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MAY 25 2001

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:) R 01-31
) (Rulemaking - Water)
PROVISIONAL VARIANCES FROM)
WATER TEMPERATURE STANDARDS:)
PROPOSED NEW 35 Ill. Adm. Code 301.109)
)

NOTICE OF FILING

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PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the **Testimony of Kenneth Rogers** of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ENVIRONMENTAL PROTECTION AGENCY
OF THE STATE OF ILLINOIS

By: Deborah J. Williams
Deborah J. Williams
Assistant Counsel
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DATED: May 22, 2001

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THIS FILING IS SUBMITTED ON RECYCLED PAPER

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TESTIMONY OF KENNETH ROGERS

QUALIFICATIONS/INTRODUCTION

My name is Ken Rogers and I am currently the manager of the Compliance Assurance Section in the Bureau of Water at the Illinois Environmental Protection Agency ("Illinois EPA"). I have held my current position at the Illinois EPA since 1984. Prior to that time, I served in the Division of Water Pollution Control as the Manager of the Water Quality Monitoring Unit from 1979 to 1984 and the Manager of the Pre-Construction Grant Unit from 1974 to 1978. I have been employed at the Illinois EPA since 1970. I received a Bachelor of Arts in Biological Science with a Chemistry Minor from Minot State University in North Dakota and a Master of Arts in Administration from the University of Illinois at Springfield.

My duties as Manager of the Compliance Assurance Section include supervision of development of the technical component of Illinois EPA recommendations to the Illinois Pollution Control Board ("Board") for the grant of provisional variances from water pollution control regulations or permit requirements, including provisional variances from thermal standards. I have

also participated in the development of the proposed amendment to the Board's regulations which is the subject of this proceeding. My testimony will address the Illinois EPA experience with provisional variances from thermal limits, the need for the amendments the Agency has proposed, and the purpose and content of the proposed amendments.

BACKGROUND

In 1980 the Illinois General Assembly amended Title IX of the Environmental Protection Act ("Act") to establish provisional variances as an additional form of short term regulatory relief. (Public Act 81-1442). Provisional variances are appropriate where it can be shown that "compliance on a short term basis with any rule or regulation, requirement or order of the Board, or with any permit requirement would impose an arbitrary or unreasonable hardship." 415 ILCS 5/35(b)(1998). Section 35(b) of the Act also requires that the Board grant a provisional variance within two working days from the date of notification from the Illinois EPA that a provisional variance is appropriate. In order to facilitate this process, the Illinois EPA typically times the filing of its provisional variance recommendations to coincide with scheduled Board meetings.

Provisional variances are intended to cover short term hardship situations. Section 36(c) of the Act provides that a provisional variance can only be granted for a maximum of 45 days, and no single facility can be granted provisional variances which exceed a duration of 90 days in any calendar year. 415 ILCS 5/36(c)(1998). This mechanism differs from the regular variance, which may be granted for up to five years, and the adjusted standard or site specific regulation,

which typically grant permanent regulatory relief. Because the relief granted by provisional variances is of such a short duration, no prior public notice or opportunity for comment or hearing is provided. However, provisional variances are only granted by the State of Illinois and do not protect facilities from U.S. EPA or citizen enforcement actions.

In 35 Illinois Administrative Code Part 180, the Illinois EPA has established procedural regulations for the provisional variance application and recommendation process. The pending regulatory proposal should be read with these regulations in mind. Section 180.202(b) of the existing procedural regulations establishes the informational requirements currently applicable to all provisional variance applications. The relevant informational requirements for thermal provisional variance applications are: a statement identifying the requirement from which the variance is requested; a description of the business or activity for which the variance is requested; the quantity and types of materials used in that process or activity; the quantity, types and nature of materials to be discharged and the identification of the receiving waterway; an assessment of any adverse environmental impacts which the variance may produce; an explanation of why compliance with the requirement imposes arbitrary and unreasonable hardship; a description of the proposed methods and a timetable for achieving compliance; a discussion of alternate methods of compliance and the factors influencing the choice to apply for a provisional variance; a statement of the period for which the variance is requested; a statement of whether the applicant has been granted any provisional variances within the calendar year,

and the terms and duration of such variances; a statement regarding the applicant's current permit status; and any Board orders in effect regarding the applicant's activities and any matters currently before the Board in which the applicant is a party.

