

ILLINOIS POLLUTION CONTROL BOARD

May 6, 2004

IN THE MATTER OF: )  
)  
PROPOSED AMENDMENTS TO ) R04-25  
DISSOLVED OXYGEN STANDARD 35 ILL.) (Rulemaking - Water)  
ADM. CODE 302.206 )

ORDER OF THE BOARD (by A.S. Moore):

On April 19, 2004, the Board received a rulemaking proposal from the Illinois Association of Wastewater Agencies (IAWA). IAWA seeks to amend the Board's rule establishing general use water quality standards for dissolved oxygen (35 Ill. Adm. Code 302.206). IAWA also moved the Board on the same date to waive the requirement that the rulemaking proposal include a petition signed by at least 200 persons.

On April 30, 2004, to correct an error, IAWA filed a motion to replace page two of the proposal, attaching a corrected page two. The Board grants that motion and for the reasons below accepts IAWA's proposal for hearing without requiring the 200 signatures.<sup>1</sup>

**IAWA PROPOSAL**

IAWA notes that dissolved oxygen is a "critical resource in freshwater systems" and is "essential to aquatic organisms for aerobic respiration and thus most biological activity and associated processes." Proposal at 3. IAWA claims that its recent study of scientific literature found the Board's existing dissolved oxygen standards for general use waters "overly restrictive." *Id.* at 1-2. IAWA states that it is proposing new standards based on the United States Environmental Protection Agency's "National Criteria Document ('NCD') for Dissolved Oxygen (1986)" and "published research on natural fluctuations in aquatic systems and physiological tolerances of native aquatic life." *Id.* at 1.

Under the existing Board rule, dissolved oxygen must not be less than 6.0 milligrams per liter (mg/L) during at least 16 hours of any 24 hour period, nor less than 5.0 mg/L at any time. *See* 35 Ill. Adm. Code 302.206. The Board adopted these standards in 1972. *See* Effluent Criteria, Water Quality Standards, Water Quality Standards Revisions for Intrastate Waters, R70-8, R71-14, R71-20 (Jan. 6, 1972). IAWA proposes to amend these standards by explicitly providing that dissolved oxygen be determined on a monthly basis and specifying that (a) during the months of July through February, dissolved oxygen must not be less than a one-day minimum concentration of 3.5 mg/L, and a seven-day mean minimum of 4.0 mg/L, and (b) during the months of March through June, dissolved oxygen must not be less than a one-day minimum concentration of 5.0 mg/L, and a seven-day mean of 6.0 mg/L. Proposal, Exhibit 1. IAWA also proposes definitions of "mean minimum" and "mean." *Id.*

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<sup>1</sup> The Board cites IAWA's rulemaking proposal, as amended, as "Proposal at \_." The Board cites IAWA's motion to waive the 200-signature requirement as "Motion at \_."

IAWA states that the more stringent of its proposed dissolved oxygen standards would apply “during the cool water spawning period of March through June when the egg, embryos and larval stages of hypoxia-sensitive fish species are present in Illinois waters.” Proposal at 2. According to IAWA, those entities that will be primarily affected by its proposed amendments are “wastewater dischargers that discharge an oxygen depleting substance, including biological oxygen demand (BOD) and nutrients [and] [t]hose dischargers are primarily entities responsible for wastewater treatment, including publicly owned treatment works and industrial dischargers, and agricultural point and non-point sources.” *Id.* at 6-7. IAWA’s rulemaking proposal, including its statement of reasons and the full text of the proposed rule language, is available through the Clerk’ Office in Chicago (312-814-3620) and on the Board’s Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)) using the Clerk’s Office On-Line or “COOL.”

### **MOTION TO WAIVE SIGNATURE REQUIREMENT**

IAWA asks the Board to waive the requirement that at least 200 persons sign a petition supporting the rulemaking proposal. The requirement, which applies only when the rulemaking proponent is not the Illinois Environmental Protection Agency or the Illinois Department of Natural Resources, is set forth in the Environmental Protection Act (Act) (415 ILCS 5/28(a) (2002)) and in the Board’s procedural rules (35 Ill. Adm. Code 102.202(f)). However, the Act gives the Board discretion to waive the signature requirement when accepting a proposal. *See* 415 ILCS 5/28(a) (2002). The Board’s procedural rules require a rulemaking proponent seeking a waiver to justify the absence of the signatures from its proposal. *See* 35 Ill. Adm. Code 102.202(j).

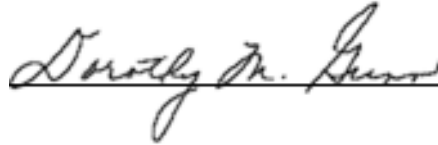
IAWA explains that its organization “exists to support administrators and managers of wastewater collection and treatment agencies in the State of Illinois.” Motion at 1. IAWA notes that it has 98 members, 55 of which are agencies, “which employ hundreds of individuals to administer the wastewater treatment systems in this state.” *Id.* IAWA states that the dissolved oxygen rule is a priority for its members. Further, IAWA asserts that because of its “status as a member organization,” requiring IAWA to obtain the signatures for a petition “would present an added expense and burden to IAWA that is duplicative and unnecessary in light of its status.” *Id.*

### **CONCLUSION**

The Board finds that IAWA’s proposal to amend the dissolved oxygen standards for general use waters satisfies the content requirements of the Act and the Board’s procedural rules for rulemaking proposals, except for the 200-signature requirement, which the Board waives. The Board accepts the proposal for hearing and directs the hearing officer assigned to proceed expeditiously under the rulemaking provisions of the Act (415 ILCS 5/27, 28 (2002)) and the Board’s procedural rules (35 Ill. Adm. Code 102).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 6, 2004, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board