

\*\*\*\*\* PC# 6 \*\*\*\*\*

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
TRIENNIAL REVIEW OF WATER	)	
QUALITY STANDARDS FOR BORON,	)	R11-18
FLUORIDE AND MANGANESE:	)	(Rulemaking – Water)
AMENDMENTS TO 35 ILL. ADM. CODE )	)	
301.106, 302.SUBPARTS B, C, E, F, AND )	)	
302.312	)	

**NOTICE OF FILING**

TO: Mr. John T. Therriault	Ms. Kathleen Crowley
Assistant Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	100 West Randolph Street
Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
<b>(VIA ELECTRONIC MAIL)</b>	<b>(VIA FIRST CLASS MAIL)</b>

**(SEE PERSONS ON ATTACHED SERVICE LIST)**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board ENTRY OF APPEARANCE OF ALEC M. DAVIS and FIRST NOTICE COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP on behalf of the Illinois Environmental Regulatory Group, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

Dated: May 29, 2012

By: /s/ Alec M. Davis  
Alec M. Davis

Alec M. Davis  
General Counsel  
Illinois Environmental Regulatory Group  
215 East Adams Street  
Springfield, Illinois 62701  
(217) 522-5512

CERTIFICATE OF SERVICE

I, Alec M. Davis, the undersigned, hereby certify that I have served the attached ENTRY OF APPEARANCE OF ALEC M. DAVIS and FIRST NOTICE COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP upon:

Mr. John T. Therriault  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

via electronic mail on May 29, 2012; and upon:

Kathleen Crowley, Hearing Officer  
Pollution Control Board  
James R. Thompson Center  
100 W Randolph, Ste. 11-500  
Chicago, Illinois 60601

Thomas Shepherd  
Office of the Attorney General  
69 West Washington, Suite 1800  
Chicago, IL 60602

Office of Legal Services  
Illinois Department of Natural Resources  
One Natural Resources Way  
Springfield, Illinois 62702-1271

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1021 North Grand Ave. East  
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Springfield, Illinois 62794-9276

Christine G. Zeman  
Special Assistant Corporation Counsel  
Office of Public Utilities  
800 E. Monroe, 4th Floor, Municipal Bldg.  
Springfield, Illinois 62757-0001

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on May 29, 2012.

By: /s/ Alec M. Davis  
Alec M. Davis

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302.312	)	

**ENTRY OF APPEARANCE OF ALEC M. DAVIS**

NOW COMES Alec M. Davis, of the ILLINOIS ENVIRONMENTAL REGULATORY GROUP, and hereby enters his appearance in this matter on behalf of the Illinois Environmental Regulatory Group.

Respectfully submitted,

By: /s/ Alec M. Davis  
Alec M. Davis

Dated: May 29, 2012

Alec M. Davis  
General Counsel  
Illinois Environmental Regulatory Group  
215 East Adams St.  
Springfield, IL 62701  
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**FIRST NOTICE COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”) by and through its attorney, Alec M. Davis, and pursuant to Section 5-40 of the Illinois Administrative Procedure Act (5 ILCS 100/5-40) and 35 Ill. Admin. Code 102.604, hereby submits its first notice comments in the above-captioned matter.

IERG is a not-for-profit Illinois corporation affiliated with the Illinois Chamber of Commerce. IERG is composed of fifty-two (52) member companies that are regulated by governmental agencies that promulgate, administer or enforce environmental laws, regulations, rules or other policies. Many IERG member companies are permitted dischargers of the parameters for which the water quality standards are being amended by the Illinois Pollution Control Board’s (“Board”) First Notice Proposal, and could be impacted by other provisions being amended. Opinion and Order of the Board, *In the Matter of: Triennial Review of Water Quality Standards for Boron, Fluoride and Manganese: Amendments to 35 Ill. Adm. Code 301.106, 302. Subparts B, C, E, F and 303.312*, R11-18 (Ill.Pol.Control.Bd. Mar. 15, 2012) (hereinafter referred to as “Board Order”).

**I. DISCUSSION**

IERG supports the amendments to the Board's boron, fluoride, and manganese standards. A number of IERG members have actively participated in this rulemaking, and the amendments are generally thought to be beneficial to the regulated community as a whole. IERG applauds the Agency for identifying the outdated standards, and for diligently working to update them. IERG encourages the Board to finalize the proposed amendments to the water quality standards as expeditiously as possible.

