

ILLINOIS POLLUTION CONTROL BOARD

May 2, 1996

IN MATTER OF: )  
)  
TRIENNIAL WATER QUALITY REVIEW ) R94-1(B)  
AMENDMENTS TO 35 ILL. ADM. CODE 302.202, ) (Rulemaking - Water)  
302.212, 302.213, 304.122 AND 304.301 )

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

In this order the Board opens a new comment period to address new developments raised in a public comment and decides several motions pending in this docket.

Comment from the Chemical Industry Council of Illinois

On April 5, 1996, the Chemical Industry Council of Illinois (CICI) filed a post-hearing comment. (PC #7(B).)<sup>1</sup> CICI states that USEPA Region VIII is drafting an issue paper concerning the ammonia criteria that proposes a less stringent alternative to the current standard. CICI recommends that no action regarding the adoption of the proposed amendments to the ammonia standards be taken at this juncture.

In view of the information provided by this comment, the Board is extending the comment period in this matter to allow the participants to provide comment to the Board on the relevancy of the action by USEPA Region VIII on this rulemaking. Comments should also indicate what, if any action, the Board should take in anticipation of the issuance of the paper on the ammonia criteria.

Participants shall file comments with the Board on the above issues on or before June 3, 1996. Comments shall also be served on all participants listed on the service list a copy of which is available from the Clerk of the Board.

Agency Motion to Strike

On April 19, 1996, the Illinois Environmental Protection Agency (Agency) filed a "Motion to Strike Final Report of the Ammonia Group". The Agency requests that the Board strike the Wisconsin Report which was attached to the post hearing comments of the Ammonia Group.<sup>2</sup> The Agency also requests that the portions of the Ammonia Group's post-hearing comment referencing the Wisconsin Report be stricken. The Ammonia Group filed a response to the Agency's motion on April 25, 1996.

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<sup>1</sup> Public comments filed in subdocket B are designated by the number of the public comment followed by a B.

<sup>2</sup> The Ammonia Group is comprised of the Cities of Batavia, Geneva, Rock Falls, Sterling and the Galesburg Sanitary District.

The Agency observes that the report was not filed earlier in the proceeding even though it is dated July 1994. The Agency also observes that the report was not specifically requested by the Board or in response to an inquiry by the Board. The Agency argues that the relevancy of the Wisconsin Report has not been established by the Ammonia Group. The Agency further contends that the Wisconsin Report is irrelevant to these proceedings because it contains suggested interim strategies that were not even adopted and implemented by the State of Wisconsin at the time the document was drafted. The Agency further observes differences between Illinois and Wisconsin waterways and the standards proposed in each state that result in the Wisconsin Report being irrelevant to Illinois regulations. In addition, the Agency raises concern as to the purpose of the document and the development of the workgroup that prepared the report.

While the Ammonia Group questions whether the relevancy requirement of Section 102.282 is applicable to public comments, it maintains that the Wisconsin Report is relevant to this proceeding. The Ammonia Group asserts that the Board specifically requested information regarding the activities of other States relating to ammonia nitrogen. The Ammonia Group contends that the Board is capable of drawing its own conclusions regarding the content of the report.

In a rulemaking proceeding “[a]ll information which is relevant and not repetitious or privileged shall be admitted”. (35 Ill. Adm. Code 102.282.) The Board specifically requested the participants to provide information regarding other States’ ammonia rules. Therefore, the Wisconsin Report is relevant to these proceedings and the Board denies the Agency’s motion to strike the Ammonia Group’s Final Report.

#### Motions of American Western Refining, L.P.

On April 4, 1996, American Western Refining, L.P. filed a motion to substitute participants and incorporate past comments and testimony of Indian Refining Limited Partnership and a motion to file its comment instanter. The motion to substitute requests that the Board substitute American Western Refining, L.P. for Indian Refining Limited Partnership as the participant and to incorporate all past comments and testimony of Indian Refining Limited Partnership in this matter.

The Board hereby grants the motion to substitute and the motion to file instanter.

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 \_\_\_\_\_ day of \_\_\_\_\_, 1996, by a vote of \_\_\_\_\_.

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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board