

OCT 11 2001

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF: )  
)  
REVISIONS TO ANTIDegradation )  
RULES: 35 ILL. ADM. CODE 302.105, )  
303.205, 303.206, AND 106.990 - 106.995 )

R01-13  
(Rulemaking)

*P.C. #53*

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn  
Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601  
**(VIA FACSIMILE AND  
AIRBORNE EXPRESS)**

Marie E. Tipsord, Esq.  
Hearing Officer  
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**(VIA FACSIMILE AND  
AIRBORNE EXPRESS)**

**(PERSONS ON ATTACHED SERVICE LIST)**

PLEASE TAKE NOTICE that I have filed today with the Clerk of the Illinois Pollution Control Board an original and nine copies of the **POST-HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP**, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

By: *Katherine D. Hodge* *ROJ*  
One of Its Attorneys

Dated: October 11, 2001

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**CERTIFICATE OF SERVICE**

I, Katherine D. Hodge, the undersigned, certify that I have served copies of the attached POST-HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP upon:


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By facsimile and by overnight delivery by depositing said documents in an Airborne Express drop box in Springfield, Illinois, on October 11, 2001, and upon:

SEE ATTACHED SERVICE LIST

by depositing said documents in the United States Mail in Springfield, Illinois on October 11, 2001.

  
Katherine D. Hodge

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IERG:001/Fil/R01-13/Service List – MASTER

OCT 12 2001

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
*Pollution Control Board*

IN THE MATTER OF: )  
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REVISIONS TO ANTIDegradation ) R01-13  
RULES: 35 ILL. ADM. CODE 302.105, ) (Rulemaking)  
303.205, 303.206, AND 106.990 – 106.995 )

**POST-HEARING COMMENTS OF  
THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by one of its attorneys, Katherine D. Hodge of HODGE DWYER ZEMAN, and for its Post-Hearing Comments in this matter, states as follows:

**I. INTRODUCTION**

Throughout the cooperative, two-year process led by the Illinois Environmental Protection Agency (“Agency”) to develop the regulations at issue in this rulemaking, the rulemaking proceeding resulting in the Illinois Pollution Control Board’s (“Board”) June 21, 2001, Opinion and Order (“Board’s Opinion”), and the subsequent Board Hearing on August 24, 2001, the Illinois Environmental Regulatory Group (“IERG”) has maintained the following principles:

- all increases in loading to waters of the State of Illinois should not be subject to the same level of antidegradation review by the Agency, necessitating that the Board grant the Agency flexibility in conducting such reviews;
- the Agency’s resources should be targeted to those loadings that are “truly” significant, necessitating the inclusion of certain exceptions to the antidegradation assessment requirement;
- the regulated community requires some degree of certainty as to how the Board’s antidegradation regulations will be implemented, necessitating that the regulatory requirements be clearly set forth;

- the designation of a surface water body (or water body segment) as an Outstanding Resource Water carries such far-reaching restrictions on the use of both land and water that all potentially impacted parties must be notified of a proceeding for such a designation, and the proponent of such a designation must support its petition with detailed supporting information for development of the Record before the Board; and,
- the Illinois Department of Natural Resources lacks the statutory authority to conduct antidegradation assessments or to otherwise implement water quality standards.

In support of these principles, IERG has offered suggested regulatory provisions, some of which the Board has included in its first notice regarding the antidegradation regulations, and others the Board has deemed unwarranted.

Throughout this proceeding, the Agency, the Board and all interested participants have offered detailed comments on how best to protect Illinois waters from degradation. The recommendations have been diverse and, in some instances, at odds. However, there is one issue as to which all participants and the Board agree: that, as the Board has stated, “all proposed increases in pollutant loadings should not require the same level of review to demonstrate compliance with the proposed antidegradation standard,” but rather, the rules “should allow the Agency to decide on a case-specific basis what level of review is appropriate.” Board’s Opinion at 14. (Emphasis added.) All participants have unequivocally recognized this principle. See, e.g., Transcript of August 24, 2001, Hearing (“August 24, 2001, Transcript”) at p. 8, l. 12, to p. 12, l. 13 (testimony of Ms. Deirdre K. Hirner); p. 51, ll. 15 to 17 (testimony of Ms. Cindy Skrukud); p. 59, ll. 9 to 13 (testimony of Mr. Robert J. Moore).

IERG discusses this issue of flexibility below. IERG also addresses additional concerns and comments that it has regarding the Board’s proposed regulations. Some of

these comments have been developed through consultation with the Agency and/or representatives of the Environmental Groups, and reflect an agreement among the participants as to appropriate revisions to the Board's proposed regulations. IERG respectfully requests that the Board take all of these concerns and comments into consideration as the Board prepares to issue its proposed antidegradation regulations for second notice.

**II. THE BOARD MUST PROVIDE THE AGENCY FLEXIBILITY IN CONDUCTING ANTI-DEGRADATION ASSESSMENTS.**

The Board has indicated that, as proposed, Section 302.105(c)(2) "allows the Agency to decide on a case-specific basis what level of review is necessary," and provides the Agency the flexibility it needs to determine the depth and degree of analysis to be completed for individual antidegradation assessments. Board's Opinion at 14. As IERG indicated at pages eight and nine of the testimony of Deirdre K. Hirner that was pre-filed for presentation at the August 24, 2001, Hearing ("IERG's Pre-Filed Testimony"), and as emphasized in oral testimony before the Board, August 24, 2001, Transcript at 8-10, IERG maintains that the language of proposed Section 302.105(c) is drafted in such a manner as to place undue restrictions on the Agency's ability to exercise flexibility in the antidegradation review process.

IERG has held discussions with the Agency regarding this issue since the August 24, 2001, Hearing on the Board's Opinion. In light of these discussions, IERG and the Agency agree that the Board's proposed Section 302.105(c)(2) should be revised to include the following language:

The assessment to determine compliance with this Section 302.105 must be made on a case-by-case basis.

See Exhibit A<sup>1</sup> at 10; Agency October 5, 2001, Comment (“Agency Comment”) at 7.

IERG and the Agency also agree that similar language should be included in what is currently the Board’s proposed Section 302.105(f)(1), the Agency’s implementation procedures.<sup>2</sup> See Exhibit A at 25; Agency Comment at 38-39.

Further, in this same regard, IERG offers the following revision to the Board's proposed Section 302.105(c)(2)(B), in an effort to ensure the Agency discretion to conduct an antidegradation review and assessment for each permit application on a case-by-case basis:

- 2) . . . In making this assessment, the Agency must:
  - A) Consider the fate and effect of any parameters proposed for an increased pollutant loading; and
  - B) On a case-by-case basis, Aassure the following:

\* \* \*

IERG’s Proposed Revised Section 302.105(c)(2)(B) (See Exhibit A at 10).

IERG respectfully asks the Board to note this language has been revised from the revision IERG offered in its Pre-Filed Testimony and in Exhibit A thereto. IERG has revised this language in deference to the concerns expressed by representatives of the environmental community at the August 24, 2001, Hearing. See August 24, 2001, Transcript at 23, 24-25, 32-34. As Ms. Deirdre K. Hirner of IERG stated at that Hearing,

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<sup>1</sup> Exhibit A to these Post-Hearing Comments details IERG’s proposed revisions to the Board’s proposed regulatory language. This Exhibit supersedes the similar exhibit filed by IERG as Exhibit A to IERG’s August 9, 2001, Pre-Filed Testimony.

<sup>2</sup> See discussion below regarding the Agency’s proposal to transfer the Board’s proposed Section 302.105(f) to Part 309 of the Board’s regulations.



it was never IERG's intent to preclude the Agency from considering any criteria it deemed necessary in the conduct of an antidegradation review. Rather, it is, and always has been, IERG's intent to propose language that ensures the Agency the flexibility needed to consider the depth and degree of study of each of the criteria which the Agency deems appropriate on a case-by-case basis.

Finally on this point, IERG again strongly encourages the Board to clarify the antidegradation regulations to allow the Agency the flexibility necessary to establish the level of review required to demonstrate compliance with the antidegradation standard for each individual permit application, with the complexity and scope of review dependent upon the nature of the proposed activity, the pollutant, and the character of the receiving stream at issue.

**III. THE REGULATIONS SHOULD IDENTIFY ACTIVITIES NOT SUBJECT TO FURTHER ANTIDEGRADATION ASSESSMENT SO AS TO ALLOW THE AGENCY TO TARGET ITS RESOURCES TO TRULY SIGNIFICANT LOADINGS.**

It is evident that the Board and the Agency agree that certain activities do not require a separate antidegradation demonstration, as such activities essentially have been subject to reviews similar to antidegradation reviews under other authorities, and thus, conducting a separate antidegradation demonstration would be an unnecessary redundancy. The Board identified seven such activities in its First Notice Opinion and Order under proposed Section 302.105(d), as did the Agency in an attachment to its March 20, 2001, filing of "CLOSING COMMENTS." IERG supports the proposed adoption of these exceptions.

In its Pre-Filed Testimony and at the August 24, 2001, Hearing, IERG requested the Board consider the adoption of four additional exceptions, including an exception for

de minimis increases in pollutant loading. IERG's Pre-Filed Testimony at 5-8, 10-14; August 24, 2001, Transcript, at 10, 12-13. On review of arguments presented at hearings throughout this proceeding, and in supporting documents, IERG now requests that the Board consider the addition of only one additional exception in its Opinion and Order issuing the Board's antidegradation regulations for second notice.

