

Electronic Filing - Received, Clerk's Office, July 31, 2008

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:

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

Marie Tipsord, Hearing Officer
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Persons included on the attached
SERVICE LIST

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board RESPONSE OF ENVIRONMENTAL GROUPS TO MIDWEST GENERATION'S MOTION FOR EXTENSION OF TIME TO FILE PRE-FILED TESTIMONY OF GREG SEEGERT AND DR. ALLEN BURTON, a copy of which is herewith served upon you.

Respectfully Submitted,



Albert Ettinger
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Environmental Law & Policy Center
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DATED: July 31, 2008

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**RESPONSE OF ENVIRONMENTAL GROUPS TO MIDWEST GENERATION'S
MOTION FOR EXTENSION OF TIME TO FILE PRE-FILED TESTIMONY OF GREG
SEEGERT AND DR. ALLEN BURTON**

Friends of the Chicago River, Openlands, Sierra Club, Prairie Rivers Network, Natural Resources Defense Council, Southeast Environmental Task Force and the Environmental Law and Policy Center (“Environmental Groups”) do not object to Midwest Generation’s motion for leave for it to file the pre-filed testimony of Mr. Greg Seegert and Dr. Allen Burton on September 8, 2008, insofar as those witnesses intend to testify regarding sediment and habitat conditions in the Upper Dresden Island Pool of the Des Plaines River. Orderly process and fairness, however, require that Midwest Generation file its pre-filed testimony to the extent possible, *i.e.*, concerning any other subject matter; and that scheduling accommodations be made to address the fact that important testimony regarding sediment and habitat in the Upper Dresden Island Pool will not be available until September. In particular, we request:

1. **That Mr. Seegert and Dr. Burton file pre-filed testimony on August 4, 2008 insofar as it is intended that they testify regarding subjects other than the sediment and habitat conditions in the Des Plaines -** Insofar as Seegert and Burton intend to testify regarding subjects other than those that are the subject of the 2008 studies, there is no reason that that testimony cannot be filed in August. Any such testimony should be filed by the original deadline, so that subjects other than that of the sediment and habitat conditions in the Upper Dresden Island Pool can be handled in a fair and orderly manner.
2. **That testimony in this proceeding be scheduled such that witnesses testifying regarding habitat and sediment conditions in the Upper Dresden Island Pool will not be called prior to hearings that should be set for dates soon after September 29 -** Obviously, it would not be reasonable or fair for witnesses for the Environmental Groups or other parties to testify regarding sediment and habitat conditions in the Upper Dresden Island Pool while Midwest Generation was still preparing its pre-filed testimony. Under 35 Ill. Adm. Code 102.424(a), the earliest that testimony of Seegert or Dr. Burton could be heard given the September 8 filing date is September 29. No witness should be

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expected to address sediment and habitat conditions in the Upper Dresden Island Pool before a hearing date on which Mr. Seegert and Dr. Burton could testify.

It appears that there will be more than enough witness testimony to fill the currently scheduled September hearing dates in the absence of any testimony regarding sediment or habitat in the Upper Dresden Island Pool. MWRDGC has indicated that it will have a large number of witnesses who will address the Chicago Area Waterway System ("CAWS"), and the Environmental Groups intend to call at least a half dozen witnesses whose testimony will not relate to sediment or habitat conditions in the Upper Dresden Pool.

3. **That a separate date be set for all parties for filing pre-filed questions regarding sediment and habitat in the Upper Dresden Island Pool.** Allowing the same amount of time now allowed for pre-filed questions of other witnesses, the date for questions regarding sediment and habitat issues in the Upper Dresden Island Pool should be approximately September 29, 2008.
4. **Finally, that additional hearing dates be set immediately, to begin soon after September 29, 2008** for testimony that will address sediment and habitat conditions in the Upper Dresden Island Pool. Fairness requires that sufficient time be given to review the prefiled testimony, but we do not wish to see this proceeding again delayed by several months.

We do not, of course, agree with all of Midwest Generation's characterization of the Illinois Environmental Protection Agency testimony or the facts. However, with the provisions above, we agree that Midwest Generation's desire to bring the results of 2008 studies to the Board can be reasonably accommodated.

Respectfully submitted,



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