

ORIGINAL
BEFORE THE

ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

MAR 20 2001

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)

REVISIONS TO ANTIDegradation)
RULES: 35 ILL. ADM. CODE 302.105,)
303.205, 303.206, and 106.990-106.995)

R01-13
(Rulemaking-Water)

P.C. #46

NOTICE OF FILING

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite. 11-500
Chicago, Illinois 60601
(VIA Facsimile followed by U. S. Mail)

AND THE ATTACHED SERVICE LIST
(Via U. S. Mail)

Marie E. Tipsord
Hearing Officer
Illinois Pollution Control Board
100 West Randolph St. Suite 11-500
Chicago, Illinois 60601
(VIA Facsimile followed by U. S. Mail)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Closing Comments, with Attachment, of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

**ENVIRONMENTAL PROTECTION AGENCY
OF THE STATE OF ILLINOIS**

By: *Connie L. Tonsor*
Connie L. Tonsor
Associate Counsel
Division of Legal Counsel

DATED: March 20, 2001

Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

RECEIVED
CLERK'S OFFICE

MAR 20 2001

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
REVISIONS TO ANTIDegradation) R01-13
RULES: 35 Ill. Adm. Code 302.105,) (Rulemaking-Water)
303.205, 303.206, and 106.990-106.995)
and 35 Ill. Adm. Code 106.990 through 106.995.)

CLOSING COMMENTS

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Connie L. Tonsor and hereby submits its Closing Comments and suggestions for amended language (Attachment A).

1. On August 30, 2000, the Illinois EPA filed the instant petition proposing amendments to the antidegradation regulations, the establishment of designation of Outstanding Resource Waters ("ORW") by the Illinois Pollution Control Board ("Illinois PCB") and the establishment of a procedure by the Illinois PCB for ORW designation.
2. The Illinois PCB held hearings on the proposal on November 17, 2000, December 6, 2000 and February 6, 2001. As noted by the Illinois EPA in its Statement of Reasons, the instant rulemaking was developed over a more than two-year period. During this time the Illinois EPA met with and discussed various proposals with a workgroup. The Illinois EPA appreciates the effort and the concern expressed by the members of the workgroup, many of whom participated in the hearings before the Illinois PCB.
3. The efforts of the workgroup and the Illinois EPA resulted in a proposal that contained many areas of agreement as to the approach and the need for amendment of the existing regulation. As the Illinois EPA noted when it proposed the instant amendments, its proposal was one, which the Illinois EPA believed workable, from an Illinois EPA resource and technical standpoint, and federally approvable.

4. However, several areas of disagreement and lack of clarity remained. These areas became the focus of testimony and alternate language proposals from members of the Illinois Environmental Regulatory Group ("IERG"), the Illinois Association of Wastewater Agencies ("IAWA"), the Environmental Law & Policy Center, Friends of the Fox River, Prairie Rivers Network, Sierra Club ("Environmental Groups"), and the Illinois Department of Natural Resources ("IDNR").

5. Those areas in general involved:

Proposed Section 302.105(a)

- (a) the distinguishing of surface water from groundwater in the applicability of the rules;
- (b) the extent of the description of activities that could constitute a degradation of an existing use;

Proposed Section 302.105(b)

- (c) whether waters should be "classified or designated" as ORWs by the Illinois PCB;
- (d) the extent of activities that should be allowed within an ORW;

Proposed Section 302.105(c)

- (e) whether the proponent of an activity should demonstrate that the activity or proposed increase in pollutant loading is necessary to accommodate important economic or social development or the Illinois EPA should make an assessment that the activity is necessary to accommodate important economic or social development;

- (f) the information sources that the Illinois EPA could consider in making its assessment;
- (g) use of an approach that provides a multi-step, limited antidegradation review, depending upon the significance of the increase in pollutant loading, and the development of such a process;
- (h) whether an existing permitted discharge should be subject to a new antidegradation review and the causes for the second review;

Proposed Section 302.105(d)

- (i) the necessity for the inclusion of various activities as exceptions from further antidegradation reviews;
- (j) whether the Illinois PCB should include a de minimis determination to limit an antidegradation review to those situations in which the increase in pollutant loading is in excess of 10% of the remaining assimilative capacity in the receiving stream; and

ORW definition and designation

- (k) the fundamental approach that the Board should adopt to designate water bodies and water body segments as ORWs.

