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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

APR 14 2003

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
PROPOSED AMENDMENTS TO:)
PART 309 SUBPART A -)
35 Ill. Adm Code 309.105, 309.7, 309.8,)
309.9, 309.10, 309.12, 309.13, 309.14,)
309.117, 309.119, 309.143, 309.147; and)
PROPOSED 35 Ill. Adm, Code 309.120)
through 122 - NPDES PERMITS AND)
PERMITTING PROCEDURES)

R03-19

NOTICE OF FILING

PLEASE TAKE NOTICE that the Environmental Law and Policy Center of the Midwest, Illinois Chapter of the Sierra Club, and Prairie Rivers Network have filed their Response to IERG's motion for a Third Hearing.



Albert F. Ettinger (ARDC # 3125045)
*Counsel for Petitioners Environmental Law & Policy
Center, Prairie Rivers Network and Sierra Club*

Environmental Law & Policy Center
35 E. Wacker Dr. Suite 1300
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PROCEDURES)

RESPONSE TO IERG MOTION FOR A THIRD HEARING

Without a trace of shame or even irony, the Illinois Environmental Regulatory Group ("IERG") has asked for a *third* hearing in this proceeding although IERG has argued repeatedly that persons seeking to prevent improper discharges of pollutants into Illinois waters should never be allowed even a *second* hearing.

This rulemaking proceeding is important and the Board should certainly allow all interested parties a full opportunity to comment. The potential evil that IERG and other members of the regulated community seek to avoid through their participation in this proceeding is not trivial. If this Board were to adopt rules that lead to unnecessary safeguards for public participation in the issuance of National Pollutant Discharge Elimination System ("NPDES") permits, there could be some unnecessary delay in the issuance of permits. Such delay could cost permit applicants some money.

On the other hand, hasty or under-informed issuance of an improper NPDES permit can result in exposure of humans or wildlife to pathogens, toxins or other

potentially lethal pollutants. Granting IERG's request for a third hearing would further delay the enactment of rules necessary to ensure that citizens seeking to prevent issuance of improper permits have a full opportunity to work to protect public health and Illinois rivers, lakes and streams.

While these proceedings are prolonged, the Illinois Environmental Protection Agency continues to make decisions on numerous NDPES permits every month. Petitioners were informed at the April 2, 2003 hearing that granting a third hearing would mean that the current unsatisfactory situation regarding public participation would be extended at least three months. IERG has not proposed a moratorium on permit issuance for the period during which these proceedings would be delayed to accommodate IERG's third hearing request and, of course, no such moratorium can be granted.

In addition to the need expeditiously to establish rules that assure an opportunity for public participation in the permitting process, a number of other factors weigh against IERG's motion.

1. IERG had well over two months after the January 13, 2003 filing of the Petition to formulate its position. In fact, IERG had over five months to contemplate its position. Last fall, petitioners presented a draft of the petition to IERG and other interested parties that was little different from what petitioners later filed. Petitioners also answered questions regarding the draft petition at an October 2, 2002 meeting held by IEPA and attended by an IERG representative.

2. It is not as though no one with IERG's concerns has been able to testify. Five witnesses concerned about potential delays in permit issuance testified at the April 2, 2003 hearing.

3. IERG itself may still comment on the petition through a written submission. The closing date for written comment has not been set. Petitioners suggest, however, that no more than thirty days be granted for written comment after the date of the Board's decision on IERG's motion.

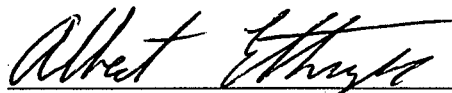
4. IERG's alleged concern that a transcript of the first hearing was not available prior to the second hearing is inflated. IERG counsel was present at the first hearing (and the meeting last October) and had plenty of opportunity to learn about the details of the petition. The Board has never required that witnesses give transcript citations as part of their testimony. Transcripts from both hearing will be available for use by IERG and others in submitting written comments.

5. As the Board heard at the April 2 hearing, the parties interested in this proceeding are attempting to reach agreements as to some elements of the petition and hope also to find ways to narrow the issues that remain for the Board's consideration. This is not a reason for a third hearing. Any agreements reached through discussions can be most easily presented to the Board in written form. Counsel for the parties, if they are even moderately diligent, can confer and present any agreements or reformulated positions to the Board by June 1, 2003.

