

ILLINOIS POLLUTION CONTROL BOARD  
July 17, 1975

IN THE MATTER OF )  
 )  
THE PROPOSED AMENDMENT TO RULE 409 ) R74-17  
of the WATER POLLUTION REGULATIONS )

OPINION AND ORDER OF THE BOARD (by Mr. Dumelle):

The Pollution Control Board (Board) authorized a proposed amendment to Rule 409 of the Water Pollution Regulations (Water Regulations) for public hearing on December 19, 1974. The proposal, together with a Statement of Need, was published in Newsletter #96 on January 10, 1975. Two days of public hearing were held in Chicago and in Springfield. Following a thirty day public comment period the Board proposed for final public comment a revised amendment to Rule 409 on May 15, 1975. This final proposal was published in Environmental Register #102 (formerly the Newsletter). Public comments were invited until June 15, 1975.

The proposed amendment to Rule 409 of the Water Regulations would extend the compliance date for certain of the effluent limitations found in Part IV of the Water Regulations. Rule 409 was originally proposed by the Environmental Protection Agency (Agency) on March 7, 1973 and was enacted by the Board on July 19, 1973 (R73-4). The effect of the adoption of Rule 409 was to extend the compliance dates for all effluent standards which were required to be met on December 31, 1973 to December 31, 1974 for any discharger, who is or will be eligible for a construction grant under Section 201(g) of the Federal Water Pollution Control Act Amendments of 1972 (FWPCA). This extension was a recognition of the delay in attaining compliance by the impoundment of federal construction grant monies.

The extension of the compliance date from December 31, 1974 to the proposed July 1, 1977 date was proposed because of the delays in federal funding of sewage treatment plants, impoundment of \$9 billion in grant funds by the President, and the publication of new regulations and guidelines necessary to establish project eligibility. In addition, the Board, on August 29 and September 5, 1974, enacted the National Pollutant Discharge Elimination System (NPDES) regulations which give the Agency the power to vary the December 31, 1974 compliance date up to and including July 1, 1977. The NPDES permit program has not been accepted by the federal government and consequently the power to vary the compliance date does not now repose in the Agency.

The extension of the deadlines by which municipalities and sanitary districts must comply with the effluent requirements found in Part IV of the Water Regulations eliminates the need for the filing of individual variances by those municipalities and sanitary districts who are awaiting construction grant awards or are in the actual construction phase after having received such an award.

During the two days of public hearings, representatives from the Metropolitan Sanitary District of Greater Chicago, the Agency and the Illinois Municipal League appeared in support of the proposal. Public comments were received from Olin Brass Company, City of Batavia, and the Galesburg Sanitary District in support of the proposed amendment. No opposition was raised concerning the basic proposal. Mr. Michael J. Hayes, manager of the grant administration and tax certification section of the Division of Water Pollution Control of the Agency testified concerning delays which have occurred in the awarding of construction grant funds. Significant delays in contract awards have occurred because of the delay by the U.S. Environmental Protection Agency (U.S. EPA) in adopting final regulations and guidelines for the awarding of construction grants, the Presidential impoundment of construction grant funds and new grant requirements such as sewer system evaluation (R. 7). On February 11, 1975 final U.S. EPA regulations on construction grants for treatment works were proposed which require facilities planning prior to the granting of construction grants (40 CFR 35. 917(b)). Mr. Hayes testified that this facilities planning requirement, when coupled with the requirement of prior approval for each step in the construction grant phase, delayed almost all sewage treatment plant construction projects in Illinois (R. 9).

The federal construction grant program provides grants through three steps. Step one involves planning, step two is the preparation of design, and step three is a construction phase of the grant program. Both federal and state funds can be available for each step (R. 7). The Agency has prepared a construction grant project list which contains some 967 individual projects which await funding (R. 32). Approximately 650 individual communities or sanitary districts have submitted the 979 applications for individual projects which make up the project list (R. 32). The project list compiled by the Agency is based upon a number of factors including the severity of the pollution impact of the discharge and are subject to public hearings conducted by the Agency (R. 33).

Presently, out of the entire project list, projects numbered 1 through 125 are eligible for step three construction grant funding from U.S. EPA, projects 126 through 175 are eligible for step three state construction funding, and projects numbered 176 through 400 are eligible for step one and step two grants from the U.S. EPA (R. 11). Therefore, projects 401 thru the remainder of the list are currently not funded by either the U.S. EPA or the State.

The Agency testified that the total federal construction grant monies available for award in Illinois and the Illinois construction grants will provide funding for projects 1 thru 400 (R. 46). It is estimated that most of these projects will begin construction by July 1, 1977 (R. 45). However, Mr. Michael Mauzey, Manager of Environmental Programs for the Agency, testified that it would be "extremely doubtful" that the proposed deadline of July 1, 1977 could be met (R. 57).

Given the delay in the awarding of construction grant funds and the actual construction time once the funds have been awarded, the Board has decided to extend the compliance date for effluent limitations found in Part IV of the Water Regulations as published in Environmental Register #102 on May 19, 1975. The extension until July 1, 1977 in Rule 409 would affect the following Rules or portions of Rules found in Part IV:

- Rule 404(a)(i) and (ii)
- Rule 404(b)(i) and (ii)
- Rule 404(c) (except (C)(ii))
- Rule 404(d)
- Rule 404(f)
- Rule 404(g)
- Rule 405 (only for discharges to Mississippi & Ohio River)
- Rule 406
- Rule 407(b)
- Rule 408(c)(ii)(B)

It was suggested that the requirement imposed by Rule 402 to comply with applicable water quality standards also be extended. The Board has decided that a discharger whose effluent, either alone or in combination with other sources causes a violation of an applicable water quality standard, should apply for appropriate variances from the applicable regulations. The case-by-case approach seems warranted rather than adoption of a blanket rollback in such cases. Rule 409(b) enables

the Board to require the abatement of water pollution by dischargers who, because of Rule 409(a), do not have to comply with the rules found in Part IV until July 1, 1977. However, the effluent of these dischargers could because of low flow or other reasons cause water pollution. The Board would be free to enter such an order pursuant to an enforcement case initiated under Sections 30 through 34 of the Act where it was found that a discharger was indeed violating Section 12(a) of the Act or an applicable water quality standard found in Part II of the Water Regulations.

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

ORDER

The following amendment to Rule 409 Delays In Upgrading of the Water Pollution Regulations is hereby enacted:

- (a) All effluent standards required to be met on December 31, 1973 or December 31, 1974 are extended to July 1, 1977 for any discharger to the waters of the State who is or will be eligible for a construction grant under Section 201(g) of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1951 et seq.) and has filed an application for such grant on or before December 31, 1975.
- (b) The above provision shall not limit the power of the power of the Board to enter an order directing immediate construction of facilities necessary to abate pollution of the waters of the State, when the Board has found, as the result of an enforcement case initiated under Sections 30-34 of the Act, that the discharger is causing or threatening to cause water pollution.
- (c) Whenever a discharger subject to the provisions of this Rule files or has filed the Project Completion Schedule required by Rule 1002 and receives a time extension through the application of this Rule, said Project Completion Schedule will be automatically adjusted to reflect the time extension.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 17<sup>th</sup> day of July, 1975 by a vote of 5-0.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board