

**Electronic Filing - Received, Clerk's Office, October 17, 2008**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**NOTICE OF FILING**

To:

John Therriault, Clerk  
 Illinois Pollution Control Board  
 James R. Thompson Center  
 100 West Randolph St., Suite 11-500  
 Chicago, IL 60601

Marie Tipsord, Hearing Officer  
 Illinois Pollution Control Board  
 James R. Thompson Center  
 100 West Randolph St, Suite 11-500  
 Chicago, Il 60601

Deborah J. Williams, Assistant Counsel  
 Stefanie N. Diers, Assistant Counsel  
 Illinois Environmental Protection Agency  
 1021 North Grand Avenue East  
 P.O. Box 19276  
 Springfield, IL 62794-9276

Persons included on the attached  
**SERVICE LIST**

PLEASE TAKE NOTICE that the Environmental Law and Policy Center of the Midwest (“ELPC”) and the Illinois Chapter of the Sierra Club today have electronically filed PREFILED QUESTIONS OF G. ALLEN BURTON AND GREG SEEGERT, copies of which are herewith served upon you.

Respectfully Submitted,



Albert Ettinger  
 Senior Staff Attorney  
 Environmental Law & Policy Center  
 35 E. Wacker Dr. Suite 1300  
 Chicago, Il 60601  
 (312) 795-3707

DATED: October 17<sup>th</sup>, 2008

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 )  
 )  
 )  
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 )  
 )

**PREFILED QUESTIONS OF  
ENVIRONMENTAL LAW AND POLICY CENTER AND SIERRA CLUB TO  
G. ALLEN BURTON**

The Environmental Law and Policy Center of the Midwest and the Illinois Chapter of the Sierra Club hereby file questions to G. Allen Burton:

1. What was the purpose of your sediment study?
2. How did you determine sampling locations for the sediment study?
3. Did you examine the sediment strata in your samples?
4. Did you perform any statistical analysis to compare historic data to this year's samples?
5. Do you have any direct evidence that contaminated sediment is limiting the abundance of any fish species in these waterways?
6. On page 4 of your prefiled testimony you state that "the removal of one stressor alone will not be sufficient to restore a watershed to beneficial use attainment." To your knowledge, has fish diversity and abundance improved over the past thirty years or so?
7. On page 12 of your prefiled testimony, you state, "Toxic sediments abound in most tributary mouth, tailwater, and pool depositional areas, which generally provide better habitats for fish." Are sedimentation rates the same within all types of habitat?
8. Are you aware of any waterways that support healthy aquatic life despite the presence of contaminated sediments?
9. What is the basis for the statement on page 9 of your prefiled testimony that nutrient enrichment is a significant stressor?
10. On pages 14 and 15 of Attachment 1 to your prefiled testimony, you quote a line from a petition asking USEPA to set standards for nitrogen and phosphorus that reads "Toxic algal blooms in Illinois have closed lakes due to swimming and fishing and burdened water suppliers with increased treatment costs. These blooms have killed livestock, pets, and tragically, a teenager in Wisconsin in 2002." Are you suggesting that you expect toxic cyanobacterial blooms to occur on these segments of the Lower Des Plaines River?
11. Does nitrogen or phosphorus pollution cause increased algae or nuisance weeds in the Upper Dresden Pool or the CAWS?

