

ILLINOIS POLLUTION CONTROL BOARD
September 17, 2015

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
WATER POLLUTION: PROPOSED) R15-24
AMENDMENTS TO 35 ILL. ADM. CODE) (Rulemaking - Water)
PART 309)



ORIGINAL

HEARING OFFICER ORDER

On June 1, 2015, the Illinois Environmental Protection Agency proposed to amend the Board's rules governing water pollution permits, 35 Ill. Adm. Code Part 309. The Board accepted the Agency's proposal for hearing three days later. Later that month, a hearing officer order scheduled dates to pre-file testimony, pre-file questions concerning the testimony, and conduct hearings.

The first hearing occurred on August 25, 2015 in Springfield, where the Agency responded to questions from the Board and other parties. Based on those responses, the Board poses additional questions filed with this order as Attachment A.

The second hearing will be a videoconference between Chicago and Springfield on September 24, 2015, as detailed in the September 14, 2015 hearing officer order. The Board directs the Agency to respond to these questions at that hearing. The Board may raise additional questions at the hearing.

IT IS SO ORDERED.

Jason James, Hearing Officer
Illinois Pollution Control Board
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Attachment A to September 17, 2015 Hearing Officer Order

Questions for Darin Lecrone, Illinois Environmental Protection Agency

Proposed Amendments to 35 Ill. Adm. Code 309.Subpart A

Rule Language

17. The Agency, in its August 25, 2015 Response to the Board's Pre-Filed Questions, proposed a change to Section 309.104(a)(1)(B). The proposed language says "A permittee has submitted a timely application for a new permit when...[t]he permittee submits request for a waiver in writing to the Agency, and the Agency grants a written waiver..." Exh. 2 at 1. This appears to say that an application is timely submitted when the Agency grants a written waiver, but does not actually require a complete application. Should this provision require that, to submit a timely application under Section 309.104(a)(1)(B), the applicant must submit a waiver request, the Agency must grant a waiver, *and* the applicant must submit an application within the timeframe listed in the waiver request?

Just Causes for Waiver

18. The Agency stated that unforeseeable circumstances can cause a permittee to submit a renewal application after the standard 180 day deadline. Exh. 2 at 1-2. Should the rule specify that the Agency will only grant waivers in unforeseeable circumstances?

Waiver Requests and Determinations

19. The Agency stated that the rule allows waiver requests at any time before the permit expires and that the permittee will be notified of a waiver denial within 21 days of the waiver request. Exh. 2 at 1. How will the Agency treat a waiver request made less than 21 days before a permit's expiration date?

For example, if a permittee requested a waiver on the permit's expiration date and the Agency denied it, would the permit then expire and not be administratively continued? Would the Agency consider the facility to be operating without a permit during this period after the permit's expiration date but before the Agency denies the waiver request?

Alternatively, is the 180 days prior to expiration the key date for when a waiver request must be filed with the Agency? With the possibility of obtaining a waiver within the 180 days prior to permit expiration, what, if any, consequences flow from the 180 days prior to expiration date passing without a renewal application filed? Will waiver requests filed within the 180 days prior to permit expiration be held to a different standard than those filed more than 180 days prior to permit expiration?