

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

WATER QUALITY STANDARDS AND )  
EFFLUENT LIMITATIONS FOR THE ) R08-9(C) and (D)  
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: Mr. John T. Therriault	Ms. Marie E. Tipsord
Assistant Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	100 West Randolph Street
Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
<b>(VIA ELECTRONIC MAIL)</b>	<b>(VIA FIRST CLASS MAIL)</b>

**(SEE PERSONS ON ATTACHED SERVICE LIST)**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board **EXXONMOBIL OIL CORPORATION'S REPLY TO THE ILLINOIS EPA'S AND ENVIRONMENTAL GROUPS' RESPONSES TO EXXONMOBIL'S MOTION TO POSTPONE HEARINGS IN SUBDOCKET D**, a copy of which is herewith served upon you.

Respectfully submitted,

EXXONMOBIL OIL CORPORATION,

Dated: July 8, 2011

By: /s/ Monica T. Rios  
Monica T. Rios

Katherine D. Hodge  
Monica T. Rios  
HODGE DWYER & DRIVER  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
(217) 523-4900

**CERTIFICATE OF SERVICE**

I, Monica T. Rios, the undersigned, hereby certify that I have served the attached  
EXXONMOBIL OIL CORPORATION'S REPLY TO THE ILLINOIS EPA'S AND  
ENVIRONMENTAL GROUPS' RESPONSES TO EXXONMOBIL'S MOTION TO  
POSTPONE HEARINGS IN SUBDOCKET D upon:

Mr. John T. Therriault  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

via electronic mail on July 8, 2011; and upon:

Ms. Marie E. Tipsord  
Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

Deborah J. Williams, Esq.  
Stefanie N. Diers, Esq.  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, Illinois 62794-9276

Matthew J. Dunn, Esq.  
Andrew Armstrong, Esq.  
Environmental Enforcement Division  
Office of the Attorney General  
State of Illinois  
69 West Washington, 18th Floor  
Chicago, Illinois 60602

Frederick M. Feldman, Esq.  
Ronald M. Hill, Esq.  
Mr. Louis Kollias  
Margaret T. Conway  
Metropolitan Water Reclamation District  
100 East Erie Street  
Chicago, Illinois 60611

Aeril J. Teshner, Esq.  
Jeffrey C. Fort, Esq.  
SNR Denton US LLP  
233 South Wacker Drive, Suite 7800  
Chicago, Illinois 60606-6404

Susan Charles, Esq.  
Thomas W. Dimond, Esq.  
Ice Miller LLP  
200 West Madison, Suite 3500  
Chicago, Illinois 60606

Claire A. Manning, Esq.  
Brown, Hay & Stephens, LLP  
700 First Mercantile Bank Building  
205 South Fifth Street  
Post Office Box 2459  
Springfield, Illinois 62705-2459

Mr. Robert VanGyseghem  
City of Geneva  
1800 South Street  
Geneva, Illinois 60134-2203

Jerry Paulsen, Esq.  
Cindy Skrukrud, Esq.  
McHenry County Defenders  
110 S. Johnson Street, Suite 106  
Woodstock, Illinois 60098

Mr. James L. Daugherty  
Thorn Creek Basin Sanitary District  
700 West End Avenue  
Chicago Heights, Illinois 60411

Ms. Traci Barkley  
Prairie Rivers Network  
1902 Fox Drive, Suite 6  
Champaign, Illinois 61820

Mr. Keith I. Harley  
Ms. Elizabeth Schenkler  
Chicago Legal Clinic, Inc.  
211 West Wacker Drive, Suite 750  
Chicago, Illinois 60606

Frederick D. Keady, P.E.  
Vermilion Coal Company  
1979 Johns Drive  
Glenview, Illinois 60025

W.C. Blanton, Esq.  
Husch Blackwell Sanders LLP  
4801 Main Street  
Suite 1000  
Kansas City, Missouri 64112

