

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)

Revisions to Antidegradation Rules:)
35 Ill. Adm. Code 302.105, 303.205,)
303.206 and 106.990-106.995)

) R01-13

) *P.C. #48*

MEMORANDUM REGARDING THE PROPOSED RULE, FIRST NOTICE,
OF THE ENVIRONMENTAL LAW AND POLICY CENTER, FRIENDS OF
THE FOX RIVER, PRAIRIE RIVERS NETWORK AND SIERRA CLUB

The Environmental Law and Policy Center of the Midwest, Friends of the Fox River, Prairie Rivers Network and the Illinois Chapter of the Sierra Club (collectively "Environmental Groups") submit this memorandum regarding the Proposed Rule, First Notice, issued by the Board with its Opinion and Order of June 21, 2001.

General Comments

The Environmental Groups believe that the rules proposed by the Board on first notice should be adopted as proposed, except as to a few provisions that should be clarified or strengthened. Generally the proposed rules create sound antidegradation standards and regulations for Illinois that should workably protect Illinois waters from injury to existing uses and unnecessary degradation. The Board has wisely rejected efforts to create arbitrary exceptions from the coverage of the rules that would have allowed Illinois waters to be degraded in a piecemeal fashion. The proposed provisions for designation and protection of Outstanding Resource Waters ("ORW") are also sound.

Specific Comments on Certain Provisions of the Proposed Rule

The Board did not adopt a number of the proposals made by the Environmental Groups in earlier memoranda and testimony in these proceedings. No purpose would be served by repeating herein arguments, suggestions or comments that the Board has already seen and presumably factored into its First Notice proposal or rejected. Some comment regarding certain provisions of the Board's First Notice Proposed Rule, however, is useful or necessary.

Proposed Section 102.810

The Environmental Groups believe that the notice provisions for petitions relating to the designation of an ORW is adequate.

Proposed Section 102.830(b)(1)

This provision contains language for designation of an ORW that speaks of "uniquely high" biological or recreational value. As was pointed out in one of the Board's questions to the Agency, see December 6, 2000 Tr. at 42-3, the term "unique" is somewhat ambiguous. The Board would improve the clarity of the proposed rule if it substituted "outstanding" or "very high" for "uniquely high". The most precise language to use, however, would be the federal language which is "of exceptional recreational or ecological significance." See 40 C.F.R. §131.12(a)(3).

Proposed Section 302.105(d)(6)

The Environmental Groups appreciate that reconciling use of general permits with proper anti-degradation policy is difficult. We are pleased that the Board has seen fit to give direction to the Agency against the use of general permits for activities that may affect waters of "particular biological significance."

The Environmental Groups believe further that, particularly given the submissions and testimony offered by the Illinois Department of Natural Resources at the third hearing, the term “particular biological significance” can be more precisely set forth in the rules. The testimony of Rob Moore states proposed language to do this.

Proposed Section 302.105(f)

The Board was wise to adopt this section regarding performance of antidegradation assessments as part of the Board standards rather than leaving this matter for later Agency rule-making. It is critical that clear procedures be established for the Agency as soon as possible given the ongoing need to consider permit applications.

Proposed 302.105(f)(2)(B)

The meaning of this provision is unclear. Perhaps there is a misprint in this language. In any event, applicants should be required to go through the permitting process before taking any appeal to the Board.

Notice to the Illinois Department of Natural Resources

Consultation by the Agency with other state agencies with biological expertise (particularly the Illinois Department of Natural Resources) regarding permitting matters is of great importance to the process. This is recognized by the Board in proposed §302.105(f)(3)(C) where it is required that the comments of IDNR and certain other bodies be summarized in the fact sheet accompanying the public notice of the draft permit. However, the proposed rule does not clearly require that IDNR or other bodies with biological expertise be informed of permit applications or the assessment process. Obviously, there will never be any comments by IDNR

summarized in the public notice if IDNR receives no notice of the proposed permit prior to the time of the public notice.

Accordingly, we propose that a new subsection 302.105(f)(2)(E) be added stating that :

(E) After review pursuant to subsection (f)(2)(A)(i) or receipt of an application pursuant to subsection (f)(2)(A)(ii), the Agency shall notify the Illinois Department of Natural Resources of the review or application as soon as practicable to allow IDNR an opportunity to prepare comments or recommendations prior to issuance of the public notice required by 35 Ill. Adm. Code 309.109 or CWA Section 401.

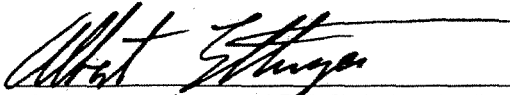
Proposed Section 303.205

Again the term “uniquely high” is used. For the reasons given above in our comment on proposed Section 102.840, “outstanding,” “very high” or use of the federal language is preferable.

CONCLUSION

The Board should adopt in final the antidegradation standards proposed by the Board on First Notice with the minor changes and clarifications presented and discussed in this memorandum.

Respectfully submitted,



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