

JAN 17 2002

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO)
AMMONIA NITROGEN STANDARDS)
35 Ill. Adm. Code)
)

R 02- 19

NOTICE OF FILING

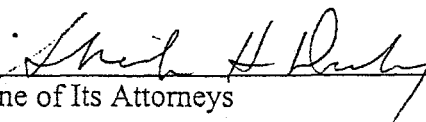
TO: Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

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Office of the Attorney General
Division Chief of Environmental Enforcement
188 West Randolph Street
Chicago, IL 60610

PLEASE TAKE NOTICE today that I have filed with the Clerk of the Illinois Pollution Control Board the **Proposed Rule and Statement of Reasons and Motion to Waive Signature Requirement**, a copy of which is herewith served upon you.

Respectfully submitted,
Illinois Association of Wastewater Agencies



One of Its Attorneys

Dated: January 17, 2002

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THIS FILING IS SUBMITTED ON RECYCLED PAPER

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Pollution Control Board

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R 02- 9

MOTION TO WAIVE SIGNATURE REQUIREMENT

The Illinois Association of Wastewater Agencies ("IAWA"), by its attorneys Gardner Carton & Douglas, moves to waive the signature requirement to file a Petition for Rulemaking in Section 102.200 of the Board's regulations. IAWA is seeking to amend the rules governing ammonia, contained in regulations at Sections 302.212, 302.213, and 304.112. In support, IAWA states as follows:

1. IAWA is a member group consisting of 98 members, of which 55 are agency members. The agency members themselves employ hundreds of individuals to administer the wastewater treatment systems in this state. IAWA exists to support administrators and managers of wastewater collection and treatment agencies in the State of Illinois. IAWA exists and acts only due to the concurrence of group members with vital and shared interests in issues governing wastewater treatment.

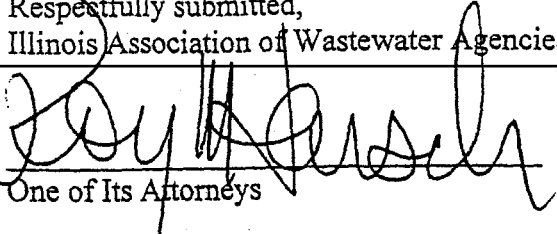
2. Amendment of the ammonia regulations is a priority of members, and IAWA has been working with its members and the Illinois Environmental Protection Agency ("Illinois EPA") to propose workable regulations in line with U.S. EPA requirements for ammonia water quality. IAWA believes it has the concurrence of the Illinois EPA with its proposal.

3. Because of the nature of IAWA's status as a member organization, IAWA seeks to waive the requirement for signature. To require a member organization like IAWA to obtain

signatures for a petition would present an added expense and burden to IAWA that is duplicative and unnecessary in light of its status.

WHEREFORE, IAWA moves the Board to waive the signature requirement for its proposal to amend the ammonia regulations.

Respectfully submitted,
Illinois Association of Wastewater Agencies



One of Its Attorneys

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CH02/22141638.1

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JAN 17 2002
STATE OF ILLINOIS
Pollution Control Board

PROPOSED RULE AND STATEMENT OF REASONS

The Illinois Association of Wastewater Agencies ("IAWA"), by its attorneys Gardner Carton & Douglas, and pursuant to 35 Il. Adm. Code 102.200, submits this Statement of Reasons in support of its proposal to revise the regulation governing discharge of ammonia.

IAWA is proposing changes to regulations governing ammonia based on a new National Criteria Document ("NCD") for ammonia issued by the United States Environmental Protection Agency ("U.S. EPA") in 1999. The NCD is intended to provide guidance to States and Tribes authorized to establish water quality standards under the Clean Water Act ("CWA"). The CWA requires states to revise water quality standards within three years of U.S. EPA's adoption of new criteria. 33 U.S.C. § 1313(c). The regulatory proposal to amend the ammonia rules is submitted contemporaneously with this Statement of Reasons.

