

ILLINOIS POLLUTION CONTROL BOARD
March 18, 2010

IN THE MATTER OF:)
)
WATER QUALITY STANDARDS AND) R08-9
EFFLUENT LIMITATIONS FOR THE) (Rulemaking - Water)
CHICAGO AREA WATERWAY SYSTEM)
AND LOWER DES PLAINES RIVER)
PROPOSED AMENDMENTS TO 35 ILL.)
ADM. CODE 301, 302, 303, and 304)

ORDER OF THE BOARD (by G.T. Girard):

Numerous motions have been filed in this proceeding including requests for additional hearings as well as a motion to sever the docket. Today the Board will address all the outstanding motions, including a motion filed on March 8, 2010 by the Metropolitan Water Reclamation District of Greater Chicago (District) for additional hearing to address aquatic life uses and the District's Habitat Reports. The Board addresses that motion even though the time for filing responses has not expired as the Board finds that waiting responses will result in undue delay. *See* 35 Ill. Adm. Code 101.500(d).

The Board grants the motion filed by Citgo Petroleum Corporation and PDV Midwest LLC (Citgo/PDV) for an additional hearing on Asian Carp, but delays that hearing until later this year. The Board also grants the motion filed by Environmental Law and Policy Center, Friends of the Chicago River, Sierra Club Illinois Chapter, Natural Resources Defense Council and Openlands (Environmental Groups). The Board grants the motion to sever the docket. Subdocket A, will deal with the issues related to recreational use designations and subdocket B will address issues relating to disinfection and whether or not disinfection may or may not be necessary to meet those use designations. Subdocket C, will be created to address the issues involving proposed aquatic life uses. Subdocket D, will be created to address the issues dealing with water quality standards and criteria which are necessary to meet the aquatic life use designations.

The Board proceeds immediately to decision on recreational uses; however, the Board reserves ruling on the disinfection issue. The Board instructs the Hearing Officer to schedule a hearing in June on the epidemiological study technical reports being prepared by the District. Finally, the Board grants the motion filed by the District to hold hearings on aquatic life uses and the District's Habitat Reports.

PROCEDURAL BACKGROUND

On October 26, 2007, the Illinois Environmental Protection Agency (IEPA) filed a proposal under the general rulemaking provisions of Sections 27 and 28 of the Environmental Protection Act (Act) (415 ILCS 5/27, 28 (2008)). Generally, the proposal will amend the Board's rules for Secondary Contact and Indigenous Aquatic Life Uses to update the designated

uses and criteria necessary to protect the existing uses of the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River (LDPR). On November 1, 2007, the Board accepted the proposal for hearing.

The Board has held 37 days of hearing in this rulemaking as of today's order. The first ten days were dedicated to hearing the IEPA's testimony, while the remaining 27 have been dedicated to testimony from participants both in support and opposed to the proposal. The hearings were organized to allow for testimony on both the recreational and aquatic life use designations proposed by the IEPA, to be followed by hearings on water quality standards. *See* May 2, 2008 hearing officer order. At the close of the hearing on January 14, 2010, all the prefiled testimony on aquatic life use designations had been heard and a prehearing conference was set to begin discussing new hearing dates. *See* November 15, 2009 and January 26, 2010 hearing officer orders.

The Board has previously denied a motion to stay the proceeding filed by Metropolitan Water Reclamation District of Greater Chicago (District) and supported by Midwest Generation L.L.C. (Midwest Gen) and Stepan Company (Stepan). *See* 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 (July 21, 2008). The motion to stay was opposed by the Environmental Law and Policy Center, Friends of the Chicago River, Sierra Club Illinois Chapter, Natural Resources Defense Council and Openlands (Environmental Groups), the Chicago Legal Clinic, the Attorney General of the State of Illinois (People) and the IEPA. After denying the stay, the Board proceeded with 27 days of hearing on the recreational and aquatic life use designations proposed by the IEPA.

On January 7, 2010, prior to the last public hearing on the use designations, Citgo Petroleum Corporation and PDV Midwest LLC (Citgo/PDV) filed a motion (Mot.) seeking additional hearings regarding the use designations of the Chicago Sanitary and Ship Canal (CSSC). The motion was filed in light of a United States Supreme Court case filed by the State of Michigan and others (plaintiffs) against the District, the State of Illinois, Illinois Department of Natural Resources (IDNR) and the Army Corp of Engineers (Army Corp) (collectively defendants).

The Board received several responses to Citgo/PDV's motion. In support, on January 21, 2010, Stepan (SResp.) and Midwest Gen (MGRsp.) filed responses. Also in support on January 25, 2010, the District (DResp.), Illinois Environmental Regulatory Group (IERG and IERGRsp.) and Corn Products International, Inc. (Corn Products and CPRsp.) filed responses. In opposition to the motion, on January 20, 2010, Environmental Groups filed a response (ELPCRsp.), and on January 25, 2010, the IEPA (IEPARsp.), and the People (AGORsp.) filed responses.

Pursuant to hearing officer order, replies were allowed. On January 25, 2010, Environmental Groups filed a reply to the responses of Midwest Gen and Stepan (ELPCReply). On January 29, 2010, Citgo/PDV filed a reply (Reply). On February 3, 2010, the People filed a reply (PReply) and Midwest Gen also filed a reply (MGRReply). Also on February 3, 2010, Chemical Industry Council of Illinois (CICI) filed a response (CICIRsp.)

While the Citgo/PDV motion was pending, on February 3, 2010, the Environmental Groups filed a motion asking that the docket be severed (SeverMot.). The Environmental Groups are asking the Board to open a subdocket to address issues relating to the recreation use designations of the CAWS and the fecal coliform discharge limits supporting the use designations.

On March 8, 2010, the responses to the motion to sever were filed by the following:

Citgo/PDV (CitgoSeverMot.)
 IEPA (IEPASEverMot.)
 People (PSeverMot.)
 District (DSeverMot.)