## Electronic Filing - Received, Clerk's Office, October 17, 2008

12. Does nitrogen or phosphorus affect dissolved oxygen levels in the CAWS or the Upper Dresden Pool?
13. Do you believe that ammonia levels are still high in the Upper Dresden Pool?
14. What field observations support your assertion on page 12 of your prefiled testimony that rapid mortality occurs in shallow-water habitats?
15. On page 14 of Attachment 1 to your prefiled testimony, you state that "Prior studies have shown that turbidity has and continues to be a stressor in both the CSSC and the UDP." What are these prior studies?
16. Do you have any documentation showing that turbidity is worse in the CSSC and the UDP than in other large Illinois rivers?
17. What kinds of effects can temperature have on the toxicity of contaminants in the water column or sediment?
18. Besides studying the effect of temperature on the toxicity of chemicals to fish, have you studied any other effects of temperature on fish?
19. Do you believe that emerging contaminants are affecting aquatic life in the CAWS or Upper Dresden Pool? If so, how? Which contaminants? Where are they having an effect?
20. Are you aware of studies regarding emerging contaminants in the CAWS or Upper Dresden Pool?
21. On page 17 of your Attachment 1 to your prefiled testimony, you state that "The most reliable indicator of in situ conditions are the indigenous communities present in the waterway." Did you study any of the indigenous communities in these waterways?
22. Have you ever conducted a Use Attainability Analysis before?
23. Have you studied the effect of entrainment of aquatic life by Midwest Generation plants on the aquatic life in the Lower Des Plaines or the CAWS?
24. Do you know how much of the barge traffic in the Upper Dresden Pool or the CAWS is for supply of Midwest Generation plants?
25. Have you studied the relationship between temperature and dissolved oxygen levels in the Upper Dresden Pool?
26. How does increased temperature caused by the operation of Midwest Generation plants affect dissolved oxygen levels in the CAWS and the Upper Dresden Pool?

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 )  
 )  
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 )  
 )

**PREFILED QUESTIONS OF  
ENVIRONMENTAL LAW AND POLICY CENTER AND SIERRA CLUB TO  
GREG SEEGERT**

The Environmental Law and Policy Center of the Midwest and the Illinois Chapter of the Sierra Club hereby file questions to Greg Seegert:

1. Does your analysis of each UAA factor apply uniformly to the entire CAWS/Lower Des Plaines system?
2. Which factors are applicable to which water segments?
3. Have you seen effects of nitrogen or phosphorus pollution in any part of the Chicago Area Waterways System (“CAWS”) or Lower Des Plaines (“LDP”)?
4. What water bodies have you studied that are comparable to the various segments of the CAWS and LDP?
5. On page 3 of your prefiled testimony, you state that changes in flow can adversely affect nest-building fish. Have nest-building fish been found in EA stream surveys?
6. How does aquatic vegetation in the Upper Dresden Pool compare to aquatic vegetation in the Illinois River?
7. What are the potential causes of fish abnormalities?
8. Have you seen any evidence of fish kills in the CAWS or LDP from barge propeller strikes?
9. Do you believe that all impounded waters have poor fisheries?
10. If not, what causes an impounded water to have a better fishery than other impounded water bodies?
11. Are you aware of any waterways with barge traffic that are able to support a healthy fishery?
12. How effective is the EA fish sampling gear at collecting fish (such as walleye) that may be present in deeper water?
13. On page 21 of your prefiled testimony, you state that 1.7% of fish collected were intolerant or moderately intolerant, and that this does not reflect a balanced indigenous population. What percentage of intolerant or moderately intolerant fish would you expect to see in a General Use waterway?

