

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 )  
 )

**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

Persons included on the attached  
SERVICE LIST

PLEASE TAKE NOTICE that the Alliance for the Great Lakes, Environmental Law and Policy Center, FOCR, NRDC, Openlands and Sierra Club have today filed a **Motion for Leave to Reply to the Responses of Midwest Generation and Stepan to the Motion of Citgo for a Hearing on the Impact of Carp Litigation** in R2008-009, a copy of which is herewith served upon you.

Respectfully Submitted,



Albert Ettinger  
 Senior Attorney  
 Environmental Law and Policy Center  
 35 East Wacker Drive, Suite 1300  
 Chicago, IL 60601  
 312-795-3707

DATE: January 25, 2010

BEFORE THE ILLINOIS POLLUTION 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)  
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PROPOSED AMENDMENTS TO 35 Ill. Adm. )  
Code Parts 301, 302, 303 and 304 )  
)

**MOTION FOR LEAVE TO REPLY TO THE RESPONSES OF MIDWEST  
GENERATION AND STEPAN TO THE MOTION OF CITGO FOR A HEARING  
ON THE IMPACT OF CARP LITIGATION**

Alliance for the Great Lakes, the Environmental Law and Policy Center, Friends of the Chicago River, Natural Resources Defense Council, Openlands and Sierra Club (collectively “Environmental Groups”) hereby move for leave to reply to the responses of Midwest Generation and Stepan to the Motion of Citgo Petroleum for a hearing on the Asian Carp litigation. In support of this motion, the Environmental Groups state:

1. The Environmental Groups filed responses to the Citgo motion for a hearing on the carp litigation on January 20, 2010. The Environmental Groups argued basically that Citgo had identified no reason to believe that the recently-filed Supreme Court carp litigation gives rise to a need for a hearing.

2. On January 21, 2010, Midwest Generation and Stepan filed responses to the Citgo motion. These responses were not restricted to the subject of whether a hearing should be held regarding the recently-filed Supreme Court litigation, but argue broadly that the presence of carp in the Upper Illinois and Lower Des Plaines require additional hearings; and identify possible testimony that they believe may be relevant to the effect of Asian Carp below Lockport.

3. The Environmental Groups move for leave to reply to the responses of Midwest Generation and Stepan. The reply is necessary in order to address the new contentions raised in the Midwest Generation and Stepan responses regarding the presence of carp below Lockport, which go beyond Citgo's more limited initial contentions concerning only the impact of the Supreme Court litigation.

4. The proposed reply is attached.

Wherefore, Alliance for the Great Lakes, the Environmental Law and Policy Center, Friends of the Chicago River, Natural Resources Defense Council, Openlands and Sierra Club respectfully move for leave to file the attached reply to the responses of Midwest Generation and Stepan to the motion of Citgo for a hearing on the impact of carp litigation.

Respectfully submitted,

ALLIANCE FOR THE GREAT LAKES

ENVIRONMENTAL LAW AND POLICY  
CENTER

FRIENDS OF THE CHICAGO RIVER

NATURAL RESOURCES DEFENSE  
COUNCIL

OPENLANDS

SIERRA CLUB

By:   
ELPC Senior Attorney and authorized to  
represent all of the above parties with regard  
to this objection

Date: January 25, 2010

**REPLY OF ALLIANCE FOR THE GREAT LAKES, ENVIRONMENTAL LAW AND POLICY CENTER, FOCR, NRDC, OPENLANDS AND SIERRA CLUB TO THE RESPONSES OF MIDWEST GENERATION AND STEPAN TO THE MOTION OF CITGO FOR A HEARING ON THE IMPACT OF CARP LITIGATION**

In our response to the Citgo motion, we stated that parties seeking to maintain the status quo regarding water quality standards for the CAWS and the Lower Des Plaines could be expected to exploit “every development” to delay Board consideration of this matter. We now must apologize to the Board, as the Midwest Generation and Stepan responses demonstrate we were implicitly too optimistic in our appraisal of the situation. It is now clear that there need not even be any sort of development to exploit for certain parties to ask for more hearings, taking yet more time, before the Board can rule in this now over two-year old proceeding.

