

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

TO: John Therriault, Assistant Clerk Attached Service List
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

PLEASE TAKE NOTICE that I have today filed with the Illinois Pollution Control Board Midwest Generation's Questions for the District's Witness Jennifer Wasik, a copy of which is herewith served upon you.

Dated: February 23, 2011

MIDWEST GENERATION, L.L.C.

By: /s/ Susan M. Franzetti
One of Its Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Midwest Generation's Questions for the District's Witness Jennifer Wasik were filed electronically on February 23, 2011 with the following:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
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and that true copies were mailed by First Class Mail, postage prepaid, on February 23, 2011 to the parties listed on the foregoing Service List.

/s/ Susan M. Franzetti

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF;)
)
WATER QUALITY STANDARDS AND) **R08-9 Subdocket C**
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)

**MIDWEST GENERATION’S QUESTIONS FOR
THE DISTRICT’S WITNESS JENNIFER WASIK**

Midwest Generation, L.L.C. (“Midwest Generation” or “MWGen”), by and through its attorneys, Nijman Franzetti LLP, submits the following questions based upon the Pre-filed Testimony of Jennifer Wasik, submitted on behalf of the Metropolitan Water Reclamation District of Greater Chicago (the “District”). Midwest Generation requests that the Hearing Officer allow follow-up questioning to be posed based on the answers provided.

QUESTIONS

1. On page 4 of your pre-filed testimony, you state that when the habitat index scores are borderline or inconclusive, other important factors should be considered, including sediment toxicity and unique flow conditions. Please explain further how such other important factors should be considered in determining the appropriate use classification for a given waterbody?
2. As you note on page 3 of Attachment 1 to your pre-filed testimony, CAWS Habitat Index Scores were determined for all of the CAWS reaches between the Wilmette Pump Station, Chicago River Controlling Works and O’Brien Lock and Dam, and the Lockport Lock and Dam and those results are presented in Table 7-7 on page 139 of the Habitat Evaluation Report.
 - a. Is it correct that under the CAWS Habitat Index Scores, the highest score was achieved by the upper North Shore Channel with a score of 75?
 - b. Is it correct that the upper North Shore Channel, along with the Little Calumet River which scored a 52 and the upper North Branch Chicago River which scored a 49 are all proposed to be included in Category 1?

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- c. Is it also correct that the CAWS Habitat Index Scores are a major factor in the proposed classification system but not the only factor used to slot individual segments into the proposed Category 1 through 3 use classifications?
 - d. Did the District also take into the account the results of the Habitat Improvement Study conducted by Limnotech?
 - e. So would it be correct to say that the District considered that habitat improvements could raise the upper North Shore Channel from a 75 to 80 score, the Little Calumet River from a 52 to a 57 score and the upper North Branch Chicago River from a 49 to a 58 score? And that this still indicated that these streams should be in Category 1?
 - f. Why did the review of habitat improvement potential result in these scores not going up significantly?
3. Does Category 1 cover any segments that score above 80 and up to 100 or is it contemplated that there may be another category above Category 1?
 4. Were there other factors beyond the Habitat Index Scores, with and without habitat improvement, that were used to place segments of the CAWS into the proposed use classifications? If so, please describe generally how this was done.
 5. On page 4 of your pre-filed testimony, in connection with the discussion of the District's Category 1 proposed use designation, you note that the Upper Branch of the Chicago River and Little Calumet River should both be placed in Category 1. Is it correct that neither of these waters is man-made but both are rivers that have been channelized?
 - a. Please describe further what you mean by your testimony that while each of these waterbodies contain reaches with earthen banks, they are "steeper than most found in natural systems."
 - b. You state on page 4 that "some areas of instream cover (e.g., overhanging riparian vegetation, fixed aquatic vegetation, boulders, or woody debris)" exist in these areas. Can you provide more information concerning the extent of the instream cover that exists for the upper Branch Chicago River and the Little Calumet River, respectively?
 - c. You state that "relatively lower depth areas may be present in these waters." Please explain in more detail what you mean by this statement.
 - d. You state that "commercial navigation is generally absent in Category 1 Waters, with the exception of the Little Calumet River." Is there any commercial navigation in the upper Branch Chicago River? Do you have any information concerning the extent of the commercial navigation in the Little Calumet River?
 6. On pages 4-5 of your pre-filed testimony, you state that "while fine sediments may be widespread in the CAWS Category 1 Waters, a majority of sediment samples were

demonstrated to be non-toxic.” Is it correct then to state that the Category 1 Waters do not generally exhibit the stressor of contaminated sediments? Is it also correct to state that the Category 1 Waters do have sedimentation issues that adversely impact the quality of the physical habitat for the fish community? However, is it correct that, unlike the Category 2 Waters, Category 1 Waters do not have a majority of sediment samples showing contaminated sediments are present?

