

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

WATER QUALITY STANDARDS AND )  
EFFLUENT LIMITATIONS FOR THE ) R08-9  
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: Mr. John T. Therriault, Assistant Clerk of the Board Illinois Pollution Control Board 100 West Randolph Street Suite 11-500 Chicago, Illinois 60601 <b>(VIA ELECTRONIC MAIL)</b>	Ms. Marie E. Tipsord Hearing Officer Illinois Pollution Control Board 100 West Randolph Street Suite 11-500 Chicago, Illinois 60601 <b>(VIA FIRST CLASS MAIL)</b>
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**(SEE PERSONS ON ATTACHED SERVICE LIST)**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an **ENTRY OF APPEARANCE OF THOMAS G. SAFLEY and PRE-FILED QUESTIONS FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP

Dated: January 18, 2008

By: /s/ Katherine D. Hodge  
One of Its Attorneys

Katherine D. Hodge  
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**CERTIFICATE OF SERVICE**

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached ENTRY OF THOMAS G. SAFLEY and PRE-FILED QUESTIONS FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY upon:

Mr. John T. Therriault  
Assistant Clerk of the Board  
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via electronic mail on January 18, 2008; and upon:

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by depositing said documents in the United States Mail, postage prepaid, in  
Springfield, Illinois on January 18, 2008.

/s/ Katherine D. Hodge  
Katherine D. Hodge

IERG:001/R Dockets/Fil/R-08-9/NOF-COS – EOA – TGS, Pre-filed Questions

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PROPOSED AMENDMENTS TO 35 Ill. )  
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**ENTRY OF APPEARANCE OF THOMAS G. SAFLEY**

NOW COMES Thomas G. Safley, of the law firm HODGE DWYER  
ZEMAN, and hereby enters his appearance in this matter on behalf of the Illinois  
Environmental Regulatory Group.

Respectfully submitted,

By: /s/ Thomas G. Safley  
Thomas G. Safley

Dated: January 18, 2008

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**PRE-FILED QUESTIONS FOR THE  
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by and through its attorneys, HODGE DWYER ZEMAN, and submits the following Pre-Filed Questions for the Illinois Environmental Protection Agency (“Agency”) for presentation at the January 28, 2008 hearing scheduled in the above-referenced matter:

1. In its Statement of Reasons (“SOR”), the Agency cites to federal requirements, which the Agency refers to as UAA factors, in 40 C.F.R. § 131.10(g), as requirements with which States must comply when developing use designations. *SOR* at 5. The first factor to be considered is whether “[n]aturally occurring pollutant concentrations prevent the attainment of the use.” *Id.* Can you please discuss how the Agency considered the pollutant concentrations of the Chicago Area Waterway System (“CAWS”) and the Lower Des Plaines River (“LDPR”) in developing the proposed rule? What information did the Agency review to evaluate the naturally occurring pollutant concentrations in the water bodies? Is any of that information not contained in the Agency’s rulemaking proposal? What were the Agency’s conclusions regarding the level

of naturally occurring pollutant concentrations in the water bodies? How did the Agency's conclusions impact the development of the proposed rule? Are any of the Agency's conclusions not reflected in the Agency's rulemaking proposal?

2. UAA factor two is the consideration of whether "[n]atural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use." *SOR* at 5. Can you please discuss how the Agency considered the natural, ephemeral, intermittent, or low flow conditions of the water bodies? What information did the Agency review to evaluate the flow conditions of the water bodies? Is any of that information not contained in the Agency's rulemaking proposal? What were the Agency's conclusions regarding the flow conditions of the water bodies? How did the Agency's conclusions impact the development of the proposed rule? Are any of the Agency's conclusions not reflected in the Agency's rulemaking proposal?

3. UAA factor three is the consideration of whether "[h]uman caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place." *SOR* at 6. Can you discuss how the Agency considered human caused conditions or sources of pollution and whether such conditions or pollution sources cannot be remedied or would cause more environmental damage to correct than to leave in place? What information did the Agency review to evaluate the human caused conditions or sources of pollution impacting the waterways? Is any of that information not contained in the Agency's rulemaking proposal? Did the Agency determine that any human caused conditions and sources of pollution impacting the water bodies cannot be remedied? If



so, as to which conditions or sources of pollution did the Agency make that determination? What information and/or factors did the Agency rely on or consider in making that determination? Did the Agency determine that any human caused conditions and sources of pollution impacting the water bodies would cause more environmental damage to correct than to leave in place? If so, as to which conditions or sources of pollution did the Agency make that determination? What information and/or factors did the Agency rely on or consider in making that determination? How did the Agency's conclusions on these issues impact the development of the proposed rule? Are any of the Agency's conclusions not reflected in the Agency's rulemaking proposal?

4. UAA factor four is the consideration of whether “[d]ams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use.” *SOR* at 6. Can you please discuss how the Agency considered whether dams, diversions or other types of hydrologic modifications to the waterbodies preclude attainment of the uses proposed in the rule? Can you discuss how the Agency considered whether it is feasible to restore these water bodies to their original condition? Can you discuss how the Agency considered whether it is feasible to operate the modifications to these waterbodies in a way that would result in the attainment of the proposed uses of the water bodies? What information did the Agency review to evaluate these issues? Is any of that information not contained in the Agency's rulemaking proposal? What were the Agency's conclusions regarding these issues? How did the Agency's conclusions impact the

development of the proposed rule? Are any of the Agency's conclusions not reflected in the Agency's rulemaking proposal?

