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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)

Petition of MATERIAL SERVICE CORPORATION)
for an Adjusted Standard from 35 Ill. Adm. Code)
302.208, 406.202 and 304.105)

AS 02-1
(Adjusted Standard)

NOTICE OF FILING

TO: Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601-3218

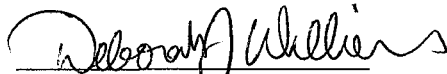
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Illinois Pollution Control Board
State of Illinois Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601-3218

Robert T. Lawley, Chief Legal Counsel
Department of Natural Resources
524 S. Second Street
Springfield, Illinois 62701-1787

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the
Pollution Control Board the attached Motion for Leave to File Recommendation *Instante* and
Recommendation of the Illinois Environmental Protection Agency, a copy of which is herewith
served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY: 
Deborah J. Williams
Assistant Counsel
Division of Legal Counsel

DATED: April 12, 2002
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

THIS FILING IS SUBMITTED
ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE
APR 16 2002
STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
Petition of MATERIAL SERVICE CORPORATION) AS 02-1
for an Adjusted Standard from 35 Ill. Adm. Code) (Adjusted Standard)
302.208, 406.202 and 304.105)
)

MOTION FOR LEAVE TO FILE RECOMMENDATION INSTANTER

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA") by one of its attorneys, Deborah J. Williams, and moves the Pollution Control Board ("Board") to allow the filing of the Illinois EPA Recommendation *instanter* in the above matter. In support of its request, the Illinois EPA states as follows:

1. On November 29, 2001, MSC filed a Petition for an Adjusted Standard from 35 Ill. Adm. Code 302.208, 406.202 and 304.105 with the Illinois Pollution Control Board ("Board") for relief from the Total Dissolved Solids and Sulfates limitations applicable to its quarry operation located in the Village of McCook, Cook County, Illinois.

2. On December 19, 2001, MSC filed a Certificate of Publication with the Board pursuant to 415 ILCS 5/28.1(d)(2000) and 35 Ill. Adm. Code 104.408 and 104.410 certifying that notice of its Adjusted Standard Petition was published in the Chicago Tribune on December 10, 2001.

3. The Illinois EPA is required to respond to a Petition for Adjusted Standard within forty-five (45) days of filing pursuant to 35 Ill. Adm. Code 104.416.

4. On January 16, 2002, the Hearing Officer granted the Illinois EPA's motion for extension of time to file its Recommendation until February 28, 2002. On February 28, 2002, the Hearing Officer granted a second motion for extension of time until March 28, 2002.

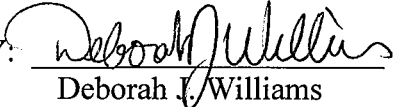
5. The time required by Section 104.416 and the additional time granted by the Hearing Officer has been inadequate for the Illinois EPA to finalize its Recommendation due to the conflict of other time sensitive obligations.

6. Petitioner will suffer no prejudice should the Illinois EPA's motion be granted as the Illinois EPA's final Recommendation to the Board in this matter recommends that the Board grant Petitioner's Adjusted Standard Petition.

WHEREFORE, the Illinois EPA respectfully requests that its Recommendation in AS 02-1 be filed *instanter*.

Respectfully Submitted

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: 
Deborah J. Williams
Assistant Counsel
Division of Legal Counsel

DATED: April 12, 2002
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

APR 16 2002

IN THE MATTER OF:)

Petition of MATERIAL SERVICE CORPORATION)
for an Adjusted Standard from 35 Ill. Adm. Code)
302.208, 406.202 and 304.105)

AS 02-1
(Adjusted Standard - Water)

