

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'S RESPONSE TO PRE-FIRST NOTICE COMMENTS**, a copy of which is herewith served upon you.

Respectfully submitted,

EXXONMOBIL OIL CORPORATION,

Dated: May 14, 2014

By: /s/ Matthew C. Read

Matthew C. Read

Katherine D. Hodge
Matthew C. Read
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

CERTIFICATE OF SERVICE

I, Matthew C. Read, the undersigned, hereby certify that I have served the attached **EXXONMOBIL'S RESPONSE TO PRE-FIRST NOTICE COMMENTS** upon:

Mr. John T. Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

via electronic mail on May 14, 2014; and upon:

Ms. Marie E. Tipsord
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Deborah J. Williams, Esq.
Stefanie N. Diers, Esq.
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Matthew J. Dunn, Esq.
Ms. Susan Hedman
Thomas H. Shepherd, Esq.
Environmental Enforcement Division
Office of the Attorney General
State of Illinois
69 West Washington, 18th Floor
Chicago, Illinois 60602

Frederick M. Feldman, Esq.
Ronald M. Hill, Esq.
Margaret T. Conway
Metropolitan Water Reclamation District
100 East Erie Street
Chicago, Illinois 60611

Jeffrey C. Fort, Esq.
Irina Dashevsky
Dentons US LLP
233 South Wacker Drive, Suite 7800
Chicago, Illinois 60606-6404

Susan Charles, Esq.
Thomas W. Dimond, Esq.
Ice Miller LLP
200 West Madison, Suite 3500
Chicago, Illinois 60606

Claire A. Manning, Esq.
Brown, Hay & Stephens, LLP
700 First Mercantile Bank Building
205 South Fifth Street
Post Office Box 2459
Springfield, Illinois 62705-2459

Mr. Bernard Sawyer
Mr. Thomas Granato
Metropolitan Water Reclamation District
6001 West Pershing Road
Cicero, Illinois 60650-4112

Mr. Robert VanGyseghem
City of Geneva
1800 South Street

Ms. Lisa Frede
Chemical Industry Council of Illinois
1400 East Touhy Avenue, Suite 110

Geneva, Illinois 60134-2203

Jerry Paulsen, Esq.
Cindy Skrukud
Environmental Defenders of
McHenry County
110 S. Johnson Street, Suite 106
Woodstock, Illinois 60098

Mr. James L. Daugherty
Thorn Creek Basin Sanitary District
700 West End Avenue
Chicago Heights, Illinois 60411

Mr. Keith I. Harley, Esq.
Ms. Elizabeth Schenkler
Chicago Legal Clinic, Inc.
211 West Wacker Drive, Suite 750
Chicago, Illinois 60606

Frederick D. Keady, P.E.
Vermilion Coal Company
1979 Johns Drive
Glenview, Illinois 60025

W.C. Blanton, Esq.
Husch Blackwell LLP
4801 Main Street
Suite 1000
Kansas City, Missouri 64112

Mr. James E. Eggen
City of Joliet, Department of Public
Work and Utilities
150 W. Jefferson Street
Joliet, Illinois 60432

Mr. Jack Darin
Sierra Club
70 East Lake Street, Suite 1500
Chicago, Illinois 60601-7447

Mr. Bob Carter
Bloomington Normal Water
Reclamation District

Des Plaines, Illinois 60019-3338

Fredric P. Andes, Esq.
Erika K. Powers, Esq.
Barnes & Thornburg
1 North Wacker Drive, Suite 4400
Chicago, Illinois 60606

Erin L. Brooks, Esq.
Bryan Cave LLP
211 North Broadway, Ste. 3600
St. Louis, Missouri 63102

Mr. Mark Schultz
Navy Facilities and
Engineering Command
201 Decatur Avenue, Bldg. 1A
Great Lakes, Illinois 60088-2801

Ms. Kay Anderson
American Bottoms RWTF
One American Bottoms Road
Sauget, Illinois 62201

Jessica Dexter, Esq.
Environmental Law & Policy Center
35 East Wacker, Suite 1600
Chicago, Illinois 60601

Ms. Cathy Hudzik
City of Chicago – Mayor's Office
of Intergovernmental Affairs
121 North LaSalle Street
City Hall – Room 406
Chicago, Illinois 60602

