

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

PLEASE TAKE NOTICE that on September 18, 2007, there was electronically filed with the Office of the Clerk of the Illinois Pollution Control Board of the State of Illinois an original, executed copy of the AGENCY'S POST-HEARING REPLY BRIEF, a copy of which is herewith served upon you.

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Illinois Pollution Control Board
James R. Thompson Center
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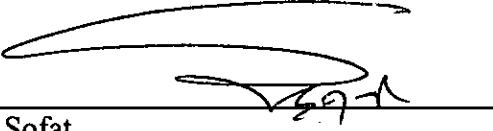
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: 
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Dated: September 18, 2007
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PROPOSED EXTENSION OF ADJUSTED STANDARD) AS 2007-2
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AGENCY'S POST-HEARING REPLY BRIEF

NOW COMES the Respondent, Illinois Environmental Protection Agency ("Illinois EPA" or "Agency") by and through its attorney, Sanjay K. Sofat, Assistant Counsel, hereby submits this reply to Illinois-American Water Company's ("Illinois-American") post-hearing brief for an adjusted standard for its Alton Public Water Supply facility. In its post-hearing brief, Illinois-American argues that there are two remaining issues: 1) the success of the Great River Land Trust's ("GRLT") project, and 2) whether that GRLT project is a "unique factor" or a "substantially and significantly different factor" than the Board considered in adopting the general effluent limitations. Despite Illinois-American's countless attempts to limit the Board's review to just the GRLT project, the issue before the Board is whether Illinois-American has met its burden of proof as required under Section 28.1 of the Act. The Agency asserts that Illinois-American has not met this statutory burden.

I. Introduction

Illinois-American relies heavily upon the GRLT project to justify its requested relief. The Agency does not dispute the significance of the GRLT project, but takes issue

with the purpose for which the project is being used. Illinois-American's use of the GRLT project in lieu of technology-based controls is inconsistent with the language and the goal of the Clean Water Act ("CWA"). Illinois-American also relies heavily upon the Agency's support of the project in the AS 99-6 proceeding. The Agency readily admits that the Agency's recommendation¹ in AS 99-6 failed to correctly interpret and implement the CWA. For the reasons stated below, the Agency recommends that this Board deny Illinois-American's adjusted standard with regards to its funding of the GRLT project in lieu of technology-based standards.

II. Arguments

In this brief, the Agency will address only the pertinent issues from Illinois-American's Post-Hearing Brief. The discussion below shows that Illinois-American is not entitled to an adjusted standard for merely funding a sedimentation reduction project. Further, the Agency will show that Illinois-American has misconstrued the Board's regulations to a point where practically any facility could be granted an adjusted standard from technology-based controls by funding a non-point source control project.

A. The Success of the GRLT Project is Not a Relevant Factor in Granting this Adjusted Standard.

Illinois-American attempts to persuade this Board to focus solely on the facts of the GRLT project. In support, Illinois-American asserts that the GRLT project was the

¹ Illinois-American believes that the Agency's support in AS 99-6 precludes it from changing its position in the present proceeding. However, nothing precludes an administrative agency from making reasonable changes in the interpretation of its regulations. *See Montana Power Co. v. EPA*, 608 F.2d 334, 348 (9th Cir.1979). Also, an agency is not bound by its prior determinations, and their "decisions may not be set aside merely because the agency has, on an earlier occasion reached a contrary result." *International Paper, Inc. v. Bridges*, 954 So.2d 321, 328 (2d Cir. 2007) (citing *Permian Basin Area-Rate Cases*, 390 U.S. 747, 88 S.Ct. 1344, 20 L.Ed. 312 (1968)).

essence of AS 99-6 proceeding, and should remain the essence of the present proceeding as well. *Illinois-American's Post-Hearing Brief*, AS 07-02, September 10, 2007 at 2 (Hereinafter "*IL-American's Post-Hearing brief*"). The Agency objects to Illinois-American's attempt to limit the Board's review of this adjusted standard to only the GRLT project. Rather, the Board should review all the relevant facts in the present proceeding to determine if an adjusted standard is warranted under Section 28.1. There are two obvious facts which Illinois-American cannot deny: 1) Illinois-American is subject to effluent limitations just like any other facility in Illinois,² and 2) Technology-based controls, applicable to Illinois-American, are both economically reasonable and technically feasible.

