

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAY 18 2005

STATE OF ILLINOIS  
Pollution Control Board

BOARD OF TRUSTEES OF SOUTHERN )  
ILLINOIS UNIVERSITY GOVERNING )  
SOUTHERN ILLINOIS UNIVERSITY )  
EDWARDSVILLE, )

Petitioner, )

v. )

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )

Respondent. )

PCB No. 02-105  
(NPDES Permit Appeal)

**NOTICE OF FILING AND PROOF OF SERVICE**

TO: Dorothy Gunn, Clerk, Illinois Pollution Control Board, 100 West Randolph Street,  
James R. Thompson Center, Suite 11-500, Chicago, IL 60601-3218;

Carol Web, Hearing Officer, Illinois Pollution Control Board, 1021 North Grand Avenue  
East, P.O. Box 19274, Springfield, IL 62794-9274

Sanjay K. Sofat, Illinois Environmental Protection Agency, 1021 North Grand Avenue  
East, P.O. Box 19276, Springfield, IL 62794-9276

PLEASE TAKE NOTICE that on May 16, 2005, I filed with the Office of the Clerk of  
the Pollution Control Board an original and nine copies of Petitioner SIUE's Reply to IEPA's  
Motion for and Memorandum of Law in Support of Summary Judgment by U.S. Mail.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing,  
together with a copy of the document described above, were today served upon the hearing  
officer and counsel of record of all parties to this cause by enclosing same in envelopes  
addressed to such attorneys at their business addresses as disclosed by the pleadings of record  
herein, with postage fully prepaid, and by depositing same in the U.S. Mail in Springfield,  
Illinois on the 16<sup>th</sup> day of May, 2005.



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THIS FILING SUBMITTED ON RECYCLED PAPER

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**PETITIONER SIUE'S REPLY TO IEPA'S MOTION FOR AND  
MEMORANDUM OF LAW IN SUPPORT OF SUMMARY JUDGMENT**

NOW COMES Petitioner, Board of Trustees of Southern Illinois University Governing Southern Illinois University, by and through its attorneys, Mohan, Alewelt, Prillaman & Adami, and respectfully submits this Reply to IEPA's Motion for and Memorandum of Law in Support of Summary Judgment.

**I. AN NPDES PERMIT IS REQUIRED FOR SIUE'S DISCHARGE OF NON-CONTACT COOLING WATER INTO TOWER LAKE**

In support of its Motion for Summary Judgment, the IEPA argues that an NPDES permit is required for SIUE's discharge of non-contact cooling water into Tower Lake. SIUE concedes this point. The point of contention is: Which provisions of Section 302.211 are applicable to SIUE's discharge? For the reasons set forth in SIUE's Motion for Summary Judgment, the applicable provisions are Section 302.211(a), (b), (c), (d), (f), (g), (h), and (i).

## II. THE NPDES PERMIT ALLOWS A MIXING ZONE FOR SECTION 302.211(e)

The IEPA argues that the NPDES permit allows no mixing zone. However, the introductory paragraph of Special Condition (2) of the NPDES permit provides:

Discharge of wastewater from this facility must not alone or in combination with other sources cause the receiving stream to violate the following thermal limitations at the edge of the mixing zone which is defined by Section 302.211, Illinois Administration Code, Title 35, Chapter 1, Subtitle C, as amended:

\* \* \*

(Record, p. 50).

Section 302.211(e)'s language stating that "water temperature at representative locations in the main river shall not exceed the maximum limits", 35 Ill. Admin. Code 302.211(e), allows a mixing zone in rivers; this is what the introductory paragraph of Special Condition (2) is referring to. As discussed in SIUE's Motion for Summary Judgment, Section 302.211(e) allows admixture of the warmed water in the river before monitoring must occur and compliance determined at representative locations in the main river. The IEPA's direction to monitor at the discharge point to determine compliance with Section 302.211(e), then, runs counter to Section 302.211(e) and the introductory paragraph of Special Condition (2).

Accordingly, if the Board rejects SIUE's position that Section 302.211(e) is inapplicable to its discharge into Tower Lake, the Board should recognize that both Section 302.211(e) and the NPDES permit drafted by the IEPA recognize that temperature monitoring for compliance with Section 302.211(e) is to occur after the warm water has mixed with the "receiving stream" or "river" accepting the discharge.

### III. BOARD MAY NOT CONSIDER "FACTS" NOT IN THE RECORD

The IEPA is required to file the entire record of its decision with the Board's Clerk. 35 Ill. Admin. Code 105.212. The Board's rules specify the information which is to be included in the record. Id. The Board has consistently held that in permit appeals, its review is limited to the record that was before IEPA at the time the permitting decision was made." Prairie Rivers Network v. IEPA and Black Beauty Coal Co., PCB No. 01-112 (Permit Appeal-NPDES, Third-Party), 2001 Ill. ENV LEXIS 366 at \*22-23 (August 9, 2001).

A review of the statement of facts in the parties' briefs shows that there are no genuine issue of material fact that prevent the Board from granting summary judgment in SIUE's favor. The IEPA's motion and memorandum, however, contain several statements of "fact" that are not included in the record.

As to the IEPA's Motion, the following statements of "fact" are not in the record:

- (a) Page 2, ¶ 2, second sentence;
- (b) Page 6, ¶ 21;
- (c) Pages 9, all sentences after "On May 16, 2002, the Board accepted the SIUE's petition"; and
- (d) Page 10, all sentences.

As to the IEPA's Memorandum, the following statements of "fact" are not in the record:

- (a) Page 17, second sentence;
- (b) Pages 18, all sentences after the sentence "The Board regulations clearly provide that mixing zones are to be granted only in cases where the discharger has made every effort to provide the best degree of treatment possible";
- (c) Page 19, all sentences except the following sentence: "To clarify the meaning of Special Condition 2...into Tower Lake."

Accordingly, SIUE requests that the Board not consider these unsupported statements of "fact" and that the Board strike them from the IEPA's motion and memorandum.

#### IV. CONCLUSION

Wherefore, Petitioner Board of Trustees of Southern Illinois University Governing Southern Illinois University prays that the Board strike all statements of "fact" offered by the IEPA which are not supported by the record, deny the IEPA's Motion for Summary Judgment, and grant SIUE's Motion for Summary Judgment.

BOARD OF TRUSTEES OF SOUTHERN  
ILLINOIS UNIVERSITY GOVERNING  
SOUTHERN ILLINOIS UNIVERSITY,  
EDWARDSVILLE, Petitioner,

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI  
Its attorneys,

BY:

  
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