

DEC 21 2004

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
December 20, 2004

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO) R04-25
DISSOLVED OXYGEN STANDARD 35 ILL.) (Rulemaking - Water)
ADM. CODE 302.206)

HEARING OFFICER ORDER

The proponent of this rulemaking is the Illinois Association of Wastewater Agencies (IAWA). IAWA seeks to amend the Board's rule establishing general use water quality standards for dissolved oxygen (35 Ill. Adm. Code 302.206). IAWA filed its proposal with the Board on April 19, 2004. The Board held public hearings in this rulemaking on June 29 and August 12, 2004. The hearing officer conducted status conference calls on September 13, October 13, November 17, and December 17, 2004. Below is a summary of the last call, including the hearing officer's directive that IAWA file a status report by January 31, 2005.

The hearing officer was joined on the December 17, 2004 conference call by the following participants: Roy Harsch, IAWA; Dennis Streicher, City of Elmhurst and IAWA; Stefanie Diers and Deborah Williams, Illinois Environmental Protection Agency (IEPA); Albert Ettinger, Environmental Law & Policy Center, Prairie Rivers Network, and Sierra Club; Irwin Polls, Ecological Monitoring & Assessment; and Esther Dundore and Tom Chinske, Illinois American Water Company.

Mr. Harsch of IAWA stated that a stakeholder meeting was held on December 13, 2004, which included, among others, the Illinois Department of Natural Resources (DNR) and the United States Environmental Protection Agency (USEPA). According to Mr. Harsch, USEPA has provided a report regarding dissolved oxygen data from Ohio waters, which is in draft form and being peer-reviewed. Further, he explained that IAWA and DNR are in the process of resolving some technical issues and that an additional stakeholder meeting may be held soon.

During the December 17, 2004 conference call, the participants indicated that they would not be ready in January or February 2005 for a third hearing in this rulemaking. March 2005 was therefore suggested for the third hearing, but the participants could not commit to any specific hearing dates. However, the dates of March 1, 3, 10, 17, 24, and 31, 2005, were ruled out. At the conclusion of the conference call, the consensus was that the most efficient way to proceed was to allow some additional time for, among other things, IAWA and DNR to try work out their technical differences before returning this rulemaking to hearing, and to have IAWA file a status report with the Board by January 31, 2005.

Accordingly, as stated by the hearing officer during the December 17, 2004 call, IAWA must file a status report with the Clerk of the Board by January 31, 2005. The status report must provide a procedural update on IAWA's readiness for a third hearing, which would be held in

Chicago. If practicable, the status report must propose specific dates for a third hearing, ideally in March 2005 and with the agreement of those participants most actively involved in this rulemaking. As the hearing officer noted, pre-filed testimony will be required for the third hearing and is generally due 21 days before hearing.

The hearing officer anticipates issuing a hearing officer order after receiving IAWA's status report. The order may provide notice of the third hearing date, time, and location, as well a deadline for pre-filing testimony.

On the record at the August 12, 2004 hearing, Mr. Ettinger asked that the Board withhold ruling on the July 21, 2004 motion to suspend consideration of this rulemaking (motion to suspend) that he filed on behalf of Environmental Law & Policy Center, Prairie Rivers Network, and Sierra Club. During the December 17, 2004 status conference, Mr. Ettinger stated that he would submit a filing to the Clerk of the Board withdrawing the motion to suspend. Mr. Ettinger must file the withdrawal by January 31, 2005.

Please note that as part of the Board's voluntary electronic filing pilot project, certain filings in this rulemaking may be made through the Board's Web-based Clerk's Office On-Line (COOL) at www.ipcb.state.il.us. Before attempting any electronic filing with the Clerk of the Board, please contact John Therriault in the Clerk's Office at therriaj@ipcb.state.il.us or (312) 814-3629 or the hearing officer to ensure that the filing is eligible for the pilot project.

Lastly, all filings with the Clerk of the Board must be served on the hearing officer and on those persons on the Service List. Before filing any document with the Clerk, please check with Sandy Wiley at (312) 814-3623 or wileys@ipcb.state.il.us or the hearing officer to ensure that you have the most recent version of the R04-25 Service List.

IT IS SO ORDERED.



Richard R. McGill, Jr.
Hearing Officer, Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
(312) 814-6983 mcgillr@ipcb.state.il.us