

ILLINOIS POLLUTION CONTROL BOARD
September 6, 2007

IN THE MATTER OF:)
)
PETITION OF ILLINOIS DEPARTMENT OF) AS 08-1
TRANSPORTATION, DISTRICT 8,) (Adjusted Standard – Water)
BOWMAN AVENUE PUMP STATION AND)
DEEP WELL SYSTEM, FOR AN)
ADJUSTED STANDARD FROM 35 ILL.)
ADM. CODE 302.208(g) (NPDES PERMIT)
NO. IL0070955))

ORDER OF THE BOARD (by T.E. Johnson):

On July 27, 2007, the Illinois Department of Transportation (IDOT) filed a petition for an adjusted standard from the Board's general use water quality standards for sulfate and total dissolved solids (TDS) at 35 Ill. Adm. Code 302.208(g). IDOT's petition for relief concerns discharge from its District 8 Bowman Avenue Pump Station in East St. Louis, St. Clair County. In this order, the Board first provides brief background on the petition before determining whether IDOT has satisfied the statutory notice requirement for adjusted standard petitions, which is a prerequisite to the Board having jurisdiction over this proceeding. The Board then identifies several informational deficiencies in IDOT's petition and directs IDOT to file an amended petition to cure them.

BACKGROUND

According to IDOT's petition (Pet.), groundwater levels are pumped down to prevent flooding and structural damage to the Interstate Highway system in the East St. Louis area. Pet. at 1. Three of the groundwater pumping systems discharge to the IDOT District 8 Bowman Avenue Pump Station, "where they are pumped to a discharge sewer." *Id.* IDOT states that the Bowman discharge is combined with discharge from the Missouri Avenue Pumping system and the combined effluent discharges to an unnamed drainage way. *Id.* This combined discharge, IDOT continues, is regulated by effluent standards of 35 Ill. Adm. Code 304 and a National Pollutant Discharge Elimination System (NPDES) permit (No. ILD0070955) issued by the Illinois Environmental Protection Agency (Agency). *Id.* Because of "naturally occurring concentrations of the various parameters," IDOT maintains, the groundwater pumped from the well systems may cause exceedences of water quality standards set forth in 35 Ill. Adm. Code 302.208. *Id.* According to IDOT, the groundwater in this system "is not known to have been contaminated by any human activity." *Id.*

IDOT explains that its NPDES permit requires the discharge to meet effluent limits derived from water quality standards. Pet. at 2. IDOT's discharge "may have occasionally" exceeded the sulfate effluent limit and "routinely" exceeded the TDS effluent limit. *Id.* IDOT seeks an adjusted standard from the Board's general use water quality standards for sulfate and TDS at 35 Ill. Adm. Code 302.208(g). *Id.* The general use water quality standards for sulfate

and TDS are 500 milligrams per liter (mg/L) and 1,000 mg/L, respectively. 35 Ill. Adm. Code 302.208(g).¹ IDOT proposes adjusted standards of 642 mg/L for sulfate and 1,128 mg/L for TDS. Pet. at 12. The same IDOT discharge is the subject of a previously-granted adjusted standard concerning iron, suspended solids, and color (*In re* Petition of Illinois Department of Transportation, District 8 for an Adjusted Standard from 35 Ill. Adm. Code 302.208, 304.124 and 302.203, AS 96-12 (Oct. 3, 1996)). *Id.* at 2.

The Agency has not yet filed its recommendation on the adjusted standard petition. IDOT has waived its opportunity for a hearing. Pet. at 21; *see also* 35 Ill. Adm. Code 104.406(j).

NOTICE

Section 28.1(d)(1) of the Environmental Protection Act (Act) (415 ILCS 5/28.1 (2006)) and Section 104.408(a) of the Board's procedural rules (35 Ill. Adm. Code 104.408(a) (quoting the Act)) require the adjusted standard petitioner to publish notice of the petition's filing by advertisement in a newspaper of general circulation in the area likely to be affected by the proposed adjusted standard. Under those provisions, publication must take place within 14 days after the petition is filed. Failure to publish within 14 days deprives the Board of statutory authority to hear the petition. *See, e.g., In re* Petition of SCA Tissue North America, L.L.C. for an Adjusted Standard from 35 Ill. Adm. Code 218.301 and 218.302(c), AS 05-1 (Jan. 6, 2005) (dismissing adjusted standard petition for lack of jurisdiction when publication of notice took place after the 14-day period).

The newspaper notice must indicate that any person may cause a public hearing to be held on the proposed adjusted standard by filing a hearing request with the Board within 21 days after publication. *See* 415 ILCS 5/28.1(d)(1) (2006); 35 Ill. Adm. Code 104.408(b). Within 30 days after filing the petition, petitioner must file a certificate of publication with the Board. *See* 35 Ill. Adm. Code 104.410.

On August 15, 2007, IDOT timely filed a certificate of publication, documenting that the required notice of the petition was timely provided in the *Belleville News-Democrat* on August 1, 2007. The Board finds that IDOT has met the notice requirements of the Act and the Board's procedural rules. The Board has not received any request for a public hearing. *See* 35 Ill. Adm. Code 104.420(a), 104.422(a)(2).

¹ The Board notes that there is a pending rulemaking in which the Agency has proposed amendments to the sulfate and TDS general use water quality standards. *See* Triennial Review of Sulfate and Total Dissolved Solids Water Quality Standards: Proposed Amendments To 35 Ill. Adm. Code 302.102(b)(6), 302.102(b)(8), 302.102(b)(10), 302.208(g), 309.103(c)(3), 405.109(b)(2)(A), 409.109(b)(2)(B), 406.100(d); Repealer of 35 Ill. Adm. Code 406.203 and Part 407; and Proposed New 35 Ill. Adm. Code 302.208(h), R07-9. IDOT acknowledges that if the Agency's proposal for sulfate and TDS in R07-9 is adopted, "there would be no need for the adjusted standard proposed in this case." Pet. at 13.

