

AUG 06 2004

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

IN THE MATTER OF:)	
)	
PROPOSED AMENDMENTS TO)	R 04-25
DISSOLVED OXYGEN STANDARD)	(Rulemaking -Public Water)
35 ILL. ADM. CODE 302.206)	

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 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 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

By: 
 Stefanie N. Diers
 Assistant Counsel
 Division of Legal Counsel

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

THIS FILING IS SUBMITTED ON
RECYCLED PAPER

AUG 06 2004

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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Pollution Control Board

IN THE MATTER OF :)	
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PROPOSED AMENDMENTS TO)	R04-25
DISSOLVED OXYGEN STANDARD)	Rulemaking-Public Water
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**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**

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
PROTECTION AGENCY

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

Illinois Pollution Control Board

Service List Service list for case R2004-025

Party Name	Party Role	Address 1	Address 2	City	State	Zip	Phone	Fax	Person Name	Title
Blackwell Sanders Peper Martin LLP	Interested Party	2300 Main Street	Suite 1000	Kansas City	MO	64108	816/983-8000	816/983-9151	W.C. Blanton	
Chemical Industry Council of Illinois	Interested Party	2250 E. Devon Avenue	Suite 239	DesPlaines	IL	60018-4509			Lisa Frede	
City of Joliet, Department of Public Works and Utilities	Interested Party	921 E. Washington Street		Joliet	IL	60431	815-724-4230		Dennis L. Duffield	Director of Public Works and Utilities
Ecological Monitoring and Assessment	Interested Party	3206 Maple Leaf Drive		Glenview	IL	60025	847-564-9905		Irwin Polls	
Evanston	Interested Party	223 Grey Avenue		Evanston	IL	60202			Vicky	

Illinois Pollution Control Board

Service List Service list for case R2004-025

Party Name	Party Role	Address 1	Address 2	City	State	Zip	Phone	Fax	Person Name	Title
Environment Board	Party								McKinley	
Fred L. Hubbard	Interested Party	Attorney at Law	415 North Gilbert Street	Danville	IL	61834-0012	217/446-0144	217/477-0573	*	
Gardner Carton & Douglas	Interested Party	191 N. Wacker Drive	Suite 3700	Chicago	IL	60606-1698	312/569/1000	312/569-3000	Sheila H. Deely	
Hodge Dwyer Zeman	Interested Party	3150 Roland Avenue	Post Office Box 5776	Springfield	IL	62705-5776	217/523-4900	217/523-4948	Ketherine D. Hodge	
IEPA	Respondent	1021 North Grand Avenue East	P.O. Box 19276	Springfield	IL	62794-9276	217/782-5544	217/782-9807	Deborah J. Williams	
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
Illinois Environmental Regulatory	Interested Party	3150 Roland Avenue		Springfield	IL	62703	217/523-4942	217/523-4948	Alex Messina	

Illinois Pollution Control Board

Service List Service list for case R2004-025

Party Name	Party Role	Address 1	Address 2	City	State	Zip	Phone	Fax	Person Name	Title
Group										
Metropolitan Water Reclamation District	Interested Party	100 East Erie Street		Chicago	IL	60611	312/751-6583	312/751-6598	Michael G. Rosenberg, Esq.	
Metropolitan Water Reclamation District	Interested Party	6001 W. Pershing Rd.		Cicero	IL	60650-4112			Bernard Sawyer	
Office of Lt. Governor Pat Quinn	Interested Party	Room 214 State House		Springfield	IL	62706	217-782-7884		Michael J. Fischer	Policy Advisor
Office of the Attorney General	Interested Party	188 West Randolph, 20th Floor		Chicago	IL	60601	312/814-2550	312/814-2347	Matthew J. Dunn	
Ross &	Interested	150 North Michigan Avenue	Suite 2500	Chicago	IL	60601-7567	312/558-	312/750-	Charles W.	

Illinois Pollution Control Board

Service List Service list for case R2004-025

Party Name	Party Role	Address 1	Address 2	City	State	Zip	Phone	Fax	Person Name	Title
Hardies	Party						1000	8600	Wesselhoft	
Sonnenschein Nath & Rosenthal	Interested Party	8000 Sears Tower	233 South Wacker Drive	Chicago	IL	60606-6404	312/876- 8000	312/876- 7934	Susan M. Franzetti	
Vermilion Coal Company	Interested Party	1979 Johns Drive		Glenview	IL	60025	847/832- 9007	847/832- 9010	Frederick D. Keady, P.E.	President

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

PROOF OF SERVICE

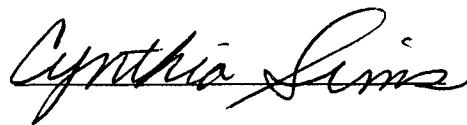
I, the undersigned, on oath state that I have served the attached Response to the Environmental Law & Policy Center of the Midwest, Prairie Rivers Network and the Sierra Club's Motion to Suspend Consideration of Proposed Amendments to the Dissolved Oxygen Standard Pending Development of Draft Implementation 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.



SUBSCRIBED AND SWORN TO BEFORE ME

this 4th day of August, 2004



Notary Public



THIS FILING IS SUBMITTED ON RECYCLED PAPER