

ILLINOIS POLLUTION CONTROL BOARD
December 5, 1974

IN THE MATTER OF)
NATIONAL POLLUTANT DISCHARGE)
ELIMINATION SYSTEM)
REGULATIONS) R73-11 & 12
)
)

OPINION OF THE BOARD (by Mr. Dumelle):

The National Pollutant Discharge Elimination System Regulations, R73-11 and 12 (hereinafter referred to as NPDES), adopted by the Board on August 29, and September 5, 1974, together with the Livestock Wastes Regulations, R72-9 (hereinafter referred to as Feedlot), form the regulatory basis for the State of Illinois' request of the transferral of authority for issuing NPDES Permits from the U.S. Environmental Protection Agency (hereinafter referred to as U.S. EPA) pursuant to Section 402(b) of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500, 33 U.S.C. 1151 et. seq., (hereinafter referred to as the FWPCA)). The NPDES Permit system was created by the United States Congress when it enacted the FWPCA on October 18, 1972. The FWPCA directed the U.S. EPA to promulgate regulations to administer the permit system and to promulgate regulations to set forth the basic requirements for State NPDES Program requests pursuant to Section 402(b) of the FWPCA. On May 22, 1973, the U.S. EPA promulgated the Environmental Protection Agency Regulations on Policies and Procedures for the National Pollutant Discharge Elimination System, 40 CFR 125, 38 FR. 13527 (hereinafter referred to as 40 CFR 125), which set out the regulatory procedures to be followed by the U.S. EPA in issuing NPDES Permits. Pursuant to Section 304(h)(2) of the FWPCA, the U.S. EPA promulgated Environmental Protection Agency Regulations on State Program Elements Necessary for Participation in the National Pollutant Discharge Elimination System, 40 CFR 124, 37 FR 28390 as amended by 38 FR 17999, July 5, 1973 and 38 FR 19894, July 24, 1973 (hereinafter referred to as 40 CFR 124), which sets out the minimum program requirements that must be met before the U.S. EPA can turn over the NPDES Permit Program to a State.

The Board acknowledges, with appreciation, the assistance of Mr. Roy M. Harsch, Administrative Assistant to the Board, in this proceeding.

The Illinois legislature adopted House Bill 1585 which amended the Environmental Protection Act (hereinafter referred to as Act) to establish the legislative authority for an NPDES Permit Program which would secure Federal approval. On September 14, 1973, Governor Walker signed House Bill 1585. Section 13(b) of the Act directs the Board to adopt:

(r)equirements, standards, and procedures which, together with other regulations adopted pursuant to this Section 13, are necessary or appropriate to enable the State of Illinois to implement and participate in the National Pollutant Discharge Elimination System (NPDES) pursuant to and under the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500). All regulations adopted by the Board governing the NPDES program shall be consistent with the applicable provisions of such federal Act and regulations pursuant thereto, and otherwise shall be consistent with all other provisions of this Act, and shall exclude from the requirement to obtain any operating permit otherwise required under this Title as facility for which an NPDES permit has been issued under Section 39(b) (Section 13(b)(1) of the Act).

To this end, the Illinois Environmental Protection Agency (hereinafter referred to as Agency) on October 1, 1973 proposed a comprehensive revision of the Illinois Pollution Control Board Rules and Regulations, Chapter 3: Water Pollution and Chapter 1: Procedural Rules (hereinafter referred to as Water Pollution Regulations and Procedural Rules, respectively).

The Agency proposal was published in Newsletter #74 on October 10, 1973. Four days of hearings were held throughout the State on this proposal. On January 16, 1974, the then new director of the Agency requested that the Board "temporarily defer action on the NPDES regulations" pending review of the matter by the Agency. On January 30, 1974, the Agency submitted an amended proposal, which in its view encompassed certain comments and criticisms which had been received by the Agency at the previous hearings and during the subsequent comment period. This amended proposal was published in Newsletter #80 on February 1, 1974. One day of hearing was held on the amended proposal on March 13, 1974 in Chicago.

At the start of this additional hearing, the Agency appeared and filed a Motion to Suspend the Proceedings. The Motion requested the Board to table consideration of the

NPDES regulatory proposal for five months while the Agency and the U.S. EPA proceeded to implement a program of State certification and drafting of NPDES Permits and U.S. EPA issuance of final NPDES Permits. The Hearing Officer deferred this ruling to the Board and proceeded to conduct the hearing on the Agency's new proposal (R. 806). On March 14, 1974, the Board denied the Agency's Motion to Suspend Proceedings (R73-11 and 12, 11 PCB 609 (March 14, 1974)).

On April 4, 1974, the Board authorized the publication of a draft set of proposed NPDES regulations which reflected the Board's review of the four days of hearings on the Agency's first proposal and all comments received on that proposal, and the testimony presented on the Agency's second proposal, as well as all comments received on it. This proposed draft was published in Newsletter #83 on April 11, 1974. In addition, copies of this proposed draft were mailed to most of those persons who had appeared at the previous hearings or had submitted comments.

Numerous comments were received by the Board on this draft proposal. On May 29, 1974, the Board conducted a "give and take" session on the record, primarily with the U.S. EPA. As the result of the comments received and the testimony at the "give and take" session, the Board further amended its proposed draft of NPDES Regulations and authorized a new final proposed draft on June 28, 1974 for publication. This final proposed set of NPDES Regulations was published in Newsletter #81 on July 5, 1974. Individual copies of this new final proposed draft were again sent to a majority of those persons who had commented on prior proposals.

After again reviewing the record, together with those comments received on the final proposal, the Board enacted these NPDES Regulations on August 29, and September 5, 1974.