Also on March 8, 2010, the District filed a new motion asking the Board to hold hearings on the CAWS Habitat and Improvement Reports (report) and the District's proposed aquatic life use designations (MWRDC Mot.).

On March 15, 2010, the Environmental Groups filed a reply to the District's response to the motion to sever (EGReply).

CITGO/PDV MOTION FOR ADDITIONAL HEARINGS ON ASIAN CARP

The Board will first summarize the arguments made in the motion filed by Citgo/PDV. The Board will then summarize the responses in support of the motion beginning with Midwest Gen, then Stepan, and the District. The Board will next summarize IERG's response, CICI's response and Corn Products. The Board will then summarize replies filed in support of the motion. The Board will then summarize the responses in opposition starting with the IEPA's response to the motion followed by the People's response. The Board will conclude by summarizing both Environmental Groups' response and reply.

Motion

Citgo/PDV argues that "recent events have created a very unusual situation" and urges the Board to investigate the current status of third party litigation before the United States Supreme Court. Mot. at 1. Specifically Citgo/PDV asks that the Board hold an additional hearing to receive information on the potential effect that the litigation may have on the proposed and current use designations of the CSSC and the impact that may have on this rulemaking. *Id.*

Citgo/PDV explains that the litigation was initiated by Michigan and joined by other States bordering the Great Lakes against the District, Illinois, IDNR and Army Corp of Engineers. Mot. at 1. Citgo/PDV describes the relief sought by Michigan as seeking to force a stronger approach to isolating the Great Lakes from an Asian Carp invasion through the Chicago Area Waterways (CAWS) and in particular the CSSC. *Id.* Citgo/PDV notes that several other states have filed briefs in support of Michigan's position. Mot. at 1-2. Citgo/PDV reports that plaintiffs argue that the steps taken by the defendants to keep Asian Carp out of Lake Michigan

are insufficient and that a significant threat exists that Asian Carp will migrate into Lake Michigan. Mot. at 2.

Citgo/PDV states that the plaintiffs are seeking a preliminary injunction that would “fundamentally change how the” CSSC and other Chicago waterways are used and have been used including seeking closure of the O’Brian Lock and Dam and the Chicago Controlling Works. *Id.* Other relief sought includes installing interim barriers or structures in the Grand and Little Calumet rivers to prevent migration to Lake Michigan and in the Des Plaines River and the CSSC to prevent Asian Carp entering the CSSC during flood events. *Id.* The suit also seeks to have the existing electrical barriers operate at full power, monitoring the CSSC and all connected waterways for Asian Carp, and eradicating any Asian Carp found in the those waters. Mot. at 3.

At the time of the filing of the motion, Citgo/PDV did not know how the Unites States Supreme Court would respond; however Citgo/PDV argues that the suit going away is highly unlikely. Mot. at 3. Citgo/PDV maintains that the orders sought by plaintiffs will have a direct effect on the CSSC, particularly at the Lemont Refinery outfall, because the outfall is located one mile upstream from the electric barriers. Citgo/PDV urges the Board to hold additional hearings on the impact of the litigation on this proceeding and asks that the Board defer hearings on water quality standards for the CSSC. *Id.*

Midwest Generation’s Response

Midwest Gen supports the motion for additional hearings based on “significant, recent developments” and suggests that the hearings also include testimony on the migration of Asian Carp into and through the Lower Des Plaines River (LDR) segments that are being considered in this rulemaking. MGResp. at 1. Midwest Gen notes that Citgo/PDV has brought the recent “significant” developments concerning Asian Carp to the Board’s attention and that in the 30 plus days of hearing there has been little to no mention of problems posed by the migration of Asian Carp. *Id.* Midwest Gen attributes the lack of testimony to the fact that “so much has changed so quickly in the past two months regarding the presence and continuing migration of Asian Carp” within the waters that are the subject of this rulemaking. MGResp. at 2. Midwest Gen does not believe that the lack of information is the result of a lack of due diligence on the part of any active participants in this proceeding. *Id.*

Midwest Gen opines that based on the “limited hearing testimony” by the IEPA on the issue of invasive species, the effects of such species including Asian Carp were likely not considered by IEPA when deliberating on the proposal filed in this proceeding in October 2007. MGResp. at 2. Midwest Gen states that there is no evidence that the IEPA considered either the effects on aquatic life due to migration of Asian Carp through the LDR to the electrical barrier in the CSSC or the potential ramifications of the Asian Carp’s migration into the CAWS. *Id.* Midwest Gen concedes that the absence of such consideration may be excused as being potentially speculative until recent developments. *Id.* Midwest Gen argues that because the presence of Asian Carp in waters of the United States is a human-caused condition, the presence is an appropriate consideration in a use attainability analysis (UAA) pursuant to the federal UAA regulations. *Id.*, citing 40 C.F.R. § 131.10(g)(3).

Midwest Gen contends that the migration of Asian Carp into the LDR and CAWS clearly warrants further review and consideration in this proceeding through sworn testimony. MGResp. at 2. Midwest Gen notes that there are not published studies or literature but there is important information concerning the migration of Asian Carp and the legal and scientific issues concerning aquatic life arising from such information. MGResp. at 3. Midwest Gen argues that such information must be gathered and presented to the Board through expert testimony and Midwest Gen has already begun taking steps to provide such testimony as quickly as possible. *Id.*

Midwest Gen also points to new developments surrounding the construction and operation of the electric barriers. MGResp. at 3. Specifically, Midwest Gen notes that only one electric barrier was operational when this rulemaking was proposed and there are now two additional electric barriers. *Id.* Midwest Gen believes that presenting evidence at hearing regarding the current and planned operation of the electric barriers and the impact of the electric barriers on the aquatic life is extremely important. *Id.* Midwest Gen also believes that evidence will be presented establishing the presence of Asian Carp in the Upper Dresden Island Pool (UDIP) and that there is no electric barrier to prevent migration to the UDIP. MGResp. at 4. Thus, Midwest Gen urges the Board to include all the waters subject to this rulemaking in holding additional hearings. *Id.* Midwest Gen further urges the Board to invite testimony from IDNR and other governmental agencies to testify on these issues. *Id.*