6. The Illinois PCB also suggested that the Illinois EPA consider: (1) a designation process for ORWs similar to that used in the designation of Special Resource Groundwater, pursuant to 35 Ill. Adm. Code 620.230 and 620.260; (2) consider the process for the adoption of a Regulated Recharge Area, pursuant to Section 17.3 and 17.4 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/17.3, 17.4; and the addition of a new part or subpart, similar to 35 Ill. Adm. Code 617, to list ORWs.

After reviewing the testimony and comments in this proposal, the Illinois EPA has made several suggested language changes. Those changes are appended to this Comment and reflect areas in which the Illinois EPA has clarified the proposal to better reflect its intent. The Comment also suggests an ORW designation process similar to that adopted by the Illinois PCB for the reclassification of groundwater as Special Resource Groundwater. The Illinois EPA notes, however, that it believes the designation process should be as open as possible to those who seek designation of a water body or water body segment as an ORW.

The balance of this comment will further discuss these areas.

Proposed Section 302.105 Introductory Language

8. The Environmental Groups suggested that the introductory language of proposed Section 302.105 should include a statement that its purpose is to protect existing uses and to protect water whose quality is better than water quality standards. This was its intent in formulating the proposal; and thus, the Illinois EPA suggests a modification of the introductory language.

Proposed Section 302.105(a)

9. The IERG suggested that the Illinois PCB clarify that Section 302.105 did not apply to groundwater. The Illinois EPA believes that this clarification is not needed in the instant regulation. Section 620.301 of the Illinois PCB's regulations governing groundwater quality ("groundwater regulations") specifically states the nondegradation standard for groundwater. (35 Ill. Adm. Code 620.301) Additionally, Section 620.130 of the Illinois PCB's regulations on groundwater quality specifically exempt groundwater from the provisions of 35 Ill. Adm. Code Subparts B and C. Although the

antidegradation regulation is a part of 35 Ill. Adm. Code Subpart A, it references water quality standards from which groundwater is exempt. Therefore, the addition of "surface water body" is not needed. However, the IERG's suggestion that "water body segment" may clarify that a water body may be treated as a whole or be broken into various segments for purposes of Section 302.105. Therefore, the Illinois EPA suggests adding this language.

9. The Environmental Groups suggested in their testimony that the examples of degradation of existing uses should include examples of degradation of uses other than aquatic life uses. The Illinois EPA has added a reference to the examples to reflect actions that would preclude the use of a water body as a public water supply or for recreational fishing, swimming, paddling or boating.

Proposed Section 302.105(b)

10. The IERG proffered language clarifying that waters must be designated by the Illinois PCB rather than "classified" as ORWs. The Illinois EPA has incorporated this change, as it more accurately reflects the formal process of determining a water to be an ORW. There are two general mechanisms by which ORWs are created. In one process, the applicable agency determines a water body to be suitable for ORW protection and, after appropriate opportunity for public participation, publishes its decision (See Exhibit I; Region VIII Guidance). In the alternate process, a formal action is necessary by the environmental control agency. In some jurisdictions, legislative action is required to establish an ORW. All of these mechanisms are acceptable under federal guidance. Since the Illinois EPA proposes a process in which the Illinois PCB would adopt a

regulation designating a water body or water body segment as an ORW, the use of the term designate is appropriate.

