

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO) R2004-025
DISSOLVED OXYGEN STANDARD) (Rulemaking – Water)
35 ILL. ADM. CODE 302.206)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that the **Illinois Association of Waste Water Agencies** electronically filed their **Public Comments**, with the Clerk of the Illinois Pollution Control, a copy of which is herewith served upon you.

Respectfully submitted,

s/Roy M. Harsch

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Dated: December 20, 2006

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THIS FILING IS SUBMITTED ON RECYCLED PAPER

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PUBLIC COMMENTS

NOW COMES the Illinois Association of Waste Water Agencies ("IAWA") by one of its attorneys Roy M. Harsch, and pursuant to the Hearing Officer Order submits these PUBLIC COMMENTS in the above-captioned matter to the Illinois Pollution Control Board ("Board"). These Public Comments are in addition to those comments previously submitted by Dr. James Garvey.

IAWA contends that the amendment filed on April 19, 2004 constitutes a technically feasible, economically reasonable, and well-supported amendment to the present Dissolved Oxygen Water Quality Standard found at 35 Ill. Adm. Code 302.206 ("DO Rule"). IAWA requests that the Board adopt the proposed amendment as submitted by IAWA with two additions. The first is the inclusion of the agreed upon 30-day average of 5.5 milligrams per liter dissolved oxygen ("5.5 mg/l"). The second addition is the inclusion of the narrative language proposed by the Joint Illinois Department of Natural Resources/Illinois Environmental Protection Agency Proposal ("Joint IDNR/IEPA Proposal").

A. Background

IAWA filed their proposed amendment to the DO Rule on April 29, 2004 due to the widespread recognition that the original DO Rule adopted by the Board in 1972 was in dire need of revision, contained serious flaws and was inconsistent with modern recognized science. While IEPA had acknowledged the need to update the DO Rule, IEPA did not have the resources or

was unwilling to commit the necessary resources to this effort. Because of the fundamental importance of the DO Rule, its basic underline use as a water quality measurement and component of various water program elements; IAWA after conferring with IEPA, undertook at its own expense a detailed thorough review of DO Rule. IAWA retained two of the most qualified field biologists in the State of Illinois to contribute their knowledge and experience. Dr. Matthew Whiles and Dr. James Garvey were retained to scientifically evaluate the present DO Rule, the National Ambient Water Quality Criteria Document for Dissolved Oxygen prepared by the United States Environmental Protection Agency ("USEPA") dated April 1986 ("NCD"), the published peer-reviewed research on DO and the current DO monitoring in Illinois. As a result of their independent work, Doctors Whiles and Garvey prepared a written report entitled An Assessment of the National and Illinois Dissolved Oxygen Water Quality Criteria, James E. Garvey and Matt R. Whiles (April 2004) ("Garvey/Whiles Report") (Exhibit 1). They concluded that the current DO Rule was in need of change and that the original recommendation contained in the NCD was still sound. Accordingly, they proposed a DO Rule that would establish a DO limit applicable from March 1 through June 30 of a one-day minimum of 5.0 mg/l and a seven-day mean of 6.0 mg/l to protect early life stages. During the warmer months of July 1 through the end of February they proposed a one-day minimum of 3.5 mg/l and a seven-day mean minimum of 4.0 mg/l. Their recommendation differed slightly from that contained in the NCD. First, they proposed a more conservative minimum of 3.5 rather than the 3.0 mg/l DO minimum. Second they did not propose the 30-day average of 5.5 mg/l because they felt it was not needed.

Six days of hearing were held on this proposal. At the initial hearing held on June 29, 2004, IAWA presented three witnesses. Mr. Dennis Streicher described IAWA, the basis for the

proposal and why the existing DO Rule was in need of revision. Mr. Michael Callahan explained the scientific need for a sound DO Rule based in part upon his service on the IEPA Nutrient Science Advisor Work Group, his intercourse with IEPA and IEPA's support for a third party investigation of the present DO Rule. He outlined the IAWA decision process to proceed with this project, the retention of Doctors Whiles and Garvey and the initial review by both IAWA and the IEPA of the Garvey/Whiles Report. Dr. Garvey testified in detail outlining the work that led up to the preparation of the Garvey/Whiles Report, the conclusions and recommendations contained in the Report and why they believed that the proposed DO Rule was protective of aquatic life during all life stages. Dr. Garvey also testified that he had learned of additional data during a meeting with USEPA, IEPA and IAWA on June 18, 2004 just prior to the first hearing. He explained that he would evaluate this data in detail and address it extensively at the second hearing. Dr. Garvey also responded to intensive questioning regarding his testimony and the Garvey/Whiles Report.

