

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

WATER QUALITY STANDARDS AND)
EFFLUENT LIMITATIONS FOR THE) R08-9 (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 **EXXONMOBIL OIL CORPORATION'S MOTION TO POSTPONE TESTIMONY IN SUBDOCKET D RELATED TO THE UPPER DRESDEN ISLAND POOL**, a copy of which is herewith served upon you.

Respectfully submitted,

EXXONMOBIL OIL CORPORATION,

Dated: October 11, 2013

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

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CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached EXXONMOBIL OIL CORPORATION'S MOTION TO POSTPONE TESTIMONY IN SUBDOCKET D RELATED TO THE UPPER DRESDEN ISLAND POOL upon:

Mr. John T. Therriault
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by depositing said documents in the United States Mail, postage prepaid, in Springfield,
Illinois on October 11, 2013.

/s/ Katherine D. Hodge
Katherine D. Hodge

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

WATER QUALITY STANDARDS AND)
EFFLUENT LIMITATIONS FOR THE) R08-9 (D)
CHICAGO AREA WATERWAY SYSTEM) (Rulemaking – Water)
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PROPOSED AMENDMENTS TO 35 Ill.)
Adm. Code Parts 301, 302, 303 and 304)

**EXXONMOBIL OIL CORPORATION'S MOTION TO
POSTPONE TESTIMONY IN SUBDOCKET D
RELATED TO THE UPPER DRESDEN ISLAND POOL**

NOW COMES EXXONMOBIL OIL CORPORATION ("ExxonMobil"), by and through its attorneys, HODGE DWYER & DRIVER, and pursuant to 35 Ill. Admin. Code § 101.500, states in support of this Motion to Postpone Testimony in Subdocket D Related to the Upper Dresden Island Pool:

I. BACKGROUND

1. On March 18, 2010, the Illinois Pollution Control Board ("Board") issued an order severing the R08-9 Rulemaking into Subdockets A, B, C, and D.¹ Subdocket C was "created to address the issues involving proposed aquatic life uses," and Subdocket D was "created to address the issues dealing with water quality standards and criteria which are necessary to meet the aquatic life use designations." *Id.* at 1. Therefore, testimony in Subdockets D is dependent on the Board's findings in Subdocket C.

2. ExxonMobil discharges into the Upper Dresden Island Pool ("UDIP"). In its initial proposal in 2007, the Illinois Environmental Protection Agency ("Illinois EPA") proposed to designate the UDIP as Upper Dresden Island Pool Aquatic Life Use Waters.

¹ Board Order, *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 (Ill.Pol.Control.Bd. Mar. 18, 2010) (rulemaking hereafter cited as "R08-9").

Proposed 35 Ill. Admin. Code § 303.237, R08-9 (Ill.Pol.Control.Bd. Oct. 26, 2007). At the time of the initial proposal, Illinois EPA proposed that UDIP waters comply with the proposed water quality standards in Proposed 35 Ill. Admin. Code Part 302, Subpart D, which included UDIP-specific provisions for dissolved oxygen and temperature. *Id.*

3. ExxonMobil filed pre-first notice comments in Subdocket C on the proposed aquatic life use designation for the UDIP. *See* Pre-First Notice Comments of ExxonMobil Oil Corporation on the Proposed Aquatic Life Use Designation for the Upper Dresden Island Pool, R08-9(C) (March 5, 2012); *see also* ExxonMobil Oil Corporation's Response to Pre-First Notice Comments, R08-9(C) (March 19, 2012).

4. In its First Notice Opinion and Order in Subdocket C, the Board proposed to designate the UDIP as General Use, but agreed to "examine water quality standards for UDIP in Subdocket D to ensure that the UDIP can meet the water quality standards applicable under the General Use standard." First Notice Opinion and Order, R08-9(C) at 221 (Ill.Pol.Control.Bd. Feb. 21, 2013) (hereinafter "Subdocket C First Notice"). In addition, the Board noted that "in the area of temperature, water quality standards may need to be adapted for the UDIP." *Id.*

5. ExxonMobil filed comments following the Board's Subdocket C First Notice. *See* ExxonMobil Oil Corporation's First Notice Comments, R08-9(C) (July 1, 2013) (hereinafter cited as "Subdocket C First Notice Comments").