STATE OF ILLINOIS
Pollution Control Board

**RECOMMENDATION OF THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY**

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA") by one of its attorneys, Deborah J. Williams, in response to the Petition for Adjusted Standard ("Petition") of Material Service Corporation ("MSC" or "Petitioner") from 35 Ill. Adm. Code 302.208, 406.202 and 304.105 and pursuant to 35 Ill. Adm. Code 104.416, hereby recommends that the Pollution Control Board ("Board") **GRANT** MSC's request for an Adjusted Standard from 35 Ill. Adm. Code 302.208. The Illinois EPA concludes that an Adjusted Standard from this provision makes an Adjusted Standard from 35 Ill. Adm. Code 304.105 and 406.202 unnecessary. In support of its recommendation, the Illinois EPA states as follows:

I. INTRODUCTION

1. On November 29, 2001, MSC filed a Petition with the Board for an Adjusted Standard from 35 Ill. Adm. Code 302.208, 406.202 and 304.105 for relief from the total dissolved solids ("TDS") and sulfate limitations applicable to its quarry operation located in the Village of McCook, Cook County, Illinois.

2. On December 19, 2001, MSC filed a Certificate of Publication with the Board pursuant to 415 ILCS 5/28.1(d)(2000) and 35 Ill. Adm. Code 104.408 and 104.410 certifying that notice of its Adjusted Standard Petition was published in the Chicago Tribune on December

10, 2001. The Board apparently accepted MSC's Adjusted Standard Petition and Certificate of Publication on January 10, 2002.

3. The Illinois EPA is required to file a Recommendation with the Board within 45 days of the filing of a Petition for Adjusted Standard or within 30 days before a scheduled hearing date, whichever occurs earlier. 35 Ill. Adm. Code 104.416. On January 16, 2002, the Hearing Officer granted the Illinois EPA's motion for extension of time until February 28, 2002. On February 28, 2002, the Hearing Officer granted the Illinois EPA's motion for extension of time to file its Recommendation until March 28, 2002. The Illinois EPA has filed a motion to accept filing of its Recommendation *instanter* simultaneously with this Recommendation. MSC has waived its right to a hearing in this matter. Petition at 15.

II. BACKGROUND

4. MSC operates a limestone quarry in the Village of McCook located in the southwestern portion of Cook County. Petition for Adjusted Standard ("Pet.") at 1. MSC's discharge is permitted pursuant to National Pollutant Discharge Elimination System ("NDPES") permit No. IL 0001945, issued on September 25, 2000 (expiration date August 31, 2005) and NPDES permit No. ILG840029 a general permit for non-coal mines issued to MSC on December 9, 1997 and expiring on May 31, 2002.

5. The Federal Quarry is 300 feet deep and intersects groundwater seams. Pet. at 1. Groundwater as well as surface water (in the form of rain) enters the quarry pits and must be pumped out to facilitate quarrying operations. The water is pumped out of MSC's quarry and discharged into the McCook Drainage Ditch. Petitioner has stated that groundwater seepage and stormwater must be pumped from the quarry at an estimated average rate of 3,600,000 gallons per day. Pet. at 1. After a storm event, the volume approaches 6,000,000 gallons per day. Pet.

at 4. Upstream from the MSC quarry, the McCook Ditch receives discharges from the Village of Brookfield's storm sewer system. Below MSC's outfall, the Ditch receives additional industrial discharges and flows into the Summit Conduit. The Summit Conduit transports these waters under the DesPlaines River and into the Chicago Sanitary and Ship Canal. Pet. at 1-2.

6. The groundwater in the area of MSC's quarry is very "hard." Dissolved solids and sulfate are present in high concentrations and in many cases uncontaminated groundwater does not meet the water quality standards for TDS of 1,000 milligrams per liter ("mg/L") and sulfate of 500 mg/L. The rainwater that falls into the quarry pits dilutes the accumulated groundwater, but this is often still not enough dilution to meet water quality standards in the water that is pumped into the receiving stream.