Mr. Bernard Sawyer  
Mr. Thomas Granato  
Metropolitan Water Reclamation District  
6001 West Pershing Road  
Cicero, Illinois 60650-4112

Ms. Lisa Frede  
Chemical Industry Council of Illinois  
1400 East Touhy Avenue, Suite 110  
Des Plaines, Illinois 60019-3338

Fredric P. Andes, Esq.  
Erika K. Powers, Esq.  
Barnes & Thornburg  
1 North Wacker Drive, Suite 4400  
Chicago, Illinois 60606

Tracy Elzemeyer, Esq.  
American Water Company  
727 Craig Road  
St. Louis, Missouri 63141

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

Mr. Mark Schultz  
Navy Facilities and  
Engineering Command  
201 Decatur Avenue, Bldg. 1A  
Great Lakes, Illinois 60088-2801

Ms. Kay Anderson  
American Bottoms RWTF  
One American Bottoms Road  
Sauget, Illinois 62201

Albert Ettinger, Esq.  
Jessica Dexter, Esq.  
Environmental Law & Policy Center  
35 East Wacker, Suite 1300  
Chicago, Illinois 60601

Mr. Dennis L. Duffield  
Mr. James E. Eggen  
City of Joliet, Department of Public  
Work and Utilities  
921 East Washington Street  
Joliet, Illinois 60431

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

Mr. Jack Darin  
Sierra Club  
70 East Lake Street, Suite 1500  
Chicago, Illinois 60601-7447

Mr. Tom Muth  
Fox Metro Water Reclamation District  
682 State Route 31  
Oswego, Illinois 60543

Ms. Beth Steinhour  
2021 Timberbrook  
Springfield, Illinois 62702

Dr. Thomas J. Murphy  
2325 North Clifton Street  
Chicago, Illinois 60614

Mr. Bob Carter  
Bloomington Normal Water  
Reclamation District  
Post Office Box 3307  
Bloomington, Illinois 61702-3307

Ms. Olivia Dorothy  
Mr. Marc Miller  
Mr. Jamie S. Caston  
Office of Lt. Governor  
Room 414 State House  
Springfield, Illinois 62706

Mr. Kenneth W. Liss  
Andrews Environmental Engineering  
3300 Ginger Creek Drive  
Springfield, Illinois 62711

Ms. Vicky McKinley  
Evanston Environment Board  
223 Grey Avenue  
Evanston, Illinois 60202

Susan M. Franzetti, Esq.  
Kristen Laughridge Gale, Esq.  
Nijman Franzetti LLP  
10 South LaSalle Street, Suite 3600  
Chicago, Illinois 60603

Mr. Irwin Polls  
Ecological Monitoring and Assessment  
3206 Maple Leaf Drive  
Glenview, Illinois 60025

Stacy Meyers-Glen, Esq.  
Openlands  
25 East Washington Street, Suite 1650  
Chicago, Illinois 60602

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

Mr. James Huff  
Huff & Huff, Inc.  
915 Harger Road, Suite 330  
Oak Brook, Illinois 60523

Ann Alexander, Esq.  
Natural Resources Defense Council  
2 North Riverside Plaza, Floor 23  
Chicago, Illinois 60606

Roy M. Harsch, Esq.  
Drinker, Biddle, Gardner, Carton  
191 North Wacker Drive, Suite 3700  
Chicago, Illinois 60606-1698

by depositing said documents in the United States Mail, postage prepaid, in Springfield,  
Illinois on July 8, 2011.

