

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROCEDURAL RULES FOR)
ALTERNATIVE THERMAL)
EFFLUENT LIMITATIONS)
UNDER SECTION 316(a) OF THE)
CLEAN WATER ACT: PROPOSED)
NEW 35 ILL. ADM. CODE PART 106,)
SUBPART K AND AMENDED)
SECTION 304.141(c))

R13- 20
(Rulemaking- Water)

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JUN 20 2013
STATE OF ILLINOIS
Pollution Control Board

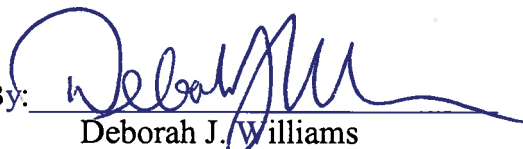
 ORIGINAL

NOTICE OF FILING

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board Illinois EPA's MOTION FOR ACCEPTANCE; APPEARANCES; CERTIFICATE OF ORIGINATION; STATEMENT OF REASONS; and PROPOSED AMENDMENTS TO 35 ILL. ADM. CODE PARTS 106: SUBPART K AND SECTION 304.141(c), a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Deborah J. Williams
Assistant Counsel
Division of Legal Counsel

DATED: 6/17/13

1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544

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MOTION FOR ACCEPTANCE

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by and through its attorneys, and pursuant to 35 Ill. Adm. Code 102.106, 102.200, and 102.202, moves the Illinois Pollution Control Board to accept the Illinois EPA's proposal for the adoption of a proposed new Subpart K to 35 Ill. Adm. Code Part 106 and proposed amendments to Section 304.141(c).

This regulatory proposal includes:

- 1) Notice of Filing;
- 2) Appearances of Attorneys for the Illinois EPA;
- 3) Certification of Origination;
- 4) Statement of Reasons (including list of attachments and documents relied on);
- 5) Attachments to the Statement of Reasons;
- 6) Proposed Amendments;
- 7) Certificate of Service;

8) Computer disc containing Proposed Amendments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

Deborah J. Williams
Assistant Counsel
Division of Legal Counsel

DATED: _____

6/17/13

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THIS FILING IS SUBMITTED ON RECYCLED PAPER

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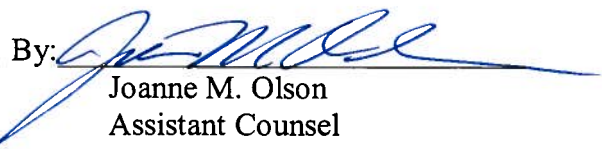
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Pollution Control Board

APPEARANCE

The undersigned hereby enters her appearance as an attorney on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Joanne M. Olson
Assistant Counsel
Division of Legal Counsel

DATED: 6/17/13

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APPEARANCE

The undersigned hereby enters her appearance as an attorney on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

Deborah J. Williams
Assistant Counsel
Division of Legal Counsel

DATED: 6/17/13

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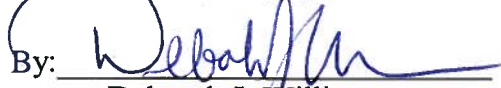
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CERTIFICATION OF ORIGINATION

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by one of its attorneys, and pursuant to 35 Ill. Adm. Code 102.202(i), the Illinois EPA certifies that the regulatory proposal in the above captioned matter amends the most recent version of Parts 106 and 304 of the Illinois Pollution Control Board's regulations, as published on the Board's website.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Deborah J. Williams
Assistant Counsel
Division of Legal Counsel

DATED: 6/17/13

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Pollution Control Board

STATEMENT OF REASONS

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”), by and through its counsel, and hereby submits this Statement of Reasons to the Illinois Pollution Control Board (“Board”) pursuant to Sections 13, 26, and 28 of the Environmental Protection Act (“Act”) (415 ILCS 5/13, 26, and 28) and 35 Ill. Adm. Code 102.202 in support of the attached proposed regulations.

I. INTRODUCTION

The Illinois EPA proposes that the Board adopt a new Subpart K of Part 106. This proposed rulemaking is intended to establish procedural rules for establishing alternative thermal effluent limitations under Section 316(a) of the Clean Water Act and 35 Ill. Adm. Code 304.141.

II. STATUTORY BACKGROUND

Section 316(a) of the Clean Water Act provides a unique procedure for relief from thermal effluent limitations or water quality standards that is different from the procedures applicable for all other categories of point sources and types of pollutants. That provision states that:

With respect to any point source otherwise subject to the provisions of section 1311 of this title or section 1316 of this title, whenever the owner or operator of any such source, after opportunity for public hearing, can demonstrate to the satisfaction of the Administrator (or, if appropriate, the State) that any effluent limitation proposed for the control of the thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made, the Administrator (or, if appropriate, the State) may impose an effluent limitation under such sections for such plant, with respect to the thermal component of such discharge (taking into account the interaction of such thermal component with other pollutants), that will assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on that body of water.

33 U.S.C. §1326. Relief under Section 316(a) of the Clean Water Act is sometimes referred to as an alternative effluent limitation or a “316(a) Variance.”

In October 1977, Illinois received delegation of the National Pollutant Discharge Elimination System (“NPDES”) permit program. In the requesting delegation of this program, the Agency explained how Section 316(a) of the Clean Water Act would be implemented in Illinois:

A special provision to implement 40 C.F.R. Part 122, Thermal Discharges, which sets forth the procedure prescribed by Section 316(a) of the FWPA, is contained in Rule 410(c) of Chapter 3. Rule 410(c) allows the Board to determine that an alternative thermal standard, other than that found in 40 CFR Part 122 and Chapter 3, should apply to a particular thermal discharge.

The concept of reviewing the effect of a thermal discharge on a receiving stream is not a recent addition to the Board’s Water Pollution Regulations. Rule 203(i)(5), which became effective on April 7, 1972, requires that owners or operators of a source of heated effluent which discharges 0.5 billion BTU per hour or more demonstrate in a hearing before the Board that the discharge from that source has not caused and cannot reasonably be expected to cause a significant ecological damage to the receiving waters. Upon failure to prove the above, the Board will order that appropriate corrective measures shall be taken. The Agency proposes that the demonstration requirements found in 40 CFR Part 122 and the supporting technical documents be utilized in the determination of an alternative thermal standard pursuant to Rule 410(c) and Rule 203(i)(5).

See, Attachment A, State of Illinois Application for Authority to Administer the NPDES Program (July 1977) at p. 27. Since this program approval document was submitted, each of the referenced regulations has been re-codified. The federal Section 316(a) regulations were originally found in Part 122 and have been moved to 40 C.F.R. §§125.70, 125.71, 125.72 and 125.73 (40 C.F.R. Part 125 subpart H). Attachment B. The Board's former rule 410(c) is now found in 35 Ill. Adm. Code 304.141(c), and Rule 203(i)(5) refers to the Heated Effluent Demonstration procedures found in 35 Ill. Adm. Code 302.211(f) – (i) and Part 106 of the Board's procedural rules.

The former Rule 410(c) and the current 35 Ill. Adm. Code 304.141(c) states as follows:

The standards of this Chapter shall apply to thermal discharges unless, after public notice and opportunity for public hearing, in accordance with Section 316 of the CWA and applicable federal regulations, the Administrator and the Board have determined that different standards shall apply to a particular thermal discharge.

Heated Effluent Demonstrations were to be conducted not less than 5 and not more than 6 years after the adoption of Rule 203(i)(5). Nevertheless, throughout the 1970s and 1980s (and even in a few cases into the 1990s), the electric generating industry came before the Board to fulfill the obligations under the Board's Heated Effluent Demonstration regulations. During these proceedings, some facilities simply made the required demonstration that no harm was being caused by their effluent without asking for Board relief. In other cases, dischargers used the heated effluent demonstration proceedings (as anticipated in the NPDES delegation submittal) to obtain thermal relief from the Board's regulations under Section 316(a) of the Clean Water Act and 35 Ill. Adm. Code 304.141(c).

On October 28, 2008, the Director of the Office of Water Management at the United States Environmental Protection Agency (“U.S. EPA”) sent a memorandum to the regional offices discussing the requirements of Section 316(a) of the Clean Water Act and expressing the goal of consistent compliance with these requirements across the various regions. In that document, U.S. EPA states that “A 316(a) thermal variance is an NPDES permit condition. It, therefore, expires along with the permit. A permittee may request a renewal of its 316(a) thermal variance prior to the expiration of the permit.” Attachment C. Since the issuance of this memorandum, the Agency has been working with U.S. EPA Region V to review the status of Illinois electric generation facilities and their thermal discharges to ensure consistency with Section 316(a) of the Clean Water Act.

III. PURPOSE

This rulemaking comes to the Board as a result of the Agency’s review of recent Board opinions in AS 13-1 and PCB 13-31. *In the Matter of: Petition of Exelon Generation, LLC, Under 35 Ill. Adm. Code 304.141(c) for Alternative Thermal Standards, Quad Cities Nuclear Generating Station, AS 13-1 and Exelon Generation LLC (Quad Cities Nuclear Generation Station) v. Illinois EPA, PCB 13-31.* Those proceedings began when Exelon Generation, LLC (“Exelon”) filed a Petition to Approve Alternative Thermal Standards pursuant to Section 316(a) of the Clean Water Act and 35 Ill. Adm. Code 304.141(c) on September 20, 2012. The petition sought relief from the thermal water quality standards and mixing zone requirements otherwise applicable in the Mississippi River found in 35 Ill. Adm. Code 302.102 and 303.331. The requested relief would have authorized the discharge of heated cooling water from Exelon’s Quad Cities Nuclear Generation Station under Section 316(a). The Board docketed the petition as AS 13-1 and issued an opinion and order on October 18, 2012, directing petitioner to file an

amended petition satisfying the procedural requirements for an adjusted standard by December 19, 2012, or the case would be dismissed. The Board also gave Exelon the option of filing for relief through a site-specific rulemaking proceeding. The Board found that:

Petitioner has requested, for its own Station only, a set of thermal standards different from those generally applicable thermal standards. For the reasons discussed below, the Board finds that that the Board is empowered to grant the requested relief under the Environmental Protection Act (Act) 415, ILCS 5/1 *et seq.* But, the Board does not believe that, *without a prior rulemaking process*, the Board can create a specific procedure for proceedings under Section 304.141(c) comparable to other specific procedures in Part 106 or as established in its Part 106 procedural rules. AS 13-1 (October 18, 2012) Slip. Op. at 4.

Prior to AS 13-1, the Agency held the opinion that the Board was able to grant relief under Section 316(a) of the Clean Water Act and 35 Ill. Adm. Code 304.141(c) without procedural rules specifically addressing these matters. This belief was based on the recognition that the Board had done so in the past. See, *In the Matter of: 401(c) Petition for Dresden Nuclear Station*, PCB 79-134 (July 9, 1981); *In the Matter of: Alternative Thermal Effluent Limitations for Electric Energy, Inc. Joppa Generating Station*, PCB 77-124 (September 1, 1977) and *In the Matter of: Proposed Determination of Thermal Standards for Zion and Waukegan Generating Stations*, PCB 77-82 (August 3, 1978). Even though AS13-1 was the second time the Board had ordered that a Petitioner satisfy the Adjusted Standard procedural requirements to obtain Section 316(a) relief, it had not been clear to the Agency that the Board held the position that no procedures existed for granting relief under Section 316(a) of the Clean Water Act and 35 Ill. Adm. Code 304.141(c).¹ As a result of U.S. EPA's focus on review of prior Section 316(a) relief and the Board's determination that it lacks authority to hear petitions

¹ The Agency does not interpret that the relief ultimately granted in *Petition of Commonwealth Edison Company for Adjusted Standard from 35 Ill. Adm. Code 302.211(d) and (e)*, AS 96-10 (October 3, 1996) as an alternative effluent limit pursuant to Section 316(a) of the Clean Water Act and 35 Ill. Adm. Code 304.141(c) but rather as a thermal limitation which ensures that Midwest Generation achieves compliance with General Use temperature standards downstream of the Interstate 55 bridge.

for Section 316(a) relief without specific procedural rules addressing this type of proceeding, the Agency developed this procedural rulemaking proposal for inclusion in Part 106 of the Board's procedural rules.

IV. PROCEDURAL RULEMAKING

Under the Environmental Protection Act, the Board shall adopt "procedures which . . . are necessary or appropriate to enable the State of Illinois to implement and participate in the National Pollutant Discharge Elimination System (NPDES) pursuant to and under the Federal Water Pollution Control Act." 415 ILCS 5/13(b) (2010). Section 26 of the Act provides:

The Board may adopt such procedural rules as may be necessary to accomplish the purposes of this Act. In adopting such rules the Board shall follow the rulemaking procedures of the Illinois Administrative Procedure Act.

415 ILCS 5/26. Under the Illinois Administrative Procedure Act, an administrative agency is not required to hold a public hearing before publishing first notice of the rule in the Illinois Register, but shall hold a hearing during the first notice period if there is public interest in the rule or a public hearing would facilitate the submission of views and comments that would not otherwise be submitted. See 5 ILCS 100/5-40. The Board's statutory requirement to hold a hearing before adopting a substantive rule does not apply to procedural rules.²

Under Section 304.141(c), thermal limits contained in the Board's regulations apply unless the Board, in accordance with the Clean Water Act and applicable federal regulations, determines that different standards should apply. 35 Ill. Adm. Code 304.141(c). In this procedural rulemaking, the Illinois EPA has integrated the existing federal regulations in 40

² See, 415 ILCS 5/27(b) ("[B]efore the adoption of any proposed rule not relating to administrative procedures. . . the Board shall . . . conduct at least one public hearing."); 415 ILCS 5/28 ("No substantive regulation shall be adopted, amended or repealed until after a public hearing"); In the Matter of Procedural Rules for Review of Petitions for Temporary Landfill Ban Waivers Under Section 95 of the Electronic Products Recycling and Refuse Act: New 35 Ill. Adm. Code 106 Subpart J, R 12-21 (February 2, 2012) ("Because the Board is not required to hold a public hearing on proposed amendments to its procedural rules (415 ILCS 5/26, 27, 28 (2010)), the Board does not now intend to hold a hearing on these proposed rules.")

C.F.R. Part 125 (2012) with the typical procedures found in the Board's procedural rules. The Illinois EPA does not believe its proposed rules contain substantive regulations because Section 304.141(c) currently requires the Board to follow the federal regulations. Therefore, the Illinois EPA requests that the Board not hold hearings on this regulatory proposal before moving to first notice.

V. THE ILLINOIS EPA'S PROPOSAL

The following is a section-by-section summary of the Illinois EPA's proposal.

Subpart K: Alternative Thermal Effluent Limitations Pursuant to Section 316(a) of the Clean Water Act and 35 Ill. Adm. Code 304.141(c)

This Subpart establishes procedural rules for those seeking alternative thermal effluent limitations from the Board. This purpose is described in Section 106.1100.

Section 106.1105 General

This Section describes the type of relief available under the Clean Water Act, the parties to any proceeding pursuant to this Subpart and the filing and service requirements. The Agency consulted with 35 Ill. Adm. Code 106.300(b) and (c) when drafting this section.

Section 106.1110 Definitions

The Illinois EPA had proposed general definitions derived from the Act, other Board regulations and 40 C.F.R. §125.71. The terms "Alternative thermal effluent limitations," "Representative important species," and "Balanced, indigenous community" are borrowed directly from the federal regulations.

Section 106.1115 Early Screening

Under this Section, the petitioner is required to submit early screening information to the Agency before filing a petition with the Board. This is identical in substance to the federal

requirements found in 40 C.F.R. § 125.72(a) except the Agency has proposed that the petitioner submit a proposed representative important species list to the Agency.

Section 106.1120 Detailed Plan of Study

This Section provides for the submittal of a detailed plan of study to the Agency after the establishment of the representative species list, but before the study is conducted or submitted to the Board. This Section is modeled after 40 C.F.R. §125.72(b) and (e). Subsection (g) has been added to the federal requirements to clarify that after the Agency completes its review of the plan of study, the Petitioner would be expected to complete the studies prior to submittal of a petition to the Board.