The fact that there are Asian Carp in the Illinois River System, and that they could enter the Lower Des Plaines, has been an open and notorious fact since well before this proceeding began. The U.S. Army Corps of Engineers began operation of the first electric barrier to stop carp at Romeoville in April 2002. See [www.lrc.usace.army.mil/projects/fish\\_barrier/index.html](http://www.lrc.usace.army.mil/projects/fish_barrier/index.html). Midwest Generation and Stepan certainly had a full opportunity to present testimony on the presence of the carp but, instead, presented days of testimony in 2009 and 2010 without making more than a passing reference to Asian Carp.

Indeed, only last week, the Board heard testimony from Dr. Alan Burton, who in his testimony clearly sought to identify every conceivable reason not to better protect aquatic life in the Lower Des Plaines from heat discharges. If the presence of carp in a system was a reason to allow abnormal temperature conditions, we certainly could have heard about it then.

If Stepan or Midwest Generation want to file comments that draw conclusions based on the presence of Asian Carp in the system, they may of course do so. The Environmental Groups may file comments in response. None of this, however, is any reason to schedule yet more

hearing days to hear testimony on an issue of highly dubious relevance that clearly could have been raised from the outset of this proceeding.

Respectfully submitted,

ALLIANCE FOR THE GREAT LAKES

ENVIRONMENTAL LAW AND POLICY  
CENTER

FRIENDS OF THE CHICAGO RIVER

NATURAL RESOURCES DEFENSE  
COUNCIL

OPENLANDS

SIERRA CLUB



By: \_\_\_\_\_  
ELPC Senior Attorney and authorized to  
represent all of the above parties with regard  
to this objection

Date: January 25, 2010

Environmental Law & Policy Center  
35 East Wacker Drive, Suite 1300  
Chicago, IL 60601; ph. 312-795-3707

**CERTIFICATE OF SERVICE**

I, Albert Ettinger, hereby certify that I have served the attached **Motion for Leave to Reply to the Responses of Midwest Generation and Stepan to the Motion of Citgo for a Hearing on the Impact of Carp Litigation** 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 January 25, 2010; and upon the attached service list by depositing said documents in the United States Mail, postage prepaid, in Chicago, Illinois on January 25, 2010.

Respectfully submitted,



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Albert Ettinger  
Senior Attorney  
Environmental Law and Policy Center  
35 East Wacker Drive, Suite 1300  
Chicago, IL 60601  
312-795-3707

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## SERVICE LIST

Jan. 25, 2010

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

Andrew Armstrong, Matthew J. Dunn – Chief,  
Susan Hedman  
Office of the Attorney General  
Environmental Bureau North  
69 West Washington Street, Suite 1800  
Chicago, IL 60602

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

Bernard Sawyer, Thomas Grant  
Metropolitan Water Reclamation District  
6001 W. Pershing Rd.  
Cicero, IL 60650-4112

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

Lisa Frede  
Chemical Industry Council of Illinois  
1400 East Touhy Avenue Suite 100  
Des Plaines, IL 60019-3338

Deborah J. Williams, Stefanie N. Diers  
IEPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

Fredric P. Andes, Erika K. Powers  
Barnes & Thornburg  
1 North Wacker Drive Suite 4400  
Chicago, IL 60606

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

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

Ariel J. Teshler, Jeffrey C. Fort  
Sonnenschein Nath & Rosenthal  
233 South Wacker Driver Suite 7800  
Chicago, IL 60606-6404

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

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

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

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

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

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

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

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

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

Marie Tipsord - Hearing Officer  
Illinois Pollution Control Board  
100 W. Randolph St.  
Suite 11-500 Chicago, IL 60601

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

James E. Eggen  
City of Joliet,  
Department of Public Works and Utilities  
921 E. Washington Street  
Joliet, IL 60431

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

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

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

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

Beth Steinhorn  
2021 Timberbrook  
Springfield, IL 62702

Bob Carter  
Bloomington Normal Water Reclamation  
District  
PO Box 3307  
Bloomington, IL 61702-3307

Lyman Welch  
Alliance for the Great Lakes  
17 N. State St., Suite 1390  
Chicago, IL 60602

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

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

# Electronic Filing - Received, Clerk's Office, January 25, 2010

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

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

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

Ann Alexander, Senior Attorney  
Natural Resources Defense Council  
2 North Riverside Plaza Floor 23  
Chicago, IL 60606

Traci Barkley  
Prarie Rivers Network  
1902 Fox Drive Suite 6  
Champaign, IL 61820

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