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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
PROPOSED SITE-SPECIFIC WATER)
POLLUTION REGULATIONS)
APPLICABLE TO THE CITY OF)
EFFINGHAM, BLUE BEACON)
INTERNATIONAL, INC. AND)
TRUCKOMAT CORPORATION)

R 03-11
(Site-Specific Rulemaking-Water)

NOTICE

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

John Knittle, Hearing Officer
Illinois Pollution Control Board
1717 Philo Road, Suite 25
Urbana, Illinois 61802

David M. Walter
N. LaDonna Driver
Hodge, Dwyer & Zeman
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776

Matthew Hortenstine
122 E. Washington
P.O. Box 668
Effingham, Illinois 62401

Please take notice that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the original and nine (9) copies of the **PREFILED TESTIMONY OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**, a copy of which is served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

Date: March 20, 2003
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
217/782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED SITE-SPECIFIC WATER) R 03-11
POLLUTION REGULATIONS APPLICABLE) (Site Specific Rulemaking-Water)
TO THE CITY OF EFFINGHAM, BLUE)
BEACON INTERNATIONAL, INC. AND)
TRUCKOMAT CORPORATION)

**PREFILED TESTIMONY OF THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY**

INTRODUCTION

On October 22, 2002, the City of Effingham ("City"), Blue Beacon International, Inc. ("BBI"), and Truckomat Corporation ("Truckomat")(referred to collectively as "Effingham" or "Petitioners") filed a site-specific rulemaking proposal with the Illinois Pollution Control Board ("Board") pursuant to Section 27 of the Illinois Environmental Protection Act ("Act"). [415 ILCS 5/27]. Effingham's proposal would change the fluoride standard applicable to the discharge from the City's wastewater treatment plant from 1.4 milligrams per liter ("mg/L") to 4.5 mg/L. Specifically, Petitioners have requested relief from 35 Ill. Adm. Code 304.105 as it applies to the water quality standard for fluoride at 35 Ill. Adm. Code 302.208(g).

Prior to filing its proposal with the Board, Petitioners submitted draft proposals to the Illinois Environmental Protection Agency ("Agency" or "Illinois EPA") for review and comment. The Petitioners revised their draft proposal in response to Agency comments and held at least two telephone conferences with Illinois EPA staff members to address the Agency's concerns with the draft proposal. As a result, the Agency is in substantial agreement that the rulemaking change proposed by the Petitioners is necessary,

contains sufficient conditions to safeguard the environment now and in the future and meets the requirements of Section 27(a) of the Act. The Illinois EPA's testimony will address the basis for our concurrence with this proposal, some specific comments on the language of the proposal, and a recommendation that the Board make changes to the language of the relief requested.

BACKGROUND AND COMMENTS ON PROPOSAL

The City of Effingham is located at the confluence of two major interstate highways (Interstates 57 and 70). Petitioners BBI and Truckomat are in the business of providing truck washing services to the interstate traffic that passes through the area. The truck washing process utilizes hydrofluoric acid as a brightener. The resulting high fluoride wastewater from these industrial facilities is discharged into the City's sewer system. Like most wastewater treatment plants, the City does not treat for fluoride. In addition, the City adds fluoride to its water supply for dental health purposes. As a result of these factors, the effluent from Effingham's publicly owned treatment works ("POTW") contains levels of fluoride that may cause exceedances of the general use water quality standard in the receiving streams. The impacted waterbodies are the unnamed tributary of Salt Creek into which the POTW discharges, Salt Creek itself, and the Little Wabash River into which the Salt Creek flows. Petitioners have estimated that the impact of its fluoride discharge may reach as far as 44 miles downstream from the point of discharge. The public water supply intake for the City of Flora is located 37 miles downstream from Effingham's discharge.

The tributary of the Salt Creek that receives Effingham's effluent is defined as a zero flow stream during 7 day, 10 year low flow conditions ("7Q10"). As a result, no mixing zone is allowed in establishing an effluent limit for the City in its National

Pollutant Discharge Elimination System ("NPDES") permit and a water quality based effluent limit ("WQBEL") has been imposed which is equivalent to the general use water quality standard of 1.4 mg/L which took effect in June 2001. The City will not be able to comply with this limit and has requested an alternative effluent limit of 4.5 mg/L. An effluent limit of 4.5 mg/L would ensure that with taking evaporation into account, the water quality in the Salt Creek and its unnamed tributary would not exceed 5.0 mg/L.