11. The IERG proposed a redraft of Section 302.105(b) that would have created a third class of activities that would be allowed within an ORW. The Illinois EPA strongly urges the Illinois PCB to reject this expansion of the activities that are permitted in an ORW. Essentially, the Illinois EPA's proposal suggested that short-term temporary lowering of water quality and existing site stormwater discharges were allowable within an ORW, when they had met the requirements of Section 302.105(c)(2), the High Quality Waters' determination, the existing uses were protected, the proposed increase in pollutant loading was necessary for an activity to improve the ORW and the improvement could not be achieved practicably in any other way. (Frevort testimony, Nov. 17, 2000, Tr. p. 87) These limited circumstances follow the basic concept that there should be no permanent lowering of water quality in an ORW. These circumstances follow the USEPA's guidance. (Illinois EPA proposal; Exhibit A, pp. 4-10--4-12; Frevort testimony, Nov. 17, 2000, Tr. pp. 18, 87; Dec. 6, 2000, Tr. P. 27) Exhibit 7, A. 5)

IERG's proposed language expanded the categories of activities to include permanent increases in pollutant loading when the increase was necessary to improve water quality and the improvement could not be practicably achieved without the increase in pollutant loading.

Although the Illinois EPA can think of one situation in which this expansion may be needed, an increase in pollutant loading needed to prevent groundwater contamination from reaching the ORW, the Illinois EPA believes this situation could be addressed under the regulatory relief mechanisms present in the Act. The Illinois EPA is concerned that

the inclusion of this category would lead to confusion about what constitutes an improvement in water quality and an attempt to justify an increase in a loading of one parameter by balancing it against a decrease in loading of another parameter.

12. The Illinois EPA notes that not all activities that may increase a pollutant loading in a water body or water body segment are subject to the permitting process or certification process under Section 401 of the Clean Water Act. The IERG proposal offered a "streamlining" of proposed Section 302.105(b) to eliminate what appeared to it to be a redundancy. However, IERG's language, suggested to eliminate redundancy, could make a substantive difference in that it implied that all of the potential activities subject to the water quality standard were also subject to the Illinois EPA's permitting or certification process. This is not the case. Therefore, the Illinois EPA does not support a merging of paragraphs in an effort to reduce redundancy in proposed Section 302.105(b). The Illinois EPA intended that the requirements be additive to the demonstration for high quality waters. (Frevert testimony, Dec. 6, 2000, Tr. p. 27) Therefore, the language is not redundant.

13. The Environmental Groups suggest adding the word "National" in the ORW designation, suggesting that the different name creates confusion. The Illinois EPA does not believe that it creates confusion to vary from the federal language.

Proposed Section 302.105(c)

14. The language of proposed Section 302.105(c) uses the word "exceeds" to describe high quality waters. More accurately these are waters whose quality is better than established standards. The Illinois EPA notes that this usage causes confusion and agrees with the Illinois PCB's suggestion that it should be changed. (Frevert testimony, Dec. 6,

2000, Tr. pp. 28-29; Exhibit 7, A. 8) At the November 17, 2000 hearing Mr. Frevert testified that the Illinois EPA intended the determination that a water body or water body segment was a high quality water be made on a parameter-by-parameter basis (Frevert testimony, Nov. 17, 2000, Tr. pp. 118-120, 123-124). Therefore, the Illinois EPA suggests stating that "is better than any of" rather than "exceeds".

15. After a review of the language of proposed Section 302.105(c), the Illinois EPA concluded that the language needed a clarification. The existing nondegradation regulation, Section 302.105, applies to all waters of the State and includes a required assessment that lowering of water quality must be justifiable as a result of necessary economic or social development.

The Illinois EPA did not intend to expand the scope of its review to include activities that are outside of its statutory and regulatory authority to issue permits. Therefore, the Illinois EPA has suggested a modification of Section 301.105(c)(1) to reiterate the basic standard applicable to waters within the state and to clarify the Illinois EPA's role in assessing whether permit applicants and those seeking Section 401 certification have met those requirements.

16. During the November 17, 2000 hearing and in subsequent hearings, the Illinois EPA offered testimony that its intent was to utilize information sources presented and available to it and make a determination that the proposed activity either met the requirements of proposed Section 302.105(c) or did not meet those requirements.