A major departure from past regulatory procedures had to be dealt with by the Board in considering this proposal. Not only did the Board have to adopt regulations that complied with the Act, but also had to adopt a set of regulations which met the requirements of the FWPCA and the basic federal minimal requirements set forth in 40 CFR 124. This new requirement, as previously stated, is set forth in Section 13(b)(1) of the Act, which directed the Board to adopt a set of regulations which would be consistent with Federal requirements.

A serious problem soon presented itself. It developed, for the most part, that the Federal requirements were not written to anticipate a State program such as Illinois' where there existed a separation of functions between the

Board and the Agency. This was alluded to in the testimony of Mr. Harvey Sheldon, Regional Counsel, Region V, U.S. EPA:

"I think that the Board should recognize very, very frankly, that this law, the Federal law, has been drafted in a way that makes it easier any time to give a single agency the authority for the complete permit issuance process. I think that as just a practical fact and deduction from the analysis of the law, that does not mean a system, where the Board would have adjudicatory hearings, is, first of all improper, or secondly necessarily unwise in a given situation."

(R. 1064)

The Board feels that the NPDES Regulations, as adopted, represent a reasonable regulatory approach which continues the distinct separation of functions of the Agency and the Board, and at the same time complies with the Federal requirements for a workable State NPDES Permit Program. The NPDES Regulations, as adopted, reflect the Board's determination to continue the basic fundamentals of the existing permit system for dischargers to the maximum degree possible within the State and Federal requirements. The NPDES Program does not represent a radical departure from past permit practices. Illinois has had a permit program since 1932 (R. 18). Since the Act became effective in 1970, and the Board's adoption of the Water Pollution Regulations, the Agency has been administering the program consistent with the permit requirements adopted by the Board. The prior Board permit regulations provided the possibility of a hearing at the Agency level prior to the issuance of a permit (see former Rule 961 of the Water Pollution Regulations). The prior permits contained many requirements or conditions that the permittee had to comply with, including both standard and special conditions specifying certain actions or levels of performance for each discharger (R. 20). These included effluent restrictions, monitoring requirements and recording requirements. The former permit applicant, or any other person, could appeal the denial or issuance of the Operating Permit to the Board. The Board has held that permits were revokable in appropriate enforcement actions. Another similar feature between the former Operating Permits and the present NPDES Permits is the maximum five year expiration period (R. 21 and 22).

During the consideration of the NPDES Regulations three problems surfaced. These three problem areas were: 1) What should be the nature of the Board review concerning Agency

issuance or denial of NPDES Permits?, 2) What should be the form of any hearing at the Agency level?, and 3) Should the Agency be able to issue NPDES Permits containing schedules of compliance beyond previously established Board deadlines? Both the Agency's amended and original proposals provided for less than de novo review at the Board level of the Agency's decision (see Proposed Procedural Rule 502 as published in Newsletter #74). The Agency testified that this change from normal Board review was because the Agency would be holding a complete adjudicatory hearing at the Agency level. A complete evidentiary record of this adjudicatory hearing would be available upon which the Board could review the Agency decision without the need to repeat the hearing process. In addition, the Agency testified that because of this complete hearing, the Agency's decision should be given more weight than variance recommendations (R. 102). This would have represented a major departure from past Board-Agency separation of functions. Many persons commented adversely on this proposal, including Commonwealth Edison Company (R. 689), Peabody Coal Company (R. 344), and the Illinois Manufacturers' Association (R. 651). In addition to these comments, the Board interprets the Act to require a complete de novo review of all contested provisions of the Agency's decision to issue or deny an NPDES Permit. Section 40 of the Act states that if the Agency refuses to grant a permit, under Section 39 of the Act, that the applicant may contest the Agency's decision before the Board. This section states that the hearing at the Board level shall be in accordance with Sections 32 and 33(a) of the Act. Read separately, and together, Sections 32 and 33(a) require the Board to exercise de novo review over Agency decisions in permit cases. The above testimony and determination is the basis for Rule 910(h)(6) as adopted, together with Procedural Rules 502 and 503, which provide the manner in which the appeal shall be taken.

Once it became obvious that the Board was going to exercise de novo review of Agency decisions to issue or deny NPDES Permits, the Agency submitted a comment to the Board that its resources would not allow for two adjudicatory-type hearings -- one at the Agency level and another on appeal at the Board level. The appropriate federal requirements 40 CFR 124.36 and Section 402 (b) (3) of the FWPCA, only require the opportunity for a public hearing prior to the issuance of or denial of an NPDES Permit. After consideration of the Federal requirement, the Agency's comment, and the lack of strong objections to the proposed final draft which deleted the Agency level adjudicatory hearing, the Board adopted Rule 909, Public Hearings on NPDES Permit Applications which provided only an opportunity to request a public hearing at the Agency level prior to the Agency final determination.

The third major problem was the provision for schedules of compliance and NPDES Permits which would allow the applicant to exceed Board enacted deadlines for compliance with effluent standards. Section 39(b) of the Act states:

The Agency, subject to any conditions which may be prescribed by Board regulations, may issue NPDES permits to allow discharges beyond deadlines established by this Act or by regulations of the Board without the requirement of a variance, subject to the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500) and regulations pursuant thereto.

This ability to issue schedules of compliance is required by 40 CFR 124.44 and Section 402 of the FWPCA. However, this amounts to a variance from Board-enacted deadlines without a showing of arbitrary or unreasonable hardship. After consideration of the Federal requirements, the amended Act and the record, the Board adopted the present Rule 910(f)(6), which allows the Agency to issue permits containing schedules of compliance which allow a permit applicant to discharge in excess of Board standards and in violation of deadlines, provided that he achieved compliance at the "earliest reasonable date", but in no event beyond July 1, 1977. The schedules of compliance must also show compliance with the appropriate Federal requirements, such as best practicable degree of treatment, at the earliest reasonable time period, but in no event beyond July 1, 1977. It is the Board's intent not to extend this 1977 date for compliance with State or Board requirements, regardless of any Federal modification or change in the date for achieving best practical degree of treatment. The deadlines established in the Water Pollution Regulations are to be complied with absent the application of Rule 910(f)(6), unless the Board has ordered otherwise in an appropriate variance or enforcement action.