The Petitioners have stated that the brightener used by BBI and Truckomat containing hydrofluoric acid is necessary to remain competitive in the truck washing industry and that it is not technically feasible or economically reasonable to change brighteners or provide treatment at the truck wash locations or the City's POTW. Additionally, Petitioners have been able to demonstrate that fluoride at the levels discharged by the City is not toxic to aquatic life likely to occur in streams similar to the Little Wabash River, Salt Creek or its unnamed tributary that receives the Effingham effluent. Toxicity test results on fluoride indicate that even the most sensitive species tested can tolerate the levels likely to be found in the receiving waters. The Petitioners investigated the existing quality of the receiving stream because of the Agency's concern that during the September 1999 facility related stream survey, net-spinning caddisflies (which are particularly sensitive to fluoride) were present approximately 3.7 miles downstream of the discharge and they were not found at the sampling locations closer to the discharge. At that time, low dissolved oxygen concentrations were also observed in the tributary stream segment immediately downstream from the Effingham discharge. Based on the June 20, 2002 rapid bioassessment, the macroinvertebrate community has improved and net-spinning caddisflies are relatively abundant. There is

no evidence that fluoride in the Effingham POTW effluent is harming the aquatic community immediately downstream from the discharge. Petitioners were also able to demonstrate that the current levels of fluoride being discharged do not have an adverse impact on the City of Flora's water supply intake.

In the petition for site-specific rulemaking, the petitioners discussed compliance alternatives that were all rejected due to cost and/or technical infeasibility. The Illinois EPA agrees that petitioners have shown that there are no cost-effective compliance alternatives available at this time.

CLARIFICATIONS OF EFFINGHAM'S PROPOSAL

Despite being in substantial agreement with Petitioners' proposal, the Illinois EPA would like to point out two minor misstatements contained in the document to the Board.

On Page 11 of its proposal, Effingham states "there do not appear to be any sources of fluoride in the subject streams, other than the City, BBI, Truckomat and, presently, Fedders." The Illinois EPA believes that the municipal sources discharging to Salt Creek and the Little Wabash River most likely add fluoride to their drinking water supply as does Effingham. However, the fluoride levels of these municipalities are below the water quality standard, therefore are not regulated in an NPDES permit. The Illinois EPA does not believe this fact changes any of the conclusions in the Petition.

On page 25, Petitioners state "the water in the Little Wabash River downstream from Effingham, Illinois, is very hard, with hardness values of more than 300 mg/L during low flow conditions." The Illinois EPA has calculated the critical hardness during low flow conditions as 130 to 143 mg/L for the Little Wabash River. This value is calculated by taking the 10th percentile hardness values during the 10th percentile low

flows. The Illinois EPA does not disagree with Effingham's general conclusion that the water downstream from Effingham's discharge is hard.

RELIEF REQUESTED AND CONSISTENCY WITH FEDERAL LAW

The Illinois EPA was able to thoroughly evaluate Effingham's technical justification for its proposal and found itself in substantial agreement with the information presented. The only remaining concern the Agency has with the proposal is the format in which the relief has been requested. Effingham is asking the Board to grant site-specific relief from 35 Ill. Adm. Code 304.105 as it applies to the water quality standard for fluoride at 302.208(g) of 1.4 mg/L and to allow an alternative effluent limit of 4.5 mg/L. Pursuant to the Board's recent opinions in several Adjusted Standard cases, Petitioners have refrained from asking the Board to change the water quality standard applicable in the receiving stream even though as a result of its discharge, the current standard will be violated. See, In the Matter of: Material Service Corporation Petition for an Adjusted Standard from 35 Ill. Adm. Code 302.208, 406.202 and 304.105, AS 02-1 (June 6, 2002); In the Matter of: Petition of Rhodia, Inc., Thorn Creek Basin Sanitary District, Takasago Corporation (U.S.A.) and Consumers Illinois Water Company for an Adjusted Standard from 35 Ill. Adm. Code 302.208 and 304.105, AS 01-9 (January 10, 2002); In the Matter of: Petition of the City of Springfield, Office of Public Utilities for an Adjusted Standard from 35 Ill. Adm. Code 302.208(e), AS 94-9 (December 1, 1994); and In the Matter of: Petition of Rhone-Poulenc Basic Chemicals Company and Thorn Creek Basin Sanitary District for an Adjusted Standard from 35 Ill. Adm. Code 302.208 and 304.105, AS 94-7 (June 23, 1994). Although the Board has recently expressed a great deal of reluctance to grant site-specific regulatory relief from water quality

