

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
TRIENNIAL REVIEW OF SULFATE AND)	
TOTAL DISSOLVED SOLIDS WASTE)	
QUALITY STANDARDS: PROPOSED)	
AMENDMENTS TO 35 ILL. ADM. CODE)	R07-9
302.102(b)(6), 302.102(b)(8), 302.102(b)(10))	(Rulemaking – Water)
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))	

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn	Ms. Marie E. Tipsord
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	100 West Randolph Street
Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)	(VIA U.S. MAIL)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an **ENTRY OF APPEARANCE OF KATHERINE D. HODGE, ENTRY OF APPEARANCE OF MONICA T. RIOS, and THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S COMMENTS**, copies of which are herewith served upon you.

Respectfully submitted,

Dated: June 7, 2007

By: /s/ Katherine D. Hodge
Katherine D. Hodge

Katherine D. Hodge
Monica T. Rios
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, certify that I have served the attached
ENTRY OF APPEARANCE OF KATHERINE D. HODGE, ENTRY OF
APPEARANCE OF MONICA T. RIOS, and THE ILLINOIS ENVIRONMENTAL
REGULATORY GROUP'S COMMENTS upon:

Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois, 60601

via electronic mail on June 7, 2007; and upon:

Ms. Marie E. Tipsord
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Sanjay K. Sofat, Esq.
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

Mr. Kenneth W. Liss
Andrews Environmental Engineering
3300 Ginger Creek Drive
Springfield, Illinois 62711

Ms. Beth Steinhorn
2021 Timberbrook
Springfield, Illinois 62702

by depositing said documents in the United States Mail in Springfield, Illinois, postage
prepaid, on June 7, 2007.

/s/ Katherine D. Hodge
Katherine D. Hodge

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 and PROPOSED NEW 35 ILL. ADM. CODE)
 302.208(h))

ENTRY OF APPEARANCE OF KATHERINE D. HODGE

NOW COMES KATHERINE D. HODGE, of the law firm HODGE DWYER

ZEMAN, and hereby enters her appearance in this matter on behalf of the Illinois
Environmental Regulatory Group.

Respectfully submitted,

By: /s/ Katherine D. Hodge
Katherine D. Hodge

Dated: June 7, 2007

Katherine D. Hodge
HODGE DWYER ZEMAN
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 and PROPOSED NEW 35 ILL. ADM. CODE)
 302.208(h))

ENTRY OF APPEARANCE OF MONICA T. RIOS

NOW COMES MONICA T. RIOS, of the law firm HODGE DWYER ZEMAN,
and hereby enters her appearance in this matter on behalf of the Illinois Environmental
Regulatory Group.

Respectfully submitted,

By: 
Monica T. Rios

Dated: June 7, 2007

Monica T. Rios
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
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(217) 523-4900

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302.208(h))

**THE ILLINOIS ENVIRONMENTAL
REGULATORY GROUP'S COMMENTS**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP
("IERG"), by and through its attorneys, HODGE DWYER ZEMAN, and submits the
following comments in the above-referenced matter:

I. INTRODUCTION

IERG, a non-profit Illinois corporation, was organized to promote and advance
the interests of its members before governmental agencies, such as the Illinois
Environmental Protection Agency (the "Illinois EPA"), and before the Illinois Pollution
Control Board (the "Board"). IERG's members include companies engaged in industry,
commerce, manufacturing, agriculture, trade, transportation, or other related activities,
and which persons, entities, or businesses are all regulated by governmental agencies that
promulgate, administer, or enforce environmental laws, regulations, rules, or policies.

On behalf of its members, IERG has participated in the development of the
proposed regulations by attending outreach meetings, discussing drafts of the proposal
with the Illinois EPA, and participating at Board hearings.

IERG generally supports the Illinois EPA's proposed amendments ("Proposed Rule") to the regulations to change the sulfate standard and eliminate the total dissolved solids ("TDS") standard. However, IERG requests that the Board favorably consider IERG's comments as it proceeds in this rulemaking.

II. TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS OF THE PROPOSED RULE

IERG understands that the Board requested, as required by Section 27(b) of the Illinois Environmental Protection Act ("Act") 415 ILCS 5/27(b), by letter dated November 27, 2006, that the Department of Commerce and Economic Opportunity (the "DCEO") conduct an economic impact study of the Proposed Rule. To date, the DCEO has not prepared such study as requested by the Board, nor is it required to complete a study under Section 27(b) of the Act. 415 ILCS 5/27(b). The Act provides, in pertinent part, that "[t]he Department may within 30 to 45 days of such request produce a study of the economic impact of the proposed rules." 415 ILCS 5/27(b). (Emphasis added.)

IERG does not believe that the Section 27(b) request for the DCEO's economic impact analysis alone fulfills the obligations of aiding the Board in its determination of the economic impact of a proposed rule. As stated in Section 27(a) of the Act, "the Board shall take into account...the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution." 415 ILCS 5/27(a). The Board must fully take into consideration the economic impact produced by an economic analysis. In order to do so, a full and adequate record should be developed, which includes such documentation supporting any proposed amendments as technically feasible and economically reasonable. Further, Section 27(a) states:

Any person filing with the Board a written proposal for the adoption, amendment, or repeal of regulations shall provide information supporting the change and shall at the same time file a copy of such proposal with the Agency and the Department of Natural Resources. To aid the Board and to assist the public in determining which facilities will be affected, the person filing a proposal shall describe, to the extent practicable, the universe of the affected sources and facilities and the economic impact of the proposed rule.

415 ILCS 5/27(a). (Emphasis added.)

On its face, the Act states that the burden is on the proponent of any proposed rule to provide information to the Board. Therefore, the burden is on the Illinois EPA to establish the technical feasibility and economic reasonableness of the Proposed Rule. IERG does not believe that the Illinois EPA has adequately met its burden – particularly as it relates to the economic impact of the Proposed Rule on dischargers. The “Technical Feasibility and Economic Justification” portion of the Illinois EPA’s Proposed Rule states:

For most dischargers, the new sulfate and total dissolved solids standards will allow attainment of water quality standards without the implementation of additional management practices or process alternatives. A significant majority of discharges would meet the applicable permit limits with the help of ongoing and routine control measures. Mines must continue to optimize the best management practices to discourage the formation of sulfates and the erosion of soils that contribute the substance to wastewaters.

Agency Regulatory Proposal, Triennial Review of Sulfate and Total Dissolved Solids Waste 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), PCB No. 07-09 at 13. (Ill.Pol.Control.Bd. Oct. 23, 2006) (hereinafter this rulemaking will be cited as “Triennial Review of Sulfate

and TDS Water Quality Standards”). Further, the Illinois EPA states in its proposal that the “Agency anticipates that the proposal would require a small number of existing mines to employ additional controls to meet water quality based permit limits.” Id.

The Illinois EPA failed to provide the basis for these statements. Mr. Robert Mosher, Manager of the Illinois EPA’s Water Quality Standards Unit, testified at the March 7, 2007 hearing in this matter that NPDES permit limits, as a result of these regulations, “will be protective, yet not overly so, and will cause no unnecessary burden on economic activity.” Transcript of March 7, 2007 Hearing, Triennial Review of Sulfate and TDS Water Quality Standards, PCB No. 07-09 at 22 (Ill.Pol.Control.Bd. Mar. 16, 2007) (hereinafter cited as Mar. Tr.). Mr. Mosher offered no analytical basis for making such a statement, and without the availability of a full economic analysis, it is difficult to accept that such a statement is justified. Further, it is clear that the Illinois EPA does not lack the ability to conduct such analysis as demonstrated by the testimony of Mr. Brian Koch, a toxicologist in Illinois EPA’s Water Quality Standards Section, during the March 7, 2007 hearing regarding the impact of the Proposed Rule on livestock. See generally, Mar. Tr. at 22-36. For example, Mr. Koch stated that a sulfate standard of 2,000 milligrams per liter “would not lead to adverse effects on livestock or economic impacts to livestock operations.” Id. at 3; see also Testimony of Brian Koch, Triennial Review of Sulfate and TDS Water Quality Standards, PCB No. 07-09 at 8 (Ill.Pol.Control.Bd. Feb. 5, 2007) (hereinafter “Koch Testimony”).