Most provisional variance applications are received by the Illinois EPA in the form of a letter from the environmental staff at the given facility. The Bureau of Water receives approximately 25 provisional variance applications per year. Part 180 gives the Illinois EPA five days to accept or reject a provisional variance application and thirty days to make a final determination.

In general, the Part 180 rules have worked well in clarifying for provisional variance applicants the documentation required for a complete application and the Illinois EPA's application review process. However, after 20 years of considering requests for provisional variances, the Illinois EPA believes that additional criteria in regard to provisional variances from water temperature standards is warranted. In the past, a combination of severe drought and extremely hot weather, low river flows, elevated ambient river temperatures and decreased heat dissipation have created emergency situations where power companies have been unable to meet their National Pollutant Discharge Elimination System ("NPDES") permit conditions for the thermal component of their discharges and also meet their obligations to supply reliable power to their customers. Since 1988, the Illinois EPA has received 23 formal requests for provisional variances from water temperature standards. The Illinois EPA recommended the granting of provisional variances (subject to certain conditions)

for 20 of these requests. Five of the approved requests were for extensions of previously granted variances. One thermal provisional variance request was denied by the Agency and applicants withdrew two others. In addition, numerous informal inquiries have been made to the Illinois EPA regarding the merits of a thermal provisional variance under consideration prior to formal submission. While this proposal could potentially impact any facility subject to a water temperature limitation for whom compliance with that limit on a short term basis would impose an arbitrary and unreasonable hardship, it is likely this proposal will only impact electric utilities that face the confluence of increased demand for power production, low flow rates, and extreme warm weather conditions in the summer months.

The most recent emergency conditions which resulted in provisional variance requests from thermal standards occurred in the summer of 1999, when four provisional variances and one extension were granted for relief from thermal requirements. Two of these provisional variances and the extension were actually utilized by the petitioners. Commonwealth Edison Company, Dresden Station, used one 45-day provisional variance plus an extension for an additional 45 days and the other was used by CIPS, Newton Station. The Dresden Station permit provides for a maximum allowable discharge temperature and a specified number of hours when the discharge could exceed a long-term average discharge temperature. The provisional variance increased the number of hours when the long-term average temperature could be exceeded. No relief from the maximum temperature was provided. The Dresden Station submitted thermal

provisional variance requests in 1988, 1992, 1994, 1996, 1997 and 1998. This history was evidence of an apparent need for additional cooling capacity at Dresden Station. The Newton Station provisional variance was similar to Dresden Station in that relief was provided for increased excursions above long-term thermal limits but no relief from maximum allowable thermal discharge limits. The Newton facility also suffered major operational problems because of a prolonged period of hot weather and apparently exceeded maximum discharge levels causing an extensive fish kill in the cooling lake. This incident further supported the apparent need for additional cooling capacity at Newton Station.

Following the summer of 1999, the Illinois EPA notified these power companies (Commonwealth Edison and Ameren-CIPS) of the need to develop more proactive plans to avoid the reoccurrence of violations and the need for variances. Both of these companies have subsequently installed additional cooling systems to reduce the possibility of permit violations. Ameren-CIPS installed supplemental cooling ponds at Coffeen Station and Newton Station and Commonwealth Edison installed cooling towers in the discharge channel at Dresden Station. It is expected that these cooling systems will sustain full compliance under extreme weather conditions; however, it is possible that unusual combinations of heat and drought may still create a situation where relief from current permit conditions may be needed in order to prevent a serious failure of the power grid. Therefore, this regulatory proposal has been developed in an effort to further clarify and provide up-front documentation to any future

applicant on the requirements for a provisional variance from any water temperature standard.