Dr. Thomas J. Murphy
2325 North Clifton Street
Chicago, Illinois 60614

Ms. Olivia Dorothy
Office of Lt. Governor
Room 414 State House

Post Office Box 3307
Bloomington, Illinois 61702-3307

Springfield, Illinois 62706

Mr. Kenneth W. Liss
Andrews Environmental Engineering
3300 Ginger Creek Drive
Springfield, Illinois 62711

Ms. Vicky McKinley
Evanston Environment Board
223 Grey Avenue
Evanston, Illinois 60202

Susan M. Franzetti, Esq.
Kristen Laughridge Gale, Esq.
Nijman Franzetti LLP
10 South LaSalle Street, Suite 3600
Chicago, Illinois 60603

Mr. Irwin Polls
Ecological Monitoring and Assessment
3206 Maple Leaf Drive
Glenview, Illinois 60025

Stacy Meyers-Glen, Esq.
Openlands
25 East Washington Street, Suite 1650
Chicago, Illinois 60602

Mr. Lyman C. Welch
Alliance for the Great Lakes
17 N. State Street, Suite 1390
Chicago, Illinois 60602

Mr. James Huff
Huff & Huff, Inc.
915 Harger Road, Suite 330
Oak Brook, Illinois 60523

Ann Alexander, Esq.
Natural Resources Defense Council
2 North Riverside Plaza, Suite 2250
Chicago, Illinois 60606

Roy M. Harsch, Esq.
Drinker Biddle & Reath
191 North Wacker Drive, Suite 3700
Chicago, Illinois 60606-1698

Albert Ettinger, Esq.
53 West Jackson
Suite 1664
Chicago, Illinois 60604

Jared Policicchio, Esq.
Chicago Department of Law
30 N. LaSalle Street
Suite 900
Chicago, Illinois 60602

by depositing said documents in the United States Mail, postage prepaid, in Springfield,
Illinois on May 14, 2014.

/s/ Matthew C. Read
Matthew C. Read

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WATER QUALITY STANDARDS AND)	
EFFLUENT LIMITATIONS FOR THE)	R08-9 (D)
CHICAGO AREA WATERWAY SYSTEM)	(Rulemaking – Water)
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EXXONMOBIL'S RESPONSE TO PRE-FIRST NOTICE COMMENTS

NOW COMES EXXONMOBIL OIL CORPORATION (“ExxonMobil”), by and through its attorneys, HODGE DWYER & DRIVER, and pursuant to the March 26, 2014 Hearing Officer Order, submits the following Response to Pre-First Notice Comments on Illinois Environmental Protection Agency’s (“Illinois EPA” or “Agency”) proposed water quality standards for the Upper Dresden Island Pool (“UDIP”).

I. INTRODUCTION

ExxonMobil testified at hearing regarding conditions in the UDIP that warrant consideration when adopting water quality standards and regulatory relief mechanisms in Subdocket D.¹ In particular, ExxonMobil presented testimony regarding impacts from road deicing on chloride levels in the UDIP in winter months and the need to adopt a standard or an appropriate relief mechanism that recognizes this activity. *Id.* at 7-12. ExxonMobil also addressed the feasibility and implementation of Illinois EPA’s proposed standard for mercury in the UDIP and the sources of mercury that impact the UDIP. *Id.* at 12-18. In doing so, ExxonMobil presented a streamlined relief mechanism for implementing a new mercury standard. *Id.* at 17-18, Exhibit 1. Next, ExxonMobil

¹ ExxonMobil Pre-First Notice Comments, *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(D) (Ill.Pol.Control.Bd. Apr. 30, 2014) (rulemaking hereinafter cited as “R08-9”).

presented testimony regarding the appropriate proposed thermal water quality standards and the need for a regulatory relief mechanism to address large upstream thermal dischargers before requiring downstream dischargers to comply. *Id.* at 18-32. Finally, ExxonMobil described the need for clear access to regulatory relief and regulatory flexibility for UDIP dischargers. *Id.* at 32-33. Other comments addressed many of these same issues in Pre-First Notice Comments and, thus, warrant a response from ExxonMobil.

