ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
REVISIONS TO ANTIDEGRADATION	)	R01-13
RULES 35 ILL. ADM. CODE 302.105, 303.206	)	
AND 106.990-106.995.	)	

P.C. #45

NOTICE OF FILING

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(PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I will file on March 20, 2001 with the Clerk of the Illinois Pollution Control Board an original and nine copies of the COMMENTS OF THE AMERICAN BOTTOMS REGIONAL WASTEWATER TREATMENT FACILITY, copies of which are herewith served upon you.

Respectfully submitted,

AMERICAN BOTTOMS REGIONAL
WASTEWATER TREATMENT FACILITY,
VILLAGE OF SAUGET, ILLINOIS

By: Susan M. Franzetti
One of Its Attorneys

Dated March 19, 2000

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STATE OF ILLINOIS
Pollution Control Board

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COMMENTS OF THE AMERICAN BOTTOMS REGIONAL WASTEWATER TREATMENT FACILITY

I. INTRODUCTION

The American Bottoms Regional Wastewater Treatment Facility ("ABRTF"), located in Sauget, Illinois, has actively participated in this rule-making proceeding and in the prior activities of the Antidegradation Task Force organized by the Illinois Environmental Protection Agency ("Agency"). Our active participation stems from our belief that the proposed antidegradation regulations have the potential to affect in significant ways the future operations of POTWs, like the ABRTF. Without further improvements to the proposed provisions of the regulations, we are concerned that the revised Illinois antidegradation policy threatens to create unpredictability and to impose unnecessary obstacles and burdens to our POTW's efforts to accept and treat increased wastewater discharges from current and future users.

As proposed, the language of the regulations could subject every increase in loading to a high quality water by a POTW, no matter how innocuous and necessary, to the burden of making an antidegradation demonstration. We submit that such an extensive regulatory reach was never the intended scope of the antidegradation policy. To prevent such an unintended regulatory impact, we are submitting these comments to urge the Illinois Pollution Control Board (the "Board") to revise the language of the Agency's proposed rules to incorporate the following concepts and principles:

1. The antidegradation rules apply to an increase in loading that has not been previously authorized by an existing NPDES permit;

2. The antidegradation rules apply to increases in loading that will significantly lower water quality. An NPDES permittee may seek an initial determination by the Agency that its proposed loading increase does not significantly lower water quality; and

3. A de minimis loading increase, as defined in the rules, does not significantly lower water quality and is not subject to the requirement to submit an antidegradation showing.

We believe the incorporation of the above three principles into the antidegradation rules will provide the proper scope and application for the State's antidegradation policy while also lending needed flexibility to the implementation of that policy. Alternatively, the ABRTF is not opposed to what the Agency has described and coined the "sliding scale approach" to the implementation of the antidegradation requirements. However, that approach is not incorporated into the language of either the proposed rules or the proposed Agency implementation procedures. Unless it is, there is no certainty for a POTW like ours that future legal interpretations and rulings will uphold the Agency's view that this uncodified approach to antidegradation demonstrations and reviews is what is intended by the proposed regulatory language.

II. BACKGROUND

The ABRTF is designed for an average daily flow of 16.1 MGD in the preliminary and primary treatment units and 27 MGD in the secondary treatment units. Secondary treatment facilities are designed for a peak flow of 52 MGD. The original design of the ABRTF was reviewed and accepted by both the Agency and the U.S. EPA as part of an extensive review process that led to the approval of the ABRTF service area and subsequently the construction grant funding to finance seventy-five percent of the construction costs of the ABRTF in the

1980's. The NPDES permit for the ABRTF was originally issued in 1986, after close review of the ABRTF proposed loadings to the Mississippi River by the Agency and the U.S. EPA. The ABRTF NPDES permit has been renewed since its original issuance, most recently in 1997.

