

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

WATER QUALITY STANDARDS AND)
EFFLUENT LIMITATIONS FOR THE) R08-9(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: 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 **ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S RESPONSE TO THE UPDATED STATUS REPORT OF ILLINOIS EPA, METROPOLITAN WATER RECLAMATION DISTRICT, AND ENVIRONMENTAL GROUPS CONCERNING PROPOSED AQUATIC LIFE USE DESIGNATIONS**, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: January 17, 2012

By: /s/ Katherine D. Hodge
Katherine D. Hodge

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THIS FILING SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S RESPONSE TO THE UPDATED STATUS REPORT OF ILLINOIS EPA, METROPOLITAN WATER RECLAMATION DISTRICT, AND ENVIRONMENTAL GROUPS CONCERNING PROPOSED AQUATIC LIFE USE DESIGNATIONS upon:

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by depositing said documents in the United States Mail, postage prepaid, in Springfield,
Illinois on January 17, 2012.

/s/ Katherine D. Hodge

Katherine D. Hodge

IERG:001/Fil/NOF-COS -IERG Response to Updated Status Report

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

WATER QUALITY STANDARDS AND)
EFFLUENT LIMITATIONS FOR THE) R08-9(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)

**ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S RESPONSE TO
THE UPDATED STATUS REPORT OF ILLINOIS EPA, METROPOLITAN
WATER RECLAMATION DISTRICT, AND ENVIRONMENTAL
GROUPS CONCERNING PROPOSED AQUATIC LIFE USE DESIGNATIONS**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP
("IERG"), by and through its attorneys, Alec M. Davis and HODGE DWYER &
DRIVER, for its Response to the Updated Status Report of Illinois EPA, Metropolitan
Water Reclamation District, and Environmental Groups Concerning Proposed Aquatic
Life Use Designations states as follows:

I. BACKGROUND

1. On September 22, 2011, the Metropolitan Water Reclamation District of
Greater Chicago ("MWRDGC"), the Illinois Environmental Protection Agency ("Illinois
EPA"), and the Environmental Groups jointly moved the Hearing Officer to vacate
comment deadlines set in Subdocket C so they could pursue a joint resolution of issues in
Subdockets C and D. Joint Emergency Motion to Vacate Deadlines in Subdocket C and
Set Date for Filing of Joint Status Report, *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) (Ill.Pol.Control.Bd. Sept. 22, 2011) (motion hereinafter cited as "Joint Emergency

Motion” and rulemaking hereafter cited as “R08-9”). The three participants further requested that the Hearing Officer allow sixty days for them to pursue such a resolution and set a date at the end of this period to file a joint status report regarding the discussion. *Id.* at 1.

2. On September 23, 2011, the Hearing Officer granted the Joint Emergency Motion in part by vacating the comment deadlines and requiring a joint status report be filed by the three participants on November 21, 2011. Hearing Officer Order, R08-9(C) (Ill.Pol.Control.Bd. Sept. 23, 2011).

3. On November 21, 2011, MWRDGC, Illinois EPA, and the Environmental Groups filed a Joint Status Report, explaining that they “held several meetings at which significant progress was made toward defining the scope of negotiations and moving toward an agreement on Subdocket C and D.” Joint Status Report of Illinois EPA, Metropolitan Water Reclamation District, and Environmental Groups Concerning Resolution of Aquatic Life Use Issues, R08-9(C) at 1 (Ill.Pol.Control.Bd. Nov. 21, 2011) (hereinafter cited as “Joint Status Report”). They admitted that “[w]hile progress has not been as swift as Participants hoped, we are working towards streamlining the process by using subcommittees and limiting participation to key representatives.” *Id.* at 2. The Joint Status Report indicated that a dissolved oxygen subcommittee and a habitat improvement subcommittee had been created. *Id.* The three participants requested that the Board set a new deadline for filing a status report and/or submittal of any motions concerning subsequent steps. *Id.*

4. On November 30, 2011, the Hearing Officer granted an additional thirty days and set January 3, 2012 as the deadline for filing a new status report. Hearing Officer Order, R08-9(C) (Ill.Pol.Control.Bd. Nov. 30, 2011).

5. On January 3, 2012, Illinois EPA, MWRDGC, and the Environmental Groups filed an updated report. Updated Joint Status Report of Illinois EPA, Metropolitan Water Reclamation District, and Environmental Groups Concerning Proposed Aquatic Life Use Designations, R08-9(C) (Ill.Pol.Control.Bd. Jan. 3, 2012) (hereinafter cited as "Updated Joint Status Report"). In it, they explain that the three participants "held numerous meetings at which significant progress was made toward an agreement on portions of both Subdocket C and D." *Id.* at 1. They claim to have reached "tentative agreements regarding habitat restoration, variances and permit terms that will be needed to make workable and effective the agreements regarding designations and criteria." *Id.* Furthermore, they believe that they will be able to present positions agreed to by the participants in mid-February regarding proper designations of many segments in the Chicago Area Waterway System ("CAWS") and DO criteria for those segments. *Id.* at 2.