B. The GRLT Project is Neither a "Unique Factor," Nor a "Substantially and Significantly Different Factor"

Illinois-American argues that "no treatment" is the appropriate technology-based control in this case and cites to the Agency's silence in the AS 99-6 proceeding. Illinois-American also criticizes the Agency for not performing Best Professional Judgment ("BPJ") to determine whether technology-based controls should apply to Illinois-American's Alton facility. *IL-American's Brief Post-Hearing Brief* at 6. The simple fact is that the Agency's does not have to perform a BPJ analysis if a technology-based standard for the pollutant of concerns exists in Part 304³ of the Board regulations. Only

² Illinois-American goes to great length to highlight the fact that Illinois-American's Alton facility has not had to meet the State's effluent standards in over 100 years. Illinois-American then attempts to use this fact as "evidence" that there are no effluent standards for the Alton area. However, the mere fact that Illinois-American is seeking this adjusted standard speaks to the fact that Illinois-American recognizes that it is still required under law to meet Illinois' effluent limitations. Further, the fact that Illinois-American has been granted relief in the past does not justify the need for continued relief. Instead, Illinois-American must meet the requirements under Section 28.1 of the Act to justify the need for its request for an adjusted standard.

³ In 1972, the Board chose to adopt Part 304 standards, to avoid an overwhelming task of obtaining the necessary case-by-case information to determine what limits are readily achievable in a given case. *See In The Matter Of: Effluent Criteria, R70-8; In The Matter Of: Water Quality Standards, R71-14; In The*

where no state or federal technology-based standard exists, does the Agency have to perform a BPJ analysis.

Further, if this Board were to reject the Agency's analysis concerning BPJ, Illinois-American's argument still cannot prevail. According to Illinois-American, the GRLT project is a "unique factor," under 40 C.F.R. 125.3(c)(2). Illinois-American asserts that their consulting firm, ENSR, conducted a BPJ analysis in 1999. In 1999, ENSR determined through BPJ "the best practicable control technology (BPT) for the proposed Alton replacement facility is no treatment of TSS in the discharge." *Illinois-American's Post-Hearing Brief* at 5. Illinois-American further concludes that since the Agency's recommendation in AS 99-6 raised no objection to ENSR's BPJ being no treatment, then the Agency should not have an issue with this BPJ analysis now. Illinois-American's argument is flawed because the GRLT is not a "unique factor" and most importantly "no treatment" is an unacceptable BPJ analysis under the CWA.

Additionally, Illinois-American's interpretation of a "unique factor" and the Board's interpretation of a "unique factor" are much different. Specifically, in *In the Matter of: Proposed Site-Specific Rule Change for the City of Rock Island's Public Water Supply Treatment Plant Discharge: 35 Ill. Adm. Code 304.217, R87-34*, at 14, March 22, 1990, the Board held that Rock Island, "[h]as not shown a comparable combination of unique factors that would distinguish it from the host of Illinois communities which are subject to Illinois' technology-based standards." Unlike Illinois-American's liberal interpretation of a unique factor, the Board adopted an interpretation which required

Matter Of: Water Quality Standards Revisions For Interstate Waters (SWB-14), R71-20, slip op. at 1, January 6, 1972.

petitioner to show that a "combination of unique factors"⁴ entitled it to an adjusted standard.

Here, according to Illinois-American, the unique factors are: 1) that it is funding the GRLT project, 2) the facility is located on the Mississippi River, and 3) the solids in the facility's effluent are comprised almost entirely of sediment present in the raw water. Under Section 28.1 of the Act, funding of a sedimentation reduction project is not a unique factor. Again, a "unique factor" has been interpreted to mean actual technical and engineering characteristics of the facility, not the financial contributions of the operating company. *See Agency's Post-Hearing Brief* at 11-13.

Also, the fact that the facility is located on the Mississippi River is not a unique factor. There are several other public water supplies on the Mississippi River that can and do meet technology-based standards for TSS and total iron. Additionally, there are several other regulated entities on the Mississippi River that can and do meet standards for TSS and total iron. *See Agency's Post-Hearing Brief* at 10 and 26-27.