standards, there are many more examples in which the Board has done so in the past.¹ The Illinois EPA would like to take the opportunity to explain for the Board, in some detail, why it has recommended in the past, and again recommends here today, that regulatory relief in cases like Effingham's must be granted from the water quality standard, rather than simply as an alternative effluent standard. The Board has responded to petitions for adjusted standards and site-specific rulemakings involving water quality standards in waters of the State in various ways including granting relief applicable to the entire waterbody where there is only one discharger or where there are multiple or unknown numbers of dischargers, granting relief applicable to the waterbody that only can be taken advantage of by the petitioner and granting relief (as requested in this case) from the requirement that a discharger's effluent can not cause a violation of a water quality standard. Recently the Board has shied away from granting relief from

¹ See, In the Matter of: Petition of Borden Chemicals and Plastics Operating Limited Partnership for an Adjusted Standard from 35 Ill. Adm. Code 302.211(b) through (e), AS 01-6 (February 7, 2002)(applies to waterbody); In the Matter of: Petition of Illinois-American Water Company's Alton Public Water Supply Replacement Facility Discharge to the Mississippi River for Adjusted Standard From 35 Ill. Adm. Code 304.124, 304.106, and 302.203, AS 99-06 (September 7, 2000)(adjusted Standard from 302.203 only applicable to Petitioner); In the Matter of: Petition of Abbott Laboratories for Adjusted Standard From 35 Ill. Adm. Code 302.208 and 304.105, AS 99-5 (July 8, 1999)(Abbott was the only discharger); In the Matter of: Petition of Illinois Department of Transportation, District 8 for an Adjusted Standard from 35 Ill. Adm. Code 302.208, 304.124 and 302.203, AS 96-12 (October 3, 1996)(applies to waterbody); In the Matter of: Petition of Central Illinois Light Company (Duck Creek Station) for an Adjusted Standard from 35 Ill. Adm. Code 302.208 and 35 Ill. Adm. Code 304.105, AS 96-8 (June 20, 1996)(applies only to petitioner); In the Matter of: Petition of Illinois Power Company (Baldwin Power Plant) for Adjusted Standard from 35 Ill. Adm. Code 302.208 and 35 Ill. Adm. Code 304.105, AS 96-01 (May 2, 1996)(applies only to petitioner); In the Matter of: Petition of Acme Steel Company and LTV Steel Company for an Adjusted Standard From 35 Ill. Adm. Code 302.211, AS 94-08 (July 7, 1995)(general use changed to secondary contact for petitioners); In the Matter of: Petition of Akzo Chemicals for an Adjusted Standard from 35 Ill. Adm. Code 304.105 and 302.208, AS 93-8 (September 1, 1994)(relief limited to petitioner); In the Matter of: Petition of Borden Chemicals & Plastics Operating Limited Partnership for an Adjusted Standard from 35 Ill. Adm. Code 302.208, AS 93-2 (November 18, 1993)(applies to receiving stream that receives other agricultural and wastewater discharges); In the Matter of: Petition of Southern Illinois Power Cooperative (Marion Power) for Adjusted Standards from 35 Ill. Adm. Code 302.208(e); AS 92-10 (July 1, 1993)(applies to waterbody); In the Matter of Granite City Division of National Steel Petition for Adjusted Standard from 35 Ill. Adm. Code 302.208: Numeric Standard for Fluoride, AS 90-4 (April 8, 1993)(Granite City was the only discharger to Horseshoe Lake); In the Matter of: Petition of Nutrasweet Company and Consumers Illinois Water Company for an Adjusted Standard from 35 Ill. Adm. Code 304.105 or 302.208, AS 89-3 (February 28, 1991)(applies to waterbody)(See slip. op. at 5 and 10).

water quality standards in cases where there may be other dischargers to the same water body. From the perspective of the Illinois EPA, there are important technical and legal reasons that the Board should not grant relief solely from 304.105 in cases where the relief granted will cause the general use standard to be violated.

