

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|--|---|----------------------|
| IN THE MATTER OF: |) | |
| |) | |
| TRIENNIAL REVIEW OF SULFATE AND |) | |
| TOTAL DISSOLVED SOLIDS WATER |) | |
| 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: Mr. John Therriault | Ms. Marie E. Tipsord |
| Assistant 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 **THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S COMMENTS**, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: December 3, 2007

By: Monica T. Rios
Monica T. Rios

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Monica T. Rios
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CERTIFICATE OF SERVICE

I, Monica T. Rios, the undersigned, certify that I have served the attached THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S COMMENTS upon:

Mr. John Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

via electronic mail on December 3, 2007; and upon:

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

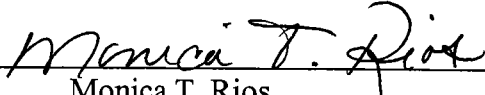
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by depositing said documents in the United States Mail in Springfield, Illinois, postage prepaid, on December 3, 2007.



Monica T. Rios

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
TRIENNIAL REVIEW OF SULFATE AND)
TOTAL DISSOLVED SOLIDS WATER) R07-09
QUALITY STANDARDS: PROPOSED) (Rulemaking – Water)
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).)

**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 ("Illinois EPA"), and before the Illinois Pollution Control Board ("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 Illinois EPA, participating at hearings, and filing comments in this matter.

On June 7, 2007, IERG filed post-hearing comments stating that it generally supports Illinois EPA's proposed amendments to revise the sulfate standard and eliminate the total dissolved solids ("TDS") standard for general use waters, and requesting that the Board favorably consider IERG's comments as it proceeds in this rulemaking. IERG's Comments, In the Matter of: Triennial Review of Sulfate and Total Dissolved Solids Water Quality Standards: Proposed Amendments to 35 Ill. Adm. Code 302.102(b)(6), 302.102(b)(8), 301.102(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. R07-9 (Ill.Pol.Control.Bd. June 7, 2007) (hereinafter this rulemaking will be cited as "Triennial Review"). Specifically, IERG commented regarding: 1) the technical feasibility and economic reasonableness of the proposed rule; 2) support of CITGO's request to extend the proposed rule to secondary contact waters; and 3) the retroactive application of the proposed standards. Id.

On September 20, 2007, the Board issued its First Notice Opinion and Order. First Notice Opinion, Triennial Review, PCB No. R07-09 (Ill.Pol.Control.Bd. Sept. 20, 2007). The Board specifically requested "participants to provide additional comment on the economic reasonableness of the entire proposed rule." Id. at 31.

II. ECONOMIC IMPACT ON LIVESTOCK OPERATIONS

IERG's June 7, 2007 comments discussed the proponent's obligation to provide an economic analysis in order for the Board to fully take into consideration the economic impact of the proposed rule. IERG's Comments at 2-4. Section 27(a) of Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1, et seq., clearly places the burden on

Illinois EPA, as the proponent of the rulemaking, to provide a full economic impact analysis to the Board. 415 ILCS 5/27(a). IERG does not believe that the information provided to the Board by Illinois EPA fulfills this obligation. IERG's Comments at 2-4.

As previously noted in IERG's June 7, 2007 comments, Illinois EPA adequately developed the record to support its position that the economics of livestock operations would not be adversely impacted by a 2,000 milligrams per liter ("mg/L") sulfate standard. Id. at 4. Illinois EPA's toxicologist, Brian Koch, provided testimony supporting the proposed rule and explained the effects of higher sulfate concentrations on livestock and its economic impact to livestock operations. Transcript of March 7, 2007 Hearing, Triennial Review at 22-36 (Ill.Pol.Control.Bd. Mar. 16, 2007) (hereinafter cited as Mar. Tr.). Based on a literature review and consultation with Dr. Gavin Meerdink from the Department of Veterinary Medicine at University of Illinois Champaign-Urbana, Illinois EPA reasoned that at a higher sulfate concentration of 2,360 mg/L, cattle exhibit decreased dressed-out parameters "signifying that exposure to drinking water at this concentration may result in economic losses to livestock operations." Id. at 32. Illinois EPA further demonstrated that at even higher sulfate concentrations from 2,500 mg/L to 3,000 mg/L, cattle exhibit more severe symptoms up to and including poor conception, weight loss, and "polioencephalomalacia, a neurological disorder which leads to anorexia, blindness, seizures, and eventually death." Id. at 33.

Based on these considerations, Illinois EPA established that at sulfate concentrations below 2,000 mg/L, there is no economic impact on livestock operations. Id. at 31. Illinois EPA concluded:

that a chronic standard of 2,000 mg/L sulfate would be protective of livestock watering, as surface waters supporting this concentration would

not lead to adverse effects on livestock or economic impacts to livestock operations.

Id.

Illinois EPA, utilizing research analysis and discussions with Dr. Meerdink, has supported its proposed sulfate standard for livestock watering. The proposed rule establishes a sulfate limit for livestock watering at 2,000mg/L, because Illinois EPA demonstrated that higher concentrations have adverse effects on the health of livestock. Thus, the potential economic impact on livestock operations was fully considered in establishing the sulfate limit for livestock drinking water. Unfortunately, Illinois EPA did not apply the same degree of diligence in considering the economic impact for industrial dischargers.

