

American Bottom Conservancy * Friends of the Fox River
Illinois Council of Trout Unlimited * Illinois Environmental Council * Illinois Smallmouth
Alliance * Illinois Stewardship Alliance * Illinois Public Interest Research Group * Livable
Communities Alliance * McHenry County Defenders
Prairie Rivers Network * Sierra Club, Illinois Chapter

August 23, 2005

Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, IL 60601

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AUG 24 2005
STATE OF ILLINOIS
Pollution Control Board

Dear Board Members:

The undersigned conservation and angling groups are writing to express our support for the position of the Illinois Department of Natural Resources (Department) in the matter regarding Proposed Amendments to Dissolved Oxygen Standard 35 Ill. Adm. Code 302.206 (R 04-025). On August 3, 2005, Dr. David L. Thomas, Chief of the Illinois Natural History Survey, a Division of the Department, filed testimony stating that the Department opposes the proposed amendments. The Department recommends maintaining the present dissolved oxygen standard, citing a failure on the part of the petitioners to demonstrate that all aquatic biota in the state would be adequately protected by the proposed amended standard. We support the Department's recommendation and urge the Board to reject the proposed amendments.

Data presented by the IAWA are not sufficient to demonstrate that the proposed lower dissolved oxygen standard during much of the year would protect the most sensitive life stages of fish that occur in Illinois waters.

The proposal would lower the state's dissolved oxygen standard during the months of July through February based on the theory that the life history of Illinois fish allows them to tolerate lower levels of oxygen during these months.

While USEPA guidance on dissolved oxygen standards indicates that it may be possible to establish seasonal criteria for dissolved oxygen, it warns that regulators must accurately determine the presence or absence of the more sensitive life stages of fish prior to adopting less stringent seasonal criteria. USEPA guidance defines the sensitive early life stage season to include all embryonic and larval stages and all juvenile forms to 30-days following hatching.

The IAWA document "An Assessment of National and Illinois Dissolved Oxygen Water Quality Criteria" (IAWA Assessment) acknowledges, and *The Fishes of Illinois* confirms, that several species of fish in Illinois are known to spawn throughout the summer months, thereby ensuring that fish will be present in the sensitive early life stages throughout the summer and into the early fall. Therefore, any lowering of the dissolved oxygen criteria during that period could put

numerous fish species at risk. Additionally, there are species of fish in Illinois for which life history is not fully understood at this time. In the absence of such information, USEPA guidance suggests that "the default criteria would be those that would protect all life stages year-round." Given both of these points, IAWA's proposal to seasonally lower the dissolved oxygen criteria is not supported by USEPA recommendations or existing science.

Data presented by the IAWA do not demonstrate that other sensitive aquatic organisms would be protected by the proposed amendments.

In addition to having negative impacts on fish species in Illinois, the proposed rule could have significant effects on other aquatic life. While the information is limited, there have been studies showing, as the IAWA Assessment acknowledges, that mussels (many of which are threatened or endangered in Illinois) and other macroinvertebrates found in Illinois streams are "far less tolerant of prolonged exposure to hypoxic conditions than most fish." Of further concern, the IAWA Assessment indicates that pesticides and other toxicants have been shown to further reduce invertebrate tolerances to low oxygen. As the use of pesticides in Illinois is greater than the use in virtually any other state, and much of it ends up in our rivers, it seems likely the impacts of low oxygen on invertebrates could be exacerbated.

The proposed amendments do not propose a way to assess compliance with the proposed amendments, nor are resources with which to do so readily apparent.

There is no way to assess compliance with the proposed weaker dissolved oxygen standard without the installation and maintenance of continuous monitoring instrumentation throughout the state for extended periods of time. While most would agree that more continuous monitoring data should be collected in Illinois, the state does not have the resources to collect the quantity of data required to ensure compliance with the proposed rule. It seems counterintuitive to adopt weaker standards that greatly increase the risks for fish and other aquatic life when compliance assessment is not possible.

The data and framework for a scientifically-defensible and economically efficient revision to Illinois' dissolved oxygen standards are not yet in place.

We certainly agree that it would be more efficient to set a dissolved oxygen standard for Illinois in a hierarchical manner, so that in any particular water body the standard is appropriate to its physical characteristics and the best possible assemblage of organisms given those physical constraints. A tiered standard would allow IAWA members to focus their wastewater treatment and monitoring efforts in an environmentally and economically responsible way. This approach will be made possible by restructuring Illinois' system of designated uses for water bodies, focusing on addressing the variety of existing and attainable aquatic life uses in the state. We all look forward to working with the Illinois EPA, the Department, IAWA members, and other stakeholders in such an effort and then moving forward to develop a tiered dissolved oxygen standard. In the meantime, efforts of IAWA members and other stakeholders will be most useful if directed towards supporting additional monitoring and field studies that would fill some of the data gaps preventing adoption of a revised standard at this time.

In conclusion, given the lack of data sufficient to demonstrate that the proposed amendments to the state's dissolved oxygen standard would be protective of sensitive organisms in all waters of the state, we urge the Board to follow the recommendations of the Department, the agency responsible for protecting and managing the state's natural resources, and reject the proposed amendments.

Thank you very much for your consideration.

Sincerely,

Kathy Andria
American Bottom Conservancy

Chuck Roberts
Friends of the Fox River

Edward Michael
Illinois Council of Trout Unlimited

Jonathan Goldman
Illinois Environmental Council

James Jozwiak
Illinois Smallmouth Alliance

Mark Beorkrem
Illinois Stewardship Alliance

Rebecca Stanfield
Illinois PIRG

Kim Kowalski
Livable Communities Alliance

Christopher Paluch
McHenry County Defenders

Jean Flemma
Prairie Rivers Network

Jack Darin
Sierra Club, Illinois Chapter

Prairie Rivers Network

Protecting Illinois' Streams

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STATE OF ILLINOIS
Pollution Control Board

Executive Director
Jean Flemma

TO: Hearing Officer R. McGill
FROM: Jean Flemma, Prairie Rivers Network
RE: Case # R2004-025
DATE: August 23, 2005

Board of Directors

Pct#81

Eric Freyfogle
President
Urbana

Attached please find public comments regarding the proposal by the Illinois Association of Wastewater Agencies to lower the dissolved oxygen standard in Illinois. Please call me if you have any questions at 217-344-2371.

Anne Phillips
Secretary
Urbana

Jon McNussen
Treasurer
Villa Grove

Brian Anderson
Rochester

Clark Bullard
Urbana

Charles Goodall
Sidell

Carolyn Grosboll
Petersburg

Bruce Hannon
Champaign

Jason Lindsey
Champaign

Ward McDonald
Mahomet

Michael Rosenthal
Glencoe

Virginia Scott
Springfield

809 South Fifth Street
Champaign, IL
61820-6215
www.prairierivers.org
217-344-2371
Fax 217-344-2381

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