

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

To: ALL COUNSEL OF RECORD
(Service List Attached)

PLEASE TAKE NOTICE that on the 12th day of July, 2010, I electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, **Metropolitan Water Reclamation District of Greater Chicago's Motion for Leave to File Combined Reply Brief in Support of Motion for Leave to File and Set a Hearing on the UIC CHEERS Report.**

Dated: July 12, 2010.

**METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO**

By: /s/ David T. Ballard
One of Its Attorneys

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PROOF OF SERVICE

The undersigned attorney certifies, under penalties of perjury pursuant to 735 ILCS 5/1-109, that I caused a copy of the forgoing, **Notice of Filing** and **Metropolitan Water Reclamation District of Greater Chicago's Motion for Leave to File Combined Reply Brief in Support of Motion for Leave to File and Set a Hearing on the UIC CHEERS Report**, to be served via First Class Mail, postage prepaid, from One North Wacker Drive, Chicago, Illinois, on the 12th day of July, 2010, upon the attorneys of record on the attached Service List.

/s/ David T. Ballard

David T. Ballard

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Electronic Filing - Received, Clerk's Office, July 12, 2010

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
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WATER QUALITY STANDARDS AND)	R08-9
EFFLUENT LIMITATIONS FOR THE)	(Rulemaking - Water)
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**METROPOLITAN WATER RECLAMATION DISTRICT OF
GREATER CHICAGO'S MOTION FOR LEAVE TO FILE
COMBINED REPLY BRIEF IN SUPPORT OF MOTION FOR LEAVE
TO FILE AND SET A HEARING ON THE UIC CHEERS REPORT**

The Metropolitan Water Reclamation District of Greater Chicago ("the District"), by its attorneys Barnes & Thornburg LLP, and pursuant to 35 Ill. Admin. Code 101.500(e), hereby moves the Board for an Order granting the District leave to file the attached Combined Reply Brief in Support of Motion for Leave to File and Set a Hearing on the UIC CHEERS Report (the "CHEERS Report"). In support of its Motion, the District states as follows:

1. On June 14, 2010, the District filed a Motion for Leave to File and Set a Hearing on the CHEERS Report. The District requested that the Pollution Control Board allow the District to file the CHEERS Report by August 31, 2010 and set a hearing on the Report so that the Board can fully consider the final analyses of health risks of recreating in the Chicago Area Waterways (the "CAWS") and use the Report for its evaluation of the disinfection requirement in IEPA's proposed rules. The District also requested that the Board set deadlines for the filing of pre-filed testimony and pre-filed questions prior to a hearing on the CHEERS Report.

2. On June 28 and 29, 2010, IEPA, the Environmental Groups¹, and the State of Illinois filed Responses in opposition to the District's Motion, asserting arguments as to why the Board should deny the District's Motion and not set a hearing on the CHEERS Report.

3. The District is relying on the CHEERS Report as a critical element in its arguments as to whether IEPA's proposed disinfection requirement should be approved by the Board, and has so stated throughout these proceedings over the last two years while the CHEERS Report was being developed. The Report will provide important information that is necessary for the Board to render a fully informed decision. Therefore, the Board should grant the District leave to file a Combined Reply Brief to address all of the arguments set forth in IEPA's, the Environmental Groups', and the State of Illinois' Responses.

4. During this rulemaking, the District provided unrebutted testimony that imposing the proposed disinfection requirement will cost the District's taxpayers almost \$1 billion. *See* Pre-Filed Testimony of David Zenz Effluent Disinfection Studies, at 9 (Aug. 4, 2008). Before the Board determines whether the taxpayers will be required to incur such a substantial cost, the District wishes to present the CHEERS Report and related testimony so that the Board can assess the health risks associated with recreating in the CAWS. The Board's review of the CHEERS Report and related testimony will directly bear on whether the disinfection requirement is necessary and economically reasonable.

5. If the District is not allowed to file a Combined Reply Brief to address the objections to its Motion for Leave, and if the District is denied leave to file the CHEERS Report and a hearing on the Report, the District will be greatly prejudiced in this rulemaking, given the

¹ The Environmental Groups consist of the Natural Resources Defense Council, Southeast Environmental Task Force, Sierra Club-Illinois Chapter, Openlands, Environmental Law & Policy Center, Friends of the Chicago River, and Alliance for the Great Lakes.

important analyses that the CHEERS Report will present and the great costs that the District's taxpayers will face if the disinfection requirement is approved.