At the August 24, 2001, Hearing on the Board's Opinion, an extensive discussion ensued regarding the scope of the Board's proposed Section 302.105(d)(5), which would except discharges of certain non-contact cooling waters from the antidegradation assessment requirement. See August 24, 2001, Transcript at 25-27. This discussion, which broached the Agency's concern with the language and industry's need for the exception, afforded the opportunity for post-hearing dialogue. Through that dialogue, the Agency and the regulated community have come to understand that application of this exception to non-contact cooling waters containing only the additive chlorine, and where dechlorination occurs before discharge, is an acceptable compromise. Accordingly, IERG proposes the following amendment to the Board's proposed Section 302.105(d)(5):

- 5) New or increased discharges of a non-contact cooling water:
  - A) without additives, except as provided in subsection (d)(5)(B) of this Section, returned to the same body of water from which it was taken, as defined by 35 Ill. Adm. Code 352.104, provided that the discharge complies with applicable Illinois thermal standards; or,
  - B) containing chlorine when the non-contact cooling water is treated to remove residual chlorine and returned to the same body of water from which it was taken, as defined in 35 Ill. Adm. Code 352.104, provided that the discharge complies with applicable Illinois thermal and effluent standards.

See Exhibit A at 12.

The Agency supports and has also proposed this revision of Section 302.105(d)(5) to the Board. See Agency Comment at 7-9. IERG respectfully requests that the Board include this revision in its Opinion and Order issuing the Board's antidegradation regulations for second notice.

Also, IERG has reconsidered its request that the Board include a de minimis exception in the antidegradation regulations. The Board has clearly articulated its belief that "the Agency should have the opportunity to review any proposed increase in pollutant loading." Board's Opinion at 16. And, IERG concurs that concerns expressed by other participants in this proceeding, namely, that performing de minimis calculations could tax Agency resources and call matters of timing and scope of review into consideration, may warrant merit. As noted by Deirdre K. Hirner at the August 24, 2001, Hearing, however, to those very few industries that could make use of a de minimis demonstration, such a demonstration would be a valuable tool in terms of avoiding potential delays in processing NPDES permits. August 24, 2001, Transcript at 10. Therefore, IERG would ask the Board's consideration of an addition to proposed Section 302.105(c)(2)(C) to allow the Agency to consider a de minimis demonstration as one of its sources of information in making an antidegradation assessment. See Exhibit A at 11. This demonstration would be prepared by the permit applicant, and show that the proposed increased in loading of a pollutant, other than a bioaccumulative chemical of concern, does not utilize more than ten-percent of the available assimilative capacity of the receiving water for the constituent under consideration. Id.

Also, IERG has withdrawn its request for an exception from the antidegradation assessment requirement for discharges authorized by the Board or by a Court. IERG

withdraws this request based on its understanding that the Agency does not consider itself to have the authority to override, by an antidegradation assessment, a Board or Court authorization for a discharge. And, IERG has withdrawn its request for an exception for site stormwater discharges.

**IV. THE REGULATORY LANGUAGE MUST BE CLEARLY STATED TO PROVIDE CERTAINTY AS TO HOW THE ANTIDEGRADATION REGULATIONS WILL BE IMPLEMENTED.**

**A. Board's Proposed Section 302.105(c)(2) – Antidegradation Assessment Trigger**

To properly comply with the antidegradation review process, the regulated community must be able to clearly identify the trigger that begins that process. IERG, the Agency and the Board concur that the Board's proposed language at Section 302.105(c)(2) makes clear that the antidegradation assessment requirement applies only to increases in pollutant loading that necessitate the issuance of a new, renewed, or modified NPDES Permit. IERG initially had proposed adding the modifying language "with a new or increased permit limit" in order to appropriately clarify the trigger for the antidegradation assessment process. However, discussions with the Agency subsequent to the August 24, 2001, Hearing have led to an understanding that this proposed language could be interpreted to restrict antidegradation review to only those pollutants having a "limit" expressly stated in a permit.

It was not IERG's intent to so impede the Agency in the conduct of its duties. Rather, IERG's intent was to explicitly state that which is implicit in the Board's proposal: that at least for those constituents for which a limit is expressly stated in a permit, the antidegradation assessment requirement is triggered by a permit applicant's request for an increase in loading that would result in an exceedence of the expressly

stated limit. Likewise, an increase in a pollutant discharge for which no permit limit is stated, but for which the Agency has authorized a level of loading, is not subject to antidegradation review as long as the increased discharge does not exceed the authorized level of loading.

In light of these discussions, IERG has reconsidered its request that the Board include the “with a new or increased permit limit” language in the Board’s proposed Sections 302.105(c)(2) and (f)(1). Instead, IERG believes that the trigger for antidegradation review can be made clear by revising Section 302.105(c)(2) to provide as follows:

The Agency must assess any proposed increase in pollutant loading that necessitates the issuance of a new, renewed or modified NPDES permit, or any activity requiring a CWA Section 401 certification, to determine compliance with this Section 302.105; provided, however, that if a pollutant is subject to an existing permit limit, an assessment shall not be required unless the proposed increase in pollutant loading would result in an exceedence of such permit limit.<sup>3</sup> The assessment to determine compliance with this Section 302.105 must be made on a case-by-case basis. In making this assessment, the Agency must:

\* \* \*

See Exhibit A at 10.

IERG also proposes to add similar language to the Agency’s proposed Section 309.141(i). See Exhibit A at 25. It is IERG’s understanding that the Agency agrees conceptually with these revisions. See Agency Comment at 10-11. IERG respectfully requests that the Board include these revisions in its Opinion and Order issuing its antidegradation regulations for second notice, so as to avoid confusion and the potential for future litigation regarding this issue.

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<sup>3</sup> See discussion of this proposed revision to Section 302.105(c)(2) below.

**B. Board's Proposed Section 302.105(b)(1)(B) – Existing Site Stormwater Discharges into ORWs**

The Board's proposed Section 302.105(b)(1)(B) provides for "existing site stormwater discharges" into ORWs. IERG has previously requested that the Board revise the language of this provision, but hereby withdraws that request. IERG is comfortable with the language of the Board's proposed Section 302.105(b)(1)(B).

**C. Board's Proposed Sections 302.105(b) to (d) – Review of Discharges to ORWs**

The Board's proposed Section 302.105(b)(3)(B) provides that the short-term, temporary activities and the stormwater discharges affecting the water quality of ORWs authorized under proposed Section 302.105(b)(1) may occur only if they are also "necessary for an activity that will improve water quality in the ORW." Based on the testimony of the Agency's witness Mr. Toby Frevert, this Section has been structured to **allow** such load increases in an ORW. While the circumstances in which such increased loading to an ORW are to be very few and limited, the provision was developed as an allowance. The requirement that the activity also improve water quality is contrary to the allowance of a limited discharge.

Accordingly, IERG assumes that the Board did not intend proposed Sections 302.105(b)(3)(B) and (C) to apply to the activities authorized in proposed Sections 302.105(b)(1)(A) and (B). IERG has consulted with the Environmental Groups regarding this issue, and it is IERG's understanding that the Environmental Groups support the following revision to clarify Section 302.105(b)(3):

- 3) Any activity listed in subsection (b)(1) or any other proposed increase in pollutant loading to an ORW must also meet the following requirements:

- A) All existing uses of the water will be fully protected; and,
- B) Except for activities falling under one of the exceptions provided in Subsection (b)(1)(A) or (B) above,
  - i) The proposed increase in pollutant loading is necessary for an activity that will improve water quality in the ORW; and
  - ~~ii~~) The improvement could not be practicably achieved without the proposed increase in pollutant loading.

See Exhibit A at 9-10.

IERG also notes that it is still unsure of the intent the Board's proposed requirement that increases in loading to ORWs improve water quality. IERG assumes that this means, for example, that if an increase in the level of one contaminant in a discharge to an ORW allowed a party to decrease the levels of three other contaminants in the discharge, the increased discharge of the first contaminant to the ORW would be allowed, because it is necessary to improve water quality (i.e., through the decrease in the other three contaminants). IERG requests that the Board clarify the intent of this requirement in the Board's Opinion and Order issuing the antidegradation regulations for second notice.

Finally, IERG proposes the following revisions to the Board's Proposed Sections 302.105(b)(2), (4), and (5), which revisions are intended to incorporate the Agency's proposed revisions to these Sections and to clarify what IERG understands to be the Board's intent in those Sections:

- 2) Any activity in~~under~~ subsections (b)(1)(A) or (b)(1)(B) of this Section or any other increase in pollutant loading that requires~~would necessitate the issuance of a new, renewed or modified-a~~ National Pollutant Discharge Elimination System (NPDES) Permit or require a Clean Water Act (CWA) Section 401

certification must also comply with subsection (c)(2) of this Section.

\* \* \*

- 4) Any proposed increase in pollutant loading to an ORW that would require the issuance of a new, renewed, or modified an NPDES permit or a CWA 401 certification for an ORW must be assessed pursuant to 35 Ill. Adm. Code 309.141(i) ~~subsection (f)~~ to determine compliance with this Section.
  
- 5) Any activity requiring a CWA Section 401 certification for an ORW must be assessed during the Section 401 certification process to determine compliance with this Section.

See Exhibit A at 9, 10.

IERG respectfully requests that the Board include these revisions in its Opinion and Order issuing the Board's antidegradation regulations for second notice.

**D. Codification of Agency Implementation Rules**

The process by which the Agency requests information from an applicant, reviews that information, and makes the results of its assessment known to the public is inextricably linked to achieving antidegradation. It was the need for certainty as to how the assessment and review process would be implemented to achieve the standard that led IERG to request that the Board include the Agency's implementation regulations within the body of the Board's rules. March 19, 2001, Post-Hearing Comments of IERG at 10. The Board agreed with this suggestion, and, again, IERG thanks the Board for doing so.

At the August 24, 2001, Hearing on the Board's Opinion, the Agency requested that the Board place the Agency's implementation rules regarding antidegradation in Part 309 rather than in Part 302 of the Board's rules. It is IERG's understanding that the Agency proposes to include the Board's proposed Section 302.105(f)(1), (2), and (3) in 35 Ill. Admin. Code §§ 309.103(a), 309.141, and 309.108 and 309.113, respectively.



IERG has considered and supports this proposal by the Agency, and IERG has set forth proposed non-substantive revisions to the Agency's proposed revisions to Part 309 in Exhibit A at 21-26.

