

ILLINOIS POLLUTION CONTROL BOARD

April 3, 1997

IN MATTER OF:)	
)	
CONFORMING AMENDMENTS FOR THE)	R97-25
GREAT LAKES INITIATIVE: 35 ILL.)	(Rulemaking - Water)
ADM. CODE 302.101, 302.105,)	
302.SUBPART E 303.443 AND 304.222)	

ORDER OF THE BOARD (by G.T. Girard, C. A. Manning, J. Yi):

On March 21, 1997 the Illinois Environmental Protection Agency (Agency) filed a proposal for rulemaking amending the water quality standards for the Lake Michigan Basin. Along with the proposal, the Agency filed a certification pursuant to Section 28.2 of the Environmental Protection Act (Act) (415 ILCS 5/28.2 (1994)) that the amendments are federally required. The Agency also filed a motion asking the Board to waive certain filing requirements.

Section 28.2 certification

Section 28.2(a) of the Act provides that a "required rule" means a rule that is needed to meet the requirements of the federal Clean Water Act, Safe Drinking Water Act, Clean Air Act or Resource Conservation and Recovery Act other than a rule which is to be adopted identical-in-substance pursuant to Sections 13(c), 13.3, 17.5, 22.4(a) or (d), 22.7(a) or 22.4(a) of the Act. Section 28.2(b) requires the Board to either accept or reject the certification filed by the Agency within 45 days and to reference the certification in the first notice published in the *Illinois Register*. Section 28.2(b) requires the Board to adopt the first notice as "expeditiously as is practicable, but in no event later than 6 months from the date the Board determines whether an economic impact study should be conducted."

The Clean Water Act as amended by the Great Lakes Critical Programs Act (Public Law 101-596) provides that:

Within two years after such Great Lakes guidance is published, the Great Lakes States shall adopt water quality standards, antidegradation policies and implementation procedures for waters within the Great Lakes System which are consistent with such guidance. If a Great Lakes State fails to adopt such standard, policies and procedures, the Administrator shall promulgate them no later than the end of such two year period.

(33 U.S.C. Section 1268(c)(2)(C).)

The United States Environmental Protection Agency (USEPA) published the Great Lakes guidance as a final rule at 60 Fed. Reg. 15366 on March 23, 1995. Thus, the state deadline was March 23, 1997. (Cert. at 2.) The Agency attached to its certification a letter from Jo

Lynn Traub, Director of the Water Division at USEPA, that confirms that the rules are necessary to meet the requirements of the Clean Water Act.

The Clean Water Act specifically requires states to adopt the Great Lakes guidance within two years of USEPA adoption. The USEPA has adopted the guidance. Therefore, it is clear that Illinois must adopt water quality standards, antidegradation polices, and implementation procedures for waters within the Great Lakes System. The Board accepts the Agency certification and finds that this rule is federally required.

The Board today accepts this matter for hearing. The Board is convinced that the expeditious processing of this proceeding will be better served by holding hearings on this proceeding prior to adopting the proposal for first notice pursuant to the Administrative Procedure Act (APA) (5 ILCS 100/1-1 *et seq.*(1994)).

The Board will attach the proposal to this order today as well as placing the proposal on the Board's internet home page (<http://www.state.il.us/pcb/>) to ensure that those who wish to review the proposal prior to hearing will have access. The Board anticipates that the public interest in this proceeding will be better served and the final adoption of the rule more quickly achieved if the Board proceeds in this manner.

Motion for Waiver of Certain Filing Requirements

The Agency asked for leave to file an original and three copies of the complete proposal in this proceeding. The Agency indicated that given the size of the entire regulatory package (six volumes of exhibits), the Agency would like leave to file the limited number of copies. The Board will grant this motion, in part. The Board directs that the Agency provide a fourth copy of the complete proposal to the Board.

The Agency also asked the Board to waive the requirement at Section 102.120 of the Board's rules that the entire proposal be filed with the Illinois Attorney General's Office. Attached to the motion is a letter from the Attorney General's Office indicating that it does not object to this waiver. The Board will grant that waiver.

IT IS SO ORDERED.

Kathleen M. Hennessey abstains.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the _____ day of _____, 1997, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board