Further, the fact that the Mississippi River already has TSS does not preclude the State from implementing controls which seek, "to restore, protect, and enhance the quality of the environment...." Also, Illinois-American has advanced this argument before, regarding the condition of the Mississippi River. In *East St. Louis and Interurban Water Co. v. IEPA and Alton Water Company v. IEPA, PCB 76-297 and PCB 76-298 (consolidated)*, February 17, 1977, petitioners East Saint Louis and the Interurban Water Company and the Alton Water Company appealed the Agency's issuance of NPDES

⁴ *In the Matter of: Proposed Site-Specific Rule Change for the City of Rock Island's Public Water Supply Treatment Plant Discharge: 35 Ill. Adm. Code 304.217, R87-34, March 22, 1990*, the petitioner, city of Rock Island tried to argue that its facility was very similar to the Alton's facility which the Board had previously granted relief to under an adjusted standard (R82-3). However, the Board denied Rock Island relief, because it failed to demonstrate any unique factors, such as those that existed at the Alton facility, to warrant the relief from the technology-based standards.

permits with TSS limitations, consistent with the State's effluent limitations. Petitioners asserted that since TSS was already in the Mississippi River, they should not be required to clean what is already in the water. The Board held that the background concentrations in the Mississippi River do not preclude a facility from using technology-based controls to meet TSS standards. Specifically, the Board noted that:

401(b) [now 35 Ill. Adm. Code 304.106] refers to "users" of water. However, in the present case Petitioners do not "use" waters, as for example, would a facility which uses water for cooling purposes and then discharges it. Petitioners' herein are consumers of the water; the water itself is a commodity which they market. The Board finds that the exception granted in Rule 401(b) was not intended to apply to this type of situation. *Id.* at 3.

Following this ruling, both East Saint Louis and Interurban Water Company and the Alton Water company pursued site-specific rulemakings.

Here, Illinois-American does not present any compelling evidence to show why this Board should ignore its long-standing policy of granting adjusted standards for only those facilities with unique technical or engineering characteristics. Rather, Illinois-American's only argument is that the Alton community does not support the building of treatment control technologies. Some members of the Alton community have voiced opposition to the Agency's Recommendation because the building of technology-based controls would increase traffic along the highway, interfere with the nearby bike path, and be an unsightly addition to their community. In the past, the Board has also dealt with a similar situation in Rock Island, where the community and the public water supply argued that the building of technology-based controls would interfere with a recreational park. However, the Board rejected that argument, stating that, "equally important, as a matter of policy, we cannot weigh the relative value of this "park" against the value of

compliance with environmental directives....” *In the Matter of: Proposed Site-Specific Rule Change For the City of Rock Island’s Public Water Supply Treatment Plant Discharge: 35 Ill. Adm. Code 304.217, R87-34, At 16, March 22, 1990.* Accordingly, this Board should reject Illinois-American’s argument that local concerns should override the necessity of required environmental laws.

Again, whether Illinois-American wishes to call it a “substantially and significantly different factor” or a “unique factor,” the analysis is the same. Those terms refer to the actual technical and/or engineering characteristics of the facility, not to financial contributions made by a facility. If the Board were to accept Illinois-American’s liberal interpretation of “substantially and significantly different factor” or a “unique factor,” then almost any facility could successfully petition for an adjusted standard.

To further demonstrate how Illinois-American has misconstrued the unique factor requirement, below is a table of the Board’s adjusted standards. The table shows that, prior to the legislature passed Section 28.3 on September 7, 1990, the Board granted adjusted standards (or site-specific rulemakings) only in unique circumstances.

Facility	PCB #	Relief Requested	Relief Granted
Illinois-American (E. St. Louis Treatment Plant)	R85-11 2/2/89	Complete relief from effluent limitations for TSS and iron	Granted for a period of 3 years, with the provision that the company shall conduct a comprehensive study of the effects of the polymers on the Mississippi River.
Illinois-American (Alton facility)	R82-3 3/8/84	Complete relief from effluent limitations for TSS and iron	Granted because Alton did not have room to add treatment facilities for TSS.
Rock Island	R87-34 3/22/90	TSS, iron, and manganese	Denied

Public Act 86-1363, effective September 7, 1990; codified as 415 ILCS 5/28.3 (1998).

Rock Island	AS 91-13 10/19/95	TSS, iron, and manganese	Granted pursuant to Section 28.3
East St. Louis	AS 91-11 5/20/93	TSS and iron	Granted pursuant to Section 28.3
East Moline	AS 91-09 5/19/94	TSS, iron, BOD, manganese, and copper	Granted pursuant to Section 28.3
Illinois-American (Alton facility)	AS 99-6	TSS and iron	Granted, Under 28.1 for a period of seven years

Clearly, AS 99-6 is an anomaly. The Agency recommends that this Board follow the long-standing policy of granting adjusted standards in only rare cases, where the petitioner can successfully meet the requirements under Section 28.1 of the Act.