6. In response to the Board's Subdocket C First Notice, Illinois EPA amended its initial regulatory proposal to remove the proposed Upper Dresden Island Pool Use and proposed that the UDIP be placed into the General Use category. Prefiled Testimony of Scott Twait, R08-9(D) at 2 (Ill.Pol.Control.Bd. May 24, 2013). In addition,

Illinois EPA removed proposed water quality standards at Part 302, Subpart D for UDIP waters.

7. Therefore, at hearing in Subdocket D, participants questioned the Illinois EPA witness, Scott Twait, about how General Use standards would apply to the UDIP and how Illinois EPA planned to implement the standards. At hearing, Mr. Twait confirmed that it was Illinois EPA's intention for the UDIP to be treated like other General Use waters once the designation is adopted, with the exception of the bacteria standard. July 29, 2013 Hearing Transcript, R08-9(D) at 14 (Ill.Pol.Control.Bd. July 29, 2013).

8. On October 1, 2013, the Hearing Officer hosted a prehearing video and teleconference to set Subdocket D deadlines for pre-filed testimony and pre-filed questions, and to set additional hearing dates. The Hearing Officer established November 15, 2013 as the deadline for pre-filed testimony, December 2, 2013 as the deadline for pre-filed questions, and December 17-19, 2013 as dates for hearings. At that time, only ExxonMobil and Citgo Petroleum Corporation and PDV Midwest, LLC expressed their intentions to pre-file testimony and present testimony at these Subdocket D hearings.

9. Following the prehearing video and teleconference, the board issued its Second Notice Opinion and Order in Subdocket C. In it, the Board proposes to designate the UDIP as Upper Dresden Island Pool Aquatic Life Use. Second Notice Opinion and Order, R08-9(C) at 42 (Ill.Pol.Control.Bd. Oct. 3, 2013) (hereinafter "Subdocket C Second Notice"). The Board proposes that UDIP waters meet the water quality standards in Part 302, Subpart D.

10. The Board will accept comments on its Subdocket C Second Notice until November 4, 2013. *Id.* at 1.

II. THE BOARD SHOULD POSTPONE TESTIMONY IN SUBDOCKET D RELATED TO THE UDIP SINCE THERE IS NO UDIP PROPOSAL BEFORE THE BOARD AND THE BOARD'S INTENT IN SUBDOCKET C IS UNCLEAR.

11. In its Subdocket C First Notice Comments, ExxonMobil objected to the classification of the UDIP as a General Use waterway and discussed the complexities associated with applying General Use water quality standards to the UDIP. *See* Subdocket C First Notice Comments. ExxonMobil appreciates the Board's consideration of its comments on these issues and embraces the Board's apparent agreement with certain concerns raised by ExxonMobil. However, this recent shift in Subdocket C creates a short-term logistical problem for preparing testimony in Subdocket D related to UDIP water quality standards.

12. There is currently no proposal in Subdocket D that addresses water quality standards applicable to the UDIP. Illinois EPA's most recent proposal, incorporating General Use standards for the UDIP, appears to be inconsistent with the Board's Subdocket C Second Notice. Neither Illinois EPA nor any other participants have introduced a proposal that incorporates the Board's Subdocket C Second Notice into proposed water quality standards for the UDIP. There simply has not been enough time.

13. It is not clear whether the Board's proposed applicability of water quality standards in Part 302, Subpart D to the UDIP, as proposed in its Subdocket C Second Notice: 1) was proposed as a temporary bridge until more specific UDIP water quality standards are proposed in Subdocket D; 2) should prompt Illinois EPA to re-propose its initial UDIP-specific water quality standard provisions contained in the initially proposed

regulations in 2007; or 3) should prompt Illinois EPA or other participants to propose entirely new UDIP water quality standards.

