

ILLINOIS POLLUTION CONTROL BOARD
December 18, 2003

IN THE MATTER OF:)
)
SITE SPECIFIC RULE FOR CITY OF) R03-11
EFFINGHAM TREATMENT PLANT) (Site-Specific
FLUORIDE DISCHARGE, 35 ILL. ADM.) Rulemaking – Water)
CODE 303.326)

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

On October 22, 2002, the City of Effingham (City), Blue Beacon International, Inc. (BBI) and Truckomat Corporation (Truckomat) (referred to collectively as “petitioners”) filed a proposal for rulemaking under Section 27 of the Environmental Protection Act (Act) (415 ILCS 5/27 (2002)), to change regulations governing fluoride found in the Board’s rules at 35 Ill. Adm. Code 302.208(g). On April 11, 2003, a hearing was held in this matter at the City Hall Council Chambers, 201 E. Jefferson, Effingham, Effingham County. A hearing on the economic impact of the proposal was held on July 18, 2003.

By today’s action the Board adopts the proposed amendments. The rules adopted here are substantively unchanged from those adopted in the Board’s first-notice and second-notice opinion and order. On October 2, 2003, the Board proposed the rulemaking for second notice. The Board directed that the rule be submitted to the Joint Committee on Administrative Rules (JCAR) for second-notice review. On December 1, 2003, JCAR issued a certification of no objection to the rule. The following opinion will explain the proposal background, summarize the procedural history, and discuss the economic reasonableness and technical feasibility of the rule.

BACKGROUND

BBI and Truckomat operate truck washes in Effingham, Effingham County. The wastewater from the truck washes contains fluoride resulting from the brighteners used in washing the trucks. Petitioners state that there are no alternative replacements for these brighteners, and discontinuing their use would cause a severe negative economic impact. Pet. at 2. Petitioners further state that the site-specific fluoride level proposed will be protective of aquatic life, human health, and the environment as a whole. *Id.*

The truck washes discharge wastewater produced from their operations into the City’s publicly owned treatment works (POTW). Pet. at 3. The POTW discharges treated effluent into an unnamed tributary of Salt Creek, which flows into the Little Wabash River, 37 miles upstream from the City of Flora. Pet. at 4, 7, 9. The City’s current daily fluoride effluent limit is 1.4 mg/L, the same as the 1.4 mg/L water quality standard. Pet. at 4. The City seeks an effluent limit of 4.5 mg/L subject to the averaging rule of 35 Ill. Adm. Code 304.104. Pet. at 2.

On November 7, 2002, the Board opened a new regulatory docket for this matter, and directed that a hearing be scheduled on the proposal. At the April 11, 2003 hearing, David M. Walter appeared and participated on behalf of the petitioners; Matthew R. Hortenstine appeared on behalf of the City of Effingham; and Deborah J. Williams appeared and participated on behalf of the Illinois Environmental Protection Agency (Agency). No members of the public attended the hearing.

PROCEDURAL HISTORY

On October 22, 2002, the petitioners filed a petition for a site-specific rulemaking. On November 7, 2002, the Board opened regulatory docket R03-11, finding that the proposal for rulemaking met the requirements of 35 Ill. Adm. Code 102.210 and accepting it for hearing.

A hearing in this matter was held on April 11, 2003, at 201 East Jefferson Street, in Effingham, Effingham County. The petitioners and the Agency appeared and presented testimony at the hearing. No members of the public attended the hearing. The petitioners and the Agency each filed public comment after the hearing.

On July 18, 2003, a hearing was held on the requested economic impact study of this rulemaking. The hearing was necessary to fulfill the requirements of Section 27(b) of the Act. 415 ILCS 5/27(b) (2002). Section 27(b) of the Act requires the Board to request the Illinois Department of Commerce and Economic Opportunity (DCEO) to conduct an economic impact study (EcIS) on certain proposed rules prior to adoption of those rules. In response to an April 3, 2003 letter by Chairman Tom Johnson requesting the study, DCEO sent an April 17, 2003 letter to the Board stating that no studies will be performed. At the hearing, the Board made available copies of the Board's April 3, 2003 letter and DCEO's April 17, 2003 response. The Board received no comments on the letters.