Contrary to Illinois-American's belief, neither the Board nor the federal scheme allows for such a liberal reading of "unique factors" or "substantial or significantly different factor" so that even the smallest bit of evidence could be construed as a unique factor. As such, the Board should reject Illinois-American's attempt to skew this requirement.

C. This Adjusted Standard Proceeding is Not the Proper Forum To Promulgate Illinois Trading Policy.

Contrary to Illinois-American's wishes, this adjusted standard proceeding is not the proper forum for promulgating a trading policy for Illinois. If and when, a trading policy is promulgated, it will be done through a formal rulemaking, consistent with Illinois law. Further, "an administrative agency, such as the Board, is a 'creature of statute,' and therefore, has only the authority given to it by the Act." *Granite City Div. Of Nat. Steel Co. v. PCB*, 155 Ill.2d 149, 171, 613 N.E.2d 719, 729 (1993).

In the past, the Board has also rejected attempts by petitioners to promulgate new policies within their requested adjusted standards. *In the Matter of: Proposed Site-*

Specific Rule Change for the City of Rock Island's Public Water Supply Treatment Plant Discharge: 35 Ill. Adm. Code 304.217, R87-34, March 22, 1990. In R87-34, Rock Island Public Water Supply Treatment Plant asserted that water treatment plants should be exempt from technology-based controls to treat for TSS, because the Ohio River Valley Water Sanitation Commission ("ORSANCO"), of which Illinois is a member, "favors the allowing of the controlled release of water plant sludges on a case-by-case basis, provided there are no adverse stream effects." *Id.* at 8-9. Further, Rock Island cited ORSANCO studies "[w]hich conclude[d] that technology-based effluent limits are inappropriate due to the high cost compared to the lack of significant benefits." *Id.* at 9. The Board, however, rejected Rock Island's attempts to persuade it into ruling on the merits of the concepts espoused by ORSANCO. *Id.* at 14. The Board noted that,

These concepts reflect an approach which would represent a broad departure from Illinois' current technology-based standards, and must be addressed in the context of a general rulemaking, not in the context of a site-specific rule. To do otherwise would induce chaos and inequitable treatment of similarly-situated dischargers." *Id.*

Similarly, this Board should reject Illinois-American's attempt to persuade this Board that technology-based controls do little to improve or enhance the quality of the Mississippi River. Further, this Board should reject Illinois-American's attempt to promulgate an Illinois trading policy within this adjusted standard proceeding consistent with its ruling in R 87-34.

Illinois-American also asserts that the absence of a trading policy does not prohibit Illinois-American's use of the sedimentation reduction project, in lieu of technology-based standards. Yet, Illinois-American fails to cite any legal authority in support of its conclusions.

Illinois-American cites AS 91-9 and AS 91-13 as justification that this Board has before approved an offset project in lieu of technology-based standards. Illinois-American asserts these adjusted standards were granted indefinitely and with more lenient conditions than Illinois-American's offset project. However, Illinois-American conveniently glazes over the fact that these adjusted standards were granted pursuant to a special provision under Section 28.3 of the Act (See Table on page 8-9). Section 28.3 of the Act, which was signed into law on September 7, 1990, establishes provisions whereby certain petitioners may request of the Board an adjustment of the standards otherwise applicable to direct discharge of waste solids to the Mississippi or Ohio Rivers. Public Act 86-1363, effective September 7, 1990; codified as 415 ILCS 5/28.3 (1998). However, the legislature limited the applicability of Section 28.3 to only adjusted standard petitioned before January 1, 1992. Therefore, it is clear that the legislature did not intend for relief under this Section beyond 1992. It is well-settled that administrative agencies are limited to the rule-making power granted them by the legislature. *Peabody Coal Co. v. Illinois Pollution Control Bd.*, 36 Ill.App.3d 5, 344 N.E. 2d 279, 282 (5th Dist., 1976) (Citing *Ruby Chevrolet, Inc. v. Department of Revenue*, 6 Ill.2d 147, 126 N.E.2d 617 (1955)).

