

ILLINOIS POLLUTION CONTROL BOARD
September 28, 1989

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO TITLE) R88-21
35, SUBTITLE C (TOXICS CONTROL))

PROPOSED REGULATIONS

FIRST NOTICE

SUPPLEMENTAL OPINION OF THE BOARD (by R. C. Flemal)

At hearing conducted in this matter on September 18 and 19, 1989 the Illinois Environmental Regulatory Group ("IERG") requested that the Board issue a Supplemental Opinion expanding upon certain matters related to the Board's First Notice Opinion of August 31, 1989. IERG requests the Supplemental Opinion so that it may more fully respond to its and the Board's concerns.

It is not the Board's normal procedure to issue Supplemental Opinions. However, IERG correctly points out that this proceeding is on an expedited time schedule intended to allow completion by February, 1990, which provides a short time frame within which IERG can formulate responses. IERG also correctly points out that some of the matters raised by it were not addressed in the Board's August 31, 1989 First Notice Opinion ("Opinion") due to the short time frame within which the Board also was required to operate.

Given these circumstances, the Board believes that departure from normal procedure is warranted in this case. Accordingly, the Board today supplements its First Notice Opinion with observations as follows. The Board emphasizes that the conclusions it reaches today are perspective conclusions based on the record as it currently stands. As is always true in rule-makings, these conclusions are subject to modification based upon continued development of the record, and are not final until the Board issues its Final Opinion in this matter.

IERG TESTIMONY: EXHIBIT 36

IERG specifically requests exposition of the Board's perspective on recommendations made at hearing held on June 13, 1989 and included within Exhibit 36. The following discussion parallels the presentation of IERG's recommendations within Exhibit 36. It is to be noted that the IERG recommendations are in reference to the Illinois Environmental Protection Agency's ("Agency") February 1989 draft proposal (Exh. 43).

Section 302.100

IERG recommends that the word "adverse" be added within the definition of "Acute Toxicity". This recommendation, which is also supported by the Agency (PC #8 at par. 4), has been accepted by the Board and incorporated within the First Notice Proposed Rule.

IERG recommends that the definition of "Toxic Substance", as included in the February 1989 proposal, be deleted. The Agency has responded that it believes that the term has utility within the overall context of the proposed rule (PC #8 at par. 5). The Board accepted this Agency perspective for the purposes of First Notice, although it has made substantive changes in the form of that definition, as detailed in the Opinion, p. 26.

IERG recommends the addition of a definition of "Toxicity Criterion". The Board believes that the Agency's recommended addition of a definition for "Criterion", as adopted for First Notice, plus other pertinent additions related to the applicability of criteria, provide for substantial conformity of the proposed rule with IERG's intent. IERG is specifically requested to comment on whether it is of a like belief.

IERG recommends the addition of a definition for "Total Residual Chlorine". This recommendation has been accepted by the Board and incorporated within the First Notice Proposed Rule. However, it is to be noted that the First Notice definition differs in detail from that proposed by IERG. The changes made are intended to present the definition in a form acceptable under the Illinois Administrative Code. IERG is requested to comment on whether the First Notice definition conforms with IERG's intentions.

IERG recommends certain modifications to the definition of "Zone of Initial Dilution (ZID)". The Agency objects to the modifications (PC #8 at pars. 6 and 7) on grounds which the Board finds reasonable. Accordingly, for purposes of First Notice, the Board followed the Agency's recommendation.

Section 302.101

IERG recommends that subsection 302.101(f) be deleted, concomitant with its recommendation that the whole of 302.Subpart F be deleted. This recommendation has been declined by the Board for the same reasons it declines to delete Subpart F (see following).

Section 302.201

IERG recommends amendments to the Scope and Applicability statement found at Section 302.201 intended to establish that the

General Use Water Quality Standards are rules of general applicability from which applicants may seek an adjusted standard. The Board believes that this recommendation may have merit, and accordingly requests that IERG, the Agency, and other interested persons continue to address this issue and provide a record which could allow the Board to revisit this matter for Second Notice.

Section 302.203

IERG recommends that Section 302.203 be modified to provide that offensive conditions (sludge, bottom deposits, floating debris, etc.) be subject to the mixing zone provisions of Section 301.102. The Agency recommends against the IERG proposal (PC #8 at par. 24) on grounds which the Board finds persuasive. Accordingly, the IERG recommendation was excluded from the First Notice Proposal.

Section 302.208

IERG recommends certain modifications of the Agency's proposed subsections (a) to (d), intended to clarify these subsections. The Board has also shared these concerns, and accordingly at First Notice discussed and proposed alternative language of its own (Opinion at p. 29). IERG is requested to comment on whether the Board's proposed modifications are in consort with the IERG recommendations.

IERG also recommends alternate chlorine and iron standards. These recommendations were accepted by the Board in principle at First Notice (Opinion at p. 21-22, 30). As noted there, IERG and other interested persons are requested to further address both of these matters.

