

ILLINOIS POLLUTION CONTROL BOARD

August 5, 2010

IN THE MATTER OF:)
)
WATER QUALITY STANDARDS AND) R08-9 (Subdocket B)
EFFLUENT LIMITATIONS FOR THE) (Rulemaking - Water)
CHICAGO AREA WATERWAY SYSTEM)
AND LOWER DES PLAINES RIVER)
PROPOSED AMENDMENTS TO 35 ILL.)
ADM. CODE 301, 302, 303, and 304)

ORDER OF THE BOARD (by G.T. Girard):

The Board today rules on a motion filed by the Metropolitan Water Reclamation District of Greater Chicago (District) to hold additional hearings in this subdocket concerning the final report on the Chicago Health Environmental Exposure and Recreation Study (CHEERS). The Illinois Environmental Protection Agency (IEPA), the People of the State of Illinois (People) and Environmental Law and Policy Center, Friends of the Chicago River, Sierra Club Illinois Chapter, Natural Resources Defense Council and Openlands (Environmental Groups) oppose the request for additional hearings. The Board grants the motion and directs the hearing officer to schedule hearings on the CHEERS final report and to schedule final comments in this matter expeditiously, but in no event to conclude later than December 31, 2010.

PROCEDURAL BACKGROUND

On March 18, 2010, the Board divided the rulemaking docket into four subdockets. Subdocket A will deal with the issues related to recreational use designations and Subdocket B will address issues relating to disinfection and whether or not disinfection may or may not be necessary to meet those use designations. Subdocket C was created to address the issues involving proposed aquatic life uses. Subdocket D was created to address the issues dealing with water quality standards and criteria which are necessary to meet the aquatic life use designations. The Board also granted a request to hold a hearing on the CHEERS technical reports, which the Board held on June 29 and 30, 2010.

On June 14, 2010, the District filed a motion asking the Board to hold a hearing on the CHEERS final report which would be completed and filed with the Board by August 31, 2010 (Mot.). The Board received three responses in opposition to the motion. On June 28, 2010, the IEPA filed a response (Resp.) and on the same day (Environmental Groups filed a response (EGRsp.)). On June 29, 2010, the Board received a response from the People (PResp.).

On July 12, 2010, the District filed a motion for leave to file a combined reply (M.Reply and Reply). On July 22, 2010, the Environmental Groups filed a response in opposition to the motion for leave to file a reply (Resp.Reply).

DISCUSSION

Before proceeding to the motion for additional hearings, the Board will address the District's motion for leave to file a reply and the Environmental Groups opposition. The District argues that not allowing the reply will prejudice the District. M.Reply at 2. The Environmental Groups argue that such prejudice has not been demonstrated. The Board disagrees with the Environmental Groups and will allow the reply.

The District argues that the final report on the CHEERS study will provide the Board with analyses of health risk for use by the Board in deciding disinfection issues. Mot. at 11. The District points out that the Environmental Groups' experts agree the evaluation of the technical reports is the next critical step in the study and the preliminary data has very little meaning without that step. Mot. at 9-10. The District maintains that the CHEERS study will provide critical information to the Board because the Board decides whether disinfection as proposed by the IEPA is necessary and reasonable. Reply at 2.

IEPA opposes the motion arguing that the CHEERS study is not relevant to the Board's decision as the CHEERS study would only be relevant if a water quality standard were being proposed. Resp. at 5-6. IEPA argues that the Board should "narrow and focus" the issue in the subdocket. Resp. at 3. The IEPA states that the IEPA did not propose disinfection to protect the proposed recreational use designations, but rather proposed disinfection as a technology-based effluent limit. Resp. at 4. The IEPA suggests that the appropriate question in this subdocket is whether or not the technology-based effluent limits are technically feasible and economically reasonable. Resp. at 8.

IEPA opines that even if the Board finds the CHEERS final report relevant, additional hearings are not warranted. Resp. at 8. IEPA notes that the District's witness has already testified twice and been subjected to extensive questioning. *Id.* The IEPA argues that the Board can read the final study and determine the weight to be given the study without another hearing. *Id.*

The Environmental Groups also question the relevance of the CHEERS study and argue that the District's motion is "merely a rehash of arguments presented earlier". EGResp. at 1-2. The Environmental Groups agree with IEPA that the CHEERS study cannot serve as a basis to reject the IEPA's proposal requiring disinfection. EGResp. at 2. The Environmental Groups argue that there is no need to spend more time on the CHEERS study but if the Board grants the motion the Environmental Groups ask that the Board establish a firm deadline of December 31, 2010 for completion of the hearings. EGResp. at 3.


The People share the opinion of the IEPA and the Environmental Groups concerning the usefulness of the CHEERS study in this proceeding and suggest that further delay in the rulemaking would be injurious to the public interest. PResp. at 1-2. The People argue that there is sufficient evidence in the record for determining the appropriateness of disinfection and the Board should close this subdocket. PResp. at 3. The People reiterate the request of the Environmental Groups that if the Board grants the motion, that the Board close the subdocket by the end of 2010. *Id.*

The environmental rulemaking process in Illinois requires information gathering in a public forum and the Board allows all information relevant to be admitted. *See* 35 Ill. Adm. Code 102.426. The Board is fully aware of the time that this rulemaking has taken. The Board, as well as numerous participants, has devoted substantial resources to this rulemaking and we continue to progress in the various subdockets. However, the Board will not cut short the information gathering in a rulemaking simply because the record that has development is already extensive. The CHEERS technical reports have been admitted and have been subject to testimony and questioning. The CHEERS final report will be filed by August 31, 2010, and a participant in the rulemaking (The District) asks for the opportunity to present testimony on the CHEERS final report at hearing. The arguments in opposition to additional hearings challenge the relevance of the CHEERS study and argue that the rulemaking should not be delayed. The Board believes that the question on the relevance of the CHEERS study to this rulemaking docket is best answered through sworn testimony and questioning at a public hearing. Therefore, the Board will grant the District's motion.

The Board does however agree that the subdocket should proceed to closure promptly. Therefore, the Board directs the hearing officer to expeditiously complete the hearings on the CHEERS final report and to set a final comment date for no later than December 31, 2010.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 5, 2010, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board