D. Illinois-American's Conclusions Are Not Supported by Mr. Azevedo's Email Correspondence

Illinois-American asserts that Mr. George Azevedo's email correspondence with Ms. Cindy Hebenstreit is "evidence" that the Agency has misinterpreted USEPA policy on trading. One email dated February 27, 2007 from Mr. Azevedo to Ms. Hebenstreit merely points to information regarding USEPA's policy on trading. The only relevant information that can be gleaned from this email is that, 1) Ms. Hebenstreit and Mr.

Azevedo evidently had a discussion regarding the "Piasa Creek facility;" 2) Mr. Azevedo was still unclear regarding the specifics of the project, since he requested a "simple explanation or outline of the issue that have come up;" and 3) that USEPA supports trading projects. Notably missing from this email is anything saying affirmatively that USEPA supports Illinois-American's substitution of technology-based controls, by funding a non-point source program. Illinois-American's explanation of the email correspondence requires a great deal of reading in between the lines to conclude that this email is evidence of the Agency's misinterpretation of USEPA's trading policy.

On May 29, 2007, Ms. Hebenstreit sent Mr. Azevedo an email discussing Illinois EPA's opposition of the project. Ms. Hebenstreit also attaches a summary of the project for Mr. Azevedo to review. Mr. Azevedo's response dated May 30, 2007, can be summarized as merely reiterating that it is not USEPA's decision. Specifically, Mr. Azevedo writes, "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." Email Correspondence from George Azevedo to Cindy Hebenstreit, date 5/30/3007.

Further, Illinois-American concludes that if USEPA had a problem with AS 99-6, it could have objected to the project and NPDES permit in 1999. Illinois-American also concluded that it, "[f]irmly believes that USEPA's silence on the record with respect to

this specific adjusted standard to date shows that USEPA policy is consistent with the proposed standard, as USEPA is clearly aware⁵ of Illinois-American's Amended Petition and its request for an indefinite extension of its adjusted standard." *Illinois-American Post-Hearing Brief* at 16. USEPA's silence on Illinois-American's NPDES permit is because of its inability to review every NPDES permit issued by the Agency, not because of its acceptance of the proposed adjusted standard.

Illinois-American is correct in stating that this adjusted standard proceeding has captured the attention of USEPA. In fact, USEPA annually updates a list of trading projects within Region V. (See Attachments 1 and 2.) Illinois-American's "trading project" has been removed from USEPA's Region V Trading List because there were no trading provisions and it is generally inconsistent with federal law.

E. Technology-based Controls are Essential for Environmental Health of Our Rivers, Lakes, and Streams.

The Agency disagrees with Illinois-American's assertion that technology-based standards, which are required under federal law, would be "detrimental" to the environment. What Illinois-American fails to understand is that point source reductions and non-point source reductions are independent and complimentary to each other. In other words, point source reductions cannot be used as a substitute for non-point source reductions, or vice versa. When you substitute one pollution control technology in lieu of

⁵ Illinois-American goes back and forth on its stance about what USEPA knows and does not know with regards to their GRLT project. At one point, Illinois-American is highly critical of Mr. Toby Frevert's conversation with Mr. George Azevedo, stating that if Mr. Azevedo had been aware of the characteristics of the GRLT project, he would have concluded the project was consistent with the Federal policy on trading. Then, Illinois-American claims that the email correspondence between Mr. Azevedo and Ms. Cindy Hebenstreit dated 5/30/2007, somehow demonstrates that USEPA supports Illinois-American's "trading" project. However, the fact remains, even after Ms. Cindy Hebenstreit alerted Mr. Azevedo of the characteristics of the project, neither USEPA, nor Mr. Azevedo has explicitly proclaimed the project is consistent with the Federal Trading policy.

another, you are applying and achieving only one type of control. The CWA envisions implementation of both technology controls, not one in lieu of the other.

Also, Illinois-American asserts that if its adjusted standard is denied, then it will be forced to construct lagoons and conventional solids handling and will no longer fund GRLT, and the existing soil savings that exist today will decline. Although Illinois-American would like this Board to believe that the GRLT project would die without its support, the Agency is confident that a project like GRLT can find its funding with a State or federal agency, private foundations, or even corporate contributions. Further, nothing precludes Illinois-American from continuing to fund the GRLT project once it is in compliance with technology-based controls. In fact, such a scenario would be consistent with USEPA's trading policy.

