RECEIVED CLERK'S OFFICE

AUG 0 6 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOAR DTATE OF ILLINOIS Pollution Control Board

)

IN THE MATTER OF:

PROPOSED AMENDMENTS TO DISSOLVED OXYGEN STANDARD 35 ILL. ADM. CODE 302.206

R 04-25 (Rulemaking – Public Water)

NOTICE

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

Richard McGill, Hearing Officer Illinois Pollution Control Board James R. Thompson Center 100 W. Randolph, Suite 11-500 Chicago, Illinois 60601

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have filed with the Office of the Pollution Control Board the <u>RESPONSE TO THE ENVIRONMENTAL LAW & POLICY CENTER OF</u> <u>THE MIDWEST, PRAIRIE RIVERS NETWORK AND THE SIERRA CLUB'S MOTION TO</u> <u>SUSPEND CONSIDERATION OF PROPOSED AMENDMENTS TO THE DISSOLVED</u> <u>OXYGEN STANDARD PENDING DEVELOPMENT OF DRAFT IMPLEMENTATION</u> <u>RULES</u> on behalf of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

Date: August 4, 2004

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Stefanie N. Diers Assistant Counsel Division of Legal Counsel

1021 North Grand Avenue East P.O. Box 19276 Spring field, IL 62794-9276 217/782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

RECEIVED CLERK'S OFFICE

AUG 0 6 2004

BEFORE THE POLLUTION CONTROL BOARD OF THE STATE OF ILLINOIS

)

)

)

STATE OF ILLINOIS Pollution Control Board

IN THE MATTER OF :

PROPOSED AMENDMENTS TO DISSOLVED OXYGEN STANDARD 35 ILL. ADM. CODE 302.206

R04-25 Rulemaking-Public Water

RESPONSE TO THE ENVIRONMENTAL LAW & POLICY CENTER OF THE MIDWEST, PRAIRIE RIVERS NETWORK AND THE SIERRA CLUB'S MOTION TO SUSPEND CONSIDERATION OF PROPOSED AMENDMENTS TO THE DISSOVLED OXYGEN STANDARD PENDING DEVELOPMENT OF DRAFT IMPLEMENTATION RULES

The Illinois Environmental Protection Agency ("Illinois EPA") hereby submits its response to The Environmental Law Policy Center of the Midwest, Prairie Rivers Network and the Sierra Club's ("ELPC") Motion to Suspend Consideration of Proposed Amendments to the Dissolved Oxygen Standard Pending Development of Draft Implementation Rules. In support of its Response, Illinois EPA states as follows:

- 1. On July 21, 2004, the Environmental Law and Policy Center of the Midwest, Prairie Rivers Network and the Sierra Club filed their Motion to Suspend Consideration of Proposed Amendments to the Dissolved Oxygen Standard Pending Development of Draft Implementation Rules.
- 2. On July 22, 2004, the Illinois EPA received the ELPC's Motion to Suspend Consideration of Proposed Amendments to the Dissolved Oxygen Standard Pending Development of Draft Implementation Rules via facsimile.
- 3. The ELPC argues that this rulemaking should not go forward without the various parties and the Board seeing implementation rules developed by the proponent,

Illinois Association of Wastewater Agencies, ("IAWA") and presumably Illinois EPA. (Motion, page 2).

4. ELPC further argues that if the hearing on August 12, 2004 is held, it should be limited only to Dr. Garvey's testimony. (Motion, page 4).

5. Illinois EPA believes that the hearing on August 12, 2004 should go forward because it will aide the Board and all parties involved in further developing the issues surrounding IAWA's proposal to amend the dissolved oxygen water quality standard.

6. Illinois EPA also believes that the hearing on August 12, 2004 will further aide the Agency in their continuing evaluation of IAWA's proposal to amend the dissolved oxygen standard. The purpose of conducting hearings during the rulemaking process is to get all the necessary information available to aide the Board and the various parties in better understanding the proposal being presented to the Board.

