental method no longer appears likely to meet the requirements of the Act and Subtitle D, Chapter I. After the Agency approves an experimental permit, it may terminate the permit if data or maintenance practices indicate that the experimental method is no longer likely to meet the requirements of the Act and Subtitle D. Within 45 days after termination, the Agency will reimpose the requirements of Section 405.102.~~
- f) Within twelve months after terminating ~~of the termination of the an~~ experimental permit, the permittee must ~~shall~~ complete the abandonment plan in the permitted mine refuse disposal area unless otherwise approved by the Agency.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 405.108 Permit for Use of Acid-producing Mine Refuse

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

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Addendum to Board Opinion of July 26, 2018

Section 405.109 Abandonment Plan

- a) A state or NPDES permit ~~must shall~~ include, as a condition, an abandonment plan ~~as a condition~~.
- b) An abandonment plan ~~must shall~~ be incorporated into the permit by reference if it:
 - 1) ~~Contains~~ Includes a time schedule ~~establishing that the abandonment plan will be executed~~ for executing and completing the plan within a reasonable time after abandonment considering any potential adverse environmental impacts on the environment pending the plan's completion of the plan and the amount of time necessary to complete ~~required to carry out~~ all the steps within it, the plan; ~~One~~ One year is assumed to be a reasonable time unless the operator demonstrates that a longer time is reasonable; and
 - 2) Shows that the mine related facilities and mining activities will be abandoned ~~without so as not to cause a violation of~~ violating the Act or Subtitle D ~~this Chapter~~.
- c) If the abandonment plan does not meet ~~the standard of~~ subsection (b) requirements, the Agency may either deny the permit or issue it with an modified abandonment plan ~~modified by conditions subject to Section 405.101~~.
- d) The time limit under provided by subsection (b)(1) is inapplicable to abandonment plans for surface coal mines which are approved as reclamation plans under the Surface Coal Mining Land Conservation and Reclamation Act, [225 ILCS 720].
- e) Any abandonment plan constituting a substantial change from the permitted abandonment plan is a revised abandonment plan.
- f) A permittee ~~must shall~~ apply for a new, ~~or~~ revised, or supplemental NPDES or ~~State~~ permit before implementing ~~prior to implementation of~~ a revised abandonment plan within the time limits of provided by 35 Ill. Adm. Code 403.104(c).

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 405.110 Cessation, Suspension or Abandonment

- a) A permittee ~~must shall~~ notify the Agency in writing by certified mail within 30 ~~thirty~~ days ~~after of any of~~ the following:
 - 1) Abandonment; or

Addendum to Board Opinion of July 26, 2018

- 2) ~~Stopping or suspending~~Cessation or suspension of active mining for 30
~~thirty~~ days or more unless caused by a labor dispute.
- b) ~~Regardless of the cause, stopping or suspending~~ During cessation or suspension of active mining, ~~whether caused by a labor dispute or not,~~ requires the permittee ~~shall provide to undertake~~ whatever interim impoundment, drainage diversion, or ~~and~~ wastewater treatment is necessary to avoid violating ~~provisions of the Act or Subtitle D~~provisions of the Act or Subtitle D ~~this Chapter.~~
- c) Upon abandonment the permittee ~~must shall~~ execute and complete the permitted abandonment plan; ~~provided, however, that the permittee need not execute and complete the permitted abandonment plan if~~ unless the abandonment arises solely from transfer of ownership to a responsible party.
- d) A responsible party is a person who holds a state or NPDES permit and all other necessary permits for the same facility. If ~~such~~ a permit is issued following ~~subsequent to the transfer, it must shall~~ relieve the transferor of any further ~~the~~ obligation ~~of further to executeing~~ the abandonment plan.
- e) Upon request by the permittee the Agency ~~must shall~~ issue a certificate of abandonment whenever the permittee demonstrates that:
- 1) The abandonment plan has been satisfactorily executed; and
 - 2) The requirements of Sections 405.109(b)(2)(A) and (b)(2)(B) have been met.
- f) Refusal to issue a certificate of abandonment is a permit denial for purposes of appeal.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 405.111 Emergency Procedures To Control Pollution