F. Illinois-American Must Meet the Same Requirements Other Regulated Entities Have Met for Decades

Illinois-American attempts to persuade this Board that the regulated community needs clarification on whether the Board will grant relief from technology-based controls for a company's funding of a non-point source program. The Agency, however, believes that the regulated community is clear on the fact that the Agency would not support a non-point source control project as a substitute for technology-based controls. It is only Illinois-American that is mystified about this requirement.

Additionally, at the Board hearing, Illinois-American attempted to persuade the Board that it should not have to meet Illinois' technology-based standard for TSS and total iron, because if the plant was in Missouri, it would not have any TSS or total iron standards to meet. *Board's Hearing Transcript* 91:2-11, (Statement of Mr. Brad Hiles at the Board's Hearing) (stating that "... there would be this great irony that a water

treatment plant built directly across the river could direct discharge with no limitations whatsoever in TSS or iron, and I'm going to ask you, sir, again back to this issue of good policy, if that would be good policy to impose limitations on the Alton, Illinois, plant when there would in fact be no limitations imposed if that plant was directly across the river [in Missouri].") Yet, this Board has rejected a similar argument in the past stating that, "the fact that communities in other states may be allowed to pollute the river with their public water supply treatment wastes is beyond our ken and irrelevant for purposes of determining the merits of a site-specific claim for relief.") *In the Matter of: Proposed Site-Specific Rule Change For the City of Rock Island's Public Water Supply Treatment Plant Discharge: 35 Ill. Adm. Code 304.217, R87-34, at 14, March 22, 1990.*

In short, Illinois-American is merely attempting to elude what the rest of the State's point source dischargers must meet on a daily basis. Therefore, the Agency recommends that this Board require Illinois-American to meet technology-based controls.

III. Conclusion

Pursuant to 415 ILCS 5/28.1 and consistent with 415 ILCS 5/27(a), the Agency recommends that the Board should deny Illinois-American's requested relief from the total suspended solids and total iron discharges limitations, for its public water supply treatment plant on the Mississippi River, located in the City of Alton, Madison County.

Illinois-American has failed to meet its burden required under Section 28.1 of the Act. The technology controls required to treat TSS and total iron are both technically feasible and economically reasonable. Further, the GRLT project is not a unique factor or a substantially and significantly different factor than those considered by the Board in

adopting the standard of general applicability. Additionally, federal law prohibits that use of an offset project in lieu of technology-based controls.

In short, Illinois-American must comply with the same regulatory controls that the rest of Illinois' regulated entities have complied with for years. The Agency, thus, requests that the Board deny Illinois-American's adjusted standard.

WHEREFORE, for the reasons stated herein, the Agency recommends that the Pollution Control Board **DENY** the adjusted standard Petition of Illinois-American Water Company.

Respectfully Submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: 

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STATE OF ILLINOIS)
)
COUNTY OF SANGAMON) SS

AFFIDAVIT OF TOBY FREVERT


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

1. I am employed by the Illinois Environmental Protection Agency, as the Manager of the Division of the Water Pollution Control.
2. I received an email from Mr. George Azevedo, the NPDES Nutrients and Water Quality Trading Coordinator for USEPA Region 5, on August 23, 2007.
3. The email attached to the Agency's Post-Hearing Reply Brief as Attachment 1 is a true and accurate copy of that email.
4. The spreadsheet attached to the Agency's Post-Hearing Reply Brief as Attachment 2 is a true and accurate copy of that spreadsheet.

Further, Affiant sayeth not.


Toby Frevert

Subscribed and sworn to before me, a notary public in and for said County and State, this 18th day of September 2007.


Notary Public

My Commission Expires:

11-3-09



ATTACHMENT 1

Electronic Filing, Received, Clerk's Office, September 18, 2007

From: Toby Frevert
To: Sofat, Sanjay
Date: 9/11/2007 4:33:26 PM
Subject: Fwd: Fw: Trading Permit Database Annual Update

FYI

Please note my email address has changed to: Toby.Frevert@illinois.gov

>>> Al Keller 8/23/2007 11:32 AM >>>

I am going to advise George the info is perfect for Illinois.

>>> <Azevedo.George@epamail.epa.gov> 8/23/2007 10:01:53 AM >>>

Dear Water Quality Trade Colleagues,

HQ has asked me to confirm the water quality trade data used to track progress in the program.

Can you please review the information in the attached spreadsheet from your state and inform me of any errors. In particular, the "Region 5" tab has the number of permits featuring trading language for each program, the number of facilities covered by those permits, and the number of facilities that have actually traded.

