

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
(VIA ELECTRONIC MAIL)	(VIA FIRST CLASS MAIL)

(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 **CORN PRODUCTS INTERNATIONAL, INC.'S REPLY TO THE ILLINOIS EPA'S AND ENVIRONMENTAL GROUPS' RESPONSES TO CORN PRODUCTS' MOTION TO POSTPONE HEARINGS IN SUBDOCKET D**, a copy of which is herewith served upon you.

Respectfully submitted,

CORN PRODUCTS INTERNATIONAL,
INC.,

Dated: July 8, 2011

By: /s/ Matthew C. Read
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THIS FILING SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, Matthew C. Read, the undersigned, hereby certify that I have served the attached CORN PRODUCTS INTERNATIONAL, INC.'s REPLY TO THE ILLINOIS EPA's AND ENVIRONMENTAL GROUPS' RESPONSES TO CORN PRODUCTS' MOTION TO POSTPONE HEARINGS IN SUBDOCKET D upon:

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

/s/ Matthew C. Read

Matthew C. Read

CORN:006Fil/NOF-COS -CP Reply

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)

**CORN PRODUCTS INTERNATIONAL, INC.'S REPLY TO THE
ILLINOIS EPA'S AND ENVIRONMENTAL GROUPS' RESPONSES TO
CORN PRODUCTS' MOTION TO POSTPONE HEARINGS IN SUBDOCKET D**

NOW COMES CORN PRODUCTS INTERNATIONAL, INC. ("Corn Products"), 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, Corn Products 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 Corn Products' Motion. Illinois EPA's Response to Corn Product International, Inc.'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 Corn Products' 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, Corn Products 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 Corn Products 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 Corn Products' 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 Corn Products' 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, Corn Products 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. Corn Products 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, Corn Products 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. Corn Products 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, Corn Products, and ExxonMobil 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. Corn Products 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 Corn Products 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 Corn

Products 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, Corn Products supports either option of postponing hearings until the Board issues a First or Second Notice in Subdocket C.

WHEREFORE, CORN PRODUCTS INTERNATIONAL, INC. 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,

CORN PRODUCTS INTERNATIONAL,
INC.,

Dated: July 8, 2011

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CORN:006/Fil/Corn Products Reply