

ILLINOIS POLLUTION CONTROL BOARD
December 16, 2004

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO 35 ILL.) R05-10
ADM. CODE 302 AND 303) (Rulemaking - Water)

ORDER OF THE BOARD (by T.E. Johnson):

On November 8, 2004, the Board received a rulemaking proposal submitted by the Illinois Environmental Protection Agency (Agency) pursuant to Sections 27 and 28 of the Illinois Environmental Protection Act (Act). 415 ILCS 5/27 and 28 (2002). The Agency seeks to set *Escherichia coli* (E.coli) bacteria water quality standards for Lake Michigan beaches and the Mississippi River. A motion for acceptance accompanied the proposal.

In its statement of reasons, the Agency asserts that changes to the Lake Michigan standards are necessary in order to comply with Section 303(i) of the Clean Water Act, also known as the Beaches Environmental Assessment and Coastal Health Act (Beach Act). Pet. at 3, citing 33 U.S.C. Section 1313. The Beach Act applies to coastal recreational waters, including Great Lake waters, and requires, among other things, a Clean Beaches Plan. Pet. at 3. The Clean Beaches Plan includes two major goals: (1) promoting recreational water quality programs nationwide; and (2) creating scientific improvements that support timely recreational water monitoring and reporting. *Id.*

The Agency is proposing to make three primary changes to the Lake Michigan Basin bacteria water quality standards. First, a definition will be provided for “designated bathing beach waters.” Pet. at 5. Second, the rule will only apply during the recreational season (May through October) since bacterial limits are intended to protect humans during whole body contact activities that occur only during the warmer months. *Id.* Third, the rule will establish a geometric mean and single sample maximum for E.coli standards. *Id.* The Agency asserts that United States Environmental Protection Agency (USEPA) guidance pertaining to the National Criteria indicates that a geometric mean has the most direct relationship to risk over the course of the recreational season and a single sample maximum is the best value against which to compare individual measurements. *Id.*

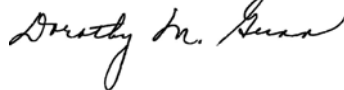
In this rulemaking, the Agency is also proposing bacteria water quality standards for Illinois’ portion of the Mississippi River. Pet. at 3. The Agency asserts that this change is proposed as a result of an agreement by the USEPA with the Sierra Club that seeks to have all states on the upper Mississippi River adopt E.coli standards. Pet. at 4. The Agency contends that it has committed to the USEPA that it will initiate its rulemaking process to adopt E.coli standards by September 30, 2004. *Id.*

The Agency’s proposal, including its statement of reasons and the full text of the proposed rule language, is available through the Clerk’ Office in Chicago (312-814-3620) and on the Board’s Web site (www.ipcb.state.il.us) using the Clerk’s Office On-Line or “COOL.”

The Board finds that the Agency's proposal satisfies the content requirements of the Act and the Board's procedural rules for rulemaking proposals. The Board grants the Agency's motion for acceptance, accepts the proposal for hearing, and directs the hearing officer assigned to proceed expeditiously under the rulemaking provisions of the Act (415 ILCS 5/27, 28 (2002)) and the Board's procedural rules. 35 Ill. Adm. Code 102.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 16, 2004, by a vote of 5-0.

A handwritten signature in cursive script, appearing to read "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board