After having discussed the three major problem areas confronted by the regulatory proposal, this Opinion will now discuss the individual rules and regulations which were proposed and adopted.

The NPDES Regulations, as adopted, consist of amendments to Chapter 1: Procedural Rules and to Chapter 3: Water Pollution Regulations. The amendments to the Procedural Rules reflect the Board's determination that a de novo review for all Agency permit decisions, including NPDES Permit decisions, is required. Procedural Rule 102, Definitions, was amended by including a definition of NPDES. Procedural Rule 502, Permit Appeals, was amended to differentiate between appeals from NPDES Permits and all other permits. The amended Rule 502(a), Permit Appeals Other Than NPDES Permit Appeals, incorporates a prior Rule 502, Denial of Permit, which sets forth the procedures for appealing non-NPDES

Permits. The new Procedural Rule 502(b), NPDES Permit Appeals, sets forth the procedures to be followed in any appeal of an Agency issuance or denial of an NPDES Permit. Subsection 10 of this Rule sets forth those remedies available in NPDES Permit appeals. In order to comply with the federal procedural requirements when issuing or denying an NPDES Permit, where appropriate, the Board intends to direct the Agency to issue, deny, or modify an NPDES Permit.

Procedural Rule 503, Permit Review, as amended, sets out the procedure to be followed in the event any person files a complaint regarding a permit other than an appeal of that permit. Rule 503(a), Permit Review other than NPDES Permit Review, incorporates the previous Rule 503, Permit Revocation. The new Procedural Rule 503(b), NPDES Permit Review, sets out the procedure pursuant to Rule 912 of the Water Pollution Regulations, as amended, regarding an enforcement complaint seeking modification, suspension, or revocation of an NPDES permit. It is intended that this procedure be in the nature of an enforcement action.

The prior Procedural Rule 504, Nuclear Facilities Permit, was deleted consistent with the Board's determination that it no longer has jurisdiction over permits for nuclear facilities. In its place a new Rule 504, Cost of Review, was enacted. This rule, for the most part, replaces the prior Rule 505, Transcripts.

The first group of amendments to Chapter 3: Water Pollution Regulations represents amendments to Part I through Part VIII of the present Chapter 3 which were necessary or desirable to clarify the interrelationship between these Parts and the NPDES Regulations as adopted. The second group of amendments to Chapter 3 deal with the permit process and are divided into two subparts. Subpart A is a new section which deals with NPDES Permits, including the regulations governing their issuance, the conditions to be attached to the permits and the method of handling public notice for public hearing. Subpart B constitutes the prior Part IX: Permits which have been renumbered and modified to reflect the existence of NPDES Permits and to exclude from the requirements from Other Permits those dischargers which are required to secure NPDES Permits.

The existing Rule 101, Authority, and 102, Policy, were modified to reflect the changes in the Act in reference to NPDES Permits. Rule 104, Definitions, was modified to include definitions for certain words or phrases that are used in reference to the NPDES Permit program. All terms used in connection with the NPDES Permit program, which have been defined in the FWPCA or the U.S. EPA regulations,

should be taken to have the same meaning in these NPDES Regulations unless specifically provided otherwise pursuant to Rule 104 as amended. The individual new definitions added to Rule 104 are self-explanatory.

Part IV: Effluent Standards, was amended by the adoption of a new Rule 410, NPDES Effluent Standards. This new Rule 410 was adopted to emphasize that a discharger who receives an NPDES Permit must not only comply with the applicable provisions of the effluent standards found in Part IV, but also must comply with the terms and conditions contained in its individual NPDES Permit (see New Rule 410(a) and 40 CFR 124.10). Rule 410(b) was included to prohibit the discharge of any pollutant which contributes or threatens to cause a violation of any applicable Federal or State standard or any other limitation, unless the limitation for such pollutant is contained in the NPDES Permit (see pages 5-8 of Agency's May 10, 1974 comment).

Rule 410(c) was adopted after being proposed by Commonwealth Edison (R. 690). This rule was incorporated in the effluent standards to reflect Section 316(a) of the FWPCA and Federal regulations adopted pursuant to Section 316(a) (Thermal Discharges 40 CFR 122). This new rule allows an applicant to request and demonstrate that alternative thermal discharge effluent standards should be applied to his thermal discharge. To the extent required by the FWPCA, this rule will provide for the opportunity to demonstrate that differing thermal effluent limitations should apply than those found in the Water Pollution Regulations and the Federal Guidelines (Steam Electric Power Generating Power Source Category, 40 CFR 423). Upon the effective date of Subpart A, such petitions for alternative discharge limitations shall be made to the Board. The Board will conduct a public hearing on the proposed alternative standards. The Board together with Agency support, will process Rule 410(c) requests in a similar manner as that set forth in 40 CFR 122.

Part V: Monitoring and Reporting, was modified by amending Rule 501, Reporting Requirements, to require any person operating a "pretreatment works, treatment works or wastewater source" to submit operating reports to the Agency. The reporting requirement for pretreatment works is only required for those pretreatment works that discharge pollutants which are toxic or interfere with the treatment process, or those that discharge 15% or more of the total hydraulic flow or biological loading to the receiving treatment works.