7. Furthermore, Illinois EPA does not believe limiting the August 12, 2004 hearing to only Dr. Garvey's testimony would be beneficial to this rulemaking proceeding. The Board should be able to allow any party ready to present testimony to do so at that date.

8. However, Illinois EPA will not be prepared to offer testimony at the August 12, 2004 hearing. Illinois EPA agrees with ELPC that the Board will not have enough information to proceed to First Notice at this time or immediately following the August 12, 2004 hearing. It is clear that the record in this matter needs further development and the Illinois EPA intends to provide the Board with testimony and

comments regarding an appropriate dissolved oxygen standard when the Agency has had an opportunity to draw a conclusion from the available information.

9. As stated above, the Illinois EPA believes that future hearings, such as the one scheduled on August 12, 2004 will help the various parties in developing the issues concerning IAWA's proposal, so that an appropriate standard is developed with respect to dissolved oxygen.

10. Illinois EPA proposes at a later date the Board allow the Agency and ELPC the opportunity to present testimony in this rulemaking once more information is obtained concerning IAWA's proposal.

11. The Illinois EPA would like to clear up some confusion that may have been created with respect to the need for "draft implementation rules." ELPC spends over half of its motion and memorandum of law perpetuating the confusion initiated by IAWA in its proposal and testimony by stating that deficiencies of its proposal will be resolved through an Agency regulatory process. At this time, it is not clear from either party what exactly is meant by "draft implementation rules".

12. Many of the concepts described by ELPC and IAWA as "implementation rules" speak to the temporal detail and measurements techniques necessary to determine compliance or non-compliance with the standards and therefore are an inherent part of the standard itself, not separate implementation procedures. To the extent they define "where, when and how" the numeric values within the standard apply, these certainly need to be defined. However, there is also an inference that the parties' use of "implementation procedures" refers to procedures for dictating discharge and monitoring requirements for permitted sources. Clearly, additional discussion and development

evaluation is necessary for Illinois EPA to accurately understand and address the various parties' positions on these matters.

13. Illinois EPA will not be able to assess the need for agency regulations until the administrative record is further developed regarding the appropriate dissolved oxygen water quality standard to protect aquatic life. However, if it is determined that such rules are necessary, Illinois EPA will provide testimony regarding the content of those rules.

14. Also, ELPC goes into great detail comparing the present rulemaking to other rulemaking proceedings to reach the conclusion that the Board has a "general practice" of requiring submission of Agency implementation rules. The Illinois EPA does not agree that a consistent practice exists regarding this issue. (Memorandum of Law P. 3-6).

15. The prime example of the need for such a practice provided by ELPC is the ammonia rulemakings. R94-01(B) and R02-19. The ammonia water quality standard is unique in that the standard itself varies with the temperature and pH of the receiving stream. As such, the process of permitting ammonia discharges was unusual and uncomparably complicated and required a rulemaking to establish procedures for setting permit limits.

16. ELPC also incorrectly states with regards to these proceedings "the standard revision cannot go into effect without development of implementation rules". (Motion, P. 3)

17. While it is true that U.S. EPA looks at a variety of Agency policies and procedures before it can approve certain standards, rarely does that involve or require

Agency rulemakings. In fact, in a vast majority of water quality standard revisions adopted by the Board, Illinois EPA's submittal does not involve agency regulations and it is unlikely this will be necessary for dissolved oxygen.

18. Finally, Illinois EPA would support additional hearings in this matter if the Board thinks future hearings are necessary. Illinois EPA is committed to working with U.S. EPA and the various parties to ensure the proper water quality standard for dissolved oxygen is developed.

WHEREFORE, the Illinois EPA respectfully requests that the Environmental Law and Policy Center, Prairie Rivers Network and the Sierra Club's Motion to Suspend Consideration of Proposed Amendments to the Dissolved Oxygen Standard Pending Development of Draft Implantation Rules be denied.

