

ILLINOIS POLLUTION CONTROL BOARD  
November 21, 1985

IN THE MATTER OF: )  
)  
AMENDMENTS TO CHAPTER 3 ) R77-12  
WATER POLLUTION (Effluent ) Docket D  
Disinfection) )

FINAL RULE. PEREMPTORY RULEMAKING.

ORDER OF THE BOARD (by J.D. Dumelle):

On October 14, 1982, the Board adopted rules repealing the fecal coliform water quality standard for general use and secondary contact waters (35 Ill. Adm. Code 302.209 and 302.406) and amending the fecal coliform effluent standard (35 Ill. Adm. Code 304.121). These rules became effective on October 26, 1982. However, on November 15, 1983, the First District Appellate Court reversed the Board's Order repealing the fecal coliform water quality standard for general use waters (35 Ill. Adm. Code 302.209) and amending the fecal coliform effluent standard (35 Ill. Adm. Code 304.121). The court, however, affirmed the Board's Order repealing the fecal coliform water quality standard for secondary contact waters (35 Ill. Adm. Code 302.406). The People of the State of Illinois v. The Pollution Control Board, et al., 119 Ill. App.3d 561, 75 Ill. Dec. 88, 456 N.E.2d 909.

On October 3, 1984, the Illinois Supreme Court affirmed the Appellate Court's decision regarding the repeal of the fecal coliform water quality standard for general use waters (35 Ill. Adm. Code 302.209) and the amendment of the fecal coliform effluent standard (35 Ill. Adm. Code 302.121). The People of the State of Illinois v. The Pollution Control Board, et al., 103 Ill.2d 441, 469 N.E.2d 1102. Pursuant to the Supreme Court's opinion, the Board, on August 1, 1985, readopted by peremptory rulemaking the fecal coliform water quality standard for general use waters and the fecal coliform effluent standard as they existed prior to the Board's October 26, 1982 action. However, the Board never filed those peremptory rules, since it became aware that the proposed action actually exceeded what was required under the courts' orders.

The Appellate Court, in affirming the Board's repeal of the fecal coliform water quality standard for secondary contact waters, stated that "in secondary contact waters, contact with the water is either incidental or accidental and ... the probability of ingesting appreciable quantities of water is minimal". People v. Pollution Control Board, 119 Ill. App.3d at 566. The court found no evidence in the record to suggest that repeal of the fecal coliform water quality standard for secondary contact waters will affect the purposes for which secondary

contact waters are used. Consequently, the court held that disinfection of fecal coliform bacteria will no longer be required of secondary contact waters. Id.

The fecal coliform effluent standard readopted on August 1, 1985, states that "no effluent governed by this Part shall exceed 400 fecal coliform per 100 ml" (35 Ill. Adm. Code 304.121). As it now stands, this effluent standard applies to discharges to general use and secondary contact waters. Yet, no fecal coliform water quality standard exists for secondary contact waters, since the Board repealed 35 Ill. Adm. Code 302.406 and that action was upheld on appeal. People v. Pollution Control Board, 119 Ill. App.3d at 561. Since no fecal coliform water quality standard exists for secondary contact waters, the Board believes it makes little sense to have a fecal coliform effluent standard applicable to secondary contact waters. The Board recognizes that a potential problem may exist at the point in a stream reach where secondary contact waters become general use waters. However, the Illinois Environmental Protection Agency can mitigate this problem through its permitting process by imposing permit conditions upon discharges to ensure that general use water quality standards are met.

Under State law, the Board is required to designate uses for various waters of the State and prescribe water quality and effluent standards to protect those uses. (Ill. Rev. Stat. 1983, ch. 111-1/2, par. 1011(b); 35 Ill. Adm. Code 301.102). At a minimum, effluent standards are imposed upon discharges to ensure that water quality standards are met. However, in some cases (i.e., the discharge of metals) the effluent standard is more stringent than is necessary to meet the water quality standard or no water quality standard may exist at all. The imposition of a more stringent effluent standard is necessary to allow for potential growth and to avoid the synergistic effects associated with some discharges. This situation does not apply to fecal coliform bacteria.

Under current law, no fecal coliform water quality standard exists for secondary contact waters and no corresponding fecal coliform effluent standard need be met. The Board believes 35 Ill. Adm. Code 304.121 should be modified to reflect this fact. The Board, therefore, hereby modifies its August 1, 1985 peremptory rulemaking action regarding 35 Ill. Adm. Code 304.121. Also, the Board affirms its August 1, 1985 peremptory rulemaking regarding 35 Ill. Adm. Code 302.209. This peremptory rulemaking will accurately reflect the current law by revising 35 Ill. Adm. Code 304.121 to exclude the applicability of the fecal coliform effluent standard to secondary contact waters and by adopting 35 Ill. Adm. Code 302.209 as it existed prior to the Board's October 26, 1982 action.

The Board hereby adopts the following amendments to 35 Ill. Adm. Code 302.209 and 304.121:

Section 302.209      Fecal Coliform

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.

Section 304.121      Bacteria

No effluent governed by this Part which discharges to general use waters shall exceed 400 fecal coliform per 100 ml.

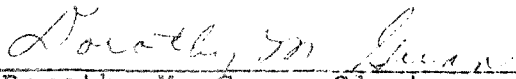
No person shall cause or allow fecal coliform (STORET number 31616) to exceed 400 per 100 ml in any effluent which discharges to the following locations:

- a) During the months of May through September, within 20 stream miles (statute miles) upstream of a public bathing beach licensed under the Illinois Swimming Pool and Bathing Beach Act (Ill. Rev. Stat. 1979, ch. 111 1/2, pars. 1201-1227,
- b) Within 20 stream miles (statute miles) upstream of a water intake used for public or food processing water supply,
- c) Any location where it may cause or contribute to violation of another state's water quality standards in interstate waters.

IT IS SO ORDERED.

Board Member J. Theodore Meyer abstains.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 31<sup>st</sup> day of November, 1985 by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board