II. EXXONMOBIL ENDORSES ILLINOIS EPA'S APPROACH TO SETTING A CHLORIDE STANDARD

Illinois EPA noted that it has not resolved outstanding issues raised by the United States Environmental Protection Agency ("USEPA") related to chloride and that it was recently informed that a new chloride criterion is forthcoming.² Illinois EPA also noted that it expects violations of the proposed chloride standard during winter months. *Id.* at 29. Accordingly, Illinois EPA continues to work with USEPA on an approvable chloride water quality standard and an approvable variance that would be water body specific and would meet the requirements of USEPA's proposed Clarifications Rule. *Id.* at 30-31. Illinois EPA is also in discussions with USEPA on a provision that would incorporate best management practices in the winter. *Id.* at 31. Given the substantial uncertainty, Illinois EPA encourages the Board to delay decision on a chloride standard or open another subdocket. *Id.* In the meantime, Illinois EPA proposes a 500 mg/L chloride water quality standard for non-winter months, which would be defined as May through November. *Id.*

² Pre-First Notice Comments of the Illinois Environmental Protection Agency for Subdocket D at 28-9, R08-9(D) (Ill.Pol.Control.Bd. Apr. 30, 2014) ("Illinois EPA Pre-First Notice Comments").

ExxonMobil supports Illinois EPA's approach to setting a water quality standard for chloride. Illinois EPA's concerns regarding chloride are similar to those raised by ExxonMobil in its pre-first notice comments. Road deicing, a non-point source chloride contributor, is the overwhelming cause of elevated chloride levels in the UDIP during winter months. Elevated levels of chloride in waterways are present for all dischargers during the winter months, not just ExxonMobil. Consistent with Illinois EPA's comments, and as documented in ExxonMobil's Pre-First Notice Comments, ExxonMobil continues to believe that a new subdocket is the most efficient way to develop a new approvable chloride standard.³ A new subdocket would allow stakeholders such as ExxonMobil to continue to effectively provide feedback on quickly developing issues. But ExxonMobil also recognizes the Board's concern about the standard that would apply before a new chloride subdocket is complete.⁴ Therefore, ExxonMobil supports Illinois EPA's initial seasonal standard for the months of May through November. As noted by ExxonMobil witness Lial Tischler, a seasonal standard is scientifically justifiable and could work in concert with other salt reduction activities in the winter. *Id.* at 11.

III. ILLINOIS EPA PROVIDES NO JUSTIFICATION FOR A COLD SHOCK PROVISION

ExxonMobil continues to disagree with Illinois EPA's insistence on including a cold shock provision in its proposed water quality standards. Illinois EPA explained in its Pre-First Notice Comments that USEPA thought Illinois EPA should protect aquatic life from cold shock despite Illinois EPA not being aware of trouble with cold shock

³ See ExxonMobil Pre-First Notice Comments at 4-6, R08-9(D) (Ill.Pol.Control.Bd. Apr. 30, 2014).

⁴ Board Order, R08-9(D) (Ill.Pol.Control.Bd. Mar. 6, 2014).

situations in the system.⁵ Illinois EPA continues to provide no justification for a cold shock provision or any explanation how permit writers would incorporate such a provision into a permit.

Further, any new cold shock provision adopted by the Board and incorporated into a permit would need to be addressed by a discharger's compliance program. Thus, if the cold shock provision is adopted by the Board, numerous dischargers, including those with minimal thermal impact, would need to prepare compliance programs and implement procedures and practices for a regulatory provision to prevent a phenomenon that has never been witnessed in the State of Illinois. Permittees would also have additional permit application and recordkeeping requirements, and Illinois EPA would be required to perform additional regulatory analysis for each NPDES permit. These additional obligations constitute unnecessary regulatory and administrative burdens to the discharger and Illinois EPA. Accordingly, the Board should reject Illinois EPA's narrative cold shock provision. If the Board does not reject the cold shock provision, it should limit its applicability to large thermal sources.⁶

IV. EXXONMOBIL SUPPORTS MIDWEST GENERATION'S SUGGESTION TO DELAY THE EFFECTIVENESS OF ANY REVISED THERMAL STANDARDS

Midwest Generation suggests that the Board provide for a delayed effective date for any revised thermal standards for the Chicago Sanitary and Ship Canal and UDIP due to the uncertainty regarding the demonstration necessary to obtain a water quality

⁵ Illinois EPA Pre-First Notice Comments at 17.

