

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO:) R07-009
35 Ill. Adm. Code 302.102(b)(6), 302.102(b)(8)) Rulemaking – Water
302.102(b)(10), 302.208(g), 309.103(c)(3),)
405.109(b)(2)(A), 405.109(b)(2)(B), 406.100((d))
REPEALED 35 Ill. Adm. Code 406.203 Part 407, and)
PROPOSED NEW 35 Ill. Adm. Code 302.208(h))

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that the Environmental Law and Policy Center of the Midwest (“ELPC”), Prairie Rivers Network and the Sierra Club today have electronically filed the motion for leave to file Pre-Filed Questions to Illinois Environmental Protection Agency (“IEPA”).

Respectfully submitted,



Albert F. Ettinger (Reg. No.
3125045)
Counsel for Environmental Law &
Policy Center, Prairie Rivers
Network and Sierra Club

DATED: February 27, 2007

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MOTION FOR LEAVE TO FILE PRE-FILED QUESTIONS

The Environmental Law and Policy Center of the Midwest (“ELPC”), Prairie Rivers Network (“PRN”) and the Sierra Club hereby move for leave to file the attached pre-filed questions to the Illinois Environmental Protection Agency (“IEPA”). In support of this motion, movants state:

1. Answers to pre-filed questions are essential to understanding the position of the Illinois Environmental Protection Agency.
2. The questions are somewhat complex and better considered responses may be obtained through pre-filed questions.
3. Movants believe that the use of pre-filed questions will expedite the hearing of this matter.

Wherefore, movants move for leave to file the attached pre-filed questions to the IEPA/IDNR.

Respectfully submitted,



Albert F. Ettinger (Reg. No.
3125045)
Counsel for Environmental Law &
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REPEALED 35 Ill. Adm. Code 406.203 Part 407, and)
PROPOSED NEW 35 Ill. Adm. Code 302.208(h))

**PRE-FILED QUESTIONS OF ENVIRONMENTAL LAW AND POLICY
CENTER, PRAIRIE RIVERS NETWORK AND SIERRA CLUB**

The Environmental Law and Policy Center of the Midwest, Prairie Rivers Network and the Illinois Chapter of the Sierra Club hereby file questions to the Illinois Environmental Protection Agency regarding its proposal to change certain water quality standards in the above-captioned proceeding.

1. At page 7 of the statement of reasons it is stated that this is the Triennial Review. What is the reason for this proposal being designated as a triennial review unlike other water quality standard proposals that the Agency from time to time has proposed to the Board?
2. Are other water quality standard proposals planned by the Agency that it is anticipated will be filed within three years?
3. It is stated at page 8 of the statement of reasons that the current Total Dissolved Solids (TDS) standard is unnecessary for the protection of aquatic life. What forms of TDS have been found to be present in Illinois waters?
4. Are all of the forms of TDS that have been found to be present in Illinois waters covered by a specific numeric standard for the constituent chemicals?
5. At page 10 of the Statement of Reasons, it is stated that the proposed aquatic based sulfate standards are “concentrations not to be exceeded at any time.” What does it mean that a standard is not to be exceeded at any time?
6. What, as a practical matter, occurs if a sample is taken showing that the standard has been exceeded?
7. At page 10 of the Statement of Reasons it is stated that studies “suggest that extended exposures to drinking waters high in sulfate may lead to weight loss,

disease and death of livestock. To address this potential problem, the Agency proposes a 2000 mg/L standard for water to be used for livestock watering.” Why is a standard of 2000 mg/L thought by the Agency to be protective of livestock?

8. Is the Agency aware of any studies regarding the exposure of livestock to drinking waters high in sulfate?
9. Is a standard necessary to protect wildlife from exposure to drinking water that is high in sulfate?
10. At page 11 of the Statement of Reasons, mine discharges are discussed and it is indicated that the Agency intends to limit discharges to mines to times and places where a significant amount of water from the unmined portion of the watershed also enters the stream during the discharge, “thus providing the necessary dilution to ensure compliance with applicable standards.” How does the Agency limit discharges from mines so as to do this?
11. Are mines limited to discharges during precipitation events? If so, how are such events defined and how does the Agency measure the amount of dilution that will be available following such events?
12. How is the flow in the receiving water monitored so as to assure that necessary dilution is present?
13. How is the amount of the discharge measured and controlled?
14. Regarding the proposed change to 35 Ill. Adm. Code 302.102(6), what is the justification for not requiring a zone of passage for those streams that have a zero flow an average of 9 out of 10 years?
15. Regarding the proposed change to 35 Ill. Adm. Code 302.102(8), currently discharges to waters with a 7q10 flow of zero must meet water quality standards at the point of discharge (“end of the pipe”). What is the justification for eliminating this limitation on dilution?
16. If this proposal is adopted, how does the Agency intend to write permits for dischargers that may discharge during dry weather conditions?
17. Is it intended by the Agency, if this proposal is adopted, to require permit limits that require meeting water quality standards at the end of the pipe for dischargers that may have dry weather discharges to waters with a 7q10 flow of zero? If so, what would be the Agency’s regulatory basis for such limits?
18. Will the proposed changes to the mixing rules of 35 Ill. Adm. Code 302.102 have any effect as to dischargers that may discharge during low stream flow conditions?

19. Currently in writing permits under 302.102(8), what is the Agency's practice in writing permits where the dilution is less than 3:1 during low flow conditions but greater than zero?
20. Please provide an example of the calculation of a sulfate water quality standard under proposed 35 Ill. Adm. Code 302.208(h) using values for hardness and chloride that are typical of Illinois streams.
21. It appears that under proposed 35 Ill. Adm. Code 302.208(h)(3)(B), that the sulfate standard will be 2000 mg/L in all cases that the chloride concentration is greater than 500 mg/l. Is this correct? If so, what is the justification for setting the sulfate standard at 2000 mg/L in all such situation?
22. What is (or was) the purpose of Part 407 which the Agency proposes to repeal?



Albert Ettinger
Counsel for ELPC, PRN and the Illinois
Chapter of the Sierra Club

DATED: February 27, 2007

CERTIFICATE OF SERVICE

I, the undersigned, on oath state that I have served the attached Pre-Filed Questions of the Environmental Law and Policy Center, Prairie Rivers Network and Sierra Club upon the persons listed in the attached service list via U.S. Mail.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Albert Ettinger", with a long horizontal flourish extending to the right.

Albert F. Ettinger (Reg. No.
3125045)
Counsel for Environmental Law &
Policy Center, Prairie Rivers
Network and Sierra Club

DATED: February 27, 2007

SERVICE LIST- R07-009

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