This modification will provide the Agency with information regarding both the operation of a treatment works and discharges to that treatment works. The reporting requirement of a pretreatment works discharging toxic pollutants is required by Section 502 of the FWPCA. The operating report for dischargers discharging 15% or more of total hydraulic flow or total biological loading was included to provide the Agency with information to adequately regulate the receiving treatment works. The establishment of this 15% minimum was included because the Board felt that discharges below 15% would not have a significant effect on the majority of treatment plants. A new Rule 501(c) was adopted to provide a reference between Part V and Part IX, Subpart A because NPDES Permits will contain enforceable requirements dealing with monitoring, sampling, recording and reporting (see Rule 910(f) and Sections 309(a) and (d) of FWPCA).

Part VII: Sewer Discharge Criteria, was amended by adopting Rule 704, Pretreatment Requirements. This new rule prohibits an industrial discharger to a publicly owned treatment works from violating any pretreatment standards promulgated by the Administrator (Sections 307(b) and (c) of FWPCA). The limitations on discharges to sewers are designed to protect treatment works against harm that might cause violations of effluent or water quality standards (R. 602).

The third portion of the NPDES Regulations consist of an amended Part IX: Permits. Part IX was enacted in two subparts. Subpart A deals solely with NPDES Permits. Subpart B, which encompasses the former Part IX, deals with all of the permits issued by the Agency other than NPDES Permits.

Subpart A, NPDES Permits, represent the majority of the new regulation adopted by the Board to enable Illinois to participate in the NPDES Permit Program. The main provisions of Subpart A were adopted to comply with 40 CFR 124, which sets out the minimum regulatory scheme necessary for State implementation of the NPDES Permit Program. Rule 901, NPDES Permit Required, contains the basic prohibition of any discharge of a contaminant or pollutant into the waters of the State from a point source or into a well without an NPDES Permit. This rule is taken from Section 12(f) of the Act and Section 301(a) of the FWPCA. It is the intention of the Board to require NPDES Permits for all dischargers who, by reason of the FWPCA or regulations adopted pursuant to it, have to obtain an NPDES Permit from the U.S. EPA.

Rule 902, Application-General, sets out the basic requirements of who has to apply, how they apply, the manner of the application, and the authority of the Agency to deny applications. This rule parallels the Federal requirement found in 40 CFR 124.21 and 40 CFR 125.12. Rule 902(a), Application Forms, was modified from the Agency's original proposal in that only the application forms promulgated by the U.S. EPA can be required by the Agency. The Agency, however, may require additional information as it reasonably deems necessary to administer the permit program. This change was adopted after the Board received numerous comments regarding the voluminous task of completing former Agency permit application forms such as those required by Chapter 2: Air Pollution Regulations (R. 648). Subpart 2 of Rule 902(a) enables the Agency to require plans and specifications for treatment works and summaries of design criteria in order that the Agency may review such works prior to issuing an authorization to construct. This is consistent with the incorporation of an authorization to construct within the NPDES Permit requirement (see Rule 908(c)).

Rule 902(b), Animal Waste Facilities, was included to provide a cross reference between the NPDES Permit Requirements, and Chapter 5, Agriculture-Related Pollution Regulations, Section I: Livestock Waste Regulations.

Rule 902(c), Mine Waste, directs all those dischargers, who by reason of Federal requirements must obtain an NPDES Permit, to apply for an NPDES Permit with the Agency. It is the intention of the Board to only require NPDES Permits for those mines or mine waste facilities which have a point source discharge. This rule recognizes that water quality standards found in Chapter 3 and the Chapter 4 Mine Related Pollution standards and limitations shall be the applicable water quality and effluent limitations incorporated within NPDES Permits to the extent consistent with Federal Regulations. In adopting this rule, the Board notes that for the limited number of mines and mine waste facilities which have point source discharges, a dual permit requirement is in existence in that both an NPDES Permit pursuant to Chapter 3 and an Operating Permit pursuant to Part II, Chapter 4, Mine Related Pollution, will be required. If the dual permit system presents a major problem, it is hoped that a review of Chapter 3 and Chapter 4 would be made and modification of the Regulations proposed to the Board.

Rule 902(d), Pending Refuse Application, and 902(e), Current Dischargers -- No Prior Application, are consistent with Section 402(k) of the FWPCA in that applications made under the Refuse Act or applications pursuant to the FWPCA for an NPDES Permit, which have been filed with the U.S. EPA, shall be deemed an application for NPDES Permit filed

with the Agency (40 CFR 124.21(b)).

Rule 902(f), Additional Information, was adopted to enable the Agency to obtain additional information where the NPDES Permit Application was not filed with the Agency but, by operation of the Act or in the previously discussed rules, is considered to be such (40 CFR 21(e)). Additional information may also be required in order to allow the Agency and the Board to carry out their statutory responsibilities.

Rule 902(g), New Discharges, requires that an application for a renewal of an NPDES Permit or an NPDES Permit for discharge commencing after the effective date of these regulations shall be filed 180 days in advance of the date in which such an NPDES Permit is required (40 CFR 21(d)).

Rule 902(h), Signatures, is consistent with requirements of 40 CFR 124.24 in describing who must sign an NPDES Permit Application.

Rule 902(i), Renewal, provides the same 180 day requirement for applying for an NPDES Permit as found in Rule 902(g) (124.52(a)).

Rule 902(j), Authority to Deny Permits, sets out five conditions where an NPDES Permit may not be issued by the Agency. The first four conditions incorporate the prohibitions found in 40 CFR 124.41. The fifth prohibition was proposed by the Agency to require the applicant to establish some basis for showing that he can comply with the terms and conditions of a proposed permit (R. 1143 and 1146). This will allow the Agency to comply with Section 39(a) of the Act which states that it is "the duty of the Agency to issue such a permit upon proof by the applicant that the facility... will not cause a violation of this Act or the regulations hereunder".