It is also IERG's understanding that the Agency has proposed that the Board delete the portions of the Board's proposed Section 302.105(f) addressing the procedures by which permit applicants interact with the Agency prior to seeking a permit. IERG has also considered and supports this proposal by the Agency.

**E. Board's Proposed Section 302.105(d)(6) – Waters Of Particular Biological Significance**

Among other exceptions from the antidegradation assessment requirement, the Agency proposed an exception for “[d]ischarges permitted under a current general NPDES permit as provided by 415 ILCS 5/39(b).” Agency's Proposed Section 302.105(d)(6). In its Opinion, the Board added a condition to this exception, which requires that:

the Agency must assure that individual permits or certification[s] are required prior to all new pollutant loadings or hydrological modifications that necessitate a new, renewed or modified NPDES permit or CWA, Section 401 certification that affect waters of particular biological significance.

Board Opinion at 34. (Emphasis Added.)

The Board does not discuss “waters of particular biological significance” in its Opinion, and this language was never discussed during the course of the Agency's work group meetings. Accordingly, IERG was uncertain of the meaning of this language and assumed that the Board must have meant to refer to ORWs. See IERG's Pre-filed Testimony at 22-23.

In their Pre-Filed Testimony, and at the August 24, 2001, Hearing on the Board's Opinion, certain Environmental Groups<sup>4</sup> supported the inclusion of this language in Section 302.105(d)(6). August 10, 2001, Memorandum Regarding the Proposed Rule, First Notice, of the Environmental Groups at 2 ("Environmental Groups' Memorandum"); August 10, 2001, Pre-Filed Testimony of Robert J. Moore at 4-5; August 24, 2001, Transcript at 66, 76-78. The Environmental Groups further argued that the Agency should rely on a 1991 report prepared for the Illinois Department of Conservation and titled "Biologically Significant Illinois Streams" to determine what constitutes a "water[] of particular biological significance." Id.

It still appears to IERG that the Board's reference to "waters of particular biological significance" was a typographical error, and that the Board intended to refer to ORWs. Using the term "waters of particular biological significance" would create a fourth class of waters, somewhere between "high quality waters" and "outstanding resource waters," and the Board has never indicated any desire to create an additional class of waters. Further, there has been no discussion among the participants in this rulemaking and no presentation of evidence to the Board regarding how a fourth class of waters should be defined, what it should comprise, etc. Accordingly, IERG opposes the inclusion of this language in Section 302.105(d)(6) and respectfully requests that the Board revise this Section to refer to ORWs. See Exhibit A at 12.

Further, even if the Board had intended to refer to "waters of particular biological significance," IERG opposes relying on the 1991 Report titled "Biologically Significant Illinois Streams" ("1991 BSIS Report") to determine what water bodies are "of particular

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<sup>4</sup> The Environmental Law and Policy Center of the Midwest; Friends of the Fox River, Prairie Rivers Network; and the Illinois Chapter of the Sierra Club (hereinafter collectively "Environmental Groups").

biological significance.” The 1991 BSIS Report classifies water bodies as “biologically significant” if one of three criteria is met: (1) the water body is classified as an “‘A’ category” stream in a 1989 report entitled “Biological Stream Characterization: A Biological Assessment of Illinois Stream Quality” (“BSC”); (2) the water body has “mussel diversity”; or (3) “a [threatened, endangered, or watch list] species has been recorded [in the water body] since 1980.” 1991 BSIS Report at 1-2, 6. The problems with this approach are as follow.

First, the Environmental Groups have not filed any evidence that the methodology used to prepare the BSC and the criteria used to identify waters of biological significance have been made available for review by the regulated community or the scientific community, and IERG is not aware of any such review having taken place. Without such review, the Board has no way to ascertain whether any scientific basis exists for the conclusions of the BSC, and thus, whether the 1991 BSIS Report should have relied on the BSC. Likewise, the Board has no way to ascertain whether any scientific basis exists for the conclusions of the 1991 BSIS Report regarding what waters are “biologically significant.”

Second, the authors of the 1991 BSIS Report explain that the data on which they relied in preparing the 1991 BSIS Report was incomplete. For example, the 1991 BSIS Report states that “[o]ther parameters” that the Report did not consider are relevant to determining the “biological significance” of a water body, including “water quality, land use, unusual habitants, naturalness of the ecosystem, and natural divisions.” 1991 BSIS Report at 3. The authors of the 1991 BSIS Report also state that they focused only on water bodies with endangered, threatened, or watch list species, fish diversity, and mussel

diversity, and that “data on additional groups would refine [the Report’s] analysis.” 1991 BSIS Report at 6. IERG is troubled by these admitted shortcomings, especially the lack of physical habitat data and data on aquatic insect fauna in the 1991 BSIS Report. For example, for several of the water bodies identified as “biologically significant,” the 1991 BSIS Report only identifies the presence of an endangered, threatened, or watch list species, and then states: “No data on stream characteristics is available for this site.” See, e.g., 1991 BSIS Report at 327.

Third, the data used in the 1991 BSIS Report regarding the presence of endangered, threatened, or watch list species in water bodies is now out of date. The 1991 BSIS Report was prepared ten years ago, and the data on which it relies to conclude that endangered, threatened, or watch list species are present were gathered before that. The Environmental Groups have presented no evidence that the conclusions of the 1991 BSIS Report regarding the presence of such species are currently accurate, or even if they are, that these conclusions will remain accurate in the future.

Fourth, in some cases, the 1991 BSIS Report itself describes that a water body that it considers “biologically significant” cannot be preserved for one reason or another. For example, the 1991 BSIS Report characterizes Sammons Creek in Alexander County, Illinois, as “biologically significant” because of the presence of a threatened fish identified in that creek in 1990. 1991 BSIS Report at 266-267, 268-269. However, the Report also states that “[p]reservation potential” for Sammons Creek “is low because of the local agricultural practices.” Id. See also, e.g., 1991 BSIS Report at 352 (discussion of Brushy Slough in White County, Illinois).

In light of all of these concerns, even if the Board had meant to refer to “waters of particular biological significance,” IERG would oppose the use of the 1991 BSIS Report to determine what water bodies are of particular biological significance.

**F. Other Proposed Minor Language Revisions**

Finally, in Exhibit A to these Comments, IERG also has proposed other minor, but important, revisions to the Board’s proposed regulations. IERG does not intend these proposed revisions to affect the substance of the regulations, but merely to clarify the language of the regulations. IERG respectfully requests that the Board include these minor, but important, revisions in its Opinion and Order issuing the Board’s antidegradation regulations for second notice.

**V. THE DESIGNATION OF OUTSTANDING RESOURCE WATERS REQUIRES THAT ALL POTENTIALLY IMPACTED PARTIES BE NOTIFIED AND OBLIGATES THE PROPONENT TO SUPPORT ITS PETITION WITH DETAILED INFORMATION.**

IERG continues to have concerns with two of the Board’s proposals relating to proceedings to designate ORWs or to repeal or modify such designations. IERG initially had voiced its preference that the Board use an adjudicatory proceeding to consider ORW designations due to the associated use limitations placed on a water body so designated and on its surrounding lands, indeed the entire watershed. Subsequently, IERG was convinced by the Board’s arguments favoring a rulemaking proceeding and supports the Board’s First Notice proposal in this regard. However, IERG has not lost sight of the significance of the ramifications of a decision to designate a water body as an ORW.

IERG maintains that, if a rulemaking proceeding is to be used to consider petitions regarding ORW designations, the Board must address two issues of concern as follows.

A. **Potentially Impacted Landowners and Interested Parties Must Receive Adequate Notification.**

IERG renews its proposal that the Board strengthen the notification requirements for petitions relating to ORWs, as outlined in IERG's Pre-filed Testimony. See IERG's Pre-Filed Testimony at 17. The Board requires newspaper publication of petitions to designate special resource groundwaters and petitions for adjusted standards. See 35 Ill. Admin. Code §§ 104.408(a), 620.260. And, the Board requires both newspaper publication and additional written notice to specified persons regarding petitions for variances from the Board's regulations. See 35 Ill. Admin. Code § 104.214(a), (b).

Given that Mr. Frevert has acknowledged that:

the ramifications of [a] decision [to designate a water body as an ORW] are fundamentally more significant than the ramifications of a typical adjusted standard or even a statewide standard in that we are not setting a target to protect an environmental use here. . . . [w]e are setting an absolute prohibition on some activities,

Transcript of November 17, 2000, Hearing at 88, ll. 10-16, and that Mr. Frevert has indicated there is:

an obligation to disseminate adequate information [regarding a proposal to designate an ORW] to start the process and [to assure] that potentially [a]ffected property owners and other citizens have adequate notice,

Id., p. 88, l. 22 to p. 89, l. 1, IERG is unequivocally convinced that its proposed expanded notification requirements are justified and strongly urges the Board to adopt the necessary notification requirements.

To facilitate the Board's favorable consideration of this request, IERG further notes that at the August 24, 2001, Hearing on the Board's Opinion, Mr. Frevert stated that the Agency could assist in the notification process, indicating that once the Board determined that a petition regarding an ORW would move forward, the Agency:

would certainly be committed at that point to do whatever we can to help you identify potentially [affected] parties, and, you know, either giving you current permit holders within that [a]ffected area mailing address or perhaps even agree to do a mailing for you or for someone.

August 24, 2001, Transcript at 87, ll. 15-20.

IERG greatly appreciates the Agency's willingness to assist with the notification process proposed by IERG, and urges the Board to accept the Agency's offer and to include the language proposed by IERG in Exhibit A hereto regarding notification in ORW proceedings. See Exhibit A at 1.

**B. Proponents of an ORW Designation Have an Obligation to Support the Petition with Detailed Supporting Information for the Development of the Record before the Board.**

In response to questions at the August 24, 2001, Hearing, Mr. Frevert indicated that designating an ORW:

is not just adjusting a standard[;] it's designating an entirely new use, an entirely new use concept. In that regard, it does have the potential significantly to [a]ffect people.