On July 24, 2003, the Board issued its first-notice opinion and order. The order summarized the testimony offered by the parties, and found that adoption of the petitioners' proposed site-specific rule for the purposes of first notice, as modified by the Agency, was warranted. Specifically, the Board agreed with the Agency that granting relief from 35 Ill. Adm. Code 304.105 instead of the water quality standard, as requested by the petitioners, could lead to inconsistencies with federal law. Accordingly, the Board proposed a site-specific water quality standard rather than a new effluent limit.

The Board found that the petitioners presented information indicating that compliance with 35 Ill. Adm. Code 302.208(g) is not economically reasonable or technically feasible. The Board found that the petitioners presented evidence regarding the nature of existing water quality and consistency with federal regulations. Further, the Board found that the water quality data presented by the petitioners indicate that the requested relief is protective of the aquatic life and environment.

The first-notice publication of the rules appeared in *27 Illinois Register* 13680 (Aug. 15, 2003). No public comments were received during the 45-day first-notice period. JCAR filed non-substantive comments addressing grammar and format changes.

In its second-notice opinion and order issued on October 2, 2003, the Board found that adoption of the proposed site-specific rule was warranted, and proposed the rulemaking for second-notice review by the JCAR. The Board incorporated the non-substantive first-notice changes suggested by JCAR into the proposal.

JCAR considered the second-notice proposal at its November 18, 2003 meeting and determined that no objection would be made. JCAR suggested one non-substantive change, and issued a formal certification of no objection to the proposed rulemaking on December 1, 2003.

The second-notice period commenced on October 14, 2003, and ended on November 27, 2003. Other than the non-substantive comments suggested by JCAR, the Board received no comments during the second-notice period.

DISCUSSION

At first notice, the Board found that compliance with 35 Ill. Adm. Code 302.208(g) was not economically reasonable or technically feasible. The Board has received no additional comments discussing economic reasonableness and technical feasibility of the proposed rule. As previously discussed, the Board proposed a site-specific water quality standard, as suggested by the Agency, for first notice rather than a new effluent limit. No comments on this change to petitioners' original proposal were received. The Board held a hearing on July 19, 2003, to satisfy the requirements of Section 27(b) of the Act. 415 ILCS 5/27(b) (2002). The Board received no comments on the DCEO's decision not to conduct an economic impact study on this proposed rulemaking.

As noted, the Board did receive a non-substantive comment from JCAR. The Board has incorporated the suggested change into the adopted proposal.

CONCLUSION

Based on the record before it, the Board finds that adoption of the proposed site-specific rule is warranted.

ORDER

The Board directs the Clerk to file the following adopted rule with the Secretary of State for publication in the *Illinois Register* for final notice and adoption in the Illinois Administrative Code.

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE C: WATER POLLUTION
 CHAPTER I: POLLUTION CONTROL BOARD

PART 303
 WATER USE DESIGNATIONS AND SITE SPECIFIC WATER QUALITY STANDARDS

SUBPART A: GENERAL PROVISIONS

Section	
303.100	Scope and Applicability
303.101	Multiple Designations
303.102	Rulemaking Required

SUBPART B: NONSPECIFIC WATER USE DESIGNATIONS

<i>Section</i>	
303.200	Scope and Applicability
303.201	General Use Waters
303.202	Public and Food Processing Water Supplies
303.203	Underground Waters
303.204	Secondary Contact and Indigenous Aquatic Life Waters
303.205	Outstanding Resource Waters
303.206	List of Outstanding Resource Waters

