

DEC 21 2004

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

IN THE MATTER OF:)
)
INTERIM PHOSPHORUS EFFLUENT)
STANDARD, PROPOSED 35 ILL. ADM.)
304.123 (G-K))
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R4-26
(Rulemaking - Water)

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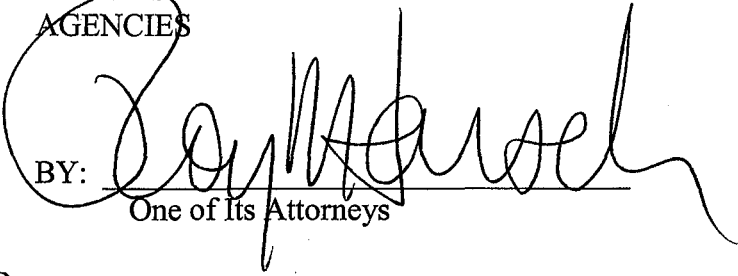
NOTICE OF FILING

TO: See Attached Certificate of Service

PLEASE TAKE NOTICE that on Tuesday, December 21, 2004, we filed the attached Comments of the Illinois Association of Wastewater Agencies with the Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ASSOCIATION OF WASTEWATER
AGENCIES

BY: 
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STATE OF ILLINOIS
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COMMENTS OF THE
ILLINOIS ASSOCIATION OF WASTEWATER AGENCIES

Introduction

The Illinois Association of Wastewater Agencies (IAWA) appreciates the opportunity to provide comment to the Board on the proposed rulemaking filed by the Illinois EPA to establish an interim phosphorus limitation for new or expanded treatment facilities. IAWA is a member group consisting of 98 members, of which 55 are agency members. IAWA's members operate approximately 75 publicly-owned treatment works (POTWs), including almost all of the state's major facilities. In addition to these sanitary districts, water reclamation districts and municipalities, the largest Illinois private wastewater utility that operates 12 plants is also a member.

Representatives of these organizations are public officials and include both elected and appointed trustees of districts and appointed officials at municipalities throughout the state. IAWA constituents are the citizens and taxpayers of Illinois, who are the same constituents as any other state or public agency. IAWA members are committed to both ensuring that the aquatic environment is maintained in a healthy state and to providing wastewater treatment services at a reasonable cost to their constituents. IAWA members take seriously their duty to properly treat wastewater before it is discharged as clean effluent to the waterways of Illinois, and the elected and appointed trustees and officials work to further the very best interests of their constituents.

IAWA opposes the proposed rule and believes the proposal to be insufficiently supported and not based on sound science, and consequently deficient in meeting the requirements required by statute and Board rules to allow the Board to adopt standards. As proponent of the proposal, the Illinois EPA is required to provide an environmental, technical, and economic justification for the proposed rule. See 35 Il. Adm. Code 102.202. The Illinois EPA has not provided an adequate environmental, technical or economic justification for a new statewide effluent limitation.

IAWA is proud of its long commitment to the application of sound science to the development of water quality and effluent standards. When standards are developed from sound science, IAWA members have a high level of confidence that those standards will be in place for many years. In contrast, when standards are developed without the use of sound science, IAWA members are forced to use interim solutions to treatment needs to avoid building facilities that might not be needed once more appropriate limits are developed.

Lack of Scientific Support for Proposed Rule

IAWA believes these standards are based not on sound science but are improperly based on an election year pledge by Governor Rod Blagojevich and Illinois EPA's desire to reduce the regulatory burden associated with the NPDES permit program. Illinois EPA acknowledged in a press release that the purpose of the rule was to fulfill the Governor's "pledge to address the impact of phosphorus in sewage plant discharges." See Exhibit 1, Illinois EPA Environmental Progress newsletter, Summer 2004. Illinois EPA has also acknowledged that this proposal is additionally intended to address the permit backlog and the burden of running a permitting program where various environmental advocacy groups regularly object to permits and take action to delay construction of new or expanded wastewater treatment facilities. Both of these rationales for the proposed standards are

improper. An election year promise does not constitute scientific evidence. And the solution to address abuse of the permitting system by advocacy groups to slow growth or obtain concessions is not to proceed with an unwise and unjustified standard. IAWA believes that any expected benefit to Illinois EPA from this rule is frankly illusory. Even if this proposal is adopted, an interim rule is not likely to reduce Illinois EPA's regulatory burdens in any case. The purported benefit to Illinois EPA is that it would not have to look at phosphorus discharges of small dischargers, but testimony at the hearing show that this is not the case and the environmental groups have already stated they do not concur with this position. Illinois EPA will still have to address water quality and anti-degradation, even with an interim standard.