6. Attached to this Motion as Exhibit A is a proposed Combined Reply Brief in Support of Motion for Leave to File and Set a Hearing on the UIC CHEERS Report that the District seeks to file to address the oppositions to its Motion.

WHEREFORE, the Metropolitan Water Reclamation District of Greater Chicago requests that the Board grant this Motion for Leave to file the attached Combined Reply Brief in Support of Motion for Leave to File and Set a Hearing on the UIC CHEERS Report, and grant all other relief that the Board deems fair and just.

Dated: July 12, 2010

**METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO**

By: /s/ Fredric P. Andes
One of Its Attorneys

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Exhibit A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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WATER QUALITY STANDARDS AND)	R08-9
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**METROPOLITAN WATER RECLAMATION DISTRICT OF
GREATER CHICAGO'S COMBINED REPLY BRIEF IN SUPPORT OF MOTION FOR
LEAVE TO FILE AND SET A HEARING ON THE UIC CHEERS REPORT**

The Metropolitan Water Reclamation District of Greater Chicago (“the District”), by its attorneys Barnes & Thornburg LLP, hereby files its Combined Reply Brief, to the Responses of IEPA, the Environmental Groups,¹ and the State of Illinois, in Support of its Motion for Leave to File and Set a Hearing on the UIC CHEERS Report that will be ready for filing by August 31, 2010 (the “CHEERS Report”). In support of its Reply Brief, the District states as follows:

INTRODUCTION

On June 14, 2010, the District filed its Motion for Leave and requested that the Board enter an Order allowing the District to file the CHEERS Report by August 31, 2010, scheduling a hearing on the Report soon thereafter, and scheduling deadlines for the submission of written, pre-filed testimony and questions related to the CHEERS Report before the hearing. Filing the CHEERS Report and conducting a hearing on it would be the culmination of a lengthy process of developing the landmark CHEERS study. The CHEERS Report, which was conducted at the request of IEPA, will set forth critical analyses related to the health risks of recreating in the Chicago Area Waterways System (the “CAWS”), and will provide valuable information to the

¹ The Environmental Groups consist of the Natural Resources Defense Council, Southeast Environmental Task Force, Sierra Club-Illinois Chapter, Openlands, Environmental Law & Policy Center, Friends of the Chicago River, and Alliance for the Great Lakes.

Board as it decides whether the effluent disinfection requirement that IEPA has proposed is, in fact, necessary and reasonable.

Since it filed a Motion for a Stay of these proceedings on June 12, 2008 - over two years ago - the District has repeatedly updated the Board and the other parties in this rulemaking of the progress of the CHEERS study. The District also presented witnesses before the Board that testified as to the importance of the final analyses that will be in the CHEERS Report, and how those analyses would figure into the Board's consideration of the recreational use and disinfection issues that are presented by IEPA's proposed rule.

Recently, the District filed the "CHEERS Research Update – An Interim Technical Report Prepared for Submission to the Illinois Pollution Control Board" (the "CHEERS Technical Report"), and the Board granted the District's motion requesting pre-filed testimony, questions, and a hearing on that report. That report presented data gathered in the CHEERS study. Dr. Dorevitch, who has been leading the study, made it clear that no conclusions regarding incidence of illness among and between the study groups (*i.e.*, health risk) could be drawn from the data in that report; those conclusions would need to wait until Dr. Dorevitch has completed the analyses that will be contained in the CHEERS report, which the District plans to file on August 31, 2010.

It is now more than two years after the District first advised the Board and the parties about the ongoing development of the CHEERS Report. In less than two months, the Report will be finalized and ready for filing. The Board has had over 40 days of hearings on numerous issues in this rulemaking, including hearings on the CHEERS Technical Report that contained the data that will be analyzed in the August 31 CHEERS report. Thus, it only makes sense for the Board to schedule a hearing on that report. Yet, IEPA, the Environmental Groups, and the

State of Illinois are objecting to the filing of the CHEERS Report and the setting of a hearing on the Report. These objections should be overruled and the District's motion should be granted. To do otherwise would not only defy common sense, but it would also violate the commitment made by this Board, almost two years ago, that the hearing process for this rulemaking would continue "at least until the Board has heard testimony from all participants who wish to testify on all aspects of the IEPA's proposal." To deny a hearing on the CHEERS Report would also pose substantial harm to the District's taxpayers, throughout Cook County, who face costs of almost a billion dollars to implement the proposed requirements.