Midwest Gen acknowledges that requesting a complete review of the potential effect of Asian Carp's presence in UDIP is beyond the scope of the response. However, Midwest Gen believes that the potential adverse effect on the diversity of the aquatic community is a "material issue that warrants further review" at hearing to avoid "material prejudice" to Midwest Gen and other similarly situated parties in this rulemaking. MGResp. at 4. Midwest Gen states that Asian Carp is the term used for an invasive fish species that can grow up to four feet long and weigh over 100 pounds. *Id.* Two species of particular concern, the bighead carp (*Hypophthalmichthys nobilis*) and the silver carp (*Hypophthalmichthys molitrix*), are plankton feeders that can consume up to 40% of their body weight in food each day. *Id.* Midwest Gen contends that these species are then in competition with other native adult fish species and with all juvenile fish and mussels. MGResp. at 5. Midwest Gen opines that these facts establish that a reasonable conclusion can be drawn that the presence of Asian Carp in the UDIP may significantly change the aquatic life community in those waters. *Id.*

Midwest Gen reiterates that relevant scientific data exist to present to the Board on this issue and Midwest Gen is committed to doing so. MGResp. at 5. Midwest Gen argues that the Board should determine if the aquatic life to be protected will consist largely of Asian Carp before the Board makes a decision to impose stricter thermal standards. *Id.* Midwest Gen further argues that regardless of the outcome of the litigation, the issue of the effect of Asian Carp in the waterways subject to this rulemaking is a significant and critical issue for the determination of the aquatic life use designations. *Id.*

Midwest Gen maintains that the plaintiffs are seeking relief that includes a regular application of fish poison in the CSSC to ensure that Asian Carp do not pass through the electric barrier. MGResp. at 6. In December 2, 2009, one such fish kill was completed and tens of

thousands of fish were killed including one bighead Asian Carp. *Id.* The data collected from this fish kill is an example of evidence Midwest Gen believes should be presented at hearing. MGResp. at 7.

Midwest Gen also agrees with Citgo/PDV that these are uncertain times for making decisions concerning the future attainability of aquatic life uses for these waters. MGResp. at 7. Midwest Gen notes that a January 19, 2010 joint presentation by the USEPA, Army Corp and the United States Fish and Wildlife Service includes a plan to address migration of Asian Carp into Lake Michigan. *Id.* Midwest Gen states that the plan identifies changes that may impact the aquatic life community in the CSSC and other parts of the CAWS and LDR. *Id.* Midwest Gen believes the Board should be informed of these plans and that a determination of what aquatic life use can be attainable in the CSSC may simply not be ripe for the Board's decision at this time. MGResp. at 7-8.

Midwest Gen acknowledges that Citgo/PDV request may be viewed as a delay tactic; however, Midwest Gen opines that there are times when not taking action is the prudent course. MGResp. at 8. Midwest Gen believes this may be one of those times. *Id.* Midwest Gen states that prior to these recent events none of the participants in this rulemaking predicted that Asian Carp would be present as far north as the CSSC or that a government authorized fish kill would occur. *Id.* Midwest Gen asserts that these developments warrant the time to allow the Board and the participants to assess the proper path for this proceeding. *Id.*

Stepan's Response

Stepan supports Citgo/PDV's motion for additional hearings and also moves for hearing on the impact of Asian Carp in the UDIP and other waterways that are the subject of this rulemaking. SResp. at 1. Stepan incorporates Citgo/PDV's motion. *Id.* Stepan notes that the United States Supreme Court denied the preliminary injunction; however the petition remains pending and is subject to further briefing. *Id.*

Stepan asks the Board to conduct hearings on the issue of Asian Carp throughout the waters that are the subject of this rulemaking because the presence and continued migration of Asian Carp calls into question the "current viability and the continued sustainability of the IEPA's aquatic life use proposals" and possibly the recreation use proposals as well. SResp. at 2. Stepan points to several areas of testimony that the Board should hear including the extent of migration and the likely long-term impact of Asian Carp on the biological diversity and abundance of aquatic life currently present in the waters. *Id.* Stepan believes that the Board should also hear testimony on the steps that the IEPA and other governmental entities are taking to protect the UDIP and other waters downstream of the CSSC. SResp. at 3. Stepan also believes that information should be presented on whether the proposed water quality standards will achieve the desired species diversity given the presence of the Asian Carp. *Id.*

Stepan notes that recent information indicates that Asian Carp are likely present in the UDIP and the presence of Asian Carp in the UDIP and LDR is not currently controlled. SResp. at 3. Stepan opines that the LDR could become an important factor in the litigation due to the possibility of overland transport into the CSSC during flooding. SResp. at 4.

Stepan further notes that Asian Carp's ability to spawn and eat 40% of their body weight a day raises at least a possibility that the Asian Carp may negatively impact the native habitat, ecosystem, and aquatic life diversity. SResp. at 4. Stepan notes that IEPA has emphasized the UDIP's diverse aquatic life and the Board "needs to understand what impact the presence of Asian Carp in the UDIP will have" on that diversity. SResp. at 4-5. Stepan notes that the IEPA has not apparently considered the impact of invasive species in deciding the aquatic life use designation to propose. SResp. at 5.

Stepan believes that additional hearing may extend the process, but that the extension need not be great. SResp. at 5. Stepan suggests that IDNR, the Army Corp and other knowledgeable parties be invited to testify. SResp. at 6.

