**Section 302.410 Other Toxic Substances**

Any substance or combination of substances toxic to aquatic life not listed in Section 302.407 must not exceed one-half of the 96-hour median tolerance limit (96-hour TLm) for native fish or essential fish food organisms in the South Fork of the South Branch of the Chicago River (Bubbly Creek). All other Chicago Area Waterway System and Lower Des Plaines River waters as designated in 35 Ill. Adm. Code 303 must be free from any substances or combination of substances in concentrations toxic or harmful to human health or animal, plant, or aquatic life. Individual chemical substances or parameters for which numeric standards are specified in this Subpart are not subject to this Section.

a) Any substance or combination of substances will be deemed to be toxic or harmful to aquatic life if present in concentrations that exceed the following:

1) An Acute Aquatic Toxicity Criterion (AATC) validly derived and correctly applied under procedures in Sections 302.612 through 302.618 or in Section 302.621; or

2) A Chronic Aquatic Toxicity Criterion (CATC) validly derived and correctly applied under procedures in Section 302.627 or 302.630.

b) Any substance or combination of substances will be deemed to be toxic or harmful to wild or domestic animal life if present in concentrations that exceed any Wild and Domestic Animal Protection Criterion (WDAPC) validly derived and correctly applied under Section 302.633.

c) Any substance or combination of substances will be deemed to be toxic or harmful to human health if present in concentrations that exceed criteria, validly derived and correctly applied, based on either of the following:

1) Disease or functional impairment due to a physiological mechanism for which there is a threshold dose below which no damage occurs calculated under Sections 302.642 through 302.648 (Human Threshold Criterion); or

2) Disease or functional impairment due to a physiological mechanism for which any dose may cause some risk of damage calculated under Sections 302.651 through 302.658 (Human Nonthreshold Criterion).

d) The most stringent criterion of subsections (a), (b), and (c) applies at all points outside of any waters within which mixing is allowed under Section 302.102. In addition, the AATC derived under subsection (a)(1) applies in all waters except that it must not apply within a ZID that is prescribed in compliance with Section 302.102.

e) The procedures of Subpart F set forth minimum data requirements, appropriate test protocols, and data assessment methods for establishing criteria under subsections (a), (b), and (c). No other procedures may be used to establish these criteria unless approved by the Board in a rulemaking or adjusted standard proceeding under Title VII of the Act. The validity and applicability of the Subpart F procedures may not be challenged in any proceeding brought under Title VIII or X of the Act, although the validity and correctness of application of the numeric criteria derived under Subpart F may be challenged in the proceedings under subsection (f).

f) Agency derived criteria may be challenged as follows:

1) A permittee may challenge the validity and correctness of application of a criterion derived by the Agency under this Section only at the time the criterion is first applied in an NPDES permit under 35 Ill. Adm. Code 309.152 or in an action under Title VIII of the Act for violation of the toxicity water quality standard. Failure of a person to challenge the validity of a criterion at the time of its first application constitutes a waiver of the challenge in any subsequent proceeding involving the application of the criterion to that person.

2) Consistent with subsection (f)(1), if a criterion is included as, or is used to derive, a condition of an NPDES discharge permit, a permittee may challenge the criterion in a permit appeal under Section 40 of the Act and 35 Ill. Adm. Code 309.181. In any such action, the Agency must include in the record all information upon which it has relied in developing and applying the criterion, whether that information was developed by the Agency or submitted by the petitioner. The burden of proof is on the petitioner to demonstrate that the criterion-based condition is not necessary to accomplish the purposes of subsection (f)(1) (see Section 40(a)(1) of the Act), but there is no presumption in favor of the general validity and correctness of the application of the criterion as reflected in the challenged condition.

3) Consistent with subsection (f)(1), in an action in which the alleged violation of the toxicity water quality standard is based on an alleged excursion of a criterion, the person bringing the action has the burdens of going forward with proof and of persuasion regarding the general validity and correctness of application of the criterion.

g) Subsections (a) through (e) do not apply to USEPA registered pesticides approved for aquatic application and applied under the following conditions:

1) Application must be made in strict compliance with label directions;

2) Applicator must be properly certified under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.136 et seq);and

3) Applications of aquatic pesticides must comply with the laws, regulations, and guidelines of all state and federal agencies authorized by law to regulate, use, or supervise pesticide applications.

(Source: Amended at 47 Ill. Reg. 4437, effective March 23, 2023)