Rule 903, Access to Facilities and Further Information, was adopted to parallel the provisions of 40 CFR 124.21(e) in that if satisfactory additional information is not received by the Agency, the Agency will take final action based on the information currently before it. This final action could be either a denial or an issuance of the permit.

Rule 904, Distribution of Applications, directs the Agency to send a copy of the complete NPDES Permit Application to the District Engineer of the appropriate District of the U.S. Corps of Engineers. Section 402(b)(6) of the FWPCA and Rule 902(j)(2) prohibits the issuance of an NPDES Permit if anchorage and navigation would be substantially impaired. Rule 904(b) directs the Agency to send a copy of the complete NPDES Permit Application to the Regional Administrator of the U.S. EPA. Section 402(d) of the FWPCA and Rule 903(j)

(3) prohibit the issuance of an NPDES Permit if the Administrator of the U.S. EPA notifies the Agency of his objection, in writing, within 90 days of the transmittal of the permit application.

Rule 905, Tentative Determination in Draft Permit, was enacted to be consistent with the Federal requirement set forth in 40 CFR 124.31 and Section 39(a) of the Act. Rule 905(c) requires the Agency to prepare a statement which substantiates the basis for the conditions imposed in an NPDES Permit. This statement will provide a useful reference in the event a permit condition is challenged. Rule 905(d) was included to comply with Section 39(a) of the Act.

Rule 906, Public Notice, is consistent with the requirements found in 40 CFR 124.32, which set forth the methods in which public notice must be given regarding NPDES Permit Applications. The regulation as adopted is self-explanatory.

Rule 907, Fact Sheets, was enacted in compliance with 40 CFR 124.33. In addition to the requirements for setting forth the average daily allowable discharge in pounds per day, the Agency will also list the average allowable concentration in mg/l in fact sheets. This was enacted because the Illinois regulations deal with concentration in mg/l rather than pounds per day. The Agency has stated that its intent is to require applicants to provide the Agency with draft fact sheets.

Rule 908, Notice to Other Governmental Agencies, was adopted to reflect the requirements set forth in 40 CFR 124.34, which set out the manner in which the Agency must give notice required by Rule 906 and 909.

Rule 909, Public Hearings on NPDES Permit Applications, was adopted with major changes from that proposed by the Agency. The form in which Rule 909 was adopted reflects the Board's determination that de novo review of Agency permit decisions was required by the Act. This requirement represents the continuation of the separation of functions between the Agency and the Board. Thus, the Board enacted Rule 909 to provide for the opportunity of a public hearing at the Agency's level if the Agency determines that a significant degree of public interest warrants the conduct of such a hearing (Rule 902(a)). The determination of what manner and form of the Agency public hearing should take has been left to the Agency. The minimal requirements are found in Rule 909 and 40 CFR 124.36. The Agency indicated that its resources would not provide for two adjudicatory hearings. This decision by the Board has been previously discussed at pages 4 and 5 of this Opinion.

The Federal requirements found in Section 402(b)(3) of the FWPCA and 40 CFR 124.36 do not require the holding of a public hearing, but merely require the opportunity for requesting such a hearing (R. 275 and 319). Rule 909(a)(2) establishes the broad standing for those persons seeking to request a public hearing on a proposed NPDES Permit. The term person includes as a minimum those affected states, interstate agencies, counties, Agency, the Regional Administrator of the U.S. EPA, the applicant, and any other person or group.

Rule 909(b) allows the Director to appoint a Hearing Board, consisting of one or more Agency employees, once the Agency has determined, under Rule 909(a), that a public hearing is required. The person or persons serving on this Hearing Board would have to comply with the conflict of interest provisions found at Section 304(h)(2)(D) of the FWPCA (R. 175).

Rule 909(d) sets forth the location in which the hearing must be held and establishes the duty of the Chairman of the Hearing Board in conducting the hearing. These two provisions are in compliance with 40 CFR 105.6(e) and 40 CFR 124.36.

Rule 909(e) requires the Agency to issue public notice, at least 30 days prior to the holding of hearings in the manner described in Rule 906 and 908. The rule also sets forth the minimum requirements to be included in the notice.

Rule 909(f) allows any person the right to submit oral or written statements and data concerning the proposed permits. The rule gives the Chairman the authority to fix reasonable limitations on the time for oral statements and allows him to require statements in writing.

Rule 909(g) directs the Chairman to prepare a hearing file which shall be a public document and as such will be open to review by any member of the public or representative of the U.S. EPA. The hearing file shall consist of all materials submitted at the hearing, a report of the major issues raised at the hearing, an estimate of the number of persons present, and the Hearing Officer's recommendations concerning actions to be taken regarding the proposed permit.

Rule 909(h) establishes the action the Agency may take following a public hearing. It requires the Agency to give notice pursuant to Rule 906 regarding the Agency's transmittal to the Regional Administrator of the U.S. EPA of the permit as modified to reflect information presented at the public

hearing. In addition, this Rule states that all permits become effective when issued. The permit would be issued once the Regional Administrator has either waived his review rights or approved the proposed permit as transmitted to him by the Agency.

Rule 910, Terms and Conditions of NPDES Permits, sets out what limitations can be included within an NPDES Permit by the Agency. Rule 910(a), General Conditions, set forth seven possible types of limitations which may be included in an NPDES Permit whenever they are applicable. These include limitations pursuant to Sections 208(b), 301, 302, 303, 306, and 308 of the FWPCA and those (adopted by the Secretary of the Department in which the Coast Guard is operating) for discharges into navigable waters from a vessel or floating craft. Agency witnesses testified that for most NPDES Permits, Sections 301, 302, 306, and 307 of the FWPCA will be satisfied by applying the Illinois effluent limitations and water quality standards found in Chapter 3 (R. 569) Subsection 4 of this Rule requires the inclusion of any more stringent limitation pursuant to any Illinois statute or regulation within the terms and conditions of an NPDES Permit pursuant to Section 510 of the FWPCA.