7. On page 5 of your pre-filed testimony, you state that “habitat features that are important to sustaining healthy and balanced warmwater aquatic communities as discussed in Dr. Mackey’s testimony are not widespread in Category 1 Waters. However, the physical habitat in Category 1 Waters is relatively better than other waterways in the CAWS.” Please explain further which of the important habitat features are present but not widespread in Category 1 Waters and how the physical habitat in Category 1 Waters is relatively better than other parts of the CAWS?
 - a. You also state on page 5 of your pre-filed testimony that there are “a number of habitat attributes” that prevent Category 1 Waters from achieving the Clean Water Act’s Aquatic Life goal and are not reversible in the foreseeable future. Please identify which habitat attributes of Category 1 Waters you are referring to in this testimony?
8. On page 5 of your pre-filed testimony, in describing the Category 1 Waters, you state that: “Physical habitat in these reaches is not adequate to support a warmwater aquatic community that fully meets the goals of the Clean Water Act, nor do they have the potential to do so.” Is it correct then to state that the Category 1 Waters use designation is for waters that do not currently meet and do not have the potential to meet the Clean Water Act Aquatic Life goal?
 - a. To what extent do the Category 1 Waters fall short of meeting the Clean Water Act’s Aquatic Life goal?
 - b. Is it also correct that each of the waterbodies that the District is proposing to include in Category 1 Waters has conditions that satisfy one or more of the UAA factors?
9. On page 5 of your pre-filed testimony, referring to the CAWS generally, you state that limited habitat features have “resulted in a biotic community (as measured by fish) that is tolerant of the modified conditions and appears to be thriving.” Is it correct that you are referring here to the fact that the CAWS fish community is generally dominated by fish species that are tolerant of the limited physical habitat features present in these waters?
 - a. Is it correct that relatively few species, mostly so-called tolerant species, can thrive in these waters?
 - b. Are examples of these species gizzard shad, common carp, green sunfish, and bluntnose minnow?

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- c. Do you agree that generally in the CAWS the quality of the fish community is relatively poor?
10. On page 5 of your pre-filed testimony, you state that: "The abundance (number and weight) of largemouth bass and bluegill is significantly higher in Category 1 Waters than Category 2 Waters." Would you please provide an estimate of the degree to which the abundance of largemouth bass and bluegill is significantly higher in Category 1 Waters?
 - a. Why is this a relevant factor for distinguishing Category 1 from Category 2 Waters?
 - b. In terms of the fish community, is the presence of more largemouth bass and bluegills the only biological factor that distinguishes Category 1 from Category 2? If there are other biological factors that differentiate these two categories, could you explain what those differences are?
11. On page 5 of your pre-filed testimony, you state: "In addition, the abundance of these fish species has increased more in Category 1 Waters than in Category 2 Waters, even though water quality improved throughout all of these waterways. The District believes this can be attributed to the slightly better physical habitat conditions present in Category 1 Waters." Please explain in more detail why the District believes this can be attributed to the slightly better physical habitat conditions present in Category 1 Waters?
12. On page 6 of your pre-filed testimony, in your description of the Calumet River, south of 130th Street to the O'Brien Lock and Dam, you reference "a side channel shallow (approximately 3 feet depth) area with relatively abundant fixed aquatic vegetation is present where the channel widens. A gradually sloping bank with emergent vegetation is present in this reach of the Calumet River to an extent not found in other areas of the CAWS." Can you provide an estimated percentage of the Calumet River area that this reach represents?
13. On page 6 of Attachment 1 to your pre-filed testimony, you indicate that "The CAWS fish species assemblage is composed primarily (96%) of fish in three families." Do you mean that 96% of the species are in these three families?
 - a. You further state that "40% of all fish collected" were clupeids. Were the vast majority of those clupeids gizzard shad? And are these clupeids one of the three fish families that make up 96% of the fish species in the CAWS?
 - b. Was the carp and minnow family, also called "Cyprinidae," one of the three fish families and did this family make up 37% of the fish community? Were most of the fish collected in this family the common carp, emerald shiner, and bluntnose minnow, all of which are classified as tolerant species?
 - c. And was the last of the three fish families that made up 96% of all fish species in the CAWS the sunfish family? Is it also correct that tolerant and moderately tolerant species dominated within the sunfish family?

14. Does the CAWS fish data also show that, except for smallmouth bass, intolerant or moderately intolerant species are rare or absent in the CAWS?
 - a. Based on the 2001 to 2007 fish data provided in Figure 2-6 in Appendix A to the Habitat Evaluation report (PC 284), is it correct that the five most common species in the CAWS during 2001-2007 were all tolerant species and accounted for nearly 75% of all fish collected?
 - b. Based on that same 2001-2007 fish data, is it correct that 7 of the top 9 were tolerant and the remaining two were moderately tolerant and all 9 together accounted for 90% of all fish collected?
 - c. Based on the 2001-2007 fish data, would you agree that there are only a few species, most of which are tolerant, that are thriving in the CAWS?
 - d. Do you agree that on the whole, the quality of the fish communities in most of the CAWS is at best fair and often poor?
15. Is it your opinion that because it is not feasible to improve the existing physical habitat attributes to ones that have positive effects on fish metrics, the fish species that are currently present in the CAWS are basically the fish species that the CAWS can attain, regardless of whether you make the water quality standards more stringent?
16. Why do you think the District's proposed use classifications are better than those proposed by the IEPA?

Respectfully submitted,

MIDWEST GENERATION, L.L.C.

By: /s/ Susan M. Franzetti
One of Its Attorneys

Dated: February 23, 2011

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