August 24, 2001, Transcript at 88.

IERG believes that any proceeding that will set "absolute bans" on the use of land and which has such potential for severe impact on people's lives and livelihoods demands that the proponent of an ORW designation have an obligation to submit sufficient supporting documentation to the Board to prove that the designation is warranted. IERG initially advocated that the designation of a water body as an ORW take place in the context of an adjudicatory proceeding because the burden of proof on a proponent in an adjudicatory proceeding before the Board is well established, while the burden of proof on a proponent in a rulemaking proceeding is not.

Arguments offered by the Board in its First Notice Opinion and Order, Board's Opinion at 20-23, and reinforced at Hearing, August 24, 2001, Transcript at p. 44 ll. 12-17, p. 45 ll. 1-6, p. 46 ll. 10-15, have convinced IERG that the procedure for designating ORWs can appropriately progress in the regulatory arena. However, the regulated community maintains that the proponent of a regulatory proceeding before the Board, even if that proponent is the Agency, does have a minimum burden in moving the proposal forward, if only by presenting sufficient information to demonstrate the need for the proposed regulation.

The essence of this matter was best articulated by Dr. Tanner Girard in his query regarding his perception of IERG's concern with the word "statement" as used in the Board's proposed Section 102.820. Dr. Girard accurately suggests that "statement" can be viewed as a narrow term allowing one to put forth a petition for ORW designation that does not include supporting evidence. August 24, 2001, Transcript at 49, ll.10 to 15. IERG holds that the proponent of an ORW designation, modification or repeal has an obligation to offer sufficient evidence in support of its position so as to allow the Board to meaningfully consider the factors set forth in Section 27 of the Illinois Environmental Protection Act. See 415 ILCS 5/27.

Accordingly, IERG proposes that the Board adopt revisions to the Board's proposed Section 102.820 that place proponents of the designation, repeal or modification of an ORW on notice of the need to fully support the petition. The listing of "Petition Contents" detailed in Section 102.820 (b) through (g) requiring the proponent to submit a "statement" in support of the designation must be strengthened by the addition



of the phrase “with supporting evidence” for each of the specified criteria, as set forth in Exhibit A at 2.

These revisions will afford some degree of certainty that the proponent indeed has a minimum burden to provide sufficient information in support of the designation for the Board’s consideration on the Record. IERG respectfully requests that the Board include these revisions in the Board’s Opinion and Order issuing its antidegradation regulations for second notice.

Finally, IERG notes that it has withdrawn its request that the Board revise proposed Section 102.830(b) to place a burden on the proponent of an ORW designation to establish the elements required for such a designation. Rather, IERG now proposes that Section 102.830(b) state that the Board may designate a water body as an ORW if it finds that “the evidence set forth in the Record . . . supports” the required elements. See Exhibit A at 3.

**VI. THE ILLINOIS DEPARTMENT OF NATURAL RESOURCES LACKS STATUTORY AUTHORITY TO CONDUCT ANTIDEGRADATION ASSESSMENTS.**

Illinois facilities are heavily regulated in the environmental area. In numerous instances, the General Assembly has charged specific state agencies other than the Agency with authority to administer specific environmental programs. Examples include the Illinois Emergency Management Agency in the Community-Right-To-Know program; the Illinois Department of Agriculture as regards agrichemical facility remediation; and the Illinois Department of Transportation as regards hazardous material transportation. The list goes on, but with a common theme: the General Assembly vested authority in a specified state agency, and the regulated community was so advised.

This advisement is crucial, because a critical factor in a business's compliance strategy is knowledge of who the regulator is, and the rules that govern those regulators.

The Environmental Groups propose that the Board authorize the Illinois Department of Natural Resources ("IDNR") to participate in the antidegradation assessment process. See Environmental Groups' Memorandum at 4. The General Assembly has designated the Agency, not IDNR, as the "water pollution agency for the state for all purposes of the Federal Water Pollution Control Act." 415 ILCS 5/4(l). Likewise, the General Assembly has charged the Agency, not IDNR, with the responsibility to administer permit programs, including the NPDES permit program and the antidegradation review process as it takes place in the context of that program. 415 ILCS 5/4(g). Only the General Assembly can give IDNR a role in administering the Water Pollution Control Act or the permit programs of the state. As the General Assembly has not done so, IERG opposes the Environmental Groups' request that the Board add a provision to the antidegradation regulations entitling the IDNR to have such involvement.

## **VII. CONCLUSION**

The Agency's Work Group process and the subsequent Board proceeding here have allowed for thorough and comprehensive review and comment by all interested participants. In addition, the Board has afforded the opportunity to reflect on all participants' positions and the rationale for those positions. IERG has been an active participant in the process and has given due consideration to all arguments, written and oral. To achieve balance between the needs of the environment and the burden on the regulated community, IERG respectfully requests that the Board address the following

issues, the subject of these comments, in its Opinion and Order issuing the Board's antidegradation regulations for second notice.

1. The Board must provide the Agency flexibility in conducting antidegradation reviews to assess any proposed increase in pollutant loading on a case-by-case basis, by specifically authorizing that flexibility.

2. The regulations should provide exceptions for activities not subject to further antidegradation review, so as to assist the Agency in targeting its resources to truly significant loadings. IERG requests the addition of only a minor modification to one of the Board's proposed seven exceptions – that chlorine be allowed as an additive to non-contact cooling water, if the water is subsequently treated to remove residual chlorine levels.

3. The regulatory language must be clear to provide certainty regarding the implementation of the antidegradation regulations, as set forth above.

4. The designation of outstanding resource waters requires all potentially impacted parties to be notified of the proceeding, and obligates the proponent of a designation, repeal or modification of an ORW to support its petition with detailed information and supporting evidence on the Record.

5. The Illinois Department of Natural Resources lacks the statutory authority to develop or implement the antidegradation water quality standard. It is, therefore, inappropriate for the Board to assign a role to the IDNR in this rulemaking.

IERG would like to again thank the Board for the opportunity to participate at the Hearing held in this matter on August 24, 2001, regarding the Board's Opinion publishing the Board's antidegradation regulations for first notice. IERG believes that

the comments and proposals submitted in advance of, and the testimony elicited at, that Hearing provide a sound basis for the Board's consideration as to how to move this rulemaking forward. IERG urges the Board to adopt its suggested revisions to the Board's proposed antidegradation regulations, particularly as detailed in these post-hearing comments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

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Dated: October 11, 2001

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IERG:001/R Dockets/Fil/R01-13/Post-Hearing Comments

**Exhibit A to  
October 11, 2001, Post-Hearing Comments of the  
Illinois Environmental Regulatory Group**

**R01-13**

*(This document supersedes Exhibit A to the  
Pre-filed Testimony of Deirdre K. Hirner, filed August 9, 2001.)*

IERG's Proposed Revisions to the Board's Proposed Regulatory Language

SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION

Section 102.800      Applicability

This Subpart applies to any person seeking the adoption, amendment, or repeal of an Outstanding Resource Water (ORW) designation for a surface water body or any water body segment as provided by 35 Ill. Adm. Code 303.205.

Section 102.810      Petition

Any person may submit a petition for the adoption, amendment or repeal of an ORW designation. The original and nine (9) copies of each petition must be filed with the Clerk and one (1) copy each served upon the Agency, the Illinois Department of Natural Resources, and the Attorney General, the State's Attorney of each county in which the surface water body or water body segment runs, the chairperson of the County Board of each county in which the surface water body or water body segment runs, each member of the General Assembly from each legislative district in which the surface water body or water body segment runs, current NPDES permittees and NPDES permit applicants for discharges into the surface water body or water body segment, applicants for federally permitted activities that require a certification from the Agency pursuant to Section 401 of the Clean Water Act for the surface water body or water body segment, all owners of real property which is located adjacent or contiguous to the surface water body or water body segment, and to other persons as required by law. In addition, the notice must be published in a newspaper of general circulation in each county through which the surface water body or water body segment runs.

Section 102.820      Petition Contents

Each proponent must set forth the following information in its proposal:

- a) The language of the proposed rule, amendment, or repealer identifying the surface waters body or water body segment being proposed for designation as an ORW or for which the proponent proposes that an ORW designation be amended or repealed. Language being added must be indicated by underscoring, and language being deleted must be indicated by strike-outs. The proposed rule must be drafted in accordance with 1 Ill. Adm. Code 100.Subpart C;

- b) A statement describing the specific surface water body or water body segment for which the ORW designation is requested or an amendment or repeal of an ORW designation is sought and the present designation of the surface water body or water body segment;
- c) A statement with supporting evidence describing the area in which the specific surface water body or water body segment exists including:
  - 1) The existence of wetlands ~~or natural areas~~; and,
  - 2) ~~The living~~ Biological organisms in that area including endangered or threatened species of plants, aquatic ~~life-organisms~~ or wildlife listed pursuant to the Endangered Species Act, 16 USC 1531 et seq. or the Illinois Endangered Species Protection Act, 41 ILCS 10-;
- d) A statement with evidence supporting the designation, the amendment of the designation, or the repeal of the designation, including the health, environmental, recreational, aesthetic or economic benefits of the designation or the amendment or repeal thereof;
- e) A statement with supporting evidence identifying the ~~ORW designation's~~ anticipated impact of the ORW designation or the amendment or repeal thereof on economic and social development. This statement should include:
  - 1) Impacts on the regional economy;
  - 2) Impacts on regional employment;
  - 3) Impacts on the community;
  - 4) A comparison of the health and environmental impacts of an ORW designation to the economic impact of an ORW designation-;
- f) A statement with supporting evidence describing the existing and anticipated uses of the specific surface water body or water body segment for which the ORW designation is requested or is sought to be amended or repealed;
- g) A statement with supporting evidence describing the existing water quality of the specific surface water body or water body segment warranting the ORW designation or the amendment or repeal of such designation;
- h) A synopsis of all testimony to be presented by the proponent at hearing;
- i) Copies of any material to be incorporated by reference within the proposed designation pursuant to Section 5-75 of the Administrative Procedures Act;

- j) Proof of service upon all persons required to be served pursuant to Section 102.810 of this Part;
- ~~k) Proof of publication required pursuant to Section 102.810 of this Part.~~
- kl) Unless the proponent is the Agency, or the Illinois Department of Natural Resources, or receives a waiver by the Board, a petition signed by at least 200 persons, pursuant to Section 28 of the Act and Section 102.160(a); and,
- ~~lm)~~ Where any information required by this Section is inapplicable or unavailable, a complete justification for such inapplicability or unavailability.

