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MAY 27 2011

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE 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
(Rulemaking - Water)
Sub-docket A

NOTICE OF FILING

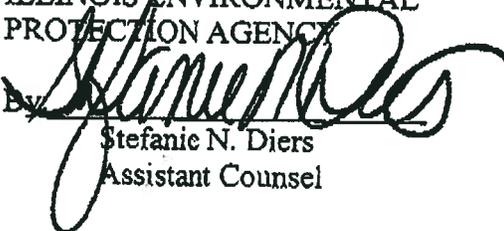
ORIGINAL

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 ILLINOIS EPA'S MOTION TO STAY THE ISSUANCE OF A SECOND NOTICE OPINION AND ORDER IN SUB-DOCKET A a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By 
Stefanie N. Diers
Assistant Counsel

Dated: May 27, 2011
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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STATE OF ILLINOIS
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R08-09 (Sub-Docket A)
(Rulemaking – Water)

ORIGINAL

ILLINOIS EPA'S MOTION TO STAY THE ISSUANCE OF A SECOND NOTICE
OPINION AND ORDER IN SUB-DOCKET A

The Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by and through its attorneys, hereby submits its Motion to Stay the Issuance of a Second Notice Opinion and Order in Sub-Docket A. 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 Illinois Pollution Control Board ("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

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 Illinois Pollution Control Board's ("Board") decision in Sub-docket A.

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 an 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 were received prior to the filing deadline from Illinois EPA, the Illinois Attorney General's Office, Exxon-Mobil, the Metropolitan Water Reclamation District of Greater Chicago, United States Environmental Protection Agency ("USEPA") Region 5, the American

Waterway Operators Association, a coalition of eight Illinois environmental organizations and members of the general public.

7. Since the closing of the First Notice Comment Period, Illinois EPA received a letter dated May 11th, 2011 from the USEPA. See Public Comment #584. A copy of this letter was also sent by USEPA to the Board's clerk. The letter specifically outlined certain segments of the CAWS that should be designated for recreation in the water (primary contact) instead of being designated as Incidental Contact Recreation Waters as previously proposed by Illinois EPA and adopted by the Board in its First Notice Opinion. USEPA further directs Illinois to expeditiously adopt new or revised water quality standards consistent with the findings outlined in the May 11, 2011 letter. id. at P. 1.

8. Based on the contents of the USEPA letter, Illinois EPA needed time to evaluate USEPA's position to decide what action, if any, may need to be taken with respect to the waters outlined by USEPA for recreation in the water (primary contact). Therefore, on May 16, 2011, the Illinois EPA filed a Motion to Stay asking that the Board to take no action at the May 19, 2011 Board Meeting with respect to issuing a Second Notice Opinion and Order for Sub-Docket A.

9. Since the filing of the Motion, the Sub-Docket A was moved to Cases Pending on the Agenda and it is now on the Board's June 2nd, 2011 Agenda for a Second Notice Opinion and Order.

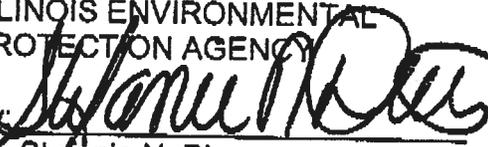
10. After careful consideration of the comments made by USEPA in the May 11, 2011 letter, Illinois EPA has determined that changes must be made to the Agency's original proposal concerning use designations to address USEPA's directives. This

determination has been confirmed through discussions with representatives of USEPA. These discussions have also resulted in the position that amendment of Sub-Docket A, consistent with the directives of the May 11th letter from USEPA, will be the most expeditious means by which USEPA's concerns can be satisfactorily addressed. The resources of the Illinois EPA and the Board would not be best served if Sub-Docket A were to continue without language that reflects the concerns and direction in USEPA's May 11th letter. Therefore, Sub-Docket A should be stayed, while the Agency prepares amendments to its original proposal for recreational use designations.

WHEREFORE, Illinois EPA respectfully requests that the Board grant Illinois EPA's Motion to Stay Sub-docket A pending submittal of a revised use designation proposal.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

Stefanie N. Diers
Assistant Counsel
Division of Legal Counsel

DATED: May 27, 2011

Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
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CLERK'S OFFICE

MAY 27 2011

SS

STATE OF ILLINOIS
Pollution Control Board

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)
)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached ILLINOIS EPA'S
MOTION TO STAY THE ISSUANCE OF A SECOND NOTICE OPINION AND ORDER OF
SUB-DOCKET A upon the person to whom it is directed by placing it an **overnight** 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

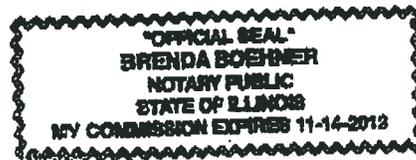
and mailing it First Class Mail from Springfield, Illinois on May 27, 2011, with sufficient
postage affixed to the addresses on the attached Service List.

[Handwritten signature]

SUBSCRIBED AND SWORN TO BEFORE ME

This 27th day of May, 2011

Brenda Boelner
Notary Public



THIS FILING IS SUBMITTED ON RECYCLED PAPER

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 STATE OF ILLINOIS
 Pollution Control Board

DATE: 5/27/2011

ORIGINAL

FACSIMILE TRANSMITTAL SHEET

PLEASE DELIVER THE FOLLOWING PAGES TO:

PARTY'S NAME: John Therriault, Clerk
Illinois PCB

FIRM/COMPANY NAME: _____

FACSIMILE NO: 312-814-3669

TELEPHONE NO: 312-814-3620

FROM: Deborah Williams + Stefanie Diers

RE: R09-09(A)

TOTAL NUMBER OF PAGES (INCLUDING THIS PAGE): 9

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COMMENTS: Fax filing per Hearing
officer authorization

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