- a) A permittee ~~must shall~~ notify the Agency within one hour of ~~becoming aware of~~ an emergency situation concerning mining activities which causes or threatens to ~~cause~~ a discharge of contaminants into the waters of Illinois. The permittee must shall initially notify the Agency by telephone and then by ~~follow this with~~ written notice ~~including a description of~~ describing the corrective measures taken. The permittee ~~must shall~~ immediately undertake necessary corrective measures consistent with Agency approval under ~~paragraph subsection (b) of this Section.~~ Emergency situations, likely to ~~cause a violation of the Act or Subtitle D~~ this Chapter I, include ~~but are not limited to the following:~~
- 1) Dike, levee, dam, or pipeline rupture;

Addendum to Board Opinion of July 26, 2018

- 2) Flooded pit containing waters which do not meet the standards of Part 406;
 - 3) Power failure or mechanical breakdown of any wastewater treatment facility.
- b) The Agency may temporarily suspend the permit requirement ~~that a permit be obtained~~ to install and operate any device or facility necessary to correct the emergency situation.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 405.112 Mine Entrances

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

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 405.113 Permit Area

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

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 405. APPENDIX A References to Previous Rules REFERENCES TO PREVIOUS RULES

The following table is provided to refer ~~aid in referencing old~~ previous Board rule numbers to current ~~Section numbers pursuant to codification~~.

Chapter 4, Mine Related Pollution Part V, 35 Ill. Admin. Code Part 405
State and NPDES Permits

Rule 500	Section 405.100
Rule 501	Section 405.101
Rule 502	Section 405.102
Rule 503	Section 405.103
Rule 504	Section 405.104
Rule 505	Section 405.105
Rule 506	Section 405.106
Rule 507	Section 405.107
Rule 508	Section 405.108
Rule 509	Section 405.109

Addendum to Board Opinion of July 26, 2018

Rule 510	Section 405.110
Rule 511	Section 405.111
Rule 512	Section 405.112
Rule 513	Section 405.113

~~(Filed August 10, 1981, effective August 10, 1981)~~

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Addendum to Board Opinion of July 26, 2018

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

PART 406
 MINE WASTE EFFLUENT AND WATER QUALITY STANDARDS

SUBPART A: EFFLUENT STANDARDS

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

SUBPART B: WATER QUALITY STANDARDS

Section	
406.201	Temporary Exemption from Section 406.105 (Repealed)
406.202	Violation of Water Quality Standards
406.203	TDS Related Permit Conditions (Repealed)
406.204	Good Mining Practices
406.205	Contact with Disturbed Areas
406.206	Retention and Control of Exposed Waters
406.207	Control of Discharge Waters
406.208	Unconventional Practices
406.209	Expiration of Former Exemptions (Repealed)
406.APPENDIX A	References to Previous Rules

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

SOURCE: Adopted in R76-20, R77-10, 39 PCB 196, at 4 Ill. Reg. 34, p. 164, effective August 7, 1980; codified at 5 Ill. Reg. 8527; emergency amendment in R83-6B at 7 Ill. Reg. 8386, effective July 5, 1983, for a maximum of 150 days; amended in R83-6B at 7 Ill. Reg. 14510, effective October 19, 1983; amended in R83-6A at 8 Ill. Reg. 13239, effective July 16, 1984; amended in R84-29 at 11 Ill. Reg. 12899, effective July 27, 1987; amended in R07-9 at 32 Ill.

Addendum to Board Opinion of July 26, 2018

Reg. 14978, effective September 8, 2008; amended in R18-24 at 42 Ill. Reg. _____, effective _____.