Rule 910(b), Water Quality Standards and Wasteload Allocations, provides that the Agency must conduct wasteload allocations in any case where more stringent standards are applied to a discharge pursuant to Rule 910(a)(1), (2), and (3). The purpose of this Rule is to insure that the discharge will not cause a violation of applicable water quality standards (even if the discharge would be in compliance with the applicable effluent standard).

Rule 910(c), Effluent Limitations, requires the Agency to include specific average and maximum daily quantitative limitations for levels of pollutants authorized by the NPDES Permit in terms of weight (except for those other pollutants not appropriately expressed by weight). In addition to the daily quantitative limitations by weight, the Agency may, in its discretion, specify such other limitations as average or maximum concentrations.

Rule 910(d), Federal New Source Standards of Performance, was enacted to comply with Section 306(d) of the FWPCA by providing a period during which a new source could not be subjected to any more stringent federal standard of performance. A federal standard of performance is defined in Rule 104. To the extent allowed by federal requirements, this Rule does not preclude the application of more stringent standards as they apply to toxic pollutants (R. 1136 and 1137).

Rule 910(e), Duration of Permits, limits NPDES Permits

to a maximum of five years (40 CFR 124.51 and Section 402(b)(1)(B) of FWPCA).

Rule 910(f), Authority to Establish Recording, Reporting, Monitoring and Sampling Requirements, was enacted to comply with 40 CFR 124.61, 62, 63, and 64. In addition, the Agency may require additional information that is reasonably necessary to carry out its duties. The NPDES program will be a self-monitoring program because of the requirements of this rule (R. 573). In addition to requiring holders of NPDES Permits for publicly owned and public regulated treatment works, the Agency may as a condition of such an NPDES Permit require all industrial users of such treatment works to undertake the same recording, reporting, monitoring, and sampling requirements as could be imposed on the original permittee. However, it is the intent of the Board that such expensive procedures only be required by the Agency when necessary.

Rule 910(g), Authority to Apply Entry and Inspection Requirements, was adopted to comply with 40 CFR 124.45(c). In addition to these federal requirements, Rule 910(g)(5) allows the Agency broad entry and inspection rights, subject to constitutional limitations, to enable to the Agency to carry out its statutory duty under the Act to determine the possibility of present or future violations of the Act, applicable regulations, of NPDES Permit conditions.

Rule 910(h), Schedules of Compliance, sets forth the conditions to be imposed in any NPDES Permit which provides for attainment of the applicable standards and limitations through the establishment of a schedule of compliance which will be included in that NPDES Permit as issued (40 CFR 124.44). The schedule of compliance must provide for compliance within the shortest reasonable time period consistent with the guideline requirements of the FWPCA and the Act. Whenever the schedule of compliance exceeds nine months, the Agency must include interim requirements and dates for their achievement, which shall not exceed nine months in time. These interim requirements and dates are enforceable without otherwise showing a violation of an effluent limitation or injury to water quality (40 CFR 124.44(e)). The interim dates and requirements shall represent deadlines for the completion of various stages of the project. Where this is not possible, the dates shall be specified for the submission of reports toward progress with the interim and final requirement. The permittee is required to provide written notice to the Agency of the permittee's compliance or non-compliance with interim or final requirements. This rule directs that the Agency prepare a quarterly list, in accordance with 40 CFR

124.44(d), of those permittees who are not in compliance with the terms and conditions of their NPDES Permit. This list shall be filed with the Regional Administrator and shall be available for public inspection at the Agency's Springfield and Chicago offices.

Rule 910(h)(6) was enacted in a form different from that proposed by the Agency. This modification has been previously discussed at pages 4 and 5 of this Opinion. The Agency, through this Rule, is given the authority to establish schedules of compliance in NPDES Permits, either earlier or later than deadlines established by the Board. However, the Agency may not issue a permit which provides for compliance beyond July 1, 1977, unless the applicant has obtained a variance from the applicable Illinois standards or has been ordered pursuant to an enforcement action to obtain all necessary permits. This was adopted to provide a limitation upon the Agency's ability to issue what amounts to a variance without the applicant having filed a request for a variance with the Board.

Rule 910(h)(7) requires the Agency to develop a statement on the factual basis upon which the schedule of compliance is based. This should provide a written basis which may be examined in the event of any appeal of the issued permit or subsequent petition to modify the permit.

Rule 910(h)(8) provides an additional cross reference between Rules 911 and 912 in regard to review by the Board of schedules of compliance contained in NPDES Permits. It is not the intent of this subsection to create a new method of review beyond that provided by Rules 911 and 912.

Rule 910(i), Authority to Require Notice of Introduction of Pollutants into Publicly Owned Treatment Works, was adopted to provide the Agency with information regarding all discharges into publicly owned or public regulated treatment works (40 CFR 124.45(d)). Subsection 4 of this Rule provides a warning system which should prevent treatment plants from reaching and exceeding their design capacity. (R. 34 and 35).

Rule 910(j), Authority to Insure Compliance by Industrial Users with Section 204(b), 307, and 308 of the FWPCA, was adopted to insure that publicly owned and publicly regulated treatment works comply both with user charges and recovery of construction costs pursuant to Section 204(b) of the FWPCA; Toxic Pollutant Effluent Standards and Pretreatment

Standards, pursuant to Section 307 of the FWPCA; and Monitoring and Entry Requirements, pursuant to Section 308 of the FWPCA (40 CFR 124.45(e) and (g)). This Rule directs the holder of an NPDES Permit to require industrial users of its facilities to comply with Section 307 of the FWPCA.

