

ILLINOIS POLLUTION CONTROL BOARD
March 28, 2019

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

Proposed Rule. First Notice.

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

The Board opened this docket to make non-substantive, clarifying amendments to its mine-related water pollution rules (35 Ill. Adm. Code 401-406). After adopting a proposal for public comment and conducting two public hearings, the Board submits proposed amendments to first-notice publication. Publication of the proposal in the *Illinois Register* will begin a period of at least 45 days during which any person may file a public comment with the Board. 5 ILCS 100/5-40(b) (2016).

In this opinion, the Board first provides background on the objectives of this rulemaking and the procedural history. The Board then discusses the proposed amendments, requests comment generally and on three specific issues, and addresses technical feasibility and economic reasonableness. The Board then concludes to submit its proposal for first-notice publication and issues its order. The proposed amendments themselves appear in the addendum to this opinion and order.

BACKGROUND

In 2016, the Board began reviewing its rules to identify obsolete, repetitive, unclear, or otherwise unnecessary language. On October 17, 2016, the Governor issued Executive Order 16-13. The order directed State agencies to review their regulations; identify those that are outdated, repetitive, confusing, unnecessary, or harmful to Illinois' economy; and amend or repeal those regulations as necessary.

On January 10, 2018, the Illinois Environmental Protection Agency (IEPA) filed a rulemaking proposal responding to Executive Order 16-13. IEPA proposed to amend numerous Board rules, including those in Subtitle D. 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, slip op. at 2, 24-26 (Jan. 10, 2018) (IEPA Prop.).

PROCEDURAL HISTORY

On March 26, 2018, the Board opened this rulemaking docket specifically to address non-substantive, clarifying amendments to the mine-related water pollution regulations in

Subtitle D of its rules. On July 26, 2018, the Board adopted a proposal for public comment (Board Prop.). The proposal included amendments originally proposed by IEPA in R18-21 and also amendments proposed by the Board. In its order, the Board requested comment both generally and on five specific matters.

On October 24, 2018, the Board requested that the Department of Commerce and Economic Opportunity (DCEO) perform an economic impact study of the Board's proposal for public comment and respond to the request by November 30, 2018. *See* 415 ILCS 5/27(b) (2016). The Board did not receive a response.

On November 2, 2018, the hearing officers scheduled two hearings to be conducted by videoconference between the Board's Chicago and Springfield offices, the first on December 6, 2018, and the second on December 20, 2018.

On November 29, 2018, IEPA filed comments on the Board's proposal (IEPA Cmts.).

The first hearing took place as scheduled, and the Board received the transcript (Tr.1) on December 12, 2018. The second hearing took place as scheduled, and the Board received the transcript (Tr.2) on December 21, 2018. On January 2, 2019, the hearing officers issued an order setting a deadline of January 11, 2019, for post-hearing comments. *See* Tr.2 at 9. On January 11, 2019, IEPA filed a post-hearing comment (IEPA Post-Hrg. Cmt.).

SUMMARY OF FIRST-NOTICE PROPOSAL

Subtitle D of the Board's regulations intends "to prevent pollution of waters of Illinois caused by failure to plan proper environmental safeguards for the locations, operation and abandonment of mining activities, mining and mine refuse operations." 35 Ill. Adm. Code 401.103 (Purpose). Subtitle D includes 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 proposes amendments to remove redundant or unnecessary language, replace outdated language, update statutory references, and reorganize provisions for clarity.

General Changes

First, throughout Subtitle D, the Board proposes to remove "Chapter I" because Subtitle D consists of a single chapter.

Second, the phrase "including, but not limited to" appears throughout Subtitle D before examples. *See, e.g.,* 35 Ill. Adm. Code 402.101(b). In its proposal for public comment, the Board struck the phrase "but not limited to." IEPA requests that the Board retain the language because removing it "is a substantive change to the regulatory language and the language is needed in case [IEPA] needs more information." IEPA Cmt. at 5, 7.

