

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

DEC 28 2007

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
TRIENNIAL REVIEW OF SULFATE AND)
TOTAL DISSOLVED SOLIDS WATER)
QUALITY STANDARDS: PROPOSED)
AMENDMENTS TO 35 ILL. ADM. CODE)
302.102(b)(6), 302.102(b)(8), 302.102(b)(10),)
302.208(g), 309.103(c)(3), 405.109(b)(2)(A),)
405.109(b)(2)(B), 406.100(d); REPEALER OF)
35 ILL. ADM. CODE 406.203 and PART 407;)
and PROPOSED NEW 35 Ill. ADM. CODE)
302.208(h))

R07-9
(Rulemaking-Water)

NOTICE OF FILING

John Therriault, Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street
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Chicago, Illinois 60601

Marie E. Tipsord
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Jonathan Furr
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

Attached Service List

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the **Response of Illinois Environmental Protection Agency to Illinois Environmental Regulatory Group's Comments**, copies of which are herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: 
Sanjay K Sofat
Assistant Counsel

Dated: December 19, 2007
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
(217) 782-5544

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and PROPOSED NEW 35 Ill. ADM. CODE)
302.208(h))

**Illinois Environmental Protection Agency's Response to
Illinois Environmental Regulatory Group's Comments**

Now comes the Illinois Environmental Protection Agency (the "Agency" or "Illinois EPA"), by and through one of its attorney, Sanjay K. Sofat, and hereby respectfully submits to the Illinois Pollution Control Board (the "Board") its response to the Illinois Environmental Regulatory Group ("IERG") comments (hereinafter "IERG Comments") filed on December 3, 2007 with the Board. In support thereof, the Agency states as follows:

COMMENTS

I. Best Management Practices

IERG states that the Agency's proposal will require "a significant majority of discharges" to utilize "ongoing and routine control measures." *IERG Comments* at 7. IERG's selective reading has confused the record and the Agency's reasoning presented in the Agency's Regulatory Proposal, Statement of Reasons, PCB 07-9 (hereinafter "Statement of Reasons"). The exact statement in the Statement of Reasons is that, "[a] significant majority of discharges would meet the applicable

permit limits with the help of ongoing and routine control measures.” *Id.* at 13. The statement preceding this sentence is that, “[f]or most dischargers, the new sulfate and total dissolved solids standards will allow attainment of water quality standards without the implementation of additional management practices or process alternatives.” *Id.*

The ongoing and routine control measures that the Agency was referring to, is the practice of applying best management practices (“BMPs”), as required under 35 Ill. Adm. Code 406.204-406.208 of the Board regulations. Mines, like all other industries, are expected to keep up with new developments that reduce pollution. The Agency’s reasoning regarding the point sources ability to meet the proposed sulfate standard can be divided into three categories. The majority of the point sources would be able to meet the proposed sulfate standard without applying any kind of additional BMPs or making any process change. The rationale behind this is that the water quality standard is much higher than the average concentration of sulfate found to be present in the point source’s effluent.

The second category of point sources would be able to meet the proposed sulfate standard by employing industry based BMPs, and other routine control measures used by the point sources. As BMPs are a requirement under the Board’s regulations, in most cases, if not all cases, mines have already applied some level of BMPs. As such, this proposed rulemaking will not require additional costs to purchase, install, operate, repair or monitor such “controls.” To meet the proposed sulfate water quality standard, only a small number of existing mines under the third category, would need to employ additional controls such as best management practices.

II. Impact of the Proposed Rulemaking on Coal Mines

According to IERG, the Illinois EPA conceded in its reply on April 9, 2007 that the *proposed* rulemaking would significantly impact all coal mine related activities in the State. *IERG Comments* at 6. However, IERG took Dr. Rao’s question and then Mr. Mosher’s response to mean

the proposed standard would impact all coal mines, when in fact Dr. Rao's question and likewise Mr. Mosher's response, was in reference to the existing sulfate and chloride (hence total dissolved solids ("TDS")) standards. Mr. Mosher was testifying that most of the mine discharges cannot meet existing sulfate, chloride, or TDS water quality standard at the end-of-pipe. In some case, where sufficient dilution is present, these sources can meet the applicable water quality standard by discharging only during wet weather conditions. In this rulemaking proceeding, the Agency has neither stated nor implied that all coal mines would have trouble in complying with the proposed standard or would be adversely affected by the proposed changes. On the contrary, through the ongoing permitting practices, the Agency is finding that most of the mines are able to comply with the proposed standard without employing any additional controls. In fact, the Agency has yet to find a situation where the sulfate limit based on the proposed standard cannot be met by the mine.