Legal objections to granting relief from 304.105

Petitioners have requested a site-specific rulemaking that would be codified within Part 304 of the Board's regulations, a Part generally reserved for site-specific technology limits, rather than Part 303 (Water Use Designations and Site-Specific Water Quality Standards). The technology based effluent limit for fluoride is 15.0 mg/L and the City has no difficulties achieving this level of reduction. In a case like this one, where the discharge from Effingham's POTW is causing a violation of the existing water quality standard, granting the relief requested to Effingham protects the discharger from enforcement, but does nothing to prevent the violation of the water quality standard. Technically, the receiving stream in this case could be classified as impaired for the general use standard for fluoride as a result the relief requested, even though Effingham's petition has demonstrated that there is no impairment to the aquatic life or public water supply uses of the stream. The legal basis for the Illinois EPA's recommendation that the Board to grant relief from the water quality standard rather than 35 Ill. Adm. Code 304.105 is because of the Agency's belief that failure to do so is inconsistent with federal law.

The Section 303 of the Clean Water Act requires the State to establish water quality standards that protect existing and potential uses. 33 U.S.C. §1313. Any time the State sets or changes a water quality standard, it is required to submit that water

quality standard to the United States Environmental Protection Agency ("U.S. EPA") for review and approval. Historically, U.S. EPA indicated to the Illinois EPA that by granting relief solely from 35 Ill. Adm. Code 304.105, the Agency was attempting to make an end run around its requirement to gain U.S. EPA approval to changes in water quality standards. See, Exhibit A (August 26, 1985 letter from U.S. EPA Region V to Illinois EPA) and Nutrasweet and Consumers Illinois Water Company, AS 89-3, Slip op. at 5 (February 28, 1991). In effect, when the Board grants a petitioner relief from 304.105 only, it has found a discharger to be exempt from the requirement not to violate the water quality standard. The Illinois EPA believes it is inconsistent with federal law for the Board to grant a discharger indefinite or permanent permission to violate a water quality standard. In addition, Section 402 of the Clean Water Act (as well as Section 39 of the Act) prohibits the Agency from issuing NPDES permits that will violate water quality standards. 33 U.S.C. §§1342. The Illinois EPA believes it lacks authority to issue an NPDES permit to Effingham that would cause a violation of the existing water quality standard for fluoride.

In order to remedy the Agency's perceived deficiency in the relief granted in the past by the Board, the Agency has always submitted adjusted standards or site-specific regulations granting relief either from water quality standards or the requirement that one's effluent not cause a violation of water quality standards to U.S. EPA for review and approval. Prior to 1997, the States acted under a federal regulation and policy interpretation that held that changes to water quality standards became effective for purposes of the Clean Water Act when they became effective under State law. Under this system, Illinois EPA sent adjusted standards and site-specific regulations to U.S.

EPA for approval and assumed they were approved by default unless the U.S. EPA objected to them. This regulation and interpretation was invalidated by the Court in Alaska Clean Water Alliance v. Clark, 45 ERC 1664, 27 Env'tl. L. Rep. 21,330 (W.D. Wash 1997). In settlement of that litigation, U.S. EPA promulgated new regulations that provide that State changes to water quality standards are only effective after they have been formally approved by U.S. EPA. The new regulations require U.S. EPA to approve (within 60 days) or reject (within 90 days) changes to water quality standards promulgated after May 3, 2000. 40 C.F.R. 131.21(c). The Illinois EPA has submitted the recent adjusted standards granted by the Board solely from 35 Ill. Adm. Code 304.105 to U.S. EPA for approval and no approvals have been received thus far in cases where relief has not been granted from a water quality standard. The Illinois EPA can not speak on behalf of U.S. EPA, but it is the Agency's view that it is preferable to set site specific water quality standards rather than to grant license to violate those standards and that to do otherwise is inconsistent with the Clean Water Act.

