

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

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

R08-09(A)
(Rulemaking – Water)

PC#552

NOTICE OF FILING

ORIGINAL

To: John Therriault, Clerk
Marie Tipsord, Hearing Officer
James R. Thompson Center
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board Comments of the Illinois Environmental Protection Agency on the Pollution Control Board's Sub-Docket A First Notice Opinion, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Deborah J. Williams
Deborah J. Williams
Assistant Counsel

Dated: November 29, 2010
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

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AND THE LOWER DES PLAINES RIVER:)
PROPOSED AMENDMENTS TO 35 III.)
Adm. Code Parts 301, 302, 303 and 304)
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R08-09 (Sub-Docket A)
(Rulemaking – Water)

ORIGINAL

**COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY ON THE POLLUTION CONTROL BOARD'S SUB-DOCKET A
FIRST NOTICE OPINION**

The Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by and through its attorneys, hereby submits its Comments on the First Notice Opinion issued by the Illinois Pollution Control Board ("Board") on August 5, 2010. In support thereof, the Illinois EPA states as follows:

1. On October 26, 2007, the Agency filed a rulemaking proposal to update the designated uses and accompanying water quality standards and effluent limitations for the waters currently designated for Secondary Contact and Indigenous Aquatic Life Use which includes most waters in the Chicago Area Waterway System ("CAWS") and Lower Des Plaines River. The Board docketed this proposal as R08-09.

2. On March 18, 2010, the Board issued an order dividing R08-09 into four separate sub-dockets. Post-Hearing Comments on Sub-Docket A were due on April 15, 2010. On April 15, 2010, the Agency submitted detailed Post-Hearing Comments. Exhibit A to the Agency's Post-Hearing Comments was a four page summary of all

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documents, exhibits, testimony and public comments in the R08-09 proceeding that pertain to the topic of recreational use designations.

3. The Agency's Post-Hearing comments in R08-09(A) summarized the legal and technical justification for the Agency's recreational use designation proposal as well as providing a summary of the testimony, exhibits and other evidence in R08-09 that are relevant to the Board's decision in Sub-docket A. Nothing in the Post-Hearing Comments submitted prior to the Board's First Notice Opinion in R08-09(A) provided any new information that would cause the Illinois EPA to revisit the conclusions in our April 15, 2010 comments and those conclusions and comments will not be repeated here.

4. On August 5, 2010, the Board issued a First Notice Opinion and Order in Sub-Docket A establishing proposed Recreational Use Designations for all segments of the CAWS and Lower Des Plaines River covered by the Agency's rulemaking proposal. The Board's First Notice Proposal was published in Volume 34, Issue 35 of the Illinois Register on August 27, 2010.

5. On August 11, 2010, the Board submitted a letter to the Department of Commerce and Economic Opportunity ("DCEO") requesting that DCEO conduct and economic impact study of Sub-Docket A. In a letter dated September 16, 2010, DCEO notified the Board that no economic impact study would be conducted. The Board held public hearings on DCEO's failure to conduct an economic impact study on October 19 and 20, 2010 and no members of the public testified or commented on DCEO's decision.

6. In an Order dated October 22, 2010, the Hearing Officer in this proceeding established a First Notice Comment deadline of November 30, 2010. Comments have been received prior to this filing deadline from Exxon-Mobil, the Metropolitan Water Reclamation District of Greater Chicago, United States Environmental Protection Agency Region V, the American Waterway Operators Association and members of the general public.

7. None of the First Notice Comments submitted to date provide a basis to justify amendments to the Board's First Notice Proposal. Some commenters suggest the Board has not given sufficient weight to safety concerns and repeat the unsubstantiated concern that new regulatory recreational use designations reflecting existing uses of the CAWS and Lower Des Plaines River will 'encourage' increased recreational uses in these waters. On the other hand, U.S. EPA Region V suggests the Board has given too much weight to safety and physical configuration and urges the consideration of additional information outside the Board's regulatory purview, including barge traffic schedules and enhancement of access points for recreational users, to conclude that more intensive recreational uses that have never occurred consistently in these waters, may none-the-less be attainable recreational uses.