SUBPART A: EFFLUENT STANDARDS

Section 406.100 Preamble

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

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 406.101 Averaging

- a) Compliance with the numerical standards of this ~~Partpart~~ mustshall be determined based on the basis of 24-hour composite samples averaged over any calendar month. ~~AIn addition, no~~ single 24-hour composite sample must notshall exceed two times the numerical standards ~~prescribed~~ in this ~~Partpart~~, and ~~nor shall~~ any grab sample taken individually or as an aliquot of any composite sample must not exceed five times the numerical standards ~~prescribed~~ in this ~~Partpart~~.
- b) ~~Despite subsection~~Subsection (a) of this section ~~notwithstanding~~, if a permittee elects monitoring and reporting by grab samples under 35 Ill. Adm. Code as provided in Section 406.102(f), then compliance with the numerical standards of ~~this part~~ mustshall be determined based on the basis of three or more grab samples averaged over a calendar month. ~~AIn addition, no~~ single grab sample must notshall exceed two times the numerical standards ~~prescribed~~ in this ~~Partpart~~.
- c) The numerical standards for settleable solids are maximum values not to be exceeded at any time and are not subject to averaging.
- d) The numerical standards for pH mustshall be within the specified range at all times and are not subject to averaging.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 406.102 Sampling, Reporting and Monitoring

- a) Where treatment is provided for a discharge, effluent samples ~~must~~ shall be taken ~~at a point~~ after the final treatment process and before entry into or mixture with any waters of the state.
- b) ~~Where treatment is provided the~~ The permittee must ~~design or modify structures assist the Agency in so as to permit the taking of effluent samples by the Agency at the required point.~~ shall design or modify structures assist the Agency in so as to permit the taking of effluent samples by the Agency at the required point.
- be) Where treatment is not provided for a discharge, effluent samples ~~must~~ shall be taken at the ~~access nearest point of access to the discharge source nearest to the~~ access nearest point of access to the discharge source nearest to the a point where the discharge leaves the mine, ~~or mine area, or other portions of the affected land, but in all cases~~ All effluent samples ~~must~~ shall be taken before entry into or mixture with waters of the state.
- cd) ~~The Agency will determine~~ At a reasonable frequency at which to be determined by the Agency, the permittee ~~must~~ shall report the actual concentration or level of any parameter identified in the state or NPDES permit.
- 1) Each report submitted ~~under pursuant to~~ this subsection ~~must~~ shall include at least three samples taken from each pond discharge during three separate periods ~~occurring~~ during that reporting period in which the alternate limitations for precipitation events under 35 Ill. Adm. Code of Section 406.109 and 35 Ill. Adm. Code 406.110 were in effect.
 - 2) If ~~such~~ alternate limitations under 35 Ill. Adm. Code 406.109 and 35 Ill. Adm. Code 406.110 are in effect on fewer than three separate occasions during a reporting period, one sample ~~must~~ shall be taken ~~from~~ of each pond discharge on during each occasion during in that period when the alternate limitations are in effect. The operator ~~has~~ shall have the burden of proof that the applicable precipitation event caused the discharge or increase in discharge ~~was caused by the applicable precipitation event.~~
- de) The Agency may ~~by permit condition~~ require monitoring and reporting based on the basis of 24-hour composite samples averaged over calendar months as a permit condition. ~~The Agency may permit~~ However, grab samples or composite samples of shorter duration ~~may be permitted by the Agency after the permittee demonstrates demonstration that the~~ such samples reflect discharge levels over standard operating conditions.
- ef) Despite subsection ~~Subsection (e) of this Section notwithstanding,~~ if a permittee so requests, the Agency ~~may~~ shall ~~by permit condition~~ require monitoring and reporting based on the basis of grab samples as a permit condition, in which case Section 406.101(b) will apply.

Addendum to Board Opinion of July 26, 2018

- fg) ~~Monitoring as required in this rule must~~ shall continue after abandonment until the permittee has reasonably established that drainage complies with and will continue to comply with the requirements of the Act and Subtitle D~~this Chapter~~.
- gh) All methods of sample collection, preservation, and analysis used in applying ~~any~~ of the requirements of Subtitle D~~this Chapter~~ ~~must~~ shall be in accord with the United States Environmental Protection Agency's current practice manual ~~of practice or with~~ other procedures acceptable to the United States Environmental Protection Agency and the Agency.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 406.103 Background Concentrations

Because the effluent standards in this part are based upon concentrations achievable with conventional treatment technology that is largely unaffected by ordinary levels of contaminants in intake water, they are absolute standards that must be met without subtracting background concentrations. ~~These~~ However, it is not the intent of these regulations are not intended to require users to clean up contamination caused ~~essentially~~ by upstream sources or to require treatment when only traces of contaminants are added to the background. Complying~~Compliance~~ with the numerical effluent standards is ~~therefore~~ not required when effluent concentrations exceeding~~in excess of~~ the standards result entirely from the ~~contamination of~~ contamination before it enters the affected land. Background concentrations or discharges upstream from affected land are rebuttably presumed not to have caused a violation of this Part~~part~~.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 406.104 Dilution