## Electronic Filing - Received, Clerk's Office, October 17, 2008

14. What Illinois water bodies would you suggest that we consider in attempting to determine the fish species that should be present in a general use waterway?
15. Have you looked at the fishery in the Des Plaines below the I-55 bridge?
16. If you have investigated the fishery below the I-55 bridge, is it better or worse than the fishery above the bridge?
17. Is the Fox River similar in depth and flow to the LDP?
18. Did you design your stream survey to be able to determine whether or not the system is influenced by thermal inputs from the Midwest Generation plants?
19. Did you determine whether the chemical quality of the LDP has improved since 1994?
20. Did you look at how the operation of the Midwest Generation plants changed over time?
21. What is the significance of an average of QHEI scores?
22. What is the expected margin of error for QHEI scores?
23. Have you determined what the MBI QHEI scores would be if the changes you suggest were made?
24. Have you calculated QHEI scores from Hickory Creek, Jackson Creek, Prairie Creek or any other tributary to the LDP?
25. Have you calculated QHEI scores for the Kankakee River or the Du Page River?
26. Why do you believe that the 25 white suckers EA collected in the Brandon Pool in 1993-94 drifted from the Upper Des Plaines River?
27. Why is it that darters and redhorse are sometimes found in the Upper Dresden Pool?
28. Please describe the fish population in samples taken from areas in the LDP identified as having good habitat.
29. Should the Upper Dresden Pool be given a classification equivalent to the Ohio Modified Warmwater Habitat classification?
30. How would you classify the Sanitary and Ship Canal using the Ohio system?
31. Have you ever seen a water body that was adversely affected by heat discharges?
32. Have you considered the effect of entrainment by Midwest Generation plants on the fishery of the CAWS or the LDP?

**CERTIFICATE OF SERVICE**

I, Albert F. Ettinger, the undersigned, hereby certify that I have served the attached prefiled questions of the Environmental Law and Policy Center and the Illinois Chapter of the Sierra Club to G. ALLEN BURTON AND GREG SEEGERT 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 filing on October 17<sup>th</sup>, 2008; and upon the attached service list by depositing said documents in the United States Mail, postage prepaid, in Chicago, Illinois on October 17<sup>th</sup>, 2008.

Respectfully Submitted,



Albert Ettinger  
Senior Staff Attorney  
Environmental Law & Policy Center  
35 E. Wacker Dr., Suite 1300  
Chicago, IL 60601  
aettinger@elpc.org

**Electronic Filing - Received, Clerk's Office, October 17, 2008**

Lyman C. Welch  
Manager, Water Quality Programs  
Alliance for the Great Lakes  
17 N. State Street  
Suite 1390  
Chicago, IL 60602

Claire Manning  
Brown, Hay & Stephens LLP  
700 First Mercantile Building  
205 South Fifth St., P.O. Box 2459  
Springfield, IL 62705-2459

Kay Anderson  
American Bottoms RWTF  
One American Bottoms Road  
Sauget, IL 62201

Lisa Frede  
Chemical Industry Council of Illinois  
2250 E. Devon Avenue  
Suite 239  
Des Plaines, IL 60018-4509

Tracy Elzemeyer, General Counsel  
American Water Company Central Region  
727 Craig Road  
St. Louis, MO 63141

Keith I. Harley and Elizabeth Schenkier  
Chicago Legal Clinic, Inc.  
205 West Monroe, 4th Floor  
Chicago, IL 60606

Kenneth W. Liss  
Andrews Environmental Engineering  
3300 Ginger Creek Drive  
Springfield, IL 62711

Cathy Hudzik  
City of Chicago, Mayor's Office of  
Intergovernmental Affairs  
121 North LaSalle Street  
City Hall – Room 406  
Chicago, IL 60602

Frederic P. Andes and Erika K. Powers  
Barnes & Thornburg LLP  
One North Wacker Drive, Suite 4400  
Chicago, IL 60606

Robert VanGyseghem  
City of Geneva  
1800 South Street  
Geneva, IL 60134-2203

Bob Carter  
Bloomington Normal Water Reclamation  
District  
P.O. Box 3307  
Bloomington, IL 61702-3307

Dennis L. Duffield  
Director of Public Works & Utilities  
City of Joliet, Department of Public Works  
& Utilities  
921 E. Washington Street  
Joliet, IL 60431

Beth Steinhorn  
2021 Timberbrook  
Springfield, IL 62702

**Electronic Filing - Received, Clerk's Office, October 17, 2008**

Dr. Thomas J. Murphy  
2325 N. Clifton Street  
Chicago, IL 60614

W.C. Blanton  
Blackwell Sanders LLP  
4801 Main Street  
Suite 1000  
Kansas City, MO 64112