As directed by the Hearing Officer prior to the second hearing, IAWA filed Dr. Garvey's pre-filed testimony along with a July 2004 report entitled "Long Term Dynamics of Oxygen and Temperature in Illinois, Streams" Dr. James A. Garvey. (Exhibit 9).

At the second hearing held on August 12, 2006, Dr. Garvey testified as to his review of the data set that was identified during the June 18, 2004 meeting. This data formed the basis for his report found at Exhibit 9. This data was collected by the United States Geological Survey ("USGS") and the IEPA. This data set included data from eight intensively sampled stream reaches. Dr. Garvey described this data set as "these long-term data are unprecedented. I am aware of no other similar comprehensive data set for streams of the Midwestern United States." (August 12, 2004 TR. at 14 and 15). Dr. Garvey testified that "application of the proposed

standard greatly reduces the number of violations in unimpaired streams, such as Lusk Creek, while still capturing violations in impaired streams." (August 12, 2004 TR. at 17). He further testified that "the results of this analysis uphold the conclusions of the Garvey and Whiles Report" (August 12, 2004 TR. at 16). He also testified that "I found no substantive differences in temperature among streams across the north-south gradient of the state these data effectively show that the proposed standard effectively captures oxygenated dynamics that occur in natural fully functioning Illinois streams." (August 12, 2004 TR. at 19). Dr. Garvey also testified that he had contacted Mr. Gary Chapman who was the author of USEPA's NCD. He explained that Mr. Chapman felt that the NCD recommendations should be adopted and that the timing of the seasonal switch from early life stage to the warmer months should be left to the local experts. (See Exhibit 10)

Dr. Garvey also testified to and addressed questions regarding his recommended DO Rule and why he believed June 30 was the appropriate date to move from the early life stage portion of the NCR recommended rule to that portion of the remainder of the year.

The second hearing was also notable in that as a result of an apparent request of the Lt. Governors Office made through Mr. Mark Miller, Dr. David Thomas of the Illinois Natural History Survey appeared and presented a letter he had prepared dated July 30, 2004. (See Exhibit 13). Dr. Thomas had not been involved before and had not participated at that morning's stakeholder meeting in which Dr. Garvey had presented his July 2004 Report found at Exhibit 9. (August 12, 2004 TR. at 153). Although an apparent participant in Mr. Miller's attempted sucker punch, Dr. Thomas did acknowledge in response to a question from Mr. Callahan that "I think probably for a lot of the water bodies where your waste treatment facilities are on, the standard probably is too high and can be modified. My only concern is to modify it for the whole state,

because I think there will be areas where I would have some concern biologically about some of the aquatic resources." (August 12, 2004 TR. at 136).

Over a year transpired before the third hearing was held after many stakeholder meetings were conducted. It was explained at the start of the third hearing that IAWA was of the belief that the stakeholder approach may have been on the verge of breaking down. It was IAWA's understanding based upon statements made by representatives of IEPA and IDNR that they were working to prepare a joint position and submit it to the Board in response to the IAWA proposal. Dr. Thomas's decision to proceed to file his pre-filed testimony prior to the third hearing had the effect of effectively stopping the stakeholder process in its tracks. IAWA was concerned that a year long effort to seek to eliminate or at least minimize points of differences had been wasted. This decision by Dr. Thomas to file his pre-filed testimony coupled with the blindside delivered by the Lt. Governor office in the second hearing were very serious developments which had the effect of essentially negating the efforts that had been made by IEPA, IDNR, IAWA the environmental group representatives and other stakeholders throughout the intervening year. Mr. Toby Frevert presented a statement on the record which essentially recounted the stakeholder efforts and repeated his previously stated positions that "the current DO standard is overly simplistic, outdated and not serving the state well." Mr. Frevert's statement is contained in Exhibit 14. Mr. Frevert's, citing significance of the DO standard, asked the Board for additional time to allow IEPA to resolve or reduce points of contention among the stakeholders. After the conclusion of Mr. Frevert's testimony, Mr. Stan Yonkauski, counsel for IDNR, was sworn in and he also testified as to the progress that had been made throughout the stakeholder process and further supported Mr. Frevert's request for more time. Mr. Yonkauski then presented a motion to withdraw Dr. Thomas testimony. After considerable discussions the motion was subsequently

granted by the Hearing Officer on the basis that the "pre-field testimony Dr. Thomas does not represent DNR's position anymore."