Section 106.1125 Initiation of Proceeding

This Section provides that a proceeding is initiated under Subpart K by filing a petition with the Board and serving the Agency.

Section 106.1130 Contents of Petition

These proposed requirements for the contents of a petition to the Board are taken from two sources: 40 C.F.R. §125.72(b) and (e) and the relevant informational requirements established by the Board for Heated Effluent Demonstration proceedings in Section 106.202(a). The Agency has also added to subsection (c) of this Section the requirement to submit “a summary of compliance or non-compliance with thermal requirements at the facility in the past five years.”

Section 106.1135 Petition Notice Requirements

Both Section 316(a) of the Clean Water Act and Section 304.141(c) of the Board rules provide that alternative thermal effluent limitations under Section 316(a) may only be granted

after public notice and opportunity for a public hearing. This Section was drafted to address that requirement and is modeled after Section 104.408(b) of the Board's procedural rules.

Section 106.1140 Proof of Petition Notice Requirements

This Section provides a process for the petitioner to demonstrate that it has complied with the public notice requirements in the preceding section. It was modeled after Section 104.410 of the Board's rules for adjusted standard proceedings.

Section 106.1145 Recommendation and Response

In order to facilitate the Board's decision making process, the Agency has drafted this Section which requires the Agency to provide a recommendation to the Board within 45 days of filing of a petition under this Subpart.

Section 106.1150 Request for Public Hearing

This Section provides the procedures for the public to request that a hearing be held on a petition for an alternative thermal effluent limitation.

Section 106.1155 Notice and Conduct of Hearing

This Section provides the criteria for granting a public hearing and the procedures for conducting and providing public notice of the hearing.

Section 106.1160 Burden of Proof

This Section provides the criteria for the Board's decision by identifying the burden of proof. The language for this Section is taken generally from 40 C.F.R. §125.72 and §125.73.

Section 106.1165 Evidentiary Matters

The Section references the additional Board procedural rules to be applied to proceedings under this Subpart.

Section 106.1170 Opinion and Order

This Section identifies the information to be included in the Board's order and the duration of relief granted.

Section 106.1175 Post-Hearing Procedures

This Section references the additional Board procedural rules to be applied to proceedings under this Subpart. The proposed rule language also would provide a mechanism for the Agency to bring to the Board's attention a formal U.S. EPA objection to an alternative thermal effluent limitation granted pursuant to this Subpart.

Section 106.1180 Renewal of Alternative Thermal Effluent Limitations

This Section provides a process for streamlined renewal of alternative thermal effluent limitations granted pursuant to this Subpart. The Agency's proposal provides for a screening process where the Agency can evaluate whether the conditions on which the prior relief was based have changed.

Section 304.141 NPDES Effluent Standards

The proposed amendments to subsection (c) of this Section include a cross-reference to the new Subpart K and update the language to reflect the delegation of permitting authority to Illinois EPA rather than USEPA.

VI. TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

Section 27 of the Act requires the Board to consider the technical feasibility and economic reasonableness of all rulemaking proposals. Because this proposal is a non-substantive, procedural rule there would be no need to implement additional treatment technologies if the rules were adopted. For this reason, the Agency's proposed changes are technically feasible and economically reasonable. Failure to establish procedural rules to allow relief from otherwise applicable thermal effluent standards pursuant to Section 316(a) of the

Clean Water Act could result in the requirement to install cooling technologies at potentially large costs by the affected facilities.

VII. AFFECTED FACILITIES AND OUTREACH

This proposal would impact any facility with a thermal effluent limit that seeks to demonstrate such effluent limit is more stringent than necessary to protect a balanced, indigenous population of fish, shellfish and wildlife. In general, the affected industry is the steam electric generating industry whether nuclear or coal fired. The universe of sources that may seek to avail themselves of these procedures is estimated to be approximately 25 power plants. The need to respond to the Board's opinions did not allow for an extensive period of outreach as would be conducted with a substantive rulemaking proposal. However, the Agency did submit drafts of the rulemaking proposal to U.S. EPA Region V for comments and a copy of the proposal was also shared with representatives of the electric generating industry and environmental groups in advance of this filing.

VIII. SYNOPSIS OF TESTIMONY

Because this is a non-substantive, procedural rulemaking, and a hearing is not required, the Agency will not be providing testimony. In the event the Board has questions on the proposal, the Agency will make appropriate staff available to address the Board's questions and concerns.

IX. PUBLISHED STUDY OR RESEARCH REPORT

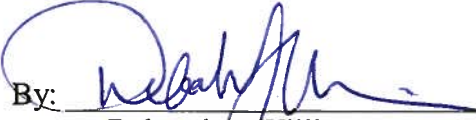
Section 102.202(e) of Title 35 of the Illinois Administrative Code requires the regulatory proposal to include "[a] descriptive title or other description of any published study or research report used in developing the rule." Neither a research report nor a published study was used in developing this rule. Therefore, the requirement of Section 102.202(e) is inapplicable.

X. CONCLUSION

WHEREFORE, the Illinois EPA respectfully requests the Board to adopt the Illinois EPA's proposed regulation in its entirety as submitted.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

Deborah J. Williams
Assistant Counsel
Division of Legal Counsel

DATED: 6/17, 2013

1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544

ATTACHMENT
A

Illinois

**Environmental Protection
Agency**



**Application for
Authority to
Administer
the NPDES
Program**

STATE OF ILLINOIS

APPLICATION FOR AUTHORITY
TO ADMINISTER THE NPDES PROGRAM

SUBMITTED
JULY, 1977

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APPENDIXES

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 - Chapter Three, Water Pollution
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STATE OF ILLINOIS
OFFICE OF THE GOVERNOR
CHICAGO 60601

JAMES R. THOMPSON
GOVERNOR

July 8, 1977

Mr. George R. Alexander, Jr.
Regional Administrator
Region V
U.S. Environmental Protection Agency
230 South Dearborn
Chicago, IL 60604

Dear Mr. Alexander:

With this letter, I am submitting the application of the State of Illinois for authority to administer the National Pollutant Discharge Elimination System (NPDES) permit program within Illinois, pursuant to the provisions of Section 402(b) of the Federal Water Pollution Control Act Amendments of 1972.

The State's submission includes: (1) a description of the legal and administrative structure of the Illinois agencies concerned with water pollution control; (2) a description of the State's program for issuing and enforcing NPDES permits; (3) the Memorandum of Agreement between the Illinois EPA and USEPA; (4) the Attorney General's statement that the laws of the State provide adequate authority to carry out the described program; and (5) certain supplementary and background material.

I hope that the U.S. Environmental Protection Agency will be able to approve the Illinois program in the near future. If there are any questions, please raise them with Dr. Leo M. Eisel, Director, Illinois Environmental Protection Agency.

Sincerely,

Original signed by Governor
July 8, 1977

James R. Thompson
GOVERNOR

JRT:ab

enclosure

INTRODUCTION

In support of its request for approval of its program for the issuance of permits under the National Pollutant Discharge Elimination System, pursuant to Section 402(b) of the Federal Water Pollution Control Act Amendments of 1972, the State of Illinois is submitting the material included in this document. The submission includes the following:

1. A description of the structure of the Illinois environmental program and implementing agencies.
2. A description of the National Pollutant Discharge Elimination System (NPDES) as Illinois proposes to administer it, including the procedures for issuance of NPDES permits, monitoring compliance with the terms and conditions of those permits, and enforcement of permit requirements.
3. A statement of the funding and manpower which Illinois proposes to devote to the carrying out of the NPDES program.

In addition, there are included a statement by the Attorney General on the adequacy of state law to carry out the NPDES program, the Memorandum of Agreement between Illinois and the U.S. Environmental Protection Agency concerning the details of the transfer, and copies of the relevant legislation, adopted regulations of the Illinois Pollution Control Board, and other supplementary material.

The Illinois submission has been prepared in accordance with the requirements of the Federal Water Pollution Control Act of 1972 and implementing federal regulations, and with the assistance of personnel of Region V of the U.S. Environmental Protection Agency, whose assistance is most gratefully acknowledged.

Following preliminary review of the Illinois submission, Region V will schedule a public hearing on the question of whether or not the Illinois NPDES program should receive federal approval. A final decision is required within 90 days following the submission.

ILLINOIS ENVIRONMENTAL STRUCTURE

State government in Illinois has possessed statutory authority and responsibility for protecting the quality of the waters of the State since the enactment of the Sanitary Water Board Act in 1929. A state permit system for the construction and operation of wastewater treatment facilities has been in existence since the early 1930's. However, with the enactment of the Environmental Protection Act in 1970 and of the new Constitution of the State of Illinois in the same year, with its nationally significant environmental article (Article XI), the emphasis of state government in Illinois on environmental issues was substantially increased. The Environmental Protection Act was nationally recognized as a model of state legislation in the environmental field and many of its original features have been adopted in other states.

The Environmental Protection Act established three related state agencies concerned with environmental issues: the Environmental Protection Agency (the Agency), the Illinois Pollution Control Board (the Board), and the Institute for Environmental Quality (the Institute). Both the Agency and the Board will be involved in the administration of the NPDES program.

The Agency is designated by statute as the State's water pollution control agency for purposes of the Federal Water Pollution Control Act. In that role, it is the recipient of program grant funds under Section 106 of the Act, it certifies the Illinois water quality standards to USEPA, as required under Section 303 of the Act, and it will bear

the primary responsibility for administration of the NPDES permit program, as described in this submission. The Agency is responsible for issuance of permits, where required by state law or Board regulation, for monitoring and surveillance to determine compliance with the requirements of the state law, the applicable Board regulations, and permit requirements, and for preparing and presenting to the Board or the courts evidence of violation of any such requirements. The director of the Agency is appointed by the governor for a two-year term. By far the majority of Agency employees are non-partisan career state employees whose conditions of employment are established by the state's personnel code.

The Agency's present Table of Organization (Appendix F) does not require change to implement NPDES. The present sections of the Division of Water Pollution Control will remain, and the administration of the Illinois NPDES program will be carried out primarily within the following existing sections of that division:

Division Manager's Office

Field Operations Section

Permit Section

Planning and Standards Section

Variance and Technical Analysis Section

The administration of the program will also utilize eight persons within the Division of Enforcement Programs of the Agency.

The NPDES related functions of each of these sections is described briefly below:

The Enforcement Programs Division, which consists of lawyers (technical advisors) and clerical support, will have four basic functions to perform in the NPDES permit program, as follows:

1. Preparation and initiation of formal Agency enforcement actions, including the preparation and referral of enforcement case files to the appropriate prosecuting authorities, and assistance to such authorities during the preparation and trial of enforcement cases;
2. Preparation of the Agency case in permit denial appeals for action by the Illinois Attorney General (adjudicatory hearings) before the Pollution Control Board;
3. Preparation of the Agency recommendation and the Agency case in support of its recommendation in petitions for variance which, if granted, will require Agency issuance or modification of an NPDES permit; and,
4. Provision of advice to the various sections of the Division of Water Pollution Control to ensure that the NPDES permit program complies with applicable federal and state statutes and regulations.

The Division Manager's Office contains the Division Records Unit where the master files are kept on all dischargers. It is also responsible for providing information to the Data Processing Division.

The Field Operations Section's support to the NPDES permits program consists of the following:

1. Provision of information to the Permits Section as necessary for drafting NPDES permit conditions for individual dischargers;
2. Provision of technical assistance to communities and to wastewater treatment plant operators where necessary to explain NPDES permit conditions and to helping the dischargers meet NPDES permit requirements;
3. Provision of assistance as necessary to the compliance schedule monitoring program;
4. Review, validation and quarterly reports as necessary for the discharge monitoring report program; and,
5. Follow-up action as necessary for enforcement where violation of NPDES conditions have been discovered.

The Permits Section of the Division is responsible for review of all NPDES permit applications and issuance or modification of NPDES permits, including drafting of public notices, fact sheets, notices of public hearings, and conduct of public hearings.

The Planning and Standards Section is responsible for review of facilities and basin plans as they may affect the terms of NPDES permits. All NPDES permits issued by the Agency for discharges located in areas covered by approved 208 plans will be consistent with all terms and conditions of those 208 plans.

The Variance and Technical Analysis Section will assist the Permits Section in the review of modifications to NPDES permits which may be requested by permittees. It will apply the type of analysis or review used in preparing the Agency's response to variance petitions.

Organizational units of the Agency, other than those in the Division of Water Pollution Control, and Enforcement Programs, will have certain support functions in carrying out the NPDES program. They include the following:

The Director's Office, through the Manager of Enforcement Programs, will exercise control over the enforcement policies and strategies of the Agency, including the enforcement of NPDES permit requirements.

The Data Processing Division will provide data processing support, including storage and retrieval of compliance schedule information, self-monitoring reports, forecasts of reports coming due, and compliance and violation information and preparation of reports, including the quarterly report of permit violations required by 40 CFR 124.44(d).

The Division of Laboratory Services will provide laboratory support to the Agency's monitoring and enforcement efforts, including testing of effluent and water quality samples taken by Agency field staff.

The Public Affairs staff of the Agency will provide assistance in the Agency's efforts to encourage meaningful public participation in the State's water pollution control program.

The Pollution Control Board of the State of Illinois consists of technically-qualified members, appointed by the Governor for three-year terms.

The Board is now fully staffed. Biographical information about the five present members is provided in Appendix H of this submission.

As Appendix H shows, Board members include:

An engineer with extensive experience in pollution abatement (Mr. Dumelle);

An agronomist with a Ph.D. in agronomy (Mr. Satchell);

An attorney with a degree in industrial engineering who has experience with private industry and a state environmental regulatory agency (Mr. Young);

An engineer with experience in combustion engineering (Mr. Werner); and

An attorney and engineer with experience in private industry and with a public interest group (Mr. Goodman)

Past appointments to the Board have included engineers, attorneys, and other persons with technical expertise in fields related to pollution abatement.

All present Board members are in compliance with the conflict of interest provisions of Section 304(h)(2)(D) of the FWPCA and implementing regulations of 40 CFR 124.93, as presently interpreted by the Administrator of USEPA.

The Board, after public hearing, promulgates regulations for the implementation of the Environmental Protection Act. These regulations include, in the field of water pollution control, water quality standards, effluent standards, permit requirements, including specific requirements for mining and agricultural operations, classification standards for bodies of water, and the implementing regulations for the NPDES program. Copies of Board regulations which are concerned with water pollution abatement are included as Appendix B to this submission. In addition to its role as promulgator of environmental regulations, the Board acts as an administrative tribunal to hear cases brought by the Agency or by others charging violation of the Environmental Protection Act or implementing regulations. The Board is empowered to order remedial action and to assess civil penalties when it finds a violation, and these powers have been upheld by the Illinois Supreme Court. To the extent allowed by federal law, the Board may also grant variances from its regulations when it finds that compliance will cause an arbitrary or unreasonable hardship.

All public hearings conducted by the Board, whether regulatory or adjudicatory, are listed in the Environmental Register, published on a

regular schedule by the Board and distributed free of charge to persons requesting it. Participation by interested members of the public is invited in all such hearings. In addition, Board meetings are listed in the Register and are open to the public. Proposed regulations appear in the Register for public comment in writing. Records of Board regulatory and adjudicatory proceedings, with minimal exceptions required to protect confidential information and trade secrets, are open to the public and may be inspected and copied.

The Institute for Environmental Quality is a research and education organization. The Institute advises the Agency and the Board in the development of new regulatory proposals, including regulations dealing with the State's water pollution control program. The Institute has made major contributions to the public hearing processes by which the State's water quality and effluent standards were adopted. It provides the administrative structure for state-sponsored research and demonstration projects in areas of concern to the water pollution control effort. The Institute has contributed heavily toward the establishment of centers of expertise in subjects related to the environment at several state universities and research institutions, and it develops environmental education programs for use in the State's elementary and secondary schools.

