

ILLINOIS POLLUTION CONTROL BOARD
January 21, 1988

IN THE MATTER OF:)
)
MISCELLANEOUS AMENDMENTS TO) R88-1
35 ILL. ADM. CODE)

PROPOSED AMENDMENTS: REQUEST FOR PUBLIC COMMENT

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

From time to time the Board, as well as practitioners before the Board, encounter aspects in the Board's rules and regulations which warrant correction, but which are not of the nature to justify the time and expense associated with conducting an individual rulemaking to address each. The Board proposes today to gather together these materials and address them within a single proceeding. In so doing, the Board borrows a page from the Illinois General Assembly, which often addresses a group of housekeeping matters in an "omnibus bill". In this sense, the instant matter is meant to be the Board's version of an omnibus rulemaking.

At this stage, the Board invites comment on two aspects of this proceeding: (1) merits of the example amendments identified herein, and (2) suggestions for and merits of additional amendments suitable for inclusion in an omnibus rulemaking proceeding. The comment period will extend until April 30, 1988.

Based upon the responses it receives, the Board will gather the appropriate amendments into a formal proposal(s) and proceed thereafter with normal rulemaking steps. Inclusion of a suggested amendment within the proposal will be based at the minimum on (1) desirability of the amendment, (2) likelihood that the amendment will be non-contentious, and (3) likelihood that the amendment will not require an Economic Impact Statement.

The following consists of some examples which the Board believes may be appropriate materials for inclusion in the omnibus rulemaking.

SECTION 301.200: INTRODUCTION TO
DEFINITIONS, WATER POLLUTION

This proposed change would amend Section 301.200 by adding a qualifying clause preceeding the existing language, thusly:

As used in Except as otherwise provided within individual Parts of this Chapter, the following terms defined by Section 301.200 et seq. shall have the meanings specified.

Over time various definitions have been added to the water pollution regulations in Parts other than Part 301. In some cases these new definitions are possibly not consistent with the definitions presented in Section 301.200 et. seq. This amendment to 301.200 is intended to specify that, should conflict arise, the definition in the Part in question prevails. An example where conflict might exist is provided by the definitions of Publicly Owned Treatment Works found at 301.365 and in Part 310. Although this specific example is proposed to be rectified as part of this omnibus rulemaking (see following), the Board believes that it is advisable to adopt the proposed 301.200 amendment to forestall other possibly existing inconsistencies and/or future inconsistencies.

SECTION 301.360: DEFINITION OF PUBLIC
AND FOOD PROCESSING WATER SUPPLY

This proposed change would delete the word "surface" from the phrase "withdrawn from surface waters of the State", in Section 301.360, as follows:

Public and Food Processing Water Supply: Any water use in which water is withdrawn from ~~surface~~ waters of the State for human consumption or for processing of food products intended for human consumption.

The affect would to be clarify that any water of the State is considered a public and food processing water supply if the water is withdrawn for human consumption or for processing of food products intended for human consumption.

The desirability of this change was brought out in testimony received in hearings conducted in R86-8, A Plan for Protecting Illinois Groundwater. There it was noted that the definition found at 301.360 was a source of confusion, in that it allowed a reading that public and food processing water supply standards are to apply only to surface waters, at the exclusion of underground waters. As was pointed out by the Board in its Report in R86-8 (In the Matter of: A Plan for Protecting Illinois Groundwater, August 28, 1986, p. IV-2), such a reading would clearly be inconsistent with Section 303.203. Section 303.203 specifically identifies that public and food processing water supply standards apply to any underground waters which are a present or potential source of water for public or food processing supply:

Section 303.203 Underground Waters

The underground waters of Illinois which are a present or a potential source of water for public or food processing supply shall meet the general use and public and food processing water standards of Subparts B and C, part 302, except due to natural causes.

The reading that public and food processing water supply standards do not apply to underground sources of water supply is also inconsistent with the expressed intention of the Board when it adopted the water quality standards of Subtitle C, including Sections 301.360 and 303.203 (then Rules 104 and 207, respectively). In particular, the Board noted that public and food processing water supply standards are intended to "assure that water is satisfactory wherever it is taken" (3 PCB 763, emphasis added).