Section 302.210

IERG recommends various modifications to wording within subsections (a) through (f) "primarily for clarification purposes". The Board notes that the Agency's August 9, 1989 proposal incorporated several of the IERG recommendations, and that additional further modifications were made by the Board at First Notice. IERG is requested to comment on whether these accumulative changes conform with IERG's intent.

IERG also recommends the addition of an adjusted standard procedure [IERG's proposed subsections (g) and (h)]. The Board gave this procedure extensive consideration prior to First Notice. Additionally, the Board is impressed with the amount of originality and effort evidenced in the recommendation. Nevertheless, the Board declined to propose the recommendation at First Notice. The principal reason is that the Board does not believe that the adjusted standard procedure is necessary because

the same ends can be achieved by more straight-forward methods. These methods are embodied principally in the Board proposed subsection (f).

A second reason for the Board declining to propose the adjusted standard procedure is the question raised by the Agency regarding the federal acceptability of the procedure (PC #8 at par. 30). The Board does not believe that the Agency's questions have been countered.

IERG further recommends the addition of new subsections at 302.210(j) and (k). As regards the proposed subsection (j), the Board believes that vagueness of the phrases "statistically reliable data base" and "scientifically valid methodology" limit the acceptability of the subsection. As regards proposed subsection (k), the Board believes that the thrust of the subsection may be incorporated within the Board's proposed 302.210(f). The Board requests that, from this vantage, IERG comment on whether it would continue to recommend the incorporation of its subsections (j) and (k).

Section 302.211

IERG recommends the addition of a new subsection specifying the dimensions of a mixing zone for temperature standards. The Board did not adopt this recommendation for purposes of First Notice because it did not believe that the record was sufficiently developed to justify its inclusion. Interested persons are requested to comment further on this matter.

302.Subpart F

IERG recommends that Subpart F be deleted in its entirety from consideration under the instant docket and considered instead under a separate docket. IERG's position is that the Subpart involves complicated issues which require more time for review.

The Board is in sympathy with the perspective that Subpart F involves complicated issues. However, the Board believes that this is not sufficient grounds to separate it out from this proposal. As complex as Subpart F may be, it must be noted that the substance of the Subpart has been available for review since the inception of this proceeding in August 1988. Moreover, the Board has received extensive testimony on the Subpart.

The Board further believes that splitting off Subpart F would leave a rule which lacks essential operative components. Such a rule would therefore doubtfully comply with the federal mandate which drives this entire proceeding.

Section 305.102

IERG recommends several additions to reporting requirements. These recommendations were not incorporated at First Notice on the belief that they have not been sufficiently developed in the record. IERG and interested persons are requested to comment further on these recommendations.

Section 309.141

IERG recommends several additions to terms and conditions of NPDES permits. These recommendations were not incorporated at First Notice on the belief that they have not been sufficiently developed in the record. IERG and interested persons are requested to comment further on these recommendations.

FIRST NOTICE ERRATA

At hearing on September 18 and 19, 1989 comments regarding apparent errata in the First Notice Opinion and Order were made by several participants. Additionally, the Board itself notes several such items. The Board takes this opportunity to identify these, as follows:

- 1) The Opinion at page 25 cites the 1985 16th Edition as the most recent Standard Methods. The 1989 17th Edition is now available, as is correctly cited in the Order at 301.106(b).
- 2) Section 302.203(d) of the Order the table entry of AS for lead should read "not to exceed 100 ug/l", rather than "not to exceed 50 ug/l".
- 3) Section 302.210(b) of the Order should contain the phrase "(WDAPC) derived pursuant to" rather than "(WDAPC) pursuant to".
- 4) Section 302.615(f) at lines 6 and 7 should contain the phrase "GMAVs which are to be used" rather than "GMAVs which are to used".
- 5) The equation in Section 302.618(j) should contain an upper case X rather than a lower case x.
- 6) The word "must" in Section 302.654(d) should be "shall".
- 7) Section 303.362 (Horseshoe Lake Mixing Zone and ZID) of the Order should be numbered as Section 303.354, for the purpose of accommodating the Part 303 organizational scheme specified at 35 Ill. Adm. Code 303.301.

- 8) Section 309.103(a)(3) of the Order has not been purged of the vague word "apparent".

The Board does not believe that any of these changes are of a nature that they could not be made at Second Notice. Accordingly, the Board would intend to incorporate them at that time.

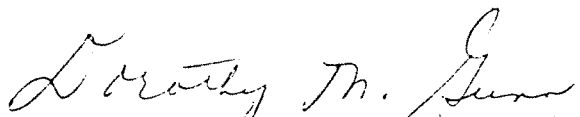
COMMENTS OF THE ILLINOIS ADMINISTRATIVE CODE DIVISION

On September 26, 1989 the Illinois Administrative Code Division of the Illinois Office of the Secretary of State filed comments. These consist of changes necessary to conform the proposed rules to Code Division standards. The Board anticipates that these changes can be made at Second Notice.

IT IS SO ORDERED.

Board Member J. Dumelle concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Supplemental Opinion was adopted on the 28th day of September, 1989, by a vote of 6-0.



Dorothy M. Gunn, Clerk.
Illinois Pollution Control Board