Following this and with the assurance that IEPA would report back during a status conference of the progress made to date, the hearing proceeded. Mr. Streicher testified about the efforts to resolve the differences throughout the stakeholder process and Dr. Garvey presented his pre-filed testimony with all nine of the attachments which set forth in Exhibit 16. Dr. Garvey explained that he had reviewed data obtained from Mr. Ranken and further work from Mr. Yoder of Ohio EPA. He concluded that this Ohio data and analysis basically supported IAWA's proposal. He cautioned about the ability to draw conclusions from certain of the data presented in the Ranken report.

Finally, Dr. Garvey testified and addressed questions concerning the early life stage cut off of June 30 and the impact of fish that continue to spawn after that date. In essence, Dr. Garvey testified that either the species have sufficient spawning earlier in the year to assure continued annual recruitment or they are adapted to lower DO levels which naturally occur after June 30.

A fourth hearing was held on April 25, 2006. This hearing was held to allow the DNR and IEPA to present the Joint DNR/IEPA Proposal and supporting information. Exhibits 20, 21 and 23. As presented the Joint DNR/IEPA Proposal differs in three respects from that of the IAWA Proposal with the agreed upon inclusion of the 30-day limit. First, they proposed the cut off date of July 30 for the earlier life stage rather than the June 30 date contained in the IAWA Proposal. Second, they proposed a second tier of enhanced waters "for those systems supporting species believed to associate with higher ambient dissolved oxygen concentrations." (Emphasis added) (April 25, 2006 TR. at 24). For these enhanced waters the Joint DNR/IEPA Proposal

would have the Board adopt a 4.0 mg/l daily minimum, 6.25 mg/l daily mean value averaged over seven days, and a 30-day 6.0 mg/l daily mean. (April 25, 2006 TR at 26). The third change was the proposal of a narrative provision designed to ensure sufficient DO to prevent offensive conditions and a recognition that quiescent and isolated sections of general use waters, including wetlands, slough backwaters and lakes and reservoirs reservations below the thermocline; shall be maintained at sufficient dissolved oxygen level to support their natural ecological functions and resident community (April 25, 2006 TR. at 25).

Representatives of IDNR and IEPA testified that they had developed a list of species they believed to be associated with higher dissolved oxygen based on extrapolations of the Ranken work and based on their own experience. They then looked at the historical data base to determine if these organisms were present in a given stream reach. If they were, the stream reach was assigned to the list of segments for which they are proposing enhanced water classification which is found at Exhibit 21.

Based on earlier requests by IAWA, for the data to support the enhanced water segment listings, proper identification of these segments in comparison of the segments the point source discharges and the list of impaired waters, DNR and IEPA provided Exhibit 22 and Exhibit 24. After extensive back and forth regarding the data issue, both IEPA and DNR agreed to work with Dr. Garvey to assist IAWA in being able to identify the basis for their enhanced water segment proposal. It is extremely interesting that the transmittal letter to Dennis Streicher transmitting a CD of DO results found at Exhibit 22 attempts to in essence refute the earlier data collection effort by USGS as well as the 2005 data which was collected because 2005 was an extreme drought year.

In response to questions Joel Cross explained that they essentially used the Ranken listing, and any species listed above rock bass for DO sensitively was assigned to the enhanced list. (April 25, 2006 TR. at 91 and 92). Mr. Cross admitted in response to questions that they did not evaluate their list of enhanced stream segments against any actual DO data, temperature data, or habitat data (April 25, 2006 TR. at 92). Not surprising the enhanced water list includes segments that are presently on the 303(d) list as impaired for DO (April 25, 2006 TR. at 98). They had no idea how many of the proposed enhanced water segments had actually had dissolved oxygen measurements taken (Id.) (April 25, 2006 TR. at 101)