- a) Dilution of an effluent from a treatment works or from any wastewater source is not acceptable as a wastewater treatment method ~~of treatment of wastes in order~~ to meet the effluent standards ~~set forth~~ in this Subpart. Rather, ~~it shall be the obligation of~~ any person discharging contaminants ~~of any kind~~ to the waters of the state ~~must~~ provide the best degree of wastewater treatment ~~of wastewater~~ consistent with technological feasibility, economic reasonableness, and sound engineering judgment.
- b) ~~When determining~~ In making determinations as to what kind of treatment is the best degree of treatment under~~within the meaning of~~ this Section, the following will be considered;
- 1) ~~The~~ What degree of waste reduction that can be achieved by process change, improved housekeeping, and recovery of individual waste components for reuse; and

Addendum to Board Opinion of July 26, 2018

- 2) Whether individual process wastewater streams should be segregated or combined.
- c) Concentrations measured for ~~the purpose of~~ determining compliance with Section 406.106 ~~must~~shall be recomputed to exclude the effect of any dilution that is improper under this Section.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 406.105 Commingling of Waste Streams

Where waste streams from ~~different facilities~~any facility described in this Part are combined for treatment or discharge ~~with other waste streams from another facility~~, ~~no~~the concentration of ~~each~~ pollutant in the combined discharge may ~~not~~ exceed the most stringent limitations for that pollutant applicable to any component waste stream of the discharge.

(Source: Former Section 406.105 renumbered to Section 406.202 at 8 Ill. Reg. 13239, effective July 16, 1984; new Section adopted at 11 Ill. Reg. 12899, effective July 27, 1987)

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 406.106 Effluent Standards for Mine Discharges

- a) The effluent limitations ~~contained in~~ 35 Ill. Adm. Code 304 ~~do~~shall not apply to mine discharges or non-point source mine discharges.
- b) Except as provided in Sections 406.109 and 406.110, a mine discharge effluent ~~must~~shall not exceed the following levels ~~of contaminants~~:

Constituent	Storet Number	Concentration
Acidity	00435	(total acidity must <u>shall</u> not exceed total alkalinity)
Iron (total)	01045	3.5mg/l
Lead (total)	01051	1 mg/l
Ammonia Nitrogen (as N)	00610	5 mg/l
pH		00400 (range 6 to 9)
Zinc (total)	01092	5 mg/l
Fluoride (total)	00951	15 mg/l
Total suspended solids	00530	35 mg/l
Manganese	01055	2.0 mg/l

- 1) The ammonia nitrogen standard ~~applies~~is applicable only to an operator ~~using~~utilizing ammonia in wastewater treatment.

Addendum to Board Opinion of July 26, 2018

- 2) The manganese effluent limitation ~~applies~~ ~~is applicable~~ only to discharges from facilities where chemical addition is required to meet the iron or pH effluent limitations. The upper limit of pH ~~must~~ ~~shall~~ be 10 for any ~~such~~ facility ~~that is~~ unable to comply with the manganese limit at pH 9. The manganese standard is not applicable to mine discharges ~~which are~~ associated with areas where no active mining, processing, or refuse disposal has taken place since May 13, 1976.
- c) New source coal mines ~~are~~ ~~shall be~~ subject to a total iron limitation of 3.0 mg/l in addition to the requirements of subsection (b) above.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 406.107 Offensive Discharges

In addition to the other requirements of ~~Subtitle D~~ ~~this Chapter~~, no mine discharge effluent ~~must~~ ~~not~~ ~~shall~~ contain settleable solids, floating debris, visible oil, grease, scum, or sludge solids. Color, odor, and turbidity ~~must~~ ~~shall~~ be reduced ~~to~~ below obvious levels.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 406.108 Non-Point Source Mine Discharges