Section 102.830 Board Action

- a) Dismissal
  - 1) Failure of the proponent to satisfy the content requirements for proposals under this Subpart or failure to respond to Board requests for additional information will render a proposal subject to dismissal for inadequacy.
  - 2) Failure of the proponent to pursue disposition of the petition in a timely manner will render a petition subject to dismissal. In making this determination, the Board may consider factors including the history of the proceeding and the proponent's compliance with any Board or hearing officer orders.
  - 3) Any person may file a motion challenging the sufficiency of the petition pursuant to 35 Ill. Adm. Code 101.Subpart E.
- b) Designation of ORW. The Board ~~must~~ may designate a surface water body or water body segment as an ORW and list it in 35 Ill. Adm. Code 303.206 if it finds that the evidence set forth in the Record before it supports the following:
  - 1) The surface water body or water body segment is of uniquely high biological or recreational quality; and
  - 2) The benefits of protection of the surface water body or water body segment from future degradation outweigh the benefits of economic or social opportunities that will be lost if the surface water body or water body segment is designated as an ORW.

(Added at \_\_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE C: WATER POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD  
PART 302  
WATER QUALITY STANDARDS

SUBPART A: GENERAL WATER QUALITY PROVISIONS

Section	
302.100	Definitions
302.101	Scope and Applicability
302.102	Allowed Mixing, Mixing Zones and ZIDS
302.103	Stream Flows
302.104	Main River Temperatures
302.105	Antidegradation <del>Nondegradation</del>

SUBPART B: GENERAL USE WATER QUALITY STANDARDS

Section	
302.201	Scope and Applicability
302.202	Purpose
302.203	Offensive Conditions
302.204	pH
302.205	Phosphorus
302.206	Dissolved Oxygen
302.207	Radioactivity
302.208	Numeric Standards for Chemical Constituents
302.209	Fecal Coliform
302.210	Other Toxic Substances
302.211	Temperature
302.212	Ammonia Nitrogen and Un-ionized Ammonia
302.213	Effluent Modified Waters (Ammonia)

SUBPART C: PUBLIC AND FOOD PROCESSING WATER SUPPLY STANDARDS

Section	
302.301	Scope and Applicability
302.302	Algicide Permits
302.303	Finished Water Standards
302.304	Chemical Constituents
302.305	Other Contaminants
302.306	Fecal Coliform



SUBPART D: SECONDARY CONTACT AND INDIGENOUS AQUATIC LIFE  
STANDARDS

Section	
302.401	Scope and Applicability
302.402	Purpose
302.403	Unnatural Sludge
302.404	pH
302.405	Dissolved Oxygen
302.406	Fecal Coliform (Repealed)
302.407	Chemical Constituents
302.408	Temperature
302.409	Cyanide
302.410	Substances Toxic to Aquatic Life

SUBPART E: LAKE MICHIGAN BASIN WATER QUALITY STANDARDS

Section	
302.501	Scope, Applicability, and Definitions
302.502	Dissolved Oxygen
302.503	pH
302.504	Chemical Constituents
302.505	Fecal Coliform
302.506	Temperature
302.507	Thermal Standards for Existing Sources on January 1, 1971
302.508	Thermal Standards for Sources under Construction But Not in Operation on January 1, 1971
302.509	Other Sources
302.510	Incorporations by Reference
302.515	Offensive Conditions
302.520	Regulation and Designation of Bioaccumulative Chemicals of Concern (BCCs)
302.521	Supplemental Antidegradation Provisions for BCCs
302.525	Radioactivity
302.530	Supplemental Mixing Provisions for BCCs
302.535	Ammonia Nitrogen
302.540	Other Toxic Substances
302.545	Data Requirements
302.550	Analytical Testing
302.553	Determining the Lake Michigan Aquatic Toxicity Criteria or Values - General Procedures
302.555	Determining the Tier I Lake Michigan Basin Acute Aquatic Life Toxicity Criterion (LMAATC): Independent of Water Chemistry
302.560	Determining the Tier I Lake Michigan Basin Acute Aquatic Life Toxicity Criterion (LMAATC): Dependent on Water Chemistry

- 302.563 Determining the Tier II Lake Michigan Basin Acute Aquatic Life Toxicity Value (LMAATV)
- 302.565 Determining the Lake Michigan Basin Chronic Aquatic Life Toxicity Criterion (LMCATC) or the Lake Michigan Basin Chronic Aquatic Life Toxicity Value (LMCATV)
- 302.570 Procedures for Deriving Bioaccumulation Factors for the Lake Michigan Basin
- 302.575 Procedures for Deriving Tier I Water Quality Criteria in the Lake Michigan Basin to Protect Wildlife
- 302.580 Procedures for Deriving Water Quality Criteria and Values in the Lake Michigan Basin to Protect Human Health – General
- 302.585 Procedures for Determining the Lake Michigan Basin Human Health Threshold Criterion (LMHHTC) and the Lake Michigan Basin Human Health Threshold Value (LMHHTV)
- 302.590 Procedures for Determining the Lake Michigan Basin Human Health Nonthreshold Criterion (LMHHNC) or the Lake Michigan Basin Human Health Nonthreshold Value (LMHHNV)
- 302.595 Listing of Bioaccumulative Chemicals of Concern, Derived Criteria and Values

SUBPART F: PROCEDURES FOR DETERMINING WATER QUALITY CRITERIA

Section

- 302.601 Scope and Applicability
- 302.603 Definitions
- 302.604 Mathematical Abbreviations
- 302.606 Data Requirements
- 302.612 Determining the Acute Aquatic Toxicity Criterion for an Individual Substance – General Procedures
- 302.615 Determining the Acute Aquatic Toxicity Criterion - Toxicity Independent of Water Chemistry
- 302.618 Determining the Acute Aquatic Toxicity Criterion - Toxicity Dependent on Water Chemistry
- 302.621 Determining the Acute Aquatic Toxicity Criterion - Procedures for Combinations of Substances
- 302.627 Determining the Chronic Aquatic Toxicity Criterion for an Individual Substance - General Procedures
- 302.630 Determining the Chronic Aquatic Toxicity Criterion - Procedure for Combination of Substances
- 302.633 The Wild and Domestic Animal Protection Criterion
- 302.642 The Human Threshold Criterion
- 302.645 Determining the Acceptable Daily Intake
- 302.648 Determining the Human Threshold Criterion
- 302.651 The Human Nonthreshold Criterion
- 302.654 Determining the Risk Associated Intake
- 302.657 Determining the Human Nonthreshold Criterion
- 302.658 Stream Flow for Application of Human Nonthreshold Criterion
- 302.660 Bioconcentration Factor

- 302.663 Determination of Bioconcentration Factor
- 302.666 Utilizing the Bioconcentration Factor
- 302.669 Listing of Derived Criteria

- APPENDIX A References to Previous Rules
- APPENDIX B Sources of Codified Sections

AUTHORITY: Implementing Section 13 and authorized by Sections 11(b) and 27 of the Environmental Protection Act [415 ILCS 5/13 11(b), and 27]

SOURCE: Filed with the Secretary of State January 1, 1978; amended at 2 Ill. Reg. 44, p. 151, effective November 2, 1978; amended at 3 Ill. Reg. 20, p. 95, effective May 17, 1979; amended at 3 Ill. Reg. 25, p. 190, effective June 21, 1979; codified at 6 Ill. Reg. 7818; amended at 6 Ill. Reg. 11161, effective September 7, 1982; amended at 6 Ill. Reg. 13750, effective October 26, 1982; amended at 8 Ill. Reg. 1629, effective January 18, 1984; peremptory amendments at 10 Ill. Reg. 461, effective December 23, 1985; amended at R87-27 at 12 Ill. Reg. 9911, effective May 27, 1988; amended at R85-29 at 12 Ill. Reg. 12082, effective July 11, 1988; amended in R88-1 at 13 Ill. Reg. 5998, effective April 18, 1989; amended in R88-21(A) at 14 Ill. Reg. 2899, effective February 13, 1990; amended in R88-21(B) at 14 Ill. Reg. 11974, effective July 9, 1990; amended in R94-1(A) at 20 Ill. Reg. 7682, effective May 24, 1996; amended in R94-1(B) at 21 Ill. Reg. 370, effective December 23, 1996; expedited correction at 21 Ill. Reg. 6273, effective December 23, 1996; amended in R97-25 at 21 Ill. Reg. 1356, effective December 24, 1997; amended in R01-13 at \_\_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

Section 302.105 Antidegradation

The purpose of this Section is to protect existing uses of all waters of the State of Illinois, maintain the quality of waters with quality that is better than water quality standards, and prevent unnecessary deterioration of waters of the State.

a) Existing Uses

Uses actually attained in thea surface water body or water body segment on or after November 28, 1975, whether or not they are included in the water quality standards, must be maintained and protected. Examples of degradation of existing uses of the waters of the State include:

- 1) an action that would result in the deterioration of the existing aquatic community, such as a shift from a community of predominantly pollutant-sensitive species to pollutant-tolerant species or a loss of species diversity;
- 2) an action that would result in a loss of a resident or indigenous species whose presence is necessary to sustain commercial or recreational activities; or
- 3) an action that would preclude continued use of a surface water body or

water body segment for a public water supply or for recreational or commercial fishing, swimming, paddling or boating.

