

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 8th day of October, 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 Reply Brief in Support of Motion to Allow Oral Statement of Thomas Granato.**

Dated: October 8, 2010.

**METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO**

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

Fredric P. Andes
David T. Ballard
BARNES & THORNBURG LLP
One North Wacker Drive. Suite 4400
Chicago, Illinois 60606
(312) 357-1313

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 Reply Brief in Support of Motion to Allow Oral Statement of Thomas Granato**, to be served via First Class Mail, postage prepaid, from One North Wacker Drive, Chicago, Illinois, on the 8th day of October, 2010, upon the attorneys of record on the attached Service List.

/s/ David T. Ballard

David T. Ballard

SERVICE LIST
R08-9 (Rulemaking - Water)

Richard J. Kissel
Roy M. Harsch
Drinker, Biddle, Gardner, Carton
191 North Wacker Drive
Suite 3700
Chicago, IL 60606-1698

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

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

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

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

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

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

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

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

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

Andrew Armstrong
Environmental Counsel
Environmental Division
69 West Washington Street
Suite 1800
Chicago, IL 60602

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

Bernard Sawyer
Thomas Granato
Metropolitan Water Reclamation District
6001 West Pershing Road
Cicero, IL 60804-4112

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

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

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

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

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

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

Beth Steinhorn
2021 Timberbrook
Springfield, IL 62702

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

Dr. Thomas J. Murphy
DePaul University
2325 North Clifton Street
Chicago, IL 60614

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

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

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

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

Electronic Filing - Received, Clerk's Office, October 8, 2010

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

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

Albert Ettinger, Senior Staff Attorney
Jessica Dexter
Environmental Law & Policy Center
35 East Wacker Drive
Suite 1300
Chicago, IL 60601

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

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

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

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

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

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

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

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

Susan M. Franzetti
Nijman Franzetti LLP
10 South LaSalle Street
Suite 3600
Chicago, IL 60603

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

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)

**METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER
CHICAGO'S MOTION FOR LEAVE TO FILE REPLY BRIEF IN SUPPORT
OF MOTION TO ALLOW ORAL STATEMENT OF THOMAS GRANATO**

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 short attached Reply Brief in Support of its Motion to Allow Oral Statement of Thomas Granato. In support of its Motion, the District states as follows:

1. On September 20, 2010, the District filed its Motion to Allow Oral Statement of Thomas Granato seeking an order from the Board to allow Dr. Granato to make oral statements at upcoming rulemaking hearings. The oral statement would consist of reading his pre-filed testimony that was filed on September 20, 2010, which presents the District's conclusions and recommendations as to how the recently completed CHEERS Report should be considered by the Board in deciding the recreational issues that are currently before it.

2. On September 30 and October 1, 2010, the Environmental Groups¹ and the IEPA filed responses in opposition to the District's Motion, asserting arguments as to why the Board should deny the District's Motion and not allow Dr. Granato to present oral testimony.

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.

3. If the District is not allowed to file a Reply Brief to address the objections to its Motion, the District will be prejudiced in this rulemaking, given the important oral testimony that Dr. Granato will present at a hearing in this matter related to how the Board should consider the CHEERS Report in its consideration of recreational issues.

4. Attached to this Motion as Exhibit A is a short proposed Reply Brief in Support of Motion to Allow Oral Statement of Thomas Granato 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 short attached Reply Brief in Support of Motion to Allow Oral Statement of Thomas Granato, and grant all other relief that the Board deems fair and just.

Dated: October 8, 2010

**METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO**

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

Fredric P. Andes
David T. Ballard
BARNES & THORNBURG LLP
One North Wacker Drive. Suite 4400
Chicago, Illinois 60606
(312) 357-1313

Exhibit A

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)

**METROPOLITAN WATER RECLAMATION DISTRICT OF
GREATER CHICAGO'S REPLY BRIEF IN SUPPORT OF MOTION
TO ALLOW ORAL STATEMENT OF THOMAS GRANATO**

The Metropolitan Water Reclamation District of Greater Chicago ("the District"), by its attorneys Barnes & Thornburg LLP, hereby files its Reply Brief, to the Responses of the Environmental Groups¹ and IEPA, in Support of Motion to Allow Oral Statement of Thomas Granato. In support of its Reply Brief, the District states as follows:

ARGUMENT

The Environmental Groups object to the District's Motion because it "presents no plausible reason" why Dr. Granato should be allowed to testify, and because such testimony would be a "pointless use of time" and offends "basic principles of fairness." Environmental Group's Resp., at 1. Similarly, IEPA argues "no other witnesses in these proceedings have been allowed to read pre-filed testimony into the record except MWRDGC's witnesses Dr. Granato and Dick Lanyon," and "[t]here is no need to burden the parties with reading this pre-filed testimony in the record . . ." IEPA Objection, at 1-2.

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.

None of these objections should be sustained by the Board, and the District's Motion should be granted. First, while both the Environmental Groups and IEPA make much about the supposed waste of time of allowing Dr. Granato to make oral statements according to his September 20, 2010 pre-filed testimony, as the District stated in its Motion, Dr. Granato's testimony will take no more than 10 minutes of time. Surely after the years that this rulemaking has been pending, it is not unfairly prejudicial to the parties to allow the District to present 10 minutes of oral testimony related to the final CHEERS Report, that provides critical information and analyses for the Board's consideration of recreational and disinfection issues. Such short testimony will provide a "clear and concise hearing record," (35 Ill. Adm. Code § 101.628(a)), and 10 minutes of testimony will not unfairly delay these proceedings.

In addition, both the Environmental Groups and IEPA ignore that in Dr. Granato's oral testimony on October 28, 2008, he stated that the CHEERS Report would provide important information for the Board to consider for recreational issues and whether to impose a disinfection requirement. Now that the CHEERS Report has been completed, Dr. Granato should be allowed to present oral testimony as to the District's recommendations based on the CHEERS Report findings. Allowing such oral testimony is appropriate so that Dr. Granato can complete his previous oral testimony regarding the data and analyses in the CHEERS Report.

Finally, both the Environmental Groups and IEPA argue that it would be unfair to allow Dr. Granato to present his pre-filed testimony orally to the Board because no other witnesses have done so. That issue, however, was already decided by the Board when it previously allowed Dr. Granato to orally present his pre-filed testimony on October 28, 2008. Dr. Granato's recently-filed testimony is a short summary of conclusions that synthesizes the extensive data and analyses in the CHEERS Report and provides the District's recommendations based on that

Report. It would be helpful for the Board to hear this testimony directly. Therefore, the Board should allow Dr. Granato to present his pre-filed testimony orally, as it did previously.

CONCLUSION

For all of the above reasons, the District requests that the Board enter an Order that allows Thomas Granato to make an oral statement at the upcoming rulemaking hearings according to his pre-filed testimony that was filed on September 20, 2010, and grant all relief the Board deems fair and just.

Dated: October 8, 2010

**METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO**

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

Fredric P. Andes
David T. Ballard
BARNES & THORNBURG LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 357-1313