The ABRTF is concerned that any revised antidegradation policy adopted by the Board should not discourage planned improvements of existing facility or unnecessarily thwart the location of new facilities from locating in the ABRTF service area. The ABRTF's current annual average flow of 14 MGD is well below its design levels. The ABRTF discharge has remained below its permitted loading limits. Thus, there is previously approved and permitted capacity for the ABRTF to accept additional wastewater flows for treatment and discharge to the Mississippi River.

The ABRTF operates under a pretreatment program approved by the United States Environmental Protection Agency ("U.S. EPA"). It services seventeen significant industrial users, 148 industrial users and 18,000 residential customers. Since it began operations in 1986, the ABRTF has brought improved wastewater treatment to its service area, including replacing the operations of two former POTWs in the region that could not provide a comparable quality of wastewater treatment. None of these developments were hampered or burdened by unnecessary delays or costs created by the application of the Illinois antidegradation policy. The ABRTF hopes through its participation here to ensure that under a revised Illinois antidegradation policy, it can continue to make this statement in the future as and when there may be loading increases from its facility.

III. SECTION 302.105: THE APPLICABILITY OF THE ANTIDEGRADATION RULE MUST BE CLEARLY AND EASILY UNDERSTOOD.

It is critical that the antidegradation rules establish clear criteria for a discharger to apply in determining whether a change in its discharge constitutes an "increased loading" sufficient to require an antidegradation demonstration. While the Agency will presumably review

antidegradation applicability issues at the time of permit renewals, in the intervening five years, the discharger is the entity who must make this "applicability" determination in the first instance. Unless the rules are easily understood, particularly as to their scope of applicability, there is an increased risk that a discharger will unknowingly fail to seek a required antidegradation review by the Agency. Further, lack of clarity may lead to unreasonable delays in determinations of the applicability of the antidegradation rules.

For this reason, it is important to clarify the applicability language in proposed Section 302.105(c)(2). As proposed, the language provides that the antidegradation rules apply to "any increase in pollutant loading subject to an NPDES permit or CWA Section 401 certification." Throughout the hearings, there has been repeated testimony concerning the lack of clarity in this language. As written , it is unnecessarily and overly broad in scope. It creates an unmanageable requirement for POTWs as they work to assure permit compliance because it lacks any clear threshold for telling them when the antidegradation requirements apply. As Ms. Robin Garibay, Principal of The ADVENT Group, testified on behalf of the ABRTF, the standard that "any" increase in pollutant loading triggers antidegradation requirements could be a moving target for POTWs. (Hearing Testimony of Robin Garibay, December 6, 2000, Tr. 99). Ms. Garibay also provided testimony from her personal experience about the problems caused by the lack of clear standards for applying the antidegradation rules, including an unjustified year-long delay in the completion of a beneficial improvement to a power and steam generating plant due to antidegradation language covering "any increase" in loading. (Exhibit 18 - Pre-Filed Testimony of Robin Garibay at p. 3).

It is not "any proposed increase in pollutant loading" that will trigger antidegradation review. The Agency's testimony and proposed implementation procedures clarify that antidegradation review is required only when the increased loading is "over and above those

levels that are already authorized in [a] permit." (Testimony of Toby Frevert, November 17, 2000, Tr. 46 and 138). This standard properly acknowledges that changes to facilities and treatment plant capacity that were previously considered by the Agency to establish NPDES permit terms should not be required to be reviewed again when these actual loading increases occur at some point in the future. These loading increases already have been determined to be consistent with water quality standards. (See Testimony of Toby Frevert, November 17, 2000, Tr. 56). They are allowed fluctuations of effluent mass within permitted discharge limits.

