

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 22nd day of October, 2010, I electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, the **Response of Metropolitan Water Reclamation District of Greater Chicago in Opposition to the People's Motion to Bar.**

Dated: October 22, 2010.

**METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO**

By: /s/ Fredric P. Andes
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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 foregoing, **Notice of Filing** and **Response of Metropolitan Water Reclamation District of Greater Chicago in Opposition to the People's Motion to Bar**, to be served via First Class Mail, postage prepaid, from One North Wacker Drive, Chicago, Illinois, on the 22nd day of October, 2010, upon the attorneys of record on the attached Service List.

/s/ David T. Ballard

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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EFFLUENT LIMITATIONS FOR THE) (Rulemaking – Water)
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PROPOSED AMENDMENTS TO 35 ILL.)
ADM. CODE 301, 302, 303, AND 304)

**RESPONSE OF METROPOLITAN WATER RECLAMATION DISTRICT OF
GREATER CHICAGO IN OPPOSITION TO THE PEOPLE'S MOTION TO BAR**

The Metropolitan Water Reclamation District of Greater Chicago (the "District"), by its attorneys Barnes & Thornburg LLP, hereby submits this response in opposition to the motion by the People of the State of Illinois to bar the District from filing further reports related to the UIC CHEERS Study.

The People have been aware since May 2010 that the District intended to submit a supplement to the CHEERS Final Report (the "Supplement") to the Illinois Pollution Control Board (the "Board") by the end of 2010. There is no legitimate basis to bar the District from filing the Supplement. As an initial matter, the District notes that in the hearings that were conducted in this Subdocket earlier this week (on October 19 and 20), there was extensive discussion of the Supplement, including extensive questioning of the District's witnesses by several of the other parties in this matter, including the People. In addition, the District was requested to submit a recommended set of proposed water quality standards, which would be based in part on the information and analyses in the Supplement. Apart from the legal reasons discussed below as to why that Supplement should be admitted to the Docket, it would make no sense at all to allow extensive questioning before the Board concerning the issues that will be discussed in the Supplement, and to have the District submit proposed standards that are based

on the Supplement, but to bar the District from submitting the actual Supplement for review by the Board and the other parties.

As a matter of Board process, the District has the right to submit information relevant to the rulemaking until the closing date of December 31, 2010, and has no desire or intention to extend the Subdocket B portion of the rulemaking by filing the Supplement.¹ If, after the Supplement is filed (which will happen by no later than December 6, 2010), the People wish to provide the Board with additional comments in response to the Supplement, they may do so. The Board should not bar the District from submitting additional information relevant to the rulemaking at any time prior to the final comment deadline, and should deny the People's motion.

DISCUSSION

Although the District had hoped to submit all reports relating to the CHEERS Study in Fall 2010, the District clearly informed the Board and all parties months ago that a supplement to the Final Report would be necessary to describe the relationship between water quality and health risk, and would be submitted to the Board by the end of 2010:

The research team is continuing to work on analyses and preparation of its report. Based on the progress of the CHEERS research and analyses, a final CHEERS report will be completed and filed with the Board by August 31, 2010. That report will address, among other issues, occurrence of illness among study participants and rates of illness attributable to CAWS recreation adjusted for demographic differences among study participants, and microbes responsible for gastrointestinal symptoms among study participants. It will also contain information concerning development of a relationship between microbial water quality parameters

¹ In fact, at the October 20, 2010 hearing in this matter, the District suggested that the Board consider creating a new Subdocket E to consider recreational water quality criteria and standards issues and information (including the Supplement), which would facilitate closing the Subdocket B docket concerning disinfection on December 31. It would also allow more time for filing of pre-filed testimony and questions, and scheduling of hearings concerning the Supplement. The District plans to file a motion on this issue in the near future, for the Board's consideration. Unless and until such a motion is granted, though, the issues to be covered in the Supplement are included in Subdocket B, and the District should be allowed to submit the Supplement in that Subdocket within the Board's specified timeline.

and incidence of illness for recreational uses proposed for the CAWS, which will eventually be needed to develop scientifically-based bacterial water quality standards for the CAWS. A supplemental report reflecting completed analyses of the water quality-illness relationship will be submitted to the Board by the end of 2010.

Pre-Filed Testimony of Samuel Dorevitch (May 28, 2010) at pp. 4-5; *see also* District's Motion for Leave to File and Set a Hearing on the UIC CHEERS Report (Jun. 14, 2010) at p. 9 ("A supplemental report reflecting completed analyses of the water quality-illness relationship will be submitted to the Board by the end of 2010."); CHEERS Final Report (Aug. 31, 2010) at p. xlii ("The answer to the other main question – what is the relationship between water quality and health risk – will be provided about 3 months from now in a supplement to this report."). The People have had five months' notice that the District intended to submit a supplement to the CHEERS Final Report, and have no legitimate basis now to object.

The Board has indicated that it "allows all information relevant to be admitted." Order of the Board (Aug. 5, 2010) at p. 3. The Board directed the hearing officer to set a final comment date for no later than December 31, 2010. *Id.* As a result, the District is entitled to submit any relevant information until the final comment date, without prejudice to any other party. The Supplement will contain information relevant to Subdocket B—whether disinfection is necessary to support the uses designated for the Chicago Area Waterway System (the "CAWS"). *See* Opinion and Order of the Board (August 5, 2010) at 3 ("Subdocket B addressed issues relating to disinfection and whether or not disinfection may or may not be necessary to achieve those use designations...."); *see also* Opinion and Order of the Board (August 5, 2010) at 87 ("In Subdocket B, the Board will consider the issues concerning water quality or effluent quality standards or criteria needed to attain the designated uses, including impact of CSOs.") As such, there is no basis to exclude the Supplement from submission to the Board. The Illinois Environmental Protection Agency ("IEPA") has acknowledged the right of the District to file the

CHEERS Final Report itself as a public comment. Response of the Illinois Environmental Protection Agency to MWRDGC's Motion for Leave to File and Set a Hearing on the UIC CHEERS Report (Jun. 28, 2010) at p. 2. The same right extends to submission of the Supplement. If the People believe that (despite the fact that they opposed any hearings on the CHEERS Study) that additional hearings are needed to allow examination of witnesses concerning the Supplement, they are free to file a motion to that effect before the Board.

Dated: October 22, 2010

**METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO**

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