b) Outstanding Resource Waters

- 1) Waters that are designated as Outstanding Resource Waters (ORWs) pursuant to 35 Ill. Adm. Code 303.205 and listed in 35 Ill. Adm. Code 303.206 must not be lowered in quality except as ~~provided below~~ by:
  - A) Activities that result in short-term, temporary (i.e., weeks or months) lowering of water quality ~~in an ORW~~; or
  - B) Existing site stormwater discharges that comply with applicable federal and state stormwater management regulations and do not result in a violation of any water quality standards.
- 2) Any activity ~~in~~ under subsections (b)(1)(A) or (b)(1)(B) of this Section or any other increase in pollutant loading that requires would necessitate the issuance of a new, renewed or modified a National Pollutant Discharge Elimination System (NPDES) Permit or require a Clean Water Act (CWA) Section 401 certification must also comply with subsection (c)(2) of this Section.
- 3) Any activity listed in subsection (b)(1) or any other proposed increase in pollutant loading to an ORW must also meet the following requirements:
  - A) All existing uses of the water will be fully protected; and,
  - B) Except for activities falling under one of the exceptions provided in Subsection (b)(1)(A) or (B) above.
    - i) The proposed increase in pollutant loading is necessary for an activity that will improve water quality in the ORW; and
    - ii) The improvement could not be practicably achieved without the proposed increase in pollutant loading.
- 4) Any proposed increase in pollutant loading to an ORW that would require the issuance of a new, renewed, or modified an NPDES permit Permit or a CWA 401 certification for an ORW must be assessed pursuant to 35 Ill. Adm. Code 309.141(i) subsection (f) to determine compliance with this Section.
- 5) Any activity requiring a CWA Section 401 certification for an ORW must be assessed during the Section 401 certification process to determine compliance with this Section.

c) High Quality Waters

- 1) Except as otherwise provided in subsection (d) of this Section, waters of the State whose existing quality is better than any of the established standards of this Part must be maintained in their present high quality, unless the lowering of water quality is necessary to accommodate important economic or social development.
- 2) The Agency must assess any proposed increase in pollutant loading that necessitates the issuance of a new, renewed or modified NPDES pPermit, or any activity requiring a CWA Section 401 certification, to determine compliance with this Section 302.105; provided, however, that if a pollutant is subject to an existing permit limit, an assessment shall not be required unless the proposed increase in pollutant loading would result in an exceedence of such permit limit. The assessment to determine compliance with this Section 302.105 must be made on a case-by-case basis. In making this assessment, the Agency must:
  - A) Consider the fate and effect of any parameters proposed for an increased pollutant loading; and,
  - B) On a case-by-case basis, Aassure the following:
    - i) The applicable numeric or narrative water quality standard will not be exceeded as a result of the proposed activity;
    - ii) All existing uses will be fully protected;
    - iii) All technically and economically reasonable measures to avoid or minimize the extent of the proposed increase in pollutant loading have been incorporated into the proposed activity; and
    - iv) The activity that results in an increased pollutant loading will benefit the community at large; and,-
  - C) Utilize the following information sources, when available:
    - i) Information, data or reports available to the Agency from its own sources;
    - ii) Information, data or reports supplied by the applicant;
    - iii) Agency experience with factually similar permitting scenarios; or

iv) Any demonstration prepared by the permit applicant that the proposed increase in loading of a pollutant, other than a bioaccumulative chemical of concern, as that term is defined in Section 302.231 of this Part, does not utilize more than ten percent of the available assimilative capacity of the receiving water for the constituent under consideration; or

v) Any other valid information available to the Agency.

d) Activities Not Subject to a Further Antidegradation Assessment

The following activities will not be subject to a further antidegradation assessment pursuant to subsection (c) of this Section, except as otherwise set forth below:

- 1) Short-term, temporary (i.e., weeks or months) lowering of water quality;
- 2) Bypasses that are not prohibited at 40 C.F.R. 122.41(m);
- 3) Response actions-pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, corrective actions pursuant to the Resource Conservation and Recovery Act (RCRA), as amended, or response actions or corrective action under similar federal or State authority, taken to alleviate a release or threatened release into the environment of hazardous substances, pollutants or contaminants which may pose a danger to public health or welfare;
- 4) Thermal discharges that have been approved through a CWA Section 316(a) demonstration;
- 5) New or increased discharges of a non-contact cooling water;
  - A) without additives, except as provided in subsection (d)(5)(B) of this Section, returned to the same body of water from which it was taken, as defined by 35 Ill. Adm. Code 352.104, provided that the discharge complies with applicable Illinois thermal standards; or,
  - B) containing chlorine when the non-contact cooling water is treated to remove residual chlorine and returned to the same body of water from which it was taken, as defined in 35 Ill. Adm. Code 352.104, provided that the discharge complies with applicable Illinois thermal and effluent standards.
- 6) Discharges permitted under a current general NPDES permit as provided by 415 ILCS 5/39(b) or a general CWA, Section 401 certification nationwide or regional Section 404 of the CWA permit are not

subject to facility-specific antidegradation review; however, the Agency must assure that individual permits or certification are required prior to all new pollutant loadings or hydrological modifications that necessitate a new, renewed or modified NPDES permit or CWA, Section 401 certification that affect waters designated as Outstanding Resource Waters pursuant to 35 Ill. Adm. Code 303.205 and listed in 35 Ill. Adm. Code 303.206 waters of particular biological significance; or

- 7) ~~Changes~~ A change to a permit limit or inclusion of a new permit limitation that does not result in an actual increase of a pollutant loading, such as those stemming from improved monitoring data, new analytical testing methods, new or revised technology or water quality based effluent limits.

e) Lake Michigan Basin

Waters in the Lake Michigan basin as identified in 35 Ill. Adm. Code 303.443 are also subject to the requirements applicable to bioaccumulative chemicals of concern found at Section 302.521 of this Part.

f) ~~Antidegradation Assessments~~

In conducting an antidegradation assessment pursuant to this Section, the Agency must comply with the following procedures:

- 1) ~~A permit application for any proposed increase in pollutant loading that necessitates a new, renewed, or modified NPDES permit, with a new or increased permit limit, or a CWA Section 401 certification, must include, to the extent necessary for the Agency to determine that the permit application meets the requirements of Section 302.105, the following information:~~
- A) ~~Identification and characterization of the waters affected by the proposed load increase or proposed activity and their existing uses. Characterization must address physical, biological and chemical conditions of the waters;~~
  - B) ~~Identification and quantification of the proposed load increases for the applicable parameters and of the potential impacts of the proposed activity on the affected waters;~~
  - C) ~~The purpose and anticipated benefits of the proposed activity. Such benefits may include:~~
    - i) ~~Providing a centralized wastewater collection and treatment system for a previously unsewered community;~~

- ~~ii) Expansion to provide service for anticipated residential or industrial growth consistent with a community's long range urban planning;~~
  - ~~iii) Addition of a new product line or production increase or modification at an industrial facility; or,~~
  - ~~iv) An increase or the retention of current employment levels at a facility.~~
- ~~D) Assessments of alternatives to proposed increases in pollutant loading or activities subject to Agency certification pursuant to Section 401 of the CWA that result in less of a load increase, no load increase or minimal environmental degradation. Such alternatives may include:~~
- ~~i) Additional treatment levels including no discharge alternatives;~~
  - ~~ii) Discharge of waste to alternate locations including publicly owned treatment works and streams with greater assimilative capacity; or~~
  - ~~iii) Manufacturing practices that incorporate pollution prevention techniques.~~
- ~~E) Any additional information the Agency may request.~~
- ~~F) Any of the information sources identified in subsection 302.105(d) (3).~~
- ~~2) The Agency must complete an antidegradation demonstration review in accordance with the provisions of this Section.~~
- ~~A) The antidegradation assessment pursuant to this Section is a part of the NPDES permitting process or the CWA Section 401 certification process. However, applicants may initiate communication with the Agency, preferably during the planning stage for any load increase. Communication will help assure the adequacy of information necessary to constitute an antidegradation demonstration and avoid or minimize delays and requests for supplemental information during the permitting stage. The Agency review process must be initiated by:~~
- ~~i) an informal or preliminary request of a proponent of a project prior to filing of a permit application; or~~



- ~~ii) — receipt of application for an NPDES permit issuance, renewal or modification, or a CWA Section 401 certification.~~
- ~~B) — A proponent seeking an immediate review of the results of the Agency's review pursuant to subsection (f)(2)(A)(ii) must do so within the NPDES permit process or the CWA Section 401 certification process.~~
- ~~C) — After a review pursuant to subsection (f)(2)(A)(i), the Agency must consult with the proponent and respond:
  - ~~i) — in writing to written requests. The written response will include a statement by the Agency indicating whether the demonstration, based upon the information provided or information acquired by the Agency during the review process, meets the criteria of this Section;~~
  - ~~ii) — verbally to verbal requests; or~~
  - ~~iii) — in a manner otherwise agreed upon.~~~~
- ~~D) — After its review, the Agency must produce a written analysis addressing the requirements of this Section and provide a decision yielding one of the following results:
  - ~~i) — If the demonstration meets the requirements of this Section, then the Agency must proceed with public notice of the NPDES permit or CWA Section 401 certification and include the written analysis as a part of the fact sheet accompanying the public notice;~~
  - ~~ii) — If the demonstration does not meet the requirements of this Section, then the Agency must provide a written analysis to the applicant and must be available to discuss the deficiencies that led to the disapproval. The Agency may suggest methods to remedy the conflicts with the requirements of this Section;~~
  - ~~iii) — If the demonstration does not meet the requirements of this Section, but some lowering of water quality is allowable, then the Agency will contact the applicant with the results of the review. If the reduced loading increase is acceptable to the applicant, upon the receipt of an amended demonstration, the Agency will proceed to public notice; or if the reduced loading increase is not acceptable to the~~~~

