

ILLINOIS POLLUTION CONTROL BOARD

August 6, 2007

IN THE MATTER OF:)	
)	
PROPOSED EXTENSION OF ADJUSTED)	AS 07-2
STANDARD APPLICABLE TO ILLINOIS-)	(Adjusted Standard)
AMERICAN WATER COMPANY’S ALTON)	
PUBLIC WATER SUPPLY FACILITY)	
DISCHARGE TO THE MISSISSIPPI RIVER)	
UNDER 35 ILL. ADM. CODE 304.124 AND)	
304.106)	
)	

HEARING OFFICER ORDER

The parties are strongly encouraged to pre-file as much testimony as possible by August 21, 2007, including written answers to these questions. This will enable the Board to follow-up with any remaining concerns at hearing. Additionally, to address the possibility that the Board may not decide this matter by October 4, 2007, petitioner may argue for retroactive relief at hearing or in its post-hearing brief.

Questions for IAWC and IEPA
Pertaining to the Amended Petition AS 2007-2
To be addressed in Pre-Filed Testimony and/or at Hearing on August 28, 2007

(Docket AS 2007-2)

Both parties are invited to address any of the questions posed, whether specifically addressed to that party or not.

Illinois-American Water Company (IAWC)

1. Quantifying and Verifying Sediment Reductions

USEPA’s Water Quality Trading Policy states that “mechanisms for determining and ensuring compliance are essential for all trades and trading programs... States and tribes should establish clear, enforceable mechanisms consistent with NPDES regulations that ensure legal accountability for the generation of (pollutant reductions) that are traded.” USEPA (9-13-03) at 10.

USEPA’s Water Quality Trading Assessment Handbook states, “In pilot projects, the relatively variable and unpredictable performance of nonpoint source BMPs [Best Management Practices] has been handled by discounting the estimated reductions available for trade. The uncertainty discount is intended to ensure that errors in BMP performance estimates will not jeopardize the water quality

equivalence of trades involving these pollutant control actions.” USEPA (11-04), EPA 841-B-04-001, at 40. The handbook provides an example using an uncertainty discount of 50%, where the nonpoint source must produce 2 pounds of pollutant reductions for every 1 pound it wishes to sell. USEPA (11-04), EPA 841-B-04-001, at 40-41.

In AS 99-6, IAWC explained, “The rate of erosion will be calculated by placing stakes (or other types of monuments) along the stream bank and measuring the rate [of] erosion for one year prior to installation of erosion controls.” Board O&O, 9-7-00 at 15. “During the ten year span of the project, GRLT will submit quarterly reports to the Agency which detail the progress of the monitoring and other project-related activities.” (Board O&O, 9-7-00 at 15.)

QUESTIONS:

- a. How does IAWC account for sediment reductions in its reporting to IEPA?
- b. Does IAWC rely entirely on the GRLT quarterly reports to the Agency to quantify and verify its sediment reductions for compliance?
- c. When IAWC states it will maintain a soil savings with a 2 to 1 offset or above 6,600 tons per year (Am. Pet. at 32), does IAWC consider the 2 to 1 ratio as the uncertainty discount? Or is the 2 to 1 ratio intended to produce a greater environmental benefit than compliance with the effluent regulations alone?
- d. If the 2 to 1 ratio is intended to produce a greater environmental benefit, would IAWC please propose an uncertainty discount based on USEPA’s Water Quality Trading Assessment Handbook (November 2004).
- e. Since IAWC is currently seeing a 4.2 to 1 offset ratio for sediment and 3.8 to 1 offset ratio for iron (Am. Pet. at 3), would IAWC consider proposing a ratio higher than 2 to 1 to account for the uncertainty discount and to create an additional environmental benefit?
- f. Since USEPA’s Water Quality Trading Policy stresses the need for clear and enforceable mechanisms to ensure compliance and accountability for the generation of pollutant reductions that are traded, can IAWC propose such mechanisms for inclusion in the wording of its adjusted standard?

2. Potential New Agreement between IAWC and GRLT

IAWC discusses the terms of the 10-year Consulting and Performance Agreement between IAWC and Great Rivers Land Trust (GRLT). After the expiration of the 10-year agreement, IAWC indicates it will continue to provide funding to maintain soil savings above 6600 tons per year, but expects the soil savings it has invested in for the Piasa Creek Watershed Project “to reach a point at which it will be sustainable without future funding from outside sources.” Am. Pet. at 32.

IAWC references a potential new contract with GRLT for maintenance only. Am. Pet. at 32.

USEPA's Water Quality Trading Policy states, "Where trading involves nonpoint sources, states and tribes should adopt methods to account for the greater uncertainty in estimates of nonpoint source loads and reductions." USEPA supports a number of approaches including, "retiring a percentage of nonpoint source reductions for each transaction or a predetermined number of credits." USEPA (1-1-3-03 at 9.)

