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DEC 09 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
INTERIM PHOSPHOROUS EFFLUENT)
STANDARD, PROPOSED 35 ILL. ADM.)
CODE 304.123 (G-K))
)
)

R04-26
(Rulemaking-Water)

PC#5

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on December 9, 2004 the undersigned filed the Post Hearing Comments Of The Metropolitan Water Reclamation District of Greater Chicago with the Illinois Pollution Control Board. A copy of the filing accompanies this notice.

METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO



Michael G. Rosenberg, Its Attorney

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RMH:jp

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

CERTIFICATE OF SERVICE

I, Judith A. Pappalardo, being duly sworn on oath, certify that I caused a copy of the attached Post Hearing Comments Of The Metropolitan Water Reclamation District of Greater Chicago to be served by First Class U. S. Mail to all parties shown on the attached Service List, at their addresses shown on said Service List, with proper postage prepaid, from 100 E. Erie Street, Chicago, Illinois, at or near the hour of 4:00 p.m., on December 9, 2004:

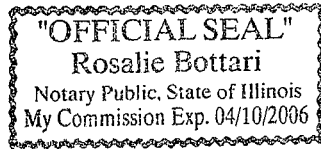
TO: SEE ATTACHED SERVICE LIST

Judith A. Pappalardo

SUBSCRIBED and SWORN to Before
me this 9th day of December, 2004.

Rosalie Bottari

Notary Public



RMH:jp

Party Name	Role	City & State	Phone/ Fax
<u>IEPA</u> Petitioner Sanjay K. Sofat, Assistant Counsel	1021 North Grand Avenue East P.O. Box 19276	Springfield IL 62794-9276	217/782-5544 217/782-9807
<u>Gardner Carton & Douglas</u> Interested Party Roy M. Harsch	191 N. Wacker Drive Suite 3700	Chicago IL 60606-1698	312/569/1000 312/569-3000
<u>Office of the Attorney General</u> Interested Party Matthew J. Dunn, Chief	Environmental Bureau 100 West Randolph Street, 11th Floor	Chicago IL 60601	312/814-2550 312/814-2347
<u>Illinois Environmental Regulatory Group</u> Interested Party Robert A. Messina, General Counsel	3150 Roland Avenue	Springfield IL 62703	217/523-4942 217/523-4948
<u>Environmental Law and Policy Center</u> Interested Party Albert F. Ettinger	35 East Wacker Drive Suite 1300	Chicago IL 60601	312/673-6500 312/795-3730
<u>Wilkie & McMahon</u> Interested Party John McMahon	8 East Main Street	Champaign IL 61820	217/359-2115 217/359-2754
<u>Department of Natural Resources</u> Interested Party Jonathan Furr	One Natural Resources Way	Springfield IL 62702-1271	217/782-1809 217/524-9640
<u>MWRDGC</u> Interested Party Richard Lanyon, Director of Research & Development	100 E. Erie	Chicago IL 60611	
<u>Aurora University</u> Interested Party David Horn, Asst. Prof., Biology	347 Gladstone Avenue	Aurora IL 60506	
<u>City of Plano</u> Interested Party Darin Boyer	17 E. Main Street	Plano IL 60545-1521	

Total number of participants: 10

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**POST HEARING COMMENTS OF THE METROPOLITAN
WATER RECLAMATION DISTRICT OF GREATER CHICAGO**

On September 28, 2004, Richard Lanyon, the Director of Research and Development for the Metropolitan Water Reclamation District of Greater Chicago ("MWRD"), filed with the Illinois Pollution Control Board ("Board") the "Written Testimony of Richard Lanyon and the Metropolitan Water Reclamation District of Greater Chicago." On October 12, 2004, Lanyon filed "Rebuttal to Previously Filed Comments of Professor Walter K. Dodds by Richard Lanyon and the Metropolitan Water Reclamation District of Greater Chicago." Lanyon subsequently testified at the October 25, 2004, hearing on this matter. The purpose of these post hearing comments is to clarify several issues that arose during Lanyon's testimony, and to reiterate the MWRD's opposition to the proposed rule. As evidenced by the record, not only are there more economical and efficient ways to reduce phosphorus in the waterways, but as admitted by the Illinois Environmental Protection Agency ("IEPA"), no science exists supporting the proposed phosphorus limit.

In his testimony, Lanyon suggested a ban on products containing phosphorus or phosphorus compounds would be a more effective approach to achieving immediate phosphorus

reductions in publicly owned treatment work (“POTW”) effluents than enacting the limit in the proposed rule. (*See* Tr. of hearing dated October 25, 2004; p. 68, lines 5-16 and p. 80, line 8).¹ Specifically, Lanyon testified that a ban on the use of automatic dishwasher detergent (“ADWD”) products containing phosphorus or phosphorus compounds would result in an estimated reduction of 1,800 tons per year of phosphorus in Illinois streams. (Tr. at p. 85, lines 6-13). In addition, a similar ban on the use of turf grass fertilizer containing phosphorus or phosphorus compounds would result in an estimated reduction of 1,800 tons per year. (Tr. at p. 86, lines 5-9). The Board is encouraged to consider these bans in their deliberations and determine if the Board possesses the necessary statutory authority to adopt such bans. Implementation of these bans would eliminate more than 10 times the phosphorus in Illinois waters than would the proposed interim effluent standard.