Respectfully submitted,

ILLINOIS/ENVIRONMENTAL PROTECT TON AGEN By:

Stefanie N. Diers Assistant Counsel Division of Legal Counsel

DATED:

Illinois Environmental Protection Agency 1021 North Grand Avenue East Post Office Box 19276 Springfield, Illinois 62794-9276 (217) 782-5544

Party Name	Party Role	Address 1	Address 2	City	State	Zip	Phone	Fax	Person Name	Title
1. 11. 11. 11. 11. 11. 11. 11. 11. 11. 1	linites naturality Printips									
Blackwell Sanders Peper Martin LLP		2300 Main Street	Suite 1000	Kansas City	мо	64108	816/983- 8000	816/983- 9151	W.C. Blanton	
Escondigion Sonnel Song Escelores Distant	Protokissish Bhanky									
Chemical Industry Council of Illinois	Interested Party	2250 E. Devon Avenue	Suite 239	DesPlaines	IL	60018-4509	en e		Lisa Frede	 Control of the second seco
	linnaiden er Pedig									
City of Joliet, Department of Public Works and Utilities	all Mile water and and a second days	921 E. Washington Street		Joliet	IL	60431	815-724- 4230			Director of Public Works and Utilities
Davintice Gave Solution Casterion	ព្រៃមើលកេច Paris	2.246 Camilis Sing a								
Ecological Monitoring and Assessment	Interested Party	3206 Maple Leaf Drive		Glenview	IL	60025	847-564- 9905		Irwin Polls	
handensterne Harans Scotter Parines Comen	[htti=x=Sit=t] [સ્ટાહ્ય	C. F. Warter								Su cu Su cu Su cu
Evanston	Interested	223 Grey Avenue	in the star and a star back in the star in the star start and the start start and the start start and the start	Evanston	JIL.	60202	<u> </u>	ter han har she had had her its	Vicky	

Party Name	Party Role	Address 1	Address 2	City	State	Zip	Phone	Fax	Person Name	Title
Environment Board	Party								McKinley	
Finter Wikedung)	İbancınderineni IRRANIN	oky sume Resources		and an		e.			an ang an ang gina. Ang ang ang ang ang ang ang ang ang ang a	
fra kinditan Lagitur										
Fred L. Hubbard	Interested Party	Attorney at Law	415 North Gilbert Street	Danville	IL	61834-0012	217/446- 0144	217/477- 0573	*	
havilten Sanos X	Inicarekuete Panis	99 X. Marka						s – S notraga	gan an a	
Gardner Carton & Douglas	Interested Party	191 N. Wacker Drive	Suite 3700	Chicago	IL	60606-1698	312/569/10 00	312/569- 3000	Sheila H. Deely	an a
Receiving	llaisiasan Pang	Ball & Barrier, College and						y and a second	in gant	
Hodge Dwyei Zeman	Interested Party	3150 Roland Avenue	Post Office Box 5776	Springfield	IL	62705-5776	217/523- 4900	217/523- 4948	Ketherine D. Hodge	
	Kangaleitidinti	(1.197) Second Contenant Society and Angels Transfer		A BARREN AND AND AND AND AND AND AND AND AND AN						an a
IEPA	Respondent	1021 North Grand Avenue East	P.O. Box 19276	Springfield	IĹ	62794-9276	217/782- 5544	217/782- 9807	Deborah J. Williams	
	Rescherentigen	half to Second Jongton (se communication) Design	Constant and						estation in the	han astron
IEPA	Respondent	1021 North Grand Avenue East	P.O. Box 19276	Springfield	IL	62794-9276	217/782- 5544	217/782- 9807	Stefanie N. Diers	Assistant Counsel
Ranges Frank Constanting Manager Ranger	linterested Parasy	Conte-Section of Section in the Section		Spirate					in the first state of the second state of the	
Illinois Environmenta 1 Regulatory	Interested Party	3150 Roland Avenue	ng dinan Shrini an Shini a Shini a Shini a shini da shini	Springfield	IL	62703	217/523- 4942	217/523- 4948	Alex Messina	a kana ay ang