Statutory terms such as “including” that are not defined in an act or regulation are given their plain and ordinary meaning. IEPA v. Darrel Slager, PCB 78-28, slip op. at 2 (Feb. 7, 1980); *see also* People v. Perry, 224 Ill. 2d 312, 330-332 (2007). “In determining the plain meaning of a statutory term, it is entirely appropriate to look to the dictionary for a definition.” Perry, 224 Ill. 2d at 300. Black’s Law Dictionary defines the verb “include” as follows:

To contain as a part of something. The participle *including* typically indicates a partial list <the plaintiff asserted five tort claims, including slander and libel>. But some drafters use phrases such as *including without limitation* and *including but not limited to* — which mean the same thing. *Include*, Black’s Law Dictionary (10th ed. 2014).

The most commonly understood meaning of “include” is a term of enlargement and not limitation. Paxson v. Bd. of Educ. of Sch. Dist. No. 87, 276 Ill. App. 3d 912, 920 (1st Dist. 1995) (citing Greyhound Lines, Inc. v. City of Chicago, 24 Ill. App. 3d 718, 727-28 (1st Dist. 1974)). The word “including” indicates that items listed in a regulation “are not meant to be exclusive.” *See* Gem Electronics of Monmouth v. Dept. of Revenue, 286 Ill. App. 3d 660, 666 (4th Dist. 1997) (citing Paxson, 276 Ill. App. 3d at 920). It is instead the term “namely” which “indicates what is to be included by name.” *Namely*, Black’s Law Dictionary (10th ed. 2014). Comparing the two terms, Black’s Law Dictionary states that “*including* implies a partial list and indicates that something is not listed.” *Id.*

The Board concludes that the phrase “but not limited to” is unnecessary. Striking the phrase does not alter the meaning of the rules and does not limit IEPA to the examples listed. If, for example, IEPA needs to request information beyond the examples after “including,” it is not foreclosed from doing so. The Board declines to follow IEPA’s recommendation, and its first-notice order below continues to strike the phrase “but not limited to.”

In the following paragraphs, the Board addresses additional specific changes on a part-by-part basis, starting with Part 401 and finishing with Part 406. If IEPA’s proposed amendments did not generate comment or disagreement, then the Board incorporates them into its proposal without additional explanation.

Part 401: General Provisions

In R18-21, IEPA proposed changes throughout Part 401, which are summarized in the subsections below. In its proposal for public comment, the Board proposed additional changes intended to provide non-substantive clarification. The Board addresses its proposed changes below only to the extent that they generated comments or questions.

Section 401.101

Section 401.101 provides in pertinent part that, “[p]ursuant to authority granted by Section 12 and 13 of the Environmental Protection Act (Act), . . . the Board adopts the following rules and regulations.” 35 Ill. Adm. Code 401.101. IEPA proposed to repeal Section 401.101

because it is “unnecessary.” IEPA Prop. at 24. IEPA argued that the authority note for Part 401 cites authorities including Sections 12 and 13 of the Act as sources of the Board’s rulemaking authority. *Id.*

Section 401.102

The Board proposed changing “the preparation, operation and abandonment of mines” to “preparing, operating, and abandoning mines.” Board Prop. at 1-2. IEPA requests that the Board retain the existing language because the terms are historical to mining operations and “represent the phases a mine goes through.” IEPA Cmts. at 2. In its order below, the Board does not propose to amend this language.

Section 401.104

In a reference to the Surface Coal Mining Land Conservation and Reclamation Act, IEPA proposed to add a statutory citation (225 ILCS 720). IEPA Prop. at 24.

Section 401.105

IEPA proposed to update the title of this section from “Validity Not Affected” to “Severability” to be consistent with Part 301 of the Board’s water pollution rules. IEPA Prop. at 24; *see* 35 Ill. Adm. Code 301.107 (Severability).

Section 401.106

IEPA proposed to repeal Section 401.106, which provides in its entirety that “Chapter 4: Mine Related Pollution, effective May 23, 1972, and all amendments thereto heretofore adopted are hereby superseded.” 35 Ill. Adm. Code 401.106. IEPA argues that this section “is no longer necessary.” IEPA Prop. at 24.