However, the Illinois EPA proposal suggested that the proponent needed to make the demonstration and raised concerns that the Illinois EPA would request information that it already possessed, reject applications for the failure to include a separate

“demonstration” document and create an excessive burden upon permit applicants. This was never the Illinois EPA’s intention (Frevert testimony, Nov. 17, 2000, Tr. pp. 71-74). Therefore, the Illinois EPA has suggested a modification of proposed Section 302.105(c)(1) and (c)(2), including the addition of subsection (c)(2)(C) in an effort to resolve these concerns. The modification preserves the criteria upon which the Illinois EPA must make its determination but does not impose an obligation upon the proponent to produce any information. The Illinois EPA notes, however, that the permit applicant, if the applicant wished to receive a permit, would need to supply any necessary information which the Illinois EPA needed to complete its assessment (Frevert testimony, Nov. 17, 2000, Tr. pp. 61-63).

17. The testimony and proposals before the Illinois EPA highlighted a difference in approach between the Illinois EPA concerning how proposed increases in pollutant loading should be reviewed. The IERG proffered a “significance” test to be utilized as a predicate to a “full antidegradation review.” Under the IERG proposal, only after the Illinois EPA determined that the particular increase in loading had a significant impact on the water quality of the water body as a whole could the Illinois EPA assess whether the increase in loading benefits the community at large and that all technically feasible and economically reasonable measures have been taken to avoid or minimize the discharge. (Hirner pre-filed testimony, Feb. 7, 2001, pp. 3-5; IERG proposal, 302.105(c)(2)(A)). The significance test would essentially fold in a tiered review of proposed increases in pollutant loading.

As the Illinois EPA’s noted during the November 17, 2000 hearing “the significance issues [in the USEPA Region 8 Guidance; Exhibit 1] are the same issues that

[the Illinois EPA] would consider in the process of determining compliance or noncompliance with the standard." (Frevert testimony, Nov. 17, 2000, Tr. p. 74). The Illinois EPA noted, however, that if significance meant that some aspect of an antidegradation assessment was inapplicable, it would be concerned. The Illinois EPA's position is that all potential increases in pollutant loading should be subject to the review set forth in proposed Section 302.105(c)(2), though the Illinois EPA acknowledges and has testified that the complexity of the review will be highly dependant upon the nature of the activity, the pollutant and the character of the receiving stream. (Frevert testimony, Nov. 17, 2000, Tr. pp. 61-2, 73, 79-80, 99, 100-11, 127-128). Even small amounts of increased loading of some pollutants should not occur if avoidable at no cost. (Frevert testimony, Dec. 6, 2000, Tr. p. 126).

Under the IERG proposal, "significance" apparently means that aspects of an antidegradation assessment are not applicable. The Illinois EPA would not have an opportunity to require an applicant consider alternatives to avoid or minimize the discharge, absent a finding that the discharge is significant, and no assessment that the discharge benefits the community at large could take place. The Illinois EPA's position is that each proposed increase in pollutant loading should be assessed to determine the need for the discharge and whether alternatives to the increase in pollutant loading have been considered. However, the Illinois EPA has also indicated that it agrees that not all increases in pollutant loading require the same level of review and in some instances the review will be "very abbreviated." (Frevert testimony, Nov. 17, 2000, Tr. p. 80)

Most importantly, the Illinois EPA believes that the expenditure of resources necessary in determining that a proposed increase in pollutant loading is insignificant will

be similar to that in determining that the proposed increase in pollutant loading meets the criteria set forth in proposed Section 302.105(c)(2). (Frevort testimony Nov. 17, 2000, Tr. pp. 133-134) Some concerns were expressed about the potential for Illinois EPA abuse of the process by making applicants unnecessarily justify that the proposal benefits the community as a whole. The Illinois EPA has testified that the "benefits determination," in fact, would be a simple one in most cases. The Illinois EPA notes that if potential abuse is a real problem, the applicant may raise the abuse issue in a permit appeal.

Several technical problems also exist with the specific language offered by IERG. First, it makes a comparison of the impact of the pollutant loading on the quality of the water body as a whole. The Illinois EPA's proposed approach looks at the effect of each parameter on the receiving stream. Thus, the significance test as proposed could allow the increased loading, absent an alternatives analysis, even if the particular parameter has an impact on the receiving stream, if the over all water quality of the stream is not significantly impacted. If one reviews the significance test in the context of the IERG's proposed de minimis exception, a situation could arise in which an increase in pollutant loading that is over 10% of the remaining assimilative capacity of the stream would not undergo an alternatives analysis because it could not be found to be significant when compared to the overall water quality of the receiving stream. (Andes testimony, February 7, 2001, Tr. pp. 94-96) (Note: The IERG language eliminates the 5% of assimilative capacity significance criteria incorporated into the Region 8 guidance.) The Illinois EPA would not be able to request the applicant consider alternatives to the

increase in pollutant loading, even if those alternatives were technically reasonable and economically feasible.