~~applicant, the Agency will transmit its written review to the applicant in the context of a NPDES permit denial or a CWA Section 401 certification denial.~~

- 3) ~~The Agency will conduct public notice and public participation through the public notice procedures found in 35 Ill. Adm. Code 309.109 or CWA Section 401 certifications. The Agency must incorporate the following information into a fact sheet accompanying the public notice:~~
- ~~A) A description of the activity, including identification of water quality parameters which will experience the increased pollutant loading;~~
  - ~~B) Identification of the affected water segment, any downstream water segment also expected to experience a lowering of water quality, characterization of the designated and current uses of the affected segments and identification of which uses are most sensitive to the proposed load increase;~~
  - ~~C) A summary of any review comments and recommendations provided by Illinois Department of Natural Resources, local or regional planning commissions, zoning boards and any other entities the Agency consults regarding the proposal;~~
  - ~~D) An overview of alternatives considered by the applicant and identification of any provisions or alternatives imposed to lessen the load increase associated with the proposed activity; and~~
  - ~~E) The name and telephone number of a contact person at the Agency who can provide additional information.~~

(Amended at \_\_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

#### Section 302.105 Nondegradation

~~Except as otherwise provided in Section 302.520, waters whose existing quality is better than the established standards at their date of their adoption will be maintained in their present high quality. Such waters will not be lowered in quality unless and until it is affirmatively demonstrated that such change will not interfere with or become injurious to any appropriate beneficial uses made of, or presently possible in, such waters and that such change is justifiable as a result of necessary economic or social development.~~

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE C: WATER POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD

PART 303  
WATER USE DESIGNATIONS AND SITE SPECIFIC WATER QUALITY  
STANDARDS

SUBPART A: GENERAL PROVISIONS

Section	
303.100	Scope and Applicability
303.101	Multiple Designations
303.102	Rulemaking Required

SUBPART B: NONSPECIFIC WATER USE DESIGNATIONS

Section	
303.200	Scope and Applicability
303.201	General Use Waters
303.202	Public and Food Processing Water Supplies
303.203	Underground Waters
303.204	Secondary Contact and Indigenous Aquatic Life Waters
303.205	Outstanding Resource Waters
303.206	List of Outstanding Resource Waters

SUBPART C: SPECIFIC USE DESIGNATIONS AND SITE  
SPECIFIC WATER QUALITY STANDARDS

Section	
303.300	Scope and Applicability
303.301	Organization
303.311	Ohio River Temperature
303.312	Waters Receiving Fluorspar Mine Drainage
303.321	Wabash River Temperature
303.322	Unnamed Tributary of the Vermilion River
303.323	Sugar Creek and Its Unnamed Tributary
303.331	Mississippi River North Temperature
303.341	Mississippi River North Central Temperature
303.351	Mississippi River South Central Temperature
303.352	Unnamed Tributary of Wood River Creek
303.353	Schoenberger Creek; Unnamed Tributary of Cahokia Canal
303.361	Mississippi River South Temperature
303.400	Bankline Disposal Along the Illinois Waterway/River
303.430	Unnamed Tributary to Dutch Creek
303.431	Long Point Slough and Its Unnamed Tributary

- 303.441 Secondary Contact Waters
- 303.442 Waters Not Designated for Public Water Supply
- 303.443 Lake Michigan Basin
- 303.444 Salt Creek, Higgins Creek, West Branch of the DuPage River, Des Plaines River

SUBPART D: THERMAL DISCHARGES

- Section
- 303.500 Scope and Applicability
- 303.502 Lake Sangchris Thermal Discharges

- APPENDIX A References to Previous Rules
- APPENDIX B Sources of Codified Sections

AUTHORITY: Implementing Section 13 and authorized by Sections 11(b) and 27 of the Environmental Protection Act [415 ILCS 5/13, 11(b), and 27].

SOURCE: Filed with the Secretary of State January 1, 1978; amended at 2 Ill. Reg. 27, p. 221, effective July 5, 1978; amended at 3 Ill. Reg. 20, p. 95, effective May 17, 1979; amended at 5 Ill. Reg. 11592, effective October 19, 1981; codified at 6 Ill. Reg. 7818; amended at 6 Ill. Reg. 11161 effective September 7, 1982; amended at 7 Ill. Reg. 8111, effective June 23, 1983; amended in R87-27 at 12 Ill. Reg. 9917, effective May 27, 1988; amended in R87-2 at 13 Ill. Reg. 15649, effective September 22, 1989; amended in R87-36 at 14 Ill. Reg. 9460, effective May 31, 1990; amended in R86-14 at 14 Ill. Reg. 20724, effective December 18, 1990; amended in R89-14(C) at 16 Ill. Reg. 14684, effective September 10, 1992; amended in R92-17 at 18 Ill. Reg. 2981, effective February 14, 1994; amended in R91-23 at 18 Ill. Reg. 13457, effective August 19, 1994; amended in R93-13 at 19 Ill. Reg. 1310, effective January 30, 1995; amended in R95-14 at 20 Ill. Reg. 3534, effective February 8, 1996; amended in R97-25 at 22 Ill. Reg. 1403, effective December 24, 1997; amended in R01-13 at \_\_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

Section 303.205 Outstanding Resource Waters

An Outstanding Resource Water (ORW) is a surface water body or water body segment that is of uniquely high biological or recreational quality and must be designated by the Board pursuant to 35 Ill. Adm. Code 102.Subpart H.

- a) Outstanding Resource Waters (“ORW”) shall be listed in Section 303.206 of this Part. In addition to all other applicable use designations and water quality standards contained in this Subtitle, an ORW is subject to the antidegradation provision of Section 302.105(b).
- b) A petition to designate a surface water body or water body segment as an ORW must be submitted to the Illinois Pollution Control Board pursuant to the procedural rules found in 35 Ill. Adm. Code 102.Subpart H.

(Added at \_\_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 303.206 List of Outstanding Resource Waters

The Board has not designated any Outstanding Resource Waters pursuant to 35 Ill. Adm. Code 102.Subpart H.

(Added at \_\_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE C: WATER POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD  
PART 309  
PERMITS

SUBPART A: NPDES PERMITS

Section	
309.101	Preamble
309.102	NPDES Permit Required
309.103	Application – General
309.104	Renewal
309.105	Authority to Deny NPDES Permits
309.106	Access to Facilities and Further Information
309.107	Distribution of Applications
309.108	Tentative Determination and Draft Permit
309.109	Public Notice
309.110	Contents of Public Notice of Application
309.111	Combined Notices
309.112	Agency Action After Comment Period
309.113	Fact Sheets
309.114	Notice to Other Governmental Agencies
309.115	Public Hearings on NPDES Permit Applications
309.116	Notice of Agency Hearing
309.117	Agency Hearing
309.118	Agency Hearing File
309.119	Agency Action After Hearing
309.141	Terms and Conditions of NPDES Permits
309.142	Water Quality Standards and Waste Load Allocation
309.143	Effluent Limitations
309.144	Federal New Source Standards of Performance
309.145	Duration of Permits
309.146	Authority to Establish Recording, Reporting, Monitoring and Sampling Requirements
309.147	Authority to Apply Entry and Inspection Requirements
309.148	Schedules of Compliance
309.149	Authority to Require Notice of Introduction of Pollutants into Publicly Owned Treatment Works
309.150	Authority to Ensure Compliance by Industrial Users with Sections 204(b), 307 and 308 of the Clean Water Act
309.151	Maintenance and Equipment
309.152	Toxic Pollutants
309.153	Deep Well Disposal of Pollutants (Repealed)
309.154	Authorization to Construct
309.155	Sewage Sludge Disposal

309.156	Total Dissolved Solids Reporting and Monitoring
309.181	Appeal of Final Agency Action on a Permit Application
309.182	Authority to Modify, Suspend or Revoke Permits
309.183	Revision of Schedule of Compliance
309.184	Permit Modification Pursuant to Variance
309.185	Public Access to Information
309.191	Effective Date

## **SUBPART B: OTHER PERMITS**

### **Section**

309.201	Preamble
309.202	Construction Permits
309.203	Operating Permits; New or Modified Sources
309.204	Operating Permits; Existing Sources
309.205	Joint Construction and Operating Permits
309.206	Experimental Permits
309.207	Former Permits (Repealed)
309.208	Permits for Sites Receiving Sludge for Land Application
309.221	Applications - Contents
309.222	Applications - Signatures and Authorizations
309.223	Applications - Registered or Certified Mail
309.224	Applications - Time to Apply
309.225	Applications - Filing and Final Action by Agency
309.241	Standards for Issuance
309.242	Duration of Permits Issued Under Subpart B
309.243	Conditions
309.244	Appeals from Conditions in Permits
309.261	Permit No Defense
309.262	Design, Operation and Maintenance Criteria
309.263	Modification of Permits
309.264	Permit Revocation
309.265	Approval of Federal Permits
309.266	Procedures
309.281	Effective Date
309.282	Severability

### Appendix A References to Previous Rules

**AUTHORITY:** Implementing Sections 13 and 13.3 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/13, 13.3 and 27].

**SOURCE:** Adopted in R71-14, at 4 PCB 3, March 7, 1972; amended in R73-11, 12, at 14 PCB 661, December 5, 1974, at 16 PCB 511, April 24, 1975, and at 28 PCB 509, December 20, 1977; amended in R73-11, 12, at 29 PCB 477, at 2 Ill. Reg. 16, p. 20, effective April 20, 1978; amended in R79-13, at 39 PCB 263, at 4 Ill. Reg. 34, p. 159, effective August 7, 1980; amended

in R77-12B, at 41 PCB 369, at 5 Ill. Reg. 6384, effective May 28, 1981; amended in R76-21, at 44 PCB 203, at 6 Ill. Reg. 563, effective December 24, 1981; codified at 6 Ill. Reg. 7818; amended in R82-5, 10, at 54 PCB 411, at 8 Ill. Reg. 1612, effective January 18, 1984; amended in R86-44 at 12 Ill. Reg. 2495 effective January 13, 1988; amended in R88-1 at 13 Ill. Reg. 5993, effective April 18, 1989; amended in R88-21(A) at 14 Ill. Reg. 2892, effective February 13, 1990; amended in R91-5 at 16 Ill. Reg. 7339, effective April 27, 1992; amended in R95-22 at 20 Ill. Reg. 5526, effective April 1, 1996; amended in R99-8 at 23 Ill. Reg. 11287, effective August 26, 1999; amended in R01-13 at \_\_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