III. SUPPORT OF CITGO’S REQUEST TO EXTEND THE PROPOSED RULE TO SECONDARY CONTACT WATERS

IERG supports the elimination of the TDS standard in general use waters. CITGO Petroleum Corporation (“CITGO”), in its prefiled testimony, requests that the

Board extend the rulemaking to secondary contact waters as well. Testimony of James E. Huff, P.E., Triennial Review of Sulfate and TDS Water Quality Standards, PCB No. 07-09 at 1 (Ill.Pol.Control.Bd. Apr. 9, 2007). In the alternative, CITGO requests that the sulfate and TDS standards extend to its refinery in Lemont, which discharges to the Chicago Sanitary & Ship Canal, a secondary contact water. Testimony of Brigitte Postel, Triennial Review of Sulfate and TDS Water Quality Standards, PCB No. 07-09 at 2 (Ill.Pol.Control.Bd. Apr. 9, 2007). IERG asks that the Board consider the suitability of this request within this rulemaking.

IERG understands that the Illinois EPA intends to address TDS in secondary contact waters in the ongoing Use and Attainability Analysis (“UAA”) process and future rulemaking proceeding. Currently, several water quality criteria proposed in the UAA draft rule are under debate, including proposed water quality criteria for temperature, bacteria, and ammonia. The Illinois EPA has not provided a definitive time period to file its proposed rulemaking with the Board, and has only stated that it believes it will be filed sometime later this year. Transcript of April 23, 2007 Hearing, Triennial Review of Sulfate and TDS Water Quality Standards, PCB No. 07-09 at 40 (Ill.Pol.Control.Bd. May 4, 2007) (hereinafter cited as Apr. Tr.) Further, the Illinois EPA has stated it prefers to address TDS in a future rulemaking in order to provide an opportunity to stakeholders to comment. Id. Illinois EPA’s justification is inadequate because, as more fully discussed in CITGO’s prefiled testimony, TDS is not an issue with stakeholders in the UAA draft proposal.

IV. RETROACTIVE APPLICATION OF THE PROPOSED STANDARDS

The standard being proposed is the result of the development of two equations for sulfate at specified ranges of hardness and chloride. See generally Koch Testimony. The equations allow for the calculation of site-specific sulfate standards dependent on water quality characteristics. Id. As stated in its economic impact report, the Illinois Coal Association (the "ICA") believes that the standard being proposed is too restrictive, and, even if possible to attain, will be costly. Exhibit 2, "Determination of Economic Impact of Changing Water Quality Standards for Sulfate on Coal Mines," Triennial Review of Sulfate and TDS Water Quality Standards, PCB No. 07-09 at 1 (Ill.Pol.Control.Bd. Apr. 23, 2007). As stated in its testimony during the April 23rd hearing, the ICA explained:

[t]he cost of a system designed to achieve a 2,000 mg/L effluent limit using excess lime and hydrochloric acid would have an annualized operating cost of \$542,000 and an annualized capital cost of \$471,500 for every 100 acres of drainage, resulting in a total cost of \$10,953,000 projected over a ten year period (ICCI 2005).

Illinois Coal Association Industry Comments, Triennial Review of Sulfate and TDS Water Quality Standards, PCB No. 07-09 at 1 (Ill.Pol.Control.Bd. Apr. 9, 2007).

IERG understands that of particular concern to the industry is the ability of old, closed mines to comply with the sulfate standard being proposed. In support of the ICA and IERG members involved in this industry, IERG requests that the Board consider limiting prospective applicability of the rule to those mines currently active and operational, and to those previously closed, inactive mines at such time as they may be re-opened for active mining.

V. CONCLUSION

IERG appreciates the opportunity to participate in this proceeding, and respectfully requests that the Board take these comments into consideration.

* * *

IERG reserves the right to supplement or modify these comments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

By: /s/ Katherine D. Hodge
One of Its Attorneys

Dated: June 7, 2007

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