Other state offices and agencies, not established by the Environmental Protection Act, also play roles in the State's environmental control system. They include the offices of the Attorney General, the Department of Registration and Education, the Department of Mines and Minerals,

the Department of Public Health, and certain interstate and international agencies. A chart depicting the relationships among the various State agencies appears on page 12 of this submission. A brief description of the activities of those whose responsibilities impinge on the administration of the proposed NPDES program appears below.

As the constitutional legal counsel of the State of Illinois, the Attorney General plays an important role in litigation related to environmental affairs. He represents the Agency in enforcement, variance and permit denial cases brought before the Board or in court, as well as acting as its counsel when it is named as a defendant. In addition, he may bring environmental cases to the Board or to court as the representative of the People of the State of Illinois.

The State Water Survey, the State Geological Survey, and the State Natural History Survey are included in the Department of Registration and Education. All three are scientific research organizations whose expertise is of value to the Agency in fulfilling its responsibilities. The Agency expects to utilize the geological and hydrological expertise of the Surveys, especially in dealing with such problems as the control of injection wells for the underground disposal of liquid wastes. The Agency has the explicit authority to regulate injection wells which receive waste, and for several years the Agency has administered a program requiring permits for such wells. The program has consistently required detailed, periodic reports from the well operators. Although the program is presently functioning within the Agency's Division of Land Pollution Control, its future functioning will be in complete consonance with the requirements of 40 CFR 124. The State Water Survey conducts intensive

water quality monitoring surveys, the results of which will be used by the Agency in developing basin plans and permit conditions based on waste load allocations where required to preserve or achieve applicable water quality standards.

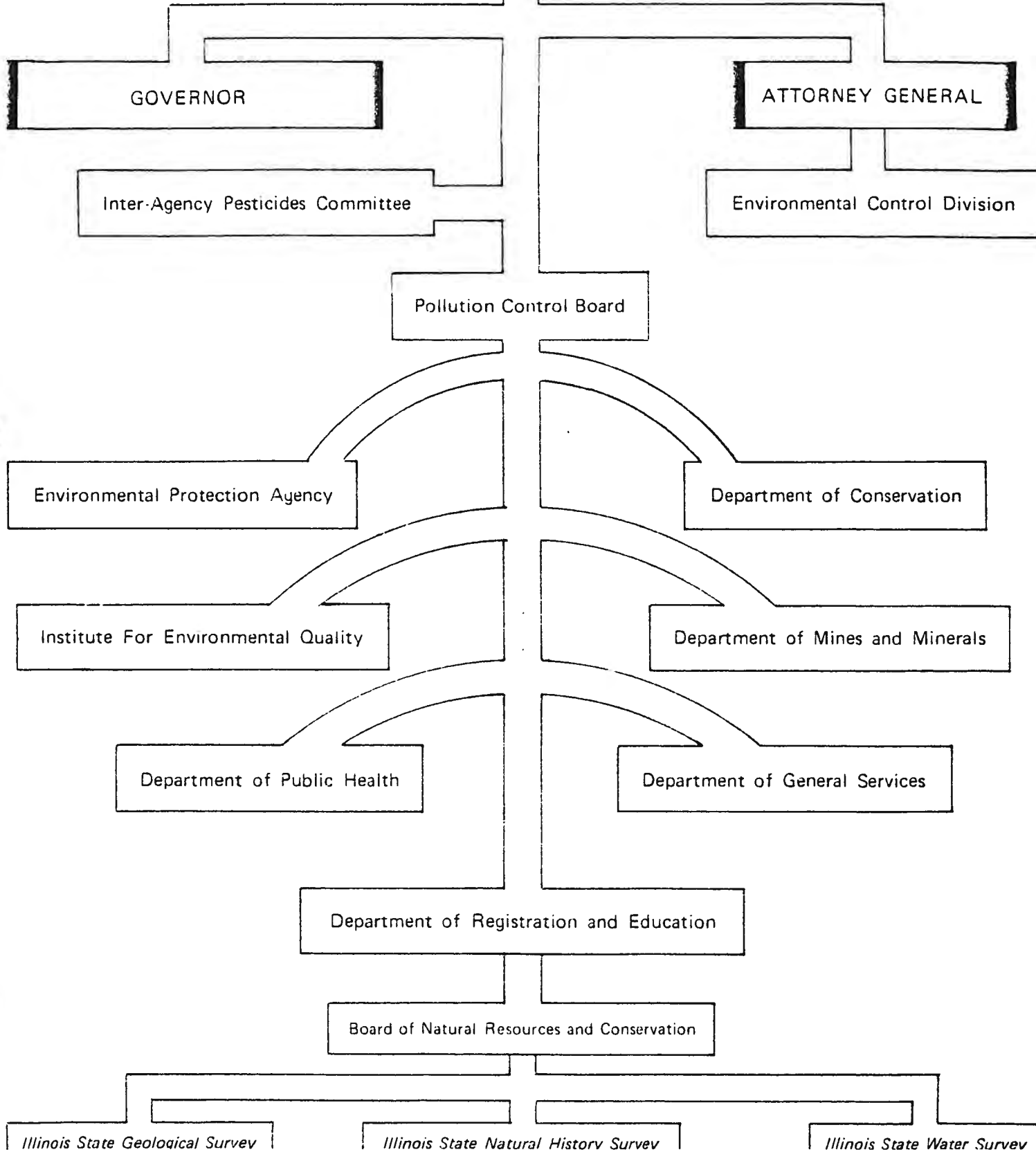
The Department of Mines and Minerals has primary jurisdiction over pollution problems resulting from petroleum production operations. The Department maintains active surveillance to assure that waters of the State are not polluted by crude oil or brine from oil fields, and has the authority to shut down any oil production facility which may be causing such pollution. Injection wells operated in conjunction with petroleum production are regulated by the Department under a permit system administered by it, although other injection wells require permits from the Agency.

The Department of Public Health engages in several activities which are directed toward prevention of the public health problems which may result from inadequate sewage treatment and resulting water pollution. In particular, the Department administers the Private Sewage Disposal Licensing Act, which regulates small, private sewage disposal systems which are not generally within the scope of the Agency's jurisdiction.

The Department also licenses mobile home parks, youth camps, recreational camps, and migrant labor camps to assure, among other things, that proper disposal of sewage and solid waste is provided. Where any facility subject to regulation by the Department requires an NPDES permit, the permit will be issued by the Agency.

The Department of Public Health is also responsible for control over activities involving the use of radioactive material; however, NPDES permits with provisions governing the discharge of radioactive wastes into the waters of the State will be issued by the Agency under authority of Section 39(b) of the Environmental Protection Act.

CITIZENS
OF
ILLINOIS



II.

ISSUANCE OF PERMITS

The Illinois Environmental Protection Act and the Regulations of the Illinois Pollution Control Board state that all discharges for which NPDES permits are required under applicable federal legislation and regulations are required to have NPDES permits under state law as well. Section 39(b) of the Environmental Protection Act authorizes the Agency to issue NPDES permits for the discharge of contaminants from point sources into navigable waters (all as defined in the Federal Water Pollution Control Act Amendments of 1972) or into any well.

The Permits Section of the Division of Water Pollution Control of the the Agency will issue all NPDES permits in the State of Illinois except for NPDES permits for discharges from public water supplies, which will be issued by the Permits Section of the Division of Public Water Supplies under the guidance of the Permits Section of the Division of Water Pollution Control. Other duties of the Permits Section include review of infiltration/inflow analysis, preliminary engineering reports on proposed construction, mine permits, determinations to restrict sewer extensions, issuance of state permits for facilities which do not require NPDES permits, issuance of construction authorizations for facilities requiring NPDES permits, and other duties dealing with sewage and industrial wastes. Also, with the approval of NPDES authority by the Administrator the State will begin issuance of permits in accordance with Chapter 5, Livestock Regulations. (See Appendix B)

Since the Sanitary Water Board was formed in 1929 as a part of the Illinois Department of Public Health, state permits have been required for the construction of sewage treatment facilities, sewers and lift stations. Records are available for municipal and industrial treatment works constructed since that time. After the passage of the Illinois Environmental Protection Act in 1970, many of the functions of the Sanitary Water Board were transferred to the Agency.

The scope of the work was enlarged to include the issuance of permits for operation, as well as for construction, of all industrial, municipal, and semipublic treatment works, sewers, lift stations and wastewater sources.

With federal approval of the Illinois NPDES permit program, the Illinois Pollution Control Board (the Board) is required by Section 13(b)(1) of the Environmental Protection Act to discontinue the state operating permit requirement for direct dischargers required to obtain an NPDES permit. This will eliminate unnecessary duplication because an NPDES permit serves essentially the same purpose as a state operating permit. The Board has modified its rules and regulations to conform to the changes required by the Federal Water Pollution Control Act Amendments of 1972 (FWPCA). Part of these regulations are currently in effect; the rest of the regulations have been adopted and filed with the Secretary of State in accordance with Illinois law, and will become effective once the Agency is authorized by the Administrator to administer the NPDES permit program.

An overall view of the procedures for the processing of NPDES permits is shown on page 24. The detailed description of these procedures, with reference to Chapter 3 of the Board's regulations, is as follows:

1. Application forms will be provided by the Agency and will include the same information the NPDES application required on forms promulgated by USEPA. In addition, the Agency may require additional information, if necessary to determine whether the discharge will be in compliance with applicable requirements, as provided by Rule 902. Copies of all permit forms to be used by the Permits Section of the Division of Water Pollution Control, including those used in the NPDES program, are included in Appendix J.

2. The application is logged in by the Agency, assigned a log number, and assigned to a review engineer in the Permits Section.

3. Applications will, under normal circumstances, be processed on a first-in, first-out basis. Applications from major dischargers and other significant new sources may be processed out of order, or changes may be made to accommodate requests for public hearings.

4. The application is then reviewed to determine:

- a. Whether the appropriate applications have been submitted, as required by 40 CFR Section 124.21.

- b. Whether any additional information is required under Rule 902(a).

c. Whether the signatures are in accordance with 40 CFR Section 124.24 and Rule 902(h).

d. Whether any other data is needed from the applicant or if a site visit is needed (Rule 903).

If all required information was not received, the reviewing engineer will request the additional information or arrange for a site visit. If the applicant refuses to submit additional information, the permit will either be issued on the basis of the information currently before the Agency or will be denied, and the applicant so notified (Rule 903).

5. Once the review described above has been completed, and the application is determined to be administratively complete, a copy of the application will be sent to the District Engineer of the appropriate district of the U.S. Corps of Engineers in accordance with Rule 904. The Agency reviewing engineer will then ascertain whether the following determinations can be made concerning the proposed permit:

a. That the discharge, if in compliance with the conditions of the proposed permit, will be in compliance with 40 CFR Section 124.42, which sets forth the federal requirements establishing the terms and conditions of NPDES permits, including effluent limitations, standards of performance, toxic and pretreatment requirements, requirements arising from planning decisions, and requirements arising from the imposition of state standards, which may be stricter than federal standards. The full list of terms and conditions which may be included in an NPDES permit appears in Rule 910.

a. The draft permit will be prepared in accordance with Rule 910. Effluent limitations will be established in accordance with 40 CFR Sections 124.42, 43, 44 and 45. Forms are shown in Appendix J.

b. The public notice will be prepared in accordance with 40 CFR Section 124.32 and Rule 906 (See Appendix B).

c. The fact sheet, when required, will be drafted in accordance with 40 CFR Section 124.33 and Rule 907 (See Appendix B).

8. The permit documents will be printed, and the mailing list will be determined.

9. After printing, the permit documents will be mailed to the USEPA and all other persons and government agencies as required in Rules 906, 907, and 908 and 40 CFR Sections 124.32, 33 and 34.

10. Following public notice, thirty days will be given for receipt of public comments (Rule 906(b)). However, 90 days will be allowed for the receipt of comments from USEPA for treatment works in classes and categories for which review has not been waived in accordance with Section 402(d)(3) of the FWPCA.

11. Following the close of the comment period all comments will be reviewed. If a permit is requested which would violate Rule 902(j), the permit will be denied. If changes are made based on comments received, another draft permit will be prepared, public notice of the revised proposed permit will be issued if the changes are significant, and unless the Regional Administrator has waived his right to object to issuance, the revised proposed permit will be sent to USEPA for comment prior to issuance.

12. If the Agency determines that there is a significant degree of public interest in a proposed permit or group of permits, the Agency will hold a public hearing in accordance with Rule 909 and 40 CFR Section 124.37.

13. If after the public hearing the draft permit is changed, a copy of the proposed permit will be sent to the USEPA prior to issuance. If objection is made by USEPA, the permit will be changed to take into account the objections. This procedure will be followed until the Regional Administrator waives his right to object to issuance as provided in Section 402(d)(3) of the FWPCA.

14. If objections are made during the comment period or if changes are made to the permit based on receipt of the comments from the public, the draft permit will be changed as necessary to reflect significant objections and then issued. If no public comments are received during the 30-day comment period, the permit will be issued as drafted.

15. Appeals of Agency NPDES permit decisions are subject to the provisions of Rules 911 and 912 of Chapter 3 and Rule 502(b) of the Board's Procedural Rules. An applicant may appeal a permit denial or a permit condition to which he objects by filing with the Clerk of the Board a petition for review of the Agency's action. Any person, other than the applicant, who participated in or requested a public hearing concerning the issuance or denial of an NPDES permit may also contest the final decision of the Agency by filing a petition with the Clerk in the same manner as the applicant. The effective date of a permit denial or grant is the date the Agency takes final action with regard to the permit application. That effective date will remain the same until changed by appropriate order of the Pollution Control Board or a court of competent jurisdiction.

16. Any person, including the Agency, whether or not that person has participated in the proceedings related to the original issuance of the permit, may file a complaint before the Board seeking modification, suspension, or revocation of the permit for "cause," in accordance with Rule 912 of Chapter 3, Water Pollution, and Part III of Chapter 1, Procedural Rules, of the Board. "Cause" includes but is not limited to the following:

- a. Violation of any term or condition of the permit;

b. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or

c. A change in any circumstance that mandates either a temporary or permanent reduction or elimination of the permitted discharge.

17. Except for issuance of permits to those classes of dischargers for which the Regional Administrator has waived his right to object, a permit which is modified by the Agency pursuant to a Board order will be submitted by the Agency to USEPA for comment before it is issued, as required by Section 402(d) of the FWPCA. (See Appendix E, page 6).