The Illinois EPA has not disputed and has in fact repeatedly conceded that the proposal to have a generally applicable interim effluent limitation for phosphorus for new or expanding treatment facilities is not based on sound science. (Statement of Reasons at 7, 8, 12; Tr. at 108, lines 2 through 12). While acknowledging the desirability of sound science as a basis for effluent standards, Mr. Toby Frevert nevertheless stated that "Based on the testimony nobody has that sound science and knows exactly what to do with nutrients." (Tr. at p. 107, lines 22-23). This admission should preclude the Board from proceeding with this standard. Illinois EPA has also stated very generally that phosphorus is known to be a problem in some streams and not in others. IAWA has already made the point that for streams where phosphorus can be shown to be impairing a recognized stream use, regulations are in place to allow the Illinois EPA to give dischargers effluent limitations. For receiving streams where it cannot be determined that there will be a benefit from reductions in phosphorus levels, however, the proposed interim limit would result in the installation and operation of treatment technology with no known benefit and an unknown cost. Tr. 100.

The environmental advocacy groups participating in this rulemaking have also attempted to provide support for the rulemaking by filing general information on the standards of other states as well as permits issued in Illinois where a phosphorus limitation was included. This information is not science, however. None of the information submitted by the environmental groups show that Illinois has a problem with phosphorus or that Illinois waterways have conditions similar to those of other states. The Illinois EPA has itself admitted that at this point in time it does not understand the role of elevated levels of nutrients in the wide range of stream conditions found in Illinois. Further, the permits that contain a phosphorus limitation reflect either dischargers, primarily downstate, where the discharge is upstream of a lake and therefore a phosphorus limitation is required by Board regulations, or cases where a permittee has accepted a permit limitation at the urging of these same environmental advocacy groups in order to avoid delays in permit issuance. Tr. 35-38, Oct. 25, 2004. These permits support only the effectiveness of the advocacy group tactics and not the scientific nature of their objections.

Lack of Technological and Economic Justification

With respect to the economic justification of the proposed rule, the absence of a sound scientific basis for the rule is ultimately a comment on the likely absence of any impact at all from installation of costly technology on nutrient levels in Illinois waterways. IAWA has already submitted testimony that the Illinois EPA's expectation on the technology that will be used, chemical phosphorus removal processes, will increase the cost of wastewater treatment. Tr. 100-01. IAWA believes there is a real deficiency in the information that has been submitted on the cost of this proposed regulation to wastewater treatment agencies and, consequently, Illinois taxpayers. Tr. 101-02. There has been no real attempt to address operating costs. Tr. 109. IAWA has also submitted testimony that Illinois EPA has failed to

provide a sound and accurate estimate of the cost and has omitted important components of the cost, including handling and disposal of additional sludge.

Illinois Nutrient Work Group

The state is moving forward on developing nutrient standards that would be based on sound science by forming the Illinois Nutrient Work Group, a process that has received federal approval by U.S. EPA. IAWA supports this process and is a participant in the Illinois Nutrient Work Group, as are the environmental advocacy groups that have commented in this rulemaking. This process is intended to result in proposed regulations that are consistent with Board rules and that are supported by proper science, and resulting standards will consequently forward the interest of public confidence in Illinois water quality standards and credibility with those entities that have to spend the money to meet the standards. The development of these limits is consistent with IAWA's long standing support of science-based water quality standards.

The Illinois EPA has testified that it expects to have standards to propose in 2007, with adoption expected in 2008. Assuming the Board adopts this proposed interim rule, construction permits to which this rule is intended to be applicable would be issued for plants to come on line in late 2006, at the earliest. By the time this rule is adopted, there would be no benefit given the short time period during which it would be in effect.