Surface drainage from the affected land of a coal mine, including disturbed areas which have been graded, seeded, or planted, ~~must pass~~ ~~shall be passed~~ through a sedimentation pond or a series of sedimentation ponds before leaving the facility.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 406.109 Effluent Standards for Coal Mine Discharges from Reclamation Areas

- a) The effluent limitations ~~ate~~ ~~contained in~~ 35 Ill. Adm. Code 304 and Section 406.106 ~~do~~ ~~shall~~ not apply to mine discharges from reclamation areas.
- b) A mine discharge effluent from a reclamation area ~~must~~ ~~shall~~ not exceed the following levels of contaminants:

Constituent	<u>Storet</u> Number	Storet Concentration
Settleable solids		0.5 ml/l
pH	<u>00400</u>	00400 (range 6-9)

- c) Notwithstanding subsection (b), ~~above~~, any discharge, or increase in ~~discharge~~ ~~the~~ volume of discharge caused by precipitation within ~~any~~ 24-hour period greater

than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) ~~is shall be~~ subject only to a pH limitation (range 6-9).

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 406.110 Alternate Effluent Standards for Coal Mine Discharges During Precipitation Events

- a) Discharges of ~~alkaline mine drainage (except discharges from underground mines that are not commingled with other discharges eligible for these alternate limits), discharges from mountaintop removal areas operations, discharges from steep slope areas, and discharges from coal preparation plants and plant associated areas, and discharges of alkaline mine drainage except for drainage from coal refuse disposal piles~~ are eligible for alternate effluent limitations during precipitation events. Discharges ineligible for alternate effluent limitations during precipitation event include drainage from coal refuse piles and discharges of alkaline mine drainage from underground mines which are not commingled with other eligible discharges. Any discharge or increase in discharge the volume of a discharge caused by precipitation within any 24-hour period less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitations instead of those in 406.106(b):

Constituent	Storet Number	Concentration
Settleable solids		0.5 ml/l
pH	<u>00400</u>	00400 (range 6-9)

- b) Discharges of acid or ferruginous mine discharge from coal refuse disposal piles are eligible for alternate effluent limitations during precipitation events. Any discharge or increase in discharge the volume of a discharge caused by precipitation within any 24-hour period greater than the 1-year, 24-hour precipitation event and less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitations instead of those in 406.106(b):

Constituent	<u>Storet</u> Number	Storet Concentration
Settleable solids		0.5 ml/l
pH	<u>00400</u>	00400 (range 6-9)

- c) Discharges of acid or ferruginous mine drainage (excluding except for discharges in subsection (b)), ~~above,~~ mountaintop removal area discharges areas, steep slope area discharges areas, controlled surface mines discharges, and discharges from underground workings) caused by precipitation:

Addendum to Board Opinion of July 26, 2018

- 1) ~~Within~~~~caused by precipitation within~~ any 24-hour period less than or equal to the 2-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitations instead of those in 406.109(b):

Constituent	<u>Storet</u> Number	Storet Concentration
Settleable solids		0.5 ml/l
Iron (total)	<u>101045</u>	3.5 mg/l
pH	<u>00400</u>	00400 (range 6-9)

- 2) ~~Within~~~~Caused by precipitation within~~ any 24-hour period greater than the 2-year, 24-hour precipitation event but less than or equal to the 10-year, 24-hour precipitation event must comply with~~shall be subject to the requirements of subsection (c)(1), above,~~ except for the total iron effluent standard.

- d) All discharges mentioned in subsections (a), (b), and (c) of this section, discharges of acid or ferruginous mine drainage from underground workings which are commingled with other discharges, and controlled acid or ferruginous surface mine discharges caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) are~~shall be~~ subject only to a pH limitation (range 6-9).

