

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED EXTENSION OF ADJUSTED STANDARD)	AS 2007-2
APPLICABLE TO ILLINOIS-AMERICAN)	(Adjusted Standard)
WATER COMPANY'S ALTON PUBLIC WATER)	
SUPPLY FACILITY DISCHARGE)	
TO THE MISSISSIPPI RIVER)	

NOTICE OF FILING

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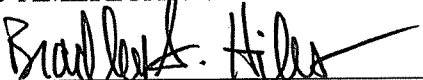
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PLEASE TAKE NOTICE that on September 10, 2007, the PETITIONER ILLINOIS-AMERICAN WATER COMPANY'S POST-HEARING BRIEF IN SUPPORT OF ITS AMENDED PETITION FOR EXTENSION OF ADJUSTED STANDARD was filed with the Clerk of the Pollution Control Board. A copy is herewith served upon you.

Respectfully submitted,

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**PETITIONER ILLINOIS-AMERICAN WATER COMPANY'S
POST-HEARING BRIEF IN SUPPORT OF ITS AMENDED PETITION
FOR EXTENSION OF ADJUSTED STANDARD**

Petitioner, Illinois-American Water Company ("Illinois-American Water"), by its attorneys, Bradley S. Hiles and Alison M. Nelson, hereby submits its post-hearing brief in support of its Amended Petition For Extension Of Adjusted Standard.

INTRODUCTION

After the submittal of numerous pleadings and exhibits, and now the conclusion of a hearing, two issues remain dominant in the present case. The first is an issue of fact: Is the Piasa Creek Watershed Project ("PCWP") showing "signs of success" in achieving its 2 to 1 offset goal by 2010? This issue has been resolved without dispute. The answer is "yes." The second dominant issue in the present case is an issue of law: Is the offset trading accomplished through the PCWP "substantially and significantly different" from the factors relied on by the Board in 1972 in establishing the effluent limits of general applicability for Total Suspended Solids (TSS) and iron? That issue could be restated with a federal regulatory bent: Is the PCWP a "unique factor"? It is, of course. This Board already made that determination in AS 99-6, and nothing has changed since 1999 to alter that the validity of that legal conclusion. In fact, the only relevant change since this case originated in 1999 is that the success of the PCWP has become an undisputed fact.

Seven years ago, the Illinois Environmental Protection Agency (the "Agency") acknowledged that the PCWP was a substantially and significantly different factor. *See* Opinion & Order of the Board, AS 99-6 at 9 (Sept. 7, 2000). But there has been a changing of the guard at the Agency. The Agency's new spokesman now asks the Board to blindly apply its 1972 effluent standards of general applicability, insisting that the PCWP success story is now irrelevant and should be ignored. That reasoning is fatally flawed. The PCWP offset trading project was the essence of case AS 99-6, and remains the essence of the present action as well. The success of the project cannot be ignored. Illinois law governing adjusted standards cannot be ignored, either. The "substantially and significantly different factor" analysis must, by necessity, draw the Board to the PCWP.

The U.S. Environmental Protection Agency's ("USEPA's") water quality trading policy does not impact the present case. That policy has not changed, in substance, since 1996. It has never prohibited the issuance of an adjusted standard on these facts, and should not prohibit the extension of the present adjusted standard now. Moreover, even if USEPA's policy could somehow be read to send a negative message against this offset trading project — which it cannot — the policy is not found in a statute or regulation. A published policy document of this nature simply lacks the force and effect of law.

This brief addresses the water quality trading policy issue and other matters raised at the August 28, 2007 hearing. One matter, addressed first, was raised by a Board representative, while the remaining issues were raised at the hearing by a witness or the Agency's counsel.

I. QUESTIONS POSED BY THE BOARD

At the hearing on August 28, 2007, Mr. Anand Rao, the Board's Senior Environmental Scientist, asked Illinois-American Water's witness Jeffrey T. Kaiser whether the Kinkaid area's

water system uses lime softening as a part of its treatment process. (Tr.¹ 28:17–22.) Mr. Kaiser was unsure whether that water system uses lime softening, and stated that he would have to review his notes to determine this. (Tr. 28:23–29:5.) After conducting this review and additional research, Mr. Kaiser has determined that the Kinkaid area's water system does not use lime softening as part of its treatment process. *See* Affidavit of Jeffrey T. Kaiser (attached hereto as Attachment A).

II. DISCUSSION OF ADDITIONAL ISSUES RAISED AT THE HEARING

A. The Board Should Not Ignore Facts Related To The Piasa Creek Watershed Project

As a preliminary matter, Illinois-American Water believes it is wrong for the Illinois Environmental Protection Agency (the "Agency") to brush aside the facts of this case. Mr. Sanjay Sofat, counsel for the Agency, stated at the Board hearing on August 28, 2007, that "discussions related to [the Piasa Creek Watershed Project and the associated offset] are irrelevant to the question of whether the Board should grant the requested relief" (Tr. at 16:2–4), and that "[w]e are not here to talk about the project." (Tr. 79:24.) This is clearly belied by the Agency's focus on the facts of Illinois-American Water's circumstances versus the facts surrounding other water treatment facilities using nonpoint source projects to achieve soil savings. *See* Agency Rec. at ¶15 (discussing 6 facilities that the Agency claims as "additional examples of regulated facilities in the State that are conducting soil conservation projects to protect source water without requesting relief from applicable effluent standards"). But as Mr. Jeffrey Kaiser (Illinois-American Water's certified expert) explained in his prefiled testimony, these facilities are not similar to Illinois-American Water's Alton facility, because: (1) the

¹ The transcript from the August 28, 2007 hearing in this matter is referred to throughout the text of this brief as the "Hearing Transcript" and in citations as "Tr." Also, the hearing exhibits admitted into evidence at the August 28, 2007 is this matter are referred to in citations as "Ex."

conditions necessary to maintain a viable water supply on the Mississippi River are much different from those necessary in lakes; (2) the six point sources identified by the Agency have used state and/or federal funds to conduct soil conservation measures; and (3) the sediment reduction efforts for the six point sources are a matter of business necessity or even survival in some cases. *See* Ex. 3 at 6:1–6:12 (summarizing the purpose of his testimony). The Agency would not have raised these factual “similarities” if it did not believe the facts were relevant

B. The Agency’s Position In This Case Is Not Based On A Best Professional Judgment Analysis

By ignoring the facts, the Agency would have this Board rely entirely on the regulation of generally applicability. However, this position is inconsistent with even the regulatory principles explained by the Agency at the hearing. As Mr. Frevert acknowledges on behalf of the Agency, there is no federal technology-based effluent limitation applicable to Illinois-American Water’s Alton facility. *See* Tr. 51:3–4 (“There are no federal effluent guidelines for total suspended solids and iron discharges”) (answering the Board’s question #3 posed to the Agency). As Mr. Frevert also acknowledges, federal regulations require that where there are no federal effluent guidelines, the permitting authority may impose effluent limitations using the authority’s best professional judgment (BPJ). *See id.* at 48:8–48:11 (“In situations or activity classifications where EPA has yet to promulgate effluent standards, the permitting authority must rely solely upon case-by-case effluent limitations.”) (answering the Board’s question #1a posed to the Agency); *see also id.* at 14:17–22 (statement of Mr. Sanjay Sofat) (stating that “in the absence of a federal promulgated effluent limitation,” the Agency’s method of imposing technology controls in permits is “on a case-by-case basis according to EPA’s best professional judgment”).

Under 40 C.F.R. 125.3, a permitting authority imposing technology-based treatment requirements must consider:

- (i) The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information; and
- (ii) Any unique factors relating to the applicant.