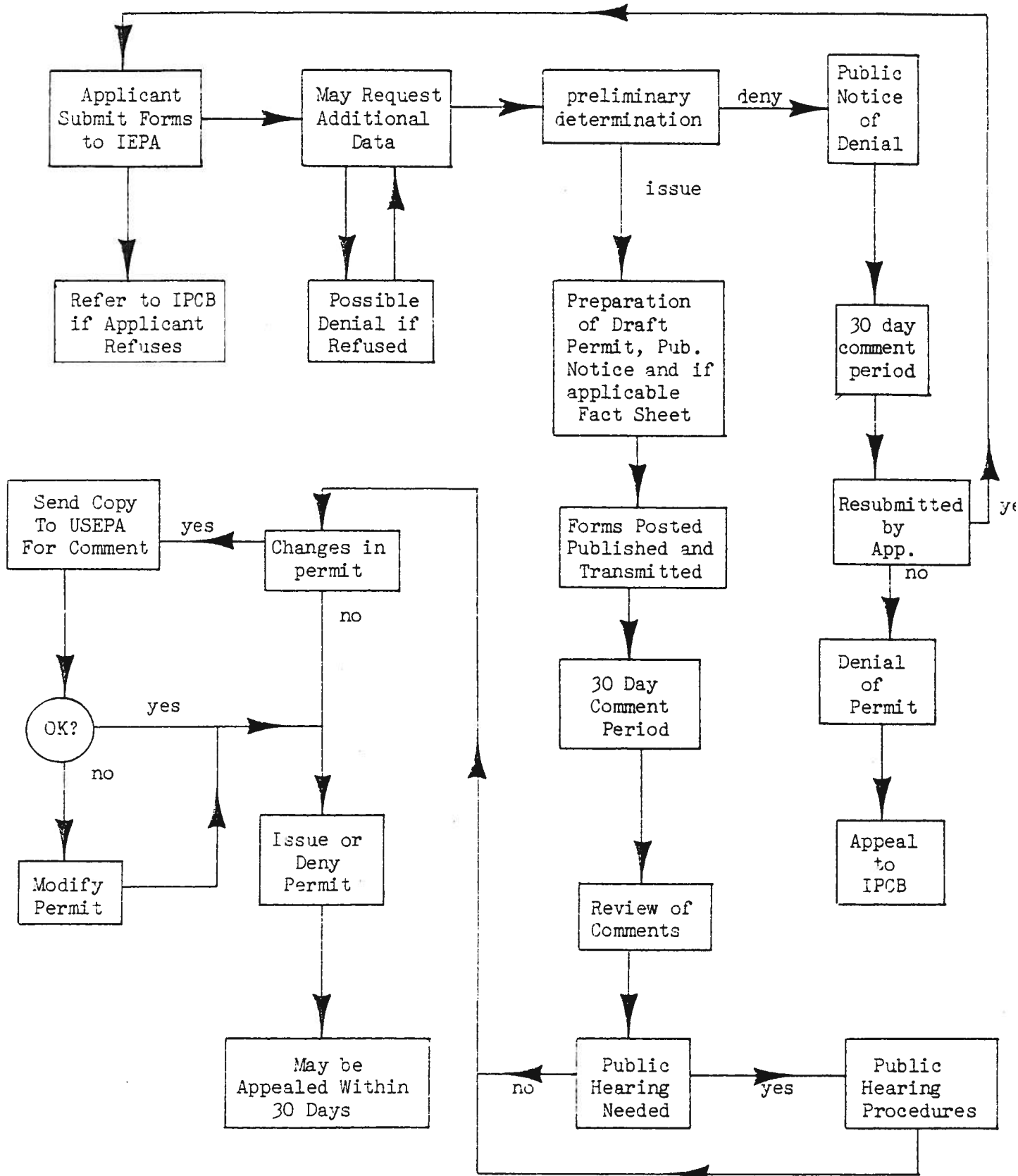
Special conditions will be included in NPDES permits as necessary to provide that the requirements of state and federal law are met. Standard conditions will be included in all permits as shown in Attachment H to the NPDES permit form, as included in Appendix J.

All NPDES permit issuance activities will be conducted in accordance with the following priorities:

1. Discharges endangering public health
2. Expiring major discharge permits
3. Significant modifications to major discharge permits
4. New major discharge permits

5. Expiring minor discharge permits
6. Significant modifications to minor discharge permits
7. New minor discharge permits
8. Other modifications
9. Termination of permits

NPDES FLOW CHART



OTHER PERMITS

The Agency will continue to issue permits for sewers, lift stations, certain pretreatment works and any treatment works or wastewater sources in the State which do not require NPDES permits. These will be handled by the same staff that issues the NPDES permits. Regulations governing the issuance of non-NPDES permits for the purpose of water pollution control are included as subpart B of Part IX of Chapter 3. The forms and instructions for application for these permits are also shown in Appendix J.

PUBLIC INSPECTION OF PERMIT DOCUMENTS

Permit applications, supporting material, fact sheets, proposed and issued permits, quarterly reports of noncompliance, and other documents generated in the NPDES program are available to the public for inspection and copying in accordance with the Agency's policy on inspection and copying of documents (Appendix L). For local planning commissions working on areawide plans information will be provided without charge by the Agency to assist those commissions in their planning activities. Most NPDES documents will be available for public inspection and copying both at the regional offices and at the Agency's Springfield headquarters.

THERMAL DISCHARGES

A special provision to implement 40 CFR Part 122, Thermal Discharges, which sets forth the procedure prescribed by Section 316(a) of the FWPCA, is contained in Rule 410(c) of Chapter 3. Rule 410(c) allows the Board to determine that an alternative thermal standard, other than that found in 40 CFR Part 122 and Chapter 3, should apply to a particular thermal discharge.

The concept of reviewing the effect of a thermal discharge on a receiving stream is not a recent addition to the Board's Water Pollution Regulations. Rule 203(i)(5), which became effective on April 7, 1972, requires that owners or operators of a source of heated effluent which discharges 0.5 billion BTU per hour or more demonstrate in a hearing before the Board that the discharge from that source has not caused and cannot reasonably be expected to cause a significant ecological damage to the receiving waters. Upon failure to prove the above, the Board will order that appropriate corrective measures shall be taken. The Agency proposes that the demonstration requirements found in 40 CFR Part 122 and the supporting technical documents be utilized in the determination of an alternative thermal standard pursuant to Rule 410(c) and Rule 203(i)(5).

III.

MONITORING COMPLIANCE WITH PERMIT CONDITIONS

The objectives of the Illinois NPDES permit compliance monitoring program are (1) to insure that all dischargers or potential dischargers to the waters and boundary waters of the State are in compliance with all applicable state and federal laws, statutes, and regulations, and with the conditions established by the discharger's NPDES permit; and (2) to communicate with the dischargers, to explain and clarify the monitoring and reporting conditions of NPDES permits and the compliance requirements of state and federal statutes, and to provide technical assistance to dischargers through training and certification programs for wastewater treatment plant operators.

A Compliance Monitoring Unit will be established within the Division of Water Pollution Control Field Operations Section. This unit will be located in the Springfield office. It will be responsible for evaluating and tracking discharge monitoring reports, compliance schedule reports, and industrial users and pretreatment reports from dischargers. Notices to dischargers who have failed to adequately report or dischargers who have reported violations will originate from the Compliance Monitoring Unit. Whenever feasible from an economic standpoint, telephone calls will be utilized to remind dischargers of reporting requirements. The Compliance Monitoring Unit will be the repository of all reports required by NPDES permits. For purposes of carrying out its duties of sorting and screening reports and contacting dischargers regarding reports, the Compliance Monitoring Unit will maintain necessary records, work sheets, files and logs.

The Illinois NPDES compliance monitoring program will utilize as input information obtained from six sources: (a) public monitoring (citizen complaints); (b) the discharger's self-monitoring activities and reports; (c) Agency data as derived from Agency grant, permit and enforcement activities; (d) Agency monitoring of central files and records; (e) contacts with treatment plant operators in training and certification activities; and (f) Agency monitoring of chemical and biological parameters through field surveillance.

Public Monitoring

Public monitoring of NPDES permit holders is conducted both by those living in the immediate vicinity of the discharger and by environmental organizations. These two groups report their findings to the Agency and to other administrative agencies through citizen complaints.

Citizen complaints received or referred to the Agency are recorded and, if initial review indicates a complaint of substance, the complaint is sent for investigation to the supervisor of the appropriate Agency regional field office. (A list of the regional supervisors, including addresses and telephone numbers, and a map showing the territories covered by each of the regional offices, appears on page 30 of this submission.) The same procedure is followed for written complaints, telephone calls, and personal visits by complainants.

On occasion, the citizen complaints are received directly by a regional office. These complaints are recorded in the regional office.

**ILLINOIS
ENVIRONMENTAL PROTECTION
AGENCY (EPA)**

**DIVISION OF
WATER POLLUTION CONTROL (DWPC)**

REGIONAL OFFICES

Region 1

Mr. Harris Chien, Manager
Illinois EPA-DWPC Region 1
4302 North Main Street
Rockford, Illinois 61103

Region 2

Mr. Benn Leland, Manager
Illinois EPA-DWPC Region 2C
1701 First Avenue
Maywood, Illinois 60153
(Tel. 312/345-9780)
He is in after 8-1-77

Region 3C

Mr. Kenneth Baumann, Supervisor
Illinois EPA-DWPC Region 3C
2125 So. First Street
Champaign, Ill. 61820
(Tel. 217/333-8361)

Region 3P

Mr. Kenneth Merideth, Supervisor
Illinois EPA-DWPC Region 3P
5415 North University
Peoria, Illinois 61614
(Tel. 309/691-2201)

Region 3S

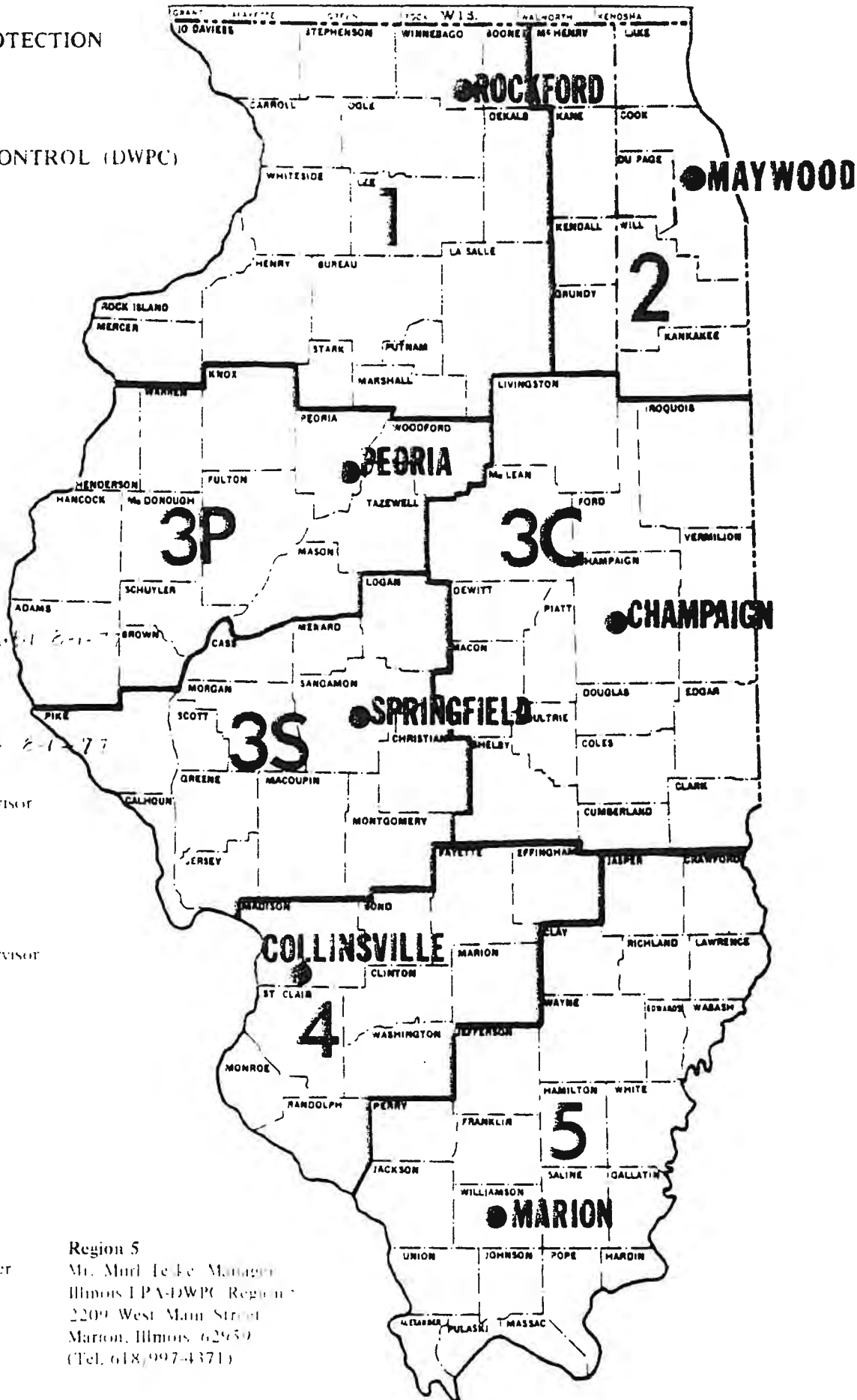
Mr. John Forneris, Manager
Illinois EPA-DWPC Region 3S
4500 South Sixth Street Road
Springfield, Illinois 62706
(Tel. 217-786-6892)

Region 4

Mr. Robert Schleuger, Manager
Illinois EPA-DWPC Region 4
117 West Main Street
Collinsville, Illinois 62234
(Tel. 618/345-6220)

Region 5

Mr. Murl Le Fe, Manager
Illinois EPA-DWPC Region 5
2209 West Main Street
Marion, Illinois 62959
(Tel. 618/997-4371)



**ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY**

WATER POLLUTION CONTROL REGIONS

**SURVEILLANCE PERSONS ASSIGNED
DUTY AS LIVESTOCK WASTE
MANAGEMENT PERSONNEL**

- I Ron Mills
4302 North Main Street
Rockford, Illinois 61103
Phone: 815-987-7576

- II Robert C. Taylor
1205 Intercontinental Center
1701 First Avenue
Maywood, Illinois 60153
Phone: 312-345-9780

- IIIP Lyle A. Ray
5415 North University
Peoria, Illinois 61614
Phone: 309-691-2200 Ext. 564

- IIIS Bruce Goff
4500 South 6th Street Road
Springfield, Illinois 62706
Phone: 217-786-6892

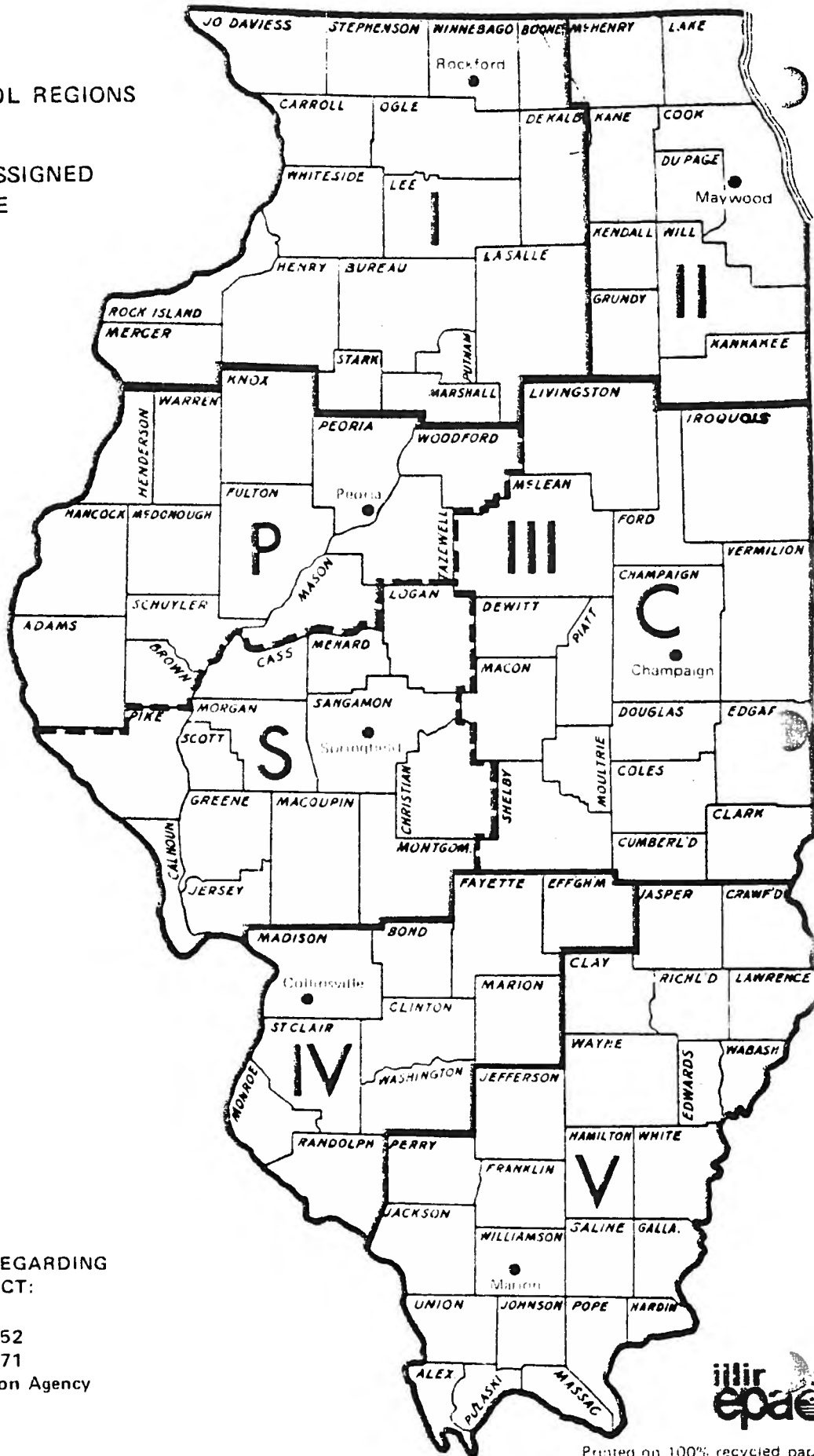
- IIIC Richard A. Ryczek
2125 South First Street
Champaign, Illinois 61820
Phone: 217-333-8361

- IV Kenneth F. Hammer
117 West Main Street
Collinsville, Illinois 62234
Phone: 618-345-6220

- V Byron Marks
2209 West Main Street
Marion, Illinois 62959
Phone: 618-997-4371

**FOR GENERAL INFORMATION REGARDING
FEEDLOT REGULATIONS CONTACT:**

James F. Frank – 217/782-2752
 Ron Elliott – 217/782-6171
 Illinois Environmental Protection Agency
 2200 Churchill Road
 Springfield, Illinois 62706



Investigation of citizen complaints against NPDES permittees is conducted in the same manner as investigation initiated by the Agency. The type of investigation is determined by the regional supervisor. In general, if a periodic full compliance monitoring inspection has been recently completed or is not scheduled for some time to come, a reconnaissance survey will be conducted to check on the specific complaint.

