

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
)  
WATER QUALITY STANDARDS AND )  
EFFLUENT LIMITATIONS FOR THE ) R08-9  
CHICAGO AREA WATERWAY SYSTEM ) (Rulemaking – Water)  
AND THE LOWER DES PLAINES RIVER: )  
PROPOSED AMENDMENTS TO 35 III. )  
Adm. Code Parts 301, 302, 303 and 304 )

**NOTICE OF FILING**

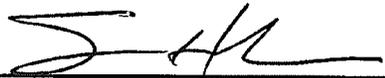
TO: See Attached Service List

PLEASE TAKE NOTICE that on the 3rd day of February, 2010, I filed with the Office of the Clerk of the Illinois Pollution Control Board the attached Reply in Opposition to the Motions to Stay Proceedings and Seeking Hearings on the Impact of Asian Carp Litigation Before the United States Supreme Court by the People of the State of Illinois, a copy of which is hereby served upon you.

Respectfully submitted,

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**THE PEOPLE OF THE STATE OF ILLINOIS' REPLY IN OPPOSITION TO THE MOTIONS TO STAY PROCEEDINGS AND SEEKING HEARINGS ON THE IMPACT OF ASIAN CARP LITIGATION BEFORE THE UNITED STATES SUPREME COURT**

The People of the State of Illinois (“the People”), by and through Illinois Attorney General Lisa Madigan, oppose the motions of several regulated parties seeking Board hearings on the Asian carp litigation pending before the United States Supreme Court and the extent to which the presence of Asian carp in Illinois waterways “could” (*e.g.*, MWRDGC Resp. at 1) or “might” (*e.g.*, Stepan Resp. at 4) affect attainable uses or appropriate water quality standards for the CAWS and Lower Des Plaines. In the alternative, some of these parties seek to “defer” all or a portion of this rulemaking proceeding. (*e.g.*, Lemont Refinery Reply at 1.)

The motions should be denied. A hearing on the Asian carp issue would be at best premature and, at worst, improper. The People also oppose any stay of this rulemaking proceeding, which has already been delayed too long.

The proposed hearing would be premature because, as the People and MWRDGC point out in their responses to the motions, Asian carp issues are currently the subject of litigation before the United States Supreme Court in which the State of Illinois and MWRDGC are named

parties. In addition, several Federal, State, and local agencies—including the State of Illinois and MWRDGC—are actively working to develop a strategy to address the Asian carp problem. (MWRDGC Resp. at 2-3.) At this point, no one can predict the result of the Supreme Court litigation or the strategy that will be selected through the intergovernmental process. Moreover, no one can predict what effect, if any, those as yet unknown outcomes might have on the attainable uses and appropriate water quality standards that are the proper subject of this rulemaking proceeding. In the face of this uncertainty, a hearing would not be productive.

The proposed hearing would be improper, because of the potential to interfere with ongoing litigation before the United States Supreme Court. As noted in the People's response, it would be highly irregular and quite inappropriate for a State agency to hold a hearing to consider the impacts that would occur if the United States Supreme Court were to rule against the State of Illinois. At this point in time, the State of Illinois should be—and is—focused on the task of defending the State before the Supreme Court.

The People also oppose any stay of this rulemaking proceeding. There are many issues before the Board in this docket on which Asian carp could have no conceivable impact. For example, none of the hypothetical scenarios advanced by the regulated parties would provide any basis for a lower level of disinfection than the Illinois EPA proposal would require for the MWRDGC's North Side treatment plant. Movants appear to have lost sight of the fact that this proceeding is a statutorily-mandated (and long-overdue) review of scientific evidence to establish water quality standards, not a perpetual fact-finding mission to investigate any and all issues that could potentially affect Illinois' waterways.

WHEREFORE, for all of the reasons stated herein, the People respectfully request that the Board deny the motions seeking a hearing on Asian carp issues and the motions seeking to stay this proceeding.

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DATE: February 3, 2010

**CERTIFICATE OF SERVICE**

I, ANDREW ARMSTRONG, do certify that I filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the foregoing Notice of Filing and Reply in Opposition to the Motions to Stay Proceedings and Seeking Hearings on the Impact of Asian Carp Litigation Before the United States Supreme Court by the People of the State of Illinois and caused them to be served this 3rd day of February, 2010 upon the persons listed on the attached Service List by depositing true and correct copies of same in an envelope, first class postage prepaid, with the United States Postal Service at 69 West Washington Street, Chicago, Illinois, unless otherwise noted on the Service List.

  
ANDREW ARMSTRONG

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