

BEFORE THE ILLINOIS POLLUTIUN CONTROL BOARD

IN THE MATTER OF:)
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)
 WATER QUALITY STANDARDS AND)
 EFFLUENT LIMITATIONS FOR THE) R08-09
 CHICAGO AREA WATERWAYS SYSTEM) (Rulemaking- Water)
 AND THE LOWER DES PLAINES RIVER:)
 PROPOSED AMENDMENTS TO 35 Ill. Adm.)
 Code Parts 301, 302, 303 and 304)
)

MOTION FOR LEAVE TO FILE PRE-FILED QUESTIONS

The Environmental Law and Policy Center of the Midwest (“ELPC”) and the Sierra Club hereby move for leave to file the attached pre-filed questions to the Illinois Environmental Protection Agency (“IEPA”). In support of this motion, movants state:

1. Answers to pre-filed questions are essential to understanding the position of the Illinois Environmental Protection Agency.
2. The questions are somewhat complex and better considered responses may be obtained through pre-filed questions.
3. Movants believe that the use of pre-filed questions will expedite the hearing of this matter.

Wherefore, movants move for leave to file the attached pre-filed questions to the IEPA/IDNR.

Respectfully submitted,



Albert F. Ettinger (Reg. No. 3125045)
 Jessica Dexter
 Counsel for Environmental Law & Policy
 Center and Sierra Club

Dated: January 18, 2008

CERTIFICATE OF SERVICE

I, Albert F. Ettinger, the undersigned, hereby certify that I have served the attached PRE-FILED QUESTIONS OF ENVIRONMENTAL LAW & POLICY

CENTER upon:

Mr. John T. Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

via electronic mail on January 18, 2008; and upon the attached service list by depositing said documents in the United States Mail, postage prepaid, in Chicago, Illinois on January 18, 2008

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Albert Ettinger", with a long horizontal flourish extending to the right.

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**PRE-FILED QUESTIONS OF
ENVIRONMENTAL LAW AND POLICY CENTER AND SIERRA CLUB**

The Environmental Law and Policy Center of the Midwest and the Illinois Chapter of the Sierra Club hereby file questions to the Illinois Environmental Protection Agency regarding its proposal to change certain water quality standards in the above-captioned proceeding.

1. Regarding p. 13 of the pre-filed Twait testimony, were the MWRDGC treatment plant discharge temperatures used to set non-summer average temperatures for the Upper Dresden Pool instead of the Route 83 temperatures? If so, why?
2. Regarding p. 14 of the pre-filed Twait testimony, how was the 75th percentile of the MWRDGC and Route 83 Chicago Sanitary and Ship Canal data used? Was the Route 83 data used in calculating the "Period Average" standards, and, if so, for what water segments and months?
3. Does the Agency expect to seek changes to the current adjusted standard at the I-55 bridge?
4. With regard to Twait testimony at p. 15, what is the biological justification for allowing excursions above the daily maximum 2% of the time?
5. With regard to Twait testimony at p. 15, what is the biological justification for allowing excursions up to 2° C (or 36° F)? Would this provision allow temperatures above 92 ° F for seven days straight in the Dresden Pool?
6. Were the temperatures that Chris O. Yoder calculated as "Optimum," "Growth MWAT," and "Avoidance (UAT)," used in any way in writing the IEPA temperature proposals? If so, how?
7. On page 22 of the Statement of Reasons, in the sentence describing the goal of the UAA process, language that is identical to one of the regulatory factors of a UAA analysis is used ("adverse widespread economic and social impact" from 40 C.F.R. 131.10(g)(6)).

Has this factor has been used to justify any element of the proposal before the Board? If so, what element(s)?

8. What analysis did IEPA use to decide which recreational activities would be considered primary recreation, which incidental-contact recreation, and which non-contact recreation?
9. On page 25 of the Statement of Reasons, and page 11 of the Sulski pre-filed testimony Incidental Contact Recreation is defined as “any recreational activity in which human contact with the water is incidental and in which the probability of ingesting appreciable quantities of water is minimal.” How did IEPA determine that the probability of water ingestion is minimal for each of the following activities: water skiing, jet skiing, kayaking, rowing/skulling, canoeing, in-stream fishing, and wading (especially by children)? What level of probability constitutes “minimal”? What is an “appreciable quantity” of water?
10. Did IEPA analyze the risk of capsizing for the following small-craft recreational boating activities: rowing, kayaking, canoeing?
11. Did IEPA analyze the probability of ingesting water in the event of a kayak capsizing? Rowing scull capsizing? Canoe capsizing? Water skiing? Jet skiing?
12. The footnote on page 43 of the Statement of Reasons states that kayaking and jet skiing have some likelihood of water ingestion, but participants in those activities are not as likely to ingest water as swimmers, for example. Are you aware of any studies or data that support this conclusion? If so, please identify such studies or data.
13. Did IEPA explore creating an intermediate recreational designation between incidental contact and primary contact?
14. In the analysis of UAA Factor 4 on page 34 of the Statement of Reasons, IEPA states that the physical attributes of the reaches designated “Incidental Contact” range from “deep-draft, steep-walled channels to gradual sloped, manicured banks.” What reaches (or portions thereof) can be described as having “gradual sloped, manicured banks”? How does this physical attribute preclude primary contact recreation?
15. The descriptions of physical attributes of all three recreational use designations (Non-Recreational, Non-Contact Recreation and Incidental Contact Recreation) on pages 33-34 of the Statement of Reasons state that certain reaches are “deep-draft, steep-walled” waterways. What thresholds must be met to fit this description (i.e. how deep and how steep)? Was any evidence of existing recreational use found in these areas?
16. On page 34 of the Statement of Reasons and on page 11 of the Sulski prefiled testimony, you state that the physical limitations described are “irreversible.” Please explain what is meant by “irreversible.”

17. On page 42 of the Statement of Reasons, IEPA concluded that “portions of the CSSC and the Brandon Pool cannot attain secondary contact recreational uses.” “Secondary contact” is not a term used by IEPA in this proposal. Please clarify its definition as IEPA understands it.
18. On page 23 of the Statement of Reasons, it is stated that the UAA was undertaken to determine the existing and potential uses of the CAWS. Please explain how you evaluated the potential uses.
19. Is IEPA aware of water skiing taking place anywhere on the CAWS or the Lower Des Plaines? If so, please describe the information the Agency has on the location and frequency of such water skiing.
20. In the analysis of habitat conditions for aquatic life on page 50 and 51 of the Statement of Reasons and in the Sulski prefiled testimony at page 8, 15, 16 and 17 it is stated that poor habitat conditions are irreversible. Please explain what is “irreversible” about these habitat conditions.

Respectfully submitted,

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