

ILLINOIS POLLUTION CONTROL BOARD
November 16, 2006

IN THE MATTER OF:)
)
TRIENNIAL REVIEW OF SULFATE AND) R07-9
TOTAL DISSOLVED SOLIDS WATER) (Rulemaking - Water)
QUALITY STANDARDS: PROPOSED)
AMENDMENTS TO 35 ILL. ADM. CODE)
302.102(b)(6), 302.102(b)(8), 302.102(b)(10),)
302.208(g), 309.103(c)(3), 405.109(b)(2)(A),)
409.109(b)(2)(B), 406.100(d); REPEALER OF)
35 ILL. ADM. CODE 406.203 and Part 407;)
and PROPOSED NEW 35 ILL. ADM. CODE)
302.208(h))

ORDER OF THE BOARD (by G.T.Girard):

On October 23, 2006, the Illinois Environmental Protection Agency (Agency) filed a proposal under the general rulemaking provisions of Section 27 of the Environmental Protection Act (Act) (415 ILCS 5/27 (2004)). In brief, the proposal seeks to update existing water quality standards (WQS) for sulfate and total dissolved solids (TDS), by amending 35 Ill. Adm. Code Parts 302, 309, 405, 406, and 407 of the Board’s water and mine-related pollution rules. For the reasons stated below, the Board accepts the proposal for hearing but directs the Agency to address two informational deficiencies in writing prior to any hearing scheduled in this proceeding at such time as directed by the hearing officer.

THE PROPOSAL

The proposal, which was accompanied by a motion for acceptance, includes among other things a 15-page statement of reasons (Stat. of Reas.) and a bound 3-inch thick collection of supporting facts and exhibits. The Agency states that the proposal fulfills the requirements of the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251-1387, sections 101-607 of which are also known as the Clean Water Act (CWA). Section 303(c) of the CWA requires the states to conduct a “triennial water quality standards” review. 33 USC Sec. 1313(c)(1). States must revise and update water quality standards to ensure that standards are protective of public health and welfare, enhance the quality of water and promote the purposes of the CWA. 33 USC Sec. 1313 (c)(2a). Stat. of Reas. at 7.

The statement of reasons explains that the proposal seeks to refine existing standards “based on the best available scientific knowledge”. Stat. of Reas. at 8.

The Board adopted water quality standards for sulfate and total dissolved solids “TDS” in 1972 to protect aquatic life and agricultural uses without scientific studies to determine appropriate values. See In the Matter Water Quality Standards Revisions, R71-14. This presented difficult compliance issues for coal

mines whose effluents are often high in sulfate. Thus, the Board adopted standards for sulfate and chloride for mine discharges. *See* 35 Ill. Adm. Code Subtitle D. In order to remedy the deficiency in the 1972 rulemaking and provide a scientific justification for sulfate water quality standards, the Illinois EPA engaged in a multi-year project researching the toxicity of sulfate to aquatic life and livestock. Stat. of Reas. at 8.

Based on the conclusion of these studies, the Agency proposal seeks to:

1. update the sulfate water quality standard for aquatic life (allowing 500-2,5000 mg/l depending on hardness and chloride in the water body) (Stat. of Reas. at 9);
2. update the sulfate water quality standard for livestock watering (2,000 mg/l with averaging available) (Stat. of Reas. at 9-10);
3. repeal the TDS WQS as unnecessary after the amendment of the sulfate WQS. (TDS is the sum of dissolved substances in water, dominated by the common ions of sulfate, chloride, sodium, calcium carbonate and magnesium in various proportions. New research indicates that the toxicity of each constituent, rather than the sum of all, is the essential factor to protection of aquatic life.) Stat. of Reas. at 10-11;
4. amend the mixing regulations at 35 Ill. Adm. Code 302.102 to allow mixing in 7Q1.1 zero flow streams to dischargers demonstrating adequate upstream dilution exists in the receiving stream at time of discharge. (This reflects IEPA practice of “granting wet weather discharges [from mines] allowed mixing for sulfate and chloride depending upon the upstream flows”.) Stat. of Reas. at 11; and
5. delete portions of the existing mine waste rules at 35 Ill. Adm. Code Subtitle D, Parts 406,407 that relate to sulfates and chlorides. As a result, mine permits will be based on the WQS at 35 Ill. Adm. Code Subtitle C, Part 300 WQS (Stat. of Reas. at 11-12).

The Agency asserts that it held stakeholders’ meetings in January 2004 and April 2006, and that updated draft rules were sent to stakeholders for comment on July 31, 2006.

As to economic reasonableness and technical feasibility of the proposal, the Agency underscores that the proposal contains science-based standards that for most dischargers “will allow attainment of water quality standards without the implementation of additional management practices or process alternatives.” Stat. of Reas. at 13. Although the Agency believes a small number of existing mine may need to employ addition controls to meet WQS-based permit limits, the Agency notes that it has been “proactive in getting information to these discharges that will help achieve compliance.” *Id.* Finally, the Agency anticipates that, at a considerable cost savings, the news standards will eliminate virtually all petitions from industrial and municipal discharges for site-specific WQS relief concerning sulfate and TSS. *Id.*

PROPOSAL CONTENT REQUIREMENTS

In reviewing the proposal for compliance with the rulemaking proposal requirements of 35 Ill. Adm. Code 102.202, the Board has identified only minor deficiencies. While these must be corrected prior to hearing, they do not prevent the Board from accepting the proposal for hearing.

First, the Board notes that in Section V “Synopsis of Testimony” the statement of reasons identifies three Agency employees as witness: Toby Frevert, Bob Mosher, and Brian Koch. The statement contains only the information that the witnesses will testify, respectively, concerning policy-related issues, development of the sulfate standard, and development of the livestock use sulfate standard and equation for the aquatic use sulfate standard.

The Board finds that these statements do not outline the proponent’s testimony sufficiently to constitute the required “synopsis of all testimony to be presented by the proponent at hearing.” 35 Ill. Adm.Code 102.202(c). But, the Board expects this deficiency will be cured by hearing officer order requiring prefilng of testimony.

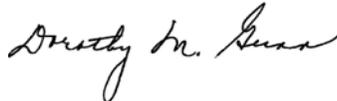
Second, the proposal includes in Section VI “Supporting Documents” a listing of various exhibits. The Board finds that this listing does not fully address the applicability of, or provide the information requested in, the “published study or report” requirement of Section 102.202(e) of the Board’s procedural rules. 35 Ill. Adm. Code 102.202(e); *see also* 35 Ill. Adm. Code 102.202(k) (justification for inapplicability or unavailability).

CONCLUSION

The Board accepts this proposal for hearing and directs the assigned hearing officer to proceed expeditiously under the rulemaking provisions of the Act and the Board’s procedural rules. 415 ILCS 5/27, 28 (2004); 35 Ill. Adm.Code 102. After conducting one or more hearings on this proposal, the Board will consider whether to proceed to first notice. The Board requests, however, that the Agency address the two informational deficiencies noted above in writing prior to any hearing scheduled in this proceeding at such time as directed by the hearing officer.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 16, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board