1. Existing and Proposed Ammonia Regulations (Section 102.202(a))

Rules governing discharges of ammonia are found at Section 302.212, Total Ammonia Nitrogen, which sets out the applicable general water quality standards for total ammonia nitrogen. This Section contains the general water quality standard for total ammonia of 15 mg/L. This section also contains standards for un-ionized ammonia, with calculations to determine acute and chronic standards. Section 302.213 contains a provision that was intended to allow relief to the regulated community from the general water quality ammonia standards using a

concept called Effluent Modified Waters. Section 304.122 contains the general effluent standard governing total ammonia nitrogen. Specific standards for Lake Michigan, which are unaffected by this proposal, are found at Section 302.535. Finally, Part 355 currently contains the implementation rules adopted by Illinois Environmental Protection Agency ("Illinois EPA") to allow specific determination of water quality based effluent standards, including those standards that were intended to allow relief to the regulated community from the more stringent general ammonia standards.

IAWA does not propose any change to the general water quality standard for total ammonia nitrogen. IAWA proposes to change both the acute and chronic general use water quality standards for un-ionized ammonia to reflect changes in the NCD for ammonia. In addition, IAWA has added a calculation for sub-chronic ammonia. Those changes are contained in the regulations found at Section 302.212. IAWA proposes to repeal the rule allowing alternate standards for Effluent Modified Waters, as the attempt to provide relief to the regulated community using this concept has not proven workable. That rule is found at 302.213, and references to effluent modified waters are also contained in Section 304.122 governing general effluent standards for total ammonia nitrogen. IAWA has submitted a copy of the revised rules with underscoring and redlining to indicate changes from the ammonia rules currently in effect. IAWA's proposal will also affect Section 355, which contains the implementation rules adopted by the Illinois EPA. Exhibit 1. The current draft of these rules is submitted with this proposal to the Board for informational purposes. Exhibit 2. Based on discussions with the Illinois EPA, it is IAWA's understanding that Illinois EPA will proceed with the rulemaking for these draft rules.

2. Statement of Reasons

a. Statement of Facts (Section 102.202(b))

In December 1996, after much debate and comment by interested parties, the Board amended its regulations as they related to ammonia. R94-1(B). These regulations were substantially modified from the original proposal of the Illinois EPA, submitted to the Board in February 1994. IAWA was an active participant in the hearings and worked with the Board and the Illinois EPA to promulgate water quality regulations governing ammonia that would be workable for its members. For a more complete discussion of the historical context and basis for these regulations, please see In the Matter of Triennial Water Quality Review Amendments to 35 Ill. Adm. Code 302.202, 302.212, 302.213, 304.122, and 304.301, R94-1(B) (Dec. 19, 1996).

The rulemaking was based on U.S. EPA's then current NCD for ammonia, "Ambient Water Quality Criteria for Ammonia", issued in 1984. The standards enacted by the Board were quite stringent and had several components. The General Use water quality standard for total ammonia nitrogen was left unchanged from its original enactment of 15 mg/L. For un-ionized ammonia, however, the Board replaced the standard with four separate standards. The un-ionized standards differed for acute and chronic discharges and varied further for summer or the winter months.

Recognizing the uncertainty of implementation and the potential for unachievable standards that might result, the Board attempted to allow a relief mechanism by giving the Illinois EPA the authority to implement a new concept called Effluent Modified Waters ("EMWs"), which could be granted for the chronic standard governing un-ionized ammonia. See 302.213. EMW relief had certain conditions that appeared rather stringent, but IAWA, the Illinois EPA, and the Board believed the relief to be workable.

The conditions on EMW relief, and indeed the entirety of the mechanism, and the Illinois EPA's implementation rules have turned out to make relief impractical to seek and impossible to obtain. To IAWA's knowledge, no party has obtained relief using the EMW provision.

Since this rulemaking, U.S. EPA has reissued its NCD for ammonia, which has substantially changed the science for determining ammonia standards. See 1999 Update of Ambient Water Quality Criteria for Ammonia. The updated NCD constitutes U.S. EPA's scientific recommendations regarding ambient concentrations of ammonia that protect freshwater aquatic life. The standards continue to protect aquatic life based on acute and chronic effects of ammonia.

Just as for other wastewater treatment bodies nationwide, amendment of the ammonia standards is a priority of IAWA and its members. IAWA has therefore taken the lead in moving to amend the Board's ammonia standards to conform with revised criteria of U.S. EPA. IAWA has been working closely with the Illinois EPA to draft rules that are workable for IAWA's members and acceptable to the Illinois EPA. The proposed rulemaking reflects close to a year of consultation and revision. IAWA believes that it has the Illinois EPA's concurrence with the proposed amendments.