Section 401.APPENDIX A

Appendix A provides cross references between previous Board rule numbers and current section numbers. 35 Ill. Adm. Code 401.Appendix A. IEPA proposed to update the appendix to reflect its proposed repeal of Sections 401.101 and 401.106. IEPA Prop. at 24.

Part 402: Definitions

In R18-21, IEPA proposed one change to Part 402, which is summarized below. In its proposal for public comment, the Board proposed additional amendments intended to provide non-substantive clarification. The Board addresses its amendments below only to the extent that they generated comments or questions.

Section 402.100

IEPA proposed to update the statutory citation in a reference to the Act (415 ILCS 5). IEPA Prop. at 25.

Section 402.101

In the definition of “mine refuse,” the Board proposed replacing “preparation of” with “preparing” mined materials. Board Prop. at 6-7. IEPA requests that the Board retain the phrase “preparation of” to be consistent with how the term is used in mining operations. IEPA Cmt. at 4. In its order below, the Board does not propose to amend this phrase.

In the definition of “mine refuse area,” the Board proposed to replace “land” with “site.” Board Prop. at 7. IEPA questioned this replacement (IEPA Cmt. at 4), and the Board’s order below does not propose to amend this language.

In the definition of “slurry,” the Board proposed removing the word “and” between “fines” and “clays.” Board Prop. at 9. IEPA explains that the “and” should remain because the language correctly refers to “fines and clays.” IEPA Cmt. at 4. In its order below, the Board does not propose to amend this language.

Part 403: NPDES Permits

In R18-21, IEPA proposed three changes to Part 403, which are summarized below. In its proposal for public comment, the Board proposed additional amendments intended to provide non-substantive clarification. The Board addresses its amendments below only to the extent that they generated comments or questions.

Part 403.101

IEPA proposed to remove a reference to the previous codification of these rules as “unnecessary.” IEPA Prop. at 25.

Section 403.103

IEPA proposed to amend a reference to NPDES permit application forms “provided by the Agency¹ or the United States Environmental Protection Agency [USEPA] as applicable.” IEPA proposed striking USEPA to reflect that IEPA supplies these forms. IEPA Prop. at 25.

In subsection (c), IEPA proposes replacing “supplemental NPDES permit” with “modified NPDES permit.” IEPA Cmt. at 4. IEPA states that “[m]odified” is the correct term.” *Id.* In its order below, the Board proposes this replacement to clarify outdated and confusing language. However, the term “supplemental” also appears in Sections 404.107, 405.103, 405.106(g), and 405.109(f). Below, under “Filing Public Comment,” the Board specifically

¹ The rules refer to IEPA as “the Agency.” 415 ILCS 5/3.105 (2016); *see* 35 Ill. Adm. Code 402.100.

requests that IEPA comment on whether the Board should propose the same replacement in these four sections if it proceeds to second notice.

Section 403.104

Subsection (b) provides that an NPDES permittee must not construct a facility or modify an activity or facility for which it holds an NPDES permit unless an NPDES permit condition authorizes that construction or modification. 35 Ill. Adm. Code 403.104(b).

The subsection also provides that “construction authorization is not required for modification which would not cause a violation of conditions of the existing permit.” 35 Ill. Adm. Code 403.104(b). The Board proposed to clarify this language by providing that “[n]o condition authorizing modification is required if the modification would not violate the existing permit conditions.” Board Prop. at 11-12.

IEPA suggests replacing the Board proposal with the following: “If the modification is already covered under the existing permit condition, a separate authorization from the Agency is not required.” IEPA Cmt. at 4. The Board’s order below reflects IEPA’s proposal.

Section 403.APPENDIX A

IEPA proposed to strike as “outdated” a reference to the effective date of Part 403. IEPA Prop. at 25.

Part 404: State Permits

In R18-21, IEPA proposed two changes to Part 404, one to the Authority Note and the other to Section 404.106, which are summarized below. In its proposal for public comment, the Board proposed additional amendments intended to provide non-substantive clarification. The Board addresses its amendments below only to the extent that they generated comments or questions.