5. UAA factor five is the consideration of whether “[p]hysical conditions related to natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of the use.” *SOR* at 6. Can you discuss how the Agency considered these characteristics and features of the CAWS and LDPR in developing the proposed rule? What information did the Agency review to evaluate the characteristics and features of the water bodies? Is any of that information not contained in the Agency's rulemaking proposal? What were the Agency's conclusions regarding the impact of the water bodies' characteristics and features on the level of pollutant concentrations in the water bodies? How did the Agency's conclusions impact the development of the proposed rule? Are any of the Agency's conclusions not reflected in the Agency's rulemaking proposal?

6. UAA factor six is the consideration of whether “[c]ontrols more stringent than those required by sections 301(b) and 306 of the Act [CWA effluent standards] would result in widespread economic and social impact.” *SOR* at 6. Can you discuss how the Agency considered the economic and social impact of its proposed rule? The Agency states in its *SOR* that it relies on USEPA guidance (“Appendix M”) when considering factor six. *Id.*; *see also* *SOR* Attachment C. Although the Agency references Appendix M, it does not provide details on whether it relied on Appendix M when evaluating factor six. Did the Agency rely on Appendix M to determine the social and

economic impact of the proposed rule? If so, to what extent did the Agency rely on Appendix M? What other information did the Agency use to determine the social and economic impact of the proposed rule? Is any of that information not contained in the Agency's rulemaking proposal? What are the Agency's conclusions regarding whether the proposed rule would have a widespread social and economic impact? Are any of the Agency's conclusions not reflected in the Agency's rulemaking proposal?

7. It is our understanding that significant portions of the CAWS and LDPR currently may not meet the proposed thermal and dissolved oxygen water quality standards. Has the Agency evaluated the water bodies to determine whether they currently meet the proposed standards? If so, what was the Agency's conclusion?

8. Pursuant to the current regulations, if a receiving water does not meet the water quality standards, no mixing zone is allowed for a discharger to the water. *See* 35 Ill. Admin. Code § 302.102(b)(9). Does the Agency agree that, as such, dischargers will not be allowed a mixing zone to aid in complying with many of the proposed standards? If not, why not? What is the Agency's basis for proposing standards that preclude the use of mixing zones?

9. Is it the Agency's intent with this proposal to require facilities to comply with the water quality standards at the "end of pipe"? If so, what are the economic and technological implications of requiring compliance in such a manner?

10. What period of time will affected facilities be given to begin compliance with the proposed rules once they are adopted and become effective?

11. How does the Agency determine if a proposed rule is economically reasonable? What factors are taken into consideration?

12. What is the Agency's justification for the economic reasonableness of this proposal? What economic impact studies or analysis did the Agency perform to determine the economic feasibility of the proposed rule?

13. If no economic impact study was performed, on what does the Agency base its economic justification for the proposed rule? What information has the Agency provided to the Illinois Pollution Control Board ("Board") on which the Board can base its determination that the proposed rule is economically reasonable?

14. How does the Agency determine if a proposed rule is technically feasible? What factors are taken into consideration?

15. What is the Agency's justification for the technical feasibility of this proposal? Did the Agency perform any studies or conduct any research regarding the technical feasibility of the proposed rule? If so, what were the Agency's conclusions?

16. If no studies were performed by the Agency that addressed the technical feasibility of the proposed rule, on what does the Agency base its technical justification of the proposed rule? What information has the Agency provided to the Board on which the Board can base its determination that the proposed rule is technically feasible?

17. Does the technology exist to comply with the proposed standards at a reasonable cost? If yes, what is that technology? What does the Agency consider to be a reasonable cost for this technology? Did the agency consider the cost for each discharger to the CAWS and LDPR to comply with the Agency's proposed regulations?

18. The Agency states in its SOR that “[its] proposed temperature water quality standards were based on the report by Midwest Biodiversity Institute (MBI) and center for Applied Bioassessment and Biocriteria (CABB),” which report is attached to the SOR as Attachment GG. *See* Statement of Reasons, *In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code Parts 301, 302, 303, and 304*, R08-9 at 80 (Ill.Pol.Control.Bd. Oct. 26, 2007) (hereinafter cited as “SOR”). Attachment S to the Agency’s SOR includes some data on which the MBI/CABB Report was based. However, the data seems to be limited to instances cited in literature from laboratory studies. The raw report data is not available for review. Having access to the raw data is critical when evaluating this type of report. Also, the report lacks discussion relating to data validation, verification and usability. These are also critical areas that need to be documented. How can interested parties obtain copies of the raw data on which Attachment S was based?

19. Does the Agency have field data that it collected, or that was provided to it by dischargers, relating to fish populations and/or water temperature in the CAWS? In the LDPR? If so, did the Agency take these data into account in developing the proposed thermal standard? If the Agency did not take these data into account, would it not be preferable to rely on this actual fish and temperature data from these water bodies in developing thermal standards? If not, why not?

20. If the proposed rule is adopted as drafted, how will the rule impact dischargers that currently have regulatory relief from the current water quality standards for the CAWS and LDPR?

This concludes IERG's questions for the Agency. IERG thanks the Board for the opportunity to present these questions today.

\* \* \*

IERG reserves the right to supplement or modify these pre-filed questions.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP

Dated: January 18, 2008

By: /s/ Katherine D. Hodge  
One of Its Attorneys

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