

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 III.)
Adm. Code Parts 301, 302, 303 and 304)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 8th day of March, 2010, I filed with the Office of the Clerk of the Illinois Pollution Control Board the attached Response In Support of Motion to Sever, Open Subdocket, and Proceed to Decision Concerning Recreational Uses, a copy of which is hereby served upon you.

Respectfully submitted,

LISA MADIGAN,
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State of Illinois

By:



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Adm. Code Parts 301, 302, 303 and 304)

PEOPLE OF THE STATE OF ILLINOIS' RESPONSE
IN SUPPORT OF MOTION TO SEVER, OPEN SUBDOCKET,
AND PROCEED TO DECISION CONCERNING RECREATIONAL USES

The People of the State of Illinois (“the People”), by and through Illinois Attorney General Lisa Madigan, support the motion (“Motion”) filed by the Natural Resource Defense Council, Openlands, Sierra Club – Illinois Chapter, Southeast Environmental Task Force, Environmental Law and Policy Center, Friends of the Chicago River, and Alliance for the Great Lakes (collectively, “Movants”) on February 3, 2010, requesting that the Board sever this proceeding, pursuant to 35 Ill. Adm. Code 101.408, and open a subdocket to address issues concerning recreational use designations of the Chicago Area Waterway System (“CAWS”).

The People respectfully request that the Motion be granted.

Under 35 Ill. Adm. Code 101.408, the Board may sever a rulemaking proceeding “in the interest of convenient, expeditious, and complete determination of claims”. At this juncture, severing the proceeding would yield the most convenient and expeditious path to completing this already lengthy rulemaking. As set forth in the Motion, it has become apparent from testimony in this proceeding that setting standards to protect recreational uses of the CAWS and aquatic life

uses of the CAWS involve two entirely different sets of issues and evidence. Setting recreational use standards focuses on issues relating to human use of the CAWS; the presence of pathogens in the waterways; and disinfection technologies. By contrast, aquatic life use designations will involve the consideration of the health of aquatic wildlife; the presence of metals, dissolved oxygen, and excessive heat in the waterways; and aeration and cooling technologies. As noted by Movants, the overlap between these two sets of issues is, at most, "minimal." (Motion at 6.)

The People concur with Movants' assessment that recreational use issues are ripe for decision and that there is no good reason to delay setting standards that are needed to protect public health. Testimony on recreational uses of the CAWS has been completed, and testimony on water quality standards and criteria to protect those uses is unnecessary because the Illinois Environmental Protection Agency has proposed a technology-based effluent standard for disinfection, not an instream water quality standard. (Motion at 4, 7.) The record on recreational uses is complete and the Board could take steps to decide them immediately, if the aquatic life issues were severed and placed in a separate subdocket.

The Board and the participants in this proceeding will have the same amount of work to complete on recreational and aquatic life use issues, whether or not the proceeding is severed. However, severing the proceeding will allow the Board to decide the recreational use issues now, rather than delaying a decision on these important public health issues until the proceeding as a whole can be completed. The record on recreational issues is complete -- there is no reason not to proceed to briefing and decision on these issues. Once severed, hearings on aquatic life issues can proceed as before, but in a separate subdocket. Severing recreational use and aquatic life issues, pursuant to 35 Ill. Adm. Code 101.408, will allow the Board to resolve all of the issues in this rulemaking in a more efficient manner than is possible in a single proceeding.

WHEREFORE, for all of the reasons stated herein, the People respectfully request that the Board grant the motion to sever, open a subdocket, and proceed to decision on the proposed rules relating to recreational uses.

LISA MADIGAN,
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DATE: March 8, 2010

CERTIFICATE OF SERVICE

I, ANDREW ARMSTRONG, do certify that I filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the foregoing Notice of Filing and Response In Support of Motion to Sever, Open Subdocket, and Proceed to Decision Concerning Recreational Uses and caused them to be served this 8th day of March, 2010 upon the persons listed on the attached Service List by depositing true and correct copies of same in an envelope, first class postage prepaid, with the United States Postal Service at 69 West Washington Street, Chicago, Illinois, unless otherwise noted on the Service List.

A handwritten signature in black ink that reads "Andrew Armstrong". The signature is written in a cursive style with a horizontal line underneath the name.

ANDREW ARMSTRONG

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