IAWA also concurs with the Metropolitan Water Reclamation District of Greater Chicago that the Board should move toward creating an incentive to allow treatment facilities to explore wetland trading to address nutrients and evaluate other alternatives. Given the uncertainties concerning phosphorus, it would seem the proper response would not be to set an unsupported interim limit during the limited time period until the prospective proposal on nutrients is adopted, but instead to work to create a regulatory environment that allows testing

of innovative solutions so that once standards are supported and adopted, Illinois' wastewater treatment facilities and the Illinois EPA will have enough information to be in a position to determine whether wetland trading is viable and effective.

Conclusion

As agencies with the authority to regulate other entities and spend taxpayer money to meet regulatory requirements, IAWA's members believe it is important that they understand and have confidence in the scientific basis for standards. IAWA strongly believes there is no current need for the proposed interim phosphorus limitation and it would be contrary to statutory requirements and Board regulations to proceed with standards without the proper environmental, economic and technical justification for the standards. 415 ILCS 5/27; 35 Il. Adm. Code 102.202. Nutrient limits are in progress in a forum that will allow them to be based on sound science, and during the interim Illinois EPA currently has the legal means to deal with streams that have known nutrient problems. Under the circumstances, adoption of an interim technology-based phosphorus limit is not wise public policy.

Exhibit 1

www.epa.state.il.us

Rod R. Blagojevich, Governor

Environmental Progress - Summer 2004

Illinois EPA Proposes Phosphorous Discharge Limits

Fulfilling Governor Rod Blagojevich's pledge to address the impact of phosphorus in sewage plant discharges, the Illinois Environmental Protection Agency has asked the Illinois Pollution Control Board to adopt new standards for new and expanding larger municipal and industrial wastewater/sewage treatment plants.

"We owe it to our future generations to do everything we can now to ensure that they'll be able to enjoy Illinois' natural habitat and wildlife for years down the road," said Governor Blagojevich. "This proposal takes a big step forward in protecting threatened plant and fish life around the state's many wastewater and sewer treatment facilities,"

"These standards are intended to address concerns that too much phosphorus results in excessive plant growth and algae, may be detrimental to fish and aquatic life and may cause odor and taste problems in drinking water," said Illinois EPA Director Renee Cipriano. "The Agency has been working on the proposal at the request of Governor Blagojevich, who pledged during his 2002 campaign to address the phosphorus concerns raised by state and local environmental groups."

"The Governor's proposal will help protect drinking water and wildlife across Illinois," said Jack Darin, Director of the Sierra Club, Illinois Chapter. "This initiative will help growing communities ensure that local streams and rivers will remain clean, even as population and wastewater discharges increase."

Under the proposed standards, new or expanding domestic sewer and wastewater treatment facilities, that discharge more than 1 million gallons a day, will be required to reduce their phosphorus content to 1 milligram per liter. Certain industrial facilities will also have the same limit applied to them.

The facilities will be able to meet the limit by incorporating available phosphorus reduction technology. Phosphorus removal can be achieved with either biological or chemical technologies. Phosphorus removed from treated wastewater is contained in the sludge or bio-solids generated during the sewage treatment process and may increase the nutrient and soil enhancement properties when it is disposed of through land application.

Phosphorus is a naturally occurring nutrient and a basic building block necessary to support life, but too much phosphorus from organic materials in wastewater discharged into a stream or lake may upset the balance in a body of water.

However, because there is still scientific debate over how much phosphorus is too much, Illinois EPA has proposed an "interim" standard that would be in effect for the next several years to allow the science to further evolve.

The Pollution Control Board will hold hearings to obtain testimony from interested constituencies on the proposed standards and then will issue a decision.

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **Comments of the Illinois Association of Wastewater Agencies** were filed by hand delivery with the Clerk of the Illinois Pollution Control Board and served upon the parties to whom said Notice is directed by first class mail, postage prepaid, by depositing in the U.S. Mail at 191 North Wacker Drive, Chicago, Illinois on **Tuesday, December 21, 2004.**

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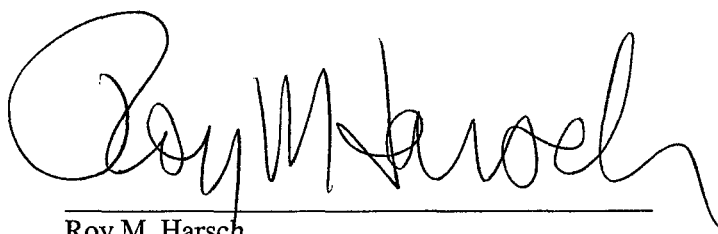
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