See 40 C.F.R. 125.3(c)(2), Exhibit 12. In the proceedings on AS 99-6, the parties agreed that under BPJ, the appropriate technology-based effluent limit was “no treatment.” Illinois-American Water commissioned ENSR to perform a BPJ analysis in 1999.² Regarding the best practicable control technology (BPT) for the facility based on consideration of the statutory factors at 40 C.F.R. 125.3(d)(1) and unique factors relating to the applicant as required by 40 C.F.R. 125.3(c), ENSR determined through BPJ “that BPT for the proposed Alton replacement facility is no treatment of TSS in the discharge.” *See* SSIS at 6-17, Section 6.5.1.7. Regarding the best conventional pollutant control technology (BCT) for the facility based on consideration of the statutory factors at 40 C.F.R. 125.3(d)(1) and unique factors relating to the applicant as required by 40 C.F.R. 125.3(c), ENSR determined that “[a]pplication of the candidate BCT technology was not cost-reasonable” and thus “adoption of BCT effluent limitations in lieu of the previously developed BPT effluent limitations [no treatment] is not warranted.” *See* SSIS at 6-20, Section 6.5.2.8. In summary, ENSR stated that “this BPJ evaluation of the existing NPDES effluent limitations concludes that the existing no effluent limitation is the appropriate control technology under both BPT and BCT.” *See id.* The Agency’s amended recommendation presented no opposition to this conclusion in the proceedings on AS 99-6, and the Agency similarly has not presented any opposition here.

² ENSR’s analysis is set forth at length in the Site Specific Impact Study (incorporated by reference into this proceeding by the Board’s order dated December 7, 2006). *See* SSIS at 6-15, Section 6.5 (“This section provides a BPJ evaluation of the effluent limitations at the proposed replacement facility. Development of BPT under BPJ is provided in Section 6.5.1, through consideration of the regulatory factors contained in 40 CFR 125.3(d)(1). Development of Best Conventional Technology (BCT) under BPJ is provided in Section 6.5.2, through consideration of regulatory factors contained in 40 CFR 125.3(d)(2).”).

The Agency has not performed a separate best professional judgment analysis to determine what technology-based effluent limitation should apply to Illinois-American Water's facility. The Agency instead argues that the appropriate effluent limitation is the standard set forth in the Board's regulation of general applicability. *See* Tr. at 48:12–18 (testimony of Toby Frevert) (“[T]he Agency has historically relied upon effluent limitations contained in the Board's pollution control regulations to meet its NPDES permitting responsibilities.”).³ This regulation of generally applicability — promulgated more than 35 years ago — is neither facility-specific nor industry-specific. *See id.* at 63:11–16 (testimony of Mr. Toby Frevert) (acknowledging that the standard reflects “technology to be applied across the board to all point sources”) (emphasis added); *id.* at 70:15–18 (testimony of Mr. Toby Frevert) (acknowledging that the “BPJ” standard applied by the Agency was set in 1972).

The Agency's reliance on the regulation of general applicability certainly does not consider “any unique factors relating to the applicant” — factors which must be considered pursuant to 40 C.F.R. 123.3(c)(2)(ii). Illinois-American Water has an adjusted standard that requires Illinois-American Water to offset any solids in its effluent by a ratio of no less than 2 to 1. The Agency clearly considered this offset a unique factor in the past. *See* Hearing Transcript, In the Matter of: Proposed Adjusted Standard Applicable to Illinois-American Water Company's Alton Public Water Supply Replacement Facility Discharge to the Mississippi River, AS 99-6

³ The Agency clearly stated this position numerous times throughout the hearing. *See also id.* at 64:1–64:6 (testimony of Mr. Toby Frevert) (“In those cases where there are no federal categorical standard, we have... historically and routinely adhered to those Board effluent standards as our judgment on what best available and practical technology is.”); *id.* at 70:4–11 (“Again, to keep with the historical and consistent practice of our agency in those areas where we have an obligation to exercise BPJ judgment in carrying out point source permitting activities, we have recognized Board-promulgated general effluent standards as the appropriate reasonable technology to apply to those sources, and we're not treating this source differently.”). *See also id.* at 14:22–15:1 (statement of Mr. Sanjay Sofat) (“Where the federally promulgated effluent limitations are not available, the Agency has always considered the Board's Part 304 standards as equivalent to the EPA's best professional judgment.”); *id.* at 74:2–74:3 (“[W]e consider the Board's Part 304 as the BPJ. That is our response.”).

(Nov. 30, 1999) at 9:7–9:15 (statement of Lisa Moreno, counsel for the Agency) (“Initially, when we filed our response to the Water Company’s petition, we did not support their request to be able to discharge without treatment, and we believe that the technology exists for them to treat. However, having said that, since the meeting that we had and the proposal that was made, we are enthusiastically looking at this opportunity to try something, to be honest with you, that is new for us too.”). In addition to the PCWP, there are other “unique factors” presented by Illinois-American Water’s Alton facility, and the regulation of general applicability also fails to take these into account. For example, the facility is located on the Mississippi River (a large and sediment-laden river), and the solids in the facility’s effluent are comprised almost entirely of the sediment present in the raw water.

The statute which authorizes the Board to grant an adjusted standard, 35 Ill. Adm. Code 104.406, also requires the Agency to consider the “unique factor” that is the PCWP. That statute contains the basic requirement that the petition for an adjusted standard must contain a statement which explains how the petitioner seeks to justify the proposed adjusted standard, and one of the elements of this justification requires Illinois-American Water to establish that factors relating to Illinois-American Water are substantially and significantly different from the factors relied on by the Board in adopting the general regulation applicable to that petitioner. *See* 415 Ill. Comp. Stat. 28.1(c)(1). Significantly, this Board has already determined that Illinois-American Water’s offset involving the Piasa Creek Watershed Project is a substantially and significantly different factor than those considered by the Board in establishing the regulations of general applicability. *See* Opinion & Order of the Board, AS 99-6 at 18 (Sept. 7, 2000) (“The Board finds that the GRLT Project is significantly and substantially different from any factor than the Board relied on in adopting the regulations at issue herein.”). *See also id.* at 19 & 20 (same). The Agency has

acknowledged this as well. *See id.* at 9 (observing that in its amended response, the Agency “said that the GRLT Project, which will offset the residuals in the untreated discharge from the new facility by a two to one margin, is a substantially different factor than those that the Board were concerned with in adopting the three standards at issue herein”).

In its briefing in this case, the Agency has not presented any opposition to or disagreement with the BPJ analysis conducted in 1999 and incorporated by reference into this proceeding. **However, the Agency now asks this Board to ignore the facts of this case; to abandon the conclusions reached by Illinois-American Water, ENSR, the Agency, and the Board in 1999-2000; and to rely solely on the regulation of general applicability.** This position is clearly at odds with the basic purpose of an adjusted standard — to vary the application of the regulation of general applicability where the particular circumstances applicable to a permit applicant deem appropriate. The Board should not determine what technology-based effluent limitations should apply to the Alton facility solely through reliance on the Agency’s view of how to apply a regulation of general applicability passed over 35 years ago. Clearly, the Agency’s view is subject to change. As in AS 99-6, the “case-by-case” effluent limitation for the facility should be determined on a “case-by-case” basis, through a best professional judgment analysis specific to this facility that considers the “unique factors” presented by this case.

C. Neither State Regulations Nor State or Federal Policies Prohibit Illinois-American Water’s Use Of An Offset Project

The Agency argues that the “[u]se of [the Piasa Creek Watershed Project and associated offset], however, as a substitute for best available technology controls is inconsistent with the basic intent of the Clean Water Act and the State’s long-standing policy of imposing technology-

based effluent limitations on point sources.” (Tr. 16:4–16:9.) This argument is not supported by state regulation, state trading policies, or federal trading policies.