(See attached file: permit_inventory_by region 2007 Working file.xls)

As a reminder HQ released the Water Quality Trading Toolkit recently, please forward this link to interested stakeholders in your state.

The Toolkit is a web-based document available at:

<http://www.epa.gov/waterqualitytrading/WQTTToolkit.html>

Regards, George.
312-886-0143

----- Forwarded by George Azevedo/R5/USEPA/US on 08/23/2007 09:35 AM

Kavya
Kasturi/DC/USEPA
/US

To

08/20/2007 02:44 PM Erik Beck/R1/USEPA/US@EPA, Jeff Gratz/R2/USEPA/US@EPA, Patricia Gleason/R3/USEPA/US, Curt Fehn/R4/USEPA/US@EPA, George Azevedo/R5/USEPA/US@EPA, Scott Stine/R6/USEPA/US@EPA, Mark Matthews/R7/USEPA/US@EPA, Sandra Stavnes/P2/R8/USEPA/US@EPA, Matthew Mitchell/R9/USEPA/US@EPA, Claire Schary/R10/USEPA/US@EPA

cc

Virginia Kibler/DC/USEPA/US

Subject
Trading Permit Database Annual
Update

Hi all,

It's that time of year again! I have attached the latest version the Trading Permit Database excel file. Please look at the file, verify that the information is correct, and update the table with any new information regarding trading in your region. The most important parts of the table are the number of permits featuring trading language for each program, the number of facilities covered by those permits, and the number of facilities that have actually traded.

Please return your revised tables to me by Friday, September 7. If you have any questions let me know.

Thanks everyone! Hope you're all having a great summer (and enjoying reading the Trading Toolkit)!

-Kavya

Kavya P Kasturi
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ATTACHMENT 2

Electronic Filing, Received, Clerk's Office, September 18, 2007

EPA Region	State	Contact	Permit/Facility Name	Corresponding NPDES Permit No.	Permit Type (IP or GP)	Total Number of Permits	Permit Status (D or F)	Number of Facilities	Trade Status	# of facilities trading	Number of Trades	PS-PS or PS-NPS?	Discharge Type	Watershed
5	Minnesota	Bruce Henningsgaard (651) 298-7756	Rahr Malting Co.	MN0031917	IP	1	F	1	Active	1	4	PS-NPS	industrial	Minnesota River Basin
5	Minnesota	Bruce Henningsgaard (651) 298-7756	Minnesota Beet Sugar Cooperative	MN0040665	IP	1	F	1	Active	1	258	PS-NPS	industrial	Minnesota River Basin/Crow River Watershed
5	Minnesota	Lisa McCormick 320-231-5343	Minnesota River Basin General Phosphorus Permit	MNG420000	GP	1	Final	41		4		PS-PS	POTW and Industrial	Minnesota River Basin
5	Wisconsin	Duane Schuettpeiz (608) 266-0156	City of Cumberland	WI0020354	IP	1	Final	1	Active	1		PS-NPS	POTW	Red Cedar River
5	Illinois	Toby Frevert and Al Keller; (217) 782-0610				0								
5	Illinois	Al Keller; (217) 782-0610	Illinois-American Water Company	IL0000299	IP	0	Final	0	No longer considered a trade in R5. Permit never included trading provisions? Issued Jan 1, 2001. Expired Dec 31, 2005; Will be reissued at some point	0		PS-NPS	Drinking water treatment facility	Piasa Creek Watershed
5	Indiana	Catherine Hess (317) 232-8704 Steve Roush (317) 232-8706												
5	Ohio	Gary Stuhlfauth (614) 644-2026	Alpine Cheese Co	OH0007960	IP	1	final	1	Issued May 8, 2006; effective January 1, 2007				Industrial	Sugar Creek
5	Ohio	Gary Stuhlfauth (614) 644-2026	City of Xenia (Glac	OH0028207	IP	1	Final	1	Permit allows trading to meet phase 2 TMDL phosphorus reductions. Phase 2 plan not yet due.		0		POTW	Upper Little Miami River Basin
5	Ohio	Gary Stuhlfauth (614) 644-2026	City of Xenia (Ford	OH0028193	IP	1	Final	1	Permit allows trading to meet phase 2 TMDL phosphorus reductions. Phase 2 plan not yet due.		0		POTW	Upper Little Miami River Basin