In the Authority Note, IEPA proposed updating the statutory citation to Sections 12, 13, and 27 of the Act (415 ILCS 5/12, 13, 27). IEPA Cmts. at 4.

Section 404.100

Section 404.100 provides in its entirety that “Part 404 governs mining activities, including construction of mine related facilities, and establishes rules for the issuance of state permits.” 35 Ill. Adm. Code 404.100. The Board proposed to repeal this section as unnecessary. Board Prop. at 13. IEPA argues that this section should remain to conform with Section 403, the other permit section under this subtitle, which retains its preamble. IEPA Cmt. at 5; 35 Ill. Adm. Code 403.100. In its order below, the Board does not propose to repeal or amend this section.

Section 404.101

The Board proposed to clarify subsection (a). Board Prop. at 13-14. IEPA commented that these proposed changes do not clearly distinguish between operating permits and construction permits. IEPA Cmt. at 5. To address this comment, the Board's order proposes the following:

- a) Except as provided in Sections 404.102 and 404.103, ~~no person shall~~ a person must obtain:
 - 1) ~~A construction permit before preparing~~Prepare land for mining activities or ~~constructing~~construct a mine related facility ~~that~~which could generate refuse, result in a discharge, or ~~potentially have the potential to~~cause water pollution ~~without a construction permit; and~~
 - 2) ~~An operating permit before carrying~~Carry out mining activities ~~without an operating permit.~~

Section 404.106

Section 404.106(a) provides in its entirety that “[a]ll state permit applications shall be mailed or delivered to the appropriate address designated by the Agency. Any application or revised application sent by mail shall be sent by registered or certified mail, return receipt requested.” 35 Ill. Adm. Code 404.106(a). IEPA proposed to strike the second sentence.

Subsection (b) provides in its entirety that “[a]pplications 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.” 35 Ill. Adm. Code 404.106(b). IEPA proposed to strike the entire subsection. IEPA commented that these revisions align with its current practices and proposed changes to 35 Ill. Adm. Code 309.223. IEPA Prop. at 25.

In its proposal for public comment, the Board retained and clarified subsection (a) to distinguish between applications delivered by mail and by hand. The Board also clarified subsection (b). Board Prop. at 15-16. IEPA's comments suggested minor changes to subsection (b), which are included in the Board's order below. IEPA Cmts. at 5.

In its proposal for public comment, the Board specifically requested that IEPA comment on whether it accepts electronic submission of State permit applications. Board Prop. at 3. For coal mine related facilities, IEPA does not accept permit applications electronically, and the Board does not revise its proposal to address them. IEPA Cmt. at 2.

Part 405: State and NPDES Permits

In R18-21, IEPA proposed four changes to Part 405, which are summarized below. In its proposal for public comment, the Board proposed additional amendments intended to provide non-substantive clarification. The Board addresses its amendments below only to the extent that they generated comments or questions.

Section 405.101

Section 405.101 addresses Agency guidance documents as sources of procedures and standards. IEPA proposed repealing this section as unnecessary because IEPA does not have or provide guidance documents. IEPA Prop. at 25. The Board notes that subsections (b) and (c) refer to adopting and revising guidance documents by citing 35 Ill. Adm. Code 450, which does not codify any requirements. At hearing, the Attorney General's Office questioned whether repeal is a substantive change if "future administrations choose to develop guidance documents." Tr. 1 at 10-11.

IEPA comments that subsection (a) addressing special permit conditions should remain because these conditions are common in IEPA-issued permits. IEPA Post-Hrg. Cmt. at 2. IEPA maintains that the remaining language is unnecessary and should be struck as originally proposed. *Id.* The Board is persuaded to propose IEPA's revisions, which are reflected below in its order.

Section 405.102

IEPA proposed to strike subsection (b), which refers to IEPA guidance documents. IEPA Prop. at 25.

Section 405.104

In subsection (a), IEPA proposed updating the statutory citation to the Illinois Professional Engineering Act (225 ILCS 325). IEPA Prop. at 21.