First, Illinois regulations provide the Board with a mechanism to grant permit applicants an adjusted standard from technology-based effluent limitations. *See* 35 Ill. Adm. Code 104.406. Adopting the Agency’s position would allow a federal policy — notably, not a federal statute or regulation⁴ — to preempt this state regulation whenever offset projects are involved. This would create the possibility for absurd results. The Board would then be unable to grant an exception under Section 104.406 to the state’s technology-based effluent limits when an offset project were involved. But the Board could still grant an adjusted standard to a facility with inadequate room to build lagoons, or a facility located in a zoning district that prohibited the construction of lagoons. In other words, application of the federal policy to preempt state regulations would tie this Board’s hands when an offset project could create a net environmental benefit, but would nonetheless allow the Board to grant an adjusted standard with the potential to create greater harm to the environment than traditional treatment.

In addition, the Agency’s argument is not supported by state trading policies. As Mr. Sanjay Sofat stated at the August 28, 2007 hearing, “[t]he simple fact is that Illinois does not have a promulgated trading policy. If and when Illinois decides to adopt a trading policy, some of the points raised by Illinois-American may become relevant in drafting of the policy. However, this adjusted standard proceeding is surely not a proper forum to discuss the details of such a policy.” (Tr. 17:5–11.) Illinois-American Water should not be punished because the Agency has not found the time or inclination to promulgate a trading policy. Here, the only “policy” explained by the Agency is an informal statement of a few Agency representatives. The

⁴ The federal policy does not have the force and effect of law. The policy is just that – a policy – and does not carry the same weight as a statute or regulation.

Board should not give the Agency's informal position undue weight. Rather, once the Agency promulgates an official statement of its policy, the Board should take its cue from that Agency policy — but not until that time.

More importantly, as a matter of law, the absence of a state trading policy does not prohibit Illinois-American Water's use of an offset, as the Agency suggests. If that were the case, the Agency would not have approved (and the Board would not have granted) the Alton facility's existing adjusted standard — or any other adjusted standard involving an offset project, for that matter. At the hearing on August 28, 2007, Agency witness Toby Frevert stated that the adjusted standard applicable to Illinois-American Water's Alton facility is a lone deviation in Illinois's history of adjusted standards. *See* Tr. 67:7–8 (affirming that the state of Illinois has never had a nonpoint source project used as an offset trading project, and stating that “I'm happy to say there are no others”). But there are.

In AS 91-9, for instance, the Board granted the City of East Moline an adjusted standard from the Board's effluent regulations for TSS and iron at 35 Ill. Adm. Code 304.124 as applied to the wastewater discharges from East Moline's water treatment plant. *See* Opinion and Order of the Board, In the Matter of: Petition of the City of East Moline and the Illinois Environmental Protection Agency for Adjusted Standard from 35 Illinois Administrative Code 304, AS 91-9 at 3 (May 19, 1994). Also, in AS 91-13, the Board granted the City of Rock Island an adjusted standard from the Board's effluent regulations for TSS and iron at 35 Ill. Adm. Code 304.124 as applied to the wastewater discharges from Rock Island's water treatment plant. *See* Opinion and Order of the Board, In the Matter of: Petition of the City of Rock Island for An Adjusted Standard from 35 Illinois Administrative Code 304, AS 91-13 at 3 (Oct. 19, 1995). One of the conditions imposed on East Moline as a result of the adjusted standard was that East Moline

obtain land that was presently being farmed and to hold the land as fallow land, with the purpose of “more than offset[ting] the net amount of solids added to the Mississippi River from the discharge of its mixing tank as compared to the amount of solids which result from the raw water used.”⁵ The conditions imposed on Rock Island similarly required Rock Island to offset any possible increases in sediment discharges to the Mississippi River by removing some erodable land from cultivation.⁶

These Board orders establish that other facilities use offsets as part of an adjusted standard from Illinois’ effluent limitations at 35 Ill. Adm. Code. 304.124, contrary to Mr. Frevert’s testimony. These orders also show that those other facilities are subject to more lenient conditions than Illinois-American Water. East Moline’s condition requires only that it “more than offset” the amount of solids it adds to the raw water.⁷ Similarly, Rock Island’s condition requires only that it offset in “an equal amount” the total suspended solids caused by the water

⁵ The permit condition applicable to East Moline’s facility provides that “[u]ntil at least January 1, 1996, East Moline shall maintain as fallow land approximately 33.7 acres which are part of Farm #2116, Tax Parcel 350 and 351 in Coe Township and after that date shall either continue to maintain that land as fallow or shall obtain, through lease or purchase, other agricultural land which at the time of acquisition is not fallow land and which is calculated through the use of the Universal Soil Loss Equation to contribute a net suspended solids loading to the Mississippi River (as compared to the calculated loading for fallow land) of least an average of 500 tons per year of the term of the lease or ownership of the water plan shall implement some other plan approved by the Agency for offsetting the water plant’s net contribution of suspended solids to the Mississippi River.” *See* Opinion and Order of the Board, AS 91-9 at 9 (May 19, 1994).

⁶ The permit conditions applicable to Rock Island’s facility provide that: “Within nine (9) months from the start of operations of all three circular clarifiers, Rock Island shall then obtain, through lease or purchase, agricultural land which at the time of acquisition is not fallow land and which amount is calculated through use of the Universal Soil Loss Equation to contribute an equal amount of total net suspended solids loading to the Mississippi River as the total suspended solids caused by the water treatment plant’s discharge; Rock Island shall remove the land... from agricultural service and shall maintain such land as fallow land, unless such land is replaced with other land similarly removed from agricultural service and maintained as fallow land or the water plant implements some other plan approved by the Agency for offsetting the water plant’s contribution of suspended solids to the Mississippi River.” *See* Opinion and Order of the Board, AS 91-13 at 6 (Oct. 19, 1995).

⁷ If Illinois-American Water were subject to such a condition, it could comply with its adjusted standard by achieving a soil savings of only 66 tons. *See* Affidavit of Paul Keck at ¶20 (noting that Illinois-American Water adds approximately 66 tons of solids to the raw water, in the form of coagulant residue) (attached to the Amended Petition as Attachment D).

treatment plant's discharge.⁸ Finally, these orders also show that this Board has granted adjusted standards to such other facilities on an indefinite basis. East Moline's adjusted standard does not address when the adjusted standard will terminate, and clearly contemplates that the adjusted standard will continue for at least 20 years. *See* Opinion and Order of the Board, AS 91-9 at 7-8 (May 19, 1994) (stating that "[o]ver a twenty-year period the proposed adjusted standard would thus save East Moline approximately \$20 million," and granting the proposed standard). Rock Island's adjusted standard similarly does not address when the adjusted standard will terminate. *See* Opinion and Order of the Board, AS 91-13 (Oct. 19, 1995). Thus, contrary to Mr. Frevert's testimony, Illinois-American Water is not the only facility in Illinois that uses nonpoint source reductions to comply with an adjusted standard from the state's generally applicable effluent limitations. Granting the relief requested by Illinois-American Water would be neither unprecedented nor inconsistent with state policy.

Finally, federal trading policies do not prohibit Illinois-American Water's use of an offset project in these circumstances. USEPA's 2003 Water Quality Trading Policy states specifically that "EPA does not support trading to comply with existing technology-based effluent limitations except as expressly authorized by federal regulations." *See* USEPA, Office of Water, Water Quality Trading Policy (Jan. 13, 2003). This federal trading policy applies only to facilities that are subject to "existing technology-based effluent limitations" and, as even Mr. Frevert was willing to admit, Illinois-American Water is not currently subject to any such standards.⁹ *See* Tr.

⁸ Assuming that Rock Island's permit condition requires an offset of the total amount of solids in the facility's effluent (rather than the amount of solids added by the facility to the raw water), Illinois-American Water could comply with its adjusted standard by achieving a soil savings of only 1,600 tons if it were subject to such a condition. *See* Affidavit of Paul Keck at ¶21 (noting that the total tons of solids discharged from the Alton facility each year is approximately 1,600 tons) (attached to the Amended Petition as Attachment D).

⁹ There are no federal effluent limits applicable to the Alton Plant either. Tr. 51:3-4. ("There are no federal effluent guidelines for total suspended solids and iron discharges.")