The fifth and sixth days of hearings were held on November 22 & 23, 2006. Prior to this hearing on May 19, 2006 DNR submitted a compact disk with information concerning Exhibit 24, segments that IEPA had identified in the 2006 assessment data base as aquatic life impaired (including segments where low dissolved oxygen is identified as a potential cause of impairment) and the NPDES discharge points and associated data. After responding to pre-filed questions submitted by the Environmental Groups, IDNR and IEPA proceeded to address several questions concerning the pre-filed testimony of Dr. Garvey. In response to this line of questioning IEPA responded to a follow up question that both IEPA and IDNR had conducted dissolved oxygen sampling during the summer of 2006. They also said that despite IAWA having asked for the data they had declined to provide it. (November 2, 2006 TR. At 41).

Mr. Streicher presented his pre-filed testimony See Exhibit 32. Mr. Streicher presented an extensive summary of the stakeholder process that transpired since IAWA retained Dr. Garvey and Dr. Whiles to work on this project. He included a summary of the various hearings and stakeholder meetings that have occurred between these hearing. Mr Streicher also pointed out that the Joint DNR/IEPA Proposal was not the result of stakeholder discussions (November

2, 2006 TR. at 67). Mr. Streicher explained the opposition by IAWA to the Joint DNR/IEPA Proposal with respect to the July 30 cutoff of the early life stages and the entire enhanced waters approach. Mr. Streicher also testified concerning IAWA efforts to move the State to develop of Tiered Use Water Quality Standards (November 2, 2006 TR. at 69 and 70). He explained that IAWA had formed a committee. It had retained a consultant and had at least one meeting with stakeholders, including IDNR, USEPA, IEPA, the regulated community, and the environmental groups. Mr. Streicher explained that he felt the proposed enhanced waters was inconsistent with the appropriate means for establishing use-based water quality standards.

Mr. Streicher also explained the effort that had been discussed at the April 25, 2006 hearing, in which certain IAWA members agreed to gather continuous dissolved oxygen data. Mr. Streicher explained the efforts undertaken by Fox Metro Water Reclamation District, City of Naperville, Greater Peoria Sanitary District, Village of Plainfield, Rock River Water Reclamation District, Danville Sanitary District and the Wheaton Sanitary District, and the preparation of Exhibits 33 and 34 (November 2, 2006 TR. at 74-75). Dr. Garvey then presented his pre-filed testimony, found at Exhibit 35, and additional testimony based upon 2006 data from Fox Metro Water Reclamation District and the Wheaton Sanitary District (see Exhibit 36). Dr. Garvey explained his involvement since initially being retained by IAWA and his participation at every hearing and all of the stakeholder meetings (November 2, 2006 TR. at 89). Dr. Garvey summarized his prior testimony, and again stated – based upon his review of the growing statewide DO data, as well new studies – that the IAWA original proposal remains appropriate, including evidence which is “mounting that the majority of reproduction of aquatic organisms in Illinois either occurs before July 1 – See CSOBOTH 2006 thesis, SIUC; Exhibit 1 ... or late-spawning organisms have early life stages that are tolerant to low dissolved oxygen

concentrations; for example, freshwater mussels” (November 2, 2006 TR. at 91). Dr. Garvey criticized the Joint IDNR/IEPA enhanced water proposal, based solely on associations between aquatic organisms and average oxygen concentrations, as ignoring “other potential causal factors such as habitat quality, gradient, and temperature” (November 2, 2006 TR. at 92). Dr. Garvey then presented extensive testimony regarding his analysis of all of the data sets that had been provided to him, both by IEPA and IDNR, as well as the recent data set collected by IAWA members. Dr. Garvey testified that the many of the enhanced water segments “likely violate both the IDNR/IEPA, and perhaps the IAWA proposed standards, even though enhanced oxygen taxa are present in streams” (November 2, 2006 TR. at 93). Dr. Garvey explained that, based on his analysis of the grab dissolved oxygen data collected from 1994 through 2003 which are said to fully meet their aquatic use designations, the 2004 and 2005 semi-continuous data logging probes in streams that have been identified for the enhanced segments, that, based on this review, the median dissolved oxygen concentration declines through during June through August to a benchmark level below 5 mg/l during summer months. He further testified that the grab samples were usually taken during the day. Turning to the continuous data, the DO levels in the enhanced segments more frequently decline below 5 mg/l, and even occasionally below the 3.5 mg/l value, during the night-through-dawn period (November 2, 2006 TR. at 95). Dr. Garvey also noted that 20% of the observations exceed the proposed DO minimum of 5 mg/l for the month of July, even though these segments contain oxygen-sensing species (*Id.*). Dr. Garvey also responded to the attempts by IEPA to try to limit the use of the grab data and the 2005 results of the continuous sampling. In Dr. Garvey’s opinion, “the extreme drought conditions in the enhanced streams likely provided the worst-case scenario, and thereby insight into what acute minimum should be to support a diverse aquatic assemblage. The proposed minimum standard