Technical Objections to Relief from 304.105

The Illinois EPA also argues that the relief in this matter needs to be granted for the water body itself from 35 Ill. Adm. Code 302.208(g) for technical reasons. When adjusted standards or site-specific regulations allow a discharger to exceed what would ordinarily be water quality based effluent limits, it is important that the standards justify that process of establishing limits. A discharger receiving WQBELs is generally one who is discharging into a water body with no mixing zone. To accomplish the setting of a new WQBEL for that discharger, the water quality standard for the affected water bodies must be changed. When the Board grants permanent relief solely from 35 Ill.

Adm. Code 304.105, saying that the effluent need not comply with the existing water quality standard, no new standard is legally created for the receiving waters. As a practical matter, however, this type of relief results in two completely different water quality standards being applicable to the same stream segment and both supposedly protecting the general use designation in that segment. This is inadequate for the following reasons.

When the Board grants one discharger relief from meeting a WQBEL without changing the water quality standard applicable to the receiving stream, the status of WQBELs for other dischargers to affected water bodies is confused. If the Board clearly designates a new water quality standard for the water body, the Agency will be able to apply it and all other standards to any other dischargers if need be. These other standards would include federal technology based limits, state effluent standards, the antidegradation standard and mixing zones. Any other discharger would be subject to meeting appropriate limits based on all standards including the site-specific standard. The Illinois EPA recognizes the Board's concern that relief will be unfairly granted to other dischargers who have not presented the Board with sufficient evidence of the need for such relief. The Illinois EPA feels this concern is somewhat misplaced since the Illinois EPA only recommends that the Board grant relief in site-specific rulemakings or adjusted standards when a thorough technical evaluation has revealed that the requested relief is adequate to protect all existing and potential uses of the water body in question.

If an adjusted standard or site-specific rule is indeed protective of the appropriate uses (generally, aquatic life), the Agency must ensure that the other dischargers receive

limits that protect that use. If, for example, a discharger seeks an adjusted standard for Total Dissolved Solids at 1,500 mg/L to a zero 7Q10 flow stream, the Board should designate the new standard for that stream (if protective of uses) at 1,500 mg/L, and in any subsequent streams in the downstream continuum at a concentration in accordance with natural dilution until the generally applicable standard is met. This designation may allow a downstream discharger to discharge above the normally allowable limit provided he complies with the other standards and regulations and does nothing to cause the new standard to be exceeded. The Illinois EPA believes it would be a rare instance when another discharger would gain relief in this manner, probably only in cases where the last water body in the continuum offered substantial mixing potential.

A second reason to firmly designate a new numeric standard for the water body is to make it known to all that a certain value has been found appropriate for the specified receiving stream. This comes to play in the Agency's efforts in assessing use support conditions through the Clean Water Act Sections 305(b) and 303(d) programs. It is important that the assessment made in the regulatory relief process be made known to all concerned with the water body. The site-specific rulemaking and adjusted standard processes are an in-depth assessment of the interplay between a discharger and the receiving stream. This process determines whether an increase above the general standard will harm the water body. It would be an absurd result to the Board's regulatory relief process if, following a favorable recommendation by the Illinois EPA in a site specific proceeding, the Agency would subsequently be legally required to list a given water body as impaired for a given substance because it does not meet the standard of general applicability for that substance. If the Illinois EPA was forced to

undertake a total maximum daily loading (“TMDL”) setting process for the waterbodies impacted by Effingham’s discharge, it is not clear how the site specific relief would be viewed by that process or what impact that would have on other dischargers who might later be required to offset the relief granted to Effingham in this case. If the Board does not set a new numeric standard for the receiving stream, the status of the applicable standard in that water body is clouded and may result in the Agency designating a stream segment as impaired for the same parameter from which the Board has granted site specific relief. For example, imagine that relief from 304.105 as it applies to the water quality standard for sulfate is granted to three out of four dischargers to a given water body to a level of 800 mg/L. At a later time, that waterbody placed the State’s listing of impaired waters and a TMDL is conducted. The fourth discharger may be obligated to receive a load limit that requires it to reduce its discharge to make up for the relief granted to the first three.