14. While the Board will be accepting comments to its Subdocket C Second Notice, it is unlikely that responses to those comments from the Board will come before pre-filed testimony is due in Subdocket D.

15. It is not clear how Illinois EPA interprets the Board's Subdocket C Second Notice. Illinois EPA's witness, Scott Twait, was questioned about Illinois EPA's interpretation of the Board's Subdocket C First Notice and how General Use water quality standards will apply to the UDIP. This testimony now appears to be superfluous given the Board's Subdocket C Second Notice. Participants do not know how Illinois EPA interprets the Board's Subdocket C Second Notice or if Illinois EPA plans to introduce an amended proposal for Part 302, Subpart D.

16. Participants cannot testify about proposed water quality standards for the UDIP because none exist at this time. Without at least some direction from the Board or an amended proposal from Illinois EPA, participants will be unable to adequately present testimony to the Board.

17. Previous testimony from Illinois EPA witness Scott Twait about UDIP water quality standards addressed the Board's Subdocket C Second Notice and was limited to the applicability of General Use Standards. However, circumstances have changed, and Illinois EPA's proposal is no longer consistent with the Board's findings in Subdocket C. It is important to hear from Illinois EPA about its interpretation of the Subdocket C Second Notice and any additional amendments to its proposal in response to the Subdocket C Second Notice.

18. If Illinois EPA does not amend its proposal, there is no proposal to address UDIP water quality standards, and thus, no basis for holding hearings on water quality standards for the UDIP.

19. Accordingly, it is premature to solicit testimony related to water quality standards for the UDIP in Subdocket D.

III. TESTIMONY REGARDING WATER QUALITY STANDARDS APPLICABLE TO THE UDIP SHOULD BE SOLICITED FOLLOWING TESTIMONY BY ILLINOIS EPA OR CLARIFICATION BY THE BOARD.

20. ExxonMobil and other dischargers must know how to direct their testimony and questions. As described above, currently there is no proposal before the Board that addresses UDIP water quality standards and no adequate direction from the Board about what water quality standards are appropriate for the UDIP. Therefore, ExxonMobil is not sure whether to draft testimony that addresses Illinois EPA's initial proposal from 2007, Illinois EPA's amended proposal from May 2013, or an entirely new and unknown proposal.

21. The Board's proposed use designation for the UDIP has changed since Illinois EPA presented testimony. Thus, it may be appropriate for Illinois EPA to supplement its amended proposal, introduce additional testimony, and be available for additional questioning. At the very least, ExxonMobil believes it should hear from Illinois EPA on the record about any revisions to its amended proposal.

22. The best use of the Board's valuable resources would be to solicit testimony on water quality standards after an amended proposal is presented to the Board, after the Board clarifies its intentions in Subdocket C, or after both.

23. The Board has already held hearings in Subdocket D based on a Subdocket C proposal that has changed since those hearings. Therefore, some of the issues discussed during those hearings are now irrelevant. ExxonMobil hopes to avoid such unnecessary testimony in the future.

24. ExxonMobil will seek clarity of the Board's intentions as they relate to water quality standards for the UDIP in comments to Subdocket C Second Notice.

25. Only after further information is obtained from Illinois EPA or the Board, or both, will ExxonMobil have enough information to adequately draft focused testimony on proposed water quality standards for the UDIP.

26. ExxonMobil sees no reason at this time to delay testimony that does not address water quality standards in the UDIP.

WHEREFORE, EXXONMOBIL OIL CORPORATION respectfully requests that the Board postpone its request for pre-filed testimony, its proposed pre-filed question deadline, and hearing dates as they relate to water quality standards for the UDIP.

Respectfully submitted,

EXXONMOBIL OIL CORPORATION,

By: /s/ Katherine D. Hodge
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Dated: October 11, 2013

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