7. In addition to pumping accumulated groundwater and runoff into the McCook Ditch, some of the accumulated water is used by MSC to wash its product. Pet. at 5. Settling ponds are used to remove the rock dust from this process. This effluent is mixed with the pit pumpage and discharged to the stream. Id. MSC submitted a technical justification document with its Adjusted Standard Petition prepared by their consultant, DAI Environmental titled "Technical Evaluation for an Adjusted Standard Petition, Material Service Corporation – Federal Quarry, McCook, Illinois (November 28, 2001)." See Pet. at Exhibit 3. MSC's consultant concluded that the effluent produced from washing its product with groundwater seepage is not a contributing factor to the receiving stream's inability to meet the TDS and sulfate water quality standards for general use waters, but rather, it is hardness of the groundwater that is preventing MSC's discharge from meeting the water quality standards for TDS and sulfate.

8. The Chicago Ship and Sanitary Canal into which the McCook Drainage Ditch flows is defined as Secondary Contact and Indigenous Aquatic Life Waters under Illinois law.

See, 35 Ill. Adm. Code 303.204 and 303.441(a). Pursuant to 35 Ill. Adm. Code 302.407, there is no secondary contact standard for sulfate and the standard for TDS is 1,500 mg/L.

III. RELIEF REQUESTED

9. With regards to the relief requested, MSC states that it is requesting an adjusted standard to set the water quality standard in the McCook Drainage Ditch at a level reflective of the background levels seeping from the groundwater. Pet. at 9. Petitioner has requested relief from the Board in the form of adjusted water quality standards for TDS and sulfate applicable to the McCook Ditch. The Illinois EPA would submit the adjusted standard, if granted by the Board, to the United States Environmental Protection Agency (“U.S. EPA”) for approval and incorporate the limits established by the adjusted standard into MSC’s NPDES permit IL 0001945. It is anticipated by the Illinois EPA that if adjusted standard relief is granted by the Board, MSC will no longer hold a general permit and a site specific permit, but its outfalls will be incorporated into a single site specific NPDES permit.

10. Specifically, MSC is requesting an adjusted water quality standard in the McCook Ditch of 1,900 mg/L of TDS (increased from 1,000 mg/L) and 850 mg/L of sulfate (increased from 500 mg/L). In reviewing the level of relief requested by MSC, it appears that the requested adjusted water quality standards are set at a level for sulfate that is somewhat above that sampled by MSC, but lower than levels obtained from studies of the same aquifer. MSC requested a level for TDS that is lower than the highest recorded values obtained by MSC, but leaves a margin of safety above the typical average values found throughout the aquifer.

11. Typically, an Illinois EPA Recommendation for the grant of an adjusted water quality standard would identify the beginning of the receiving stream affected as the Petitioner’s discharge point. MSC has requested that the relief cover the entire length of the McCook Ditch

beginning at the 47th Street Culvert. Given the location of MSC's outfall, the Illinois EPA agrees this is a reasonable and convenient method of defining the receiving stream.

IV. LEVEL OF JUSTIFICATION REQUIRED

12. The Illinois EPA agrees with the Petitioner that the regulations of general applicability at 35 Ill. Adm. Code 302.208, 304.105 and 406.202 do not specify a level of justification or other requirements necessary for this type of adjusted standard. Since there is no specific level of justification for adjusted standards from the regulations at issue in this Petition, the general level of justification provided in Section 28.1 of the Environmental Protection Act ("Act"), 415 ILCS 5/28.1, is the standard of review by which the Board is to judge the instant adjusted standard petition. Section 28.1(c) of the Act, 415 ILCS 5/28.1(c), provides the general level of justification the Board must find a petitioner to have met when granting an adjusted standard petition. That subsection provides:

[T]he Board may grant individual adjusted standards whenever the Board determines, upon adequate proof by petitioner, that: 1) factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner; 2) the existence of those factors justifies an adjusted standard; 3) the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and 4) the adjusted standard is consistent with any applicable federal law.

The Illinois EPA believes that this is the proper standard for the Board to consider and that MSC has met this standard of review in this case for the reasons outlined below.

V. FACTS PRESENTED IN THE PETITION

13. Although the McCook Ditch is defined under Illinois law as general use waters, it empties into the Chicago Sanitary and Ship Canal which is defined as secondary contact and

indigenous aquatic life waters. In addition to MSC's discharge, the McCook Ditch receives discharges from a number of industrial and municipal effluents.

