

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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SEP 17 2007

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO)
DISSOLVED OXYGEN STANDARD)
35 ILL ADM. CODE 302.206)

R2004-025
(Rulemaking - Water)

pc#113

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on September 17, 2007 the Illinois Association of Waste Water Agencies filed the following, **Public Comments of the Illinois Association of Wastewater Agencies to the First Notice of Adoption of Proposed Amendments to General Use Water Quality Standard for Dissolved Oxygen (35 Ill. Adm. Code 302.206)**, with the Clerk of the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,



By: _____

Roy M. Harsch on behalf of
Illinois Association of Wastewater Agencies

Dated: September 17, 2007

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THIS FILING IS SUBMITTED ON RECYCLED PAPER

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STATE OF ILLINOIS
Pollution Control Board

**PUBLIC COMMENTS OF THE ILLINOIS ASSOCIATION OF WASTEWATER AGENCIES IN
RESPONSE TO FIRST NOTICE OF ADOPTION OF PROPOSED AMENDMENTS TO
GENERAL USE WATER QUALITY STANDARD FOR DISSOLVED OXYGEN (35 Ill. Adm.
Code 302.206)**

The Illinois Association of Wastewater Agencies (“IAWA”) would like to take this opportunity to comment on the first notice of proposed amendment to the general use water quality standards for dissolved oxygen (35 Ill. Adm. Code 302.206), published in the federal register on August 3, 2007. The IAWA thanks the Illinois Pollution Control Board (“Board”) for its recognition of the need to update the Illinois dissolved oxygen water quality standard in Illinois and comments as follows:

As this rule making record clearly establishes, the original dissolved oxygen water quality standard had fundamental flaws largely because it was never based in the science necessary for such a complex standard. As this rule making preceded, even the Illinois Department of Natural Resources (“IDNR”) and the Illinois Environmental Protection Agency (“IEPA”) finally agreed that changes were necessary as well. What the IAWA would like to achieve and support in this and similar future rule makings, is that fundamental science be the basis for the development and improvement of complex water quality standards.

IAWA can agree with all of the proposed modifications to the original petition except the establishment of a different dissolved oxygen standard for specified stream segments designated as enhanced segments¹. The enhanced water standards portion of the proposed rule (35 Ill. Adm. Code 302.206 (c)) is not based on sound science. It has no field evidence to show that it is necessary and there is no ‘ground proof’ that it would improve local conditions in the designated segments let alone improve water quality in those segments.

While the Board has very broad authority to adopt various water quality standards, expressly including dissolved oxygen regulations, pursuant to Section 27 of the Illinois Environmental Protection Act (“ACT”); its authority is not unlimited. 415 ILCS 5/27(a)(2006).

¹ While IAWA believes that the inclusion of July with cooler months makes absolutely no sense and totally ignores meteorological conditions, IAWA can at least recognize that there maybe some scientific basis for continued protection of spawning organisms.

The Act requires that the Board take into consideration the existing physical conditions, including the nature of the existing receiving water. *Id.* As clearly shown in this record, existing data indicates that many of the proposed enhanced segments do not now meet the proposed dissolved oxygen standard. The segments were selected based on existing habitat and the possibility that those segments might eventually support dissolved oxygen sensitive species. Carving out the suggested segments with no evidence that the ‘*enhanced*’ standard will do any good is wasteful and not based in the science IAWA hopes to have as a basis for sound regulations.

There is a cost for decisions such as these. As noted by the Board in pages 48 and 49 of the First Notice of the Proposed Rule R04-25 (July 12, 2007), those enhanced segments which do not comply with the standards are to be identified and placed on the 303(d) list for ultimate development of Total Maximum Daily Loadings (“TMDL”). The cost burden will be shared by the state as well as taxpayers in studying and establishing the TMDLs (when these river segments are due for analysis) that in the end will be ineffective and unnecessary. There is no evidence that the dissolved oxygen concentrations lower than the proposed standards in these segments is due to the impact from any point or nonpoint source discharges. It may be entirely possible that many of these segments, given their existing physical condition and nature, may not support dissolved oxygen levels that will comply even absent the impact of any discharges.

The IAWA assessment of National Criteria Document (“NCD”) and its proposed dissolved oxygen water quality standard has withstood the test of several years of evaluation and field measurements that have continued to support the position of IAWA in regards to establishing reasonable dissolved oxygen requirements in Illinois. All the new data further supports this position. The seasonality of the proposed concentrations has also held up to that test. The IAWA proposed standard is more conservative than that suggested in the NCD in regards to establishing minimas for dissolved oxygen and it adheres to the advice of local experts in establishing the months of late spawning and protecting those early life stages. The IAWA has acknowledged that some waters in Illinois could be identified as requiring a different dissolved oxygen average or minima for certain least disturbed waters. However, the IAWA adamantly opposes establishing such criteria without the ground truthing data to support that designation. The IAWA proposes to work closely with IEPA and IDNR and other interested parties in establishing those criteria and determining what are the attainable uses of the rivers and waters in Illinois.

The IAWA has spent a great deal of time and resources utilizing fundamentally sound science developing the data to support the original petition. The petition was ground truthed in field studies and subsequent measurements. While the establishment of enhanced river segments should be the goal and would be achieved eventually in a process of establishing designated uses, the enhanced river segments should not be established on subjective criterion that has been proposed by the IDNR and the IEPA.


The adoption of this First Notice proposal will enshrine segments of rivers that might never be supportive of the enhanced segments at the prescribed dissolved oxygen levels or the proposed dissolved water quality standards. This proposal may at the very same time leave out other segments which could possibly be in need of the more restrictive standards if they were

appropriately identified. The establishment of enhanced river segments with accompanying water quality standards creates a hardship that has no basis in science for the individual public agencies that may be discharging to those segments.

The Board states that site-specific relief in the form of either an adjusted standard or site-specific under the Act is available "if a discharger believes these more protective DO standards are not warranted for a given stream segment." (See page 3 of the First Notice of the Proposed Rule R04-25 (July 12, 2007)). However the Board has not set forth the factors that such a discharger would have to show to successfully convince the Board to grant such site-specific relief. There was no direct evidence presented in this record that the dissolved oxygen sensitive species actually exist in each segment, that the low dissolved oxygen level in all of the segments that are presently below that required standard is the result of the impact by any discharge (whether point or non-point) or that the existing physical condition and/or nature of such segments is such that the standard is in fact attainable. Thus, the delineation of necessary factors to be shown in any site-specific request is necessary and should be set forth in this rule.

The IAWA believes that the dissolved oxygen standard in Illinois is in need of revision and that the First Notice proposal moves significantly toward establishing the reasonable dissolved oxygen standard necessary to maintain and improve water quality. Including the proposed enhanced standard on the river segments will once again include the fundamental flaws of poor science that is the underlying weakness of the existing dissolved oxygen standard.

Respectfully submitted,

By: 

Roy M. Harsch on behalf of
Illinois Association of Wastewater Agencies

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **Public Comments of the Illinois Association of Wastewater Agencies to the First Notice of Adoption of Proposed Amendments to General Use Water Quality Standard for Dissolved Oxygen (35 Ill. Adm. Code 302.206)** was filed by hand delivery with the Clerk of the Illinois Pollution Control Board and served upon the parties to whom said Notice is directed by first class mail, postage prepaid, by depositing in the U.S. Mail at 191 North Wacker Drive, Chicago, Illinois on Monday, September 17, 2007.



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