QUESTIONS:

- a. For a stream bank that has been stabilized where sediment reductions are not active but passive, is there a point at which that particular project could be retired in terms of accounting for sediment reductions?
- b. When a sediment reduction project is mature and self-sustaining and no longer benefits from continued maintenance and monitoring, is it time to initiate an active sediment reduction project to generate a tradable commodity?
- c. Should IAWC's adjusted standard contain provisions to maintain the necessary offset by continuing to fund sediment reduction projects beyond those that have already reached maturity? Does IAWC believe this approach would be consistent with funding long term maintenance of a traditional effluent control facility, albeit more financially and environmentally beneficial?
- d. Did IAWC consult with GRLT or the Illinois State Water Survey (which works with the Agency on sediment control projects such as the Lake Pittsfield watershed project—Board O&O, 9-7-00 at 16) to provide insight into this?

3. Funding for the Sediment Reductions and Maintenance

The previous AS 99-6 bound Illinois-American to a dollar amount of \$4,150,000 payable over ten years. The AS 07-2 petition specifies only a performance goal of a 2 to 1 offset, or a minimum of 6600 tons of soil per year. The cost of complying with the AS 07-2 is not specified or estimated.

QUESTIONS:

- a. Were there other aspects of the Piasa Creek Watershed Project that benefited from IAWC's funding besides the direct soil savings, such as educational outreach or habitat restoration?
- b. In terms of other aspects besides soil savings, how would the Project as a whole be impacted by committing solely to a performance goal of 2:1 or 6600 tpy rather than a dollar amount?
- c. Does Illinois-American have an estimate for yearly costs and time associated with a maintenance contract?

- d. How would those costs change over the years as the project reaches the point of sustainability without future funding from “outside sources”?
- e. In referring to a future without funding by “outside sources”, is IAWC aware of funding that might come from other than outside sources?

4. Rulemaking Update

“In the 1980s, the Alton Water Company (the predecessor to IAWC in Alton) applied to the Board for relief from the effluent standards at 35 Ill. Adm. Code 304.104.” Board O&O, September 7, 2000 at 4.

QUESTION:

The Board engages in ongoing review of 35 Ill. Adm. Code Part 304 and all of its rules to determine whether they are still necessary or accurate. For the sake of any needed cleaning up of 35 IAC Part 304 in a future rulemaking, please comment on whether Section 304.206 Alton Water Company Treatment Plant Discharges is still needed?

Section 304.206 Alton Water Company Treatment Plant Discharges

This Section applies to the existing 18.3 million gallons per day potable drinking water treatment plant owned by the Alton Water Company which is located at, and discharges into, river mile 204.4 on the Mississippi River. Such discharges shall not be subject to the effluent standards for total suspended solids and total iron of 35 Ill. Adm. Code 304.124.

(Source: Added at 8 Ill. Reg. 3687, effective March 14, 1984)

Illinois Environmental Protection Agency (IEPA)

1. The Agency Recommendation states,

“In making its decision, the Board should also consider the USEPA’s efforts to develop categorical effluent limits for water supply treatment plant effluents in federal regulations...Adoption of federal categorical effluent limits would supersede any limits previously adopted by states unless the state limits were more stringent. Federal action would therefore negate any continued

relief granted by the Board regarding Illinois American’s petition for extended relief.” Ag. Rec. at 11.¹

Under 40 CFR Subchapter N: Effluent Guidelines and Standards, Parts 402-699 “prescribe effluent limitations guidelines for existing sources, standards of performance for new sources and pretreatment standards for new and existing sources...” 40 CFR 401.10.

40 CFR 403.1

- (b) This regulation applies:
- (4) To any new or existing source subject to Pretreatment Standards. National Pretreatment Standards do not apply to sources which discharge to a sewer which is not connected to a POTW Treatment Plant.

QUESTIONS:

- a. Since IAWC is not discharging to a POTW, the 40 CFR Subchapter N: Effluent Guidelines and Standards appear not to apply. Does the Agency agree? Is the Agency Recommendation referring to other federal categorical effluent limits?
- b. The Agency Recommendation also states, “Up-to-date information on [USEPA’s efforts to develop categorical effluent limits for water supply treatment plant effluents] was obtained from Mr. Tom Bone of USEPA’s Office of Science and Technology...” Ag. Rec. at 11. In the Agency’s contact with Mr. Bone, did he indicate that USEPA would be developing categorical effluent limits for sources which do not discharge to a POTW?
- c. Did Mr. Bone indicate for which pollutants USEPA would be setting effluent limitations guidelines for water supply treatment plants? Did they include TSS and iron?

2. Illinois Water Quality Trading Policy

QUESTIONS:

- a. Is IEPA considering water quality trading as an option for point source discharges in waterways with TMDLs, such as the East Branch of the DuPage River and Salt Creek? If so, please describe.
- b. Is the Agency aware of any other dischargers in Illinois that use or plan to use water quality trading? If so, please describe?

¹ The Agency Recommendation dated 6-18-07 will be cited as Ag. Rec.

- c. Did IEPA consult with the Illinois State Water Survey (which works with the Agency on sediment control projects such as the Lake Pittsfield watershed project—Board O&O, 9-7-00 at 16) to provide insight into the prospect of trading and retiring credits for nonpoint source projects that have matured?

