

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS DEPARTMENT OF)	
TRANSPORTATION,)	PCB 2016-027
)	
Petitioner,)	(Variance -Water)
)	
v.)	
)	
ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Respondent.		

NOTICE OF FILING

To:	John Therriault, Assistant Clerk	Brad Halloran, Hearing Officer
	Illinois Pollution Control Board	Illinois Pollution Control Board
	James R. Thompson Center	100 West Randolph, Suite 11-500
	100 West Randolph, Suite 11-500	Chicago, Illinois 60601
	Chicago, Illinois 60601	
	Via Electronic Mail and First Class Mail	

PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board the MOTION TO CONSOLIDATE CASES AND FOR AN EXTENSION OF TIME for the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Stefanie Diers
Stefanie Diers
Assistant Counsel
Division of Legal Counsel

DATED: December 3, 2015
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544

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**MOTION TO CONSOLIDATE CASES AND FOR AN EXTENSION OF TIME TO FILE
THE AGENCY'S RECOMMENDATION**

The Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by and through its attorney, hereby submits its Motion to Consolidate Cases and for an Extension of Time to File the Agency's Recommendation with respect to the Variance Petition filed by the Petitioner. In support thereof, the Illinois EPA states as follows:

1. On July 21, 2015, the Petitioner filed its Variance Petition from the chloride water quality standards recently adopted in R08-09.
2. Pursuant to the hearing officer Order issued on September 1, 2015, the Agency is to file its recommendation with respect to the Variance Petition on December 3, 2015.
3. Illinois EPA is still reviewing the Variance Petition and is in continuing discussions with the Petitioners and USEPA. Illinois EPA would like to complete those discussions before filing a recommendation in this matter.

4. During the status call with the hearing officer on October 22, 2015, it was noted that the Variance Petition is one of multiple petitions for a variance from newly-adopted chloride standards for the Chicago Area Waterways System and the Lower Des Plaines River.

5. In the R08-9 Rulemaking, the Board explained that the delayed effective date of the chloride standard “is intended to allow time for the work group to develop a proposal to address chloride and a water body wide variance as well as for others who may be seeking alternatives.” *In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303, and 304, R08-9(D) at 29 (Ill.Pol.Control.Bd. Jun. 18, 2015).*

6. The Agency and the variance petitioners, along with other stakeholders, are currently discussing how long-term compliance with the chloride standards should be addressed, and a Work Group has been formed to develop solutions. Meetings of the Work Group, and of several committees dealing with specific aspects of the Work Group’s efforts, have been held, and the work is progressing.

7. It is expected that the compliance issues of all of the chloride variance petitioners will be resolved through the solutions being developed by the Work Group, which will be brought to the Board for adoption within the three-year compliance period. Therefore, the Agency and the petitioners believe that it would be most efficient if all of the chloride variance petition cases are now consolidated before the Board. The parties would then report to the Board on progress in the Work Group process at six-month intervals.

8. Section 101.406 of the Board Procedural Rules, 35 Ill. Adm. Code § 101.406 provides:

Consolidation of Claims

The Board, upon the motion of any party or upon its own motion, may consolidate two or more proceedings for the purpose of hearing or decision or both. The Board will consolidate the proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party. The Board will not consolidate proceedings where the burdens of proof vary.

9. Consolidation of the multiple variances for hearing and decision is in the interest of convenient, expeditious, and complete determination of claims. All variances request relief from the newly-adopted chloride water quality standards for the Chicago Area Waterways System and the Lower Des Plaines River. Petitioners all discharge into waterways that are part of the same regional watershed. Furthermore, the potential cause of chloride standard exceedances in receiving waters is the same – road salt related to deicing. Moving forward with separate cases would result in duplicative efforts, both by Illinois EPA and petitioners and would require enormous Board resources. Each petitioner's request may be adequately managed by the Board in a single variance case.

10. All parties willingly agree to the requested consolidation and extension of time to file the Agency's recommendation. The Petitioner has also indicated that it is willing to file additional waivers of the statutory decision deadline as needed to accommodate the requested extension of time.

11. Neither the consolidation nor the extension of time will cause material prejudice to any party.

12. Therefore, the Agency is asking the Board to grant its Motion to Consolidate Cases and for an Extension of Time to file the Agency's recommendation until six months after the consolidation date. If the Motion to Consolidate is granted, then once the petitions are consolidated, the Board could specify a single date for recommendations to be filed.

WHEREFORE, the Illinois EPA respectfully requests the Illinois Pollution Control Board grant its Motion to Consolidate Cases and for an Extension of Time to file the Agency's recommendation. The Board should consolidate this case with all other cases regarding petitions for variances from the chloride standards, and should grant the Agency an additional six months from the consolidation date to file its recommendation with the Board.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Stefanie Diers
Stefanie Diers
Assistant Counsel
Division of Legal Counsel

DATED: December 3, 2015

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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served the attached the MOTION TO CONSOLIDATE AND EXTENSION OF TIME for the Illinois Environmental Protection Agency upon the person to whom it is directed, by sending it electronic email to the hearing officer and mailing it by first-class mail from Springfield, Illinois, with sufficient postage affixed, to the following persons:

John Therriault, Assistant Clerk
Brad Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601-3218

Matthew D. Dougherty
Special Attorney General
Illinois Department of Transportation
2300 S. Dirksen Parkway, Room 313
Springfield, IL 62764

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Stefanie Diers
Stefanie Diers
Assistant Counsel
Division of Legal Counsel

DATED: December 3, 2015

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