Subsection (b)(10) requires that permit applications include "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." 35 Ill. Adm. Code 405.104(b)(10). In its proposal, the Board sought comment on whether IEPA relies on a specific classification or list of classifications for this purpose. Board Prop. at 3. IEPA responds that it does not. IEPA Cmts. at 2. IEPA proposed striking references to classification so that subsection (b)(10) refers only to general characteristics. IEPA Prop. at 25. The Board's order below reflects IEPA's proposal.

In subsection (b)(14), the Board proposed minor changes. IEPA comments without explanation that "total dissolved solids" should be struck. IEPA Cmts. at 5. While the Board does not discount IEPA's comment, the Board is not persuaded that striking estimated total dissolved solids from permit application requirements is a non-substantive clarification. Below under "Filing Public Comments," the Board requests that IEPA comment with support for its proposal.

Subsection (c) provides that IEPA may "specify" other information necessary to consider a permit application. 35 Ill. Adm. Code 405.104(c). IEPA suggests that "specify" be amended to "require." IEPA Cmt. at 5. IEPA also proposed striking a reference to IEPA guidance documents. IEPA Prop. at 25. The Board's order below reflects these revisions.

In subsection (d), IEPA proposed updating the reference to the Illinois Department of Mines and Minerals to the Illinois Department of Natural Resources, Office of Mines and Minerals. IEPA Prop. at 25.

Section 405.106

IEPA comments that the Board’s proposal includes two subsections designated as “(g).” IEPA Cmt. at 5; *see* Board Prop. at 23. The Board re-designates the second as “(h)” to maintain alphabetical order.

Section 405.110

The Board proposed revising “cessation or suspension” to “stopping or suspending” in subsection (a)(2) and subsection (b). Board Prop. at 26. IEPA commented that “[c]essation is the proper term in mining” and that keeping “cessation” is consistent with the heading of the section. IEPA Cmt. at 6. In its order below, the Board retains the current language.

Section 405.111

Subsection (a) provides in its first sentence that “[a] permittee 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.” 35 Ill. Adm. Code 405.111(a). The Board proposed to strike the term “becoming aware of.” Board Prop. at 26. IEPA commented that this term should not be struck “because one could not report until becoming aware of the emergency situation.” IEPA Cmt. at 6. IEPA suggested that this is a substantive revision and “is not appropriate at this time.” *Id.* In its order below, the Board retains the current language.

Section 405.113

This section provides that “[a] state or NPDES permit shall specify a permit area.” 35 Ill. Adm. Code 405.113. The Board proposed amending “shall” to “must.” Board Prop. at 26. The section continues by providing that “[d]uring the permit term no portion of the affected land shall be outside the permit area.” 35 Ill. Adm. Code 405.113. The Board proposed amending “shall” to “may.” Board Prop. at 26. IEPA commented that “shall” is the proper term, arguing that that changing “shall” to “may” alters the meaning of the sentence. IEPA Cmts. at 6. To clearly indicate the prohibitory nature of this provision, the Board proposes the following: “[d]uring the permit term, no portion of the affected land, or any portion of it, must not shall be outside the permit area.”

Section 405.APPENDIX A

Appendix A provides cross references between previous Board rule numbers and current section numbers. 35 Ill. Adm. Code 405.Appendix A. IEPA proposed updating the appendix to reflect its proposed repeal of Section 405.101. IEPA Prop. at 26. IEPA also proposed striking a

reference to the 1981 dates on which Part 405 was filed and took effect. *Id.* Because IEPA does not now propose to repeal the entire Section 405.101 (*see* IEPA Post-Hrg. Cmt. at 2), the Board strikes the reference to repealing it.

Part 406: Mine Waste Effluent and Water Quality Standards

In R18-21, IEPA did not propose changes to Part 406. However, in its proposal for public comment, the Board proposed amendments intended to provide non-substantive clarification.

IEPA requests that “no amendments be made at this time” to Part 406. IEPA Cmts. at 6. IEPA provides specific comments in case the Board proposes first-notice amendments. The Board concludes to propose clarifying amendments, addressing below only those amendments that generated comments or questions.