14. The McCook Drainage Ditch is considered a low flow stream because it has a seven day, ten year low flow value ("7Q10") of zero cubic feet per second. The high concentration of effluent containing groundwater with elevated background concentrations of TDS and sulfate results in stream concentrations that violate water quality standards.

15. MSC states its quarry floor is below the local water table and groundwater seeps from the quarry face. Pet. at 4. The only treatment currently performed on the water that seeps into the quarry or is used to wash product is the use of settling ponds. Pet. at 5. The groundwater seepage and storm water are drained to a pair of settling ponds on the quarry floor. That water is pumped up to another pond on an intermediate grade and then up to a tank at grade and led through culverts to the McCook Drainage Ditch. Pet. at 4. MSC's consultant performed sampling of groundwater seeping into the quarry and found an average TDS level of 1,345 mg/L and an average sulfate level of 425 mg/L. Pet. at 4-5. MSC states the average predicted concentrations in the McCook Ditch of sulfate are 215 to 512 mg/L and 865 to 1,787 mg/L of TDS. Pet. at 10.

16. The older portion of the quarry is operating under general permit ILG 840029 for non-coal mines that expires statewide on May 31, 2002 and has no TDS or sulfate limits. Pet. at Appendix A. The Illinois EPA did not have information at the time this permit was issued of any compliance problems with the TDS and sulfate water quality standards in the McCook Ditch. An NPDES permit (IL0001945) has been issued for the newest area of MSC's quarry with limits for TDS and sulfate set at the general use water quality standard after additional sampling data was presented as part of the permitting process. Id. According to MSC, this mine will not reach groundwater for several years, so there will not be an immediate problem meeting these limits.

The Illinois EPA and MSC intend to amend this site specific permit to incorporate any adjusted water quality standard approved by the Board in this matter. Outfalls 002 and 003 are covered by the site specific permit, while outfall 001 is currently still covered by the general permit.

17. In winter, when road salt runoff is high, MSC's discharge stabilizes the levels of TDS and sulfate in the Ditch. Under normal conditions, MSC's discharge increases the levels in the ditch by 169 mg/L of sulfate and 346 mg/L of TDS. Pet. at 10. Appendix I. When there is storm water present, the levels of TDS and sulfate are also diluted significantly.

18. According to MSC's consultant, at periods of low flow, MSC's discharge into the ditch may be the only flow component that fosters any permanent aquatic ecosystem in the water body. Pet. at 10. The Illinois EPA agrees with this analysis and would even go so far as to say that the quarry effluent is one of the less contaminated sources of water in the McCook Ditch.

VI. EFFORTS NECESSARY TO ACHIEVE COMPLIANCE AND ALTERNATIVES

19. The Petitioner examined several alternatives to achieve compliance with the TDS and sulfate water quality standard. The alternatives addressed by MSC are dilution, deep well injection, and reverse osmosis and de-ionization. Pet. at 7-8. With regard to dilution, MSC's consultant estimated that 2 million gallons per day of Lake Michigan water would have to be discharged to sufficiently dilute the McCook Ditch to meet the water quality standards. MSC does not quantify whether dilution is a cost effective solution, since it concludes that the stress it would place on the McCook Ditch and the Summit Conduit are so great as to make the alternative technically infeasible. Pet. at 7. The Illinois EPA agrees that it is an undesirable method of compliance to utilize so much clean Lake Michigan water to dilute background concentrates of TDS and sulfate from the groundwater seepage into MSC's quarry.

20. Deep well injection of the seeping groundwater into a deeper stratum was also considered. MSC's consultant estimates this would require 8 to 10 injection wells located

several hundred feet apart from each other. Pet. at 7. MSC concluded that this alternative might not be capable of being managed effectively given the high dissolved solids and low suspended solids nature of the seepage. Id. Capital costs of this alternative are estimated from between \$19 million to \$26 million with annual operating costs as high as \$16 million to \$20 million. Pet. at 7, Appendix J.