We submit that only an increase not already authorized by an NPDES permit should be a trigger for potential antidegradation review. The prior permit is protective of the receiving water for antidegradation purposes. Especially in the case of a POTW, its proposed discharge has gone through several water quality standards reviews by the time it is issued an NPDES permit. These reviews may include the approval of the POTW's design plans, an additional review as part of the construction grants program and the construction permitting program, and finally another round of water quality standards review at the time of NPDES permit issuance. (See Testimony of Robin Garibay, December 6, 2000, Tr. 97-98; Testimony of Toby Frevert, November 17, 2000, Tr. 69). Otherwise, a POTW potentially could be exposed to a claim that any new discharge to the POTW constitutes an "increased loading" to the receiving water, such as increased loadings due to batch or campaign operations by industrial users, weather-related events, or demands on commercial facilities services. (See Exhibit 18 - Pre-Filed Testimony of Robin Garibay at p. 2, November 28, 2000, and December 6, 2000 Hearing Testimony, Tr. 99). If so, one or a series of antidegradation reviews could be required even though the POTW's existing NPDES permit already contemplated and allowed the presence of these discharges when the existing permit limitations were established.

This threshold for applicability needs to be clearly and expressly stated in the antidegradation rule itself. We support the revision of proposed Section 302.105(c)(2), in relevant part, to read: "Any proposed increase in pollutant loading not authorized by an existing NPDES permit or CWA Section 401 certification must be assessed ...."

IV. DE MINIMIS

The antidegradation rule should not be applicable to minimally increased loadings. The Agency should incorporate into the rules an applicability "trigger" that is measured by a percentage increase over the remaining assimilative capacity of the receiving water. Such an approach provides ease of application and is appropriate to defining loadings that clearly will not result in a lowering of water quality. For that reason, we support the exclusion of de minimis loadings from the applicability of the antidegradation rules. This approach will greatly increase the chances that the proposed antidegradation rules are workable, do not threaten planned improvements of existing facilities, and are not unreasonably burdensome either to the Agency or to the public. It will help conserve the Agency's limited resources for those permit applications which truly do raise antidegradation concerns.

The Agency has stated that it supports the concept of a de minimis exception but not a burdensome approach to implementing that concept. The ABRTF, through the testimony of Ms. Garibay, showed that the de minimis exclusion need not be burdensome or novel for the Agency to employ. (Exhibit 18 - Pre-filed Testimony of Robin Garibay at p. 4, November 28, 2000). Instead, the implementation of a de minimis approach can closely mirror the evaluation the Agency already performs as part of each NPDES permit issuance process to determine whether a discharge has the "reasonable potential to exceed" ("RPE") a water quality standard. Ms. Garibay explained how the data and information needed to make these RPE assessments are similar to what is needed to determine whether a proposed increase in loading will impact water

quality for purposes of the antidegradation requirements. (Id. at p. 4) The Agency recently confirmed that it utilizes the RPE approach described by Ms. Garibay, which is set forth in the Technical Support Document for Water Quality-based Toxics Control, EPA/505/2-90-001, March 19991. (See Answers of IEPA to Pre-filed Questions, dated March 9, 2001, at ¶ 13.) It would not add a separate or unique data review to the Agency's permit issuance process. Moreover, using the de minimis approach incorporated into the State of Indiana's antidegradation rules, Ms. Garibay showed how a straightforward set of values can be used to calculate and identify a de minimis increase. (Id. at p. 5-6). The use of a de minimis concept in the antidegradation program does not require the Agency to undertake significant, additional demands on its permit review resources. If it did, it is unlikely that other Region V states, such as Indiana and Wisconsin, would continue to employ this concept in their respective antidegradation rules.

In addition to the added ability to conserve scarce resources and minimize permitting delays, the inclusion of a "bright line" de minimis exception can also serve as an incentive to dischargers to achieve levels of wastewater treatment or pollution prevention measures that exceed those realized by the application of Best Available Technology and water quality-based effluent limitations ("WQBELs"). Ms. Garibay provided an example of how the desire to avoid the uncertainties and resource demands of an antidegradation review motivated a discharger seeking to expand its existing production to reduce its lead discharge level to half of the WQBEL required discharge level in order to qualify for the de minimis exemption. By staying below the de minimis threshold of 10% of the unused loading capacity of the receiving stream, the discharger knew that it would be allowed to pursue its planned facility expansion. (See Exhibit 18 - Pre-filed Testimony of Robin Garibay at p. 6 and December 6, 2000 Hearing Testimony, Tr. 100-102). Hence, not only can a de minimis exception provide an appropriate means to

efficiently and effectively implement the antidegradation program, it can also promote pollution prevention and minimization in return for greater certainty on the regulatory front.