90:5–10 (“In terms of attainability and reasonable accuracy, I believe [both the TSS limit and the iron limit adopted by the Pollution Control Board in 1972] constitute readily available best practical judgment technology, but I do understand your point that at points in the past the Board has consciously relieved [Illinois-American Water] of that technology in lieu of other conditions.”); *id.* at 90:14–15 (confirming that “there is not a technology-based effluent limitation applicable to the Alton plant of Illinois-American Water Company” in Pollution Control Board regulations).

Furthermore, the fact that *the federal trading policy has not changed* cannot be emphasized enough. The 1996 policy that was in effect at the time AS 99-6 was granted states the same principles as the final policy issues in 2003. Notably, the Agency has not provided one example in support of the changes it claims were made, either in its recommendation or at the hearing. This suggests that the Agency has simply changed its mind, and is citing the federal policy as a smokescreen in lieu of actual support for its position.

D. The Board Should Not Accept The Agency’s Unsupported Interpretation Of USEPA Policy

The backbone of the Agency’s change from supporting AS 99-6 to opposing an extension of that standard is its newfound belief that the use of an offset project runs counter to state law and USEPA policy. *See* Tr. 16:4–9 (statement of Mr. Sanjay Sofat) (“Use of this project, however, as a substitute for best available technology controls is inconsistent with the basic intent of the Clean Water Act and the State’s long-standing policy of imposing technology-based effluent limitations on point sources.”). The Agency appears to base this position in part on discussions between Mr. Toby Frevert and USEPA representatives. However, Illinois-American Water has received written statements from a USEPA representative that conflicts with the position reported by Mr. Frevert.

Mr. Frevert testified that he contacted Mr. Peter Swenson and Mr. George Azevedo, both employees of USEPA's Region 5 office. (Tr. at 52:1-3.) Mr. Frevert reported that Mr. Swenson said "his understanding of what Illinois-American was requesting was inconsistent with his understanding of what federal policy and good practice requires." (Tr. 52:7-11.) Mr. Frevert further stated that Mr. Azevedo was "surprised" and "disappointed" that this was the nature of the program, and that Mr. Azevedo said that "this was a prime example of misuse of a trading concept, a good example of what trading should not be." (Tr. 53:2-5.)

Unfortunately, no one participated in the Frevert-Azevedo telephone discussion but the two of them (Tr. 59:18-60:2), and the Agency elected not to invite Mr. Azevedo to testify at the August 28 hearing. But we have the benefit of two e-mail exchanges between Mr. Azevedo and Cindy Hebenstreit, Director of Environmental Management for American Water Company's Central Region. Those two messages contradict the statements attributed to Mr. Azevedo by Mr. Frevert. In those written exchanges, Mr. Azevedo stated "we want this program to be successful," and "I believe that the situation [i.e. Illinois EPA's opposition] is salvageable and I will work with the State to that end."¹⁰

The cause for this discrepancy is unclear. Unfortunately, Mr. Frevert did not invite anyone else from the Agency or Illinois-American Water to participate in his call. (Tr. 59:17-60:2.) Mr. Frevert testified that he did not share a copy of Illinois-American Water's petition for

¹⁰ See e-mail correspondence from George Azevedo, U.S. EPA Region 5, NPDES Nutrients and Water Quality Trading Coordinator, to Cindy Hebenstreit, Director, Environmental Management, American Water -Central Region re: water quality trading materials (Feb. 27, 2007); e-mail correspondence from George Azevedo, U.S. EPA Region 5, NPDES Nutrients and Water Quality Trading Coordinator, to Cindy Hebenstreit, Director, Environmental Management, American Water -Central Region re: Illinois American Water Piasa Creek project (May 30, 2007). (This correspondence, as well as an intervening e-mail from Cindy Hebenstreit to George Azevedo, are attached hereto as Exhibit 1. Also, an Affidavit of Cindy Hebenstreit attesting to the authenticity of this e-mail correspondence is attached hereto as Attachment B.)

the adjusted standard with Mr. Azevedo (Tr. 56:24–57:3), nor did he share a copy of Illinois-American Water's amended petition (Tr. 57:4–6), the ENSR study (Tr. 57:14–18), or the latest report from Great Rivers Land Trust on the Piasa Creek Watershed Project (Tr. 57:19–24). Moreover, Mr. Frevert testified that he did not inform Mr. Azevedo that the Piasa Creek watershed project had reached a soil savings level of approximately 6,700 tons (Tr. 58:13–17), and did not inform Mr. Azevedo of the net savings that had been achieved when factoring in the loading from the plant to the savings achieved in the Piasa Creek watershed (Tr. 58:18–22). As Mr. Frevert himself observed, "I was not attempting to understand the federal perspective on the Piasa Creek Watershed Project." (Tr. 60:23–61:6.)

As noted above, the facts of this case cannot be ignored. Mr. Frevert's presentation of the issue to Mr. Azevedo in the abstract may have colored Mr. Azevedo's answers to Mr. Frevert's pointed questions. In addition, Mr. Frevert's conversation with Mr. Azevedo took place before Ms. Hebenstreit's correspondence with Mr. Azevedo in late May of 2007. Mr. Frevert explained that his conversation with Mr. Azevedo took place in April or May of 2007. (Tr. 58:1–12.) Because no one else participated in these calls and neither Mr. Azevedo nor USEPA has entered a statement on the record regarding USEPA's perspective on the application of federal policy in this case, Mr. Frevert's summary of USEPA's perspective should not be given any weight.

This is particularly true in light of the conference on June 15, 2007, between Ms. Cindy Hebenstreit and Ms. Marsha Willhite (Director of the Division of Water Pollution Control at the Agency), Mr. Jim Hanlon (Director, Office of Wastewater Management in Washington, D.C.), Mr. Marcus Zobrist (Team Leader of the Water Permitting Program, in Washington, D.C.), Ms. Nina Badgerfield (Washington, D.C.), and Mr. Peter Swenson (Branch Chief, Permits Section,

Region V). During this conference, no one from USEPA advised or implied that the adjusted standard should not be extended, and Ms. Hebenstreit came away from the call strongly encouraged that USEPA officials had a favorable view of TSS offset trading generally — and the GRLT/Illinois-American Water offset trading in particular. *See* Ex. 1 at 2:9–2:19 (confirming that Illinois-American Water’s answers to the Board’s question #4 posed to the Agency are true to the best of her knowledge, information, and belief); Petitioner Illinois-American Water Company’s Written Answers To The Board’s Questions For LAWC And IEPA Pertaining To The Amended Petition AS 2007-2 at 28–30 (Aug. 21, 2007).

As with all permits issued by the Agency, USEPA will have the opportunity to object if it believes that the terms of the permit will run counter to federal law. Rather than simply adopting the Agency’s perspective regarding whether the permit is consistent with USEPA policy and federal law, the Board should give USEPA the opportunity to weigh in on this issue itself, if USEPA deems that to be necessary.¹¹ As noted above, neither federal law nor USEPA trading policy have changed since AS 1999-6 was granted, so Illinois-American Water believes it is highly unlikely that USEPA will object.

E. Requiring Treatment Would Be Detrimental to the Environment

The Agency also claims that extending the adjusted standard would be inconsistent with the Clean Water Act. (Tr. at 13:9–13.) However, the stated purpose of the Clean Water Act is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” *See* 33 U.S.C. 1251(a). This belies Mr. Frevert’s assertion that “I don’t think net benefit, whether it be positive or negative, is the point here.” (Tr. at 78:5–6.) Although net benefit may

¹¹ Illinois-American Water firmly believes that USEPA’s silence on the record with respect to this specific adjusted standard to date shows that the USEPA policy is consistent with the proposed standard, as USEPA is clearly aware of Illinois-American Water’s Amended Petition and its request for an indefinite extension of its adjusted standard.

be irrelevant when federal categorical effluent standards apply, it is clear that no such standards apply to the Alton facility. The benefit to the environment — the stated purpose of the Act and its implementing regulations — therefore cannot be ignored here.