Section 406.102

Subsection (b) provides in its entirety that “[w]here treatment is provided the permittee shall design or modify structures so as to permit the taking of effluent samples by the Agency at the required point.” 35 Ill. Adm. Code 406.102(b). The Board proposed to clarify it: “[t]he permittee must design or modify structures [to] assist the Agency in taking effluent samples at the required point.” Board Prop. at 31. IEPA commented that it “is unsure what is meant” by the phrase “assist the Agency.” IEPA Cmt. at 6. IEPA requested that the phrase “be struck from the proposal.” *Id.* To address IEPA’s comment, the Board proposes in its order below to clarify this section by providing that “[t]he permittee must design or modify structures that allow the Agency to take effluent samples at the required point.”

Subsection (c) provides in part that, when treatment is not provided for a discharge, “effluent samples shall be taken at the nearest point of access to the discharge source at a point where the discharge leaves the mine or mine area or other portions of the affected land.” 35 Ill. Adm. Code 406.102(c). The Board proposed to replace “point of access” with “access point.” Board Prop. at 31. IEPA commented that the existing language “provides clearer guidance as to where the sample must be taken” and therefore “should remain.” IEPA Cmt. at 6. In its order below, the Board retains the current language.

The Board proposes to clarify subsections (b) and (c) by combining them into a single subsection (b). Board Prop. at 31. The Board proposed re-designating current subsection (d) as subsection (c) to maintain alphabetical order. *Id.* The Board also proposed separating it into two subsections, (c)(1) and (c)(2), to clarify the reporting requirements. *Id.*

As re-designated, subsection (c)(1) provides in part that “[e]ach report submitted pursuant to this subsection 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 of Section 406.109 and 406.110 were in effect.” 35 Ill. Adm. Code 406.102(d). The Board proposed to strike the word “occurring.” Board Prop. at 31. IEPA

comments that the Board should leave the word in the rule. IEPA Cmt. at 6. For greater clarity, the Board retains the current language.

Section 406.105

Section 406.105 addresses combining waste streams from multiple facilities. The Board proposed replacing “waste streams from any facility” with “waste streams from different facilities.” Board Prop. at 33. IEPA indicates that the Board’s proposed change may alter the meaning of the sentence. IEPA Cmt. at 7. Given the scope of this rulemaking, the Board retains the current language.

Section 406.106

Subsection (b) establishes mine discharge effluent standards for eight constituents. 35 Ill. Adm. Code 406.106(b). Under subsection (b)(1), the ammonia nitrogen standard applies to “an operator,” but under subsection (b)(2), the manganese standard applies to discharges. Below under “Filing Public Comments,” the Board asks IEPA and the other participants to comment on whether one or both of these two subsections should be amended to be consistent with one another.

Subsection (b) lists effluent standards for mine discharges and includes a STORET number for each of the listed constituents other than pH. “STORET” is “the national water quality data system of the federal Environmental Protection Agency.” 35 Ill. Adm. Code 301.405; *see* 35 Ill. Adm. Code 402.100. In its original proposal, IEPA stated that “the numeric STORET codes that appear in current Board water quality standards are no longer maintained,” “of little use,” and “no longer needed.” IEPA Prop. at 19. In an earlier rulemaking, IEPA noted that USEPA no longer supported the STORET database, and IEPA began “to drop STORET codes from throughout the regulations when those regulations are opened for other amendments.” Updated Water Quality Standards for Boron, Fluoride and Manganese: Proposed Amendments to 35 Ill. Adm. Code Part 302, Subparts B, C, E and F and Section 303.312, R 11-18, slip op. at 10 (Dec. 2, 2010) (IEPA Statement of Reasons). Consequently, IEPA proposed that “the STORET numbers be stricken from the regulations.” IEPA Cmt. at 7. The Board’s order strikes the obsolete STORET numbers.

Section 406.109

Subsection (b) lists effluent standards for coal mine discharges from reclamation areas and includes a column for STORET numbers. IEPA proposes that the STORET numbers be stricken. IEPA Cmt. at 7. For the reasons described above under Section 406.106, the Board’s order strikes the obsolete STORET numbers.