Second, the IERG proposed significance review goes beyond that proposed in the Region 8, USEPA guidance (Exhibit 1; Frevert testimony, Nov. 17, 2000 Tr. pp. 74-77), incorporating no upward limit on that which is significant and specifically excluding an alternatives analysis.

Third, the IERG proposed language sets up an appeal of an apparently non-final Illinois EPA determination. The IERG proposed Section 302.105(c)(2)(A)(viii) notes that the applicant can file an appeal of a decision that the proposed increase in pollutant loading is significant. The appeal would be conducted pursuant to 35 Ill. Adm. Code 101.Subpart B. However, the Illinois EPA is uncertain that the significance determination is anything other than a determination, like many others, which is made as a part of reviewing a permit application. It does not of itself set a permit limit and it would not be a determination that the increase in pollutant loading could not occur. It would not be an action that finally determined whether the increase in pollutant loading ultimately would meet the requirements of an antidegradation assessment. Therefore, the language is suggesting an appeal of a non-final order.

Several problems exist with establishing a system for the piecemeal appeal of permits. However, the primary one may be that the significance test as offered by IERG may not be federally approvable. The Illinois EPA is not certain that any opportunity for third parties participation exists in the appeal by the applicant of a determination that a proposed increase in pollutant loading is significant. No permit would have been placed on public notice at that time. In theory, the Illinois PCB could rule on an appeal and

determine that a proposed increase in pollutant loading is not significant prior to the time that third parties could participate. Third parties may only participate in the NPDES permitting process and file appeals as specified in Section 40(e) of the Act (415 ILCS 5/40(E)).

18. The Environmental Groups suggested that the Illinois EPA review permitted levels of pollutant loading if "good cause" exists to indicate that the permitted levels are no longer necessary. The Illinois EPA believes that once it has performed an antidegradation assessment and a permit has been issued that it should not perform multiple antidegradation assessments. (Frevort testimony, Nov. 17, 2000, Tr. pp. 45-46) The Illinois EPA is uncertain as to the meaning of the phrase "good cause."

Proposed Section 302.105(d)

19. The IERG offered several proposed additions to proposed Section 302.105(d). The IERG proposal suggested adding "with additives" to the Illinois EPA proposed Section 302.105(d)(5). In short, the Illinois EPA's position is that the addition of additives to a discharge or the change in additives should be subject to an antidegradation assessment. Differing additives may have an impact on the receiving stream. The Illinois EPA's position is that there may be benefit in reviewing the additive to determine if it is the best additive and whether there are toxic ramifications in the receiving stream for that additive. (Frevort testimony, Nov. 17, 2000, Tr. pp. 86, 194-95) Therefore, the Illinois EPA does not support the IERG's proposed addition of additives to Section 302.105(d)(5).

The Illinois EPA supports the addition of language to proposed Section 302.105(d)(6), covering general permits. The additional language would expand the

subsection to include general certifications. It would specifically note that in circumstances in which conditions warrant a site-specific permit, the Illinois EPA would cover the facility with a site-specific permit. (McSwiggin testimony, Nov. 17, 2000, Tr. p. 181; Frevert testimony, Nov. 17, 2000, p. 188) This is the current Illinois EPA practice and was suggested by the Environmental Groups.

The Illinois EPA also suggests adding the language proffered by IERG that indicated changes to or additions of new permit limits not resulting from an actual increase in pollutant loading are not subject to further antidegradation review. The Illinois EPA notes that its position is that these types of activities are not subject to the regulation as proposed. (Frevert testimony, Nov. 17, 2000 Tr. pp. 45, 48, 56) However, some benefit may occur in stating this fact in the regulation. Therefore, the Illinois EPA suggests adding a new Section 302.105(d)(7) (See Attachment).

