

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

MAR 29 2005

STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF: )

)  
)  
) BACTERIA (E-COLI) WATER QUALITY  
) STANDARD FOR LAKE MICHIGAN  
) AND THE MISSISSIPPI RIVER,  
) PROPOSED AMENDMENTS TO CODE 302  
) AND 303 )

R 05-10  
(Rulemaking -Water)

NOTICE

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

John Knittle, Hearing Officer  
Pollution Control Board  
2125 South First Street  
Champaign, Illinois 61820

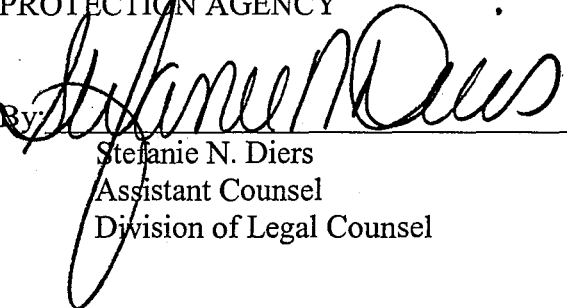
RoseMarie Cazeau  
Environmental Bureau  
Assistant Attorney General  
188 West Randolph, 20<sup>th</sup> Floor  
Chicago, Illinois 60601

Legal Service  
Illinois Department of Natural Resources  
One Natural Resources Way  
Springfield, Illinois 62702-1271

PLEASE TAKE NOTICE that I have filed with the Office of the Pollution Control Board the MOTION TO SUSPEND ILLINOIS EPA'S PROPOSAL TO AMEND 35 ILL. ADM. CODE 302 AND 303 on behalf of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

Date: March 24, 2005

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

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CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MAR 29 2005

IN THE MATTER OF: )  
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BACTERIA (E-COLI) WATER QUALITY )  
STANDARD FOR LAKE MICHIGAN )  
AND THE MISSISSIPPI RIVER, )  
PROPOSED AMENDMENTS TO CODE 302 )  
AND 303 )

R05-10  
(Rulemaking-Water)

STATE OF ILLINOIS  
Pollution Control Board

**MOTION TO SUSPEND ILLINOIS EPA'S PROPOSAL TO AMEND 35 ILL.  
ADM. CODE 302 AND 303**

The Illinois Environmental Protection Agency ("Illinois EPA") hereby submits its Motion to Suspend Its Proposal to Amend 35 Ill. Adm. Code Section 302 and 303 at this time. In support of said Motion, Illinois EPA states as follows:

- 1) On November 8, 2004, the Illinois EPA filed with the Board its proposal to amend 35 Ill. Adm. Code Section 302 and 303.
- 2) On December 16, 2004, the Board granted Illinois EPA's Motion for Acceptance and accepted the proposal for hearing. A status conference was held on March 17, 2005 and another status conference is scheduled for April 19, 2005 at 10:00 a.m.
- 3) The Illinois EPA filed their proposal because the United States Environmental Protection Agency ("U.S. EPA") determined Illinois did not have water quality standards for bacteria that comply with the requirements of Section 303(i) of the Clean Water Act. See 33 U.S.C. Section 1313; See also 40 C.F.R. Part 131. Also, Illinois EPA indicated to U.S. EPA that the agency would file water quality standards for bacteria by September 30, 2004. (See Exhibit D, attached to Illinois EPA's Statement of Reasons filed on November 8, 2004).

4) U.S. EPA stated that if a state, such as Illinois, did not have standards for bacteria that complied with Section 303(i); U.S. EPA would propose standards for those states. Id.

5) U.S. EPA's proposal for Water Quality Standards for Coastal and Great Lakes Recreation Waters was adopted as a final rule on December 16, 2004. See Exhibit A.

6) Because Illinois has not adopted water quality standards for bacteria that comply with Section 303(i) before December 16, 2004, the Federal Water Quality Standards for Coastal and Recreation Waters will now apply to Illinois' coastal recreation waters<sup>1</sup>. Id.

7) Since the filing of this rule, Illinois EPA participated in a telephone conference with U.S. EPA on November 8, 2004. During this telephone conference, U.S. EPA indicated they intend to file new bacteria criteria in October 2005 and the indicator organism will not be either fecal coliform or *E-coli*. Also, it is unclear at this time if U.S. EPA's new bacteria criteria will be for just Great Lake Coastal Recreation Waters or for all surface waters.

8) Therefore, based on this information Illinois EPA requests at this time the docket in this rulemaking be held open until U.S. EPA's new bacteria criteria is determined.

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<sup>1</sup> U.S. EPA's rule for *E. coli* in fresh coastal recreation waters requires a geometric mean of 126/100ml with four different single sample maximums, which vary based on intensity of use. See 40 CFR 131. U.S. EPA's rule for marine coastal recreation waters requires a geometric mean of 35/100ml with four different single sample maximums based on intensity of use. See 40 CFR 131.

9) By holding this docket open until U.S. EPA's new bacteria criteria is determined, it would allow for Illinois EPA to better use its resources to evaluate the waters of the state and perhaps propose a bacteria standard for all waters of the state instead of just focusing on Lake Michigan and the Mississippi River.

10) Illinois EPA contends that continuing with this rulemaking at this time would not be of any economical use of time for the Board or party participants, since U.S. EPA has indicated they are in the process of changing the criteria for bacteria this fall.

11) Also, there is no urgency for this rule to proceed at this time since Illinois is now required to follow the federal standard.

12) Furthermore, the Illinois Department of Public Health is responsible for monitoring Illinois' beaches and they already use *E. coli* as the indicator organism.

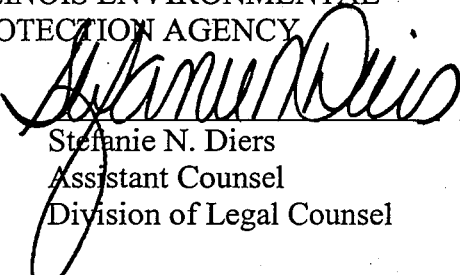
13) Finally, should the Board grant Illinois EPA's Motion to Suspend, the Agency recommends quarterly status case calls be held in this matter with the hearing officer and the Agency, so the Agency can keep the Board and interested parties apprised of significant developments or progress in this matter.

WHEREFORE, the Illinois EPA respectfully request this Board grant its Motion to Suspend this Rulemaking until further information is acquired from U.S. EPA concerning bacteria water quality standards.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:

  
Stefanie N. Diers  
Assistant Counsel  
Division of Legal Counsel

Date: March 24<sup>th</sup>, 2005

1021 N. E. Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217-782-5544

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF SANGAMON )

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Motion to Suspend Illinois EPA's Proposal to Amend 35 Ill. Adm. 302 and 303 upon the person to whom it is directed, by placing it in an envelope addressed to:

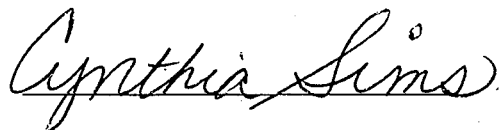
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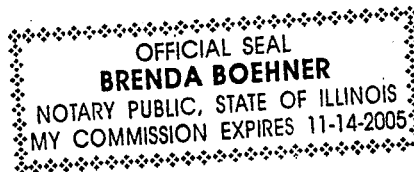
and mailing it by First Class Mail from Springfield, Illinois on March 24, 2005, with sufficient postage affixed.



SUBSCRIBED AND SWORN TO BEFORE ME

this 24<sup>th</sup> day of March, 2005

Brenda Boehner  
Notary Public



**THIS FILING IS SUBMITTED ON RECYCLED PAPER**