8. On page 1 of its First Notice Opinion and Order, the Board summarizes its conclusions as follows: "The record clearly demonstrates that the CAWS and the LDPR cannot attain the Clean Water Act recreational use goal of recreating on and in the water (swimmable) at this time. However, the Board's thorough examination of the record in this proceeding provides clear evidence of existing recreational uses in the CAWS and LDPR that must be protected."

9. The Board's First Notice Opinion and Order carefully weighed the voluminous testimony and exhibits before concluding to adopt the Agency's proposed recreational uses with only minor edits. The Agency supports the minor edits that the Board has made which allow for consistency in the current regulations and the new regulations while the remaining Sub-dockets of R08-09 are under review by the Board.

10. Illinois EPA appreciates the resources the Board has dedicated to this regulatory proceeding and the opportunity granted to all parties to participate and present documents and testimony for the Board's consideration. Furthermore, the Illinois EPA appreciates the Board's effort to sort out a lengthy and complex administrative record.

WHEREFORE, the Illinois EPA respectfully requests the Illinois Pollution Control Board proceed to Second Notice and Final Adoption of the Recreational Use designations contained in its First Notice Opinion and Order in the above-captioned matter.

Respectfully submitted,

By: 
Deborah J. Williams
Assistant Counsel
Division of Legal Counsel

Date: November 29, 2010

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

STATE OF ILLINOIS)
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COUNTY OF SANGAMON)
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Pollution Control Board

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Comments of the Illinois Environmental Protection Agency on the Pollution Control Board's Sub-Docket A First Notice Opinion upon the person to whom it is directed by placing it in an envelope addressed to:

John Therriault, Clerk
Marie Tipsord, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

ORIGINAL

and mailing it by Overnight Mail from Springfield, Illinois on November 29, 2010, with sufficient postage affixed and by mailing it by First Class U.S. Mail from Springfield, Illinois on November 29, 2010 with sufficient postage affixed to the **ATTACHED SERVICE LIST**.

[Handwritten Signature]

SUBSCRIBED AND SWORN TO BEFORE ME

This 29 day of November, 2010

[Handwritten Signature]
Notary Public



Service List for R08-09

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

Susan M. Franzetti
Nijman Franzetti LLP
10 South LaSalle St.
Ste. 3600
Chicago, IL 60603

Katherine D. Hodge
Monica Rios
Matthew C. Read
Hodge Dwyer Driver
3150 Roland Ave.
P.O. Box 5776
Springfield, IL 62702

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Ste 11-500
Chicago, IL 60601

Elizabeth Wallace
Andrew Armstrong
Office of the Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, IL 60602

Jeffrey C. Fort
Ariel J. Teshler
Sonnenschein Nath & Rosenthal LLP
7800 Sears Tower
233 S. Wacker Drive
Chicago, IL 60606-6404

Ann Alexander
Senior Attorney, Midwest Program
Natural Resources Defense Council
2 Riverside Plaza, Floor 22
Chicago, IL 60606

Fredrick M. Feldman
Ronald M. Hill
Margaret T. Conway
Metropolitan Water Reclamation District
of Greater Chicago
111 East Erie Street
Chicago, IL 60611

Mitchell Cohen, General Counsel
Office of Legal Counsel
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62705-5776

Marie Tipsord, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Ste 11-500
Chicago, IL 60601

Albert Ettinger, Senior Staff Attorney
Jessica Dexter
Environmental Law & Policy Center
35 E. Wacker Dr., Suite 1600
Chicago, IL 60601

Thomas W. Dimond
Susan Charles
Ice Miller LLP
200 West Madison Street
Suite 3500
Chicago, IL 60606-3417

Service List for R08-09 Continued

✓ Fredric P. Andes
Carolyn S. Hesse
David T. Ballard
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, IL 60606

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

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

Lisa Frede
Chemical Industry Council of Illinois
1400 E. Touhy Ave.
Des Plaines, IL 60019

Stacy Meyers-Glen
Openlands
25 E. Washington, Ste. 1650
Chicago, IL 60602

Jack Darin
Cindy Skrukrud
Sierra Club, Illinois Chapter
70 East Lake Street, Ste 1500
Chicago, IL 60601

Lyman C. Welch
Alliance for the Great Lakes
17 North State Street, Suite 1390
Chicago, Illinois 60602