of 3.5 mg/l was rarely exceeded in these streams, and likely is near the extreme lower limit” (November 2, 2006 TR. at 97). Dr. Garvey had also compared the proposed IAWA seven day minimum average as it would apply in July at 4.0 mg/l to the proposed Joint DNR/IEPA seven day minimum average as it would apply in August and found the IAWA standard yielding more potential violations indicating its greater sensitivity to low DO conditions during the July transitional month. (November 2, 2006 TR. at 101 and 151-154). In conclusion, Dr. Garvey testified that based upon his review of all of the DO data sets, including that assembled by the IAWA members, in his opinion, a dissolved oxygen "threshold" does exist and that it occurs during the summer when concentrations are less than or equal to 3 mg/l as stated in the NCD and the Garvey-Whiles Report. If a stream remains consistently above this level, *i.e.*, never violates a 3.5 mg/l minimum – oxygen is no longer limiting for life, and some other factors then limits organisms, probably habitat. All of the stream data and the literature – see Dr. David’s research – supports this view” (November 2, 2006 TR. at 102). In summary, in response to a question as to whether he believed there was any scientific basis to support the Joint DNR/IEPA Proposal, Dr. Garvey stated that the enhanced tier criteria was not supportable, because of his belief that you need to have strong laboratory-derived physiological-based data associated with oxygen tolerances in fish and other aquatic organisms, as well as incorporating the effects of flow (November 2, 2006 TR. at 119-120). Dr. Garvey then responded to a number of questions.

At the sixth day of hearing on November 3, 2006, Ms. Cindy Skrukrud testified on behalf of the Illinois Chapter of the Sierra Club. She testified that they also support the Joint DNR/IEPA Proposal (November 3, 2006 TR. at 257). She further testified that they support the agency’s narrative proposal (November 3, 2006 TR. at 258).

B. Issues for Decision By Board

As aptly described by Mr. Streicher, the testimony presented at six days of hearing in this record, and the numerous stakeholder meetings that have occurred, have resulted in essentially two competing rule-making proposals before the Board. The first is that of the original IAWA proposal, and the second, the Joint DNR/IEPA Proposal. As previously stated, IAWA is in complete agreement with the inclusion of a 5.5 mg/l 30-day mean minimum value. IAWA is also in complete agreement with the proposed narrative rule set forth in the Joint Proposal. Therefore, there exists three issues of controversy in this record. The one that IAWA believes is the most easy to deal with is the proposal by Mr. Murphy to have a minimum 6.5 mg/l dissolved oxygen water quality standard during the cold-weather months be adopted as supported by Sierra Club. IAWA believes that the record simply does not support this proposal as being necessary. It is inconsistent with the NCD, and representatives of the Metropolitan Water Reclamation District of Greater Chicago have clearly shown that adoption of this proposal is unwarranted.

The two issues where there is a substantial disagreement between IAWA and the other participants is the inclusion of July in the early life stage period and the entire enhanced water proposal. There is absolutely no evidence to refute the analysis of all of the existing data set that has been provided by Dr. Garvey to the effect that July is a warm-weather month, and the existing data shows that the dissolved oxygen water quality values in July decline to below 6 mg/l and 5.0 mg/l. It is true that certain species continue to reproduce during the months of June and July, with some species reproducing throughout the year. As explained by Dr. Garvey, these species either have substantial reproduction which occurs during the cooler weather months to ensure natural recruitment, or the species have adapted to the naturally occurring lower levels of

dissolved oxygen that occur during periods of warmer summer weather. The IAWA proposal is more stringent for the summer months than that contained in the NCD. The author of the NCD believes that local experts should be consulted as to the appropriate cut-off date. Anyone who has listened to or has read the testimony of Dr. Garvey in this proceeding, including his reluctant recitation of his credentials, will have to admit that Dr. Garvey is that recognized expert, who has participated throughout the entirety of this proceeding. His testimony should be controlling. The Board should not adopt the end-of-July cutoff, as it will simply be ensuring that a dissolved oxygen water quality standard will be unattainable, similar to the present unattainability of the present DO rule.