6. Still further, under Board procedures, IERG will have an opportunity to comment on whatever First Notice Order is issued by the Board. In stark contrast to the situation of members of the public attempting to protect their waters by commenting on draft NPDES permits, IERG can count on receiving this additional opportunity for comment and a hearing no matter how much or little the Board's final language varies from the language on which IERG was first given an opportunity to comment.

Wherefore, petitioners ask that IERG's motion for a third hearing be denied and that a date be set for submitting written comments no later than June 1.

Respectfully submitted,



Albert F. Ettinger
*Counsel for Petitioners Environmental
Law & Policy Center, Prairie Rivers
Network and Sierra Club*

Dated: _____

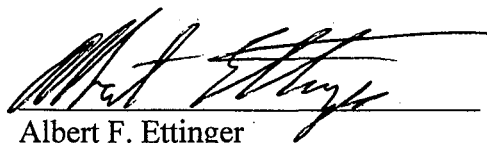
4/14/03

R03-19 Service List
 Amendments to Part 309 Subpart A
 April 14, 2003

Lname	fname	company	address	citystate	Zip
Blanton	W.C.	Blackwell Sanders Peper Martin, LLP	2300 Main, Suite 1000	Kansas City, MO	64108
Cox	Larry	Downers Grove Sanitary District	2710 Curtiss Street	Downers Grove, Illinois	60515
Daugherty	James	Thorn Creek Sanitary District	700 West End Ave.	Chicago Heights, IL	60411
Donahue	John	City of Geneva	1800 South Street	Geneva, Illinois	60134
Ettinger	Albert	Environmental Law & Policy Center	35 E. Wacker Drive, Suite 1300	Chicago, Illinois	60601-2110
Franzetti	Susan M.	Sonnenschein Nath & Rosenthal	8000 Sears Tower	Chicago, Illinois	60606
Frede	Lisa M.	Chemical Industry Council	250 East Devon Ave., Suite 239	Des Plaines, Illinois	60018
Gunn	Dorothy	Clerk, Pollution Control Board	100 West Randolph, Suite 11-500	Chicago, Illinois	60601
Harrington	James T.	Ross & Hardies	150 North Michigan, Suite 2500	Chicago, Illinois	60601
Harsch	Roy M.	Gardner, Carton & Douglas	Suite 3700, 191 North Wacker Drive	Chicago, Illinois	60606
Hill	Ron	Metropolitan Water Reclamation District	100 East Erie	Chicago, Illinois	60611
Hodge	Katherine	Hodge Dwyer Zeman	3150 Roland Avenue, PO Box 5776	Springfield, Illinois	62705-5776
Hubbard	Fred L.	Attorney At Law	415 North Gilbert Street, PO Box 12	Danville, Illinois	61834-0012
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McKinley	Vicky	Evanston Environment Board	223 Grey Avenue	Evanston, Illinois	60202
Messina	Robert A.	Illinois Environmental Regulatory Group	215 East Adams Street	Springfield, Illinois	62701
Polls	Irwin	Metropolitan Water Reclamation, Dist. Of Chicago	6001 West	Cicero, Illinois	60804
Powers	Erika K.	Barnes & Thornburg	10 South LaSalle, Suite 2600	Chicago, Illinois	60201
Rosenberg	Michael G.	Metropolitan Water Reclamation District	100 East Erie Street	Chicago, Illinois	60611
Schulz	Sue A.	General & Associate Corporate Counsel	300 North Water Works Drive	Belleville, Illinois	62223-9040
Sullivan	Mary G.	Illinois-American Water Company	PO Box 24040		
Sofat	Sanjay	Illinois Environmental Protection Agency	1021 North Grand Ave. East	Springfield, Illinois	62794-9276
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Sternstein	Joel	Assistant Attorney General Environmental Bureau North	188 West Randolph Street, 20 th Floor	Chicago, Illinois	60601
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Wesselhoft	Charles	Ross & Hardies	150 North Michigan	Chicago, Illinois	60601

CERTIFICATE OF SERVICE

I, Albert F. Ettinger, certify that on April 14, 2003, I filed the attached Response to IERG Motion for a Third Hearing. An original and 9 copies of the response was filed with the Illinois Pollution Control Board, James R. Thompson Center, 100 West Randolph, Suite 11-500, Chicago, IL 60601, and copies were also served via United States Mail to those individuals on the attached service list.



Albert F. Ettinger

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