District's Response

The District also supports the request for additional hearings arguing that the recent events related to the presence of Asian Carp in the CSSC and other parts of CAWS are highly relevant to this proceeding. DResp. at 1. The District opines that the actions being taken or that will be taken by the courts and agencies could have a tremendous impact on the Board's ultimate decision as to what uses are appropriate and attainable. DResp. at 1-2. The District feels that the parties involved will have differing viewpoints on the Asian Carp issue and these issues will be raised by fact witnesses and experts. DResp. at 2. The District believes the only practical way for the Board to come to an informed decision would be to conduct a hearing where there would be an opportunity for testimony and questions. *Id.* The District contends that mere submittal of comments would be inadequate and failure to hold a hearing would deprive the District and other parties of a full and fair opportunity to be present and discuss relevant issues before the Board. *Id.*

The District notes that Asian Carp related issues are being addressed through ongoing activities in the courts, Congress and Federal and State agencies and the denial of the injunction does not resolve the litigation. DResp. at 2. The District notes that the motions in the litigation request relief that goes beyond the CSSC and includes the closing of locks at several location along the CAWS. DResp. at 3. The District points out that in Congress, committees are holding hearings concerning the Asian Carp issue and a Michigan Congressman has introduced a bill to accomplish the same result as requested in the litigation. *Id.* Agency activity includes consideration of several actions including additional fish poisonings, lock closure and targeted removal of Asian Carp. *Id.*

The District contends that, if implemented, some of these measures could drastically affect the kind of designated use and water quality standards that would be appropriate. DResp. at 4. The District points out as an example that fish poisoning would certainly impact the issue of whether the segments should be assigned new, stricter water quality standards designed to bring about an improved fish community. *Id.* The District maintains that the possible impacts of these measures were not considered by the IEPA or even in the UAA studies on which the IEPA's proposal is based. *Id.*

The District also suggests that the Board invite testimony from other entities, including Federal or State agencies involved in day-to-day assessment and addressing of the Asian Carp issue. DResp. at 5. The District recommends focusing the hearings on the following key issues:

1. The presence of Asian Carp and alleged detection of Asian Carp eDNA¹ in various reaches of the CAWS;
 2. Actions that have already been taken or which are underway to address the problem;
 3. Possible carp-related actions that are either being planned or being considered; and
 4. The possible impacts of different scenarios on the Board's eventual decisions as to designated uses and water quality standards for the CAWS.
- Id.*

As to Citgo/PDV's suggestion that the Board defer the rulemaking or some aspects of the rulemaking, the District believes that during the hearing process the Board may consider deferral while the actions to address the Asian Carp issue are taken. DResp. at 5. The District believes that for the Board to proceed with the rulemaking would be highly inefficient if the Board's decision making was based on assumptions on how the Asian Carp issue would be resolved and then to reopen the rulemaking once the actual actions have been taken. *Id.* The District believes that the issue of possible deferral of the rulemaking would be an appropriate topic for Asian Carp related hearings. *Id.*

IERG's Response

IERG supports Citgo/PDV's motion to hold additional hearings and urges the Board to expand the hearings to include other segments of the CAWS and LDR. IERGRsp. at 2. IERG notes that the reason to perform a UAA is to determine the existing and potential uses of the waterway in order to establish water quality standards to achieve the goals of the Clean Water Act. *Id.* IERG notes that the IEPA has proposed water quality standards that the IEPA believes protect aquatic life; however, the IEPA has acknowledged that IEPA did not consider whether improving water quality would increase the chances of invasive species migrating into Lake Michigan. IERGRsp. at 2-3.

IERG notes that the preventing the migration of Asian Carp into Lake Michigan is a priority for various parties and determining what additional measures will be taken is uncertain. IERGRsp. at 3. However, IERG maintains that the potential impact of these additional measures on the objectives of this rulemaking is a reality. *Id.* IERG opines that the resulting uncertainty warrants discussion. *Id.*

¹ eDNA or environmental DNA testing approach uses standard genetic identification methods in the extraction of low concentrations of DNA from water sampled in the field that allows for species-specific detection. DNA testing is used to serve as an early warning system as to the presence of Asian Carp. MGRsp. at Exh. A and D.

CICI's Response

CICI filed a response in support of additional hearings. CICIResp. at 1. CICI believes that Asian Carp will adversely affect recreation and water quality in the waterways and that Asian Carp plays a “huge role” in the rulemaking. *Id.*

Corn Products' Response

Corn Products supports the request for additional hearings and asks that the Board extend the hearing to include all the CSSC. CPResp. at 1-2. Corn Products notes that the United States Supreme Court denied the motion for preliminary injunction; however the Court could still rule on Michigan's request for relief. CPResp. at 2. Corn Products states that regardless of the litigation, Federal and State agencies have indicated that they will mitigate the risk of Asian Carp migrating into Lake Michigan and such mitigation will likely impact both the current and future uses attainable in the CSSC. CPResp. at 3.

Corn Products notes the recent events including the discovery of Asian Carp, construction of the additional electric barriers and fish poisoning and states that the IEPA did not consider these factors when drafting the proposal. CPResp. at 3-5. Corn Products states that the conditions in the CSSC have changed and are likely to change even more in the future. CPResp. at 5. Corn Products opines that past response actions and similar future actions related to Asian Carp will likely have a significant impact on the current use and the attainable uses of the CSSC. *Id.* Corn Products believes that accordingly the record should be supplemented and only by hearing testimony can the Board acquire the information necessary. CPResp. at 5-6.