The investigations conducted in response to citizen complaints are focused on the quality of the effluent and its compliance with the NPDES permit and on the status of the improvements, if any, required by the NPDES compliance schedule. The results of the investigation are recorded and utilized in a report or response to the complainant.

The handling of apparent violations which may be uncovered during investigations of citizen complaints is in accord with the Agency's NPDES enforcement program. (See Section IV). In general, following the inspection, an informal letter and a copy of the inspection report are sent to the discharger. If a periodic compliance monitoring inspection has recently been completed, the report of that inspection will also be included. If the letter reports an apparent violation, Form 1A or 1B will be used (Appendix K).

Self-Monitoring by the Discharger

Discharger self-monitoring will consist of three elements:

1. The discharge monitoring report (DMR),
2. The compliance schedule report, and
3. Any other special reports which may be required by the terms of the permit.

The discharge monitoring report is completed by the discharger and is based on its measurement of flow and laboratory analyses of effluent, as required by its NPDES permit. The report is submitted on forms (USEPA Form 7-40, or as revised) furnished by the Agency. For most dischargers, these reports are to be compiled monthly and mailed quarterly to the Compliance Monitoring Unit and to the USEPA regional office. For the USEPA-Agency agreed list of major dischargers, the permit will require that these reports be mailed monthly to the Agency's Compliance Monitoring Unit in Springfield and quarterly to the USEPA, so that prompt action may be taken on reported violations. This agreed list appears in each year's Program Plan and the current list appears in Appendix G.

The DMRs are reviewed for accuracy and reliability, and for indication of violations. Violations are detected through comparison of the report with a master file for each discharge of NPDES conditions and effluent requirements. A separate master file of violations reported in DMR's serves as a record of the reports until electronic data processing (EDP) support becomes available. It will provide a brief historical summary of instances of noncompliance with measured parameters. It will be kept for the period of time required by the Federal law and is available for public inspection.

When EDP support becomes available, the reports will be keypunched at least quarterly and returned to the regional office for filing. The EDP system will be used to generate quarterly noncompliance reports to the USEPA, for managerial control purposes, and to allow follow-up in cases of missing or inadequate DMR's. Until EDP is available, a manual system will be used for these purposes.

Whether a manual system or an automated system is in use, a form letter (compliance inquiry) will be the normal first step used to investigate and resolve instances of DMR non-reporting by dischargers or the reporting to the permittee of effluent discharge violations noted in the DMR's or both. If a compliance monitoring survey is required, one is made by regional staff. These visits also may be used to give instruction on DMR reporting mechanics, laboratory analyses, or operation of the plant itself.

Review of DMR's from the list of major dischargers will be given special attention. These dischargers will be required to submit monthly rather than quarterly reports, and this requirement will be included as a condition of the permit. These DMR's will be evaluated monthly upon receipt and if an apparent violation is found, either an inquiry letter will be mailed within five days of discovery of the violation; or, if there have been other violations, other appropriate enforcement action will be taken in accordance with the procedures described in Part IV of this submission and Appendix E (the Memorandum of Agreement).

When DMR's are not received from a discharger when due, Form 1-C (Appendix K) (request for DMR) will be sent. When a DMR has been received, and the Agency decides to notify the discharger of noncompliance indicated in the report, Form 1-B (Appendix K) may be sent. Any DMR may be transmitted from the central office to the regional office with a request for an investigation prior to enforcement action.

Discharger reports of compliance with permit compliance schedules are sent to the Agency's Springfield office. The regional office serves as a second information source, to confirm the accuracy of discharger reports, and as an investigative arm.

Compliance schedule reports sent to the Agency are reviewed for completeness and for possible violations. If the report is incomplete, an inquiry letter is sent to the discharger in order to complete the report and to ascertain reasons for the incompleteness. A copy of the inquiry is sent to the regional office for addition to the regional master file on violations.

Agency Data

The Agency's Division of Water Pollution Control's Grants and Permits Sections and the Enforcement Programs Division maintain contact with the Compliance Monitoring Unit through the copying or forwarding of data pertaining to compliance schedules.

Agency Monitoring of Central Files

The Compliance Monitoring Unit has established a manual tickler file, in which compliance schedule requirements for each permit are entered as received. From this file a monthly report of compliance schedule status is prepared for use in sending out inquiries in case of missing or inadequate compliance schedule reports, or in taking further enforcement action, in accordance with the procedures described in Part IV, Enforcement.

The Permits Section will include with new NPDES permits a package of preprinted compliance schedule event reporting forms which

the permittee will complete and return as required by the permit. Copies of the completed forms returned by permittees will be kept in Springfield and in the appropriate regional offices.

If the report shows an apparent violation, a compliance inquiry (Form 1-E, Appendix K) is usually sent to determine the reason. More stringent enforcement may of course be taken. If an adequate explanation is not provided in response to the compliance inquiry, Form 1-F may be sent or Enforcement Programs is notified so that further enforcement steps may be taken. Enforcement is coordinated with the regional supervisors to enable concurrent action on all NPDES permit violations, some of which may not be apparent from the reporting systems.

Training and Certification Activities

The Operator Certification and Training Unit maintains operator certification files which are utilized to monitor both the individual operator's certification status and the certification status at wastewater treatment facilities. Although records are updated on an ongoing routine basis, the files are audited periodically by direct contact with the operator or treatment facility.

The unit coordinates and cooperates with field personnel in monitoring and enforcement activities. The Grants Section is also informed of the certification status at specific treatment facilities to the extent that information applies to final grant inspections and payments.

Through coordination of certification records and workforce analysis activities, the development and administration of certification examinations, the evaluation of certification procedural rules and policies, and the development and carrying out of training activities are facilitated.

Agency Compliance Monitoring

The Agency's own activities in monitoring of compliance include water quality monitoring, effluent monitoring, and facilities inspections.

Water quality is monitored for chemical, biological, and physical characteristics of the waters through the use of 226 fixed monitoring stations. Biological surveys are also used for this purpose. The biological surveys are generally of an investigative nature with locations selected to support an enforcement activity or to verify chemical data and to measure the results of treatment improvements. To the extent that they are available and helpful, biological surveys may also be used in support of basin planning activities.

The fixed station network is maintained by the Field Operations Section of the DWPC. The stations are usually sampled monthly by technicians. The samples are collected and analyzed in Agency laboratories with the results of the analyses reported to the regional offices. Regional staff review the data for compliance with water quality standards. They may in this way detect changes which can be attributed to a specific discharger. When water quality degradation appears which can be traced to an identifiable discharger, additional investigation, such as a reconnaissance survey of the facility, may be conducted.

The biological surveys, while generally conducted for purpose of water quality monitoring, may occasionally result in detection of violations for specific discharges. Violations noted through biological surveys are subject to enforcement procedures in the same manner as other violations.

The Agency also operates an effluent sampling program to supplement the water quality monitoring program. The samples of effluent from principal pollutant point source discharges are collected and reviewed together with DMR's. Occasionally samples collected by a discharger will be split and analyzed concurrently by the discharger and the Agency.

The Agency operates four laboratories -- in Chicago, Champaign, Springfield, and Marion -- at which effluent and water quality samples are analyzed in accordance with the procedures mandated by 40 CFR 136 and any amendments adopted pursuant to Section 304 (g) of Public Law 92-500.

Agency laboratory procedures include comprehensive quality assurance and quality control programs, including the use of spike samples, split-sample analyses with USEPA and discharger laboratories, and other procedures. Special care is taken to maintain tight control over sample identities and chain of custody so that problems are not encountered in use of laboratory results in enforcement.

The reports of analyses are submitted to the regional supervisors for review and included in reports made to dischargers and responses to citizen complaints, as well as for enforcement. By comparing the laboratory data with effluent requirements as stated in the NPDES permits, detection of effluent violations and the triggering of further compliance activity are possible.

The Agency believes that all violations shown on self-monitoring reports should be subject to enforcement action. However, the facility inspection is also an important monitoring tool leading

to enforcement action. The facility inspection may be of two types, the reconnaissance survey and the complete compliance monitoring inspection.

The reconnaissance survey is conducted for a specific purpose: to review a specific problem which may have been detected by effluent monitoring, citizen complaint, or water quality monitoring, or by request of the discharger. Requests from the discharger often result in the Agency's providing specific recommendations to correct a violation.

The compliance monitoring inspection is a thorough inspection and review of the discharger's facility and includes a review of the Agency's effluent sampling data and the discharger's self-monitoring reports, and a complete engineering inspection of treatment units and waste handling systems.

Priorities for conducting facility inspections and for determining the necessity for enforcement surveys are set annually during the program plan process, as required by 40 CFR 35, subpart B.

The reconnaissance survey is utilized to provide continuing communication with dischargers during periods between compliance monitoring inspections. Major emphasis is on determining compliance with the discharger's NPDES permit or to determine, in some cases, whether the discharger holds or has applied for an NPDES permit.

The results of all surveys are reported to the discharger. If the reports show an apparent violation, a compliance inquiry is sent (Form I-A or I-B, Appendix K). The report may also include Agency recommendations and other information.

The information describing compliance or noncompliance with NPDES requirements which is obtained from facility inspections is recorded on a compliance status report and reviewed by the regional supervisor and an Agency technical advisor at the monthly enforcement conference as described in Section IV.

The conduct of compliance monitoring inspections is a coordinated effort with USEPA in Chicago so that the resources available in that office may be utilized to gain the best possible coverage of Illinois facilities. To this end, a standard inspection report form will be utilized when conducting these surveys. Survey reports are exchanged between USEPA in Chicago and the Agency as the surveys are conducted. Agency copies of inspection reports are kept on file both in the appropriate regional office and in Springfield.

Compliance status reports are prepared monthly and quarterly by Regions in cooperation with technical advisors, as described in Part IV. The quarterly report includes information such as the status of major dischargers currently in violation of any discharge limits or schedule dates, bypass notifications, industrial users and pretreatment reports, as well as other required information. The quarterly report is to be assembled and forwarded to the Compliance Monitoring Unit office by the 12th of the month following the end of the quarter; and to USEPA, Region V, by the 20th of the month.

ENFORCEMENT OF NPDES PERMIT REQUIREMENTS

The Illinois NPDES enforcement program will ensure that all discharges to the waters of the State comply with all terms and conditions of NPDES permits issued to the dischargers and with all applicable state and Federal statutes and regulations.

Section 12(f) of the Illinois Environmental Protection Act prohibits any person from causing, threatening or allowing the discharge of any contaminant into the waters of the State without an NPDES permit or in violation of any term or condition of such permit. Section 12(f) also provides that an NPDES permit issued by the Administrator of the USEPA is deemed to be a permit issued by the Agency. It is the intent of the Agency that all violations of permit conditions be pursued with an appropriate enforcement remedy until compliance is achieved.

The organizational elements of the Illinois NPDES permit enforcement program include the Field Operations Section of the Division of Water Pollution Control, the Enforcement Programs Division and the Office of the Attorney General.

The regional managers of the Field Operations Section are responsible for initial informal contacts where apparent violations are discovered resulting from inspections. Such action will normally consist of sending a compliance inquiry to the discharger (See Forms 1A-1F, Appendix K) and determining the adequacy of the response.

If the regional manager receives no response to a compliance inquiry within the specified time limit, if the response is in any way unsatisfactory, or if a compliance inquiry is inappropriate, a staff member of the Enforcement Programs Division, in cooperation with the regional manager, determines the nature of further action to be taken. This staff person is referred to as a technical advisor under the Personnel Code of the State of Illinois. In all cases these "technical advisors" are attorneys licensed to practice law in Illinois.

The Enforcement Programs Division includes eight technical advisors as well as clerical staff assigned to support the Division of Water Pollution Control. Of this staff, five are assigned specifically as advisors to the five regional managers. A compliance status report (Form 2, Appendix K) is prepared monthly at each regional Office, and is reviewed at a monthly meeting between the regional manager, his staff, and the technical advisor assigned to the region. These meetings are held at the regional offices where complete files on each discharger's history are available.

At the monthly regional conference, violations, including DMR violations and violations of compliance schedules, will be considered for referral for legal action in accordance with established priorities and available resources.

If further investigation is necessary or desirable to establish the existence or extent of a violation, the technical advisor provides definite guidance on the information to be obtained.

At the conclusion of the monthly regional enforcement meeting, the regional manager completes the monthly compliance status report to show the actions undertaken. Copies of this report are maintained in Springfield headquarters and reviewed regularly by the manager of Enforcement Programs and the division manager.

As soon as a decision is reached to take enforcement action, the Enforcement Programs Division opens an Agency enforcement file and assigns the file to an Agency technical advisor who is usually assigned to the region in which the violation occurred.

The technical advisor supervises any additional investigations which may be conducted to improve the quality of proof of the violations being charged or to secure proof of continuing or additional violations.

In order to assure management control over the NPDES permit enforcement program, the Enforcement Programs Division prepares a monthly report of the enforcement status of all violators against which enforcement action is being taken.

The monthly compliance status report and the monthly enforcement status report, as well as the quarterly report of violations prepared by the Agency pursuant to 40 CFR 124.44 (c) and PCB Rule 910 (h)(5), are public documents. The compliance status reports will be available for public inspection in the Agency's Springfield headquarters and in the originating regional offices; the enforcement status reports are available from the Enforcement Programs Division in Springfield and Maywood; the quarterly report will be available for public inspection in the Agency's Springfield and Chicago offices.

On determination that an enforcement case should be prosecuted, the case file is presented to the Manager, Enforcement Programs Division for review and approval by the Director. After approval, the enforcement case is referred to the Chief of the Environmental Control Division of the Illinois Attorney General's office, who assigns an assistant attorney general to prosecute the case.

If the Agency and the assistant attorney general agree that the evidence is sufficient to sustain the alleged violations, a complaint is drafted, approved by the Director, and filed. The Attorney General's office represents the Agency in all subsequent litigation in the matter.

If a permittee requests modification of the terms or conditions of a permit (including a schedule of compliance), the Agency may make such a modification within the limits established by applicable state and federal statutes and regulations. Modification of a schedule of compliance must be consistent with Rule 913 of the Board's regulations, which limits the total of any extension or series of extensions of a schedule of compliance to 90 days beyond the original final compliance date. Further extensions require a variance from the Board, as stated in Rule 914 of Chapter 3 of the Board's regulations.