III. ECONOMIC IMPACT ON INDUSTRIAL DISCHARGERS, INCLUDING MINING OPERATIONS

No similar economic impact analysis has been conducted to determine the impact of Illinois EPA's proposal to establish a range of sulfate concentrations from 500 mg/L in soft waters with low chloride levels to over to 2,500 mg/L in hard waters of average chloride concentrations for industrial dischargers. Illinois EPA fails to cite to any literature review or expert consultation to support the economic reasonableness of establishing this range of sulfate limits. Instead, in Illinois EPA's brief "Technical Feasibility and Economic Justification" section of the proposal's Statement of Reasons, Illinois EPA states that "for most dischargers, the new sulfate and total dissolved solids standards will allow attainment of water quality standards with the implementation of additional management practices or process alternatives." Agency Regulatory Proposal, Triennial Review at 13 (Ill.Pol.Control.Bd. Oct. 23, 2006) (hereinafter cited as

“Statement of Reasons”). Illinois EPA further states that “a significant majority of discharges” would need to utilize “ongoing and routine control measures. Id. In addition, Illinois EPA noted in regards to the proposal’s economic impact that it “would require a small number of existing mines to employ additional controls to meet water quality based permit limits.” Id. Further, Illinois EPA also stated that the proposed changes to the TDS and sulfate standards will reduce petitions for site-specific water quality standards for these two parameters resulting in “a significant cost savings for those entities as well as to the Agency and Board.” Id.

In regard to Illinois EPA’s belief that the proposal will decrease petitions for regulatory relief from the sulfate standard, IERG could locate only one site-specific rulemaking petition for regulatory relief for these constituents since 2004. In the Matter of: Revisions to Water Quality Standards for Total Dissolved Solids in the Lower Des Plaines River for ExxonMobil Oil Corporation: Proposed 35 Ill. Adm. Code 303.445, PCB No. R06-24 (Ill.Pol.Control.Bd. Feb. 7, 2006). However, this site-specific petition would not have been impacted by this proposed rulemaking since it requested relief from the TDS standard for secondary contact waters. Id. Although cost savings may result by eliminating a small number of petitions for regulatory relief, any such cost savings would likely be offset by costs incurred by affected sources’ inability to comply with the proposed sulfate limits, as is the case with coal mine operations.

As set forth above, Illinois EPA has indicated that it “anticipates that the proposal would require a small number of existing mines to employ additional controls to meet water quality based permit limits.” Statement of Reasons at 13. However, Illinois EPA does not explain the nature of these additional controls or what it will cost to purchase,

install, operate, maintain, repair, and monitor such controls. Further, the “small number” of affected coal mines referenced in Illinois EPA’s Statement of Reasons could quite possibly be all coal mines as stated by Illinois EPA. Id. At the March 7, 2007 hearing, Dr. Anand Rao, a Board technical adviser, asked Illinois EPA “how many mine discharge permits currently exist in the State that are affected” by the proposed rules. Mar. Tr. at 73. In response, Illinois EPA replied in a April 9, 2007 filing:

There are 19 active coal mines in Illinois at the present time. The Agency believes that all of these mines have discharges that have the potential to exceed either the Board’s existing sulfate or the chloride water quality standards in their final effluent. Other mine related discharges exist at mine reclamation sites, coal ash disposal sites, and related facilities not associated with one of the active mines. These sources total approximately 90 NPDES permits, and most of these discharges would also not meet one or both of these standards in the final effluent.

Illinois Environmental Protection Agency’s Additional Information and Documents, Triennial Review at 2 (Ill.Pol.Control.Bd. Apr. 9, 2007). (Emphasis added.)

Thus, the proposed rule could have potentially significant economic impact upon all coal mine related activities in the State, and Illinois EPA has not provided any economic analysis to support its claim that the proposed rule does not, in fact, negatively impact coal mine related activities. In the Motion for Acceptance of the Proposed Rule, Illinois EPA states that the “regulatory proposal includes” an “Agency Analysis of Economic and Budgetary Effects of Proposed Rule.”¹ Statement of Reasons at 3. The proposal does not contain such a document. Illinois EPA’s statutory obligation, as the

¹ Note that the Joint Committee on Administrative Rules (“JCAR”) may request from any agency “an analysis of the economic and budgetary effects of the proposed rulemaking....” 1 Ill. Admin. Code § 220.300(a). JCAR requested such an analysis from the Board on October 2, 2007. JCAR Request, Triennial Review, PCB No. R07-9 (Ill.Pol.Control.Bd. Oct. 10, 2007). Illinois EPA’s statutory obligation, as the proponent of the proposal, to provide an economic analysis of the impact of the rule is independent from any response the Board may provide to JCAR’s request. Also note that the Board may have difficulty complying with JCAR’s request since Illinois EPA has failed to provide a thorough analysis of the proposed rule’s economic impact.

proponent of the proposal, to provide an economic analysis of the impact of the rule is independent from any response the Board may provide to JCAR's request. Illinois EPA has merely provided three paragraphs in its Statement of Reasons to justify the economic reasonableness of the proposed rule. Id. at 13. As discussed more fully above, Illinois EPA has failed to support its statements that the proposed rule is economically reasonable.

IV. CONCLUSION

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

* * *

IERG reserves the right to supplement and modify these comments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

By: Monica T. Rios
One of its Attorneys

Dated: December 3, 2007

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