The Agency's own supervisor of the Water Quality Standards Unit with the Division of Water Pollution Control, Robert G. Mosher, has acknowledged the net environmental benefit that Illinois-American Water's offset project has achieved. In his deposition on August 16, 2007, Mr. Mosher stated, "[p]ersonally, I don't want to see it ended necessarily. It's probably good for the Piasa watershed." *See* Deposition Transcript (Aug. 16, 2007) at 52:17–19. He also stated that given his frame of reference, "it seems to me that the offset was a benefit to the environment, [a] net benefit." *See id.* at 55:10–12.

For some unknown reason, the Agency refuses to acknowledge the certain effect of terminating the adjusted standard and requiring Illinois-American Water's Alton facility to install lagoons and conventional treatment equipment — a net increase in the solids loading to the Mississippi River. Rather, Mr. Frevert avoided the question, asking "[a]re you asking me to speculate that the Piasa Creek project would die and there is no community support for that project or federal or state funds available to support that?" (Tr. at 83:6–9.) Mr. Frevert's question misses the point. The fact is, if Illinois-American Water must install lagoons and conventional solids handling facilities, it will no longer fund the PCWP and, over time, the soil savings that exist today will decline. Eventually, a greater volume of solids will be added to the Mississippi River using conventional treatment than under the offset trading project.¹²

¹² In fact, the result would be a harsh drop from 5,091 net tons saved to 205 net tons discharged (calculated using the formula set forth in the Affidavit of Paul Keck, attached to the Amended Petition as Attachment D) — a swing of approximately 5,296 more tons of TSS to the Mississippi River than the amount current achieved through Illinois-American Water's compliance with the adjusted standard.

F. Another Sunset Period Is Unnecessary

At the hearing, Anand Rao asked Terry Gloriod to comment on whether the Board should impose another sunset provision in the adjusted standard if the Board decides to grant Illinois-American Water's requested relief. (Tr. 37:24–38:3.) Mr. Gloriod responded that there is no need for an additional sunset, because “the NPDES permit runs on a five-year cycle, and so every five years we're going to come up for renewal of our NPDES permit, and clearly, if the permit condition is compliance with the adjusted standard and maintaining [a] two to one offset or at least 6600 tons, that's going to get reviewed every five years.” (Tr. 38:5–11.) Illinois-American Water's Amended Petition further explains why a sunset provision is unnecessary,¹³ but these reasons are restated here for the Board's convenience.

First, the factors the Board has identified in other adjusted standard proceedings that justify use of a sunset provision to allow the Board to revisit a case are not present in this case. Those factors include circumstances in which a sunset provision would encourage the petitioner to take advantage of new technology and to continually explore methods to lower its effluent limits¹⁴; in which the water quality of the receiving stream was expected to change in the near future, when granting permanent relief would remove any incentive for the petitioner to improve its effluent quality, and when the petitioner's evaluation of alternatives was not detailed enough to conclusively rule out all alternatives¹⁵; and in which granting permanent relief would utilize a portion of the receiving water that would not then be available to future dischargers.¹⁶ Here,

¹³ See Amended Petition at ¶¶15–17.

¹⁴ See In the Matter of: Petition of PDV Midwest Refining, L.L.C. for a Site-Specific Rulemaking Amendment to 35 111. Adm. Code 304.2 13, R98-14 at 3 (Dec. 17, 1998).

¹⁵ See In the Matter of: Proposal of Union Oil Company of California to Amend the Water Pollution Regulations, R84-13 at 12 (March 19, 1987).

¹⁶ See In the Matter of: Site-Specific Rulemaking for the Sanitary District of Decatur, Illinois, R85-15 at 7 (Jan. 23, 1986).

exploration of new technologies or alternative methods to reduce the amount of TSS and iron in Illinois-American Water's effluent is not necessary because the offset actually improves the environmental quality of the River; the conditions in the Piasa Creek Watershed and the Mississippi River are not likely to change in the near future; Illinois-American Water's Site-Specific Impact Study was comprehensive enough to rule out other alternatives; and the Piasa Creek Watershed Project actually *creates* capacity in the receiving waters for future dischargers by reducing the amount of TSS and iron in Piasa Creek and in the Mississippi River.

Second, permanent relief is also appropriate because Illinois-American Water has successfully enhanced water quality in the Mississippi River above even the most ambitious expectations, and this Board has granted permanent relief to petitioners on lesser grounds.¹⁷ As noted above, the East Moline and Rock Island facilities are subject to less restrictive offset requirements, yet the adjusted standards applicable to those proceedings do not include termination or sunset provisions.

Finally, requiring submission to the Board of annual reports reflecting the soil savings of the Project and conditioning the adjusted standard on satisfaction of certain conditions, rather than including a sunset provision, would allow this adjusted standard to remain in place until the Board determines that the adjusted standard is no longer successfully reducing the TSS loading to the Mississippi River. Illinois-American Water's proposed order, if granted, will require Illinois-American Water to maintain a 2 to 1 offset of the solids in its effluent (with a soil savings of no less than 6,600 tons per year), and to submit annual reports on its soil savings and offset reduction to the Board and the Agency. This Board has approved the use of a reporting requirement in other adjusted standard proceedings, provided that the Board retains some oversight over the petitioner's

¹⁷ See, e.g., In the Matter of: Proposal of Mobil Oil Corporation to Amend the Water Pollution Regulations, R84-16 at 8 (Feb. 5, 1987) (holding that a sunset provision was not necessary when the petitioner's discharge was "quite close" to the regulation of general applicability).

compliance with the standard.¹⁸ The annual reports provide the Board with this oversight, and Illinois-American Water's need to renew its NPDES permit every five years ensures that the Agency will review Illinois-American Water's compliance with the adjusted standard no less than every five years.

G. Send the Right Message to the Regulated Community, the Public, and to Other States and Regulatory Agencies

This case has an audience. The PCWP has been a remarkable success, and news of that success has spread well beyond the Alton community. The PCWP has achieved acclaim on a state-wide level and on a national level. *See* Affidavit of Alley Ringhausen at ¶8 (attached to the Petition as Attachment A). An invited speaker at many national forums, Alley Ringhausen has trumpeted the success of GRLT's program and helped other environmental groups and point source dischargers understand that point/non-point source offset trading projects really do work. *See id.* at ¶10. He has touted the success that can be achieved through the cooperative efforts of a private company, a land trust and the governing regulatory body. Without question, the PCWP is perceived as a model of success in and outside of Illinois, as it should be. Indeed, USEPA has acknowledged that it is considering the PCWP as it deliberates on whether or not to propose federal standards for water treatment plants. *See* Ex. 1 at 2:9–2:19 (confirming that Illinois-American Water's answers to the Board's question #4 posed to the Agency are true to the best of her knowledge, information, and belief); Petitioner Illinois-American Water Company's Written Answers To The Board's Questions For IAWC And IEPA Pertaining To The Amended Petition

¹⁸ *See, e.g., In the Matter of: Amendments to Water Quality and Effluent Standards Applicable to the Chicago River System and Calumet River System*, R87-27 at 23 (March 24, 1988) (including a reporting requirement); *In the Matter of: Site Specific Rule for City of Effingham*

Treatment Plant Fluoride Discharge, 35 Ill. Adm. Code 304.233, R03-11 at 9 (July 24, 2003) (granting permanent relief, but noting that the Board would revisit the standard if the passage of time reveals that the proposed water quality standards are not being met).

AS 2007-2 at 29 (Aug. 21, 2007) (Mr. Hanlon, stating that EPA is working on categorical standards but “is looking at your situation there in Alton”).