If a discharger seeks modification of a permit condition which would require an exemption from Board-adopted regulations (other than compliance dates) a variance is also required and can be granted only within the limits of the applicable federal law and regulations (Rule 914).

Variations will be granted by the Board, pursuant to Title 9 of the Environmental Protection Act, only on the basis of arbitrary or unreasonable hardship, and the burden of proof rests with the petitioner for variance. The procedures governing variance proceedings appear in Part IV of the Board's Procedural Rules (Appendix B of this submission). Until the Administrator waives his right of review of NPDES permits in Illinois, as provided in Section 402 (e) of the FWPCA, an NPDES permit which is modified as the result of a Board order in a variance proceeding will be subject to review by USEPA, as provided by Section 402(d) of the FWPCA.

In all cases in which the discharger proposes a permit modification which requires a variance, if the discharger and the Agency can arrive at an agreement on an appropriate modification, that agreement will be presented to the Board either in the Agency's recommendation or in a proposed agreed order. The "agreed order" approach may also be used if a permit is to be modified as the result of the decision in an enforcement proceeding.

Permit modifications not requiring Board orders (e.g., extensions of schedules of compliance for less than 90 days, or monitoring, sampling or reporting requirements) may be made by Agency action. In such cases, the appropriate regional manager, assigned technical advisor, and Permit Section engineer will participate in the decision. The Agency will issue public notice and reissue the modified permit as if it were a new permit.

Until the Regional Administrator waives his right to object to the issuance of permits in Illinois, in accordance with Section 401(d) (3) of the Federal Water Pollution Control Act Amendments of 1972, proposed modified permits will be submitted to USEPA before issuance, in accordance with the regulations and the Memorandum of Agreement (Appendix E).

There are special statutory provisions in the Environmental Protection Act which provide additional remedies in the case of violations which may result in "circumstances of substantial danger to the environment or to the public health of persons or to the welfare of persons where such danger is to the livelihood of such persons." (Section 43).

In such cases, the Act provides that the State's Attorney or the Attorney General, upon request of the Agency or on his own motion, may institute a civil action for an immediate injunction to halt the discharge or other activity causing or contributing to the danger or to require such other action as may be necessary.

Cases of this type will be referred to the Attorney General's office without regard to the procedural steps described in this submission. Telephone clearances and approvals will be made, in accordance with the Agency's emergency procedures, which have been approved by USEPA as part of the Agency's water pollution control program plan as required by Section 106(a)(2) of the FWPCA. The Region V office of USEPA will also be promptly notified of all such actions so that it may take action under Section 504 of the FWPCA.

In addition to the injunctive relief provided by Section 43 of the Act, the Agency possesses the authority, under Section 34 of the Act, to seal any equipment or facility which is contributing to an emergency condition which creates an immediate danger to health. Provision is made for a hearing before a Board member and a qualified hearing officer, or for injunctive relief to determine whether the seal should be removed.

The Agency's Division of Water Pollution Control has not found it necessary to utilize the provisions of Section 34 and does not anticipate doing so in the course of administering the NPDES program. However, no problems are expected if circumstances should arise in which a Section 34 seal is the appropriate remedy.

The Agency, in cooperation with representatives of Region V, has developed a system of enforcement priorities which will enable it to carry out an enforcement program with the maximum environmental impact and deterrent effect possible with the resources at its command.

1. Those which cause imminent danger to public health;
2. Major dischargers (those which appear on the list in Appendix G) which do not meet the compliance schedules included in their permits or do not provide progress reports as required;
3. Major dischargers which do not meet the effluent limitations (either interim or final limitations) which are included in their permits or do not provide self-monitoring reports as required;

4. Other significant dischargers (those in the size range immediately below the major dischargers or those with problem discharges) which do not meet or properly report on compliance schedule requirements;
5. Minor dischargers which do not meet effluent limitations or provide self-monitoring reports as required;
6. All others.

An effective enforcement tool against municipal dischargers that will augment NPDES compliance activities is the sanitary sewer extension ban. Authority to impose sanitary sewer extension restrictions is provided by Rule 604 of Chapter 3 of the Board's Regulations.

Under this rule, the Agency imposes partial or complete restriction on new sewer extensions in a community when the publicly owned treatment works approaches or exceeds its design capacity. The Agency may also impose sewer extension restrictions on a publicly owned treatment works if its effluent does not meet applicable limits even though it may have not reached its design capacity.

All of the organizational elements are in place to carry out the described enforcement program, and the funding expected from State appropriations as augmented by federal grants is expected to be fully adequate to do so.

V.

FUNDING AND MANPOWER

Table 1, page 49, sets forth the resources and manpower which the Agency proposes to use to administer the NPDES program during a twelve month period. Table 2, page 51, details the 1978 budget (by line item) of the Division of Water Pollution Control, which has the major responsibility for the program.

During the initial shakedown of the administration of this program some of the manpower requirements will be provided by contractual help. The number of people to be on contract is not included in this budget analysis.

Table 3, page 52, details the number of positions, personnel code classifications, and estimated time of each person, for each position with NPDES related responsibilities. Further details concerning the qualifications requested for each position title are set forth in Appendix I.

TABLE 1

FY 78 BUDGET FOR NPDES PROGRAM ADMINISTRATION

<u>Cost</u>	<u>Permanent Headcount</u>	<u>Budget Amount</u>
<u>Division Direct</u>		
Field Operations Section	50.3	\$1,012,019
Permits Section	15.7	302,082
Variance Section	4.65	103,102
Enforcement	9.66	190,215
<u>Division Indirect</u>		
Division Manager's Office (including Records Unit)	6.0	220,328
Word Processing	2.0	28,655
<u>Division Total</u>	88.9	1,856,401
Federal Funds		869,661
General Revenue Funds		986,740
<u>Other Agency Direct</u>		
Division of Laboratory Services	24.1	570,360
Division of Information Systems	5.0	51,200
Office of the Manager of Environmental Programs	.25	6,000

Agency Indirect

Computed at a rate of 15.5%

385,313

Agency Total

32,868,974

Table 2

Division of Water Pollution Control

Line Item Summary

	State General Revenue Funds	Federal 106 Grant Funds	Total
Personnel Services and Fringe Benefits	\$762,685	\$697,621	\$1,460,306
Contractual	86,723*	165,131	251,859
Travel	64,563	-	64,563
Commodities	3,395	4,252	13,147
Equipment	2,500	2,657	5,157
Operation of Auto Equipment	10,974	-	10,974
Telecommunications	50,395	-	50,395
Total	\$986,740	\$869,661	\$1,856,401

* Includes occupancy charges

Other state agencies and branches of government have budgeted funds and effort to support the water pollution control effort and therefore support the NPDES program administration. The major contributing agencies or branches of government include the Attorney General's Office, the Pollution Control Board, the Institute for Environmental Quality, the Department of Mines and Minerals, the Department of Registration and Education, and the Department of Public Health. The amount of funds contributed by these governmental bodies toward the administration of an NPDES program cannot be readily or accurately determined; therefore, no representation is made in this application. Suffice it to state that their contribution is significant and continuous.

Table 3
NPDES Staffing

<u>Section</u>	<u>Pos. Title</u>	<u>No. of Positions Involved</u>	<u>No. of Man-Yrs Devoted to NPDES</u>
Mgrs. Office	EME I	1	.4
	EPE V	1	
	EPE IV	1	.6
	EPS IV	1	
	EPA	1	1.0
	Adm. Clerk	1	.2
	Clerk V	2	1.0
	Sec. I	1	.4
	CS III	1	.4
	CT III	1	1.0
	Clk III	2	.5
	Clk II	1	<u>.5</u>
			6.0
Var. & Tech.	EPE V	1	.35
Analysis	EPE IV	1	.1
	EPE III	2	2.0
	EPS III	1	1.0
	CT III	<u>1</u>	<u>.7</u>
		6	4.65

Enforcement	TA IV	2	1.33	
	TA III	3	3.0	
	TA II	3	2.0	
	TA I	1	1.0	
	LI II	1	.33	
	CS III	1	1.0	
	CS II	1	<u>1.0</u>	
			9.66	
Field	EPE VI	3	1.631	1.6
Operations	EPE V	6	3.311	3.3
	EPE IV	5	2.534	2.5
	EPE III	9	4.816	4.8
	EPE II	6	3.612	3.6
	EPE I	4	2.408	2.4
	EPS IV	1	1.0	1.0
	EPS III	5	3.408	3.4
	EPS II	5	2.408	2.4
	EPS I	6	2.408	2.4
	EPT II	6	4.18	4.2
	EPT I	5	3.35	3.4
	EPA	2	1.204	1.2
	AB IV	1	-	

AB III	2	-	
AB II	3	-	
AA I	1	.427	.4
Clerk IV	1	-	
CS III	6	3.437	3.4
CS II	2	1.204	1.2
CT III	4	2.806	2.3
CT II	6	3.408	3.4

<u>Section</u>	<u>Pos. Title</u>	<u>Nc. of Pos. Involved</u>	<u>Denoted NPDES</u>
Permits	EPE VI	1	.6
	EPE IV	5	2.95
	EPE III	6	2.68
	EPE II	6	2.95
	EPE I	6	2.94
	CS III	1	.6
	CT II	5	<u>3.0</u>
			15.7
Admin.	Clk V	2	1.0
Support			
Word	Corresp.	3	1.2
Processing	CT III	1	<u>.4</u>
			2.6
Unclassified			
Personnel			
brought from			
other Sections			2.3
			<u>2.9</u>
Total Staff			50.3

EME: Environmental Management Engineer
EPE: Environmental Protection Engineer
EPA: Environmental Protection Assistant
CS: Clerk Stenographer
CT: Clerk Typist
EPS: Environmental Protection Specialist
TA: Technical Advisor (at former)
LI: Legal Investigator (paralegal)
EPT: Environmental Protection Technician
AB: Aquatic Biologist
AA: Administrative Assistant

ATTACHMENT B

Environmental Protection Agency

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if you were discharging a secondary treatment effluent?

F. Establishment of a Monitoring Program [40 CFR 125.63]

1. (L,S) Describe the biological, water quality, and effluent monitoring programs which you propose to meet the criteria of 40 CFR 125.63. Only those scientific investigations that are necessary to study the effects of the proposed discharge should be included in the scope of the 301(h) monitoring program [40 CFR 125.63(a)(1)(i)(B)].

2. (L,S) Describe the sampling techniques, schedules, and locations, analytical techniques, quality control and verification procedures to be used.

3. (L,S) Describe the personnel and financial resources available to implement the monitoring programs upon issuance of a modified permit and to carry it out for the life of the modified permit.

G. Effect of Discharge on Other Point and Nonpoint Sources [40 CFR 125.64]

1. (L,S) Does (will) your modified discharge(s) cause additional treatment or control requirements for any other point or nonpoint pollution source(s)?

2. (L,S) Provide the determination required by 40 CFR 125.64(b) or, if the determination has not yet been received, a copy of a letter to the appropriate agency(s) requesting the required determination.

H. Toxics Control Program and Urban Area Pretreatment Program [40 CFR 125.65 and 125.66]

1. a. (L,S) Do you have any known or suspected industrial sources of toxic pollutants or pesticides?

b. (L,S) If no, provide the certification required by 40 CFR 125.66(a)(2) for small dischargers, and required by 40 CFR 125.66(c)(2) for large dischargers.

c. (L,S*) Provide the results of wet and dry weather effluent analyses for toxic pollutants and pesticides as required by 40 CFR 125.66(a)(1). (* to the extent practicable)

d. (L,S*) Provide an analysis of known or suspected industrial sources of toxic pollutants and pesticides identified in (1)(c) above as required by 40 CFR 125.66(b). (* to the extent practicable)

2. (S)a. Are there any known or suspected water quality, sediment accumulation, or biological problems related to toxic pollutants or pesticides from your modified discharge(s)?

(S)b. If no, provide the certification required by 40 CFR 125.66(d)(2) together with available supporting data.

(S)c. If yes, provide a schedule for development and implementation of nonindustrial toxics control programs to meet the requirements of 40 CFR 125.66(d)(3).

(L)d. Provide a schedule for development and implementation of a nonindustrial toxics control program to meet the requirements of 40 CFR 125.66(d)(3).

3. (L,S) Describe the public education program you propose to minimize the entrance of nonindustrial toxic pollutants and pesticides into your treatment system. [40 CFR 125.66(d)(1)]

4. (L,S) Do you have an approved industrial pretreatment program?

a. If yes, provide the date of EPA approval.

b. If no, and if required by 40 CFR part 403 to have an industrial pretreatment program, provide a proposed schedule for development and implementation of your industrial pretreatment program to meet the requirements of 40 CFR part 403.

5. Urban area pretreatment requirement [40 CFR 125.65] Dischargers serving a population of 50,000 or more must respond.

a. Provide data on all toxic pollutants introduced into the treatment works from industrial sources (categorical and noncategorical).

b. Note whether applicable pretreatment requirements are in effect for each toxic pollutant. Are the industrial sources introducing such toxic pollutants in compliance with all of their pretreatment requirements? Are these pretreatment requirements being enforced? [40 CFR 125.65(b)(2)]

c. If applicable pretreatment requirements do not exist for each toxic pollutant in the POTW effluent introduced by industrial sources,

—provide a description and a schedule for your development and implementation of applicable pretreatment requirements [40 CFR 125.65(c)], or

—describe how you propose to demonstrate secondary removal equivalency for each of those toxic pollutants, including a schedule for compliance, by using a secondary treatment pilot plant. [40 CFR 125.65(d)]

Subpart H—Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Act

§ 125.70 Purpose and scope.

Section 316(a) of the Act provides that:

“With respect to any point source otherwise subject to the provisions of section 301 or section 306 of this Act, whenever the owner or operator of any such source, after opportunity for public hearing, can demonstrate to the satisfaction of the Administrator (or, if appropriate, the State) that any effluent limitation proposed for the control of the thermal component of any discharge

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from such source will require effluent limitations more stringent than necessary to assure the protection [sic] and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made, the Administrator (or, if appropriate, the State) may impose an effluent limitation under such sections on such plant, with respect to the thermal component of such discharge (taking into account the interaction of such thermal component with other pollutants), that will assure the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on that body of water."

This subpart describes the factors, criteria and standards for the establishment of alternative thermal effluent limitations under section 316(a) of the Act in permits issued under section 402(a) of the Act.

§ 125.71 Definitions.

For the purpose of this subpart:

(a) *Alternative effluent limitations* means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under section 316(a) and this subpart.

(b) *Representative important species* means species which are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish and wildlife in the body of water into which a discharge of heat is made.

(c) The term *balanced, indigenous community* is synonymous with the term *balanced, indigenous population* in the Act and means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species and by a lack of domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modifications. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with section 301(b)(2) of the Act; and

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may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to section 316(a).

§ 125.72 Early screening of applications for section 316(a) variances.

(a) Any initial application for a section 316(a) variance shall include the following early screening information:

(1) A description of the alternative effluent limitation requested;

(2) A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;

(3) A general description of the type of data, studies, experiments and other information which the discharger intends to submit for the demonstration; and

(4) Such data and information as may be available to assist the Director in selecting the appropriate representative important species.

(b) After submitting the early screening information under paragraph (a) of this section, the discharger shall consult with the Director at the earliest practicable time (but not later than 30 days after the application is filed) to discuss the discharger's early screening information. Within 60 days after the application is filed, the discharger shall submit for the Director's approval a detailed plan of study which the discharger will undertake to support its section 316(a) demonstration. The discharger shall specify the nature and extent of the following type of information to be included in the plan of study: Biological, hydrographical and meteorological data; physical monitoring data; engineering or diffusion models; laboratory studies; representative important species; and other relevant information. In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards. After the discharger submits its detailed plan of study, the Director shall either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies

which the Director subsequently determines necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger may provide any additional information or studies which the discharger feels are appropriate to support the demonstration.

(c) Any application for the renewal of a section 316(a) variance shall include only such information described in paragraphs (a) and (b) of this section as the Director requests within 60 days after receipt of the permit application.