ARGUMENT

I. The Board has already ruled that the parties will be able to present testimony on all aspects of the IEPA proposal, including the disinfection requirement, so testimony as to the CHEERS Report should be allowed.

Early in this rulemaking, the District requested a stay of the rulemaking while certain pending studies were completed. The CHEERS study was specifically mentioned in the District's motion. *See* Mot. to Stay, filed June 12, 2008, at 10 ("Currently, there is an ongoing epidemiological study of recreational contamination in the CAWS, which is intended to validate the results of the quantitative microbial risk assessment, to provide scientific data necessary to properly evaluate the actual risk of illness, and to provide scientific data on the risk of illness in correlation to indicator bacteria concentrations."). In denying that motion, the Board stated that "[t]he hearing process and information gathering by the Board will continue at least until the Board has heard testimony from all participants who wish to testify on all aspects of the IEPA's proposal. Additional testimony will provide a more complete record and enable the Board to make the best possible decisions regarding the IEPA's proposed rules." July 21, 2008 Order at 11. The Board's intention was clear: all parties that wished to present testimony on issues related to IEPA's proposed rules would be allowed to do so, and the Board encouraged such

testimony so that it could collect as much testimony and information as possible to evaluate the proposed rules.

As it has said numerous times in this rulemaking process, and as laid out in its Motion, the District seeks to file the CHEERS Report and to present testimony at a hearing related to the Report. The CHEERS Report was described in testimony from the District:

[A]t the agency's request, the District initiated a multi-phase research program, and has invested substantial funds (over \$10 million) on expert studies that can provide meaningful recommendations for a systematic technical and scientific assessment of recreational health risks to protect the identified uses of the CAWS. The key focus in this comprehensive research program is the assessment of the risks to human health for the identified recreational uses relative to the current practice of not disinfecting the effluents that discharge to the CAWS, as well as a structured scientific assessment to generate data and information upon which science-based water quality criteria can be derived.

Pre-Filed Testimony of Thomas Granato, Recreational Uses and Standards (August 4, 2008) at 3.

The District recommended that "it would be most prudent to base the final rulemaking on the completed program of study." *Id.* at 8. The CHEERS report will be ready shortly, and consistent with its position throughout this rulemaking, the District has asked that that report be treated the same way as all other relevant information has been treated in this process. To be consistent with its July 21, 2008 Order, the Board should grant that request.

II. The CHEERS Report is relevant and important to the Board's consideration of disinfection issues.

As the District has set forth throughout this rulemaking and in its Motion, the CHEERS Report will provide the Board with relevant and critical analyses for its final consideration of IEPA's proposed rules. Because of the relevance and importance of the analyses that will be set forth in the CHEERS Report, the objections to the District's Motion should be overruled, and the Motion should be granted.

A. The Environmental Groups' Opposition.

In their response, the Environmental Groups attack the CHEERS Report and argue that it is not relevant to the Board's consideration of issues in Subdocket B, and, thus, there is no need for the Board to set a hearing on the Report. Specifically, the Groups assert:

No matter how effectively the study is conducted, or the data reviewed and evaluated, the study simply lacks the statistical power to assess health risk to the many sensitive sub-populations and specific recreational uses on the CAWS, such as children or kayakers. As an overall matter, as we have discussed at great length in previous submissions, negative results in any epidemiological study are of extremely limited value for policy making purposes, given the extreme difficulty in pinpointing the source of a health risk among a general population exposed to many sources of illness.

Environmental Groups' Resp., at 2. These statements are without merit. Nowhere in the record of this proceeding is there any evidence that the CHEERS study "lacks the statistical power to assess health risk..." No definitive conclusions can be drawn until the Board, and the parties, see the actual report from that study on August 31, 2010. That is recognized by the Environmental Group's own witness:

To the extent that potential biases exist, they call into question the strength of the CHEERS study's conclusions and generalizability of its conclusions. For this reason, it is important in the research context to identify all such biases in evaluating data, so that its strength and significance can be better understood. Certainly, the statistical data in the Technical Report should not form the basis for any conclusions whatsoever until the potential epidemiologic biases are identified and discussed in a final report.