IERG's argument that mines will incur increased costs because of the proposed sulfate standard is misleading. In the absence of the proposed rulemaking, mines would have had to meet the existing TDS standard and sulfate standard of 500 mg/L. The net impact of the proposed rulemaking is that it relaxes the existing standards of sulfate and TDS for point sources. Therefore, mines cannot be said to be in increased jeopardy because of the water quality standards portion of the rulemaking. It makes little sense to argue that mine dischargers that were struggling to meet the strict existing sulfate standard would incur additional costs to comply with a less stringent standard.

III. Site-specific Rulemakings

Additionally, the proposed rulemaking will eliminate a large portion of mine dischargers that would need to seek site-specific rulemakings to meet the existing standards. While IERG was only able to identify one such site-specific rulemaking, the Agency has conducted its own review to find that seven (7) dischargers would not have needed to apply for a site-specific rulemaking because of the proposed rule. Therefore, the Agency was justified to conclude that the proposed standard will

reduce petitions for site-specific water quality standards for TDS and sulfate resulting in a cost savings for the entities, the Agency, and the Board. *See* Attachment I.

IV. Conclusion

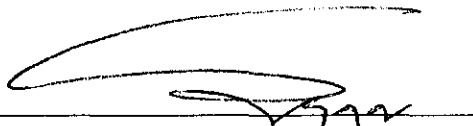
The Agency's reasoning above is based on the years of experience in dealing with the sulfate concentrations in a stream as well as in discharge effluents. Though IERG expresses concern that the proposed sulfate standard would bring hardship to many sources, it does not cite to any specific evidence to support its statements of economic hardship.

WHEREFORE, for the reasons stated above, the Agency respectfully requests the Board to take further action in this proceeding consistent with the Agency's Comments.

Respectfully Submitted

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: _____



Sanjay K Sofat
Assistant Counsel
Division of Legal Counsel

DATED: December 19, 2007
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STATE OF ILLINOIS)
)
) SS
COUNTY OF SANGAMON)
)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached **Response of Illinois Environmental Protection Agency to Illinois Environmental Regulatory Group's Comments** upon the person to whom it is directed, by placing a copy in an envelope addressed to:

John Therriault, Assistant Clerk
Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

(OVERNIGHT MAIL)

Mathew Dunn
Illinois Attorney General's Office
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Attached Service List
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and mailing it from Springfield, Illinois on December 19, 2007, with sufficient postage affixed as indicated above.

Meredith Kelley

SUBSCRIBED AND SWORN TO BEFORE ME

this day of December 19, 2007.

Brenda Boehner

Notary Public



ATTACHMENT I

Board Order	Stream or Lake Name	Discharger	Parameters	Adjusted WQS now applied to the water body (mg/L)
AS 89-03 2/28/91	Deer Creek	Consumers IL Water Co. (Takasago, formerly Nutrasweet)	TDS	2,100 mg/L
AS 01-09 1/10/02	Thorn Creek from discharge to confl. Deer Creek	Thorn Creek S.D. (Rhodia)	Sulfate TDS	1,350 mg/L 2,650 mg/L
AS 01-09 1/10/02	Thorn Creek from Deer Creek confl. to USGS Gauging Station 05536275	Thorn Creek S.D. and Consumers IL Water Co.	Sulfate TDS	1,340 mg/L 2,620 mg/L
AS 01-09 1/10/02	Thorn Creek from USGS 05536275 to Little Calumet River	Thorn Creek S.D. and Consumers IL Water Co.	Sulfate TDS	1,160 mg/L 2,360 mg/L
AS 01-09 1/10/02	Little Calumet River from confl. with Thorn Creek to the confl. with Calumet Sag Channel	Thorn Creek S.D. and Consumers IL Water Co.	Sulfate TDS	1,000 mg/L 2,020 mg/L
AS 93-2 11/18/93	Long Point Slough and its unnamed tributary	Borden Chemical	Sulfate TDS	1,000 mg/L 3,000 mg/L
AS 93-08 9/1/94	Aux Sable Creek from the discharge to the confl. with the Illinois River	Akzo Chemicals	Sulfate TDS	1,000 mg/L 3,000 mg/L
AS 99-5 7/8/99 and 5/6/99	Middle Fork of the North Branch Chicago River from the 001 and 002 outfalls of Abbott Laboratories to the Route 176 Bridge	Abbott Laboratories, Abbott Park	TDS	1,500 mg/L
AS 02-01 6/6/02	McCook Drainage Ditch	Material Service Corp.	TDS Sulfate	1,900 mg/L 850 mg/L
AS 03-01 6/19/03	Unnamed tributary of Horse Creek	Exelon	TDS	1,900 mg/L