

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
WATER QUALITY STANDARDS AND)
EFFLUENT LIMITATIONS FOR THE) R08-9 Subdocket C
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)

NOTICE OF FILING

TO: John Therriault, Assistant Clerk Attached Service List
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

PLEASE TAKE NOTICE that I have today filed with the Illinois Pollution Control Board Midwest Generation's Questions for the District's Witness Scudder Mackey, a copy of which is herewith served upon you.

Dated: February 23, 2011

MIDWEST GENERATION, L.L.C.

By: /s/ Susan M. Franzetti
One of Its Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Midwest Generation's Questions for the District's Witness Scudder Mackey were filed electronically on February 23, 2011 with the following:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
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and that true copies were mailed by First Class Mail, postage prepaid, on February 23, 2011 to the parties listed on the foregoing Service List.

/s/ Susan M. Franzetti

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF;)
)
WATER QUALITY STANDARDS AND) **R08-9 Subdocket C**
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)

**MIDWEST GENERATION'S QUESTIONS FOR
THE DISTRICT'S WITNESS SCUDDER MACKEY**

Midwest Generation, L.L.C. ("Midwest Generation" or "MWGen"), by and through its attorneys, Nijman Franzetti LLP, submits the following questions based upon the Pre-filed Testimony of Scudder Mackey, submitted on behalf of the Metropolitan Water Reclamation District of Greater Chicago (the "District"). Midwest Generation requests that the Hearing Officer allow follow-up questioning to be posed based on the answers provided.

QUESTIONS

1. On page 2 of your pre-filed testimony, you state that: "my work has been focused on developing linkages between physical processes, physical habitat, and the organisms that use those habitats." Please explain what you mean by the phrase "physical processes." Please also explain how your work involves "developing linkages" among these three categories.
2. On page 4 of your pre-filed testimony, are you saying that even if the habitat improvements recommended in the Habitat Improvement Report were made, it is not going to support sustainable populations of intolerant or moderately intolerant fish species that need fast-moving water and also coarse substrates as part of their physical habitat?
 - a. With regard to these limitations regarding the lack of fast-moving water and coarse substrates, do you know whether these same limitations apply to the Upper Dresden Island Pool with the limited exception of the Brandon tailwater area?
 - b. Do you agree that any waterbody that lacks such habitats will not be able to support sustainable populations of intolerant or moderately intolerant fish species?

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- c. Does a fish population in a waterbody that does not have a sustainable population of either moderately intolerant or intolerant species constitute a balanced, indigenous fish population?
 - d. Do you believe that such a waterbody can attain the Clean Water Act's aquatic life use goal?
 - e. On page 4 of your pre-filed testimony, you state that these less tolerant species that require the fast-moving water and coarse substrates are always going to be limited in the CAWS because of its "functional uses"? Please explain what uses you are including in the phrase "functional uses"?
 - f. On page 4 of your pre-filed testimony, you state that the CAWS channelized waters are similar to impoundments. Please explain in what way they are similar to impoundments?
3. On page 5 of your pre-filed testimony, you note that the 15% of the variability in the fish data that is not explained by the physical habitat conditions and the variation in fish sampling results is explained by "other factors such as navigation or conveyance of wastewater." For the CSSC in particular, is it correct that it is not just the fact that wastewater from POTWs is discharged to the CSSC but that it makes up more than half of the flow in the CSSC that makes it a significant contributing factor to that remaining 15% of the conditions that affect aquatic life uses in the CSSC?
 4. On page 5 of your pre-filed testimony, you state: "In fact, navigation was deemed to have a potential affect on aquatic life uses in the CAWS, but current datasets were inadequate to evaluate those impacts quantitatively," citing to pages 91-93 of the CAWS Habitat Evaluation Report. Are you saying that navigation does adversely affect aquatic life in the CAWS but there just isn't enough data currently available to identify what percentage of the 15% is due to its navigational use?
 5. On page 5 of your pre-filed testimony, you state that the results from the CAWS Habitat Evaluation Study "clearly demonstrate that current DO levels are not a significant limiting factor of Aquatic Life Uses in the CAWS, and that further increases in DO would yield only marginal improvements to aquatic life in the CAWS due to severe physical habitat limitations." Are you saying that given the poor habitat conditions in the CAWS, you can only get marginal improvement in the quality of the fish community by increasing DO levels?
 - a. Did you also review the results and findings in the CAWS Habitat Evaluation Study that temperature was not a significantly limiting factor of the Aquatic Life Uses in the CAWS? And that temperature was even less of a limiting factor than was DO levels?
 - b. Do you agree with Limnotech's analysis of the data and these findings regarding temperature?

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6. On page 7 of your pre-filed testimony you discuss the fact that there is a relatively complete fish community in the CAWS because they occupy most of the trophic levels in the food web and that the fish that are there are thriving, but are the fish that are thriving limited to fish species that are moderately to high tolerant species like common carp, bluntnose minnow and gizzard shad?
 - a. Do you agree that intolerant or even moderately intolerant species are absent or nearly so from all or most of the CAWS?
 - b. So are the fish that are healthy and thriving in the CAWS those that can deal with the severe limitations imposed by the habitat constraints of this waterway?
7. Is it your opinion that because it is not feasible to change the existing physical habitat attributes in the CAWS to ones that have positive effects on fish metrics, the fish species that are currently present in the CAWS are basically the fish species that the CAWS can attain, regardless of whether you make the water quality standards more stringent?
8. Two of the proposed CAWS Aquatic Life Use Categories, Categories 1 and 2, appear to use the same nomenclature as the Ohio EPA uses in its use classification system, namely "Modified Warm Water Aquatic Life Waters" and "Limited Warm Water Aquatic Life Waters," respectively, correct?
 - a. Are these two CAWS categories intended to refer to the same types or levels of aquatic life uses as in the Ohio EPA use classification system, which also uses the modified and limited warm water language?
 - b. If so, then please explain why it was necessary to have a CAWS-specific habitat index developed on which to base these proposed aquatic life use designations when the Ohio EPA use classification system uses the QHEI which Limnotech found to be ill-suited to the CAWS?
 - c. If not, then please explain why similar language to Ohio's use classification system is used to describe uses that are not intended to be the same as Ohio's?
9. You note on page 12 of your pre-filed testimony that the Upper and Lower North Shore Channel, the Upper North Branch of the Chicago River, and the Little Calumet River are CAWS ALU Category 1 waterbodies. What are the predominant features of these waterbodies that make them Category 1 instead of Category 2 waterbodies?

10. Can you describe to what extent the CAWS ALU Category 1 falls below the Clean Water Act aquatic life use goals?

Respectfully submitted,

MIDWEST GENERATION, L.L.C.

By: /s/ Susan M. Franzetti
One of Its Attorneys

Dated: February 23, 2011

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