ILLINOIS EPA'S PROPOSAL

The Illinois EPA has proposed the addition of a new Section 301.109 to the Board's water pollution regulations that sets forth how the Illinois EPA will exercise its provisional variance authority consistent with the Act and the Illinois EPA's procedural regulations when evaluating requests for provisional variances from water temperature standards. The proposal also provides guidance for the regulated community regarding the minimum appropriate conditions to be included in thermal provisional variances to ensure that no environmental harm will result.

This proposed new Section places several requirements upon the contents of any Illinois EPA recommendation to the Board for the grant of a provisional variance from any water temperature requirement. The Illinois EPA recommendation must specifically address each of the informational contents required of a provisional variance application under Part 180.202(b) of the Illinois EPA's procedural regulations. The Illinois EPA is also required to specifically address the foreseeability of weather and operational conditions that led to the provisional variance request and identify any provisional variances from any water temperature standard that the Board has issued to the applicant for the past five years. Typically, an Illinois EPA provisional variance recommendation would only address whether the applicant had been issued any provisional variances during the current calendar year. The Illinois EPA recommendation

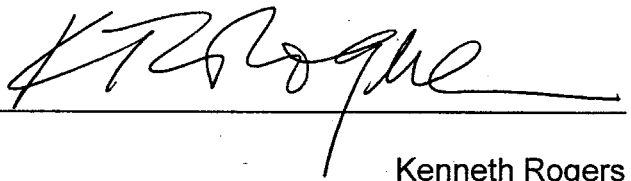
must also address its rationale for recommending any specific conditions that have been imposed upon the water temperature provisional variance.

Subsection (b)(2) of proposed Section 301.109, lists five specific conditions that the Illinois EPA will impose upon most provisional variances granted from a water temperature requirement. These conditions are the requirement to: (1) continuously monitor intake, discharge, and receiving water temperature and visually inspect intake and discharge areas three times daily to assess any mortalities to aquatic life; (2) document environmental conditions during the term of the provisional variance and submit the documentation to the Illinois EPA and the Department of Natural Resources ("DNR") within 30 days after the provisional variance expires; (3) immediately implement biological activities to characterize how other aquatic life respond to the thermal conditions resulting from the provisional variance; document these activities; and submit the documentation to the Illinois EPA and DNR within 30 days after the provisional variance expires; (4) notify the Illinois EPA and DNR of any unusual conditions, including mortalities to aquatic life; immediately take action to remedy the problem; investigate and document the cause and seriousness of the unusual conditions while providing updates to the Illinois EPA and DNR as changes occur until normal conditions return; notify the Illinois EPA and DNR when normal conditions return; and submit the documentation to the Illinois EPA and DNR within 30 days after normal conditions return; and (5) develop and implement a response and recovery plan to address any adverse environmental impact due to thermal conditions resulting from the provisional variance, including loss and

damage to aquatic life. In many cases, these conditions are currently being imposed upon provisional variance applicants. However, in some cases, additional temperature, environmental, and biological monitoring, record-keeping, and reporting will be required for the term of the provisional variance.

This proposal is not intended to place new substantive regulatory requirements under Illinois' water pollution control regulations on facilities; but merely to clarify the types of information the Illinois EPA should consider when recommending that the Board grant provisional variances from a water temperature regulation or permit limitation. The proposal clarifies the information provisional variance applicants should expect to submit to the Illinois EPA in a provisional variance application and the minimum conditions that would be imposed upon grant of such a provisional variance.

This concludes my pre-filed testimony. I will be happy to address any questions during the hearing.

By: 
Kenneth Rogers

May 21, 2001

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STATE OF ILLINOIS)
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COUNTY OF SANGAMON)
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PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached **Testimony Of Kenneth Rogers** and **Notice** upon the person to whom it is directed, by placing a copy in an envelope addressed to:

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and mailing it from Springfield, Illinois on May 22, 2001, with sufficient postage affixed as indicated above.

Nancy J D Lampert

SUBSCRIBED AND SWORN TO BEFORE ME
this 22nd day of May 2001.

Brenda Boehner

Notary Public