Party Name	Party Role	Address 1	Address 2	City	State	Zip	Phone	Fax	Person Name	Title
Group										
er anter a second and a second br>A second a s A second a s	husisten Paus P	Kulle Son Herverner - Wardte Merere H	fer an inge sjol i stæregel ne stere ne stere ne stere							
1 1	Interested Party	100 East Erie Street	7	Chicago	IĹ		312/751- 6583	312/751- 6598	Michael G. Rosenberg, Esq.	
	lteric)Carton Preniny	COULD IN SHARE								
Rest Hideory Witors										
Metropolitan Water Reclamation District	Interested Party	6001 W. Pershing Rd.		Cicero	IL	60650-4112			Bernard Sawyer	
anna oldur. Santarioirilian Santar		Raidin 154. Real charge								Strandistanti 1997 - Angelander 1997 - Angelander 1997 - Angelander
Office of Lt. Governor Pat Quinn		Room 214 State House		Springfield	IL	62706	217-782- 7884		Michael J. Fischer	Policy Advisor
The Althe	linies ferrieret Sterau	1935 Wees Romiton de 2011 Filmer							an a san an a	dan ar tur (ormelika and Gastar werdiska and
Office of the Attorney General	Interested Party	188 West Randolph, 20th Floor	n na sana ang kana an Ang kana ang	Chicago	IL	60601	312/814- 2550	312/814- 2347	Matthew J Dunn	
Paragan B.	handrand Pitos	1. 1993 Sec. Sec. alles Alles Alles and and and a	te server and and the server as a starting of	al have been and the second states						
Ross &	Interested	150 North Michigan Avenue	Suite 2500	Chicago	IL	60601-7567	312/558-	312/750-	Charles W	

Party Name	Party Role	Address 1	Address 2	City	State	Zip	Phone		Person Name	Title
Hardies	Party						1000	8600	Wesselhoft	
Reads into	little estited	and the stand of the second					a da sasse			
BERTHER.	Retrat	and a second	and the second state of th	s			i ili. Antonia di statuana	ing Alternational and a start	laran Tarihin da Marinta (da Arawan da Marinta (da	الم المراجعة (المراجع (المراجع (المراجع (المراجع) المراجع (المراجع) المراجع (المراجع (المراجع (المراجع
Sonnenschein	Interested	8000 Sears Tower	233 South Wacker	Chicago	ĮL.	60606-6404	312/876-	312/876-	Susan M.	
Nath &	Party		Drive				8000	7934	Franzetti	
Rosenthal						1				
ferennes fratale	Doffer (d. 11-(a)	MID MARY AND STREET								Lana 1
l'example.	Ritory									البرا الألج مولغان
Section 2										
Dikjent	te te te te te te te te te te te te te t		line of an indication of the second states and the second s	I	ada datar	n an		.)) Usta in the second of		
Vermilion	Interested	1979 Johns Drive		Glenview	μL	60025	847/832-	847/832-	Frederick	President
Coal	Party						9007	9010	D. Keady,	
Company]	P.E.	

STATE OF ILLINOIS

)) SS.

COUNTY OF SANGAMON

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Response to the

Environmental Law & Policy Center of the Midwest, Prairie Rivers Network and the Sierra

Club's Motion to Suspend Consideration of Proposed Amendments to the Dissolved Oxygen

Standard Pending Development of Draft Implementation Rules upon the person to whom it is

directed, by placing it in an envelope addressed to:

 TO: Dorothy Gunn, Clerk Illinois Pollution Control Board James R. Thompson Center 100 W. Randolph Street, Suite 11-500 Chicago, Illinois 60601 Richard McMill, Hearing Officer Illinois Pollution Control Board James R. Thompson Center 100 W. Randolph, Suite 11-500 Chicago, Illinois 60601

SEE ATTACHED SERVICE LIST

and mailing it by First Class Mail from Springfield, Illinois on August 4, 2004, with sufficient

postage affixed.

Cynthia Sims

SUBSCRIBED AND SWORN TO BEFORE ME

this 4th day of August, 2004

Notary Public

OFFICIAL SEAL BRENDA BOEHNER NOTARY PUBLIC, STATE OF ILLINOIS MY COMMISSION EXPIRES 11-14-2005

THIS FILING IS SUBMITTED ON RECYCLED PAPER