Corn Products believes that given the recent revelations concerning Asian Carp and the responses by Federal and State agencies, hearing testimony from the participants related to the impact of the Asian Carp's presence in the CSSC is appropriate. CPResp. at 6. Corn Products also requests that the Board seek additional testimony from the IEPA regarding uses in the CSSC given recent developments. *Id.*

Corn Products agrees with Citgo/PDV's request to defer hearing on water quality standards since response plans are still being formulated. CPResp. at 6. Corn Products also requests that the Board allow time for “certainty to be established regarding material and unaddressed factors impacting uses resulting from both the [Asian] carp themselves, and measures taken to control them.” *Id.* Corn Products argues that granting this request is the only viable alternative that allows the Board to avoid expending resources and time to address matters that are unsettled and subject to change. *Id.*

Citgo/PDV Reply

In reply to all the responses, Citgo/PDV notes that the People and the District, both parties to the litigation, have taken differing views on whether or not a hearing should be held. Reply at 1. Citgo/PDV replies that in order to “efficiently promulgate this rulemaking without causing undue harm” to the positions of the People and the District, Citgo/PDV suggests that the

Board defer all or a portion of the rulemaking that concerns the litigation. *Id.* Citgo/PDV asserts that if the rulemaking proceeds without deferring the aspects of the rule impacted by the litigation, the issue will arise in the remaining hearings before the Board in this rulemaking. Reply at 2.

Midwest Gen's Reply

Midwest Gen provides additional information in the reply from the Asian Carp Regional Coordinating Committee (ACRCC) which is a group of federal, state, and municipal entities. MGReply at 1. The document identifies additional actions that may be taken to address the migration of Asian Carp to Lake Michigan. *Id.* Midwest Gen asserts that the proposed actions identified by ACRCC could potentially affect aquatic life in various areas of the waterways that are the subject of this rulemaking. *Id.* For example, one action would be to spot treat using piscicide for fish kills in areas of the CSSC as well as intensive fishing operations. MGReply at 2. Midwest Gen opines that these actions may have a significant impact on aquatic life use issues. *Id.*

Midwest Gen maintains that the ACRCC information is further proof of a quickly changing response to the Asian Carp migration. MGReply at 2. Midwest Gen argues that these developments are relevant to the fundamental issues in this rulemaking including the nature of the aquatic life that is to be protected by the aquatic life use designations. *Id.* Further Midwest Gen argues that the direct link between governmental developments on the Asian Carp issue and the critical aquatic life uses involved in this rulemaking, the requests for additional hearings are not a delay tactic. MGReply at 2-3.

Midwest Gen opines that the issue of the effect that Asian Carp migration into the waterways subject to this rulemaking is a significant and critical issue for the determination of aquatic life uses. MGReply at 3. Midwest Gen urges the Board to hold a hearing to hear relevant evidence concerning the presence of Asian Carp and the efforts to control or mitigate the migration of Asian Carp. MGReply at 4.

IEPA's Response

IEPA opposes Citgo/PDV's motion arguing that Citgo/PDV is asking the Board to investigate the current status of a third party litigation and the motion is premature and unnecessary at this time. IEPAResp. At 1. IEPA notes that the United States Supreme Court denied the motion for preliminary injunction on January 19, 2010, and the issues raised by Citgo/PDV are speculative at this point. IEPAResp. At 2. IEPA maintains that to have a hearing now is premature as the steps that the States will take in response to the United States Supreme Court decision are unclear. *Id.* The IEPA also argues that allowing a hearing at this time would unnecessarily delay the current rulemaking. *Id.* The IEPA argues that even if the Board were to hold a hearing, who would provide the additional information is not made clear and the IEPA is not in a position to provide additional information on the suit to the Board. *Id.*

People's Response and Reply

The People argue that the Citgo/PDV motion should be denied because no information that could be gathered through a hearing by the Board would be helpful in predicting the outcome of any litigation. PeopleResp. At 1. The People opine that at worst the proposed hearing could interfere with the pending litigation. PeopleResp. At 2.

In reply to the responses and the motions, the People renew their opposition to the motions, including any potential stay of the proceedings. Preply at 1. The People argue that a hearing on Asian Carp would be “at best premature and, at worst, improper”. *Id.* The People argue that hearings would be premature because no one can predict the result of the United States Supreme Court litigation or the strategies that may be developed for addressing the Asian Carp issue by the several government entities studying the issue. Preply at 1-2. The People believe the hearings would be improper because of potential interference with the ongoing litigation. Preply at 2.

The People oppose the stay because there are many issues before the Board that are unrelated to the Asian Carp issue. Preply at 2. The People give as an example that none of the hypothetical scenarios to address the Asian Carp issue would provide a basis for a lower water quality standard for disinfection. *Id.* The People opine that this proceeding is a statutorily mandated proceeding to review scientific evidence to establish water quality standards and “not a perpetual fact-finding mission” to investigate any and all issues that may affect Illinois’ waterways. *Id.*

Environmental Groups' Response and Reply

The Environmental Groups oppose the motion for additional hearings and notes that in the Citgo/PDV motion there is no indication of what witnesses may be offered nor why the points cannot be made in writing. ELPCResp. at 1. The Environmental Groups argue that the idea that anything relevant to the rulemaking might come out of the litigation is speculative. *Id.* The Environmental Groups maintain that holding additional hearings will lead to more delay as the Board attempts to find calendar and physical space for additional hearings. *Id.* The Environmental Groups opine that the positions on the Asian Carp issue can be made in writing. ELPCResp. at 2.

The Environmental Groups filed a reply to Midwest Gen and Stepan’s responses and argues that both had a full opportunity to present testimony on the presence of the Asian Carp but instead presented days of testimony while making only passing references to Asian Carp. ELPCReply at 3. The Environmental Groups maintain that the parties are free to file comments concerning Asian Carp, but none of the reasons espoused are sufficient to warrant the scheduling of additional hearings. *Id.* The Environmental Groups argue that the issue is “of highly dubious relevance” and could have been raised from the outset of this proceeding. ELPCReply at 4.

MOTION TO SEVER

The Board will begin with a summary of the motion to sever and follow by summarizing the response of Citgo/PDV and then the IEPA. The Board will then summarize the District's response and conclude with the Environmental Groups reply.