/s/ Monica T. Rios

Monica T. Rios

CORN:006Fil/NOF-COS --ExxonMobil Reply

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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WATER QUALITY STANDARDS AND )  
EFFLUENT LIMITATIONS FOR THE ) R08-9(C) and (D)  
CHICAGO AREA WATERWAY SYSTEM ) (Rulemaking – Water)  
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**EXXONMOBIL OIL CORPORATION'S REPLY TO THE  
ILLINOIS EPA'S AND ENVIRONMENTAL GROUPS' RESPONSES TO  
EXXONMOBIL'S MOTION TO POSTPONE HEARINGS IN SUBDOCKET D**

NOW COMES EXXONMOBIL OIL CORPORATION ("ExxonMobil"), by and through its attorneys, HODGE DWYER & DRIVER, and pursuant to the Hearing Officer Order, dated June 1, 2011, states in support of this Reply as follows:

**I. BACKGROUND**

1. On June 14, 2011, ExxonMobil filed a Motion to Postpone Hearings in Subdocket D requesting that the hearings scheduled for October 2011 should be postponed until the Illinois Pollution Control Board ("Board") issues a Second Notice Opinion and Order in Subdocket C. Motion, *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, R08-9 (C) and (D) (Ill.Pol.Control.Bd. June 14, 2011)* (rulemaking hereafter cited as "R08-9").

2. On June 29, 2011, the Illinois Environmental Protection Agency filed a Response to ExxonMobil's Motion. Illinois EPA's Response to ExxonMobil Oil Corporation's Motion to Postpone Hearings in Subdocket D, R08-9 (C) and (D)

(Ill.Pol.Control.Bd. June 29, 2011) (hereafter cited as “Illinois EPA Response”). The Environmental Groups also filed a Response to ExxonMobil’s Motion. Response of Environmental Groups to the Motions of Midwest Generation, Exxon, and Corn Products to Delay Hearings in Subdocket D until Subdocket C is Resolved, R08-9 (C) and (D) (Ill.Pol.Control.Bd. June 29, 2011) (hereafter cited as “EG Response”).

3. As discussed in greater detail below, ExxonMobil supports Illinois EPA’s position that the hearings in Subdocket D be postponed until the Board issues a First Notice Opinion and Order in Subdocket C, and ExxonMobil respectfully disagrees with the Environmental Groups assertion that postponing Subdocket D hearings will “almost certainly delay for years the resolution” of this proceeding and “almost certainly not actually provide the desired guidance or result in substantial savings of time or effort.” EG Response at 1-2.

## **II. REPLY TO ILLIOIS EPA’S RESPONSE**

4. Illinois EPA states that it “strongly disagrees” with ExxonMobil’s request to postpone hearings in Subdocket D until Second Notice in Subdocket C, and further states that “[w]aiting until an adoption of aquatic life uses in Subdocket C is unreasonable and would cause unnecessary delay in these proceedings.” Illinois EPA’s Response at ¶3. However, Illinois EPA neither articulates why ExxonMobil’s request is unreasonable nor explains why it would cause unnecessary delay.

5. Although postponing hearings until Second Notice in Subdocket C would provide nearly final guidance on the aquatic life use designations that the Board intends to adopt, ExxonMobil supports Illinois EPA’s alternative approach, as articulated in

Midwest Generation's Motion for Temporary Suspension of Subdocket D Hearings, to wait until First Notice in Subdocket C before proceeding with Subdocket D hearings.

6. As explained by Illinois EPA in its response, the issuance of a First Notice in Subdocket C will allow participants "to know what use designations are being proposed for aquatic life uses and would allow the parties to present testimony on water quality standards and criteria that are necessary to protect those use designations in Subdocket D hearings." Illinois EPA's Response at ¶3. Further, Illinois EPA recognizes "the confusion that would be caused if the parties were to move forward before seeing the First Notice Opinion and Order in Subdocket C as well as timing and expense issues that may burden the parties by not knowing what aquatic life uses the Board intends to go forward with." *Id.*

7. ExxonMobil agrees with Illinois EPA on these issues, but requests that the Board not proceed to hearing in Subdocket D until Second Notice in Subdocket C. In the alternative, if the Board determines that proceeding in this fashion is not appropriate, ExxonMobil supports proceeding to hearing in Subdocket D after First Notice in Subdocket C, which will no doubt provide participants valuable insight into the use designations that the Board proposes to adopt as they prepare testimony for Subdocket D.