The IERG also offered a suggested inclusion of Section 302.105(d)(8) for stormwater discharges covered under a site-specific permit. The Illinois EPA's position is that it would need to make an individual assessment of an increase loading caused by a additional service area or increased stormwater. (Frevert testimony, Dec. 6, 2000, Tr. pp. 37-40).

20. The IERG proposed a de minimis formula be added to Section 302.105(d). As noted by Mr. Frevert other states have attempted to incorporate some kind of de minimis language into the implementation procedures or standards. (Frevert testimony, Nov. 17, 2000, Tr. p. 81) The Illinois EPA and the work group struggled with this issue. The Illinois EPA is concerned that the de minimis step merely determines whether or not a review is completed. If that step is more burdensome than doing the review "we feel like

we are going backwards [ra]ther than forwards.” (Frevert testimony, Nov. 17, 2000, Tr. p. 82) The general statements made with regard to the significance determination are applicable to the Illinois EPA’s position with regard to the de minimis test.

Additionally, assimilative capacity is not a constant. Therefore, it may take as much effort to determine 10% of the remaining assimilative capacity as completing the review. The de minimis test would also preclude the Illinois EPA from asking the permit applicant to consider alternatives to the increase in pollutant loading.

The Illinois EPA notes that the de minimis test is unlike the other categories of activities in proposed Section 302.105(d). In the other categories, the Illinois EPA would have had an opportunity to review the proposed increase in pollutant loading and to determine that the intent of Section 302.105 had been met. Therefore, an additional or further assessment would be an unjustified expenditure of resources. In the case of the de minimis formulation, the Illinois EPA would be making an assessment to determine if the criteria of proposed Section 302.105(c) were applicable to the proposed increase in pollutant loading.

Outstanding Resource Waters

21. The Illinois PCB asked about the usage of “unique” to describe an ORW in proposed Section 303.205. The Illinois EPA notes that this may cause some confusion. It, therefore, suggests using the federal language of “exceptional” to describe the OWR.

22. The Illinois EPA testified that its intent was that the ORW designation process be a regulatory process. (Frevert testimony, Nov. 17, 2000, Tr. pp. 88-94) However, the Illinois EPA acknowledged that the effect of a designating a water body or water body segment as an ORW has far reaching impacts. The designation would preclude most

increases in pollutant loading into the designated area. Therefore, it would have land use consequences. Nevertheless, the Illinois EPA believes the process should be an open one, in which interested groups could petition the Illinois PCB for such a designation. The goal of the Illinois EPA's proposal was to ensure that the Illinois PCB and the public recognized the import of the designation of a water body as an ORW.

The Illinois PCB and the IERG requested the Illinois EPA to consider designation mechanism similar to those for regulated recharge areas and Special Resource Groundwater. The Illinois EPA has reviewed those processes. The regulated recharge area determination is based upon Sections 17.1 through 17.4 of the Act (415 ILCS 5/17.1-17-4). A part of the process involved the allocation of resources from the Illinois EPA for a statewide well site survey that may be used in lieu of a groundwater needs assessment. These documents form the basis for seeking a regulated recharge area designation. The Illinois EPA believes that absent a statutory commitment to conduct a similar survey of surface water bodies, the regulated recharge area process is not as analogous to the ORW designation process as the Special Resource Groundwater designation process.

The Illinois EPA notes that the Special Resources Groundwater designation process does appear somewhat analogous to an ORW designation process. Special Resources Groundwater is groundwater that is "demonstrably unique...and suitable for application of a water quality standard more stringent than the otherwise applicable water quality standard." (35 Ill. Adm. Code 620.230) The designation of a special resource groundwater involves similar factors to an ORW. However, the ORW designation has greater impacts than a Special Resources Groundwater designation in that it would impose prohibitions upon many types of activities. The Special Resources Groundwater

designation process simply allows for the setting of more protective standards.

Nevertheless, the Illinois PCB has established an adjusted standard process for Special Resource Groundwater designation (35 Ill. Adm. Code 620.260).

The Illinois EPA has proffered language applicable to this type of process.