While Lanyon was being questioned by Albert Ettinger at the October 25th hearing, there may have been some confusion as to what Mr. Ettinger was asking and Lanyon’s response. In response to Ettinger’s questions, Lanyon and the MWRD were attempting to make it clear that any reduction in influent phosphorus loads due to a ban on ADWD products would result in a reduction in the effluent load of phosphorus discharged to the receiving stream, although not necessarily on a pound-per-pound basis. (Tr. at p. 92, lines 2-8). Lanyon was attempting to explain that it may be difficult to demonstrate a statistically significant reduction for an effluent load reduction of less than ten percent of the total load. Such demonstrations are often attempted by an analysis of effluent concentrations and loads, but conclusive results may not be reached

¹ All references in these comments to the transcript refer to the transcript of the hearing dated October 25, 2004.

because of the inherent variability in flow and constituent concentrations in process streams at a wastewater treatment plant.

The MWRD wishes to reiterate its suggestion that the Board allow for the use of water quality trading and wetlands to remove nutrients, including phosphorus, as suggested by Lanyon. (Tr. at p. 78, line 8, and p. 82, line 19). The Board is encouraged to give this matter careful consideration so that use of trading and wetland technology can be demonstrated through pilot projects while the IEPA develops their proposal for nutrient standards. Strictly speaking, water quality trading for nutrients is not necessary at this time because there are no nutrient standards. However, water quality trading for nutrients will be necessary when nutrient standards are adopted. Thus, it is necessary for IEPA to give water quality trading consideration during the standards development process. Failure to create an incentive for the use of wetlands will discourage their use. Once nutrient standards are promulgated, it may be too late to consider water quality trading or will require separate regulatory relief. When standards are adopted and point sources are required to remove nutrients, Illinois streams may not achieve the standards because of the non-regulated nonpoint sources. However, a point source may invest in a wetland site that is removed from their outfall and remove more nutrients at less cost through the use of wetlands, thereby providing a greater benefit to a watershed than if they only removed nutrients prior to their outfall. The Board is encouraged to give this matter careful consideration.

The IEPA's testimony validates testimony by the MWRD regarding the proposal's lack of a basis in science, as well as the IEPA's true motivation in this rulemaking. (Tr. at 108, lines 2 through 12). Testifying on behalf of the IEPA, Mr. Toby Frevert stated that "Based on the testimony nobody has that sound science and knows exactly what to do with nutrients." (Tr. at p.

107, lines 22-23). Frevert's admission of a lack of science or knowledge about the role of phosphorus in Illinois streams underscores the argument of the MWRD and IAWA that this proposal lacks a scientific foundation. (Tr. at p. 108, lines 7-10).

As for the IEPA's true motivation, the Agency's testimony indicates that the proposal is designed to eliminate its permit backlog, not to improve Illinois streams. Frevert refers to the reality of "...putting it on day after day a program to operate." (Tr. at p. 108, line 2). He is undoubtedly referencing the permit backlog that Lanyon mentioned at page 64, line 5, and that was identified in the IEPA Statement of Reasons as the impetus for the proposed rule.

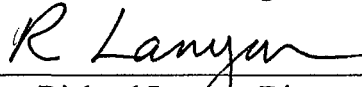
In an attempt to minimize the scope of the proposal, Frevert identifies an estimated 20 sources that will be subject to the proposed interim standard. (Tr. at p. 109, line 7). However, minimizing the impact of an imperfect proposal is not justification for adoption. If the proposal unjustly impacts only one permitted discharger, it is unjust.

In response to a question from Board member Girard, Frevert asserts that an initiative brought up by Lanyon regarding the use of wetlands has "...wound down to a back burner." (Tr. at p. 111, line 20). With all due respect, this matter has not wound down, but has progressed. Since the presentation of testimony by Lanyon on October 25, 2004, a draft report has been received indicating that the use of wetlands for nutrient removal could save at least 50 percent over the cost of conventional biological nutrient removal technology. Both the District and Illinois Association of Wastewater Agencies maintain a high level of interest in pursuing wetland technology, despite the apparent reluctance of the IEPA to address water quality trading and to create an incentive or regulatory mechanism for wetland technology.

In conclusion, the record is devoid of sound scientific evidence that would support the proposal. Furthermore, the IEPA has ignored viable alternatives to reduce nutrients that are more economical and would have a greater impact. Consequently, the MWRD respectfully requests that the Board reject the proposed rule.

Respectfully submitted,

Metropolitan Water Reclamation
District of Greater Chicago,

By: 
Richard Lanyon, Director of
Research & Development

Dated: December 9, 2004

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This filing is submitted on recycled paper.