8. Illinois EPA, in its Response, also states that it is working on issues raised in USEPA's January 2010 letter and that it is willing to provide a status report on its discussions with USEPA. ExxonMobil requests that the Board require Illinois EPA to file a status report describing the discussions it has had with USEPA on the issues raised in the January 2010 letter and providing any other information relevant to those

discussions, including but not limited to how Illinois EPA intends to address the comments made by USEPA in this rulemaking.

**III. REPLY TO ENVIRONMENTAL GROUPS' RESPONSE**

9. The Environmental Groups argue that granting the motions filed by Midwest Generation, ExxonMobil, and Corn Products will delay the resolution of this proceeding for years. EG Response at 2-3. The Environmental Groups present a timeline stating that “it is entirely possible that if the motions are granted, testimony in Subdocket D will not begin until sometime in 2014.” *Id.* at 3. The timeline presented by the Environmental Groups is speculative and appears to be based on unknown timeframes for submitting final comments in Subdocket C, the Board’s issuance of First Notice in Subdocket C, post-First Notice comments, the length of time between First and Second Notices in Subdocket C, and preparation time after First or Second Notice for Subdocket D testimony. It is “entirely possible” that should hearings in Subdocket D be postponed until after First or Second Notice in Subdocket C that testimony in Subdocket D could begin well before 2014 depending on varying timeframes for the actions described above.

10. In addition, the Environmental Groups state that “it is very unlikely in this proceeding that a ruling on designated uses is going to do much to clarify the appropriate criteria.” *Id.* at 4. The Environmental Groups argue that the use designations adopted by the Board will use “general language” or “resemble in scope the broad descriptive language now in the Board definition for General Use,” and parties “will have to decide

for themselves what species they maintain are 'pollution tolerant' or 'indigenous' and what life stages are covered by the use designations." *Id.* at 4-5.

11. However, even if the Board adopts aquatic life use designations using general or broad language, knowing what those uses are either at Second or even at First Notice, as Illinois EPA supports, will provide insight as to the uses the Board deems appropriate for the waterways subject to this rulemaking. Participants will then be able to tailor their testimony to the uses proposed by the Board at First or Second Notice in Subdocket C rather than presenting testimony on every possible water quality standard scenario for each possible use that a segment could be designated. There is undoubtedly benefit to postponing hearings in Subdocket D until participants have an understanding of the likely aquatic life use designations since testimony can be streamlined to address the proposed uses, and the Board's resources, as well as participants' resources, can be saved as there will likely be less hearing dates necessary since testimony will be focused on water quality standards protective of the use designations proposed at First or Second Notice rather than all possible use designations.

#### **IV. CONCLUSION**

12. ExxonMobil supports Illinois EPA's and Midwest Generation's approach to postpone hearings in Subdocket D until First Notice in Subdocket C, but requests that the Board not proceed to hearing in Subdocket D until Second Notice in Subdocket C. Although ExxonMobil would prefer the near finality of a Second Notice in Subdocket C before proceeding to testimony in Subdocket D, knowing what designated uses are proposed at First Notice in Subdocket C will greatly benefit ExxonMobil and other

participants since testimony on the proposed water quality standards can focus on the uses proposed at First Notice and participants can utilize their resources in a more efficient and effective manner than if they had to present testimony on multiple water quality standard scenarios for multiple use designations. Accordingly, ExxonMobil supports either option of postponing hearings until the Board issues a First or Second Notice in Subdocket C.

WHEREFORE, EXXONMOBIL OIL CORPORATION respectfully requests that the Board postpone hearings in Subdocket D until the Board takes action in Subdocket C and requests that the Board ask Illinois EPA to provide a status report regarding its discussions with USEPA.

Respectfully submitted,

EXXONMOBIL OIL CORPORATION,

Dated: July 8, 2011

By: /s/ Monica T. Rios  
Monica T. Rios

Katherine D. Hodge  
Monica T. Rios  
HODGE DWYER & DRIVER  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
(217) 523-4900

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