(d) The Director shall promptly notify the Secretary of Commerce and the Secretary of the Interior, and any affected State of the filing of the request and shall consider any timely recommendations they submit.

(e) In making the demonstration the discharger shall consider any information or guidance published by EPA to assist in making such demonstrations.

(f) If an applicant desires a ruling on a section 316(a) application before the ruling on any other necessary permit terms and conditions, (as provided by § 124.65), it shall so request upon filing its application under paragraph (a) of this section. This request shall be granted or denied at the discretion of the Director.

NOTE: At the expiration of the permit, any discharger holding a section 316(a) variance should be prepared to support the continuation of the variance with studies based on the discharger's actual operation experience.

[44 FR 32948, June 7, 1979, as amended at 45 FR 33513, May 19, 1980; 65 FR 30913, May 15, 2000]

§ 125.73 Criteria and standards for the determination of alternative effluent limitations under section 316(a).

(a) Thermal discharge effluent limitations or standards established in permits may be less stringent than those required by applicable standards and limitations if the discharger demonstrates to the satisfaction of the director that such effluent limitations are more stringent than necessary to assure the protection and propagation

of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made. This demonstration must show that the alternative effluent limitation desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made.

(b) In determining whether or not the protection and propagation of the affected species will be assured, the Director may consider any information contained or referenced in any applicable thermal water quality criteria and thermal water quality information published by the Administrator under section 304(a) of the Act, or any other information he deems relevant.

(c) (1) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any such demonstrations shall show:

(i) That no appreciable harm has resulted from the normal component of the discharge (taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge has been made; or

(ii) That despite the occurrence of such previous harm, the desired alternative effluent limitations (or appropriate modifications thereof) will nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made.

(2) In determining whether or not prior appreciable harm has occurred, the Director shall consider the length of time in which the applicant has been discharging and the nature of the discharge.

ATTACHMENT
C



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

28 October 2008

OFFICE OF
WATER

Memorandum

Subject: Implementation of Clean Water Act Section 316(a) Thermal Variances in NPDES Permits (Review of Existing Requirements)

From: James A. Hanlon, Director
Office of Wastewater Management

To: Water Division Directors, Regions 1 - 10

The purpose of this memorandum is to provide a framework for reviewing permit application materials that summarizes existing requirements to ensure consistency with section 316(a) of the CWA and its implementing regulations.

Beginning in January 2007, the Water Permits Division began to do Permit Quality Reviews (PQR) of National Pollutant Discharge Elimination System (NPDES) permits in conjunction with the Office of Water's Regional Water Program Review. A large component of the NPDES portion of each Regional review is a PQR assessing whether NPDES permitting authorities are adequately implementing NPDES requirements in their permits and other supporting documents (e.g., fact sheets and effluent limit calculations). Through this review, EPA Headquarters promotes national consistency, identifies successes in implementation of the base NPDES program, and identifies opportunities for improvement in the issuance of NPDES permits.

The PQR includes topic-specific reviews, during which detailed checklists are used to assess particular aspects of NPDES permits. A review of Clean Water Act (CWA) section 316(a) provisions is included in the PQR process, and the preliminary results from five EPA Regions indicate a need to clarify the procedures and criteria for granting and renewing CWA section 316(a) thermal variances.

Background

Section 316(a) of the CWA applies to point sources with thermal discharges. It authorizes the NPDES permitting authority to impose alternative effluent limitations for the control of the thermal component of a discharge in lieu of the effluent limits that would otherwise be required under sections 301 or 306 of the CWA.

Regulations implementing section 316(a) are codified at 40 C.F.R. Part 125, subpart H. These regulations identify the criteria and process for determining whether an alternative effluent limitation (i.e., a thermal variance from the otherwise applicable effluent limit) may be included in a permit and, if so, what that limit should be. This means that before a thermal variance can be granted, 40 C.F.R. §§ 125.72 and 125.73 require the permittee to demonstrate that the otherwise applicable thermal discharge effluent limit is more stringent than necessary to assure the protection and propagation of the waterbody's balanced, indigenous population (BIP) of shellfish, fish and wildlife.

40 C.F.R. § 125.71(c) defines the BIP as:

“a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species and by lack of domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial irreversible environmental modifications. Normally however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with section 301(b)(2) of the Act; and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to section 316(a).”

In 1977, EPA released draft CWA section 316(a) guidance entitled “*Interagency 316(a) Technical Guidance Manual And Guide For Thermal Effects Sections Of Nuclear Facilities Environmental Impact Statements.*” This guidance provides valuable technical information on conducting 316(a) demonstrations, useful to both facilities and permitting authorities.

Expectations for Granting or Renewing a CWA Section 316(a) Thermal Variance

Variance Approval

The burden of proof is on the permittee to demonstrate that it is eligible to receive an alternative thermal effluent limit under section 316(a). This means the permittee must demonstrate to the permitting authority that a thermal effluent limit necessary to meet the requirements of sections 301 or 306 is more stringent than necessary to assure the protection and propagation of a BIP in and on the body of water into which the discharge is made. (See 40 C.F.R. § 125.73(a)).

In support of any proposed alternative thermal limit, the discharger must demonstrate that the alternative limit will assure protection of the BIP, considering the “cumulative impact of its thermal discharge together with all other significant impacts on the species affected.” (See 40 C.F.R. § 125.73(a)).

When applying for an alternative thermal limit, an applicant must submit the supporting information and demonstrations identified and described in 40 C.F.R. §§ 125.72 and .73. Among other things, the applicant must identify and describe (1) the requested alternative effluent limitation, (2) the methodology used to support that limitation, (3) the organisms comprising the

BIP along with supporting data and information, and (4) the types of data, studies, experiments and other information the applicant intends to use to demonstrate that the alternative thermal limit assures the protection and propagation of the BIP. 40 C.F.R. § 125.72(a) and (b).

Existing dischargers may base their demonstration on the "absence of prior appreciable harm in lieu of predictive studies." (See 40 C.F.R. §125.73(c)(1)). The demonstration of no appreciable harm must consider the "interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a [BIP]..." (See 40 C.F.R. § 125.73(c)(1)(i)). The regulations at 40 C.F.R. §125.73(c)(2) further state that "in determining whether or not prior appreciable harm has occurred the Director shall consider the length of time in which the applicant has been discharging and the nature of the discharge."

With respect to renewal of a prior section 316(a) thermal variance, it is essential that permitting authorities require applicants to provide as much of the information described in 40 C.F.R. § 125.72(a) and (b) as necessary to demonstrate that the alternative effluent limit assures the protection and propagation of the BIP. 40 C.F.R. § 125.72(c). Such information may include a description of any changes in facility operations, the waterbody, or the BIP since the time the variance was originally granted.

Permit and Fact Sheet Requirements

NPDES permits containing a 316(a) thermal variance must include a fact sheet that complies with the general requirements of 40 C.F.R. § 124.8. Among other things, the fact sheet must explain why the permitting authority believes any section 316(a) thermal variance included in the permit is justified, and it should contain a summary of any 316(a) thermal variance history from previous permits, if applicable (e.g., dates, determinations, limitations, etc.), as well as the basis for continuing the 316(a) thermal variance in the present permit.

A 316(a) thermal variance is an NPDES permit condition. It, therefore, expires along with the permit. A permittee may request a renewal of its 316(a) thermal variance prior to the expiration of the permit. Any discharger holding a 316(a) thermal variance should be prepared to support the continuation of the variance with studies based on the discharger's actual operation experience (See Note following 40 C.F.R. 125.72).

Public Notice

40 C.F.R § 124.57 contains specific public notice requirements for permits requesting a 316(a) thermal variance. In addition to the public notice requirements at 40 C.F.R. § 124.10(d)(1), the public notice for permits requesting a 316(a) thermal variance must contain the following elements:

1. A statement that the thermal component of the discharge is subject to effluent limitations under CWA sections 301 or 306 and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under Section 301 or 306, and

2. A statement that a Section 316(a) request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under Section 316(a) and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request.

If you have any questions, please contact me at (202) 564-0748 or have your staff contact Deborah Nagle at (202) 564-1185.

Additional Resources

U.S. EPA. May 1, 1977. *Interagency 316(a) Technical Guidance Manual And Guide For Thermal Effects Sections Of Nuclear Facilities Environmental Impact Statements*. Office of Water Enforcement, Permits Division, Industrial Permits Branch, Washington, D.C. (<http://www.epa.gov/npdes/pubs/owm0001.pdf>)

In re Dominion Energy Brayton Point, L.L.C., 2007 EPA App. LEXIS 38 (NPDES Permit Appeal No. 03-12)(September 27, 2007).

In re Dominion Energy Brayton Point, L.L.C. (Formerly USGen New England, Inc.) Brayton Point Station, 12 E.A.D. 490, 2006 EPA App. LEXIS 9 (NPDES Permit Appeal No. 03-12)(February 1, 2006).

In re Aurora Energy, L.L.C., 2004 EPA App. LEXIS 30 (NPDES Permit Appeal No. 03-11)(September 14, 2004).

In the Matter of Public Service Company of Indiana, Inc. (Wabash River Generation Station, Cayuga Generating Station), 1 E.A.D 590, 1979 EPA App. LEXIS 4 (NPDES Appeal No. 78-6) (November 29, 1979).

In the Matter of Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), 1 E.A.D. 455, 1978 EPA App. LEXIS 17 (NPDES Permit Appeal No. 76-7)(August 4, 1978).

In the Matter of Public Service Company of New Hampshire (Seabrook Station, Units 1 & 2), 1 E.A.D. 332, 1977 EPA App. LEXIS 16 (NPDES Permit Appeal 76-7)(June 10, 1977).

Letter dated August 11, 1988, from Charles Kaplan, EPA National Expert for Steam Electric to Region 4 States.

"Guidance on Systematic Planning Using the Data Quality Objective Process", (EPA/QA/G-4), EPA/240/B-06/001, February 2006) (http://www.epa.gov/quality/qa_docs.html#guidance)

Biological Criteria: Technical Guidance for Streams and Small Rivers, EPA/822/B-96/001 (<http://www.epa.gov/bioindicators/html/bioltech.html>)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD

PART 106
PROCEEDINGS PURSUANT TO SPECIFIC RULES OR STATUTORY PROVISIONS

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**SUBPART K: ALTERNATIVE THERMAL EFFLUENT LIMITATIONS PURSUANT TO
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106.APPENDIX A Comparison of Former and Current Rules (Repealed)

AUTHORITY: Implementing and authorized by Sections 5, 14.2(c), 21(q), 22.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3 of the Environmental Protection Act (the Act) [415 ILCS 5/5, 14.2(c), 21(q), 21.622.4, 26, 27, 28, 28.1, 28.5, 35, 36, 37, 38, 39.5 and 52.3], and Section 5 of the Regulation of Phosphorus in Detergents Act [415 ILCS 92/5] and Section 95 of the Electronic Products Recycling and Reuse Act [415 ILCS 150/95].

SOURCE: Filed with Secretary of State January 1, 1978; amended at 4 Ill. Reg. 2, p. 186, effective December 27, 1979; codified at 6 Ill. Reg. 8357; amended in R85-22 at 10 Ill. Reg. 992, effective February 2, 1986; amended in R86-46 at 11 Ill. Reg. 13457, effective August 4, 1987; amended in R82-1 at 12 Ill. Reg. 12484, effective July 13, 1988; amended in R88-10 at 12 Ill. Reg. 12817, effective July 21, 1988; amended in R88-5(A) at 13 Ill. Reg. 12094, effective July 10, 1989; amended in R88-5(B) at 14 Ill. Reg. 9442, effective June 5, 1990; amended in R93-24 at 18 Ill. Reg. 4230, effective March 8, 1994; amended in R93-30 at 18 Ill. Reg. 11579, effective July 11, 1994; amended in R99-9 at 23 Ill. Reg. 2697, effective February 16, 1999; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 550, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8817, effective June 8, 2005; amended in R10-19 at 34 Ill. Reg. 11486, effective July 23, 2010; amended in R12-21 at 36 Ill. Reg. 9236, effective June 7, 2012; amended in R12-11 at 36 Ill. Reg. 16581, effective November 5, 2012; amended in R ____ - ____ at ____ Ill. Reg. _____, effective _____.

SUBPART K: ALTERNATIVE THERMAL EFFLUENT LIMITATIONS PURSUANT TO SECTION 316(a) OF THE CLEAN WATER ACT AND 35 ILL. ADM. CODE 304.141(c)

Section 106.1100 Purpose

This Subpart describes the factors, criteria, and standards for the establishment of alternative thermal effluent limitations under 35 Ill. Adm. Code 304.141(c) and Section 316(a) of the Clean Water Act and in permits issued under 35 Ill. Adm. Code 309.

Section 106.1105 General

- a) Description. This Subpart applies to any point source that discharges pollutants to waters of the United States who seeks to demonstrate pursuant to 35 Ill. Adm. Code 304.141(c) and Section 316(a) of the Clean Water Act that any effluent limit proposed for the control of a thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made.
- b) Parties. The person making the demonstration must be named the petitioner. The Agency must be named as a respondent. Any interested person may become a participant in the alternative thermal effluent limitation demonstration proceeding in accordance with 35 Ill. Adm. Code 101.110 and 101.628.
- c) Filing and service. The filing and service requirements of 35 Ill. Adm. Code 101.Subpart C apply to the proceedings of this Subpart.

Section 106.1110 Definitions

In addition to these definitions, all definitions of the Illinois Environmental Protection Act [415 ILCS 5], and 35 Ill. Adm. Code 301, apply to this Subpart. For the purpose of this Subpart:

“Alternative thermal effluent limitations” means all effluent limitations or standards of performance for the control of the thermal component of any discharge that are established under 35 Ill. Adm. Code 304.141(c), Section 316(a) of the CWA and this Subpart.

"CWA" means the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq., Public Law 92-500 enacted by Congress October 18, 1972, as amended by the "Clean Water Act", Public Law 95-217, enacted December 12, 1977, as amended).

“Representative important species” means species that are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish, and wildlife in the body of water into which a discharge of heat is made.

“Balanced, indigenous community” is synonymous with the term “balanced, indigenous population” in the CWA and means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and by a lack of domination by pollution tolerant species.

Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modifications. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with Section 301(b)(2) of the CWA; and may not include species whose presence or abundance is attributable to alternative thermal effluent limitations imposed pursuant to this Subpart or through regulatory relief from otherwise applicable thermal limitations or standards granted by the Board.

Section 106.1115 Early Screening

- a) Prior to filing a petition for an alternative thermal effluent limitation, the petitioner must submit the following early screening information to the Agency:
 - 1) A description of the alternative thermal effluent limitation requested;
 - 2) A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;
 - 3) A general description of the type of data, studies, experiments and other information that the discharger intends to submit for the demonstration; and
 - 4) A proposed representative important species list and such data and information as may be available to assist the Agency in approving the selection of the appropriate representative important species.

- b) Within 30 days from receipt of the early screening information under subsection (a) of this Section, the petitioner shall consult with the Agency to discuss the petitioner's early screening information.

Section 106.1120 Detailed Plan of Study

- a) Within 60 days after the early screening information is submitted pursuant to Section 106.1115 of this Part, the petitioner shall submit for the Agency's approval a detailed plan of study that the petitioner will undertake to support its alternative thermal effluent limitation demonstration.

- b) The petitioner shall specify the nature and extent of the following types of information to be included in the plan of study:
 - 1) biological, hydrographical, and meteorological data;
 - 2) physical monitoring data;

- 3) engineering or diffusion models;
 - 4) laboratory studies;
 - 5) representative important species; and
 - 6) other relevant information.
- c) In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards.
 - d) The petitioner shall provide any additional information or studies that the Agency subsequently determines necessary to support the alternative thermal effluent limitation demonstration, including such field or other studies as may be necessary to select representative important species.
 - e) In making the alternative thermal effluent limitation demonstration the petitioner shall consider any information or guidance published by USEPA to assist in making such demonstrations.
 - f) Within 90 days of petitioner's submittal of its detailed plan of study, the Agency shall approve the plan or specify any recommended revisions to the plan.
 - g) After obtaining Agency approval or the Agency's recommended revisions, the petitioner shall complete the plan of study prior to filing the petition for an alternative thermal effluent limitation with the Board.

