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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MAR 31 2003

IN THE MATTER OF: )  
)  
PROPOSED AMENDMENTS TO: ) RO3-19  
PUBLIC PARTICIPATION RULES IN 35 ) (NPDES Rulemaking)  
ILL. ADM. CODE PART 309 NPDES )  
PERMITS AND PERMITTING )  
PROCEDURES )

STATE OF ILLINOIS  
Pollution Control Board

NOTICE OF FILING

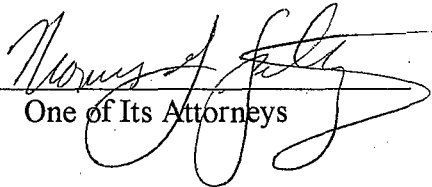
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(VIA FIRST CLASS MAIL) (VIA FIRST CLASS MAIL)

(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 an original and nine copies each of a **MOTION FOR A THIRD HEARING**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

By:   
One of Its Attorneys

Dated: March 27, 2003

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**CERTIFICATE OF SERVICE**

I, Thomas G. Safley, hereby certify that I have served copies of the foregoing MOTION

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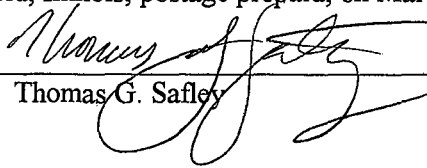
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by placing said documents in the United States Mail in Springfield, Illinois, postage prepaid, on March 27, 2003.



Thomas G. Safley

IERG:001/R Dockets/Fil/R-013/Certificate of Service

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD MAR 31 2003

|                                   |   |                                |
|-----------------------------------|---|--------------------------------|
| IN THE MATTER OF:                 | ) | STATE OF ILLINOIS              |
|                                   | ) | <i>Pollution Control Board</i> |
| PROPOSED AMENDMENTS TO:           | ) | R03-19                         |
| PUBLIC PARTICIPATION RULES IN 35  | ) | (NPDES Rulemaking)             |
| ILL. ADM. CODE PART 309 NPDES     | ) |                                |
| PERMITS AND PERMITTING PROCEDURES | ) |                                |
|                                   | ) |                                |

**MOTION FOR A THIRD HEARING**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP ("IERG"), by and through one of its attorneys, Robert A. Messina, pursuant to 35 Ill. Adm. Code 102.402, and hereby respectfully moves the Illinois Pollution Control Board ("Board") to hold a Third Hearing in the above-referenced matter. In support of its Motion, IERG states as follows:

1. On January 13, 2003, the Environmental Law and Policy Center of the Midwest, the Illinois Chapter of the Sierra Club, and the Prairie Rivers Network ("various environmental groups") filed a proposal to amend the public participation procedures for NPDES permits in Part 309 of the Board's regulations ("Proposal").

2. On February 10, 2003, Hearing Officer Marie Tipsord issued an Order setting the First Hearing on this proposal for March 17, 2003, in Chicago, Illinois, and the Second Hearing for April 2, 2003, in Springfield, Illinois.

3. On March 17, 2003, the First Hearing was held. On behalf of the various environmental groups, Mr. Albert Ettinger, Ms. Cindy Skrukrud, and Ms. Beth Wentzel offered testimony in support of the Proposal, and Mr. Ettinger responded to questions regarding the Proposal.

4. Further, participants at this hearing were notified by Hearing Officer Tipsord that the Second Hearing was scheduled for April 2, 2003, in Springfield, Illinois, with pre-filed testimony to be received by the Board no later than March 26, 2003. The mailbox rule would not apply. In response to concerns raised at the hearing about the availability of the transcript of the First Hearing prior to March 26, 2003, Hearing Officer Tipsord stated that the transcript likely would be available before that date. As of the filing of this motion, the hearing transcript is not available.

5. Testimony by the various environmental groups at the March 17, 2003, hearing raised significant concerns for IERG regarding these groups' intentions in filing their proposal in this matter. In order to meaningfully address the various environmental groups' proposal, IERG must be able to review and cite from the transcript of the March 17, 2003, hearing in any testimony it presents in this matter.

6. Further, in pre-filed testimony filed with the Board on March 26, 2003, Mr. Toby Frevert of the Illinois Environmental Protection Agency ("Illinois EPA") wrote that the Illinois EPA intended to modify the various environmental groups' proposed language where changes were warranted and was scheduling meetings with the other major stakeholders to discuss in detail the elements of the proposal. IERG has not yet seen these modifications or met with Mr. Frevert, but believes it is necessary to do so before preparing detailed, meaningful testimony to the Board.

7. Further, IERG is currently engaged in representing its members in several pressing matters, including the issue of regulation of isolated wetlands in the State of Illinois and the issue of fees for permits issued by the Illinois EPA. These matters are



taking substantial time and thus are hindering IERG's ability to file pre-filed testimony in this matter prior to the Second Hearing.

8. The short time frame involved between the First Hearing and the deadline for pre-filed testimony for the Second Hearing, the inability of IERG and its Members to review the First Hearing transcript or to meet with the Agency to discuss its suggested changes, and the schedule for IERG to respond to several other pressing matters will adversely affect IERG's ability, and its member companies' ability, to prepare a meaningful response to the various environmental groups' Proposal. There will simply be insufficient time to receive and review the hearing transcript and Agency changes to brief IERG's member company representatives, to solicit their input, and to prepare detailed testimony in response to the Agency's answers. Also, IERG anticipates preparing proposed revisions to the Proposal, and preparing testimony in support of the same.

9. IERG hereby requests that the Board schedule a Third Hearing in this matter for the purpose of providing sufficient time to review the First Hearing transcript, to prepare detailed, meaningful testimony for submittal to the Board, to meet with the Illinois EPA to discuss its intention to modify the proposed language, and to analyze the impact of Illinois EPA's proposed modifications on IERG's member companies.


10. In addition, there is not currently a deadline by which the Board is required to adopt the regulations proposed in this rulemaking. As such, no material prejudice will result if the Board grants this Motion and holds a Third Hearing in this matter.

11. Finally, because this proposal has not been submitted for First Notice, statutory procedural requirements would preclude this proposal from being promulgated until after the season during which thermal provisional variances traditionally have been issued. Again, no material prejudice would result if the Board were to grant this Motion.

WHEREFORE, for the above and foregoing reasons, the ILLINOIS ENVIRONMENTAL REGULATORY GROUP respectfully moves the Illinois Pollution Control Board to hold a Third Hearing in the above-referenced matter.

Respectfully,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

By: Robert A. Messina   
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Dated: March 27, 2003

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