

ILLINOIS POLLUTION CONTROL BOARD
February 5, 2009

IN THE MATTER OF:)
)
CITY OF GALVA SITE SPECIFIC WATER) R09-11
QUALITY STANDARD FOR BORON) (Rulemaking - Water)
DISCHARGES TO EDWARDS RIVER)
AND MUD CREEK:)
35 ILL. ADM. CODE 303.447 and 303.448)

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by S.D. Lin):

On October 17, 2008, the City of Galva (City of Galva), a rural community located in Henry County, filed a proposal for site-specific rulemaking pursuant to Section 28 of the Environmental Protection Act (Act), 415 ILCS 5/28 (2006)). The proposal (Prop.) seeks to establish a 3.0 milligram per liter (mg/L) alternative boron standard to the generally applicable 1.0 mg/L boron water quality standard in 35 Ill. Adm. Code 302.208(g). The alternative standard for boron would apply to certain segments of an unnamed tributary to the South Branch of the Edwards River, the South Branch of the Edwards River, and the Mud Creek Run. These segments receive discharges from the two Sewage Treatment Plant (STPs) operated by the City. The City's Northeast STP discharges into the South Branch Edwards River, and its Southwest STP discharges into Mud Run Creek.

The City also filed motions requesting the Board to waive the requirement for 200 signatures on the petition and to expedite consideration of the petition. *See* 415 ILCS 5/28 (2006); 35 Ill. Adm. Code 102.202(g) and 101.512. The motion to expedite suggests that the Board cause immediate first notice publication of the proposal under the Administrative Procedure Act (APA), 5 ILCS 100 *et seq.* (2006). The Board has received no responses to the motions and pursuant to Section 101.500(d), any objection to the granting of the motions is deemed waived. 35 Ill. Adm. Code 101.500(d).

In this order, the Board accepts the proposal for hearing, granting the motion to waive signature requirement. The Board denies the motion for expedited consideration, but authorizes first-notice publication of the proposal without comment on the proposal's merits.

THE PROPOSAL

The City seeks alternative boron standards for certain segments of the streams that receive discharges from both of its STPs. The Northeast STP is an activated sludge plant that ultimately discharges into an unnamed tributary of the South Branch of the Edwards River. The Southwest STP is an aerated lagoon system, discharging into Mud Run Creek, a tributary of Walnut Creek, which is a tributary of the Spoon River.

Galva states that the source of the boron in its STP discharges is the groundwater from aquifers that supply Galva's drinking water. Galva states that the Illinois Environmental

Protection Agency (Agency) has incorporated the 1.0 mg/L boron water quality standard of 35 Ill. Adm. Code 302.208(g) into Galva's National Pollutant Discharge Elimination System ("NPDES") Permit as an effluent standard. Without conceding the correctness of the Agency action, Galva states that, unless the Board determines otherwise, the requested relief is necessary to ensure that Galva does not violate any relevant regulation or appropriate permit condition.

Galva relates that it has investigated various compliance options, including treatment of its effluent to remove excess boron or obtaining alternative drinking water sources from neighboring cities of Kewanee and Galesburg. Galva's proposal summarized its options available to Galva, and their associated upfront costs, as follows:

- a. Ion Exchange Treatment - \$2,016,410
- b. Potable Water Ion Exchange Treatment - \$2,099,784
- c. Potable Water Reverse Osmosis Treatment - \$6,905,955
- d. Drill New Drinking Water Well - Initial search \$100,000, not including drilling.
- e. Drinking Water from City of Kewanee - Not possible.
- f. Drinking Water from City of Galesburg - \$13,600,000. Prop. at 23.

Galva states that it is a rural community without resources to deal with these costs, except by "record level" user rate increases. *Id.*

Galva opines that there is no foreseeable environmental impact from adoption of its proposal. Among other things, the City intends to present expert testimony in support of its contention that the Board's 1.0 mg/L boron water quality standard is "over-protective of aquatic life". Prop. at 25, and 26-29.

MOTIONS

The City first requests the Board to waive the requirement for 200 signatures in support of the petition, as required by 35 Ill. Adm. Code Section 102.202(g). In support of this motion, Galva cites various past proceedings in which the Board has granted similar requests.

Then, in its motion to expedite (Mot. Exp.), Galva requests the Board proceed to first notice under the APA without reaching a decision on the merits, by publishing the regulatory language proposed in this rulemaking proposal only for purposes of first notice. Galva also requests that the requisite hearing be scheduled as soon as possible in accordance with Section 28(a) of the Act. Mot. Exp. at 2-3.

