

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
TRIENNIAL REVIEW OF WATER QUALITY) R11-18
STANDARDS FOR BORON, FLUORIDE) (Rulemaking – Water)
AND MANGANESE: AMENDMENTS)
TO 35 ILL. ADM. CODE 302.Subparts B, C, E)
and F and 303.312)

PC#9

NOTICE OF FILING

TO: John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

RECEIVED
CLERK'S OFFICE
SEP 19 2012
STATE OF ILLINOIS
Pollution Control Board

SEE SERVICE LIST

PLEASE TAKE NOTICE that I have filed today with the Office of the Clerk of the Illinois Pollution Control Board the Final Comments of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Deborah J. Williams
Deborah J. Williams
Assistant Counsel

1021 North Grand Avenue East
P.O. Box 19276
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Dated: September 14, 2012

ORIGINAL
RETURN TO CLERK'S OFFICE

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FINAL COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

The Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by and through its attorney, Deborah J. Williams, hereby submits its final comments on the First Notice Opinion and Order issued by the Illinois Pollution Control Board ("Board") on March 15, 2012 in the above-captioned rulemaking proceeding. In support thereof, the Illinois EPA states as follows:

Procedural Background

On December 2, 2010, the Agency filed a rulemaking proposal with the Board containing proposed amendments to the Board's water quality standards regulations. The Board found that the Illinois EPA's proposal met the procedural requirements of 35 Ill. Adm. Code 102.202 and accepted the proposal for hearing at its December 16, 2010 meeting.

Hearings were held on the Agency's proposal on June 21, 2011 in Springfield and on July 26, 2011 in Chicago. Post-Hearing Comments were filed by the Agency on August 19, 2011. No other post-hearing comments were received by the Board's September 9, 2011 deadline.

On March 15, 2012 the Board issued a First Notice Opinion and Order which reflected most changes proposed by the Agency with a few minor edits by the Board on the issue of derived water quality standard publication and incorporation by reference of the proposed cyanide methods. First Notice Comments were received from Illinois Environmental Regulatory Group (“IERG”) and the Agency.

The Hearing Officer scheduled and held an Economic Impact Study (“EclS”) hearing for this proceeding on August 23, 2012 in Springfield. At that hearing, testimony was taken from Alec Messina, the Executive Director of IERG. Mr. Messina’s testimony summarized IERG’s First Notice Comments and indicated IERG’s agreement with the additional, related edit to the language in 302.208(a) proposed by the Agency.

Agency Response to Question Posed by the Hearing Officer

At the EclS hearing, Hearing Officer Crowley posed the following question: “In Section 302.208(c), we’re talking about added language that water in which the Agency has approved a mixing zone or in which mixing is allowed. Typically, we would add for those waters in which the Agency [has approved a] mixing zone in writing, do you have a problem with that?” August 23, 2012, Hearing Transcript at 10. The Agency indicated it would address this question in its Final Comments.

The Hearing Officer is suggesting the following change to the currently jointly proposed language in 302.208(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 **in writing** or in

which mixing is allowed pursuant to Section 302.102 as provided in subsection (d)."

The Agency has considered the Hearing Officer's suggestion and while the Agency does not feel the change is necessary, it would not object if the Board chose to make this change.

It is important to the Agency, however, to be clear on the record that the language adopted by the Board not specify the format such writing is expected to take. While it is the Agency's current practice that all mixing zones approved by the Agency are to be delineated within a regulated facility's National Pollutant Discharge Elimination System (NPDES) permit, this may not have been done consistently or uniformly in the past. In some cases, facilities may still be operating under an NPDES permit that does not delineate the location and dimensions of an Agency approved mixing zone, but instead the mixing zone is identified in a memo in the permit file or through review of a mixing zone study by the Agency that is referenced in an individual permit writer's notes.

Conclusion

Illinois EPA appreciates the Board's time and efforts in this rulemaking proceeding and encourages the Board to take into account the Agency's concerns with proposed Sections 502.595 and 502.669 as highlighted in First Notice Comments when adopting a Second Notice Opinion and Order.

Respectfully submitted,

By: 
Deborah J. Williams
Assistant Counsel
Division of Legal Counsel

Date: September 14, 2012

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STATE OF ILLINOIS)
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COUNTY OF SANGAMON)
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PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached First Notice Comments of the Illinois Environmental Protection Agency upon the person to whom it is directed, by placing it an envelope addressed to:

John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

Thomas H. Shepherd
Assistant Attorney General
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Kathleen C. Bassi
Amy Antonioli
SCHIFF HARDIN, LLP
233 South Wacker Drive, Suite 6600
Chicago, Illinois 60606

and mailing it First Class Mail from Springfield, Illinois on September 14, 2012, with sufficient postage affixed.

Catherine R. Demeroukas

SUBSCRIBED AND SWORN TO BEFORE ME

This 14th day of September 2012

Cynthia L. Wolfe
Notary Public