(Source: Amended at 42 Ill. Reg. _____, effective _____)

SUBPART B: WATER QUALITY STANDARDS

Section 406.201 Temporary Exemption from Section 406.105 (Repealed)

(Source: Repealed at 8 Ill. Reg. 13239, effective July 16, 1984)

Section 406.202 Violation of Water Quality Standards

In addition to the other requirements of this Part, ~~no~~ mine discharges and~~or~~ non-point source mine discharges shall, alone or in combination with other sources, must not cause a violation of any water quality standards under~~of~~ 35 Ill. Adm. Code 302 or 303. ~~If~~~~When~~ the Agency finds that a discharge which would comply with Subtitle D effluent standards ~~contained in this Part~~ would cause or is causing a violation of water quality standards, the Agency will~~shall~~ take appropriate action under Section 31 or 39 of the ~~Environmental Protection Act~~ and~~to~~ require the discharge to meet ~~whatever~~ effluent limits are necessary to comply~~ensure~~ compliance with the water quality standards. When ~~such~~ a violation is caused by the cumulative effect of more than one source, several sources may be joined in an enforcement or variance proceeding, and measures for necessary effluent reductions will be determined based on ~~the basis of~~ technical feasibility, economic reasonableness, and fairness to all dischargers.

Addendum to Board Opinion of July 26, 2018

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 406.203 TDS Related Permit Conditions (Repealed)

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

Section 406.204 Good Mining Practices

~~In determining whether an operator is utilizing good~~ Good mining practices are designed to minimize discharge of total dissolved solids, chloride, sulfate, iron, and manganese. ~~The~~ The Agency will~~shall~~ consider whether the operator is using~~utilizing~~ the following good mining practices, further defined in the Sections indicated:

- a) Practices which may stop or minimize water from coming into contact with disturbed areas (Section 406.205);
- b) Retention and control ~~within the site~~ of waters exposed to disturbed materials (Section 406.206);
- c) Control and treatment of waters discharged from the site (Section 406.207);
- d) Unconventional practices (Section 406.208).

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 406.205 Contact with Disturbed Areas

~~In considering whether an operator is utilizing practices which may stop or minimize water from coming into contact with disturbed areas, the~~ The Agency will~~shall~~ consider whether the operator's practices stop or minimize water from coming into contact with disturbed areas by considering the extent to which the operator is utilizing erosion controls, including:

- a) Diversions
 - 1) Bypass diversions to collect and convey around or through to a receiving stream waters that would otherwise flow over or through disturbed areas.
 - 2) On-site diversions to convey water around or over: disturbed areas; or, undermined areas connected to the surface.
 - 3) Interception diversions to isolate on-site critical areas; including, ~~but not limited to:~~ raw spoils, partially stabilized spoils, and highway access roads.
- b) Runoff Controls

Addendum to Board Opinion of July 26, 2018

- 1) ~~Staging of clearing~~ Clearing, grubbing, scalping, grading and reclamation operations so that the various to keep stages of the mining operation are kept concurrent with extraction operations; and a minimum disturbed surface area is exposed at any one time.
- 2) Keeping gradients and inclines to the active pit as short as possible ~~in order~~ to minimize the amount of drainage going to the active pit.
- 3) Soil stabilization ~~through~~ measures such as revegetation and mulching to reduce the potential for exposing materials which may produce dissolved solids.
- 4) Sealing ~~of~~ boreholes acting as conduits allowing ~~which allow the~~ uncontrolled entrance of water to underground mines or to active pit areas of surface mines.
- 5) Leaving sufficient barriers whenever mining adjacent to abandoned underground workings that may be inundated with water.
- 6) Prompt disposal ~~Disposal~~ of potential-contaminant producing materials as ~~soon as possible~~ in areas that will prohibit or minimize contact with surface and groundwater.
- 7) Covering or treating potential contaminant-producing materials ~~so as~~ to minimize adverse effects on water quality.
- 8) Sealing ~~of~~ water-yielding fracture zones encountered during underground mining to reduce the flow of high total dissolved solids waters when geologic conditions permit successful sealing and when the flow from the fracture zone contributes significantly to the total dissolved solids load in the mine discharge.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 406.206 Retention and Control of Exposed Waters

~~In considering whether an operator is utilizing practices leading to the retention and control within the site of waters exposed to disturbed materials, the~~ The Agency will ~~shall~~ consider the following to determine ~~whether~~ extent to which the ~~an operator's~~ practices retain and control ~~waters exposed to disturbed materials is utilizing:~~

- a) Erosion Controls: grading, sloping, and revegetating ~~revegetation~~ of disturbed soil surfaces to reduce and detain runoff.