In support of this request, Galva notes that the boron in its STP discharges is found naturally in the drinking water supplied by its two wells. Mot. Exp. at 1. Galva asserts that it has been consulting with the Agency in the development of its proposal. The City also states that if more information is needed that it will expeditiously provide it. The City also cites to other proceedings in which the Board has granted similar requests. Mot. Exp. at 2.

Galva notes that a similar proposal for the City of Springfield pending before the Board is currently receiving expedited consideration. Galva suggests that "it would alleviate the burden on the Board to review both Petitions at the same time, and would promote the interests of judicial

economy.” Mot. Exp. at 3, citing inter alia Proposed Site Specific Rule for City of Springfield, Illinois, Office of Public Utilities, City Water, Light, Power, and Springfield Metro Sanitary District from 35 Ill. Adm. Code 302.208(g), R09-8 (Sept. 16, 2008). Galva concludes that:

Galva will be prejudiced if this Motion is denied because it continues to be subject to enforcement for failure to meet its NPDES effluent standard for boron despite any realistic environmental rationale for such standard. Mot. Exp. at 3.

DISCUSSION

First, the Board finds that the petition meets the content requirements of 35 Ill. Adm. Code 102.208 and 102.210 and is accepted for hearing. However, a review of the proposal reveals that the City did not address the applicability of, or provide the information requested in, the “published study or report” requirement of Section 102.210(c). 35 Ill. Adm. Code 102.210(c); *see also* 35 Ill. Adm. Code 102.210(g). The Board requests that the City address Section 102.210(c), or its inapplicability, in writing, prior to any hearing scheduled in this proceeding or at such other time as directed by the hearing officer.

Next, the Board grants the motion to waive the signature requirement of Section 102.202(g).

Lastly, the Board denies the motion for expedited consideration. Requests for expedited review are governed by Section 101.512 of the Board's rules, and must contain, *inter alia*, a complete statement of the facts and reasons for the request. *See* 35 Ill. Adm. Code 101.512. In acting on a motion for expedited review, the Board considers, at a minimum, all statutory requirements and whether or not material prejudice will result from the motion being granted or denied. 35 Ill. Adm. Code 101.512(b). In addition, the Board will only grant a motion for expedited review consistent with available resources. *See* 35 Ill. Adm. Code 101.512(c).

The Board does not discount the City's assertions concerning costs of compliance, and its need to either comply with the boron limits in its NPDES permit or to receive an alternative water quality standard. However, this does not give rise to “material prejudice” sufficient to allow the Board to grant Galva's request as made.

As noted, expedited review is granted consistent with decision deadlines and available resources. The Board currently has numerous open rulemaking dockets that demand immediate attention, as well as pressing cases that will keep the Board busy for several months.

Due to attrition, Board staffing is at its lowest levels in some years. Even if the Board were to accept that Galva's claims amount to “material prejudice”, the Board's limited resources in light of its current and future decision deadlines render the granting of a motion for expedited review unlikely in all but the most dire circumstances.

However, the Board can authorize the first-notice publication of this proposal without comment on its merits. The Board notes that it has made minor, non-substantive changes to the form and text of the proposed rule. The Board directs its hearing officer to expeditiously

schedule hearing consistent with the Board's decision and regulatory hearing calendars and other operational needs.

ORDER

The Board directs the Clerk to cause the first notice publication of the following rule in the *Illinois Register*:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE C: WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 303

WATER USE DESIGNATIONS AND SITE-SPECIFIC WATER QUALITY STANDARDS
SUBPART A: GENERAL PROVISIONS

Section	
303.100	Scope and Applicability
303.101	Multiple Designations
303.102	Rulemaking Required

SUBPART B: NONSPECIFIC WATER USE DESIGNATIONS

Section	
303.200	Scope and Applicability
303.201	General Use Waters
303.202	Public and Food Processing Water Supplies
303.203	Underground Waters
303.204	Secondary Contact and Indigenous Aquatic Life Waters
303.205	Outstanding Resource Waters
303.206	List of Outstanding Resource Waters

SUBPART C: SPECIFIC USE DESIGNATIONS AND SITE
SPECIFIC WATER QUALITY STANDARDS

Section	
303.300	Scope and Applicability
303.301	Organization
303.311	Ohio River Temperature
303.312	Waters Receiving Fluorspar Mine Drainage
303.321	Wabash River Temperature
303.322	Unnamed Tributary of the Vermilion River
303.323	Sugar Creek and Its Unnamed Tributary
303.326	Unnamed Tributary of Salt Creek, Salt Creek, and Little Wabash River
303.331	Mississippi River North Temperature
303.341	Mississippi River North Central Temperature
303.351	Mississippi River South Central Temperature
303.352	Unnamed Tributary of Wood River Creek
303.353	Schoenberger Creek; Unnamed Tributary of Cahokia Canal
303.361	Mississippi River South Temperature
303.400	Bankline Disposal Along the Illinois Waterway/River
303.430	Unnamed Tributary to Dutch Creek