(Attachment, Section 303.205(b), (c)) In the attached suggestion, the Illinois EPA states that the Illinois PCB may make such a designation when it determines that the benefits of protection of the water body from further degradation outweigh the benefits of social or economic opportunities that would be lost as a result of the designation. (Attachment, Section 302.205(b)). At the February 6, 2001 hearing, a question arose concerning the origin of the "benefits" analysis." The Illinois EPA is not aware of any federal guidance that describes the economic analysis stated in its proposal. (Frevert testimony, Nov. 17, 2000, Tr. p. 202)

Wherefore, the Illinois EPA respectfully requests that the Illinois PCB consider its comments in the above matter.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By:



Connie L. Tonsor
Associate Counsel
Division of Legal Counsel

March 20, 2001

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

217/782-5544
connie.tonsor@epa.state.il.us

ATTACHMENT

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

**TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE C: WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD**

**PART 302
WATER QUALITY STANDARDS**

SUBPART A: GENERAL WATER QUALITY PROVISIONS

Section	
302.100	Definitions
302.101	Scope and Applicability
302.102	Allowed Mixing, Mixing Zones and ZIDS
302.103	Stream Flows
302.104	Main River Temperatures
302.105	<u>Antidegradation</u> Nondegradation

SUBPART B: GENERAL USE WATER QUALITY STANDARDS

Section	
302.201	Scope and Applicability
302.202	Purpose
302.203	Offensive Conditions
302.204	pH
302.205	Phosphorus
302.206	Dissolved Oxygen
302.207	Radioactivity
302.208	Numeric Standards for Chemical Constituents
302.209	Fecal Coliform
302.210	Other Toxic Substances
302.211	Temperature
302.212	Ammonia Nitrogen and Un-ionized Ammonia
302.213	Effluent Modified Waters (Ammonia)

SUBPART C: PUBLIC AND FOOD PROCESSING WATER SUPPLY STANDARDS

Section	
302.301	Scope and Applicability
302.302	Algicide Permits
302.303	Finished Water Standards

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

302.304	Chemical Constituents
302.305	Other Contaminants
302.306	Fecal Coliform

SUBPART D: SECONDARY CONTACT AND INDIGENOUS AQUATIC LIFE STANDARDS

Section	
302.401	Scope and Applicability
302.402	Purpose
302.403	Unnatural Sludge
302.404	pH
302.405	Dissolved Oxygen
302.406	Fecal Coliform (Repealed)
302.407	Chemical Constituents
302.408	Temperature
302.409	Cyanide
302.410	Substances Toxic to Aquatic Life

SUBPART E: LAKE MICHIGAN BASIN WATER QUALITY STANDARDS

Section	
302.501	Scope, Applicability, and Definitions
302.502	Dissolved Oxygen
302.503	pH
302.504	Chemical Constituents
302.505	Fecal Coliform
302.506	Temperature
302.507	Thermal Standards for Existing Sources on January 1, 1971
302.508	Thermal Standards for Sources under Construction But Not in Operation on January 1, 1971
302.509	Other Sources
302.510	Incorporations by Reference
302.515	Offensive Conditions
302.520	Regulation and Designation of Bioaccumulative Chemicals of Concern (BCCs)
302.521	Supplemental Antidegradation Provisions for BCCs
302.525	Radioactivity
302.530	Supplemental Mixing Provisions for BCCs
302.535	Ammonia Nitrogen
302.540	Other Toxic Substances