⁶ ExxonMobil Pre-First Notice Comments at 31-32.

standard variance.⁷ Midwest Generation explains that such a delay in effectiveness would allow time to clarify variance criteria and determine the necessary demonstration to qualify for a water quality standard variance. *Id.* This would give dischargers the opportunity to pursue necessary variance relief without “being in potential jeopardy.” *Id.*

In Pre-First Notice Comments, ExxonMobil described testimony from Mr. Twait and Mr. Tischler that explained potential impacts on downstream dischargers if new, stricter thermal standards were adopted by the Board and applied immediately upon adoption.⁸ In particular, small downstream dischargers may lose mixing zones if upstream waters are not meeting water quality standards due to large upstream dischargers. *Id.* at 24. Mr. Twait acknowledged that such a result would be unfair or unwise and suggested a cascading approach to permitting. *Id.* at 25. But that approach is unclear and imperfect given Illinois EPA’s permitting process. *Id.* Delaying the effectiveness of any new standard would allow large thermal dischargers such as Midwest Generation time to attain compliance or seek the appropriate regulatory relief. As suggested by ExxonMobil, a delay could also be coupled with a demonstration by larger thermal dischargers similar to that in the General Use Thermal Standards at 35 Ill. Admin. Code § 302.211(f). *Id.* at 23-26. Until such a demonstration is completed, smaller thermal dischargers could continue to comply with previously permitted limits. *Id.* at 26. By combining both a delayed effective date and a demonstration by larger dischargers, the Board would be protecting smaller dischargers that are not contributing

⁷ Midwest Generation’s Post-Hearing Comments at 49, R08-9(D) (Ill.Pol.Control.Bd. Apr. 30, 2014).

⁸ ExxonMobil Pre-First Notice Comments at 22-27.

appreciably to elevated temperatures in the UDIP and providing a path for larger dischargers to attain compliance or relief.

V. MERCURY HUMAN HEALTH CRITERION

USEPA commented on Illinois EPA's proposed water column criterion of 12 ng/L for total mercury.⁹ USEPA explained that it previously recommended that Illinois EPA either adopt criteria consistent with the fish-tissue based methyl-mercury criterion set forth in USEPA's January 2001 guidance document and/or translate the methyl-mercury criterion into a water column criterion. *Id.* If Illinois adopts the proposed 12 ng/L water quality standard, USEPA will review its protectiveness and scientific defensibility pursuant to 40 C.F.R. § 131.11(b)(1) in light of its April 2010 guidance for implementing the January 2001 methyl-mercury water quality criterion. *Id.* USEPA noted that the preferred methods for translating fish tissue concentration to a water column concentration are to use site-specific bioaccumulation factors ("BAF") and conversion factors derived from field studies or to use a scientifically defensible bioaccumulation model. *Id.* USEPA explained that Illinois EPA indicated there are no entities that collect low-level mercury samples in ambient water from the area, so a site-specific BAF does not appear to be possible at this time. *Id.* USEPA went on to explain that the April 2010 guidance presents another method for deriving water column criterion from the 2001 methyl-mercury criterion using USEPA's draft national BAFs and draft national conversion factors. *Id.* USEPA cautioned, however, that using such information may result in criteria that are either underprotective or overprotective of human health uses. *Id.* at 4.

⁹ Letter from Tinka G. Hyde, Director, Water Division, USEPA to John Therriault, Illinois Pollution Control Board, Enclosure 1 at 3 (Ill.Pol.Control.Bd. Apr. 30, 2014).

Notably, USEPA reviewed the fish tissue data available from the Chicago Area Waterway System (“CAWS”) and Lower Des Plaines River (“LDPR”) sites provided by Illinois EPA and found that fish tissue levels are 0.21 mg/kg or less, based upon 141 samples collected. *Id.* This is lower than USEPA’s 304(e) criterion guidance value for methyl-mercury fish tissue concentrations of 0.3 mg/kg. *Id.* The average fish tissue concentration for the fish sampled in the CAWS and LDPR is 0.07 mg/kg. *Id.*

USEPA’s analysis of the data provided by Illinois EPA suggests that fish tissue data for these waterways do not indicate the uses of the waterways are impaired by mercury in fish tissue. Therefore, ExxonMobil suggests that Illinois EPA remove the UDIP from the 303(d) list with respect to fish tissue mercury levels.

VI. CONCLUSION

ExxonMobil appreciates the opportunity to provide these responses to comments, and it respectfully requests that the Board consider its responses in adopting revised water quality standards and incorporate ExxonMobil’s suggested revisions.

Respectfully submitted,

EXXONMOBIL OIL CORPORATION,

Dated: May 14, 2014

By: /s/ Matthew C. Read
Matthew C. Read

Katherine D. Hodge
Matthew C. Read
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

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