So, the denial of an indefinite extension will be noticed by the regulated community, and by other regulatory agencies as well. Terry Gloriod’s testimony is compelling on this point. (Ex. 6 at 16:1–22.) Reflecting on the seven year “journey” from the first adjusted standard case to now, Mr. Gloriod expressed understandable frustration. Illinois-American Water satisfied every requirement the Agency imposed, answered every question the Agency raised in 1999 and 2000, spent time and resources to make the PCWP succeed, achieved success years ahead of schedule, and then faced unwavering opposition from the Agency at the eleventh hour. For seven years, the Agency made no negative comments while Illinois-American Water invested in soil savings projects that will be effective well beyond 2010. Then the Agency’s only witness insisted that the Board end the adjusted standard, essentially calling it a mistake from the start. (Tr. 67:11–13.)

If the Board denies the Amended Petition, it will send a negative message to the regulated community, to wit: Come to the Board for an adjusted standard if you are serious about an offset trading project; do everything asked of you in the Board’s Order granting your adjusted standard and meet offset goals years ahead of schedule; make sure to implement soil savings projects that will continue to eliminate TSS loading years into the future... achieve all that and the Board will terminate your adjusted standard. Illinois-American Water doubts that the Board intends to send such a message, but that will be the unfortunate result if the Agency’s “new direction” is adopted.

Illinois-American Water urges the Board to send a different message — one of encouragement for point sources that might be considering offset trading for TSS: Improved

water quality really does matter in Illinois. If a petitioner presents a SSIS that concludes, without contradiction from the Agency, that untreated discharge is BPJ for a particular water body, and that same petitioner promises to eliminate two pounds of solids for every pound it loads, it should — and will — be taken seriously by the Board. The Board will follow the regulation governing adjusted standards, determine whether that offset project is “significantly and substantially different,” and stand by that decision years later when the offset project is a proven success.

That message will be consistent with Illinois law, and will maintain the credibility the Board has earned for decades. In addition, it will allow one of America’s most successful and acclaimed offset projects to stay the course and improve water quality on the Mississippi River.

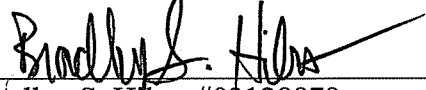
CONCLUSION

Illinois-American Water dutifully honored every requirement established by the Board in case AS 99-6. The fruits of that labor have been one of the most successful and acclaimed TSS offset trading projects in America. Although the Agency failed to perform a five-year study of the effectiveness of the PCWP, that effectiveness is undisputed. The ten year goal was achieved in year six. Success of this magnitude warrants an extension. The Board should stay the course, extend the adjusted standard, continue the mechanism that improves water quality in the Mississippi River near Alton and Godfrey, and continue to send the message to the regulated community, the public, and other states that successful offset projects will be encouraged, not terminated, in Illinois.

Respectfully submitted,

ILLINOIS-AMERICAN WATER COMPANY

By:



Bradley S. Hiles, #03128879

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St. Louis, MO 63101

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An Attorney for Petitioner

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
 PROPOSED EXTENSION OF ADJUSTED STANDARD) AS 2007-2
 APPLICABLE TO ILLINOIS-AMERICAN) (Adjusted Standard)
 WATER COMPANY'S ALTON PUBLIC WATER)
 SUPPLY FACILITY DISCHARGE)
 TO THE MISSISSIPPI RIVER)

CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2007, the attached PETITIONER ILLINOIS-AMERICAN WATER COMPANY'S POST-HEARING BRIEF IN SUPPORT OF ITS AMENDED PETITION FOR EXTENSION OF ADJUSTED STANDARD was filed by electronic transmission with the Office of the Clerk of the Illinois Pollution Control Board, and was served by first class mail, postage prepaid, upon the following persons:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

Sanjay Sofat
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

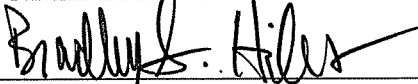
William Richardson, Chief Legal Counsel
Illinois Department of Natural Resources
One Natural Resource Way
Springfield, Illinois 62702

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274

Matthew J. Dunn
Division Chief, Environmental Enforcement
Illinois Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601

Respectfully submitted,

ILLINOIS-AMERICAN WATER COMPANY

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 An Attorney for Petitioner



Azevedo.George@epamail.e
pa.gov

02/27/2007 04:51 PM

To cindy.hebenstreit@amwater.com

cc

bcc

Subject water quality trading materials

History: This message has been forwarded.

Hi Cindy,

Thank you for the discussion today on the concerns you have on the permit re-issuance of the Piasa Creek facility. I would appreciate a simple explanation or outline of the issues that have come up so I can try to address your concerns.

As I mentioned, the U.S. EPA promotes and supports water quality as an innovative and cost effective approach to achieve water quality standards with flexibility and economic efficiency. It is an option offered to point sources - that includes pollution prevention/reduction, installing new technology or recycling/reuse - but requires a champion to make it happen.

On the right side of this page you will find water quality trading materials on our new Blue Ribbon Awards Program and the Trading Assessment Handbook.
<http://www.epa.gov/owow/watershed/trading.htm>

On this page you will find the Water Quality Trading Policy, at ten-pages it is very short.
<http://www.epa.gov/owow/watershed/trading.htm>

I think you may get some use out the these materials to understand that we want this program to be successful.

Regards,

George Azevedo.
U.S. EPA Region 5
NPDES Nutrients and Water Quality Trading Coordinator.

EXHIBIT

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Cindy M
Hebenstreit/MOAWC/AWWS
C

05/29/2007 01:59 PM

To Azevedo.George@epamail.epa.gov

cc

bcc

Subject Illinois American Water Piasa Creek project

Hi George,

We had spoken a couple months ago regarding the Piasa Creek Watershed Project—a water quality trading project that Illinois American Water has been involved in since 2000. The program has been very successful, achieving more than a 2:1 reduction in sediment loading. Illinois EPA has stated opposition to the Illinois Pollution Control Board renewal of the adjusted standard that allows discharge of the residuals to the Mississippi River. The explanation given is that a "philosophical change" has occurred in how the agency views this issue. If Illinois American is not granted the renewal, then the company will have to go ahead and build a residuals processing facility anyway, and the initial \$4 million invested in the watershed protection program will be viewed only as a delay to the eventual sludge handling facility.

From previous conversations, I understand U.S. EPA promotes and supports water quality trading as an innovative and cost effective approach to achieve water quality standards. It would be helpful if the agencies in Illinois knew of the general support for such programs. Can you offer advice as to how to approach EPA to get their input into this matter?

I've attached a summary of the project and issues below. Please call me to discuss if you would like additional information. Your consideration of this matter is very much appreciated.



Alton Direct Discharge April 2007 Summary Fact Sheet.DOC

Cindy Hebenstreit
Director, Environmental Management
American Water—Central Region
727 Craig Road
St. Louis, MO 63141
314-996-2391 office
314-640-7787 cell

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Piasa Creek Watershed Project

A Successful Partnership Between Industry, Environmentalists

PROJECT SUMMARY

In Alton, the Piasa Creek Watershed Project is an example of a unique, successful relationship between environmentalists (Great Rivers Land Trust) and industry (Illinois American Water).

In 1999, Illinois American Water began construction of a new water treatment facility on the Great River Road in Alton. The new plant replaced a 108-year-old plant that was flooded in August 1993. The original Alton facility had a permit that allowed discharge without suspended solids limits, permitting the Company to return river mud and silt filtered in the treatment process back to the river. This direct discharge practice had been allowed in the Alton District for more than 100 years.

The discharge permit was part of an adjusted standard allowing such discharge under state environmental regulations. As the Company explored extending the adjusted standard to the new plant, the state regulatory agency, Illinois Environmental Protection Agency (IEPA), indicated opposition and proposed adding solids limits to the permit for the new facility. Solids limits, if imposed, would require construction of impoundment lagoons and trucking tons of river silt along the Great River Road, a national scenic highway, to a landfill several miles from the new Alton treatment facility.

