

ILLINOIS POLLUTION CONTROL BOARD

November 4, 2010

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

ORDER OF THE BOARD (by G.T. Girard):

The Board today rules on a motion filed by the People of the State of Illinois (People) asking that the Board bar the Metropolitan Water Reclamation District of Greater Chicago (District) from filing a supplement to the Chicago Health Environmental Exposure and Recreation Study (CHEERS). The People filed the motion on October 8, 2010 (Mot.) and the District filed a response on October 22, 2010 (Resp.). On October 25, 2010, Environmental Law and Policy Center, Friends of the Chicago River, Sierra Club Illinois Chapter, Natural Resources Defense Council and Openlands (Environmental Groups) filed a response in support of the People’s motion (EGResp.)

PEOPLE’S MOTION

The People argue that the filing of the supplemental report is “contrary to its [the District’s] representations in earlier pleadings to the Board.” Mot. at 2. Further the People argue that the filing of a supplement is disruptive of the previously set deadline for closing the record in Subdocket B and manifests a “bad-faith effort” by the District to continue the rulemaking. *Id.* The People note that in responding to the District’s motion to set CHEERS hearings, the People expressed concern that the District’s motion would delay any decision on disinfection. Mot. at 4. The People further note that the District responded that the Peoples’ concerns were exaggerated. *Id.* However, the People assert that this concern was well-founded given the District’s current attempt to file more reports. Mot. at 6.

The People argue that the Board has set a firm deadline for submission of comments in Subdocket B and that deadline was based on assurances from the District that the final CHEERS report would be final. Mot. at 6. The People assert that the District’s proposal to file another report four weeks before the comment deadline would create significant difficulty for every participant in Subdocket B. *Id.* The People claim that if the District is allowed to file the additional material, there is inadequate time for review and consideration of the material before the public comment deadline. Mot. at 7. The People acknowledge that the remedy would be to allow more time for review and comment; however the People “wholeheartedly reject this approach.” *Id.*

ENVIRONMENTAL GROUPS RESPONSE

The Environmental Groups support the People's motion and argue that the study objective that will be addressed in the supplement is not "specifically pertinent to the issue pending" in this subdocket. EGResp. at 1. The Environmental Groups argue that the issue in Subdocket B is whether "the technology-based disinfection standard proposed by Illinois Environmental Protection Agency is necessary to support the uses proposed" in Subdocket A. *Id.* The Environmental Groups assert that the supplement is potentially relevant only to determining water quality criteria, which is an issue pending in Subdocket D. *Id.*

DISTRICT'S RESPONSE

The District argues that the People have been aware since May 2010 that the District would submit a supplement to the CHEERS final report by the end of 2010. Resp. at 1. The District asserts that there is no legitimate basis to bar the District from filing the supplement. *Id.* The District notes that during the October 19 and 20, 2010 hearings in this subdocket, there was extensive discussion of the supplement, including questions of the District's witnesses. *Id.* Furthermore, the District was asked to recommend water quality standards which would be based at least in part on materials in the supplement. *Id.* The District maintains that the District has a right to submit information until the comment period closes on December 31, 2010, and the District has no desire to extend Subdocket B by filing the supplement. Resp. at 2.

The District states that the District clearly informed the Board that a supplement to the final CHEERS report would be necessary to describe the relationship between water quality and health risk. Resp. at 2-3. The District asserts that the People had five months notice that the District would submit a supplement to the final report. Resp. at 3. The District notes that the Board has indicated that all relevant information will be admitted and as a result the District is entitled to submit any relevant information until the final comment date. *Id.* The District maintains that the supplement will contain information relevant to the subdocket and so there is no basis to exclude the supplement from submission. *Id.*

DISCUSSION

The Board previously stated that the record in this subdocket will close on December 31, 2010. Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and Lower Des Plaines River Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303, and 304, R08-9(B) (Aug. 5, 2010) slip. op. at 3. However, the environmental rulemaking process in Illinois requires information gathering in a public forum and the Board allows all information relevant to be admitted. *See* 35 Ill. Adm. Code 102.246. While the Board understands the concerns expressed by the People and the Environmental Groups, the Board does not agree that the District should be precluded from filing relevant information in Subdocket B by the December 31, 2010 deadline. The Board notes that the District did file the final CHEERS report by the deadline of August 31, 2010. Given the information gathering function of the environmental rulemaking process in Illinois, the Board finds no reason to preclude any participant from continuing to analyze the data and conclusions of the CHEERS report to prepare comments for Subdocket B to submit to the Board before December 31, 2010. Therefore, the

Board denies the People's motion to bar the District from submitting the supplement. The Board will accept all relevant information in Subdocket B submitted by December 31, 2010, including any filings by the District.

The Board will not respond at this time to the Environmental Groups' assertion that the supplement is "potentially relevant only to determining water quality criteria, which is an issue pending in Subdocket D." Resp. at 3. The Board will address the relevancy of any potential District comments filed in Subdocket B when the first notice order is considered.

The Board is cognizant that the filing of any public comment near the deadline may result in the other participants requesting additional time to respond to the comment. The Board will give such requests appropriate consideration, if and when they occur.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 4, 2010, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board