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5	Ohio	Gary Stuhlfauth (614) 644-2026	Montgomery County Eastern Regional Wastewater Treatment Plant	OH0026590	IP	1	Final	1	Permit allows trading to meet phase 2 TMDL phosphorus reductions. Phase 2 plan not yet due. Eastern Regional will be selling phosphorus credits to the Sugarcreek plant in their planned ps-ps trade.	0	PS-PS	POTW	Upper Little Miami River Basin
5	Ohio	Gary Stuhlfauth (614) 644-2026	Jamestown Regional Wastewater Treatment Plant Permit	OH0025879	IP	1	Final	1	Permit allows trading to meet phase 2 TMDL phosphorus reductions. Phase 2 plan not yet due.	0		POTW	Upper Little Miami River Basin
5	Ohio	Gary Stuhlfauth (614) 644-2026	Greene County Sugarcreek Water Resource Reclamation Facility Permit	OH0040592	IP	1	Final	1	Permit allows trading to meet phase 2 TMDL phosphorus reductions. Phase 2 plan not yet due. Sugarcreek plant will be buying P credits from Eastern Regional plant. Also, Greene Co. is planning to do a NPS project upstream of their discharge to generate P credits that they would	0	PS-PS, PS-NPS	POTW	Upper Little Miami River Basin
5	Ohio	Gary Stuhlfauth (614) 644-2026	Greene County Cedarville Water Resource Reclamation Facility Permit	OH0020010	IP	1	Final	1	Permit allows trading to meet phase 2 TMDL phosphorus reductions. Phase 2 plan not yet due.	0		POTW	Upper Little Miami River Basin
5	Ohio	Gary Stuhlfauth (614) 644-2026	Greene County Beaver Creek Water Resource Reclamation Facility Permit	OH0025381	IP	1	Final	1	Permit allows trading to meet phase 2 TMDL phosphorus reductions. Phase 2 plan not yet due.	0		POTW	Upper Little Miami River Basin
5	Ohio	Gary Stuhlfauth (614) 644-2027	City of Union	OH0021644	IP	1	Final	1	Trading included in compliance schedule to meet TMDL. Union appealed permit because it required them to meet P loads required by the Stillwater TMWL. Currently Ohio is revising permit language.		PS-NPS	POTW	Stillwater River Basin (Great Miami Trading Program)
5	Michigan	Bill Creal (517) 335-4114	Kalamazoo River Watershed Trading Project	NPDES permits do not provide for trades	IP	30	Final	30	Facilities have language that refers to a cooperative agreement on trading; Facilities have an aggregate load, so can trade informally amongst themselves. Lake Allegan has chosen to make all of their progress by a 23% phosphorus reduction specified in the TMDL. They have language to trade, but they were able to achieve their reductions via the TMDL.			POTWs and Industrial dischargers	Kalamazoo River Watershed
5	Michigan	Bill Creal (517) 335-4114	Middle Huron River	NPDES permits do not provide for trades	IP	4	Final	4	to a cooperative agreement on trading; Facilities have an aggregate load, so can trade			POTWs	Middle Huron River Watershed
5	Michigan	Elizabeth Biononlemi (616)681-8830	Gun Lake Tribe	2004 Targeted Watershed Grant					Developing model tools and infrastructure				Kalamazoo River Watershed

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

CERTIFICATE OF SERVICE

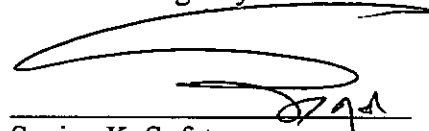
I, Sanjay K. Sofat, certify on September 18, 2007, I filed the above **AGENCY'S POST-HEARING REPLY BRIEF** electronically with the Clerk of the Pollution Control Board and with Carol Webb, Hearing Officer, at webbc@illinois.gov. In addition, I served copies of the foregoing electronically upon Bradley S. Hiles and Alison M. Nelson, counsel for petitioner Illinois-American, at bhiles@Blackwellsanders.com and anelson@Blackwellsanders.com. An executed copy of the **AGENCY'S POST-HEARING REPLY BRIEF**, will be mailed on September 19, 2007, by first class mail, postage prepaid, upon the following persons:

William Richardson, Chief Legal Counsel
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Springfield, IL 62702

Matthew J. Dunn
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Illinois Attorney General
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Respectively submitted,

Illinois Environmental
Protection Agency



Sanjay K. Sofat
Assistant Counsel