Testimony of Marc Gorelick, MD (June 14, 2010) at 7. As stated by the District's CHEERS witness, Dr. Samuel Dorevitch, the CHEERS report will identify and discuss those potential biases. Pre-Filed Testimony of Samuel Dorevitch Regarding CHEERS Research Update: An Interim Technical Report Prepared for Submission to the Illinois Pollution Control Board (May 25, 2010) at 3-4. The Board should wait to see that report, and hear testimony about the report,

before it draws any conclusions. As to whether this study will have “extremely limited value for policy making purposes,” we submit that that is an issue for the Board itself to determine – after it has heard testimony about the actual technical analyses in the CHEERS report, not before that report even gets submitted.

The Environmental Groups (as well as IEPA and the State of Illinois) also raise a process-related objection to the District’s motion: they argue that the Board has already implicitly denied the District’s request to set the CHEERS Report for a hearing, because the Board did not rule on the District’s request for a hearing in its response to the Environmental Groups’ Motion to Sever. *See* Environmental Groups’ Resp., at 3 (“The Board’s March 18 order did not grant MWRD’s request for hearings concerning the final CHEERS study, and we believe that judgment was appropriate for all of the reasons stated herein. The Board should therefore deny MWRD’s renewed motion.”); *see also* IEPA’s Resp., at 2 (“The Board did not specify that additional hearings and testimony would be held on the final CHEERS report.”); State of Illinois Resp., at 2-3 (“[T]he Board did not direct the Hearing Officer to set a schedule related to the Final CHEERS Report. By not including a schedule for the Final CHEERS Report, the Board signaled, at the very least, its reluctance to prolong Subdocket B.”). These interpretations of the Board’s March 18, 2010 Order, which presume to divine the implicit intentions of the Board, have no basis at all. In its Order, the Board ruled that it would set a hearing on the CHEERS Interim Technical Report, but did not rule at all on whether it would set hearings on the CHEERS Report. In fact, the Board clearly left the door open for possible future hearings in Subdocket B, when it stated as follows: “The Board will refrain from deciding whether or not to require disinfection to support the proposed recreational uses until at least the conclusion of the hearing on the epidemiologic technical reports.” March 18, 2010 Order at 19. If the Board

intended to deny the District's request to set a hearing on the CHEERS Report, it knows how to do so and would have expressly denied the request. In fact, the Environmental Groups had pressed for that action, contending that the disinfection issue was already ripe for decision. *See* Environmental Groups' Mot. to Sever at 8-14; Reply in Support of Mot. to Sever at 3-10. The Board did not accept that invitation. Instead, the Board simply did not address the issue, leaving it open for future consideration. That future consideration is the very purpose of the District's Motion.

B. IEPA's Opposition.

The Board's March 18, 2010 Order states that the purpose of Subdocket B is "whether or not disinfection may or may not be *necessary to meet those use designations*," (emphasis added). Nevertheless, IEPA argues in its Response that the Board mischaracterized the purpose of Subdocket B, stating that "it is not accurate at this stage in the proceeding to suggest the Board is faced with the decision of what water quality standard is necessary to meet recreational use designations. The decision on whether to require disinfection in some of the affected waters should not be equated with a decision on what level of ambient bacterial contamination is safe." IEPA Resp., at 5. In fact, though, these contentions are disputed by the Environmental Groups, who have asserted that the Board must ultimately decide whether the disinfection requirement will support IEPA's proposed designated uses. *See* Environmental Groups' Mot. to Sever, at 8 (Feb. 3, 2010) ("Regardless of whether effluent disinfection will in fact support the proposed designated uses by reducing exposure to harmful pathogens – a substantive question the Board will ultimately decide in evaluating IEPA's proposal . . ."); *id.* at 3 ("IEPA made a determination to impose its widely-used technology-based discharge standard for indicator bacteria in order to protect the proposed uses and provide more immediate protection of public health, in recognition

of the increasing recreational value of the CAWS.”). In fact, in response to hearing questions from the Environmental Groups, IEPA agreed with those statements:

MS. ALEXANDER: I have just a quick follow-up.

Would you say that the purpose of the technology-based standard is to protect this designated use that you have identified – the designated use of incidental contact regulation [sic]? Is that the purpose of the technology-based standard for disinfection?

MR. TWAIT: Yes.

Hearing Transcript of January 29, 2008 at 176-177. IEPA’s position on this issue is clear, and the Board understood that position properly when it stated the purpose of Subdocket B – to determine if disinfection is necessary to meet the proposed use designations.