303.431	Long Point Slough and Its Unnamed Tributary
303.441	Secondary Contact Waters
303.442	Waters Not Designated for Public Water Supply
303.443	Lake Michigan Basin
303.444	Salt Creek, Higgins Creek, West Branch of the DuPage River, Des Plaines River
303.445	Total Dissolved Solids Water Quality Standard for the Lower Des Plaines River
303.447	<u>Unnamed Tributary of the South Branch Edwards River and South Branch Edwards River</u>
303.448	<u>Mud Creek</u>

SUBPART D: THERMAL DISCHARGES

Section	
303.500	Scope and Applicability
303.501	Lake Sangchris Thermal Discharges
303.APPENDIX A	References to Previous Rules
303.APPENDIX B	Sources of Codified Sections

AUTHORITY: Implementing Section 13 and authorized by Sections 11(b) and 27 of the Environmental Protection Act [415 ILCS 5/13, 11(b) and 27].

SOURCE: Filed with the Secretary of State January 1, 1978; amended at 2 Ill. Reg. 27, p. 221, effective July 5, 1978; amended at 3 Ill. Reg. 20, p. 95, effective May 17, 1979; amended at 5 Ill. Reg. 11592, effective October 19, 1981; codified at 6 Ill. Reg. 7818; amended at 6 Ill. Reg. 11161, effective September 7, 1982; amended at 7 Ill. Reg. 8111, effective June 23, 1983; amended in R87-27 at 12 Ill. Reg. 9917, effective May 27, 1988; amended in R87-2 at 13 Ill. Reg. 15649, effective September 22, 1989; amended in R87-36 at 14 Ill. Reg. 9460, effective May 31, 1990; amended in R86-14 at 14 Ill. Reg. 20724, effective December 18, 1990; amended in R89-14(C) at 16 Ill. Reg. 14684, effective September 10, 1992; amended in R92-17 at 18 Ill. Reg. 2981, effective February 14, 1994; amended in R91-23 at 18 Ill. Reg. 13457, effective August 19, 1994; amended in R93-13 at 19 Ill. Reg. 1310, effective January 30, 1995; amended in R95-14 at 20 Ill. Reg. 3534, effective February 8, 1996; amended in R97-25 at 22 Ill. Reg. 1403, effective December 24, 1997; amended in R01-13 at 26 Ill. Reg. 3517, effective February 22, 2002; amended in R03-11 at 28 Ill. Reg. 3071, effective February 4, 2004; amended in R06-24 at 31 Ill. Reg. 4440, effective February 27, 2007; amended in R09-8 at 33 Ill. Reg. _____, effective _____, amended in R09-11 at _____ Ill. Reg. _____, effective _____.

SUBPART C: SPECIFIC USE DESIGNATIONS AND SITE SPECIFIC WATER QUALITY STANDARDS

Section 303.347	<u>Unnamed Tributary of the South Branch Edwards River and South Branch Edwards River</u>
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The general use water quality standard for boron at 35 Ill. Adm. Code 302.208(g) does not apply to the waters of the State that are located from the point of discharge of the publicly owned treatment works located at 523 NE 9th Street in Galva, known as the Galva Northeast Sewage Treatment Plant, to an unnamed tributary of the South Branch of the Edwards River (the

discharge point being located in Henry County, Township 14 North, Range 4 East, occupying portions of Sections 21, 26, 27, 28,33,34, and 35 in the Fourth Principal Meridian, Latitude N 41.175°, Longitude: W 90.035°) to the confluence of unnamed tributary with the South Branch Edwards River; to the confluence with the Edwards River. Boron levels in such waters must meet a water quality standard for boron of 3.0 mg/L.

Section 303.448 Mud Run Creek

The general use water quality standard for boron set forth at 35 Ill. Adm. Code 302.208(g) does not apply to the waters of the State that are located from the point of discharge of the publicly owned treatment works located at ½ mile South of the Burlington Northern Santa Fe Railroad and SW 4th Street in Galva, known as the Galva Southwest Sewage Treatment Plant, to Mud Run Creek (said point located in Henry County, Township 14 North, Range 4 East, occupying portions of Sections 21, 26, 27, 28, 33, 34 and 35 of the Fourth Principal Meridian, Latitude: N 41.154 degrees, Longitude W. 90.053 degrees) to the confluence of Mud Run Creek with Walnut Creek. Boron levels in such waters must meet a water quality standard for boron of 3.0 mg/L.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 5, 2009, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board