**Section 352.425 Intake Credits**

a) 35 Ill. Adm. Code 304.105 provides that no effluent may cause or contribute to a violation of a water quality standard but Section 304.103 provides that it is not the intent of 35 Ill. Adm. Code 304 to clean up contamination caused by upstream sources or incidental traces of contaminants. If a discharge contains a toxic substance solely due to its presence in intake water from the same water body receiving the discharge, the Agency may determine there is no reasonable potential for that discharge to cause or contribute to an exceedance for that substance and therefore not establish a WQBEL in the permit. Agency application of such intake credits will be restricted to the following conditions:

1) 100% of the water comprising the discharge is withdrawn from the same body of water that receives the discharge.

2) The permitee does not contribute any additional mass of the identified intake toxic substance to its discharge.

3) The permitee does not alter the identified intake pollutant chemically or physically in a manner that would cause adverse water quality impacts to occur that would not occur if the substance were left in the water body.

4) The discharge does not result in an increase above the intake concentration at any applicable point below the discharge outside a mixing zone unless such increase does not cause an excursion above the applicable water quality standard, criteria or value.

5) The timing and location of the discharge would not cause adverse impacts to occur that would not occur if the substance were left in the water body.

b) If the source water contains a pollutant at a concentration in excess of an applicable water quality standard, criteria or value and there is some net addition of that parameter due to activities or operations of the permittee or source tributary to the discharge, the Agency will restrict intake credits to the following circumstances:

1) The Agency will establish permit limits allowing no greater discharge than the concentration and mass present in the intake water as a "no net increase limit".

2) Intake credit will only be allowed for that portion of intake pollutant loading present in source water withdrawn from the same body of water receiving the discharge. If any of the intake pollutant is removed through a water treatment process prior to utilization by the permittee, intake credit will be restricted to the concentration and mass emerging from the water treatment process.

3) Any permits incorporating "no net increase" provisions must include notice to the permittee that current federal guidance prohibits allowance of such limits after March 23, 2007. The permit need not include an expiration date at the time of issuance but must give fair warning that continuation in future permit renewals is questionable due to anticipated federal requirements. The sunset of "no net increase" allowances after March 23, 2007 is mandated in USEPA's Water Quality Guidance for the Great Lakes System, 60 FR 15366, March 23, 1995. The preamble to this guidance contains a commitment from USEPA to reconsider this requirement by March 23, 2002 with the possibility of extending or deleting this deadline.

4) If a facility's treatment system under proper operation and maintenance results in removal of the intake pollutant of concern to a discharge level that is below the level in the intake water, the Agency will establish effluent limits that reflect the lower mass and concentration of the pollutant achievable and feasible by such treatment.

5) The issuance of a permit incorporating "no net increase" provisions shall not affect or modify the requirement of 35 Ill. Adm. Code 304.103, that effluent standards in 35 Ill. Adm. Code 304 must be complied with without subtracting background concentrations, except that compliance with those standards is not required when effluent concentrations for the facility in excess of the standard result entirely from evaporation or incidental traces of materials not utilized or produced in the activity.

c) When, pursuant to 35 Ill. Adm. Code 352.425(a), the Agency declines to establish a WQBEL that would otherwise be warranted under other provisions of this Part, the permit shall contain requirements sufficient to demonstrate that the terms of subsection (a) of this Section are being maintained. Appropriate permit requirements may include influent, effluent and ambient monitoring, and a reopener clause authorizing modification or revocation and reissuance if new information demonstrates that intake credit is no longer justified.