IEPA actually attempts to argue, in its Opposition, that even if the CHEERS study is relevant to the Board’s decision on disinfection, the Board should still refuse to hold a hearing – apparently because Dr. Dorevitch has already testified twice, and three times would be too much. IEPA Resp. at 8. That argument hardly merits a response, other than to point out that the first time Dr. Dorevitch testified, it was to describe the study that he was then conducting, and the second time was to describe the data that have been generated by the study. It would be irrational to now say that he cannot come before the Board again to describe what the study actually says, and to answer questions from the parties and the Board about the study’s conclusions.

IEPA then goes on to argue that the CHEERS Report is irrelevant, because the only relevant considerations for determining whether to impose a disinfection requirement are whether the requirement is technically achievable and economically reasonable, and the Report will not address those issues. *See* IEPA Resp. at 8 (“The question in sub-docket B is whether the Agency’s proposal of a technology-based disinfection requirement for some of these waters is

technically feasible and economically reasonable.”); *id.* at 5 (“MWRDGC and other stakeholders are certainly free to argue that the technology-based effluent limit proposed by the Agency is too expensive or not achievable.”); *id.* at 7 (“In adopting effluent standards under this authority, the Board must also consider the technical feasibility and economic reasonableness of such limitations.”). In considering these arguments, it needs to be remembered that the purpose of the CHEERS study is to assess the health risks to recreators from using the CAWS. The District has always assumed that is obvious why that assessment is relevant to this proceeding: if, for example, the study were to conclude that the health risks to CAWS recreators are not significantly different than the health risks to recreators in other waters, where effluent disinfection is required, then it would seem that requiring disinfection of the District’s effluents would have little, if any, public health benefit. If the Board were to find that the IEPA proposal would not benefit the public health, would the Board approve the proposal anyway, simply because it might be technically achievable? Such a decision would be the essence of “arbitrary and capricious,” and would waste taxpayer resources for no purpose.

However, IEPA’s argument – that the CHEERS study is irrelevant – fails even if one accepts IEPA’s premise (for the sake of argument only) that the only issue before the Board is whether the disinfection requirement is “technically achievable and economically reasonable.” During this rulemaking, the District submitted testimony showing that imposing disinfection on the District’s North Side, Calumet, and Stickney plants will cost the District \$919.6 million. *See* Pre-Filed Testimony of David R. Zenz, at 9 (Aug. 4, 2008); *see also* Pre-Filed Testimony of Thomas Granato Recreational Uses and Standards, at 7 (Aug. 4, 2008). In determining whether these costs are “economically reasonable,” it would stand to reason that the Board would consider the extent of the risk that those control measures are designed to address. As a general

matter, whether costs are “reasonable” depends on the benefit that will result from the required controls. If one were to find, for instance, that some chemical was causing many individuals to suffer severe, long-term illness, then one would surely conclude that spending large sums to reduce this risk would be “reasonable.” On the other hand, if one were to conclude that another chemical was causing no health risks at all, or only very slight risks to a small number of people, then the control costs that are deemed to be “reasonable” would be far lower than in the first situation. In the CAWS situation, the Board needs to determine whether compliance costs of \$919.6 million are “economically reasonable.” It only makes sense that the Board would need to understand the magnitude of the health risks before it can make that determination. And that is the exact question that the CHEERS study was designed to answer.

IEPA also argues that “[i]n order for MWRDGC to argue that the results of the CHEERS study indicate that disinfection is not necessary, they must first identify what the water quality standards should be in order for the Board or the permitting authority to determine that the established water quality standard can be met without imposing a disinfection requirement on the discharger.” IEPA Resp. at 6. This argument by IEPA has several major flaws. First, it is completely inconsistent with the Agency’s own position on disinfection. IEPA cannot argue, first, that they do not have to adopt a proper water quality standard before imposing disinfection, and second, that the District cannot oppose disinfection without first proposing the proper water quality standard. The District’s position has been consistent throughout; it has pointed out, numerous times, that under applicable Federal regulations, the proper way to address water quality issues is to adopt proper water quality standards, and then determine what needs to be done in order to meet those standards. Viewed from that perspective, the IEPA’s disinfection requirement has no basis, since it is not based on a water quality standard. However, IEPA seeks

to impose that requirement anyway, which exposes the second major flaw in the Agency's argument here: simple logic. IEPA contends that the Board or the parties cannot know if the disinfection requirement is not necessary unless the District first proposes a water quality standard. But if the CHEERS study shows that people recreating in the CAWS are experiencing the same, or very similar, levels of health effects as people recreating in Lake Michigan or other nearby waters, where effluent disinfection requirements do apply, then we do not need a new water quality standard to tell us that disinfection will have no or very little public health benefit and is, therefore, not necessary. All that the District asks is that the Board listen to the evidence – following the same testimony, question and hearing process that it has been conducting in this case for more than two years on every other issue – and then make up its own mind.