With respect to the proposed enhanced waters proposal, the record clearly does not support its adoption by the Board. It is based solely upon an extrapolation of the dissolved oxygen sensitivity contained in the Ranken and work which admittedly has serious faults. This simplistic approach to look simply at these dissolved oxygen sensitivity values, without accounting for any other factors, is scientifically flawed. IEPA and IDNR have admitted that they made no attempt to evaluate existing dissolved oxygen data, temperature data, or habitat data in establishing the proposed enhanced DO segments. Their testimony is essentially all over the map. They have testified that, in some instances, they averaged the cold water values contained in the NCD with the warm water values, and in some instances, essentially adopted the cold water numbers. Again, Dr. Garvey's careful evaluation and detailed testimony and reports concerning his evaluation of all of the available data sets clearly show that many of the enhanced segments do not comply with the proposed dissolved oxygen values that DNR and IEPA would have the Board adopt. In fact it is so telling that IEPA has attempted to refute the very data they have collected and supplied to Dr. Garvey for his review. Also damning is that IDNR and IEPA

collected data during the summer of 2006, and despite being asked to share it with IAWA, declined to do so. The only conclusion that can be drawn is that this 2006 data, like all of the other data that has been provided to date, does not support the Joint DNR/IEPA Proposal.

IAWA is firmly committed to the process of establishing appropriate tiered-use aquatic water quality standards. It has put its own resources to work to start this process, given the apparent reluctance or inability of either IEPA or DNR to address this issue. IAWA welcomes the existing involvement of IEPA and DNR in this process, and looks forward to their continuing involvement along with that of the U.S. EPA and the various stakeholders. The enhanced water approach should be deferred to a scientifically based tiered-use proposal, relying upon the guidance from U.S. EPA for developing tiered-use water quality standards. The record simply before the Board in this proceeding does not support the need for the enhanced water dissolved oxygen water quality standards, or the basis for the actual designations set forth in Exhibit 21, the stream segments for enhanced dissolved oxygen protection as set forth in Exhibit 21.

C. Potential Middle Ground or Compromise

IAWA while it truly believes that the record does not support the Boards adoption of the Joint IDNR/IEPA proposal, IAWA does recognize the potential need for compromise. The Joint IDNR/IEPA Proposal really has two parts. The first is a request to adopt a second tier dissolved oxygen water quality standard for a category of Illinois Waters referred to as the Enhanced Waters in this proposal. The second is the actual regulatory identification of stream segment as being included as subject to this standard.

If the Board believes that there is any merit in the proposed enhanced dissolved oxygen water quality proposal submitted in the Joint IDNR/IEPA Proposal, IAWA would suggest that the Board enact this as the appropriate dissolved oxygen water quality standard for Enhanced

Waters. IAWA would ask that the Board not adopt the list of enhanced water segments until such time as either IEPA or DNR have come forth and presented the scientific technical basis to support the inclusion of a segment or segments as being in need of enhanced protection. IAWA would be hopeful that this process could be streamlined consistent with U.S. EPA's guidance for adopting tiered use water quality standards. IAWA has repeatedly stated throughout this proceeding that it has no objection to the establishment of more restrictive dissolved water quality standards, where such water quality standards are deserving to be enacted. The adoption of the enhanced water DO standard could proceed independently of the regulatory process of deciding which water segments to include as subject to this standard.

Respectfully submitted,

ILLINOIS ASSOCIATION OF WASTE WATER
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **Notice of Filing - Public Comments** were filed electronically and first class mail with the Clerk of the Illinois Pollution Control Board and served upon the parties to whom said Notice is directed by electronic mail and first class mail, postage prepaid, by depositing in the U.S. Mail at 191 N. Wacker Drive – Suite 3700, Chicago, IL 60606 on Wednesday, December 20, 2006.

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