6. At the conclusion of the Updated Joint Status Report, the three participants ask the Illinois Pollution Control Board ("Board") to set February 17, 2012 as the last date for filing Post-Hearing Comments in Subdocket C before First Notice. *Id.* at 2.

7. This Response is timely because the Board has not ruled on requests made in the Updated Joint Status Report. Furthermore, although the Updated Joint Status Report is not captioned as a motion, the request for a deadline resembles a motion.

Pursuant to 35 Ill. Admin. Code § 101.500(d), the Board allows parties to file a response to a motion within fourteen days after service of the motion. This Response is filed within fourteen days after service of the Updated Joint Status Report.

8. IERG is a not-for-profit Illinois corporation affiliated with the Illinois Chamber of Commerce. IERG is composed of fifty-one (51) member companies that are regulated by governmental agencies that promulgate, administer or enforce environmental laws, regulations, rules or other policies. Several of IERG member companies have facilities located along, and discharging to, the waterways subject to this rulemaking. For the reasons discussed below, it is unclear at this time whether member companies will be impacted by agreements made between Illinois EPA, MWRDGC, and the Environmental Groups. If they are impacted, the scope of such an impact is unclear. As such, IERG offers this response to the Updated Joint Status Report.

II. RESPONSE TO UPDATED JOINT STATUS REPORT

9. In anticipation of reaching an agreement, Illinois EPA, MWRDGC, and the Environmental Groups request that the Board set February 17, 2012 as the last date for filing Post-Hearing Comments in Subdocket C. However, such a deadline would not allow other participants to determine how changes in proposals and positions, resulting from the agreements, affect other dischargers before submitting comments. Particularly troubling, such a deadline would preclude other participants, such as IERG and its affected member companies, from reviewing and commenting on such changes that could potentially impact them before the Board's First Notice in Subdocket C. IERG and its affected member companies would not have the opportunity to comment on last minute

changes to positions and proposals before the Board issues its First Notice, even if those changes affected them.

10. The scope of the agreements is unclear and past filings do not allow other participants, such as IERG and its affected member companies, to determine whether they will be affected by new positions and proposals of Illinois EPA, MWRDGC, and the Environmental Groups. In the Joint Emergency Motion, Illinois EPA, MWRDGC, and the Environmental Groups requested the opportunity to “pursue a possible joint resolution of issues in Subdockets C and D over the next 60 days.” Joint Emergency Motion at ¶3. In the Joint Status Report, the three participants explained that they made significant progress “toward defining the scope of negotiations and moving toward an agreement on Subdocket C and D.” Joint Status Report at 1. While they explained that subcommittees were created for dissolved oxygen and habitat improvement, they did not indicate whether negotiations were limited to these topics. *See Id.* at 2. In the Updated Joint Status Report, the three participants noted that “significant progress was made toward an agreement on portions of both Subdocket C and D.” Updated Joint Status Report at 1. Specifically, the group reached tentative agreements regarding “habitat restoration, variances and permit terms that will be needed to make workable and effective the agreements regarding designation and criteria.” *Id.* These descriptions do not provide any substantive detail as to the scope of the agreements. In fact, the scope of the agreements appears to be changing with each new update.

11. IERG and its affected member companies cannot determine who will be impacted by changes in proposals and positions made as a result of the agreements. If

dischargers are impacted by these changes, and the Board grants the request to set February 17, 2012 as the last date for filing Post-Hearing Comments, with the agreed-upon positions only to be submitted to the Board a few days earlier or on February 17th itself, those impacted dischargers would not be able to comment on the changes to positions and proposals presented by the three participants before the Board issues its First Notice in Subdocket C.

12. Rulemakings before the Board should give all participants the opportunity to provide meaningful testimony and/or comments. Eliminating the opportunity for participants to comment on the proposals and positions of others in the present circumstance, where proposals or positions may be substantially altered, restricts the voice of participants and prevents the Board from receiving a complete set of comments before First Notice.

13. IERG supports the concept of resolving matters amicably among participants. However, if the proposals or positions of Illinois EPA, MWRDGC, or the Environmental Groups are substantially altered, and/or result in an alternative proposal, other participants should have an opportunity to review, and if necessary, comment on any new proposals. .

III. CONCLUSION

14. Therefore, IERG asks the Board to deny the request to set February 17, 2012 as the last date for filing Post-Hearing Comments in Subdocket C. Instead, IERG urges the Board to establish a deadline for Illinois EPA, MWRDGC, and the Environmental Groups to file a report summarizing the scope of their agreements such

that the other participants may determine whether comments are appropriate or whether additional testimony on the subject of the agreements is necessary.

WHEREFORE, the ILLINOIS ENVIRONMENTAL REGULATORY GROUP respectively requests that the Board deny the request to set February 17, 2012 as the last date for filing Post-Hearing Comments in Subdocket C before First Notice and requests that the Board establish a deadline for Illinois EPA, MWRDGC, and the Environmental Groups to file a report summarizing the scope of their agreements such that the other participants may determine whether comments are appropriate or whether additional testimony on the subject of the agreements is necessary.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: January 17, 2012

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