3. USEPA Water Quality Trading Policy

The Agency Recommendation states,

“In the intervening years since relief was granted, concepts of pollutant trading and the importance of providing reasonable treatment have been refined at the federal level. The Agency thus believes that the requested relief is no [longer] consistent with applicable federal law.” Ag. Rec. at 15.

The Agency’s Recommendation quotes information from the USEPA’s “Frequently Asked Questions about Water Quality Trading.”

“When can trading occur?... the Trading Policy does not allow trading to meet a technology-based effluent limit (TBEL).” Ag. Rec. at 10.

<http://www.epa.gov/owow/watershed/trading/tradingfaq.html>

Although IEPA states trading has been refined at the federal level, this particular issue of the USEPA’s policy appears to be consistent with USEPA’s previous 1996 “Effluent Trading in Watersheds Policy Statement”.

“To take advantage of trading, a point source must be in compliance, and remain in compliance, with applicable technology-based limits.” 61 Fed. Reg. 4995, February 9, 1996.

The issue is similarly reiterated in the “Water Quality Trading Assessment Handbook: Can Water Quality Trading Advance Your Watershed’s Goals?”, November 2004 EPA 841-B-04-001:

“Under the Clean Water Act, point sources are required to comply with their technology-based limits without trading unless trading is explicitly incorporated in the effluent guidelines.” USEPA (11-04) at App. D-104.

In this regard, the Handbook refers specifically to requirements under the Clean Water Act. The Clean Water Act itself only refers to the federal technology-based limits. Currently, there appear to be no federal effluent guidelines or TBEL for iron or TSS from water supply treatment plant effluents not discharged to a POTW.

QUESTION:

Are there federal effluent guidelines or TBEL for TSS and iron discharges not to a POTW that would apply to IAWC?

4. USEPA Oversight

AS 99-6 was incorporated into the NPDES Permit, which is subject to federal purview. USEPA's Water Quality Trading Policy (9-13-03) states, "[US]EPA has various oversight responsibilities under the CWA, including...review of NPDES permits and provisions for reviewing and making recommendations regarding revisions to a state's or tribe's water quality management plans through the continuing planning process. ...However, where questions or concerns arise, EPA will use its oversight authorities to ensure that trades and trading programs are fully consistent with the CWA and its implementing regulations." USEPA (9-13-03) at 11.

So far the record reveals no indication from USEPA that the approach under AS 99-6 that was included in IAWC's NPDES Permit - IL0000299 is inconsistent with the CWA or its implementing regulations.

In USEPA's Office of Water, Water Quality Trading Policy, January 13, 2003 on p. 11, it states, "States and tribes are encouraged to consult with [US]EPA throughout development of trading programs to facilitate alignment with the CWA."

QUESTIONS:

- a. Other than discussions with Mr. Bone about possible federal effluent limitation guidelines, did the Agency consult with USEPA specifically about IAWC's adjusted standard petition for cooperation with the Piasa Creek Watershed Project? If so, would you please describe.
- b. Is IEPA aware of any feedback from USEPA regarding IAWC's NPDES Permit and the provisions for AS 99-6? If so, please describe.

5. Report on performance of Piasa Creek Watershed Project:

In AS 99-6, the Board's Opinion and Order read,

"During the ten year span of the project, GRLT will submit quarterly reports to the Agency which detail the progress of the

monitoring and other project-related activities...GRLT staff will also meet periodically with Agency staff to discuss the progress of the GRLT Project.” (Board O&O, 9-7-00 at 15.)

“Five years into the GRLT Project (the halfway point), the Agency will make a determination of effectiveness...In addition to the fifth year review, the Agency will continue to be involved in the site selection process for the various aspects of the project, help review and implement management practices, analyzed quarterly reports submitted by GRLT, and meet periodically with GRLT staff.”
Board O&O, 9-7-00 at 16.

The Agency’s Recommendation did not mention making a determination of effectiveness of the GRLT Project or a synopsis of its involvement as described above.

QUESTIONS:

- a. Please provide a copy of an Agency’s determination of effectiveness and a summary of the Agency’s involvement in the GRLT for the record here.
- b. How has the Agency assessed compliance with AS 99-6 thus far in terms of tracking the generation of sediment savings in Piasa Creek and comparing it to the load from the Alton Plant?

The parties are reminded to participate in a telephone status conference with the hearing officer at 10:30 a.m. on August 13, 2007. The status conference shall be initiated by the petitioner.

IT IS SO ORDERED.



Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
217/524-8509
webbc@ipcb.state.il.us

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class on August 6, 2007, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on August 6, 2007:

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601



Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
217/524-8509
webbc@ipcb.state.il.us

AS 2007-002
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

AS 2007-002
Thomas Andryk
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

AS 2007-002
Alison M. Nelson
Blackwell Sanders Peper Martin LLP
720 Olive St., 24th Floor
St. Louis, MO 63101

AS 2007-002
Bradley S. Hiles
Blackwell Sanders Peper Martin LLP
720 Olive St., 24th Floor
St. Louis, MO 63101