

ILLINOIS POLLUTION CONTROL BOARD  
June 30, 1988

IN THE MATTER OF: )  
 )  
AMENDMENTS TO SUBTITLE C: ) R85-29  
WATER POLLUTION. FECAL )  
COLIFORM AND SEASONAL )  
DISINFECTION )

CONCURRING OPINION (by J.D. Dumelle):

My reasons for concurring lie in the vagueness of Section 302.209. The essence of any rule is that a literate person can read it and determine if it applies to that person's activities.

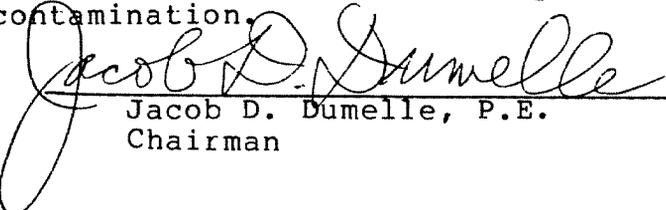
Section 302.209(a) defines "protected waters" as those which "have the physical characteristics to support primary contact." But nowhere in the rule are "physical characteristics" defined. Is water depth one of these characteristics? Children can wade and splash in very shallow waters. Is current speed one of the characteristics? Most Illinois streams are sluggish except during and following rainstorms.

Section 302.209(b) defines waters exempt from the bacterial standard. It speaks of "waters unsuited for primary contact uses because of physical, hydrologic or geographic configuration ...". But what are those configurations? What streams are exempt? How is one to know?

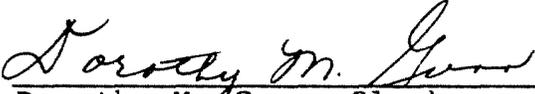
A second part of the Section 302.209(b) exemption reads "and are located in areas unlikely to be frequented by the public on a routine basis ...". What is "routine basis?" Is it daily, weekly, monthly or annually?

One might answer the questions posed above by stating that IEPA should spell out these phrases in guidelines or in Practice. But, to me, such guidelines would invade the Board's rulemaking province.

How is one to determine from the rule whether a stream is a "protected water" or not? It is impossible and the rule, being vague, may be ill-administered and adults and children may become seriously ill from bacterial contamination.

  
Jacob D. Dumelle, P.E.  
Chairman

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was submitted on the 2<sup>nd</sup> day of December, 1988.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board