Rules 910(k), Maintenance and Equipment; 910(l), Toxic Pollutants; and 910(m), Deep Well Disposal of Pollutants, are consistent with Federal requirements found in 40 CFR 124.

Rules 910(n), Authority to Construct, was adopted to provide a procedure whereby the existing construction permit requirements could be merged with the NPDES Permit requirements which authorize a discharge. By including an authorization to construct clause in NPDES Permits for new or modified treatment works, disposal well or wastewater sources, a dual state permit system was avoided. The authorization to construct provides a continuance of the Agency's past technical review of proposed construction to insure that facilities will be constructed so as to meet the applicable standards and limitations. This provides both a service to those who are investing their money and a protection that the constructed facility will not cause violation of applicable standards.

Rule 911, Appeal of Final Agency Action on a Permit Application, was enacted to provide the right to appeal to the Board an Agency decision regarding the issuance or denial of an NPDES Permit. As previously discussed, this appeal would be de novo and would thus extend to all matters which are contested by the person appealing the Agency decision. Such appeals shall be filed within 30 days after final Agency action. Procedural Rule 502(b) sets forth the matter in which the appeal shall be filed with the Board.

Rule 912, Authority to Modify, Suspend or Revoke Permits was enacted to be consistent with Section 33(b) of the Act, which allows the Board to revoke an Agency-issued permit in an enforcement action. 40 CFR 124.72(a) requires that the State have the authority to modify, suspend, or revoke permits for cause. The causes for which a permit can be revoked are specified in Rule 912(d). These include, but are not limited to, violations of any term or condition of a permit, obtaining a permit by misrepresentation, and any change in circumstance which mandates a reduction or elimination of the permitted discharge (40 CFR 124.45(b) and (c)). This Rule continues the Illinois philosophy of allowing any person to file an enforcement-type proceeding challenging an issued permit, whether or not that person was a party or

participant to the issuance of the original permit. Procedural Rule 503(b) details the manner in which such a petition shall be filed with the Board.

Rule 913, Revision of Schedules of Compliance, was enacted to provide the Agency with the authority to modify schedule-of-compliance interim dates contained in NPDES Permits (R. 661). This authority is required by 40 CFR 124.72(b). The basis on which an Agency can extend these interim compliance dates are set forth in Rule 913(a). Rule 913(b) represents a restriction upon the Agency's ability to modify permits for cause because the Agency may only make revisions when the Agency has determined that the final compliance dates shall not be extended by more than 90 days as originally contained in the permit. Any extension or series of extensions which would extend the final compliance date beyond 90 days would require the applicant to file a variance petition with the Board.

Rule 914, Variance From NPDES Limitations, Standards, and Requirements, continues the present variance relief from the Act and Board regulations to the extent authorized by the FWPCA. If a variance is granted by the Board or by operation of law, it is intended that the Agency would then issue or modify an NPDES Permit consistent with the variance to the extent allowed by the FPWCA.

Rule 915, Public Access to Information, was adopted after suggestion by the U.S. EPA. This rule reiterates the provisions of Section 7(b) of the Act, regarding public access to information.

Rule 916, Effective Date, sets out the effective date of Subpart A, Part IX. Because the existence of the Illinois NPDES Permit Program is contingent upon approval by the Administrator of the U.S. EPA, the Board enacted as the effective date of Part IX, Subpart A (as well as those changes to the Procedural Rules and the Water Pollution Regulations as previously discussed), the date upon which a letter is filed with the Secretary of State which contains the approval and transfer of NPDES authority by the Administrator.

The second portion of Part IX: Permits, Subpart B, Other Permits, includes the regulations concerning the issuance of permits for the construction, modification, and operation of treatment works, pretreatment works, sewers, wastewater sources and other discharges which are not required to have NPDES Permits pursuant to Subpart A.

Testimony was presented throughout the hearings and many comments were received following the hearings

regarding the broad area of State regulation versus local regulation concerning the construction and operation of sewers and dischargers into municipal sewer systems. What was basically proposed was the fundamental shift of the regulatory authority from the Agency to the local sanitary district or municipality. The Agency was desirous of retaining the Construction and Operating Permit Program for sanitary sewer extensions in order to maintain the enforcement tool of restricting additional loading to facilities that are reaching or have reached design capacity -- an Agency imposed sewer ban (R. 34 and 35). The Board has chosen not to adopt these provisions because they represent such a major change in the regulatory philosophy of the State's control of water pollution. Such a proposal should be made in a separate regulatory proceeding where it could be dealt with separately.

Rule 951, Construction Permits, continues the prior Rule 901 with some modifications. The requirement that the treatment works, sewer, or wastewater source designed and intended to serve a single building with an eventual discharge of 15 or more persons was modified to read "an average of 1500 gallons per day of domestic sewage". This change was premised upon a population equivalent of 100 gallons per person, which equates 15 or more persons to 1500 gallons per day of domestic sewage. In addition, Construction Permits will not be required for any sewer required by statute to secure a permit from the Illinois Department of Public Health. This exclusion applies primarily to sewers constructed in mobile home parks. An additional exemption was provided for private sewers tributary to industrial treatment works owned by the same person, if such additional wasteload does not exceed the design capacity of the industrial treatment works. The final effluent from such a treatment system, if discharged to the waters of the State, would be regulated by the terms and conditions of the applicable NPDES Permit.

Rule 951(c) further provides that Construction Permits are required for any construction of a pretreatment works or modification to a pretreatment works if such pretreatment works will discharge pollutants which are either toxic or which will interfere with the treatment processes of the receiving treatment works, discharge 15% or more of the total hydraulic flow received by the treatment works, or will discharge 15% or more of the total biological loading received by the treatment works.