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 302.545 Data Requirements
- 302.550 Analytical Testing
- 302.553 Determining the Lake Michigan Aquatic Toxicity Criteria or Values - General Procedures
- 302.555 Determining the Tier I Lake Michigan Basin Acute Aquatic Life Toxicity Criterion (LMAATC):
Independent of Water Chemistry
- 302.560 Determining the Tier I Lake Michigan Basin Acute Aquatic Life Toxicity Criterion (LMAATC):
Dependent on Water Chemistry
- 302.563 Determining the Tier II Lake Michigan Basin Acute Aquatic Life Toxicity Value (LMAATV)
- 302.565 Determining the Lake Michigan Basin Chronic Aquatic Life Toxicity Criterion (LMCATC) or the
Lake Michigan Basin Chronic Aquatic Life Toxicity Value (LMCATV)
- 302.570 Procedures for Deriving Bioaccumulation Factors for the Lake Michigan Basin
- 302.575 Procedures for Deriving Tier I Water Quality Criteria in the Lake Michigan Basin to Protect Wildlife
- 302.580 Procedures for Deriving Water Quality Criteria and Values in the Lake Michigan Basin to Protect
Human Health - General
- 302.585 Procedures for Determining the Lake Michigan Basin Human Health Threshold Criterion (LMHHTC) and the Lake Michigan Basin Human Health Threshold Value (LMHHTV)
- 302.590 Procedures for Determining the Lake Michigan Basin Human Health Nonthreshold Criterion (LMHHNC) or the Lake Michigan Basin Human Health Nonthreshold Value (LMHHNV)
- 302.595 Listing of Bioaccumulative Chemicals of Concern, Derived Criteria and Values

SUBPART F: PROCEDURES FOR DETERMINING WATER QUALITY CRITERIA

- Section
- 302.601 Scope and Applicability
- 302.603 Definitions
- 302.604 Mathematical Abbreviations
- 302.606 Data Requirements
- 302.612 Determining the Acute Aquatic Toxicity Criterion for an Individual Substance -
General Procedures

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 302.615 Determining the Acute Aquatic Toxicity Criterion - Toxicity Independent of Water Chemistry
- 302.618 Determining the Acute Aquatic Toxicity Criterion - Toxicity Dependent on Water Chemistry
- 302.621 Determining the Acute Aquatic Toxicity Criterion - Procedures for Combinations of Substances
- 302.627 Determining the Chronic Aquatic Toxicity Criterion for an Individual Substance - General Procedures
- 302.630 Determining the Chronic Aquatic Toxicity Criterion - Procedure for Combination of Substances
- 302.633 The Wild and Domestic Animal Protection Criterion
- 302.642 The Human Threshold Criterion
- 302.645 Determining the Acceptable Daily Intake
- 302.648 Determining the Human Threshold Criterion
- 302.651 The Human Nonthreshold Criterion
- 302.654 Determining the Risk Associated Intake
- 302.657 Determining the Human Nonthreshold Criterion
- 302.658 Stream Flow for Application of Human Nonthreshold Criterion
- 302.660 Bioconcentration Factor
- 302.663 Determination of Bioconcentration Factor
- 302.666 Utilizing the Bioconcentration Factor
- 302.669 Listing of Derived Criteria

APPENDIX A References to Previous Rules

APPENDIX B Sources of Codified Sections

AUTHORITY: Implementing Section 13 and authorized by Sections 11(b) and 27 of the Environmental Protection Act [415 ILCS 5/13 11(b), and 27]

SOURCE: Filed with the Secretary of State January 1, 1978; amended at 2 Ill. Reg. 44, p. 151, effective November 2, 1978; amended at 3 Ill. Reg. 20, p. 95, effective May 17, 1979; amended at 3 Ill. Reg. 25, p. 190, effective June 21, 1979; codified at 6 Ill. Reg. 7818; amended at 6 Ill. Reg. 11161, effective September 7, 1982; amended at 6 Ill. Reg. 13750, effective October 26, 1982; amended at 8 Ill. Reg. 1629, effective January 18, 1984; peremptory amendments at 10 Ill. Reg. 461, effective December 23, 1985; amended at R87-27 at 12 Ill. Reg. 9911, effective May 27, 1988; amended at R85-29 at 12 Ill. Reg. 12082, effective July 11, 1988; amended in R88-1 at 13 Ill. Reg. 5998, effective April 18, 1989; amended in R88-21(A) at 14 Ill. Reg. 2899, effective February 13, 1990; amended in R88-21(B) at 14 Ill. Reg. 11974, effective July 9, 1990; amended in R94-1(A) at 20 Ill. Reg. 7682, effective May 24, 1996; amended in R94-1(B) at 21 Ill. Reg. 370, effective December 23, 1996; expedited correction at 21 Ill. Reg. 6273, effective December