INFORMATIONAL DEFICIENCIES

The Board finds that IDOT has not provided all of the information required by the Board's procedural rules for the contents of an adjusted standard petition. *See* 35 Ill. Adm. Code 104.406. Below, the Board identifies, and directs IDOT to cure, those informational deficiencies. The Board recognizes that some or all of the requested information may have been provided to the Agency over time or may otherwise be publicly available, but these items need to be developed in the record of this proceeding.

1. IDOT's petition at page 9 includes two tables showing the calculated mass of sulfate and TDS in pounds per day. Please also indicate the number of tons per year. *See* 35 Ill. Adm. Code 104.406(d).
2. Appendix A to the petition shows the Unnamed Tributary, and Figure 2 shows a portion of the Cahokia Canal. None of the maps depicts the system of waterways affected from the Bowman Avenue Pump Station to the confluence of Schoenberger Creek and Cahokia Canal. Please provide a continuous map depicting the waterways affected: Pump Station to Drainage Way to Unnamed Tributary to Schoenberger Creek to Cahokia Canal. *See* 35 Ill. Adm. Code 104.406(d).
3. In referring to AS 96-12, the petition at page 10 states that "[w]hile the treatment cost for the parameters evaluated then are not applicable to TDS and sulfates, they were nonetheless very high" Please explain whether IDOT believes that the costs and types of treatment for TDS and sulfate would be comparable to those evaluated in AS 96-12. *See* 35 Ill. Adm. Code 104.406(e).
4. From Appendix A of the petition, it appears the drainage way runs from the "Bowman Avenue Pump Station" to the "Bowman Avenue Pump Station Drainageway Discharge Point." Then it appears the water is discharged to the "Unnamed Tributary" and on to the channelized portion of Schoenberger Creek. The appendix differentiates between the "Drainageway" and the "Unnamed Tributary." IDOT's proposed adjusted standard wording, however, seems to group the drainage way and the unnamed tributary into one 1,750-ft section. Please address whether it would be clearer to identify the drainage way and unnamed tributary separately in the adjusted standard wording and, if so, please provide the revised language. *See* 35 Ill. Adm. Code 104.406(f).
5. The adjusted standard wording of AS 96-12 for the same discharge was formatted differently than the language proposed by IDOT here. The wording of AS 96-12 included separate sections for each stream segment and identified the deep well system by a name: FAI-55/70-FAI-64. For consistency and to provide a basis for comparison, please propose adjusted standard language more similar to the form of AS 96-12. *See* 35 Ill. Adm. Code 104.406(f).

6. Please address the efforts necessary to achieve the adjusted standard and the associated costs. *See* 35 Ill. Adm. Code 104.406(f).
7. The petition at page 15 states that “it is suspected that during non-rainy weather most if not all of the flow in the drainage way is from the IDOT flows.” Please clarify whether this includes the unnamed tributary. *See* 35 Ill. Adm. Code 104.406(g).
8. Please discuss whether there is a Total Maximum Daily Load (TMDL) for the drainage way, the unnamed tributary, Schoenberger Creek, or Cahokia Canal and whether any of the affected waterways are listed on the federal Clean Water Act Section 303(d) (33 U.S.C. 1313(d)) list as impaired. For any impaired waterways, please explain whether any of the causes of impairment are attributed to any components of TDS (*e.g.*, sulfate, chloride, sodium, calcium, carbonate, magnesium). Please comment on the environmental impacts to downstream waters from compliance with the proposed adjusted standard, as well as to waterways for which the adjusted standard is proposed. *See* 35 Ill. Adm. Code 104.406(g).

Before this proceeding can continue, IDOT must remedy these informational deficiencies by filing an amended petition. The amended petition “need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear.” 35 Ill. Adm. Code 104.418(d). The Board allows IDOT until October 11, 2007, to file the amended petition. Failure to timely file the amended petition will subject this matter to dismissal. If IDOT requires additional time to file the amended petition, it may file a motion for an extension, but must do so by the October 11, 2007 filing deadline.

As noted above, IDOT has waived hearing and the Board has received no public request for a hearing. Whether the Board will nevertheless order a hearing depends on several factors, including the adequacy of IDOT’s responses to the identified informational deficiencies. *See* 35 Ill. Adm. Code 104.422(a)(3). Also as noted above, the Agency’s recommendation has not yet been filed. Under the Board’s procedural rules, the recommendation is generally not due until 45 days after the filing of the petition or amended petition, unless ordered otherwise. *See* 35 Ill. Adm. Code 104.416(a). IDOT served the Agency with IDOT’s July 27, 2007 petition on August 24, 2007, and the incremental changes expected in the amended petition should be relatively modest. Under these circumstances and in the interest of administrative economy, the Board directs the Agency to file its recommendation within 30 days after being served with IDOT’s amended petition. IDOT, in turn, will have 14 days after being served with the Agency’s recommendation to file a response, if any. *See* 35 Ill. Adm. Code 104.416(d).

CONCLUSION

The Board finds that IDOT has satisfied the jurisdictional requirement of providing newspaper notice of its petition for an adjusted standard from the Board’s general use water quality standards for sulfate and TDS at 35 Ill. Adm. Code 302.208(g). However, as described

above, the Board finds that IDOT has not provided all of the necessary information in its petition and directs IDOT to file an amended petition to cure these shortcomings.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 6, 2007, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John Therriault, Assistant Clerk
Illinois Pollution Control Board