If the Board is still concerned about the impact of granting regulatory relief to Petitioners who have not come before the Board to request or justify such relief, the alternative available could be to place as a condition to establishing the site specific water quality standard that any party wishing to take advantage of the new water quality standard must also come to the Board to request such relief. It is preferable to the Illinois EPA that a new water quality standard is established that is applicable only to the Petitioners, rather than granting the Petitioners a license to violate the water quality standard. Additionally, the Illinois EPA can find no basis in the Clean Water Act for giving permanent relief from compliance with a water quality standard.

The petitioners are proposing to eliminate the water quality standard by setting an effluent standard. The water quality standard, for this receiving stream, should be changed to more accurately reflect the impact of the relief afforded by the site-specific rulemaking. In other words, the fluoride water quality standard of the receiving waters should be adjusted to reflect the concentrations present.

In addition, Petitioner's requested relief includes the phrase "subject to the averaging rule of Section 304.104." This language should be removed since any regulatory relief granted by the Board in this matter will establish an alternative effluent limit or water quality standard, while the averaging rule in Part 304 merely addresses how compliance with the effluent ultimately placed in NPDES permit is determined. It is the Agency's intention to use 4.5 mg/L fluoride as a daily maximum permit limit should this site-specific rulemaking be adopted and 304.104(b)(2) may be available to the Petitioners to determine compliance with that effluent limit.

As an alternative to the relief requested by Petitioners in the case, the Illinois EPA proposes the following language for a site-specific rulemaking:

Section 303.XXX. Unnamed Tributary of Salt Creek, Salt Creek, and Little Wabash River. The fluoride general use water quality standard of Section 302.208(g) shall not apply to the waters of the State which are located from the point of discharge of the POTW located at 903 E. Eiche Avenue in Effingham, Illinois, owned by the City of Effingham, to an unnamed tributary of Salt Creek, said point being located in Effingham County, T8N, R6E, Sec. 28, Lat: 39°06'24", Long: 88°31'55", to the confluence of said unnamed tributary with Salt Creek; to the confluence of Salt Creek with the Little Wabash River; to the confluence of Buck Creek and the Little Wabash River. Fluoride levels in such waters shall meet a water quality standard for fluoride (STORET Number 00951) as set forth below:

- a) From the point of discharge of the City of Effingham POTW to the unnamed tributary to the confluence of the unnamed tributary with Salt Creek and from the confluence of the unnamed tributary with Salt Creek to

the confluence of Salt Creek with the Little Wabash River, the fluoride water quality standard shall be 5.0 mg/L.

- b) From the confluence of Salt Creek with the Little Wabash River to a point on the Little Wabash River located 2.8 miles downstream of Louisville, Illinois, the fluoride water quality standard shall be 3.2 mg/L.
- c) From a point on the Little Wabash River located 2.8 miles downstream of Louisville, Illinois to the confluence of Buck Creek and the Little Wabash River, a point on the Little Wabash River located approximately 9.8 miles downstream of Louisville, Illinois, the fluoride water quality standard shall be 2.0 mg/L.

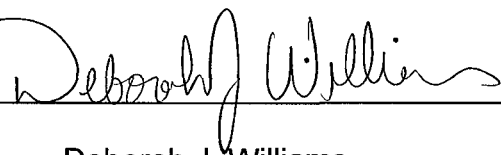
CONCLUSION

The Petitioner was unable to find any adverse environmental impacts of the relief requested including to the public water supply intake at the City of Flora located 37 miles downstream. In order to guarantee that the Flora public water supply will not be adversely impacted by the relief requested, the City has agreed to the placement of language in its NPDES permit that requires the POTW to monitor fluoride concentration at the Flora water supply intake when the Little Wabash River nears seven day, 10 year low flow ("7Q10") conditions. Discussions with the Petitioners and additional modeling performed also led to the conclusion that it will be necessary to place an effluent limit of 4.5 mg/L in the City's NPDES permit to guarantee that the water quality standard will not violate 5.0 mg/L taking evaporation into account. Through the permit renewal process, the Illinois EPA has the authority to require the petitioners to review, over the coming years, any new information on brighteners that may allow for replacement or reduction of fluoride to the wastewater reaching Effingham's POTW. With the inclusion of these additional safeguards, the Illinois EPA is confident that granting site specific regulatory relief to the receiving stream impacted by the effluent from the City of