There is, however, one small but significant issue that is important to IERG and its members. Specifically, IERG is unsure of the need for the proposed changes contained in Section 302.208 subsections (a), (b), (c), and (d), and is concerned that those changes have the potential to be misconstrued. There was little to no discussion in the Board Order related to the language IERG now questions. The Board simply noted in a single statement that, "IEPA has proposed clarifying changes to Section 302.208 that reorganize the various subsections to clearly identify the application of the acute, chronic, human health and single value standards." Board Order at 10 (citing the Agency's Statement of Reasons). Since the publication of the Board Order, IERG has met with the Agency to discuss these concerns, and is convinced that the Agency's intent is solely to provide clarity, and nothing in the proposed changes is intended to alter the Agency's treatment of mixing zones or the body of case law relative to the Board's mixing rules that has developed over time. However, as the Board and the Agency are surely aware, even the most innocuous of changes can result in unintended consequences or the later misreading of that new language. The need for clarity and accuracy are particularly

important as the provisions at issue apply not only to the three parameters being amended, but to all of the numeric water quality standards for general use waters. Therefore, due to an abundance of caution, IERG suggests that certain minor adjustments to that language be made by the Board to further improve upon the clarity of the language adopted by the Board in its Order, while maintaining the substance of the Board's longstanding mixing rules. IERG has included those changes in Attachment A to these comments (for ease of identification, IERG's suggested changes to the Board's proposed amendments are highlighted). Should the Board decline to accept this language, and given the relative paucity of discussion in the Board's record related to these changes, IERG would urge the Board to take one of the following alternative actions: 1) return the language in question back to its original form that existed prior to the Board's Order, or 2) split the docket in two, allowing the changes to the water quality standards to proceed as expeditiously as possible, while any potential issues relative to the mixing language can be dealt with in a new subdocket.

## II. CONCLUSION

IERG supports the amendments to the water quality standards for boron, fluoride, and manganese proposed by the Board for First Notice, and encourages the Board to finalize them as expeditiously as possible. IERG's sole concern relates to the "clarifying changes" described above, and IERG requests that the Board adopt IERG's suggested revisions included in Attachment A to these comments. Alternatively, IERG asks that the Board consider reverting back to the previous language, or provide a subdocket to allow for additional discussion of IERG's concerns without hindering the adoption of the other proposed amendments.

IERG appreciates the opportunity to provide these comments. Thank you for your consideration.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

Dated: May 29, 2012

By: /s/ Alec M. Davis  
Alec M. Davis

Alec M. Davis  
General Counsel  
Illinois Environmental Regulatory Group  
215 East Adams Street  
Springfield, Illinois 62701  
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# Attachment A

**IERG's Suggested Revisions to the Illinois Pollution Control Board's First Notice Proposed Amendments to 35 Ill. Admin. Code 302.208 subsections (a), (b), (c), and (d)**

**Section 302.208 Numeric Standards for Chemical Constituents**

- a) The acute standard (AS) for the chemical constituents listed in subsection (e) shall not be exceeded at any time except for those waters for which a zone of initial dilution (ZID) applies pursuant to Section 302.102~~as provided in subsection (d)~~.
- b) The chronic standard (CS) for the chemical constituents listed in subsection (e) shall not be exceeded by the arithmetic average of at least four consecutive samples collected over any period of at least four days, except for those waters in which the Agency has approved a mixing zone or in which mixing is allowed~~mixing pursuant to Section 302.102 as provided in subsection (d)~~. The samples used to demonstrate attainment or lack of attainment with a CS must be collected in a manner that assures an average representative of the sampling period. For the chemical constituents~~metals~~ that have water quality based standards dependent upon hardness, the chronic water quality standard will be calculated according to subsection (e) using the hardness of the water body at the time the ~~metals~~ sample was collected. To calculate attainment status of chronic ~~metals~~ standards, the concentration of the chemical constituent~~metal~~ in each sample is divided by the calculated water quality standard for the sample to determine a quotient. The water quality standard is attained if the mean of the sample quotients is less than or equal to one for the duration of the averaging period.
- c) The human health standard (HHS) for the chemical constituents listed in subsection (f) shall not be exceeded when the stream flow is at or above the harmonic mean flow pursuant to Section 302.658 nor shall an annual average, based on at least eight samples, collected in a manner representative of the sampling period, exceed the HHS except for those waters in which the Agency has approved a mixing zone or in which mixing is allowed~~mixing pursuant to Section 302.102 as provided in subsection (d)~~.
- d) The standard for the chemical constituents of subsections (g) and (h) shall not be exceeded at any time except for those waters in which the Agency has approved a mixing zone or in which mixing is allowed~~mixing pursuant to Section 302.102. In waters where mixing is allowed pursuant to Section 302.102, the following apply:~~
- 1) ~~The AS shall not be exceeded in any waters except for those waters for which the Agency has approved a zone of initial dilutions (ZID) pursuant to Section 302.102.~~
  - 2) ~~The CS shall not be exceeded outside of waters in which mixing is allowed pursuant to Section 302.102.~~
  - 3) ~~The HHS shall not be exceeded outside of waters in which mixing is allowed pursuant to Section 302.102.~~