Deletion of the word "surface" from Section 301.360 would make Section 301.360 consistent with 303.203 because "waters of the State", as defined within the Environmental Protection Act, Section 3(oo), includes both surface and underground waters.

SECTION 301.365: DEFINITION OF PUBLICLY OWNED TREATMENT WORKS

This proposed amendment would delete the existing definition of Publicly Owned Treatment Works ("POTWs") found at 301.365 and replace it by reference to the definition found in Part 310, thusly:

Publicly Owned Treatment Works: A treatment works owned by a municipality, sanitary district, county or state or federal agency, and which treats domestic and industrial wastes collected by a publicly owned or regulated sewer system. Industrial treatment works which are publicly owned and financed by bond issues of public agencies are not included in this definition. As defined in 35 Ill. Adm. Code 310.

The Board in R86-44 (In the Matter of: Pretreatment Regulations, December 3, 1987) adopted an extensive set of regulations applicable to POTWs, now found in Part 310. This action was initiated by a requirement for the State to adopt regulations "identical in substance" with federal regulations promulgated by the United States Environmental Protection Agency. The new regulations include a definition of Publicly Owned Treatment Works at Section 310.110. Although this new definition is similar to that also found at 301.365, it is not identical. To forestall possible conflict between the two existing definitions, the Board believes that it is advisable to make the amendment as here proposed.

SECTION 301.415: DEFINITION OF TREATMENT WORKS

The proposed course of action and the rationale here are identical to that proposed for the amendment to Section 301.365, above. In particular, it is proposed that 301.415 be amended as follows:

Treatment Works: individually or collectively those constructions or devices (except sewers, and except constructions or devices used for the pretreatment of wastewater prior to its introduction into publicly owned or regulated treatment works) used for collecting, pumping, treating, or disposing of wastewaters or for the recovery of byproducts from such wastewater As defined in 35 Ill. Adm. Code 310.

REPEAL OF SECTION 304.140

Section 304.140 deals with the conditions under which delays in upgrading of effluent discharges are allowable. The proposal is to repeal the entirety of the Section, or, in the alternative, to replace it with a shortened version. Section 304.140 appears to apply to actions and possible actions now entirely past, and therefore may be surplusage. If so, removal of it from the regulations would be justified as a matter of clarity and efficiency. However, the Board does request that interested parties closely review this Section to ascertain whether the entirety of the rule is indeed superfluous, and alternatively whether some of it may be beneficially retained.

REPEAL OF SECTION 304.301

Section 304.301 deals with exceptions for ammonia nitrogen water quality violations. All of the provisions of the Section terminate after July 1, 1988. Therefore, after that date the entire Section may become superfluous. The proposal is therefore to initiate repealing of this Section now, such that at some date after July 1, 1988, when the instant omnibus rulemaking is completed, the surplusage may be removed from the regulations.

SECTION 305.102: REPORTING REQUIREMENTS FOR PRETREATMENT WORKS

This proposed amendment would remove the references to pretreatment works and operations found in existing Section 305.102, and add a new subsection pertaining to pretreatment operations. The proposed changes are as follows:

- a) Every person within this State operating a pretreatment works, treatment works, or wastewater source shall submit operating reports to the Agency. Such reports shall contain information regarding the quantity of influent and of effluent discharged, or wastes bypassed and of combined sewer overflows; the concentrations of those physical, chemical, bacteriological and radiological parameters which shall be specified by the Agency; and any additional information the Agency may reasonably require. This reporting requirement for pretreatment works shall only apply to those pretreatment works which:
- 1) Discharge toxic pollutants, as defined in Section 502(13) of the CWA, or pollutants which may interfere with the treatment process, into the receiving treatment works or are subject to regulations promulgated under Section 307 of the Clean Water Act (CWA); 33 U.S.C. 1251 et seq.; or
 - 2) Discharge 15% or more of the total hydraulic flow received by the treatment works; or
 - 3) Discharge 15% or more of the total biological loading received by the treatment works as measured by 5-day biochemical oxygen demand.
- b) Every holder of an NPDES Permit is required to comply with the monitoring, sampling, recording and reporting requirements set forth in the permit and this Chapter.
- c) Persons operating pretreatment works may be subject to reporting requirements specified in 35 Ill. Adm. Code 310.

