

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**NOTICE OF FILING**

To: John Therriault, Clerk  
Marie Tipsord, Hearing Officer  
James R. Thompson Center  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601  
(VIA electronic mail and First Class Mail)

**SEE ATTACHED SERVICE LIST**

PLEASE TAKE NOTICE that I have filed electronically today with the hearing officer ILLINOIS EPA'S MOTION FOR CLARIFICATION AND STAY, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:/s/Stefanie N. Diers  
Stefanie N. Diers  
Assistant Counsel

Dated: August 14, 2015  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 )  
WATER QUALITY STANDARDS AND )  
EFFLUENT LIMITATIONS FOR THE ) R08-09 (Sub-Docket 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 )  
 )

**MOTION FOR CLARIFICATION AND STAY**

The Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by and through its attorney, hereby submits its Motion For Clarification with respect to the effective date of the new temperature and chloride water quality standards adopted in R08-9 Subdocket D. In support thereof, the Illinois EPA states as follows:

- 1) On June 18, 2015, the Illinois Pollution Control Board (“Board”) issued a final Opinion and Order in Subdocket D with respect to water quality standards in the Chicago Area Waterway and Lower Des Plaines River.
- 2) On July 10, 2015 the adopted rules were published in the Illinois Register with an effective date of July 1, 2015. (See, Ill. Reg., 39, Issue 28, P. 9388, 9423 and 9433).
- 3) After reviewing the adopted Notice, it is unclear what the Board intended with respect to the effective date of water quality standards for chloride and temperature.
- 4) The Notice of Adopted Rule states the effective date of the adopted rules is July 1, 2015. However, Sections 302.407(g)(2,3) and 302.408(b) of Title 35 of the

Illinois Administrative Code, state the new temperature and chloride standards are not effective until July 1, 2018. See 35 Ill. Adm. Code 302.407(g)(2,3) and 302.408(b).

5) Therefore, based on these two dates there is confusion amongst the parties involved in Subdocket D rulemaking. It would appear, and this is what the Agency assumed as the rules were adopted, that the effective date for the new temperature standards and the new chloride standards would not be July 1, 2015, but instead would be July 1, 2018.

6) Because of this confusion several entities filed variance petitions with the Board on July 21, 2015, pursuant to the language found in Section 38(b) of the Illinois Environmental Protection Act ("Act") and seeking a stay of the effectiveness of the chloride and temperature water quality standards. See 415 ILCS 5/38(b). Section 38(b) of the Act provides that if a variance is sought within 20 days of the effective date of the rule or regulation, the operation of the rule or regulation is stayed to such person pending disposition of the petition. The variance petitions that have been filed with the Board were done in an effort to comply with the filing deadline of Section 38(b).

7) Due to this confusion and regulatory uncertainty and the numerous recent variance petitions filed with the Board, the Agency believes it would be helpful for the Board to clarify the effective date of the water quality standards for chloride and temperature found in Section 302.408(b) and 302. 407(g)(2) and (3) and erase any confusion that the two dates in question have caused those impacted by the new rules adopted in R08-9 (Subdocket D). Specifically, the Board should clarify when the tolling of the 20 day period described in Section 38(b) of the Act begins for purposes of timely

filing a variance petition seeking a stay of the effectiveness of Sections 302.407(g)(2,3) and 302.408(b).

8) If the Board clarifies its final Opinion and Order and finds that the effective date for the chloride and temperature water quality standards is July 1, 2018, and not July 1, 2015, the Agency would ask the recent variance petitions be stayed since they are premature. Such stay would include a stay of the deadline by which the Illinois EPA must file a recommendation to each variance petition.

WHEREFORE, the Illinois EPA respectfully requests the Board provide clarification as to the effective date of the water quality standards adopted for temperature and chloride that were adopted in R08-9 (Subdocket D). The Illinois EPA further requests that, if appropriate, a stay be issued by the Board in each recent filing of a variance petition filed seeking a stay of Section 302.407(g)(2) and (3) and 302.408(b).

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Stefanie Diers  
Stefanie Diers  
Assistant Counsel  
Division of Legal Counsel

DATED: August 14, 2015

1021 N. Grand Ave. East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(217) 782-5544

**Service List for R08-09**

Elizabeth Schenkier  
Keith Harley  
Chicago Legal Clinic, Inc.  
211 West Wacker Drive, Suite 750  
Chicago, IL 60606

Susan M. Franzetti  
Nijman Franzetti LLP  
10 South LaSalle St.  
Ste. 3600  
Chicago, IL 60603

Katherine D. Hodge  
Matthew C. Read  
Hodge Dwyer Driver  
3150 Roland Ave.  
P.O. Box 5776  
Springfield, IL 62702

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

Elizabeth Wallace  
Thomas H. Shepherd  
Office of the Attorney General  
Environmental Bureau North  
69 West Washington Street, Suite 1800  
Chicago, IL 60602

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

Ann Alexander  
Senior Attorney, Midwest Program  
Natural Resources Defense Council  
20 N. Wacker Drive, Suite 1600  
Chicago, IL 60606

Fredrick M. Feldman  
Ronald M. Hill  
Margaret T. Conway  
Metropolitan Water Reclamation District  
of Greater Chicago  
111 East Erie Street  
Chicago, IL 60611

General Counsel  
Office of Legal Counsel  
Illinois Department of Natural Resources  
One Natural Resources Way  
Springfield, IL 62705-5776

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

Jessica Dexter  
Environmental Law & Policy Center  
35 E. Wacker Dr., Suite 1600  
Chicago, IL 60601

Thomas W. Dimond  
Susan Charles  
Ice Miller LLP  
200 West Madison Street  
Suite 3500  
Chicago, IL 60606-3417

**Service List for R08-09 Continued**

Fredric P. Andes  
Carolyn S. Hesse  
David T. Ballard  
Barnes & Thornburg LLP  
One North Wacker Drive  
Suite 4400  
Chicago, IL 60606

Stacy Meyers-Glen  
Openlands  
25 E. Washington, Ste. 1650  
Chicago, IL 60602

Jack Darin  
Cindy Skrukud  
Sierra Club, Illinois Chapter  
70 East Lake Street  
Chicago, IL 60601

Albert Ettinger  
53 W. Jackson  
1500 Suite 1664  
Chicago, Illinois 60604

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

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

Lisa Frede  
Chemical Industry Council of Illinois  
1400 E. Touhy Ave.  
Des Plaines, IL 60019

**PROOF OF SERVICE**

I, the undersigned, on oath state that I have served the attached ILLINOIS EPA'S MOTION FOR CLARIFICATION AND STAY upon the person to whom it is directed by electronic filing and placing it an envelope addressed to:

John Therriault, Clerk  
Marie Tipsord, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

and by mailing the document to those listed above and on the attached Service List by First Class Mail from Springfield, Illinois on August 14, 2015, with sufficient postage.

/s/Stefanie N. Diers  
Stefanie N. Diers  
Assistant Counsel

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**