The ABRTF appreciates the concerns voiced by other commenters that adopting a de minimis exception threatens to exhaust the available assimilative capacity of the receiving stream. Theoretically, this is possible over time assuming there are multiple uses of the de minimis exception in the same receiving water segment. To that end, the ABRTF is not opposed to the inclusion of a "cap" on the availability of the de minimis exception that reserves a portion of the unused assimilative capacity in the receiving water.

V. THE ANTIDEGRADATION RULES SHOULD ALLOW FOR A SEPARATE AND EARLY DETERMINATION OF WHETHER A PROPOSED LOADING INCREASE MAY LOWER WATER QUALITY.

Antidegradation review should focus on addressing true impacts to water quality, recognizing that certain projects, including those with limited impacts or great environmental import, do not warrant extensive review. The burden and expense of evaluating economic and social impacts, conducting comparative technology reviews and other efforts necessitated by an antidegradation review should be limited to those increases in loading that have a significant effect on water quality in the receiving stream. POTWs, like the ABRTF, should be able to reduce the drain on their limited resources caused by conducting all aspects of an antidegradation review where the proposed increase in loading will have an insignificant impact on the receiving water's quality. A de minimis exception is one means of achieving a workable and protective program. However, there will be proposed increases that do not fit the specific terms of a de minimis exception but nevertheless do not have any significant impact on water quality. These instances are another facet of the "sliding scale" approach described by the Agency that needs to be incorporated into the language of the antidegradation rules. As Mr. Frevert testified, the level of significance will determine the extent of review. (Testimony of Toby Frevert, November 17,

2000, Tr. 73-74). We agree with that approach, but it is not expressed in the proposed language of the antidegradation rules.

American Bottoms submits that it is important to separate the two concepts of "loading increase" and "lower water quality" as used in the proposed antidegradation rules. A loading increase above authorized permit levels should be the "triggering" event for determining whether and to what extent an antidegradation review is required. However, for high quality waters, unless there will be a lowering of water quality from the loading increase, the federal antidegradation policy does not require any showing concerning social and economic factors or comparable alternatives. Section 131.12(a)(2) of the federal antidegradation policy requires consideration of these additional factors only where the State decides it will be "allowing lower water quality."

During the hearing testimony, at least one example of an increase in loading that could be above permit limits but would be beneficial to the water quality of the stream was presented. The example involved a discharger who was increasing its loading of ammonia nitrogen but the increased concentration of ammonia was still below the ambient ammonia concentration of the receiving stream. As Mr. Frevert testified, in such a situation, the increased loading is "a beneficial thing" because it will actually lower in the in-stream concentration. (Testimony of Toby Frevert, November 17, 2000, Tr. 127-128). However, under the language of the proposed regulations, an antidegradation review is still required because the sole determining factor is whether there is an increased loading, including those above permitted levels, and not the additional step of whether the increased loading results in any lowering of water quality. Instead, the discharger should be able to present solely the information showing that while an increase loading may be above permitted levels, it results in improved water quality. None of the remaining antidegradation demonstration requirements should apply. Mr. Frevert agreed with

this approach in his testimony (See Hearing Testimony, November 17, 2000, Tr. 132-133), however, this process is not provided for in the language of the regulations proposed by the Agency. Under the proposed language, once a loading increase to a high quality water triggers antidegradation review, the remaining requirements concerning reasonable alternatives analysis and social and economic factors must be demonstrated.

