

ILLINOIS POLLUTION CONTROL BOARD

April 21, 2005

IN THE MATTER OF: )  
)  
PROPOSED AMENDMENTS TO 35 ILL. ) R05-10  
ADM. CODE 302 AND 303 ) (Rulemaking - Water)

ORDER OF THE BOARD (by T.E. Johnson):

On November 8, 2004, the Board received a rulemaking proposal submitted by the Illinois Environmental Protection Agency (Agency) that seeks to set *Escherichia coli* (E-coli) bacteria water quality standards for Lake Michigan beaches and the Mississippi River. The Board accepted this rulemaking for hearing on December 16, 2004.

The hearing officer held telephone status conferences on February 17, 2005; March 15, 2005; and April 20, 2005 for the purpose, among other things, of scheduling hearing on the proposal.

On March 29, 2005, the Agency filed a motion to suspend this rulemaking. In the motion, the Agency asserts that it filed its proposal because the United States Environmental Protection Agency (USEPA) determined that Illinois did not have water quality standards for bacteria that comply with the requirements of Section 303(i) of the Clean Water Act, and that the Agency indicated to the USEPA that it would file water quality standards for bacteria by September 30, 2004. Mot. at 1. The Agency asserts that because Illinois has not adopted water quality standards for bacteria that comply with 303(i) before December 16, 2004, the Federal Water Quality Standards for Coastal and Recreation Waters now apply to Illinois' coastal recreation waters. Mot. at 2.

The Agency asserts that the USEPA indicated that it intends to adopt a new bacteria criterion in October 2005, with an indicator organism other than fecal coliform or E-coli. Mot. at 2. As a result, the Agency asks that the docket in this rulemaking be held open until the USEPA's new bacteria criterion is determined. *Id.* The Agency contends that holding the docket open would allow for the Agency 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 focusing on Lake Michigan and the Mississippi River. Mot. at 3. The Agency asserts that continuing with the rulemaking would not be an economical use of time in light of the USEPA's intent to change the criterion, and that there is no urgency for this rule to proceed as Illinois is now required to follow the federal standard. *Id.*

Generally, a 14-day response period is allowed for a motion filed before the Board. *See* 35 Ill. Adm. Code 101.500(d). To date, the Board has not received any responses to the Agency's March 29, 2005 motion.

The Board agrees with the Agency's assertion that continuing with the rulemaking would not be an economical use of time or administrative resources in light of the USEPA's intent to

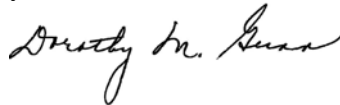
change the criterion. Because Illinois is required to follow the federal standard, no compelling urgency for this rule to proceed is evident. In addition, if the USEPA does significantly alter its bacteria criterion, the Agency may have to substantively amend its current proposal.

The Board does not favor indefinite stays of regulatory proceedings before it, particularly those involving water quality issues. Members of the regulated community and the public regularly contact the Board for information on when stays will end and hearings will be held in stayed proceedings; staff resources are expended in response to little purpose when the Board can supply no concrete information. This is very much the case here, where the length of the stay is contingent upon completion of regulatory action by USEPA as well as IEPA analysis of the effect of that action. The priorities of each agency may be subject to change due to resource or other constraints beyond their control or that of the Board. In light of these factors, the Board believes that dismissing this rulemaking proposal with leave to re-file is procedurally preferable for the Board, the Agency, the regulated community, and the public. Interested persons will then feel free to focus their attention on the federal activity.

Accordingly, the motion to suspend the rulemaking is denied. The Board dismisses the rulemaking proposal, and closes the docket. The Agency is given leave to re-file an appropriate rulemaking proposal when the USEPA's new bacteria criterion is adopted.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 21, 2005, by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board