21. Reverse osmosis and De-ionization would both involve removing dissolved minerals from the discharge by treating 40 percent of the total seepage prior to discharge. Pet. at 8. Reverse osmosis would be somewhat less expensive, but both technologies would result in waste product of brine that would have to be disposed of by injection wells. The costs of these technologies would be between \$2,300,000 and \$3,200,000 with annual and operating costs per year of \$2,300,000 to \$5,600,000. This does not include an additional \$1,400,000 to \$1,900,000 each year for brine disposal. Id.

22. The Illinois EPA agrees that the alternative technologies discussed by MSC for treatment and disposal are an accurate representation of the available technologies to achieve compliance with these parameters. The Board has found these technologies to be lacking in several other adjusted standard petitions.¹ As MSC points out in its Petition, the Board has recognized that the treatment technologies available for sulfate are very expensive and result in bi-products that create environmental concerns of their own. Pet. at 8. MSC's Petition accurately details the futility of the alternative treatment methods to reduce the TDS and sulfate in its effluent. There is no economically reasonable technology to remove or dispose of these dissolved substances other than the existing discharge to surface waters.

¹ See Adjusted Standards granted to the following dischargers: Consumers Illinois Water Company and Nutrasweet (Takasago)(AS 89-3), Borden Chemical (AS 93-2), Akso Nobel (AS 93-8), Abbot Laboratories (AS 99-5) and Rhodia, Inc. and Thorn Creek Basin Sanitary District (AS 01-9).

23. In addition to a discussion of alternatives, MSC's petition thoroughly explains the geological conditions that make compliance impossible in this case. After evaluating the annualized and capital costs of each alternative and considering the adverse cross-media environmental impacts resulting from the various alternative methods of compliance, the Illinois EPA agrees that none of these are viable options. In addition, the cost of compliance presented by the Petitioners exceeds the typical cost of secondary treatment for these pollutants, which is taken into account in establishing the best achievable technology that is economically available for industrial sources. The Illinois EPA believes that all conceivable options were investigated and none are technically feasible or economically reasonable.

VII. ENVIRONMENTAL IMPACT

24. The environmental harm addressed by Petitioner and investigated by the Illinois EPA involves the toxicity of TDS and sulfates to aquatic life. The Petitioner's environmental consultant evaluated the relative toxicities of TDS and sulfate to aquatic life. Toxicity testing using native aquatic organisms has also been conducted for other adjusted standard justifications. *See*, footnote 1 above. The Illinois EPA agrees that based on this and other toxicity studies that no adverse impacts to aquatic life in the receiving stream would be expected at the highest predicted stream concentrations of TDS and sulfate. The Illinois EPA agrees with Petitioner's conclusion that the levels discharged are not likely to have any adverse effects on the aquatic life expected to reside in McCook Ditch.

25. MSC's consultant looked at impact on downstream indigenous aquatic life of the proposed adjusted standard using a literature review covering typical freshwater fish (blue gill, large mouth bass, and channel catfish). The LC50 mortality rate for these species was found to range from 14,000 to 17,500 mg/L of TDS and 10,000 to 11,000 mg/L sulfate. Pet. at 11. The

Petitioner's consultant also reviewed a recent study conducted by Huff & Huff and presented by Rhodia, Inc. and Thorn Creek Basin Sanitary District in AS 01-9. Pet. at 11. The Illinois EPA agreed with the conclusions of that study and recommended the Board grant that adjusted standard. That study looked at chronic toxicity tests for TDS and sulfate on a species of water flea and the flathead minnow and found a no observed effect concentration of 2,970 mg/L TDS and 1,388 mg/L of sodium sulfate (the form of sulfate at issue in that case). Pet. at 11.

