

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

PROPOSED AMENDMENTS TO:)
35 Ill. Adm. Code 302.102 and 302.208(g)) R2018-032
WATER QUALITY STANDARDS)
FOR CHLORIDES)

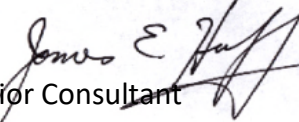
NOTICE OF FILING

TO: **Attached Service List**

PLEASE TAKE NOTICE that on October 1, 2019 I have filed with the Office of the Clerk of the Illinois Pollution Control Board Huff & Huff, Inc.'s Motion to Dismiss, a copy of which is herewith served upon you.

Respectfully submitted,

Huff & Huff, Inc.

By: 
Senior Consultant

Dated: October 1, 2019

James E. Huff, P.E.
HUFF & HUFF, INC.
915 Harger Road, Suite 330
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WATER QUALITY STANDARDS)
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MOTION TO DISMISS

Now comes Huff & Huff, Inc. by its Senior Consultant, James E. Huff, P.E., and hereby moves that the Illinois Pollution Control Board dismiss the above-referenced matter. In support of this motion, Huff & Huff states as follows:

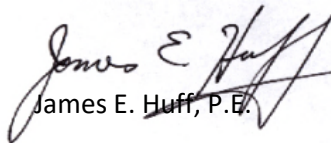
- 1) On May 21, 2018, Huff & Huff, Inc. submitted a petition (subsequently amended on March 14, 2019) proposing to revise the chloride criteria that would apply throughout Illinois. The Amended Petition resulted in additional pre-filed questions and the participation by the Illinois Association of Wastewater Agencies and the USEPA. The petition uses the results of laboratory tests conducted at different temperatures to derive chloride toxicity criteria based on stream temperature. Laboratory testing was primarily conducted by Dr. David Soucek of the Illinois Natural History Survey. Funding was provided by a consortium of municipalities, counties, the Illinois Tollway, and industries. Initially, one round of toxicity testing was anticipated. However, testing evolved into three rounds. The second round of testing extended the exposure period, and in the third round, the chloride concentrations were reduced after seven days of exposure. These additional laboratory tests fully consumed the funds raised by the consortium.
- 2) The need to test at least one fish species was recently raised by both the Board and the Agency, and additional funds were sought. Funds have been secured sufficient to conduct cold temperature toxicity testing of the *Pimephales*, but not the winter stoneflies (which was requested to be tested by the Agency). However, the fish toxicity testing is currently delayed because they are vertebrates. An animal care and use protocol has been submitted to the University of Illinois at Urbana/Champaign Institutional Animal Care and Use Committee for approval. Under University of Illinois guidelines, until this committee approves the work plan, the fish studies cannot begin.
- 3) USEPA filed comments on June 28, 2019 (after electing previously not to comment on the original work plan submitted to them and taking the position that there was no need for funding temperature effect studies for chlorides). Comment 1a from USEPA ignores the results from the extended duration period testing and ignores the chloride data included with the petition on the duration of elevated chlorides in the Illinois streams. Comment 1b from USEPA was directed at the second round of toxicity testing, where extended time periods were evaluated which far exceeded the time period chlorides are elevated following storm events. In addition, Comment 1b also ignores the third round testing where the chlorides were lowered after seven days of exposure, reflecting what happens in receiving streams. Comment 2 from USEPA suggests that the averaging period could possibly be altered if accompanied by restrictions on short-term peaks to prevent toxic effects. USEPA notes that such an approach would require a "complex and rigorous testing protocol". Comment 3 requires further investigation on the difference in the slopes between Jackson and Funk and our studies, and more species to be evaluated for the relationship between temperature and toxicity, despite the USEPA approving the hardness

relationship for chloride toxicity based on a single species. It is clear from USEPA's comments that it has no interest in chloride standards based on temperature.

- 4) The Illinois Association of Wastewater Agencies (IAWA) filed comments on May 30, 2019. This is a group of dischargers that is impacted by the current chloride water quality standard, and a higher winter chloride water quality standard would benefit members of this group. A lower summer standard (at higher temperatures) is a potential concern to this group, although IAWA provided no data to support the validity of this concern. It should be noted this group did not financially support our research, although a few of its members did. Perhaps of most interest in the IAWA comments is Comment 2, which states that USEPA expects to release additional data regarding chloride toxicity toward the end of 2019. I am unaware of this work and would be surprised if temperature effects are addressed in this "release of additional data." USEPA in its comments did not identify this pending release of "additional data". IAWA further questions whether our petition on cold temperature toxicity of chlorides is premature, given USEPA's pending additional data on chloride toxicity soon to be released. IAWA has confidence that the USEPA's "additional data" will be timely released in 2019 and apparently believe it will add to our understanding of temperature effects on chloride toxicity. If IAWA, which would benefit from the proposed winter standards, does not support this petition, it is time to withdraw the proposal.
- 5) Given the identification of chlorides as a cause of impairment in virtually all urban streams in Illinois, growth can occur only with chloride offsets plus approval of the Time-Limited Water Quality Variances currently under consideration. Future growth in urban areas will be constrained in the urban portions of Illinois. There are significant costs associated with both the offsets and the variances.
- 6) The Time-Limited Water Quality Variances currently being considered include a 280 mg/L chloride water quality objective based on a 4-year average of results from December through April. There is no discussion about protection of the aquatic community in the Time-Limited Water Quality Variance. From the regulated community perspective, this approach is preferable to trying to achieve a not-to-exceed acute or 4-day chronic standard, but it does little for the protection of aquatic organisms. Presumably USEPA has agreed to this approach, despite commenting in these proceedings that the averaging period might be altered only if there are restrictions on short-term peaks to prevent toxic effects. The Time-Limited Water Quality Variance petitioner notes in response to questions that no aquatic life monitoring will be conducted as part of the variance. In short, for the regulated community, the proposed 4-year seasonal average objective is more readily achievable than the acute and chronic standards proposed in this proceeding. If this variance approach is ultimately approved, this will set the precedent for the foreseeable future of simply maintaining a 4-year average objective, lowered every five years when the variance renewal process is renewed, while future projects will still be required to find chloride offsets.
- 7) Despite the requested withdrawal of this Petition, the consortium is committed to completing the toxicity testing of the *Pimephales*, once the University of Illinois at Urbana/Champaign Institutional Animal Care and Use Committee approves the work. The results of this study will thus be available when the chloride water quality standards in Illinois are again considered for revision, perhaps after the USEPA additional data are released.

Wherefore Huff & Huff respectfully requests the Illinois Pollution Control Board dismiss this proposed rule change proceeding.

Respectfully submitted,
Huff & Huff, Inc.



James E. Huff, P.E.

Dated: October 1, 2019

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CERTIFICATE OF SERVICE

I, James E. Huff, the undersigned, on oath state the following: That I have served the attached **MOTION TO DISMISS TO AMEND 35 ILL. ADM. CODE 302.102 and 302.208(g) WATER QUALITY STANDARDS FOR CHLORIDES**, via electronic mail upon:

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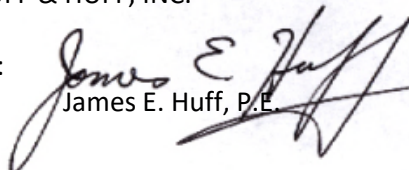
That the number of pages in the email transmission is 5.

That the email transmission took place before 5:00 p.m. on the date of October 1, 2019.

Dated: October 1, 2019

HUFF & HUFF, INC.

By:


James E. Huff, P.E.