Section 309.103      Application - General<sup>1</sup>

a)      Application Forms

\*      \*      \*<sup>2</sup>

5)      A permit application for any proposed increase in pollutant loading that necessitates **the issuance of** a new, renewed, or modified NPDES permit, ~~with a new or increased permit limit or a CWA Section 401 certification, must include~~, to the extent necessary for the Agency to determine that the ~~proposed activity permit application~~ meets the requirements of ~~Section 35 Ill. Adm. Code 302.105~~, the following information:

- A)      Identification and characterization of the waters **body** affected by the proposed load increase or proposed activity and ~~their~~ **water body's** existing uses, ~~which~~ ~~C~~characterization must address physical, biological and chemical conditions of the **waters body**;
- B)      Identification and quantification of the proposed load increases for the applicable parameters and of the potential impacts of the proposed activity on the affected **waters body**;
- C)      The purpose and anticipated benefits of the proposed activity, **which anticipated**. ~~Such~~ benefits may include, but are not limited to:
  - i)      Providing a centralized wastewater collection and treatment system for a previously unsewered community;

<sup>1</sup> IERG has included the Agency's proposed Sections 309.103, 309.108, 309.113, and 309.141, with revisions thereto as proposed by the Agency. In addition, IERG has proposed additional revisions to the Agency's proposed language. IERG's proposed revisions are set forth in bold type.

<sup>2</sup> “\* \* \*” denotes portions of Part 309 which are not amended by the antidegradation regulations, and which IERG has omitted in order to save space and to reduce the amount of paper required for this Exhibit A.



- ii) Expansion to provide service for anticipated residential or industrial growth consistent with a community's long range urban planning;
- iii) Addition of a new product line or production increase or modification at an industrial facility; or
- iv) An increase or the retention of current employment levels at a facility;

D) Assessments of alternatives to proposed increases in pollutant loading ~~or activities subject to Agency certification pursuant to Section 401 of the CWA~~ that **would** result in **a lesser of a** load increase, no load increase or minimal environmental degradation, ~~which~~ **Such** alternatives may include, but are not limited to:

- i) Additional treatment levels including no discharge alternatives;
- ii) Discharge of waste to alternate locations including publicly-owned treatment works **and or** streams with greater assimilative capacity; or
- iii) Manufacturing practices that incorporate pollution prevention techniques.

E) Any additional information that the Agency ~~may~~ request.

b) Animal Waste Facilities

\* \* \*

(Source: Amended at 20 Ill. Reg. 5526, effective April 1, 1996; Amended at Ill. Reg. effective \_\_\_\_\_, 2002.)

Section 309.108 Tentative Determination and Draft Permit

Following the receipt of a complete application for an NPDES Permit, the Agency shall prepare a tentative determination. Such determination shall include at least the following:

\* \* \*

- d) For any proposed increase in pollutant loading that necessitates **the issuance of a** new, renewed, or modified NPDES permit, ~~with a new or increased permit limit~~

subject to review pursuant to 35 Ill. Adm. Code 302.105, the tentative determination of the Agency with regard to 35 Ill. Adm. Code 302.105.

1) After its assessment pursuant to Section 309.141(i)(f)(2)(A)(ii) review, the Agency must produce a written analysis addressing the requirements of 35 Ill. Adm. Code 302.105 ~~this Section~~ and provide a decision yielding one of the following results.

A) If the proposed activity demonstration meets the requirements of 35 Ill. Adm. Code 302.105 ~~this Section~~, then the Agency must proceed with public notice of the NPDES permit ~~or CWA Section 401 certification~~ and include the written analysis as a part of the fact sheet accompanying the public notice;

B) If the proposed activity demonstration does not meet the requirements of 35 Ill. Adm. Code 302.105 ~~this Section~~, then the Agency must provide a written analysis to the applicant and must be available to discuss the deficiencies that led to the disapproval. The Agency may suggest methods to remedy the conflicts with the requirements of 35 Ill. Adm. Code 302.105 ~~this Section~~.

C) If the proposed activity demonstration does not meet the requirements of 35 Ill. Adm. Code 302.105 ~~this Section~~, but some lowering of water quality is allowable, then the Agency **will-must** contact the applicant with the results of the review. If the reduced loading increase is acceptable to the applicant, upon the receipt of an amended application demonstration, the Agency will proceed to public notice; ~~or~~

2) If the reduced loading increase is not acceptable to the applicant, the Agency **will-must** transmit its written analysis review to the applicant in the ~~context-form~~ **form** of a NPDES permit denial ~~or a CWA Section 401 certification denial~~.

ed) Upon tentative determination to issue or deny an NPDES Permit:

1) If the determination is to issue the permit the Agency shall notify the applicant in writing of the content of the tentative determination and draft permit and of its intent to circulate public notice of issuance in accordance with Sections 309.108 through 309.112;

2) If the determination is to deny the permit, the Agency shall notify the applicant in writing of the tentative determination and of its intent to circulate public notice of denial, in accordance with Sections 309.108 through 309.112. In the case of denial, notice to the applicant shall

include a statement of the reasons for denial, as required by Section 39(a) of the Act.

(Source: Amended at \_\_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, 2001.)

Section 309.113 Fact Sheets

- a) For every discharge which has a total volume of more than 500,000 gallons (1.9 megaliters) on any day of the year, the Agency shall prepare and, following public notice, shall send upon request to any person a fact sheet with respect to the application described in the public notice. The contents of such fact sheets shall include at least the following information:

\* \* \*

- 6) For any proposed increase in pollutant loading that necessitates **the issuance of** a new, renewed, or modified NPDES permit, ~~with a new or increased permit limit~~ subject to review pursuant to 35 Ill. Adm. Code 302.105, the following information:
- A) A description of the activity, including identification of water quality parameters **for which the Agency has approved for** ~~which there will be~~ which will experience the increased pollutant loading;
  - B) Identification of the affected water **body or water body** segment, any downstream **water body or water body** segment also expected to experience a lowering of water quality, characterization of the designated and current uses of the affected **water body or water body** segments and identification of ~~which those~~ uses **that** are most sensitive to the proposed load increase;
  - C) A summary of any review comments ~~and or~~ recommendations provided by **the** Illinois Department of Natural Resources, local or regional planning commissions, zoning boards ~~and or~~ any other entities the Agency consults regarding the proposal;
  - D) An overview of alternatives considered by the applicant and identification of any provisions or alternatives imposed **by the Agency to** lessen the load increase associated with the proposed activity; and
  - E) The name and telephone number of a contact person at the Agency who can provide additional information.

- b) The Agency shall add the name of any person or group, upon request, to a mailing list to receive copies of fact sheets.

(Source: Amended at \_\_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, 2001.)

### SUBPART A: NPDES PERMITS

#### Section 309.141 Terms and Conditions of NPDES Permits

In establishing the terms and conditions of each issued NPDES Permit, the Agency shall apply and ensure compliance with all of the following, whenever applicable:

\* \* \*

- i) If the NPDES permit is for a discharge that constitutes an increase in pollutant loading that necessitates the issuance of a new, renewed or modified NPDES permit, the Agency must complete an antidegradation assessment demonstration review in accordance with the provisions of this subsection to determine compliance with 35 Ill. Adm. Code 302.105. However, if a pollutant is subject to an existing permit limit, an assessment shall not be required unless the proposed increase in pollutant loading would result in an exceedance of such permit limit. The assessment to determine compliance with 35 Ill. Adm. Code 302.105 must be made on a case-by-case basis. In making such an assessment, the Agency must consider:
- 1) the criteria stated in 35 Ill. Adm. Code 302.105(c)(2); and,
  - 2) the following information:
    - A) Identification and characterization of the **waters body** affected by the proposed load increase or proposed activity and **their water body's** existing uses, **which**. ~~C~~ Characterization must address physical, biological and chemical conditions of the **waters body**;
    - B) Identification and quantification of the proposed load increases for the applicable parameters and of the potential impacts of the proposed activity on the affected waters **body or water body segment**;
    - C) The purpose and anticipated benefits of the proposed activity, **which anticipated** ~~Such~~ benefits may include, but are not limited to:

- i) Providing a centralized wastewater collection and treatment system for a previously unsewered community;
  - ii) Expansion to provide service for anticipated residential or industrial growth consistent with a community's long range urban planning;
  - iii) Addition of a new product line or production increase or modification at an industrial facility; or
  - iv) An increase or the retention of current employment levels at a facility.
- D) Assessments of alternatives to proposed increases in pollutant loading ~~or activities subject to Agency certification pursuant to Section 401 of the CWA~~ that **would** result in **a lesser of a** load increase, no load increase or minimal environmental degradation, **which-Such** alternatives include, but are not limited to:
- i) Additional treatment levels including no discharge alternatives;
  - ii) Discharge of waste to alternate locations including publicly-owned treatment works **and-or** streams with greater assimilative capacity; or
  - iii) Manufacturing practices that incorporate pollution prevention techniques; and,
- E) Any of the information sources identified in subsection 302.105 (d)(3)35 Ill. Adm. Code 302.105(c)(2)(C).

~~3) The Agency will conduct public notice and public participation through the public notice procedures found in 35 Ill. Adm. Code 309.109 or CWA Section 401 certification denial.~~