26. MSC presented evidence in its Petition and technical justification document that its operations do not significantly raise TDS and sulfate levels above the level found naturally in the background groundwater. The Illinois EPA agrees with Petitioner's statements that its process of pumping some groundwater seepage for use in washing some of its product does not contribute significantly to the inability of MSC's discharge to meet the general use water quality standards. Geological information was presented regarding the presence in the shallow aquifer flowing into MSC's quarry of background TDS levels from 1,200 to 1,600 and sulfate levels from 500 to 700 mg/L. Pet. at 5. Petitioner's environmental consultant estimated that a 6 mg/L increase in TDS and 3 mg/L increase in sulfate in the Sanitary and Ship Canal can be attributed to MSC's discharge. Pet. at 6. Discharge monitoring by MSC finds average TDS levels of 1,299 mg/L with a range of 1,070 mg/L to 1,400 mg/L. Sulfates have been monitored from MSC's effluent at an average of 427 mg/L with a range from 351 mg/L up to 524 mg/L. Pet. at 6.

27. The Illinois EPA agrees with the conclusion of MSC's consultant that the current discharge is not having a detrimental effect on existing aquatic life in the McCook Ditch and the proposed adjusted standard relief is lower than necessary to protect that life. Under most conditions, there will be water from other sources in the receiving stream that will dilute the quarry water's TDS and sulfate content. Under conditions of winter runoff when area streets

have been salted, higher TDS concentrations will be found upstream of the quarry discharge. This runoff is high in chlorides, which are not at issue in the quarry discharge. McCook Ditch may suffer from some of the problems of other urban streams that receive salty runoff during the winter and early spring, but the Illinois EPA does not find that the quarry discharge exacerbates these conditions and may even be helping the overall quality of the stream. In addition, the TDS and sulfate standards were set primarily to protect domesticated livestock watering which, as an urbanized area, the McCook Drainage Ditch does not support as a use.

VIII. PETITIONER'S JUSTIFICATION OF PROPOSED ADJUSTED STANDARD

28. The Board must review the justification for a proposed adjusted standard pursuant to 35 Ill. Adm. Code 104.426. This rule provides that the Petitioner must justify its adjusted standard consistent with Section 27(a) of the Act, 415 ILCS 5/27(a)(2000). That section requires the Board to take into account five specified factors when promulgating regulations, including adjusted standards: the existing physical conditions; the character of the area involved including surrounding land use; zoning classifications; nature of the receiving water body; and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution. It is the Illinois EPA's conclusion, based on the facts identified in the preceding sections of this Recommendation, that these factors point in favor of the grant of an Adjusted Standard to the Petitioner.

29. Additionally, 35 Ill. Adm. Code 104.426(a) restates the four additional factors specified in Section 28.1 of the Act [415 ILCS 5/28.1], to be proven by the Petitioners: the Petitioners' relevant factors are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to the Petitioners; that these factors justify an adjusted standard; the requested adjusted standard will not result in

environmental or health effects substantially or significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and the requested adjusted standard is consistent with any applicable federal law.

30. In making its Recommendation to the Board, the Illinois EPA concludes that no additional environmental harm will result from a grant of the requested relief. The Illinois EPA also concludes that the requested adjusted standard will not result in environmental impacts that are “substantially or significantly” more adverse than the effects considered by the Board in adopting the rule of general applicability. Given the zero 7Q10 nature of the McCook Ditch, the Illinois EPA agrees that the proposed adjusted standards of 1,900 mg/L TDS and 850 mg/L sulfate are appropriate and necessary for the quarry to continue its current operations in an economically feasible manner and that these levels will cause no harm to the receiving stream.