Motion to Sever

The Environmental Groups ask that the Board to create a subdocket in this rulemaking to address the portions of the IEPA's proposal designating areas of the CAWS for "limited contact recreation", "non-contact recreation", and "non-recreation". SeverMot. at 1; *see also* Proposed Sections 303.220, 303.225, and 303.227. The Environmental Groups further ask that the Board also include in the new subdocket the proposed technology-based fecal coliform discharge limit supporting those designated uses. *Id.*, *see also* Proposed Section 304.224. In support of this request, the Environmental Groups argue that a subdocket is appropriate because the recreational use issues are almost entirely separate and distinct from the aquatic life uses issues and all testimony concerning recreational use has concluded. SeverMot. at 2. The Environmental Groups opine that the hearings moving forward will involve extensive and time-consuming additional testimony concerning the unrelated aquatic life uses. *Id.*

The Environmental Groups note that the IEPA's proposal includes substantial changes to the water quality standards and criteria to support the proposed aquatic life uses; however IEPA "decided to postpone setting standards and criteria to support the recreational use designations" due to ongoing research. SeverMot. at 2. The Environmental Groups indicate that this research was being undertaken by the District and USEPA and includes potential development of criteria for "indicator bacteria" such as E.Coli and fecal coliform by USEPA and the District's risk assessment and epidemiological study. *Id.* SeverMot. at 2-3. The Environmental Groups state that the proposal did include a "widely-used technology-based discharge standard" to protect the proposed recreational uses and to "provide more immediate protection of public health, in recognition of the increasing recreational value of the CAWS." SeverMot. at 3. The specific standard proposed by IEPA is "that discharges to the CAWS between March and November not exceed 400 colony forming units per 100 milliliters (cfu/100 ml) of fecal coliform", which the Environmental Groups claim is the standard currently used for discharges into general use waters throughout Illinois. *Id.*

The Environmental Groups argue that maintaining both recreational use issues and unrelated aquatic life issues in the same docket will "unnecessarily delay decision" on the question of whether the District will be required to disinfect the sewage effluent discharged into the CAWS. SeverMot. at 4. The Environmental Groups maintain that all prefiled testimony has been heard on this issue and severance of recreational use issues from aquatic life use issues is appropriate under the Board's rules. SeverMot. at 4-5, citing 35 Ill. Adm. Code 101.408. The Environmental Groups point out that the Board has used this procedure on multiple occasions to "facilitate rulemaking in dockets involving disparate subject matter." SeverMot. at 5.

In support of the position that the recreational use and aquatic life use designations are unrelated, the Environmental Groups assert that all the witnesses that testified regarding

recreational uses have addressed questions regarding pathogens, and the type and frequency of use. SeverMot. at 6. The Environmental Groups claim that by contrast aquatic life use testimony is based on ecosystem considerations and tolerance to pathogens. *Id.* The Environmental Groups concede that there may be “occasional minimal intersection” in the issues of recreation use and aquatic life use but the issues “are in every meaningful sense separate”. SeverMot. at 6-7.

The Environmental Groups note that the next phase of this proceeding is designed to develop a record on water quality standards and criteria; however no such standards or criteria were proposed to support recreational uses. SeverMot. at 7. Thus, the Environmental Groups opine that the second phase of the proceedings will concern solely aquatic life use issues and there is no reason to delay decision on recreation uses. SeverMot. at 7-8. The Environmental Groups argue that the time necessary to complete the next phase of the rulemaking could be considerable and the Board should use that time to render a decision on recreational issues. SeverMot. at 8.

The Environmental Groups urge the Board to consider the relative risks and benefits of an earlier decision versus a delayed decision on recreational uses. SeverMot. at 8. The Environmental Group maintain that their position and that of the IEPA is that disinfection will reduce the risk “of illness to kayakers, canoeists, and other recreators whom IEPA’s proposal aims to protect.” *Id.* The Environmental Groups assert that if the Board ultimately agrees with this position, there would be public health benefits in reaching a decision sooner rather than later. SeverMot. at 9.

The Environmental Groups also argue that once a subdocket is created, the Board should proceed to decision on the recreational use issues as the Board has all the evidence necessary to render a decision expeditiously. SeverMot. at 5. The Environmental Groups assert that neither the epidemiological study nor the ongoing research by USEPA will provide any additional information on which the Board should base a decision on the recreational use designations for CAWS. *Id.* The Environmental Groups claim that to the extent that the District might argue that the Board should await the epidemiological study, the District is wrong. SeverMot. at 9.

The Environmental Groups assert that the IEPA has indicated that the results of the epidemiological study and USEPA research may be relevant in future rulemakings setting water quality standards for the indicator bacteria in the CAWS. SeverMot. at 9. However, the Environmental Groups maintain that these studies are not necessary to support the IEPA’s conclusion that disinfection is appropriate to reduce public exposure to sewage-related pathogens. *Id.* The Environmental Groups opine that this conclusion had already been reached by most regulators in the nation. SeverMot. at 9-10. The Environmental Groups argue: “[s]imply put, we do not need more studies to conclude that sewage germs in the water are bad for people.” SeverMot. at 10.