IEPA also argues that the Board's rulemaking for the interim phosphorus effluent standard is instructive in this case. *See IEPA Resp.*, at 7 (citing *In the Matter of: Interim Phosphorus Effluent Standard*, Proposed 35 Ill. Adm. Code 304.123(g-k)). That rulemaking, however, is distinguishable from the instant rulemaking in several respects. It is worth noting how the Board explained its decision to uphold the phosphorus rules:

The Board continues to believe that, based on the cost information in the record coupled with the fact that the proposed rule applies to only new or expanding larger facilities, affected facilities can incorporate the additional cost of phosphorus control in their overall expansion plans with an economically reasonable impact. Once again, it should be stressed that the proposed limit would apply to only new or expanded discharges from wastewater treatment plants with either a design average flow over 1.0 million gallons per day receiving municipal or domestic waste water, or a total phosphorus effluent load of 25 pounds per day or more for treatment works other than those treating municipal or domestic wastewater. Further, the 1.0 mg/L limit would not apply to a source that can demonstrate that phosphorus is not the limiting nutrient in the receiving water or that alternative phosphorus effluent limits are warranted by the aquatic environment in the

receiving water. Thus, the Board finds that the implementation of the proposed phosphorus effluent standard will not impose an undue economic or regulatory burden.

See R04-26, Slip Op. at 3 (Jan. 19, 2006). This rulemaking for phosphorus differed from the CAWS disinfection rulemaking in at least two ways. First, the phosphorus rule applied only to new or expanding facilities, who could incorporate new controls into their plans. The CAWS disinfection proposal, on the other hand, applies only to three existing MWRD facilities, that do not have the same flexibility to incorporate new control systems that new and expanding plants would have. Second, the phosphorus rule had exceptions, which would apply if one could make certain showings (e.g., that phosphorus is not the limiting nutrient, or that alternative limits are warranted). No such exceptions are provided in the CAWS disinfection proposal; each of the three covered MWRD facilities must meet the new standard. Given these significant differences between the phosphorus and CAWS rulemakings, the fact that the Board approved the phosphorus rule means little as far as precedent in determining whether the Board should approve the disinfection rule. And it certainly provides no authority for the Board to decline to hold hearings on the most critical study to date regarding the benefits of disinfection in the CAWS – the CHEERS Report.

C. The State of Illinois' Opposition.

The State of Illinois opposes the District's Motion for Leave because "[b]y granting this Motion, the Board will effectively delay any decision on disinfection for an unknown period of time." State of Illinois Resp., at 1. This argument is misleading and exaggerated. The District has requested leave to file the CHEERS Report by August 31, 2010, which is less than two months from today, and then have the Board schedule a hearing shortly afterward. It is simply not true that this request will somehow lead to an unknown delay in the Board's decision on disinfection in Subdocket B. Instead, if the District's request is granted, the Board will receive

the CHEERS Report and related testimony in the next few months. This rulemaking has been proceeding since October of 2007, and the Board has conducted approximately 40 hearings on numerous issues. Before deciding whether or not to impose over \$900 million in costs on taxpayers, it is more than reasonable for the Board to wait a few short months to hear critical testimony on this issue.

In addition, like the Environmental Groups and IEPA, the State of Illinois prejudices the CHEERS Report and urges the Board to simply ignore it. State of Illinois Resp., at 2 (“[T]here is sufficient evidence on which the Board can decide IEPA’s proposed rule. All stakeholders have had ample time to conduct studies and prepare testimony for this docket. The District’s request to file additional reports and hold additional hearings only serves to unnecessarily further delay this process.”). The State apparently wants to keep the Board from considering the CHEERS Report fully and making its own decision as to the weight of that evidence. The Board should refuse to allow that effort to succeed, and instead should grant the District’s Motion.

CONCLUSION

For all of the above reasons, the District requests that the Board enter an Order granting the District leave to file the CHEERS Report by August 31, 2010, and scheduling a hearing shortly thereafter on the Report. Along with setting a hearing date, the District also requests that the Board set deadlines for the filing of pre-filed testimony and pre-filed questions prior to a hearing on the CHEERS Report.

Dated: July 12, 2010

**METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO**

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