31. Impossibility is an element of the justification presented by MSC in this case. MSC must pump groundwater out of the quarry or it will fill with water and its operation will be forced to cease. MSC can not prevent the elevated levels of TDS and sulfates entering the quarry and its options for treating the water before discharge are expensive, create new environmental consequences and will not result in significant improvement to the water quality of the McCook Ditch. The Illinois EPA does not believe the Board considered these factors in establishing the general use water quality standard for TDS and sulfates. Furthermore, the Board was not able to consider the toxicity studies currently available in setting this standard. The Illinois EPA is currently reviewing toxicity studies to evaluate whether new science supports a change to the general use water quality standard itself. As indicated above, the Board developed a water quality standard in the early 1970’s that it believed was necessary to protect watering livestock, fish and the public water supply. Livestock watering is not an issue in this case since public

access to this water body is limited, no stock watering occurs in the vicinity of the McCook Ditch, and the Village of McCook's zoning ordinance prohibits stock watering in this area. Pet. at 13, 15. In this case, the groundwater itself is the source of the contamination and its discharge will have no known impact on a public water supply. MSC has also demonstrated there will be no harm to existing aquatic life if this adjusted standard is granted. The Illinois EPA agrees that the factors present in this case are different than the factors the Board was looking at and trying to protect in developing the rule of general applicability.

IX. CONSISTENCY WITH FEDERAL LAW

32. The existing general use Illinois water quality standards have been approved by U.S. EPA. The proposed adjusted standards for water quality, if adopted by the Board, will be submitted for approval to U.S. EPA. MSC correctly points out that the Board can grant this adjusted standard petition without running afoul of the mandates of the Clean Water Act.

X. HEARING

33. Petitioner has waived its right to a hearing in this matter. The Illinois EPA agrees that no hearing is necessary for the Board to make a determination on this request for Adjusted Standard.

XI. RECOMMENDATION AND CONCLUSION

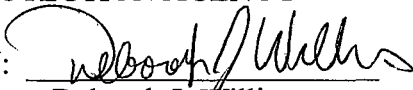
34. The Illinois EPA recommends that Petitioner, Material Service Corporation, be granted the requested adjusted standard, pursuant to 415 ILCS 5/28.1 and consistent with 415 ILCS 5/27(a), from the Total Dissolved Solids and Sulfate requirements contained in 35 Ill. Adm. Code 302.208, for the Petitioner's Village of McCook, Cook County, Illinois quarry facility. The Illinois EPA does not believe the requested adjusted standard from 35 Ill. Adm. Code 304.105 or 406.202 are necessary in this case, as an adjusted TDS and sulfate water quality

standard for the McCook Ditch will ensure that MSC's discharge does not cause of violation of any water quality standards. MSC requests the adjusted standard for the entire McCook Drainage Ditch from the 47th Street Culvert to the Summit Conduit. Typically the Illinois EPA would recommend that an adjusted water quality standard begin at the point of discharge, but in this case, the description provided by Petitioners provides clarity and only included a few hundred additional yards of the stream segment and is acceptable to the Illinois EPA.

WHEREFORE, for the reasons stated herein, the Illinois EPA recommends that the Pollution Control Board **GRANT** the Adjusted Standard Petition of Material Service Corporation.

Respectfully Submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: 
Deborah J. Williams
Assistant Counsel
Division of Legal Counsel

DATED: April 12, 2002
1021 N. Grand Ave. 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 FOR LEAVE TO FILE RECOMMENDATION INSTANTER AND RECOMMENDATION OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY** upon the person to whom it is directed, by placing a copy in an envelope addressed to:

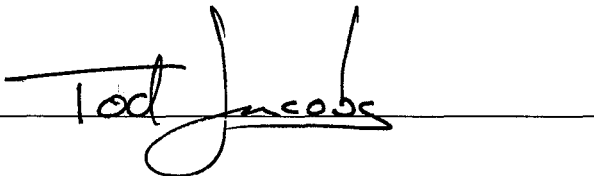
Dorothy M. Gunn, Clerk
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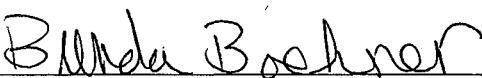
Robert Lawley
Chief Legal Counsel
Illinois Department of Natural Resources
222 North LaSalle Street
Chicago, Illinois 60601
(FIRST CLASS MAIL)

and mailing it from Springfield, Illinois on **April 12, 2002** with sufficient postage affixed as indicated above.



SUBSCRIBED AND SWORN TO BEFORE ME

this 12th day of April 2002


Notary Public