Several concerns were raised by interested stakeholders. Construction of lagoons and operating dewatering equipment (belt presses) would have substantially increased construction and operating costs at the water treatment facility, and such costs would be passed on to local residents, as the Company's ratepayers. In addition, City of Alton officials, local residents and civic leaders strongly opposed construction of lagoons at the new treatment facility site. Among other things, there was public concern that lagoons would significantly increase truck traffic (hauling) on the Great River Road and that the disposal of river silts would utilize valuable space at nearby landfills.

As an alternative, the stakeholders developed an innovative trading concept that would allow the new treatment facility to return river mud and silt to the river in exchange for the Company's participation in a sediment reduction project in the Piasa Creek watershed.

Specifically, Illinois American Water and Great Rivers Land Trust (GRLT) proposed a partnership in which Illinois American Water would fund the Piasa Creek Watershed Project over 10 years in an attempt to reduce net sediment loading in the river by a 2:1 ratio, offsetting the amount discharged into the river by the water treatment process. The plan was to reduce sedimentation through silt basins, dry dams, streambank stabilization, land acquisition, and various other practices that could ultimately be maintained at a level of 6600 tons of soil savings per year.

The IEPA supported the offset project and, in October 2000, the Illinois Pollution Control Board (Board) issued the adjusted standard allowing the new plant to start operations.

Under the adjusted standard and related permit, Illinois American Water continues the practice of direct discharge of residuals from the new Alton treatment facility. The sediment control from the Piasa Creek projects more than offset the sediment that the water treatment process returns to the river. In fact, the unique program has been highly successful. The 2:1 offset ratio has been achieved four years ahead of schedule. The project has won many state and national awards. It has had a positive impact in the Alton community, serving as a strong example of community values being achieved when industry and environmentalists work together for common goals.

Nevertheless, direct discharge by the facility and maintenance of the soil savings program may be discontinued. At the outset, no one knew whether the 2:1 offset could be attained, so the Board inserted two safeguards into the adjusted standard: 1) a five year IEPA review at the half-way point of the project to determine if the project was on target to meet the ten year goal (which it was); and 2) a seven year sunset provision to allow the Board to consider the effectiveness of the project before continuing it. Under the second safeguard, the adjusted standard is scheduled to expire in October 2007, and Illinois American Water is required to seek an extension.

In October 2006, Illinois American Water filed a Petition for Extension of the Adjusted Standard that would allow it to continue the practice of direct discharge from the new Alton treatment facility into the river in exchange for funding maintenance of soil savings from the Piasa Creek Watershed Project at an agreed upon level. Despite the success of the project, IEPA has expressed opposition to the Petition and to any permit that allows direct discharge. Without the adjusted standard and related permit, Illinois American Water will be forced to construct lagoons at its treatment facility in Alton, over the objections of the local public and elected officials. Denying the adjusted standard also jeopardizes the future maintenance of the Piasa Creek Watershed Project.

--end--



Fact Sheet

Alton District Treatment Plant Adjusted Standard Allowing Direct Discharge of Residuals

- ✓ **“Direct discharge” of residuals always has been utilized at the Alton water treatment plants.**

In the Alton District, Illinois American Water has always discharged its residuals from the water treatment processes directly to the Mississippi River. This practice has been allowed for more than 100 years.

- ✓ **Direct discharge has not posed environmental concerns.**

The direct discharge allowance means the company can return sediments (dirt, sand) that are removed in the water treatment process back to the Mississippi River. Approximately 91 percent of what is returned to the river is sediment (dirt, sand). Nine percent is biodegradable and inert chemical solids used in the treatment process. Studies show these chemicals do not adversely affect the river environment. Basically, the water company returns nothing more to the river than what was removed from it.

- ✓ **If the adjusted standard is denied, the alternative is lagoons at the Alton water treatment site.**

Adding lagoons will require substantial acreage at the site of the existing water treatment facility to be developed for storage of river sediment. The stored solids would be treated on-site with filter presses, and then the solids would be hauled by truck to a landfill. At a July 1998 “stakeholders” meeting at the Stratford Hotel in Alton, with IEPA officials in attendance, several local homeowners voiced their concern about the potential of lagoons being constructed at the plant. They do not want lagoons “in their backyards.” These residents, and the City of Alton, still oppose constructing lagoons.

- ✓ **On-site treatment of residuals is substantially more expensive.**

There would be a financial impact on water rates for local customers. Lagoons and the alternate residual-handling technologies at the treatment plant are substantially more expensive than the direct discharge and offset program that has been in place since 2000. In 1999, the construction of lagoons/filter presses was estimated to cost \$7.4 million at the new plant, or \$720,000 annualized over 30 years. In addition, it was estimated that it would cost approximately \$420,000 more annually to maintain and operate lagoons/filter presses at the plant site.

✓ **Increased truck traffic on scenic byway.**

Treatment of solids would require the daily hauling of waste solids from the water treatment plant site to a landfill. Under worst-case conditions, this would mean 17 truckloads per day. At a minimum, hauling was expected to require three truck trips per day. Hauling solids would mean increased truck traffic along one of the nation's most scenic highways, near a public park and bike trail.

✓ **The "direct discharge" practice meets all current legal standards.**

Allowing direct discharge of residuals into the Mississippi River in Alton was studied by an independent expert, which recommended direct discharge as the best method for handling residuals at the Alton facility under the relevant standards set by federal and state laws.

✓ **Illinois American Water's partnership with Great Rivers Land Trust is a creative alternate solution that has benefited all of the stakeholders and the environment.**

Eight years ago, Illinois American Water worked with the Great Rivers Land Trust (GRLT) and the Illinois EPA to create an alternative to lagoons that would benefit all stakeholders and the environment and could be proposed to the Illinois Pollution Control Board. The parties came up with an innovative solution -- allow the new treatment facility to return river mud and silt to the river in exchange for participation in a sediment reduction project in the Piasa Creek watershed. The Illinois Pollution Control Board approved the proposal and issued an adjusted standard allowing direct discharge.

As a result, Illinois American Water continued its practice of direct discharge when the new Alton treatment facility went on-line. Illinois American Water also has provided funding to the GRLT for the Piasa Creek Watershed Project, a project designed to significantly improve the sediment loading which occurs from the Piasa Creek, located "up-river" from the new water treatment facility. The sediment control from this project more than offsets the sediment which the water treatment plant would return to the river. This is being accomplished at less cost, and without the negative impact of using lagoons (at the plant site) and trucking the sediment to landfills daily.

The Piasa Creek Watershed Project has been highly successful. The goal was to reduce net sediment loading to the river by at least 2:1. The 2:1 offset was achieved four years ahead of schedule. Further reductions are practically guaranteed through 2010. Soil savings are self-sustaining for an extended duration. Land acquisitions and conservation easements will last indefinitely.

In addition, over the past eight years, the Piasa Creek Watershed Project has earned the following recognition and awards:

- 2002 Illinois Governor's Pollution Prevention Award
- Trees Forever National Award
- National Resource Conservation Service's Conservation Academy Award.
- U.S. Department of Agriculture Earth Team Volunteer Program Award
- Soil and Water Conservation Society's National Merit Award

✓ **Eight Years Later, The Program is in Jeopardy**

No one knew in 1999 whether the 2:1 offset could be attained, so two safeguards were inserted into the adjusted standard:

1. A 5-year Illinois EPA review at the halfway point of the project to determine if the project was on target to meet the ten-year goal.
2. A 7-year sunset provision to allow the Board to consider the effectiveness of the project before continuing it.

The sunset provision is scheduled to expire in October 2007. Because of the sunset provision, Illinois American Water must seek an extension of the adjusted standard from the Illinois Pollution Control Board. The Petition for Extension was filed October 31, 2006. Illinois EPA stated initial opposition, and Illinois American Water tried to address some of the agency's concerns, and filed an Amended Petition on April 2, 2007. Illinois EPA has until May 17, 2007 to file a response.