Roy M. Harsch  
Drinker, Biddle, Gardner, Carton  
191 N. Wacker Drive, Suite 3700  
Chicago, IL 60606-1698

Deborah J. Williams and Stefanie N. Diers  
Assistant Counsel, Division of  
Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

Irwin Polls  
Ecological Monitoring and Assessment  
3206 Maple Leaf Drive  
Glenview, IL 60025

Marie Tipsord, Hearing Officer  
John Therriault, Assistant Clerk  
Illinois Pollution Control Board  
100 West Randolph, Suite 11-500  
Chicago, IL 60601-7447

Tom Muth  
Fox Metro Water Reclamation District  
682 State Route 31  
Oswego, IL 60543

Katherine D. Hodge, Monica T. Rios,  
N. LaDonna Driver, Alec M. Davis and  
Matthew C. Read  
Hodge Dwyer Zeman  
3150 Roland Avenue  
P.O. Box 5776  
Springfield, IL 62705-5776

Kevin G. Desharnais, Thomas W. Dimond,  
Jennifer A. Simon and Thomas V. Skinner  
Mayer, Brown LLP  
71 South Wacker Drive  
Chicago, IL 60606-4637

James Huff, Vice-President  
Huff & Huff, Inc.  
915 Harger Road, Suite 330  
Oak Brook, IL 60523

Jerry Paulsen and Cindy Skrukrud  
McHenry County Defenders  
132 Cass Street  
Woodstock, IL 60098

Kristy A.N. Bulleit and Brent Fewell  
Hunton & Williams LLC  
1900 K. Street, NW  
Washington, DC 20006

Ronald M. Hill, Frederick M. Feldman,  
Esq., Louis Kollias and Margaret T. Conway  
Metropolitan Water Reclamation District of  
Greater Chicago  
100 East Erie Street, Room 301  
Chicago, IL 60611

# Electronic Filing - Received, Clerk's Office, October 17, 2008

Bernard Sawyer and Thomas Grant  
Metropolitan Water Reclamation District  
6001 West Pershing Road  
Cicero, IL 60650-4112

Stacy Myers-Glen  
Openlands  
25 East Washington, Suite 1650  
Chicago, IL 60602

Ann Alexander, Senior Attorney  
Natural resources Defense Council  
101 North Wacker Drive, Suite 609  
Chicago, IL 60606

Traci Barkley  
Prairie Rivers Networks  
1902 Fox Drive  
Suite 6  
Champaign, IL 61820

Mark Schultz  
Regional Environmental Coordinator  
Navy Facilities and Engineering Command  
201 Decatur Avenue  
Building 1A  
Great Lakes, IL  
60088-2801

Charles W. Wesselhoft and  
James T. Harrington  
Ross & Hardies  
150 North Michigan Avenue  
Suite 2500  
Chicago, IL 60601-7567

Marc Miller, Senior Policy Advisor  
Jamie S. Caston, Policy Advisor  
Office of Lt. Governor Pat Quinn  
Room 414 State House  
Springfield, IL 62706

Jack Darin  
Sierra Club, Illinois Chapter  
70 E. Lake Street, Suite 1500  
Chicago, IL 60601-7447

Matthew J. Dunn, Chief  
Office of the Attorney General  
Environmental Bureau North  
69 West Washington, Suite 1800  
Chicago, IL 60602

James L. Daugherty, District Manager  
Thorn Creek Basin Sanitary District  
700 West End Avenue  
Chicago Heights, IL 60411

Susan Hedman and Andrew  
Armstrong, Environmental Counsel  
Environmental Bureau North  
Office of the Illinois Attorney General  
69 West Washington, Suite 1800  
Chicago, IL 60602

Frederick D. Keady, P.E., President  
Vermillion Coal Company  
1979 Johns Drive  
Glenview, IL 60025

Vicky McKinley  
Evanston Environmental Board  
223 Grey Avenue  
Evanston, IL 60202