SUBPART C: SPECIFIC USE DESIGNATIONS AND SITE
 SPECIFIC WATER QUALITY STANDARDS

Section	
303.300	Scope and Applicability
303.301	Organization
303.311	Ohio River Temperature
303.312	Waters Receiving Fluorspar Mine Drainage
303.321	Wabash River Temperature
303.322	Unnamed Tributary of the Vermilion River
303.323	Sugar Creek and Its Unnamed Tributary
303.326	<u>Unnamed Tributary of Salt Creek, Salt Creek, and Little Wabash River</u>
303.331	Mississippi River North Temperature
303.341	Mississippi River North Central Temperature
303.351	Mississippi River South Central Temperature
303.352	Unnamed Tributary of Wood River Creek
303.353	Schoenberger Creek; Unnamed Tributary of Cahokia Canal
303.361	Mississippi River South Temperature
303.400	Bankline Disposal Along the Illinois Waterway/River
303.430	Unnamed Tributary to Dutch Creek
303.431	Long Point Slough and Its Unnamed Tributary
303.441	Secondary Contact Waters

- 303.442 Waters Not Designated for Public Water Supply
 303.443 Lake Michigan Basin
 303.444 Salt Creek, Higgins Creek, West Branch of the DuPage River, Des Plaines River

SUBPART D: THERMAL DISCHARGES

- Section
 303.500 Scope and Applicability
 303.502 Lake Sangchris Thermal Discharges

- APPENDIX A References to Previous Rules
 APPENDIX B Sources of Codified Sections

AUTHORITY: Implementing Section 13 and authorized by Sections 11(b) and 27 of the Environmental Protection Act [415 ILCS 5/13, 11(b) and 27].

SOURCE: Filed with the Secretary of State January 1, 1978; amended at 2 Ill. Reg. 27, p. 221, effective July 5, 1978; amended at 3 Ill. Reg. 20, p. 95, effective May 17, 1979; amended at 5 Ill. Reg. 11592, effective October 19, 1981; codified at 6 Ill. Reg. 7818; amended at 6 Ill. Reg. 11161, effective September 7, 1982; amended at 7 Ill. Reg. 8111, effective June 23, 1983; amended in R87-27 at 12 Ill. Reg. 9917, effective May 27, 1988; amended in R87-2 at 13 Ill. Reg. 15649, effective September 22, 1989; amended in R87-36 at 14 Ill. Reg. 9460, effective May 31, 1990; amended in R86-14 at 14 Ill. Reg. 20724, effective December 18, 1990; amended in R89-14(C) at 16 Ill. Reg. 14684, effective September 10, 1992; amended in R92-17 at 18 Ill. Reg. 2981, effective February 14, 1994; amended in R91-23 at 18 Ill. Reg. 13457, effective August 19, 1994; amended in R93-13 at 19 Ill. Reg. 1310, effective January 30, 1995; amended in R95-14 at 20 Ill. Reg. 3534, effective February 8, 1996; amended in R97-25 at 22 Ill. Reg. 1403, effective December 24, 1997; amended in R01-13 at 26 Ill. Reg. 3517, effective February 22, 2002; amended in R03-11, at _____ Ill. Reg. _____, effective _____.

Section 303.326 Unnamed Tributary of Salt Creek, Salt Creek, and Little Wabash River

The fluoride general use water quality standard of Section 302.208(g) does not apply to the waters of the State that are located from the point of discharge of the POTW located at 903 E. Eichie 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 must meet a water quality standard for fluoride (STORET Number 00951) as set forth in this section.

- 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

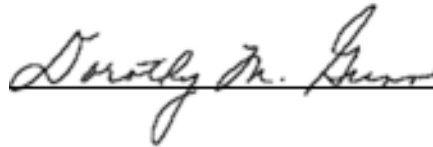
to the confluence of Salt Creek with the Little Wabash River, the fluoride water quality standard is 5.0 mg/L.

- b) From the confluence of Salt Creek with the Little Wabash River to monitoring station C-19 located on the Little Wabash River approximately 2.8 miles downstream of Louisville, Illinois, the fluoride water quality standard is 3.2 mg/L.
- c) From monitoring station C-19 located on a point on the Little Wabash River approximately 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 is 2.0 mg/L.

(Source: Amended at _____, effective _____)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 18, 2003, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board