

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED AMENDMENTS TO)	R2004-025
DISSOLVED OXYGEN STANDARD)	Rulemaking – Public Water
35 ILL ADM. CODE 302.206)	

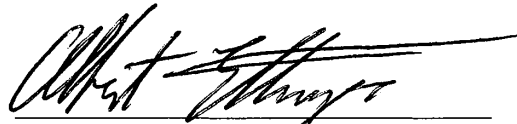
MOTION FOR LEAVE TO FILE PRE-FILED QUESTIONS

The Environmental Law and Policy Center of the Midwest (“ELPC”), Prairie Rivers Network (“PRN”) and the Sierra Club hereby move for leave to file the attached pre-filed questions to the Illinois Environmental Protection Agency (“IEPA”) and the Illinois Department of Natural Resources (“IDNR”). In support of this motion, movants state:

1. Answers to pre-filed questions are essential to understanding the position of the Illinois Environmental Protection Agency and the Illinois Department of Natural Resources and the practical effect of their proposal.
2. The questions are somewhat complex and better considered responses may be obtained through pre-filed questions
3. Movants believe that the use of pre-filed questions will expedite the hearing of this matter.

Wherefore, movants move for leave to file the attached pre-filed questions to the IEPA/IDNR.

Respectfully submitted,



Albert F. Ettinger (Reg. No.
3125045)
Counsel for Environmental Law &
Policy Center, Prairie Rivers
Network and Sierra Club

DATED: October 24, 2006

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NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that the Environmental Law and Policy Center of the Midwest (“ELPC”), Prairie Rivers Network and the Sierra Club today have electronically filed the motion for leave to file Pre-Filed Questions to Illinois Environmental Protection Agency (“IEPA” and the Illinois Department of Natural Resources (“IDNR”).

Respectfully submitted,



Albert F. Ettinger (Reg. No.
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DATED: October 24, 2006

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PRE-FILED QUESTIONS TO IEPA/IDNR

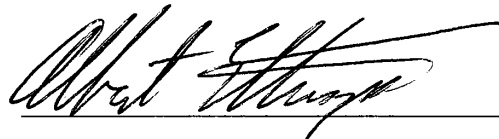
The Environmental Law & Policy Center of the Midwest (“ELPC”), Prairie Rivers Network and Sierra Club hereby pose the following questions regarding Attachment A to the IEPA/IDNR filing of March 31, 2006 to the Illinois Environmental Protection Agency (“IEPA”) and the Illinois Department of Natural Resources (“IDNR”):

1. Regarding the proposed definition of thermocline in proposed 302.100:
 - a. What waters have thermoclines?
 - b. For any water that has any rate of decrease of temperature with respect to depth, is there not by definition a plane of maximum rate of decrease?
 - c. How, as a practical matter, is it expected that the thermocline will be determined? Will temperature measurements be taken? Are there models or formulas that will be used in locating the thermocline?

2. Regarding proposed 302.206(a):
 - a. What is “quiescent” water?
 - b. What is an isolated sector?
 - c. What tests or criteria is it expected will be used to determine if a water is “quiescent” or “isolated”
 - d. What waters are “wetlands” under the proposed rule?
 - e. What waters are “sloughs” under the proposed rule?
 - f. What waters are “backwaters” as that term is used in the proposed rule?
 - g. What waters are “lakes and reservoirs” under the proposed rule
 - h. Does IEPA or IDNR have a list of the “reservoirs” or “lakes” that are covered by this provision of the proposed rule?
 - i. What standard applies to lakes or reservoirs that are not thermally stratified?
 - j. What are the “natural ecological functions” of lakes and reservoirs below a thermocline?

- k. What resident ecological communities are natural below a thermocline in a lake or reservoir?
 - l. Are "offensive conditions" a violation of water quality standards under the proposed rule if they occur in "wetlands, sloughs, backwaters or lakes and reservoirs below the thermocline" or is it intended to modify the application of Section 302.203 as to such water bodies?
3. Regarding 302.206(d)(3):
- a. Is it anticipated that under this rule that no judgment will be made that a water body is attaining dissolved oxygen ("DO") standards unless data has been collected sufficient to determine the daily minima?
 - b. How will compliance with the proposed standard be determined? With regard to specific discharges? With regard to general assessments?
 - c. Under this rule, will IEPA require pre-dawn DO monitoring of waters as a condition for obtaining a permit to discharge Biological oxygen demanding pollutants?
 - d. Under this rules, will IEPA require pre-dawn DO monitoring of waters as a condition for obtaining a permit to discharge nutrients?
4. How do IEPA and IDNR use the DO standard now in their programs?
5. Does IEPA intend to use the DO standard in writing NPDES permit limits?

Respectfully submitted,



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Counsel for Environmental Law & Policy
Center, Prairie Rivers Network and Sierra
Club

DATED: October 24, 2006.