

ILLINOIS POLLUTION CONTROL BOARD

November 7, 2013

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

ORDER OF THE BOARD (by D. Glosser):

On October 11, 2013, ExxonMobil Oil Corporation (ExxonMobil) filed a motion to postpone the pre-filing of testimony for hearings scheduled on December 17, 18 and 19, 2013. No responses to the motion were received; although the Illinois Environmental Protection Agency (IEPA) did comment on the motion when filing comments on the Board's proposed second notice opinion and order in Subdocket C (*see* PC 1390).

On October 1, 2013, a prehearing conference was held to establish dates for hearings in this subdocket and dates for the pre-filing of testimony. *See* Hearing Officer Order (Oct. 9, 2013). The parties agreed to hearings on December 17, 18 and 19, 2013, with pre-filing of testimony due by November 15, 2013. *Id.* On October 3, 2013, the Board adopted a proposed second notice in Subdocket C. *See* Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303, and 304, R08-9(C) (Oct. 3, 2013). In that opinion and order, the Board revisited its decision moving the Upper Dresden Island Pool (UDIP) to General Use. In the proposed second notice, the Board proposed a UDIP aquatic life use rather than designating UDIP as General Use.

ExxonMobil argues that "there is currently no proposal in Subdocket D that addresses water quality standard applicable to the UDIP." Mot. at 4. ExxonMobil notes that this is so because the IEPA "amended its initial regulatory proposal to remove the proposed Upper Dresden Island Pool Use and proposed that UDIP" be placed into General Use. Mot. at 2. ExxonMobil states that participants questioned the IEPA witness at hearing regarding its intention to treat UDIP as a General Use water. Mot. at 3. ExxonMobil maintains that the Board's shift in Subdocket C "creates a short-term logistical problem for preparing testimony in Subdocket D". Mot. at 4. Specifically ExxonMobil seeks clarification as to 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 IEPA to re-propose its initial UDIP-specific water quality standard provisions contained in the initially regulations in 2007; or 3) should prompt IEPA or other participants to propose entirely new UDIP water quality standards. Mot. at 4-5.

ExxonMobil argues that it is not clear how IEPA interprets the Board's second notice, and while the Board is accepting comments on the proposed second notice, responses will not likely be available until after prefiled testimony is due. Mot. at 5. ExxonMobil claims that participants cannot testify about proposed water quality standards for UDIP because none exist at this time and without some direction from the Board, participants will be unable to present meaningful testimony. *Id.* ExxonMobil opines that the best use of the Board's resources would be to solicit testimony after an amended proposal is filed or after the Board clarifies its intentions in Subdocket C. Mot. at 6.

The Board is unconvinced that a delay in hearings in Subdocket D is necessitated by the Board's actions in Subdocket C. Although IEPA filed a motion to amend its proposal concerning water quality standards for the Chicago Area Waterways System (CAWS) and the Lower Des Plaines River (LDPR), which included the UDIP, the Board has not yet ruled on the motion. IEPA presented testimony in support of the amendment at two days of hearing and extensive testimony on its original proposal. The original proposal by IEPA has standards for the UDIP use designation. Therefore, the record before the Board includes testimony concerning both the amended proposal and the original proposal. As the Board has proposed that the UDIP be given its own designation, the Board will examine the entire record, both the original proposal and relevant discussions on the amended proposal, in making its determination.

Because the due date for prefiling of testimony is just over one week from today's order, the Board will grant the motion to ensure that testimony can be prepared. The Board directs the parties to prefile all testimony by November 22, 2013 and prefiled questions by December 9, 2013. The mail box rule does not apply to these filings. *See* 35 Ill. Adm. Code 101.300.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 7, 2013, by a vote of 4-0.



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John T. Therriault, Clerk  
Illinois Pollution Control Board