

SEP 23 2011

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
September 23, 2011

IN THE MATTER OF:)
)
WATER QUALITY STANDARDS AND) R08-9 (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)

HEARING OFFICER ORDER

On August 16, 2011, the Board concluded the scheduled hearings in Subdocket C. At the close of hearing the participants discussed dates for submission of final pre-first notice comments in this Subdocket. The participants agreed that all comments must be filed by October 3, 2011. Any responses to the final comments must be filed by October 17, 2011. However, on September 22, 2011, the hearing officer received a "Joint Emergency Motion to Vacate Deadlines in Subdocket C and Set Date for Filing of Joint Status Report" (Mot.). The joint motion was filed by: 1) the Metropolitan Water Reclamation District of Greater Chicago; 2) Illinois Environmental Protection Agency; and 3) the Environmental Law and Policy Center, Friends of the Chicago River, Sierra Club Illinois Chapter, Natural Resources Defense Council, Openlands, Prairie Rivers Network, Alliance for the Great Lakes and Southeast Environmental Task Force (collectively movants).

The joint motion asks that the hearing officer vacate the current public comment deadlines so the movants can pursue a joint resolution of issues in both Subdocket C and D. Mot. at 1. Movants ask that the hearing officer set a date to file a joint status report regarding discussions at the end of the 60-day period. *Id.* Movants state that "without regard to what is said in the joint status report," the hearing officer should set a date for comments and responses no later than December 19, 2011. Mot. at 2. The movants met on September 19, 2011, to discuss a possible agreement on a "substantial number of issues" and the movants anticipate that if they are able to pursue discussions an agreement may be reached. *Id.*

The movants argue that they would be materially prejudiced and undue delay would result if the hearing officer allowed for the 14-day response to the motion allowed by Section 101.500(d) of the Board's rules. Mot. at 3, citing 35 Ill. Adm. Code 101.500(d). Movants further argue that this is so because October 3, 2011, the day comments are due, is less than 14 days from the filing of the motion. *Id.*

The emergency motion to vacate the comment deadlines is granted, in part. Material prejudice would result not only to movants but other participants if the 14-day response time in the Board's rules was allowed. The motion is granted to the extent that the deadlines of October 3, 2011, and October 17, 2011 are vacated. Further, a joint status report must be filed by movants on November 21, 2011, and the mailbox rule does not apply. *See* 35 Ill. Adm. Code

101.300. However, a new comment deadline will not be set until the status report is filed. The movants have indicated that they may move "further with regard to the schedule for filing comments" after the filing of the status report. Since a later motion is likely, it would be prudent to await the status report before setting a comment deadline. The comments will be due no sooner than 30 days after the filing of the status report and based on the content of the status report may be set later.

IT IS SO ORDERED.



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