

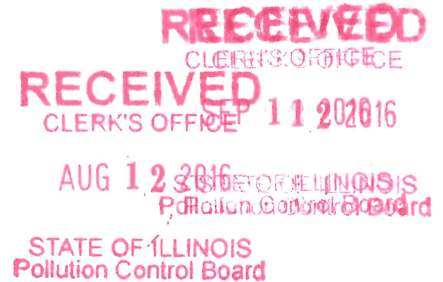


OFFICE OF THE SECRETARY OF STATE

JESSE WHITE • Secretary of State

August 4, 2016

POLLUTION CONTROL BOARD
DON BROWN
100 W RANDOLPH ST
STE 11-500
CHICAGO, IL 60601



Dear DON BROWN

Your rules Listed below met our codification standards and have been published in Volume 40, Issue 33 of the Illinois Register, dated 8/12/2016.

NOTICE OF FAILURE TO REMEDY JCAR OBJECTIONS

Permits

35 Ill. Adm. Code 309

11063

Point of Contact: Crystal Woolard

If you have any questions, you may contact the Administrative Code Division at (217) 782 - 7017.

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JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

NOTICE OF FAILURE TO REMEDY
OBJECTION TO PROPOSED RULEMAKING

POLLUTION CONTROL BOARD

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- 1) Heading of Part: Permits
- 2) Code Citation: 35 Ill. Adm. Code 309
- 3) Section Numbers:

309.104	309.201	309.202
309.203	309.204	309.242
309.263		
- 4) Notice of Proposed Rulemaking Published in *Illinois Register*: 39 Ill. Reg.15103; November 20, 2015
- 5) Summary of Rulemaking: Allows NPDES permit holders who missed the renewal application deadline (180 days before their current permits are set to expire) to ask EPA for a deadline waiver, and sets timelines for consideration of that request. Updates the requirements for non-NPDES permits (e.g., construction or operating permits). Authorizes EPA to require the modification or renewal of an operating permit for reasons such as a change in the requirements applicable to the permittee, inaccuracy on the permit application, or permittee's noncompliance.
- 6) JCAR Action: Objection (40 Ill. Reg. 5232; March 25, 2016)
- 7) Basis for JCAR Action: At its meeting on 3/8/16, the Joint Committee on Administrative Rules objected to Section 309.263(c) of the above-referenced rulemaking because PCB has declined to provide the standards for when EPA will require modification or renewal of a non-NPDES permit and when it will not.
- 8) Agency Response: Refusal. PCB declined (in a 5-0 vote) to modify this rulemaking and offered 3 reasons: (1) The rule, as written, does comply with the IAPA because it gives open-ended examples of how EPA's discretion might be used. (2) Removing EPA's discretion to waive the modification/renewal requirement would create a burden on licensees required to modify their permits for extremely minor cases. (3) Because qualifying EPA's discretion in this matter would be a substantive change to the rulemaking, the proposal would have to be supported by evidence in the record, and thus, the rulemaking would have to be reopened for public comment.
- 9) Basis for JCAR Determination of Failure to Remedy: PCB refused to modify this rulemaking by providing standards for when EPA will require modification or renewal of

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a non-NPDES permit and when it will not. Sec. 5-20 of the IAPA requires agencies to provide standards for the exercise of their discretion. At its 7/12/16 meeting, JCAR found that the Pollution Control Board had not remedied this Objection. JCAR voted to issue this Notice of Failure to Remedy for publication in the next *Illinois Register*.