

ILLINOIS POLLUTION CONTROL BOARD
December 5, 1985

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO) R85-29
SUBTITLE C: WATER POLLUTION,)
35 ILL. ADM. CODE 304.121)

DENIAL OF EMERGENCY RULE. PROPOSAL FOR PERMANENT RULE.

ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon a November 8, 1985 motion for Emergency Rulemaking filed by Bloomington and Normal Sanitary District (BNSD) and the Illinois Association of Sanitary Districts (IASD). Responses were filed by Illinois Environmental Protection Agency, Northern Illinois Planning Commission and United States Environmental Protection Agency on December 4, 1985. BNSD and IASD urge the Board to adopt an emergency amendment to 35 Ill. Adm. Code 304.121 (bacteria) to establish effluent disinfection on a seasonal basis pursuant to Section 27(c) of the Environmental Protection Act (Act) and 5.02 of the Illinois Administrative Procedure Act (APA). Such emergency rule would be effective for 150 days. That motion is hereby denied.

Summary of Motion

In support of their motion, BNSD and IASD made several allegations which are set forth below. They alleged that the First District Appellate Court upheld the Board's repeal of the fecal coliform water quality standard for secondary contact waters, thereby holding that disinfection of fecal coliform bacteria will no longer be required of secondary contact waters. The People of the State of Illinois v. The Illinois Pollution Control Board, et al., 119 Ill. App.3d 561, 75 Ill. Dec. 88, 456 N.E.2d 909; November 1983. During the months of November through April, the general use waters of the State are not used for primary contact (e.g., swimming and wading). Since the fecal coliform standard was established primarily to protect human health, there appears to be little reason to impose such a standard during the winter months when the potential for primary contact is greatly reduced. The total annual cost of disinfecting the final effluents of approximately 1,400 municipal, industrial and commercial treatment plants is over 4.0 million dollars, placing an unnecessary financial burden on these facilities.

Further, BNSD and IASD alleged that the environmental impacts of effluent disinfection with chlorine include production of chlorinated hydrocarbons which have been found to be carcinogenic and may enter drinking water supplies, air emissions

of chloroform which will be listed by the United States Environmental Protection Agency as a hazardous air pollutant, adverse effects upon aquatic life due to the presence of residual chlorine in effluents and safety hazards to treatment facility workers and the surrounding community if an accidental release of chlorine gas occurs. It was also alleged that because of potable water treatment plants, no measurable risk exists from bacteria and viruses in drinking water as a result of discontinuing effluent disinfection.

Lastly, BNSD and IASD alleged that if a season of non-chlorination were established, then necessary maintenance and repair of existing chlorination systems could be scheduled and completed during such a season. Moreover, since secondary contact standards only apply to Chicago area streams, a seasonal non-chlorination period needs to be established to afford downstate areas the opportunity for relief similar to that in the Chicago area.

Procedural History

In 1977, the Illinois Environmental Protection Agency proposed amendments to the water pollution regulations which eliminated the fecal coliform water quality standard for general use and secondary contact waters (35 Ill. Adm. Code 302.209 and 302.406) and amended the corresponding effluent standard (35 Ill. Adm. Code 304.121). The Board docketed the proposed amendments in R77-12D, held ten public hearings throughout the state and received extensive public comments. On October 14, 1982, the Board adopted the Agency's proposed amendments.

In November 1983, the First District Appellate Court reversed the Board's repeal of the fecal coliform water quality standard for general use waters and the amendment of the fecal coliform effluent standard. The court, however, affirmed the Board's order repealing the fecal coliform water quality standard for secondary contact waters. The Illinois Supreme Court upheld this action in October 1984. Subsequently, the Board on August 1, 1985, by peremptory rulemaking readopted the fecal coliform water quality and effluent standard but did not file the rules with the Secretary of State, since it became aware that the proposed amendments exceeded what was required under the courts' orders. On November 21, 1985, the Board by peremptory rulemaking revised the fecal coliform effluent standard to exclude its applicability to secondary contact waters and readopted the fecal coliform water quality standard for general use waters.

The Board believes that BNSD and IASD have failed to demonstrate that an emergency exists. While they have made various unverified allegations which, if proven, could perhaps support the adoption of a permanent rule, those allegations cannot simply be accepted as true in order to support a finding that an emergency exists.

The Board does, however, believe that the question of seasonal disinfection deserves to be considered further and will open docket R85-29 which will include a seasonal chlorination proposal consistent with the BNSD and IASD proposal. However, it goes beyond that proposal in that language has been added to mitigate possible damage to aquatic life from recommencement of chlorination in the spring.

The Board realizes that seasonal chlorination could result in fish kills when chlorination is resumed in May. With year-round chlorination most fish will avoid the chlorinated stream reach. However, with seasonal chlorination the fish will not avoid those stream reaches during the winter months and could be subject to sudden lethal slugs of chlorine. Therefore, the Board is including a directive in the rule which requires that when facilities recommence disinfection, they shall do so in such a way so as to minimize any potential adverse effect on aquatic life. This provision is included to assure that the Agency has the ability to include permit conditions to effectuate that goal.

Furthermore, while the BNSD and IASD have requested only that 35 Ill. Adm. Code 304.121 be amended (General Effluent Standards: Bacteria), the Board believes that complete relief can only be given if 35 Ill. Adm. Code 302.209 (General Use Water Quality Standards: Fecal Coliform) is similarly amended to be effective only during the summer months. Therefore, the Board proposes amendments to both sections.

The Board notes that BNSD and IASD have indicated a desire for regulatory change which would go beyond the implementation of seasonal disinfection and establish some mechanism (such as an "exception procedure" similar to procedures presently in place regarding combined sewer overflows) which would allow for year-round relief, where appropriate. The Board invites BNSD, IASD, or any other interested person or group to file proposals alternative to or in addition to the proposed language that is set forth in this Order.

The Board hereby proposes the following amendments:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE C: WATER POLLUTION
CHAPTER 1: POLLUTION CONTROL BOARD

PART 302
WATER QUALITY STANDARDS

SUBPART B: GENERAL USE WATER QUALITY STANDARDS

Section 302.209 Fecal Coliform

During the months of May through October, based on a minimum of five samples taken over not more than a 30 day period, fecal coliforms (STORET number 31616) shall not exceed a geometric mean

of 200 per 100 ml, nor shall more than 10% of the samples during any 30 day period exceed 400 per 100 ml.

PART 304
EFFLUENT STANDARDS

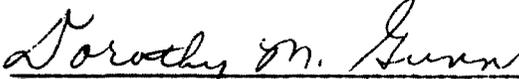
SUBPART A: GENERAL EFFLUENT STANDARDS

Section 304.121 Bacteria

During the months of May through October, no effluent governed by this Part which discharges to general use waters shall exceed 400 fecal coliform per 100 ml. Any facility which ceases disinfection during November through April shall recommence disinfection in such a manner so as to minimize any potential adverse effect on aquatic life.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Emergency Order was adopted on the 5th day of December, 1985 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board