The Environmental Groups point to testimony that indicates that recreating in sewage-contaminated water has a risk and that disinfection should be occurring in the CAWS. SeverMot. at 11. The Environmental Groups argue that a determination by the epidemiological study that the risk is not significant does not equate with a determination that the risk does not

exist and disinfection is not necessary. *Id.* The Environmental Groups assert: “[w]hile finding the ‘needle’ of risk associated with CAWS recreation would certainly be additional basis for joining the rest of the nation in requiring disinfection, failure to find such a risk would not be.” *Id.*

The Environmental Groups do not take issue with the research methods being employed in the epidemiological studies; however, they assert that the study is not designed to detect all the risks relevant to a determination as to whether or not to disinfect. *SeverMot.* at 12. Specifically, the Environmental Groups note that the study is designed to assess the risk of all uses of the CAWS including activities which would have little to no contact with the waters. *Id.* Furthermore, the study assesses all users, those with compromised immune systems and those with normal immune systems. *Id.*

Citgo/PDV Response

Citgo/PDV indicates agreement with the IEPA’s proposed designation of non-recreational for the CSSC from the confluence with the Calumet-Sag channel to the confluence with the Des Plaines River. *CitgoSeverMot.* at 1. Citgo/PDV requests that if the Board grants the motion that the Board also defer “all other rulemaking that concerns the waters” of the CSSC that have been deemed non-recreational. *Id.* at 2.

IEPA Response

The IEPA first notes that the motion to sever does not refer to the LDPR and suggests that the Board include the LDPR recreational use designations with the discussion of the CAWS recreational use designations. *IEPASeverMot.* at 1-2. The IEPA does not believe that the proposed recreational uses for CAWS are in all cases upgraded uses, but feels more accurate terms are updated or new use designations. *Id.* at 2. The IEPA indicates that the general use water quality standard for fecal coliform is not limited to the recreational season and applies all year, with an allowance for facilities to request exemptions. *Id.* IEPA points out that the proposal has built in a seasonal exemption for waters subject to this rulemaking. *Id.*

IEPA does not take a position on the actual severance of the docket. *IEPASeverMot.* at 3. Instead, IEPA expresses support for any procedural mechanism which would bring the rulemaking to a more orderly and expeditious conclusion and defers to the Board to determine the appropriate mechanism. *Id.*

The People Response

The People support the motion of the Environmental Groups to sever the docket and agree that severing the proceeding will be the most convenient, expeditious mechanism for completing the rulemaking. *PSeverMot.* at 1. The People indicate that the setting of standards to protect recreational uses and aquatic life involve two “entirely different sets of issues and evidence” and the overlap is minimal. *Id.* at 2. The People concur with the Environmental Groups that the recreation use issues are ripe for decision and the People opine that there is no “good reason to delay setting standards” necessary to protect public health. *Id.* The People

believe that testimony on water quality standards and criteria to protect recreational uses are unnecessary as the IEPA has proposed a technology-based effluent standard, not a water quality standard. *Id.*

The People opine that the participants and the Board will have the same amount of work to do, whether or not the Board severs the docket. PSeverMot. at 2. However, the People maintain that severing the docket will allow the Board to decide on recreational uses now instead of delaying a decision on “important public health issues” until the completion of the entire proceeding. *Id.* The People agree with the Environmental Groups that the record on recreational uses is complete and severing the docket will allow the Board to resolve all of the issues in a more efficient manner than is possible in a single proceeding. *Id.*

The District’s Response

The District filed a response in opposition to the motion to sever and asks for additional hearings on the recreational use issue. DSeverMot. at 1. The District maintains that the Environmental Groups ignore the facts of this rulemaking in arguing that the recreational use designations are ripe for decision, because the District has “repeatedly stated” that the epidemiological study is essential for the Board’s consideration of recreational uses. *Id.* at 1-2. The District notes that as with any epidemiological study data collection and analysis has taken several years to complete and the District is now ready to file technical reports by May 5, 2010, and a final report with conclusions by September 15, 2010. *Id.* at 2. The District opines that for the Board proceed now to a final decision on the recreational uses without allowing the District to file the epidemiological study would be nonsensical. *Id.*

The District states that to be consistent the Board should set a schedule for the filing of written testimony and questions regarding the District’s report and set a hearing. DSeverMot. at 3. In support, the District notes that the Board, in denying a motion by the District to stay the proceedings, indicated that the hearing process would continue until the Board heard all testimony on all aspects of the IEPA’s proposal. *Id.*, citing Water Quality Standards, R08-9 (July 21, 2008). The District maintains that because the District will be providing the epidemiological study and hearings “would be held to” address the study, the Environmental Groups are incorrect that the issue of recreational uses is ripe for decision. *Id.*

The District requests that the Board allow for a hearing opportunity related to the technical reports for the epidemiologic study and the District commits to providing technical reports for the epidemiological study by May 5, 2010. DSeverMot. at 4. The District indicates that the technical reports will include: 1) water quality data summary, 2) clinical microbiological summary (pathogen content of stool samples), 3) final recruitment statistics, 4) overall incidence of illness data, and 5) water exposure study final report. *Id.* at 4-5.

The District also believes a decision on recreational uses is premature because of the Asian Carp issue, which has been raised by Citgo/PDV. DSeverMot. at 4. Specifically, the District believes that many of the measures that are being discussed as control for Asian Carp may impact recreating on the CAWS. *Id.* Therefore, the District believes that the recreational

use designations are not ripe for decision and the Environmental Groups motion should be denied. *Id.*

The District agrees that the Board's rules allow for severing a claim; however, the District maintains that the Board will not sever a claim where the severance would not further the convenient, expeditious, and complete determination of the claims. DSeverMot. at 5, citing 35 Ill. Adm. Code 101.408 and People v. Union Pacific R & R, PCB 08-07 (Aug. 20, 2009) and People v. Community Landfill Co., Inc., PCB 03-191 (Mar. 15, 2007). The District argues that under the standard in Section 101.408 of the Board's rules, the Environmental Groups motion should be denied because the recreational use issues are not ripe for Board decision for the reasons enunciated above. DSeverMot. at 5. Thus, the District maintains the creation of a subdocket would be pointless. *Id.*

The District also takes issue with the Environmental Groups argument that the epidemiological study is not relevant. DSeverMot. at 13. The District points to testimony provided by the Environmental Groups experts, claiming that those experts testified that the Board should consider the epidemiological study. *Id.* Furthermore, the District believes that the Environmental Groups argument concerning the relevancy of the epidemiological study pre-judges the study and presumes that the Environmental Groups' experts are correct without considering the counter testimony provided by the District. *Id.* at 14. The District maintains that the Board cannot simply disregard the testimony of the District's experts concerning the importance of the study. *Id.* The District maintains that the District "is entitled to file the study and have the Board consider the information contained" in the study. *Id.* at 15.

