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JAN 20 2004

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

|                                   |   |                    |
|-----------------------------------|---|--------------------|
| IN THE MATTER OF:                 | ) |                    |
|                                   | ) |                    |
| PROPOSED AMENDMENTS TO:           | ) | R03-19             |
| PUBLIC PARTICIPATION RULES IN 35  | ) | (NPDES Rulemaking) |
| ILL. ADM. CODE PART 309 NPDES     | ) |                    |
| PERMITS AND PERMITTING PROCEDURES | ) |                    |
|                                   | ) |                    |

PC 17

NOTICE OF FILING

TO: Dorothy M. Gunn  
 Clerk of the Board  
 Illinois Pollution Control Board  
 James R. Thompson Center  
 100 West Randolph Street  
 Suite 11-500  
 Chicago, Illinois 60601  
**(VIA FEDERAL EXPRESS)**

Marie Tipsord  
 Hearing Officer  
 Illinois Pollution Control Board  
 James R. Thompson Center  
 100 West Randolph Street  
 Suite 11-500  
 Chicago, Illinois 60601  
**(VIA FIRST CLASS MAIL)**

**(PERSONS ON ATTACHED SERVICE LIST)**

PLEASE TAKE NOTICE that I have filed today with the Clerk of the Illinois Pollution Control Board an original and nine copies of the COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP, copies of which are herewith served upon you.

Respectfully submitted,  
 ILLINOIS ENVIRONMENTAL  
 REGULATORY GROUP,

By: Robert A. Messina  
 ROBERT A. MESSINA

Dated: January 19, 2004

Robert A. Messina  
 General Counsel  
 Illinois Environmental Regulatory Group  
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JAN 20 2004

STATE OF ILLINOIS  
Pollution Control Board

6005 H S HALL  
STATE OF ILLINOIS  
POLLUTION CONTROL BOARD

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COMMENTS OF THE  
ILLINOIS ENVIRONMENTAL REGULATORY GROUP

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP ("IERG"), by one of its attorneys, Robert A. Messina, and submits the following comments in the above-referenced matter to the Illinois Pollution Control Board ("Board"), stating as follows:

IERG submits the following comments in response to the proposed rulemaking entitled "Proposed Amendments to: Public Participation Rules in 35 Ill. Adm. Code Part 309 NPDES Permits and Permitting Procedures (R03-19)." There have been numerous opportunities to provide testimony and comments in this rulemaking, and for that IERG thanks the Board. Therefore, without addressing those comments that have already been made, IERG limits its comments today to the remaining issues below.

First, IERG testified at the November 19, 2003 hearing (hereinafter, "hearing") that the language proposed by the proponents in Section 309.143(a) did not include modifying language found immediately following that section in the federal regulations

(See Transcript, page 11): Further, IERG testified that Illinois' Section 309.143 should include, in a new subsection (b), additional federal language that further explains an excursion or violation of a state Water Quality Standard. That modifying language, found at 40 CFR 122.44(d)(1)(ii), provides:

*When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the [Agency] shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.*

This language was not found objectionable by counsel for the proponents (See Transcript, page 13, beginning at line 21).

Second, IERG testified at the hearing that the language proposed by the proponents in Section 309.113(a)(5) is both not required and potentially costly and burdensome to the Agency (See Transcript, page 10). With regards to this language, the benefit to the environment does not equal the cost to the Agency, it will likely add to the time and expense of undertaking the NPDES permit writing effort, and will only delay a process which already takes a great deal of time now. Further, the Illinois EPA testified that the benefit resulting from such language would be either small or non-existent, and that the language would add to the workload of the Agency (See Transcript, pages 17-18, and again, pages 29-30). Therefore, IERG asks that this language be stricken from the proposal.

Finally, IERG would like to address one issue that was raised both at hearing and during numerous meetings between the various stakeholders. Throughout this rulemaking process, and even before a proposal was even filed, IERG and its Members have tried to understand the precise scope of the language that was proposed which would allow second, or third, or subsequent public hearings. Many of our questions have been addressed, but one issue remains. Must the Agency reopen the public comment period and perhaps hold another hearing if the applicant submits material to the Agency after the close of the comment period to respond to public comment? Can the Agency utilize and rely upon that information provided by the applicant without reopening the comment period?

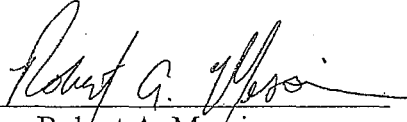
When asked these questions at hearing, Mr. Frevert testified that, oftentimes, the Agency must solicit additional data or information from an applicant in order to address issues raised during the comment period. Further, he noted that an applicant's ability to respond to public comment must, in some circumstances, be extended past the close of the comment period. Finally, Mr. Frevert suggested that sometimes this information is of such nature that additional public comment is necessary, but sometimes this information does not necessitate further public comment (*See Transcript*, pages 22-23).

IERG concurs with this assessment, but is concerned that Section 309.120, as drafted, is not clear on this issue, and could be misinterpreted to require additional public comment in all instances when an applicant submits data or information after the close of the comment period. IERG asks the Board to include language in this section consistent with Mr. Frevert's testimony to ensure that the Agency is granted sufficient discretion.

In the event that the Board adopts amendments to the Part 309 regulations, IERG requests that they be consistent with the above comments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

By:   
Robert A. Messina

Dated: January 19, 2004

Robert A. Messina  
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**CERTIFICATE OF SERVICE**

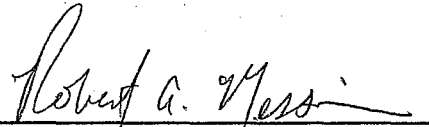
I, Robert A. Messina, the undersigned, certify that I have served a copy of the  
COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP upon:

Dorothy M. Gunn  
Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center  
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Chicago, Illinois 60601

Marie Tipsord  
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SEE ATTACHED SERVICE LIST.

by depositing said documents in Airborne Express Mail and in the United States Mail in  
Springfield, Illinois on January 19, 2004.

  
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