

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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)

RECEIVED
CLERK'S OFFICE

JUN 30 2008

R08-09
(Rulemaking - Water) STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

To: John Therriault, Clerk
Marie Tipsord, Hearing Officer
James R. Thompson Center
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board Illinois EPA's Response to MWRDGC's Motion to Stay IPCB R08-9, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Stefanie N. Diers
Assistant Counsel

Dated: June 26, 2008
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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R08-09
(Rulemaking – Water)

**ILLINOIS EPA'S RESPONSE TO METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO'S MOTION TO STAY IPCB R08-9**

The Illinois Environmental Protection Agency ("Illinois EPA") hereby submits its response to the Metropolitan Water Reclamation District of Greater Chicago's ("MWRDGC") Motion to Stay IPCB R08-9. In support of its Motion, Illinois EPA states as follows:

1. On June 12, 2008, MWRDGC filed its Motion to Stay with the Illinois Pollution Control Board ("Board").
2. On June 16, 2008, the Illinois EPA received MWRDGC's Motion to Stay R08-9.
3. MWRDGC states that a stay should be granted so that Illinois EPA can: (1) receive, consider and analyze the studies that are going to be submitted by MWRDGC in the next few years; (2) collect any other information that is needed to complete a supportable analysis; and (3) submit the complete rulemaking proposal to the Board with all relevant supporting information, so the Board can make a fully-informed and soundly-based decision.
4. MWRDGC's Motion to Stay should be denied.

5. MWRDGC cites to Board opinions that state the Board has “inherent authority to grant a stay in certain circumstances”. (See MWRDGC’s Motion to Stay P. 4). Illinois EPA does not dispute the Board’s authority to grant a stay; however, MWRDGC cites to no cases where the Board has granted a motion to stay in a regulatory proceeding or a regulatory relief proceeding without support of Illinois EPA.

6. MWRDGC also states there are four situations where the Board typically grants a Motion to stay. (Id.) However, this four part test or list cited by MWRDGC is not found in the cases cited in their Motion. If one was to apply this list or four part test to the case at bar, MWRDGC’s Motion would fail. A stay at this stage of the process would not save time, expenses or resources. It would cause practical difficulties. Also, there are not pending proceedings that would be duplicated by the work of the parties in this proceeding. Finally, it would not assist the Board in its final determination to have a multi-year span between Illinois EPA’s testimony and testimony from the regulated community.

7. Illinois EPA has been working on the proposed rulemaking rule since 2000 and MWRDGC has been a participant in this matter from the beginning.

8. Illinois EPA filed a complete rulemaking package with the Board with on October 26, 2007.

9. The Board accepted Illinois EPA’s proposal on November 1, 2007.

10. Illinois EPA has met all filing requirements under the Environmental Protection Act and the Illinois Administrative Code when filing its proposal. (See 415 ILCS 5/27 and 35 Illinois Administrative Code 102.200 & 102.202.

11. Illinois EPA has answered numerous questions over a span of 10 hearing days with respect to its proposal. In fact, there have been over 2,500 pages of testimony. Furthermore, Illinois EPA has filed additional information with respect to its proposal in March and April of 2008.

12. Illinois EPA has met its burden by the submittal of a very detailed rulemaking package and answering numerous questions asked at the hearings. Illinois EPA disagrees that its proposal is deficient as alleged by MWRDGC.

13. Instead of delaying these proceedings for 2 years or more in hopes that more relevant information will be produced, it is now time for MWRDGC or any other party who disagrees with Illinois EPA's proposal to come forward and present their counter-arguments or proposals to the Board.

14. Illinois EPA disagrees that the requested delay a delay would enhance the record or produce needed changes to Illinois EPA's proposal.

15. As for the studies currently being submitted by MWRDGC, Illinois EPA is prepared to review these as the rulemaking moves forward. No delay is needed for such review. If Illinois EPA sees changes are warranted based on a review of the information this can be done without delaying the process for another 2 years or more.

16. MWRDGC makes much of the need for additional information with respect to bacteria. Illinois EPA recognized in its Statement of Reasons that states are waiting on U.S. EPA to update the national criteria for bacteria. (See SOR P. 42-46.) However, Illinois EPA addressed this issue by proposing a technology based effluent requirement in Part 304 and proposing appropriate

designated recreational uses for the CAWS and Lower Des Plaines River. (Id. at 92).