Section 106.1125 Initiation of Proceeding

After completion of the plan of study pursuant to Section 106.1120, the petitioner may file a petition for an alternative thermal effluent limitation with the Clerk of the Board and must serve one copy upon the Agency.

Section 106.1130 Contents of Petition

A petition for an alternative thermal effluent limitation must include the following:

- a) Information providing a general plant description including, as applicable:
 - 1) Generating capacity;
 - 2) Type of fuel used;
 - 3) Operating characteristics of the condenser cooling system;

- 4) History of the load factor of the plant for the last 5 years;
 - 5) Projected load factors of the plant for the next 5 years;
 - 6) Estimated date of retirement for each unit at the plant and any plans for additional units at the plant;
 - 7) History of plant shutdowns for the last 5 years;
 - 8) Planned and emergency shutdowns with frequency and duration for the last 5 years; and
 - 9) Planned and projected shutdowns with frequency and duration for the next five years.
- b) Description of Method for Heat Dissipation:
- 1) Type of system used (such as once-through, mechanical, and draft cooling towers) in narrative form; and
 - 2) Summary information on temperature of discharge to receiving waters in narrative form.
- c) A summary of compliance or non-compliance with thermal requirements at the facility in the past five years;
- d) The results of the studies conducted pursuant to the detailed plan of study submitted under Section 106.1120 of this Part;
- e) Any information or guidance published by USEPA to assist in making alternative thermal effluent limitation demonstrations that the Board should consider in evaluating the petition; and
- f) Any additional information or studies that the petitioner judges to be appropriate to support the alternative thermal effluent limitation demonstration.

Section 106.1135 Petition Notice Requirements

- a) Within 14 days after the filing of the petition, the petitioner must publish notice of the filing of the petition by advertisement in a newspaper of general circulation in the county where the facility is located.
- b) The notice must contain the name and address of the petitioner and it must state that the petitioner has filed with the Board a petition for an alternative thermal effluent limitation. The notice must also provide the date on which the petition was filed, the Board docket number, the regulatory standard (with appropriate

Administrative Code citation) from which the alternative thermal effluent limitation is sought, the proposed alternative thermal effluent limitation, and the location of the facility. The concluding portion of the notice must read as follows:

“Any person may cause a public hearing to be held in the above-described proceeding by filing a hearing request with the Illinois Pollution Control Board within 21 days after the date of the publication of this notice. The hearing request should clearly indicate the docket number for the proceeding, as found in this notice, and must be mailed to the Clerk of the Board, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601.”

Section 106.1140 Proof of Petition Notice Requirements

Within 30 days after the filing of the petition, the petitioner must file a certificate of publication. This certification must be issued by the newspaper that published the notice and must certify when the notice was published and the information the notice contained.

Section 106.1145 Recommendation and Response

Within 45 days after the filing of a petition for an alternative thermal effluent limitation, the Agency must file with the Board a recommendation as to whether the Board should grant the petitioner’s requested alternative thermal effluent limitation. The petitioner, any party to the proceeding, or any interested person may file a response to the Agency recommendation within 21 days after the Agency files its recommendation.

Section 106.1150 Request for Public Hearing

Any person can request that a public hearing be held in a proceeding under this Subpart. The requests must be filed with the Clerk of the Board no later than 21 days after the date of the publication of the petition notice in accordance with Section 106.1135 of this Part. Requests for hearing should make reference to the Board docket number assigned to the proceeding.

Section 106.1155 Notice and Conduct of Hearing

- a) The Board shall hold a public hearing on the petition and alternative thermal effluent limitation demonstration when one is requested in accordance with Section 106.1150 of this Part or when requested by the petitioner.
- b) The hearing officer will schedule the hearing to be held in the county likely to be affected by the petitioner's activity.
- c) The Clerk will give notice of the hearing in accordance with 35 Ill. Adm. Code 101. The proceedings will be conducted in accordance with 35 Ill. Adm. Code 101.Subpart F.

Section 106.1160 Burden of Proof

- a) The burden of proof is on the petitioner.
- b) The petitioner must demonstrate to the satisfaction of the Board that the otherwise applicable effluent limitations under Chapter I of Subtitle C of this Title are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made.
- c) The demonstration must show that the alternative thermal effluent limitation desired by the petitioner, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made.
- d) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies.
 - 1) When the petitioner bases the alternative thermal effluent limitation demonstration upon the absence of prior appreciable harm, the demonstration must show:
 - A) That no appreciable harm has resulted from the normal component of the discharge, taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge has been made; or
 - B) That despite the occurrence of such previous harm, the desired alternative thermal effluent limitation (or appropriate modifications thereof) will nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made.
 - 2) In determining whether or not prior appreciable harm has occurred, the Board shall consider the length of time during which the petitioner has been discharging and the nature of the discharge.

Section 106.1165 Evidentiary Matters

- a) The provisions of 35 Ill. Adm. Code 101 regarding admissible evidence, written narrative testimony, official notice, viewing premises, admitting business records, examining adverse parties or agents and hostile witnesses and compelling them to

appear at hearing, and amendment and variance of pleadings and proof will apply to proceedings under this Subpart.

- b) In determining whether or not the protection and propagation of the affected species will be assured, the Board may consider any information contained or referenced in any applicable thermal water quality criteria and thermal water quality information published by the USEPA under section 304(a) of the CWA, or any other information the Board deems relevant.

Section 106.1170 Opinion and Order

- a) After an opportunity for a public hearing and upon a satisfactory alternative thermal effluent limitation demonstration, the Board may order the Agency to include thermal discharge effluent limitations or standards in the petitioner's NPDES permit that are less stringent than those required by applicable standards and limitations if the thermal component of the discharge, taking into account the interaction of such thermal component with other pollutants, will assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water.
- b) If the petitioner intends for the alternative thermal effluent limitation granted by the Board pursuant to this Subpart to continue beyond the expiration of the petitioner's NPDES permit, the petitioner must apply for renewal of the alternative thermal effluent limitation pursuant to Section 106.1180.

Section 106.1175 Post-Hearing Procedures

- a) The provisions of 35 Ill. Adm. Code 101 regarding default, transcripts, the record, motions, briefs, and oral arguments apply to proceedings under this Subpart.
- b) In addition to the provisions of 35 Ill. Adm. Code 101.520 and 101.902, if USEPA objects pursuant to 40 C.F.R. §123.44 to issuance in the petitioner's NPDES permit of the alternative thermal effluent limitation ordered by the Board, the Agency is given leave to file a motion for reconsideration of the Board's order granting the effluent limitation pursuant to 35 Ill. Adm. Code 101.520 within 35 days after the Agency's receipt of USEPA's objection.

Section 106.1180 Renewal of Alternative Thermal Effluent Limitations

- a) The permittee may request continuation of an alternative thermal effluent limitation granted by the Board, pursuant to this Subpart, as part of its NPDES permit renewal application.
- b) Any application for renewal should include sufficient information for the Agency to compare the nature of the permittee's thermal discharge and the balanced, indigenous population of shellfish, fish, and wildlife at the time the Board granted

the alternative thermal effluent limitation and the current nature of the petitioner's thermal discharge and the balanced, indigenous population of shellfish, fish, and wildlife. The permittee should be prepared to support this comparison with documentation based upon the discharger's actual operation experience during the previous permit term.

- c) If the permittee demonstrates that the nature of the thermal discharge has not changed and the alternative thermal effluent limitation granted by the Board has not caused appreciable harm to a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is made, the Agency may include the alternative thermal effluent limitation in the permittee's renewed NPDES permit.

- d) If the nature of the thermal discharge has changed materially or the alternative thermal effluent limitation granted by the Board has caused appreciable harm to a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is made, the Agency may not include the thermal relief granted by the Board in the permittee's renewed NPDES permit. The permittee must file a new petition and make the required demonstration pursuant to this Subpart before the alternative thermal effluent limitation may be included in the permittee's renewed NPDES permit.

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

**PART 304
EFFLUENT STANDARDS**

SUBPART A: GENERAL EFFLUENT STANDARDS

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304.101	Preamble
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304.103	Background Concentrations
304.104	Averaging
304.105	Violation of Water Quality Standards
304.106	Offensive Discharges
304.120	Deoxygenating Wastes
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304.124	Additional Contaminants
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304.126	Mercury
304.140	Delays in Upgrading (Repealed)
304.141	NPDES Effluent Standards
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**SUBPART B: SITE SPECIFIC RULES AND EXCEPTIONS NOT OF GENERAL
APPLICABILITY**

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304.201	Wastewater Treatment Plant Discharges of the Metropolitan Water Reclamation District of Greater Chicago
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304.203	Copper Discharges by Olin Corporation
304.204	Schoenberger Creek: Groundwater Discharges
304.205	John Deere Foundry Discharges
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304.208	City of Lockport Treatment Plant Discharges
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304.211	Discharges From Borden Chemicals and Plastics Operating Limited Partnership Into an Unnamed Tributary of Long Point Slough
304.212	Sanitary District of Decatur Discharges
304.213	PDV Midwest Refining, L.L.C. Refinery Ammonia Discharge

- 304.214 Mobil Oil Refinery Ammonia Discharge
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- 304.218 City of Pana Phosphorus Discharge
- 304.219 North Shore Sanitary District Phosphorus Discharges
- 304.220 East St. Louis Treatment Facility, Illinois-American Water Company
- 304.221 Ringwood Drive Manufacturing Facility in McHenry County
- 304.222 Intermittent Discharge of TRC
- 304.224 Effluent Disinfection

SUBPART C: TEMPORARY EFFLUENT STANDARDS

Section

- 304.301 Exception for Ammonia Nitrogen Water Quality Violations (Repealed)
- 304.302 City of Joliet East Side Wastewater Treatment Plant
- 304.303 Amerock Corporation, Rockford Facility

304.APPENDIX A References to Previous Rules

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

SOURCE: Filed with the Secretary of State January 1, 1978; amended at 2 Ill. Reg. 30, p. 343, effective July 27, 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; amended at 4 Ill. Reg. 20, p. 53, effective May 7, 1980; amended at 6 Ill. Reg. 563, effective December 24, 1981; 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 7 Ill. Reg. 3020, effective March 4, 1983; amended at 7 Ill. Reg. 8111, effective June 23, 1983; amended at 7 Ill. Reg. 14515, effective October 14, 1983; amended at 7 Ill. Reg. 14910, effective November 14, 1983; amended at 8 Ill. Reg. 1600, effective January 18, 1984; amended at 8 Ill. Reg. 3687, effective March 14, 1984; amended at 8 Ill. Reg. 8237, effective June 8, 1984; amended at 9 Ill. Reg. 1379, effective January 21, 1985; amended at 9 Ill. Reg. 4510, effective March 22, 1985; peremptory amendment at 10 Ill. Reg. 456, effective December 23, 1985; amended at 11 Ill. Reg. 3117, effective January 28, 1987; amended in R84-13 at 11 Ill. Reg. 7291, effective April 3, 1987; amended in R86-17(A) at 11 Ill. Reg. 14748, effective August 24, 1987; amended in R84-16 at 12 Ill. Reg. 2445, effective January 15, 1988; amended in R83-23 at 12 Ill. Reg. 8658, effective May 10, 1988; amended in R87-27 at 12 Ill. Reg. 9905, effective May 27, 1988; amended in R82-7 at 12 Ill. Reg. 10712, effective June 9, 1988; amended in R85-29 at 12 Ill. Reg. 12064, effective July 12, 1988; amended in R87-22 at 12 Ill. Reg. 13966, effective August 23, 1988; amended in R86-3 at 12 Ill. Reg. 20126, effective November 16, 1988; amended in R84-20 at 13 Ill. Reg. 851, effective January 9, 1989; amended in R85-11 at 13 Ill. Reg. 2060, effective February 6, 1989; amended in R88-1 at 13 Ill. Reg. 5976, effective

April 18, 1989; amended in R86-17(B) at 13 Ill. Reg. 7754, effective May 4, 1989; amended in R88-22 at 13 Ill. Reg. 8880, effective May 26, 1989; amended in R87-6 at 14 Ill. Reg. 6777, effective April 24, 1990; amended in R87-36 at 14 Ill. Reg. 9437, effective May 31, 1990; amended in R88-21(B) at 14 Ill. Reg. 12538, effective July 18, 1990; amended in R84-44 at 14 Ill. Reg. 20719, effective December 11, 1990; amended in R86-14 at 15 Ill. Reg. 241, effective December 18, 1990; amended in R93-8 at 18 Ill. Reg. 267, effective December 23, 1993; amended in R87-33 at 18 Ill. Reg. 11574, effective July 7, 1994; amended in R95-14 at 20 Ill. Reg. 3528, effective February 8, 1996; amended in R94-1(B) at 21 Ill. Reg. 364, effective December 23, 1996; expedited correction in R94-1(B) at 21 Ill. Reg. 6269, effective December 23, 1996; amended in R97-25 at 22 Ill. Reg. 1351, effective December 24, 1997; amended in R97-28 at 22 Ill. Reg. 3512, effective February 3, 1998; amended in R98-14 at 23 Ill. Reg. 687, effective December 31, 1998; amended in R02-19 at 26 Ill. Reg. 16948, effective November 8, 2002; amended in R02-11 at 27 Ill. Reg. 194, effective December 20, 2002; amended in R04-26 at 30 Ill. Reg. 2365, effective February 2, 2006; amended in R08-9B at 36 Ill. Reg. 2586, effective February 2, 2012; amended in R _____ at ___ Ill. Reg. _____, effective _____.

SUBPART A: GENERAL EFFLUENT STANDARDS

Section 304.141 NPDES Effluent Standards

- a) No person to whom an NPDES Permit has been issued may discharge any contaminant in his effluent in excess of the standards and limitations for that contaminant which are set forth in his permit.
- b) No person may discharge any pollutant subject to, or which contributes or threatens to cause a violation of, any applicable federal or state water quality standard, effluent standard, guideline or other limitation, promulgated pursuant to the CWA or the Act, unless limitation for such a pollutant has been set forth in an applicable NPDES Permit. However, the Agency may, by permit condition, provide that the permittee may discharge pollutants present in its water supply intake sources in concentrations not greater than the concentrations in the intake sources, or which are added in trace amounts by normal domestic water usage.¹
- c) The standards of this Chapter shall apply to thermal discharges unless, after public notice and opportunity for public hearing, in accordance with Section 316 of the CWA, ~~and applicable federal regulations, and procedures in 35 Ill. Adm. Code 106 Subpart K,~~ the Agency Administrator and the Board have determined that different standards shall apply to a particular thermal discharge.

¹Section 304.141(b) was declared invalid in *Peabody Coal Co. v. PCB*, 3 Ill. App. 3d 5 (5th District, 1976) and declared valid in *U.S. Steel v. PCB*, 52 Ill. App. 3d 1 (2d District, 1977).


CERTIFICATE OF SERVICE

Joanne M. Olson, Assistant Counsel for the Illinois EPA, herein certifies that she has served a copy of the foregoing NOTICE OF FILING and MOTION FOR ACCEPTANCE; APPEARANCES; CERTIFICATE OF ORIGINATION; STATEMENT OF REASONS; and PROPOSED AMENDMENTS TO 35 ILL. ADM. CODE PART 106: SUBPART K AND SECTION 304.141(c) upon persons listed on the Service List by mailing, unless otherwise noted on the Service List, a true copy thereof in an envelope duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois on

June 17, 2013.

RECEIVED
CLERK'S OFFICE
JUN 20 2013
STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Joanne M. Olson
Assistant Counsel
Division of Legal Counsel

1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Office of Legal Services
Illinois Department of Natural Resources
One Natural Resources Way
Springfield IL 62702-1271

Matt Dunn
Division Chief of Environmental Enforcement
Office of the Attorney General
69 W. Washington, Suite 1800,
Chicago, IL 60602