

ILLINOIS POLLUTION CONTROL BOARD  
March 17, 1994

IN THE MATTER OF: )  
 )  
Amendments to 35 Ill. Adm. )  
Code 302.302, 302.208, 302.212 ) R94-1  
302.213, 302.407, 304.122 and ) (Rulemaking)  
304.301 (Ammonia Nitrogen, Lead )  
and Mercury) )

ORDER OF THE BOARD (by C. A. Manning, R. C. Flemal, E. Dunham)

On February 24, 1994, the Illinois Environmental Protection Agency (Agency) filed a regulatory proposal as part of its mandatory review of the applicable water quality standards of the State of Illinois pursuant to 33 U.S.C. §§ 1251-1387 (1987).<sup>1</sup> The Agency filed the proposal pursuant to Section 27 of the Environmental Protection Act (Act) and the Board's procedural rules at 35 Ill. Adm. Code §§ 102.120 and 102.121. (415 ILCS 5/27 (1992)) The Agency is proposing to amend 35 Ill. Adm. Code §§ 302.302, 302.208, 302.212, 302.407, 304.122 and 304.301 to update the ammonia nitrogen, mercury and lead general water quality standards, secondary contact and indigenous aquatic life standards and other applicable regulations. In addition, the Agency is proposing to add a new section 35 Ill. Adm. Code 302.213 entitled "Effluent Modified Waters." The Agency also filed a motion to waive the requirements of 35 Ill. Adm. Code §102.120 of filing the original and nine copies of the regulatory proposal. The Agency requests that it be allowed to file with the Board the original, three (3) complete copies, and six (6) partial copies of the regulatory proposal.

Section 28.2 of the Act and the Board's procedural rules at 35 Ill. Adm. Code § 102.121(e) require the Agency, if it believes a regulatory proposal is federally required, to certify to that fact. As the Agency states a "required rule" is a rule that is needed to fulfill the requirements of the Federal Clean Water Act. (415 ILCS 5/28.2 (1992)) The Agency certifies that the proposed rules amending the water quality standards for ammonia nitrogen, lead and mercury are federally required. The Agency also goes on to say that the rules proposed in this rulemaking to implement the ammonia nitrogen standard through the National Pollutant Discharge Elimination System (NPDES) Permit Program are not federally required. The Agency had requested a confirmation letter from the USEPA verifying that the proposed rules amending

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<sup>1</sup> The Federal Water Pollution Control Act commonly known as the Clean Water Act (CWA) §§ 101-607 requires the Agency to periodically, but at least every three years, review the water quality standards applicable in that State. The Agency refers to this as the "Triennial Review."

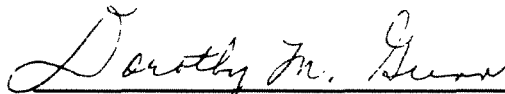
the water quality standards for ammonia nitrogen, lead and mercury are federally required pursuant to the Clean Water Act, as amended but did not receive the letter prior to filing the proposal.

The Board is required by Section 28.2 of the Act to accept or reject the Agency's certification that the proposal is federally required within forty-five (45) days of the filing of the proposal. Based on the Agency's certification that this rulemaking is only in part federally required and, for purposes of simplicity in moving on the rulemaking as a whole proceeding, the Board will reject proceeding on this proposal as being federally required. Nonetheless, the Board will make every effort to proceed to first notice of the proposed rulemaking in six (6) months as would be required pursuant to Section 28.2 of the Act.<sup>2</sup>

The Agency's motion to waive the filing requirement is granted and the regulatory proposal is found to be sufficient pursuant to the Act and the Board's procedural rules. The hearing officer assigned to this matter, Charles M. Feinen, is directed to set this matter for hearing at the earliest time in accordance with the above dates and 35 Ill. Adm. Code 102.162 and the hearing shall proceed expeditiously.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 17<sup>th</sup> day of March, 1994, by a vote of 6-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

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<sup>2</sup> The differences between rulemakings pursuant to Section 28.2 of the Act and general rulemaking pursuant to Section 27 and 28 of the Act is that the Board must proceed to first notice within six (6) months from the date the Board determines whether an economic impact study is necessary. Since, effective July 1, 1992, the economic impact studies have been repealed by P.A. 87-860 and are no longer required, the difference in whether we proceed under Section 27 and 28 or 28.2 of the Act is minimal.