17. To allow MWRDGC's Motion to Stay at this time would cause further delay in the Board's decision with respect to the proposed rulemaking and could be detrimental to the waterway that needs improvements now. Illinois EPA and the various participants have already dedicated a lot of time and resources to this rulemaking and to allow a delay for another 2 years or longer seems unreasonable.

18. Also, despite MWRDGC's allegation of problems with Illinois EPA's analysis of economic reasonableness, the Illinois EPA has stated on record and in its Statement of Reasons that this proposal is economically reasonable and technically feasible and submitted information related to this issue to the Board. (Id. at 97-101).

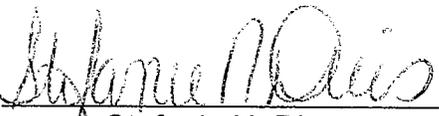
19. Finally, it would not be appropriate for the Board to order the various parties to go back to the stakeholder's process. Illinois EPA conducted a very extensive stakeholders process for this rulemaking. (Id. at 103-105). Illinois EPA can and will meet with interested parties as the rulemaking proceeds to discuss ways to narrow the issues of disagreement before the Board.

20. The proposal is now before the Board and should proceed as scheduled by the Hearing Officer Order of May 19, 2008.

WHEREFORE, the Illinois EPA respectfully requests that MWRDGC's Motion to Stay IPCB R08-9 be denied.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By 
Stefanie N. Diers
Assistant Counsel
Division of Legal Counsel

DATED: June 26th, 2008

Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Service List for R08-9

Elizabeth Schenkier
Keith Harley
Chicago Legal Clinic, Inc.
205 W. Monroe, 4th Floor
Chicago, IL 60606

Susan M. Franzetti
Franzetti Law Firm P.C.
10 South LaSalle St.
Ste. 3600
Chicago, IL 60603

Katherine D. Hodge
Monica Rios
Thomas G. Safley
Hodge Dwyer Zeman
3150 Roland Ave.
P.O. Box 5776
Springfield, IL 62702

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Ste 11-500
Chicago, IL 60601

Susan Hedman
Andrew Armstrong
Office of the Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, IL 60602

Jeffrey C. Fort
Ariel J. Teshner
Sonnenschein Nath & Rosenthal LLP
7800 Sears Tower
233 S. Wacker Drive
Chicago, IL 60606-6404

Ann Alexander
Senior Attorney, Midwest Program
Natural Resources Defense Council
101 North Wacker Dr., Ste. 609
Chicago, IL 60606

Fredrick M. Feldman
Ronald M. Hill
Margaret T. Conway
Metropolitan Water Reclamation District
of Greater Chicago
111 East Erie Street
Chicago, IL 60611

William Richardson, Chief Legal Counsel
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62705-5776

Marie Tipsord, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Ste 11-500
Chicago, IL 60601

Albert Ettinger, Senior Staff Attorney
Jessica Dexter
Environmental Law & Policy Center
35 E. Wacker Dr., Suite 1300
Chicago, IL 60601

Kevin Desharnais
Thomas W. Dimond
Thomas V. Skinner
Mayer Brown LLP
71 South Wacker Drive
Chicago, IL 60606-4637

Service List for R08-9 Continued

Fredric P. Andes
Carolyn S. Hesse
David T. Ballard
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, IL 60606

Stacy Meyers-Glen
Openlands
25 E. Washington, Ste. 1650
Chicago, IL 60602

Brent Fewell
Hunton & Williams LLC
1900 K Street, NW
Washington, DC 20006

Jack Darin
Cindy Skrukrud
Sierra Club, Illinois Chapter
70 East Lake Street, Ste 1500
Chicago, IL 60601

Marc Miller
Office of the Lt. Governor, Pat Quinn
Room 414 State House
Springfield, IL 62706

STATE OF ILLINOIS
COUNTY OF SANGAMON

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)
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SS

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Illinois EPA's Response to MWRDGC'S Motion to Stay IPCB R08-9 upon the person to whom it is directed by placing it an envelope addressed to:

John Therriault, Clerk
Marie Tipsord, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

SEE ATTACHED SERVICE LIST

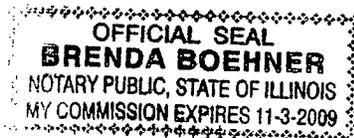
and mailing it First Class Mail from Springfield, Illinois on June 26, 2008, with sufficient postage affixed.

Jana McOmere

SUBSCRIBED AND SWORN TO BEFORE ME

This 26th day of June, 2008

Brenda Boehner
Notary Public



THIS FILING IS SUBMITTED ON RECYCLED PAPER