The purpose of this proposed amendment is eliminate duplication and possible inconsistencies between the reporting requirements found at 305.102 and the new reporting requirements found in Part 310, as adopted by the Board in R86-44 (In the Matter of: Pretreatment Regulations, December 3, 1987).

SECTION 309.281: EFFECTIVE DATE OF
PART 309 (PERMITS), SUBPART B (OTHER PERMITS)

The present language in Section 309.281, which determines the effective date of Subpart B, does not reference the calendar

date upon which Subpart B became effective. Rather, reference is to "the date of filing with the Secretary of State" and to "such time as the Agency adopts criteria to administer the permit program". Thus, to identify the calendar date, an interested party must go outside of the regulations, which is an unnecessary inconvenience. Accordingly, it is proposed to amend the Section with the inclusion of the specific calendar dates in question, as follows:

- a) The effective date of ~~this~~ Subpart B shall be the date of filing with the Secretary of State on an emergency basis is March 7, 1972.
- b) Notwithstanding (a) above, Section 309.208 shall become effective at such time as the Agency adopts criteria to administer the permit program contained therein became effective with adoption by the Agency of 35 Ill. Adm. Code 391 on December 14, 1983.

SECTION 601.105: DEFINITION OF GROUND WATER

This proposed change would amend the definition of ground water found at 601.105 in the following manner:

"Ground Water means all natural or artificially introduced waters found below the ground surface, including water from dug, drilled, bored or driven wells, infiltration lines, and springs underground water which occurs within the saturated zone and geologic materials where the fluid pressure in the pore space is equal to or greater than atmospheric pressure.

The amendment is occasioned by testimony received by the Board during hearings in R86-8, A Plan for Protecting Illinois Groundwater, which noted the inconsistency between the existing definition and other definitions of the same term. In response the Board noted (p. I-4):

The ... definition is not only inconsistent with the conventional definition of groundwater, but also appears to be inconsistent with use and definitions found elsewhere within Illinois statutes [Ill. Rev. Stat. ch. 111 $\frac{1}{2}$, par. 1003] and the Board's regulations [34 Ill. Adm. Code 301.420]. In particular, the Section 601.105 definition appears to establish an identity between "ground water" and "underground water", whereas conventional use considers groundwater to be a subset of underground water (R. at 1531). Since these differences in definition appear to be the

source of some confusion, the Board will propose to amend these definitions in the earliest possible regulatory proceeding.

The replacement definition proposed here is that definition recently adopted by the Illinois General Assembly in the Illinois Groundwater Protection Act, P.A. 85-863. Although the Board realizes that there are several possible definitions of groundwater, each of some individual merit, the Board believes that utilization of this particular definition is preferable due to the consistency it provides between statutes and the Board's regulations.

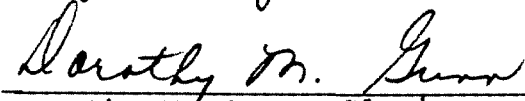
The Board also notes that throughout the Public Water Supplies (Subtitle F) portion of the Board's rules and regulations the term "ground water" is spelled as two words. In contrast, within the Environmental Protection Act and most other state statutes, as well as elsewhere within the Board's rules and regulations, the spelling is in the more commonly encountered form of a single word, "groundwater". Given that both spellings occur in technical literature, and that it is commonly understood that there is no distinction between the two terms other than in the spelling, the Board does not believe that changing the spelling within Subtitle F is justified.

ORDER

A comment period extending until April 30, 1988, on the Board's proposed rulemaking, R88-1, is hereby opened.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 21st day of January, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board