IAWA is not the first party to seek amendment of ammonia regulations in light of the Update. The Ohio River Valley Water Sanitation Commission ("ORSANCO"), which is an interstate commission representing eight states (including Illinois) and the federal government, sets water quality standards for the Ohio River and its tributaries. The proposal of IAWA is substantially like that of ORSANCO. ORSANCO's adopted rules are attached as Exhibit 3.

b. Purpose and Effect of the Proposal (Section 102.202(b))

The revised NCD reflects increased information on ammonia toxicity and its relationship to temperature. This updated NCD for ammonia contains more recent scientific information on the factors that affect ammonia toxicity. Ammonia toxicity is dependent on temperature and pH, and reflects toxicity to fish species under varying conditions.

IAWA has used the criteria of U.S. EPA and its calculation. The criteria document allows some discretion in the equation to account for the presence or absence of early life stages of fishes and cold water fishes. For some species, the presence of early life stages causes greater ammonia toxicity. If early life stages are present, then the standard becomes more stringent as early life stages have a lower threshold for toxicity. IAWA engaged a professional, Dr. Robert Sheehan, to study early life stages in Illinois.

Dr. Robert Sheehan is a professor at Southern Illinois University and a recognized expert on fish species in Illinois and the effect of water quality on those fishes. Dr Robert Sheehan performed a study in which he evaluated when early life stages would be present for fish species in Illinois. For those species, he evaluated existing toxicological data to determine whether those species are sensitive to ammonia and thus require protection. *His data was used to determine the period in Illinois during which early life stages are present or absent to determine the proper equation.* Dr. Sheehan determined that April would be acceptable as a starting point for assuming the presence of early life stages, but after consultation with the Illinois EPA, IAWA agreed to include March as the relevant starting point. Dr. Sheehan's work will be available at the hearing.

The other part of the NCD concerns salmonids. IAWA's proposal does not include allowance for toxicity to salmonids, as there are no indigenous salmonids in Illinois other than in

Lake Michigan. There are no NPDES permitted point source discharges in Illinois to Lake Michigan.

c. Affected Sources and Facilities (Section 102.202(b))

The sources that will be primarily affected by this rule are wastewater agencies, including publicly owned treatment works. IAWA represents approximately 98 members, including POTWs and municipal interests and other governmental and private organizations with an interest in wastewater issues.

3. Testimony to be Presented At Hearing (Section 102.202(c))

IAWA intends to offer the testimony of Dr. Sheehan to discuss the revised NCD and calculations, including how he determined when early life stages are present and those species that are sensitive to ammonia. IAWA will also offer the testimony of John Michael Callahan as to the economic and technical necessity for IAWA's members of revision to the ammonia rules. Mr. Callahan is the Executive Director of the Bloomington and Normal Water Reclamation District, as well as the Chair of the Ammonia Technical Committee for IAWA.

4. Petition (Section 102.202(d))

IAWA is moving contemporaneously with submission of this proposal to waive the requirement that it submit a petition to amend the rule.

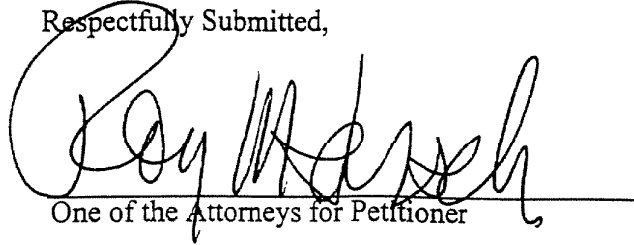
5. Proof of Service (Section 102.202(e))

IAWA has attached a certificate of service on all persons required to be served pursuant to Section 102.422.

6. Certification (Section 102.202(h))

IAWA has attached a certification that this proposal amends the most recent version of the rule as published on the Board's website.

Respectfully Submitted,



One of the Attorneys for Petitioner

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THIS FILING SUBMITTED ON RECYCLED PAPER

CH02/22139544.1

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **Notice of Filing Proposed Rule and Statement of Reasons and Motion to Waive Signature Requirement** was served upon the following persons:

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Office of the Attorney General
Division Chief of Environmental Enforcement
188 West Randolph Street
Chicago, IL 60610

by causing the copy to be placed in an envelope addressed as above, with postage fully prepaid and deposited in the U.S. Post Office mailbox at 321 North Clark Street, Chicago, Illinois on January 17, 2002.