Addendum to Board Opinion of July 26, 2018

- b) ~~Sedimentation Controls: routing and segregating~~~~segregation or combining~~~~combination~~ of wastewater and mine runoff water to minimize any effect on the ~~receiving stream's~~ ~~quality of the receiving stream.~~
- c) Reuse of Discharges: ~~reusing~~Reuse of water ~~with~~bearing high concentrations of total dissolved solids, whenever possible, including:
- 1) Recirculation ponds to recycle water to the preparation plant.
 - 2) Recirculation ponds to provide water for underground dust control.
 - 3) Holding ponds to provide irrigation waters to reclaimed land ~~and/or~~ adjacent crop land ~~tolerating~~with tolerances to accept higher concentrations of total dissolved solids.
- d) Minimum Exposure of Waters to Disturbed Materials:
- 1) ~~Applying~~Application of water management practices, either continuously or at frequent intervals, ~~in order~~ to minimize water contact with disturbed materials.
 - 2) ~~Preventing~~Prevention of ~~water~~ accumulation of waters in active pits, benches, terraces, roads, processing areas, surface depressions, and underground mine workings and cavities where ~~the dissolution~~ of contaminants will be ~~dissolved~~facilitated.
 - 3) ~~Prompt removal~~Removal of water to diversions and appropriate impoundments ~~as soon as possible~~ to minimize additional loadings of total dissolved solids.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 406.207 Control of Discharge Waters

~~In considering whether an operator is utilizing practices leading to control and treatment of waters discharged from the site containing elevated levels of total dissolved solids, chloride or sulfate, the~~ The Agency will~~shall~~ consider the following practices to determine whether an operator is controlling and treating waters containing elevated levels of total dissolved solids, chloride, or sulfate discharged from the site~~extent to which the operator is utilizing:~~

- a) ~~Regulating~~Regulation of discharges when other control methods are insufficient and chemical treatment is economically unfeasible, including:
- 1) Regulating the flow of discharges high in total dissolved solids according to~~in accordance with~~ fluctuating or intermittent stream flows so that the

Addendum to Board Opinion of July 26, 2018

~~concentration~~ of total dissolved solids concentration remains within established water quality standards; or

- 2) Regulating the flow or fluctuation of receiving streams by timely discharge of water from existing impoundments which have suitable discharge control structures.
- b) Rerouting over economically feasible distances, involving collecting discharges and conveying them to more suitable discharge points, such as large holding ponds located adjacent to more suitable receiving streams where dilution ~~and/or~~ water quality is better.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 406.208 Unconventional Practices

~~In considering whether an operator is utilizing unconventional practices to prevent production or discharge of elevated levels of total dissolved solids, chloride and sulfate, the~~ The Agency will ~~shall~~ consider the following unconventional practices to consider whether an operator's practices prevent producing or discharging elevated levels of total dissolved solids, chloride, and sulfate ~~extent to which the operator is utilizing:~~

- a) ~~Diverting~~ Diversion of groundwater by intercepting the flow path ~~before~~ prior to entering a surface or underground mine when it is determined by the mine operator to be economically preferable to treating contaminated water after it passes through a mine.
- b) Dewatering practices that remove clean formation water before contacting dissolved solids-producing materials, including techniques used ~~which can be employed~~ to tap nonpolluted aquifers ~~in order~~ to reduce the amount of water entering a mine.
- c) Any additional practices ~~which~~ the operator uses effectively to reduce ~~demonstrates to be effective in reducing~~ levels of total dissolved solids, chloride, sulfate, iron and manganese in discharges.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 406.209 Expiration of Former Exemptions (Repealed)

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

Section 406.APPENDIX A References to Previous Rules

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

Addendum to Board Opinion of July 26, 2018

Chapter 4, Mine Related Pollution Part VI, 35 Ill. Admin. Code Part 406
Effluent and Water Quality Standards

Rule 600	Section 406.100
Rule 601	Section 406.101
Rule 602	Section 406.102
Rule 603	Section 406.103
Rule 604	Section 406.104
Rule 605	Section 406.105
Rule 605.1	Section 406.201
Rule 606	Section 406.106
Rule 607	Section 406.107
Rule 608	Section 406.108

~~(Filed August 10, 1981, effective August 10, 1981)~~

(Source: Amended at 42 Ill. Reg. _____, effective _____)