

ILLINOIS POLLUTION CONTROL BOARD  
May 22, 1986

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

ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board upon certain developments in another Board docket which, though it is distinct from this docket, directly influences the manner in which this proceeding moves forward.

The "other" docket referred to is the matter of R77-12 Docket D, and the following discussion summarizes the critical developments in that proceeding. In October, 1982 the Board repealed the fecal coliform water quality standard for general use and secondary contact waters (35 Ill. Adm. Code 302.209 and 302.406, respectively) and amended the fecal coliform effluent standard (35 Ill. Adm. Code 304.121). The First District Appellate Court upheld the Board's repeal of 302.406 but reversed the Board's repeal of 302.209 and its amendment of 304.121. The People of the State of Illinois v. The Pollution Control Board, et. al., 119 Ill. App. 3d 561, 456 N.E. 2d 909 (1983). The Illinois Supreme Court upheld the appellate court's actions in The People of the State of Illinois v. The Pollution Control Board, et. al., 103 Ill. 2d. 441, 469 N.E. 2d 1102 (1984).

On November 21, 1985 the Board in R77-12 Docket D adopted by peremptory rulemaking 302.209 as it existed prior to the Board's action in October 1982. Also on that date and in the same docket, the Board adopted by peremptory rulemaking an amendment to 304.121 that reestablished that section as it existed prior to the Board's action in October, 1982, with one exception.

On April 17, 1986 the Joint Committee on Administrative Rules ("JCAR") filed a Statement of Objection to the aforementioned peremptory rulemaking undertaken by the Board in R77-12 Docket D. JCAR objected to the peremptory rules because it believes that the Board violated 5.03 (Peremptory Rulemaking) of the Illinois Administrative Procedure Act ("APA") in that the Board had discretion as to the content of the rules, the rules were not required under conditions precluding the use of general rulemaking procedures, and the Board did not file the rules within 30 days of the time at which the change in the rules was required.

The matter at hand, R85-29, is procedurally affected by JCAR's objections to the peremptory rulemaking attempted in R77-12 Docket D. The Board's proposed amendments in R85-29 are, in fact, amendments to regulatory language that the Board believed it had readopted by peremptory rulemaking of November 21, 1985. If that rulemaking was in fact invalid, there are then no rules "on the books" for the amendments proposed in R85-29 to amend.

The Board today intends to remedy this dilemma by acceding to the concerns expressed by JCAR and revising its proposed amendments in R85-29 to include the readoption in toto of 302.209 and 304.121 as they existed prior to October 1982. The Board's December 5, 1985 proposed amendments to those sections simultaneously remain as proposed amendments. The only impetus for undertaking this action today is that it will potentially accomplish, by general rather than peremptory rulemaking, the readoption of the pre-October 1982 language of 302.209 and 304.121 and therefore allow for the amending of that language.

The Board does not at this time anticipate the revision of its proposal to require that additional hearings be held in R85-29. In fact, the Board does not envision any manner in which R85-29 will be impacted by this development, other than in its procedural formality.

For the foregoing reasons, the Board revises its December 5, 1985 proposal in this docket and 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

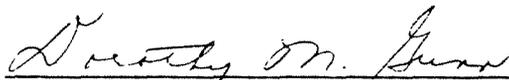
Section 304.121 Bacteria

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.

Board Members Jacob D. Dumelle and Bill Forcade dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 22<sup>nd</sup> day of May, 1986, by a vote of 5-2.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