- ✓ **The original objective was environmental – sediment loading reduction – and the environmental benefits, along with cost savings, continue to make the project a win-win for all stakeholders.**

-- end --



Azevedo.George@epamail.e
pa.gov

05/30/2007 10:38 AM

To: Cindy.Hebenstreit@amwater.com

cc:

bcc:

Subject: Re: Illinois American Water Piasa Creek project

History: This message has been replied to and forwarded.

Hi Cindy,

Thank you for your message. I understand that your NPDES permit is up for renewal and that you are concerned about the process. However, I encourage you to continue working with the Illinois Environmental Protection Agency in this matter, as they are the designated permitting authority. The NPDES permit and variance from water quality standards you are seeking for this facility are issued by the State of Illinois.

I believe that the situation is salvageable and I will work with the State to that end.

Best Regards, George.
(Embedded image moved to file: pic11643.gif)

Cindy.Hebenstreit
t@amwater.com

05/29/2007 01:59
PM

To: George Azevedo/R5/USEPA/US@EPA
cc:

Subject
Illinois American Water Piasa
Creek project

Hi George,
We had spoken a couple months ago regarding the Piasa Creek Watershed Project--a water quality trading project that Illinois American Water has been involved in since 2000. The program has been very successful, achieving more than a 2:1 reduction in sediment loading. Illinois EPA has stated opposition to the Illinois Pollution Control Board renewal of the adjusted standard that allows discharge of the residuals to the

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Mississippi

River. The explanation given is that a "philosophical change" has occurred in how the agency views this issue. If Illinois-American is not granted the renewal, then the company will have to go ahead and build a residuals processing facility anyway, and the initial \$4 million invested in the watershed protection program will be viewed only as a delay to the eventual sludge handling facility.

From previous conversations, I understand U.S. EPA promotes and supports water quality trading as an innovative and cost effective approach to achieve water quality standards. It would be helpful if the agencies in

Illinois knew of the general support for such programs. Can you offer advice as to how to approach EPA to get their input into this matter? I've attached a summary of the project and issues below. Please call me to

discuss if you would like additional information. Your consideration of this matter is very much appreciated.

(See attached file: Alton Direct Discharge April 2007 Summary Fact Sheet.DOC)

Cindy Hebenstreit

Director, Environmental Management

American Water--Central Region

727 Craig Road

St. Louis, MO 63141

314-996-2391 office

314-640-7787 cell (See attached file: Alton Direct Discharge April 2007



Summary Fact Sheet.DOC) pic11643.gif Alton Direct Discharge April 2007 Summary Fact Sheet.DOC

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED EXTENSION OF ADJUSTED STANDARD)	AS 2007-2
APPLICABLE TO ILLINOIS-AMERICAN)	(Adjusted Standard)
WATER COMPANY'S ALTON PUBLIC WATER)	
SUPPLY FACILITY DISCHARGE)	
TO THE MISSISSIPPI RIVER)	

AFFIDAVIT OF JEFFREY T. KAISER

I, Jeffrey T. Kaiser, after being first duly sworn upon my oath, do depose and say as follows:

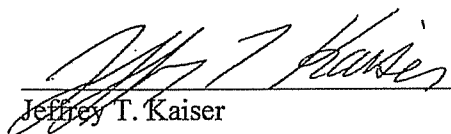
1. I work at Black & Veatch Corporation where I hold the position of Project Manager for water and wastewater projects. I have been actively engaged in the field of civil engineering for more than 20 years, and I am registered by the state of Illinois as a Professional Engineer. Also, I was certified as an expert at the Board's August 28, 2007 hearing.

2. I submitted pre-filed testimony in this case on behalf of Illinois-American Water Company ("Illinois-American Water"). The purpose of my testimony was to compare and contrast the sediment reduction effort of Illinois-American Water's Alton plant (through the Piasa Creek Watershed Project) with the sediment reduction efforts of six point sources identified by the Agency in its Recommendation.

3. For the majority of those six point sources, my testimony addressed whether the facility in question uses lime softening as part of its treatment process. My testimony did not address this point for the Kincaid area's water treatment system. At the August 28, 2007 hearing, the Board's Senior Environmental Scientist, Mr. Anand Rao, asked me to state whether the Kincaid system uses lime softening, and I was unable to do so without reviewing my notes and conducting a minimal amount of additional research.

4. Following this review of my notes and this additional research, I determined that the Kincaid system does not use lime softening as part of its treatment process.

Further, Affiant sayeth not.



 Jeffrey T. Kaiser

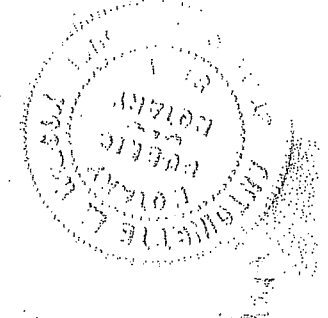
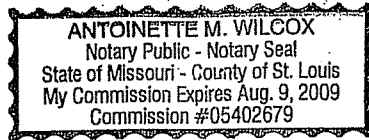
State of Missouri)
) ss
County of St. Louis)

Subscribed and sworn to before me this 10 day of September, 2007.

Antoinette M Wilcox
.....
Notary Public

My Commission Expires:
.....

[SEAL]



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
 PROPOSED EXTENSION OF ADJUSTED STANDARD) AS 2007-2
 APPLICABLE TO ILLINOIS-AMERICAN) (Adjusted Standard)
 WATER COMPANY'S ALTON PUBLIC WATER)
 SUPPLY FACILITY DISCHARGE)
 TO THE MISSISSIPPI RIVER)

AFFIDAVIT OF CINDY HEBENSTREIT

I, Cindy Hebenstreit, after being first duly sworn upon my oath, do depose and say as follows:

1. I am employed by American Water Works Service Company, Inc., a subsidiary of American Water Works Company, Inc. ("American Water"), as Central Region Director, Environmental Management & Compliance. The Central Region includes the operations of Illinois-American Water Company ("Illinois-American Water").

2. Mr. George Azevedo, the NPDES Nutrients and Water Quality Trading Coordinator for USEPA Region 5, called me in August 2006, to discuss the Piasa Creek Watershed Project ("PCWP") and water quality trading. I discussed the PCWP in detail with him at that time. During that call, Mr. Azevedo said he is very impressed by the PCWP. Also, he said that his job is to get states on board with, and to promote, water quality trading.

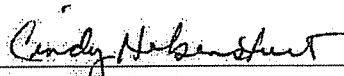
3. I called Mr. Azevedo in February 2007 regarding our concerns about the Illinois Environmental Protection Agency's (the "Agency's") view on whether water quality trading should be permitted in this case. During this call, Mr. Azevedo again stated that he is extremely supportive of the PCWP. He also referred to Illinois-American Water as a "champion," and stated that USEPA wants the PCWP to be successful.

4. I received an e-mail from Mr. Azevedo on February 27, 2007. The e-mail attached to Illinois-American Water's Post-Hearing Brief as Exhibit 1A is a true and accurate copy of that e-mail.

5. I sent an e-mail to Mr. Azevedo on May 29, 2007. The e-mail attached to Illinois-American Water's Post-Hearing Brief as Exhibit 1B is a true and accurate copy of that e-mail.

6. I received an e-mail message from Mr. Azevedo on May 30, 2007. The e-mail attached to Illinois-American Water's Post-Hearing Brief as Exhibit 1C is a true and accurate copy of that e-mail.

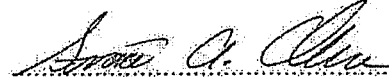
Further, Affiant sayeth not.



 Cindy Hebenstreit

State of Missouri)
) ss
County of St. Louis)

Subscribed and sworn to before me this 10th day of September, 2007.


.....
Notary Public

My Commission Expires:

.....
[SEAL] **Staci A. Olsen**
 Notary Public - Notary Seal
 State of Missouri
 St. Charles County
 Commission # 05519210
 My Commission Expires: March 20, 2009