Rule 951 requires a Construction Permit for all dischargers including those who have obtained an NPDES Permit from the U.S. EPA, until such time as the Agency begins to issue NPDES Permits containing an authorization to construction provision.

Rule 952, Operating Permits: New or Modified Treatment Works, Sewers and Wastewater Sources, continues the prior Rule 902 by prohibiting the operation of any treatment works, sewer, or wastewater source for which a Construction Permit is required under Rule 951. The requirement for obtaining Operating Permits under Rules 952 and 953 for dischargers for which an NPDES Permit is required will be abolished pursuant to Section 13(b)(i) of the Act when the State of Illinois' NPDES Permit Program is approved by the Administrator. In the interim, the requirement for Operating Permit has been suspended from the effective date of Subpart B (October 12, 1974, when the Subpart B Regulations were filed with the Secretary of State), until the earlier of January 31, 1975 or the date of final determination by the Administrator regarding the Illinois NPDES Permit Program request. This interim suspension was enacted to provide a release from the dual permit system and to allow the Agency to concentrate its resources in the certification and drafting of NPDES Permits for final issuance by the U.S. EPA.

Rule 953, Operating Permits: Existing Treatment Works, Pretreatment Works and Wastewater Sources, continues the former Rule 903 which applied to Operating Permits for existing sources. The interim suspension of the requirement and the final abolishment of the requirement to obtain an Operating Permit contained in Rule 952 is also included in Rule 953. The same change was incorporated which requires an Operating Permit for those treatment works and wastewater sources that are designed and intended to serve a single building with an average discharge of domestic sewage equal to or greater than 1500 gallons per day. In addition, Operating Permits are now not required for those pretreatment works which will not discharge pollutants which are toxic or which will interfere with the treatment process of the receiving treatment works, or will not discharge 15% or more of the hydraulic flow of the receiving treatment works, or will not discharge 15% or more of the biological loading of the receiving treatment works.

Rule 954, Joint Construction and Operating Permits, which was formerly Rule 906, was amended to include pretreatment works in those facilities which may be issued a joint permit.

Rule 955, Experimental Permits, which was formerly Rule 907, was amended to provide that Experimental Permits may not be issued in place of NPDES Permits where an NPDES Permit is required.

Rule 956, Former Permits, which was formerly Rule 908, was amended to add a Subsection B, which specifies that no Construction or Operating Permit issued by the Agency or its predecessor can fulfill the requirements of obtaining an NPDES Permit under Section 39(b) of the Act.

Rule 957, Applications - Contents, which was formerly Rule 911, was amended to require that plans and specifications accompanying a permit application be prepared by an Illinois Registered Professional Engineer when required by the provisions of the Illinois Professional Engineering Act (Ill. Rev. Stat. 1971 Ch. 481/2).

Rule 958, Applications - Signatures and Authorizations, which was formerly Rule 912, was amended to parallel the signature requirements enacted in Subpart A, Rule 902(h).

Rule 959, Application - Registered or Certified Mail, is the former Rule 913.

Rule 960, Applications - Time to Apply; Rule 961, Applications - Filing and Final Action by the Agency; Rule 962, Standards for Issuance; and Rule 963, Duration of Permits Issued Under Subpart B, are a continuation of the former Rules 914, 915, 921, and 922, respectively. Rule 961(d) was changed by deleting the requirement of certified or registered mail when the Agency sends written notice to the applicant regarding final action on a permit application. A modification of Rule 963(b) was also made which would allow the Agency to issue Operating Permits for a period of time shorter than one year in circumstances set forth in the Rule (R. 44). In addition, this subsection provides that Operating Permits, issued under Rule 952 for newly constructed sewers, may extend beyond the five year limit for all other Operating Permits.

Rules 964, Conditions; 965, Appeals from Conditions in Permits; 966, Permit No Defense; and 968, Modification of Permits, represent a continuation of the former Rules 923, 924, 925, and 941, respectively.

Rule 967, Design, Operation and Maintenance Criteria, which was formerly Rule 931, was amended to allow the Agency to adopt criteria for the design, operation, and maintenance of pretreatment works.

Rule 969, Permit Revocation, which was formerly Rule 942, was amended by adding a Subsection B which allows the Board to revoke a permit issued pursuant to Subpart B if the permit holder is delinquent in the payment of any charges which may be required under Section 204(b) of the FWPCA. These charges would include both user charges and industrial


cost recovery charges that the permit holder may be obligated to pay under the provisions of the Federal law. The Board enacted this provision to provide an additional enforcement tool to insure against delinquency in the payment by industrial users of publicly owned or publicly regulated treatment works.

Rule 970, Approval of Federal Permits, which was formerly Rule 951, was amended to allow the Agency to certify for purposes of Federal permits, other than NPDES Permits issued by the Administrator, that the applicant is in compliance with the appropriate provisions of the Act and Chapter 3, or has been granted a variance from the provisions of the Act and Chapter 3, or is in compliance with the terms and conditions of an NPDES Permit, including interim dates within a schedules compliance.

Rule 972, Effective Date, was enacted to set an effective date for Subpart B of Part IX as the date upon which the Regulations were filed with the Secretary of State on an emergency basis. The Regulations were filed on October 12, 1974.

These NPDES Regulations together with the amended Act provide a workable NPDES Permit system that can be approved by the U.S. EPA. By adopting these Regulations, the Board has fulfilled the legislative mandate to avoid a dual permit system. Once Illinois has been delegated the NPDES Permit authority (and during the interim while Rules 952 and 953 suspend the Operating Permit requirements), permit applicants will be able to file one application for an NPDES Permit that will comply with both state and federal requirements. This will result in significant cost savings to permit applicants and to the State. For these reasons the Board adopted the NPDES Regulations.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion was adopted on the 5th day of December, 1974 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board