

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
WATER QUALITY STANDARDS AND)	
EFFLUENT LIMITATIONS FOR THE)	
CHICAGO AREA WATERWAYS SYSTEM)	R08-09 Subdocket D
(CAWS) AND THE LOWER DES PLAINES)	(Rulemaking- Water)
RIVER: PROPOSED AMENDMENTS TO)	
35 Ill. Adm. Code Parts 301, 302, 303 and 304)	
(Aquatic Life Use Designations))	

NOTICE OF FILING

To:

John Therriault, Clerk
 Illinois Pollution Control Board
 James R. Thompson Center
 100 West Randolph St., Suite 11-500
 Chicago, IL 60601

Marie Tipsord, Hearing Officer
 Illinois Pollution Control Board
 James R. Thompson Center
 100 West Randolph St, Suite 11-500
 Chicago, IL 60601

Persons included on the attached
SERVICE LIST

PLEASE TAKE NOTICE that on June 1, 2015 I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, **Responsive Comments of the Environmental Groups Regarding Public Comment on Temperature**, a copy of which is attached hereto and herewith served upon you.

Respectfully Submitted,



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DATED: June 1, 2015

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**RESPONSIVE COMMENTS OF ENVIRONMENTAL GROUPS
REGARDING PUBLIC COMMENT ON TEMPERATURE**

These comments are in response to the Illinois Pollution Control Board's Order of May 21, 2015 seeking additional public comment on temperature. The Environmental Groups, (Sierra Club, Prairie Rivers Network, Natural Resources Defense Council, Openlands, Friends of the Chicago River and the Environmental Law & Policy Center) provide the following additional comments on the temperature standards. We oppose any attempts to weaken the temperature standards found in the Illinois Pollution Control Board's (Board or IPCB) Proposed Rule, now on Second Notice. Likewise we are opposed to any further delay in the implementation of the effective date of the updated temperature standards beyond the three years from the effective date of the rules that the Board has proposed in its Second Notice.

The Board's Proposed Rule already represents a compromise of the input of the parties who have participated in the eight years of rulemaking process at the IPCB. Many of the parties to this rulemaking were also involved in the IEPA-led Use Attainability Analysis efforts of seven years which led up to this rulemaking.

The Environmental Groups and IEPA had proposed temperature standards to protect aquatic life in the CAWS and LDPR that were more stringent than the current thermal standards for General Use waters. Midwest Generation has proposed alternative standards based on Petition of Commonwealth Edison Company for Adjusted Standard from 35 Ill. Adm. Code 302.211(d) and (e). AS 96-10 (Oct. 3, 1996) that were less protective than the IEPA proposal. The Board instead proposed General Use temperature standards for all aquatic life use designations in the CAWS and LDPR. The Board felt it was premature to adopt more stringent standards for the CAWS and LDPR before the standards for General Use Waters were addressed. The Board was unconvinced that the standards proposed by Midwest Generation (MWG) would be protective of aquatic life expected to be in the

UDIP waters, noting that MWG's proposed standards were based on data and work from 20 years ago.

Thus, the Board's Proposed Rule to apply the General Use temperature standards for all aquatic life use designations in the CAWS and LDPR is a reasonable compromise and is based on standards that were approved by US EPA in the past.

In its September 18, 2014 First-Notice Opinion and Order, the Board proposed that the effective date of the temperature standards be 18 months after the effective date of the rules. In its comments on the First Notice, Midwest Generation asked for a three-year delay to allow for resolution of compliance issues facing thermal dischargers. The Environmental Groups argued against any further delay:

It is unclear that even the delay that the Board allowed is now needed. While the record before the Board at the time it rendered its First Notice decision indicated that thermal dischargers to the CAWS and LDPR might need some type of short-term or long-term regulatory relief (First Notice Order at 216), the record is no longer clear that any such relief is needed. As MWG writes, "NRG's plans for the Will County and Joliet stations, all of which utilized once-through cooling water to operate, will likely reduce their thermal discharges." (MWG First Notice Comments at 3.) (Responsive Comments of Environmental Groups Regarding First Notice at 6.)

In considering comments received by the Joint Committee on Administrative Rules, we strongly urge that the Board adheres to its initial compromise of extending the effective date of the temperature standards until three years after the effective date of the rules. This is the delay that Midwest Generation/NRG requested in November 2014. Now NRG is attempting a second bite at the apple, requesting even more changes to the rule outside of the Board's public process. There is no need to further delay the establishment of updated temperature standards to protect the aquatic life in the CAWS and LDPR.

We also want to note that the details of NRG's back-room attempt to change the PCB's rule are not known to the public. If there are other changes proposed to the rule beyond the delay of implementation, this public comment announcement regarding "temperature" has not given Environmental Groups the detail necessary to respond to any such proposals. Due process and fairness require that no such changes be made unless they are presented for review and comment by all interested parties. Consequently, Environmental Groups are opposed to any changes to the temperature standards that have not been vetted by the Board in the broad light of day.

Respectfully,

A handwritten signature in black ink, appearing to read 'JDexter', with a long, sweeping horizontal stroke extending to the right.

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CERTIFICATE OF SERVICE

I, Jessica Dexter, hereby certify that I have served the attached **Responsive Comments of the Environmental Groups Regarding Public Comment on Temperature** upon the below service list via the United States Mail, postage prepaid, in Chicago, Illinois on June 1, 2015.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JDexter', with a long horizontal flourish extending to the right.

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