Effingham's POTW is technologically feasible, economically reasonable and will cause no adverse environmental impacts because it is protective of the existing and potential uses of the Little Wabash River, Salt Creek and its unnamed tributary. However, the Illinois EPA strongly believes that the granting of relief solely from 35 Ill. Adm. Code 304.105 to these Petitioners would result in a license to violate the existing water quality standard for fluoride and would be inconsistent with the Clean Water Act.

Scott Twait of the Water Quality Standards Unit of the Division of Water Pollution Control at the Illinois EPA will be available at the hearing in this matter to answer any questions the Board may have about the technical justifications provided in Effingham's site-specific rulemaking proposal and Deborah J. Williams of the Division of Legal Counsel will be available for cross-examination on this testimony and to answer any of the Board's questions regarding legal issues.

Respectfully submitted,

By:  _____

Deborah J. Williams
Assistant Counsel
Division of Legal Counsel

March 20, 2003

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Exhibit A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

AUG 26 1985

RECEIVED

AUG 29 1985

Mr. Roger Kanerva
Manager, Environmental Programs
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

IEPA
ENVIRONMENTAL PROGRAMS

Dear Mr. Kanerva:

As a result of a recent NPDES permit review for John Deere Foundry (Rock Island County), I became aware of a 1981 site-specific rule change (Section 304.205) to the State's effluent limitation rules, which exempts the discharger from meeting water quality standards (Section 305.105) for total dissolved solids, iron, and temperature. Although this rule was a revision to the State's effluent standards, it is my opinion that this change clearly constitutes a de facto water quality standards change which was never submitted to the U.S. Environmental Protection Agency for review and approval.


In addition, if the permittee were to discharge these parameters at the permitted levels, the resultant in-stream concentrations at critical low flow (7Q10) would not be protective of the designated general use for the unnamed tributary to Sugar Creek. Further, the available Illinois Pollution Control Board records do not provide sufficient information to justify such a water quality standards revision.

We would like to avoid disapproval of the water quality standards exemption for John Deere Foundry as currently adopted. In order to do this, Illinois must either modify the use designation for the affected receiving streams based upon use attainability analyses or it must rescind or revise the rule in order to adopt criteria which are protective of the designated general use.

We would like to receive your proposal for resolving this issue within the next 30 days. This would enable us to carry out our statutory responsibilities for water quality standards review and approval. In the interim, we will continue to object to the John Deere Foundry permit on the basis that the proposed effluent limits are not protective of the designated general use.

As with the Lockport issue, this is a serious matter which requires your personal attention. If you have any questions or concerns regarding this matter, please feel free to contact me.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Dale J. Boyson".

for Charles H. Sutfin
Director, Water Division

cc: Jacob Dumelle

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached **PREFILED TESTIMONY OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY** upon the persons to whom it is directed, by placing a copy in an envelope addressed to:

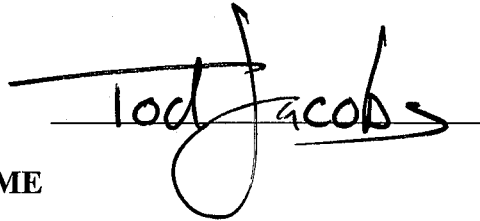
Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph Street
Chicago, IL 60601

John Knittle, Hearing Officer
Illinois Pollution Control Board
1717 Philo Road, Suite 25
Urbana, Illinois 61802

David M. Walter
N. LaDonna Driver
Hodge, Dwyer & Zeman
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776

Matthew Hortenstine
122 E. Washington
P.O. Box 668
Effingham, Illinois 62401

and mailing it from Springfield, Illinois on March 18, 2003, by First Class U.S. Mail with sufficient postage affixed.



SUBSCRIBED AND SWORN TO BEFORE ME

this 20th day of March, 2003

Brenda Boehner
Notary Public