The determination of the applicability of the antidegradation requirements for discharges to high quality waters should be a two-step process. The first step is whether there is a proposed new or increased loading above levels authorized by any existing NPDES permit. The second step should be for the Agency to determine whether the proposed loading increase is reasonably likely to cause any significant lowering of water quality. To automatically equate every proposed increased loading with a lowering of water quality unreasonably overstates the intended scope and purpose of the antidegradation policy. To require an antidegradation demonstration of every POTW who proposes an increase in loading due to the addition of residential wastewater sources in its service area, no matter how innocuous the impact of the loading increase is on water quality, is an unreasonable and unnecessary regulatory approach. The antidegradation rules should provide a POTW the right to seek an early and final determination by the Agency that its proposed loading increase will not lower water quality such that a showing on comparable alternatives and economic and social factors is required.

By seeking to include the right to a water quality impacts review early on in the antidegradation review process, there is no intent to "hide" the potential impacts of a proposed loading as has been implied by one commenter. The ABRTF supports an approach that makes the Agency's review and finding that there is no significant lowering of water quality that warrants a further antidegradation showing a part of the public record. There is no intent to "hide" the evaluation of water quality impacts. There is, however, an intent to avoid the

unnecessary expenditure of POTW funds. For a POTW, a reasonable alternatives analysis could include looking at a broad range of options, from various pretreatment options at industrial user facilities and end-of-pipe control measures for the POTW. This analysis would consume an extensive number of hours and significant cost. (See Hearing Testimony of Robin Garibay, December 6, 2000, Tr. 104-105). As Ms. Garibay's testimony made clear, the work involved to demonstrate that all technically and economically reasonable measures to control the increase have been taken (i.e. the "reasonable alternatives analysis") can and has cost in excess of over $100,000 in engineering fees and extended over a two year period in just one of the examples she gave from her real-life experiences with antidegradation demonstrations. (Exhibit 18 - Pre-filed Testimony of Robin Garibay at p. 7, November 28, 2000 and December 6, 2000 Hearing Testimony, Tr. 105-07). This is compelling and concrete evidence concerning the actual burdens and costs of making the reasonable alternatives demonstration. It stands unrebutted and in stark contrast to the general testimony presented to the Board questioning the appropriateness of including this early water quality impacts review in the antidegradation process on the speculative grounds that it could be more burdensome.

The Agency's and other interested parties' support for a "sliding scale" approach to antidegradation reviews can be incorporated into the language of the antidegradation rules by codifying this two-step process for determining the applicability of the requirements of the antidegradation rules. We support the efforts of the Illinois Environmental Regulatory Group (IERG) to incorporate this concept into the antidegradation rules through its proposed Section 302.105(c)(2) revisions submitted to the Board. The regulations should allow a determination of whether the lowering of water quality is significant before a discharger to high quality waters is required to submit a demonstration of the reasonable alternatives analysis and social and economic factors.

VI. CONCLUSION

We commend the Agency and the other participants in this rule-making who have provided valuable comment and testimony towards making the proposed antidegradation rules protective of our State's waters while retaining a workable and efficient program for both the Agency and the public. As shown by the limited issues we have addressed, we support most of the proposed rule-making submitted by the Agency. By these comments, we seek to improve on the substantial foundation presented by the Agency so that it is not subsumed by unpredictability and unnecessary delay and costs that could adversely impact the future needs and finances of the ABRTF and its users.

Respectfully submitted,

AMERICAN BOTTOMS REGIONAL
WASTEWATER TREATMENT FACILITY,
VILLAGE OF SAUGET, ILLINOIS

By: Susan M. Franzetti
One of Its Attorneys

Dated March 19, 2001

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CERTIFICATE OF SERVICE

I Susan M. Franzetti, the undersigned, certify that I will serve a copy of the attached COMMENTS OF THE AMERICAN BOTTOMS REGIONAL WASTEWATER TREATMENT FACILITY, filed In The Matter Of Revisions To Antidegradation Rules, upon:

Ms. Dorothy M. Gunn
Clerk of the Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

By sending said documents by messenger delivery on March 20, 2001; and upon

(SEE ATTACHED SERVICE LIST)

by depositing copies of said documents in the United States Mail on March 19, 2001.

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