Section 406.110

As in Sections 406.106 and 406.109, this section contains STORET numbers. IEPA proposes that the STORET numbers be stricken. IEPA Cmt. at 7. For the reasons described above under Section 406.106, the Board’s order strikes the obsolete STORET numbers.

Section 406.202

In its proposal, the Board noted that this section “addresses violations of Subtitle C water quality standards by mine discharges and non-point source mine discharges, as well as related enforcement.” Board Prop. at 3. The Board asked IEPA to comment on whether this section is “necessary for the enforceability of those standards.” *Id.* IEPA responds that the section is necessary and should remain in the rules because it “has historically been part of the regulations and provides a reminder that mining facilities cannot violate water quality standards.” IEPA Cmt. at 2-3. IEPA further indicates that this section works in conjunction with Section 304.105 to prevent permit holders charged with water quality violations from using the permit as a defense. *Id.*; 35 Ill. Adm. Code 304.105; 35 Ill. Adm. Code 406.202. The Board is persuaded that this language should remain in the rules and therefore retains it with only minor corrections.

TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

As noted above under “Procedural History,” the Board on October 24, 2018, requested that DCEO perform an economic impact study of the Board’s proposal for public comment and respond to the request by November 30, 2018. *See* 415 ILCS 5/27(b) (2016). The Board has received no response from DCEO. At the second hearing, no person testified or commented on the Board’s request or the absence of a response. *See* Tr.2 at 8.

The Board intends to propose only non-substantive amendments that clarify the language of existing rules. The Board has carefully considered the record, particularly IEPA’s comments on the Board’s proposal for public comment. As indicated above, the Board responds to those comments by amending numerous sections of its proposal. The Board has specifically requested comment to clarify three matters before proposing additional revisions. Based on the record now before it, the Board concludes that its first-notice proposal does not make substantive revisions that affect complying with existing rules. Accordingly, the Board finds that the proposal is both technical feasible and economically reasonable. *See* 415 ILCS 5/27(a) (2016). The Board further finds that these proposed amendments would not have any adverse economic impact on the people of the State of Illinois. *See* 415 ILCS 5/27(b) (2016).

FILING PUBLIC COMMENTS

Illinois Register publication of the Board’s first-notice proposal will start a period of at least 45 days during which any person may file a public comment with the Board, regardless of whether the person has already filed a public comment. *See* 5 ILCS 100/5-40(b) (2016) (Illinois Administrative Procedure Act).

The Board encourages persons to file public comments on these proposed amendments. The Board specifically requests that IEPA comment on the following three matters:

1. In Section 403.103, the Board follows IEPA’s recommendation and replaces the term “supplemental NPDES permit” with “modified NPDES permit” as the correct term. However, the Board notes above that Sections

404.107, 405.103, 405.106(g), and 405.109(f) continue to refer to supplemental permits. The Board requests that IEPA comment on whether it should propose the same replacement in these four additional sections.

2. In Section 405.104(b)(14), the Board requests that IEPA explain and support striking “total dissolved solids” as a non-substantive clarification of the permit application requirements.
3. Section 406.106(b) establishes mine discharge effluent standards for eight constituents. 35 Ill. Adm. Code 406.106(b). Subsection (b)(1) applies the ammonia nitrogen standard to “an operator,” but subsection (b)(2) applies the manganese standard “discharges.” The Board requests that IEPA comment on whether one or both of these two subsections should be amended to be consistent with one another.

Public comments must be filed electronically through the Clerk’s Office On-Line (COOL) at pcb.illinois.gov. The Board requests that comments indicate this rulemaking’s docket number, R18-24. Questions about electronic filing should be directed to the Board’s Clerk at 312-814-3461.

CONCLUSION

The Board proposes these amendments to the mine-related water pollution rules for first-notice publication in the *Illinois Register*. The proposed amendments appear in the addendum to this opinion and order. The Board invites public comments on all aspects of the proposal, particularly the three matters above.

ORDER

The Board directs the Clerk to cause *Illinois Register* publication of the proposed first-notice amendments that appear in the addendum to this opinion and order.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 28, 2019, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board