Environmental Groups' Reply

The Environmental Groups reply that no participant responding to the motion argued specifically against creation of a subdocket, but confined arguments to whether or not the Board should proceed to decision rather than waiting until the conclusion of the epidemiological study. EGReply at 1. The Environmental Groups state that since the issue of a separate subdocket is uncontested the reply addresses solely the question of timing. *Id.*

The Environmental Group reiterate their position that the epidemiological study may be useful in determining instream criteria and determining whether designated uses are adequately protected. EGReply at 1-2. However, the Environmental Groups assert that the epidemiological study is "inherently insufficient to overcome the well-established understanding that disinfection is fundamentally necessary to protect public health." EGReply at 2. The Environmental Group maintain that the question in the motion to sever is whether there is any outcome of the epidemiological study that could support a decision by the Board that disinfection is not required. *Id.*

The Environmental Groups insist that they and their experts have consistently made clear that the epidemiological study is excellent science and may contribute to an understanding of the CAWS. EGReply at 2. However, the Environmental Groups argue that the District has not addressed the arguments made in the motion that disinfection is required in the first instance and no outcome of the epidemiological study can refute that fact. *Id.*

The Environmental Groups state that the IEPA delayed setting instream bacterial water quality standards and criteria pending further studies, including the epidemiological study now offered by the District. EGReply at 3. The Environmental Groups note that IEPA did propose an initial measure requiring disinfection, “a public health protection nearly universal in large U.S. cities.” *Id.* The Environmental Groups opine that risks associated with sewage pathogens are well-known and that negative results in one epidemiological study do not indicate a low risk. *Id.* The Environmental Groups also note that the District’s epidemiological study is not designed to assess imports aspects of risk such as vulnerable sub-populations, like children. EGReply at 4. The Environmental Groups argue that based on these facts, their experts concluded that while the epidemiological study is useful a decision by the Board on disinfection should not be delayed by awaiting results of the study. *Id.* The Environmental Groups opine that since the Board’s decision on disinfection “cannot appropriately turn on the outcome of the epidemiological study, there is no good reason to delay a decision pending completion of the study.” EGReply at 9.

The Environmental Groups also discount the District’s argument that Asian Carp control measures will impact recreational use. EGReply at 10. The Environmental Groups argue that the District’s raising of this argument is an attempt to delay the rulemaking. EGReply at 11.

MOTION FOR HEARINGS ON CAWS HABITAT REPORTS

The District asks that the Board hold additional hearings on the filings by the District of a Habitat Evaluation and Improvement Reports (PC 284). MWRDC Mot. at 1. The District notes that on June 12, 2008, the District filed a motion asking that the Board stay this proceeding “based on the premise that the District would be receiving numerous studies related to different aspects of this rulemaking.” *Id.* The District points out that the ongoing studies related to both recreation use and aquatic use designations as proposed by IEPA. *Id.* The District acknowledges that the Board denied the motion to stay; however the District maintains that the Board found that the District or any party “should be allowed to fully present its studies and witnesses related to the studies.” *Id.* at 2. The District states that based on the Board’s ruling, “the District is entitled to present testimony regarding” PC 284 before the Board makes a final decision on aquatic life uses. *Id.*

The District indicates that throughout the rulemaking the District has repeatedly informed the Board and other participants of the status of PC 284 and the importance of PC 284 to the process. MWRDC Mot. at 2. The District points to testimony by the District’s experts discussing the reports and the importance of those reports to a decision on aquatic life. *Id.* at 3-4. The District maintains that even the Environmental Groups’ expert “confirmed” the importance of the reports. *Id.* at 4.

The District has filed the reports as PC 284 and the District is prepared to offer testimony on the reports along with proposed aquatic life use designations and water quality standards. MWRDC Mot. at 5. The District also believes that the Asian Carp issue could impact on hearings concerning the reports. *Id.* at 6. The District asks that the Board set deadlines for pre-filing of testimony (20 days after the date of this order), questions (30 days after testimony is filed) and hearings. *Id.*

DISCUSSION

For ease of discussion, the Board will first address the motion to sever and then follow with a discussion on the motion for a hearing on the issue of Asian Carp. The Board will conclude by discussing the decision on the District's motion for additional hearings on aquatic life uses and the District's Habitat Reports.

Motion to Sever

The proposal was originally filed by the IEPA on October 26, 2007 and hearings began on January 28, 2008. Over the last two years, the Board and parties have expended substantial resources by holding 37 days of hearing to collect thousands of pages of testimony, questions, and responses. In addition a total of 381 hearing exhibits have been entered and the Board has received 285 public comments. The Board is committed to working diligently and expeditiously to complete this rulemaking proceeding. From the beginning, the Board, the hearing officer, and the participants, have attempted to organize this rulemaking to ensure a complete record for consideration by the Board. The IEPA's proposal included recreational uses for several stretches of water in the CAWS and LDPR as well as separate aquatic life uses for those same waters. The proposal also includes water quality standards and criteria necessary to meet the proposed aquatic life uses. The Board's hearings to date have had ten days of hearing from the IEPA in support of the proposal and 27 days of hearing concerning the proposed recreational use designations and the aquatic life use designations.

At this time, the Environmental Groups have asked that the docket be severed by moving recreational use designations into a different subdocket from aquatic life use designations. The Environmental Groups also believe that the recreational use designations are ripe for decision. The People support this motion, including the position that the recreational use designations are ripe for decision. The IEPA and Citgo/PDV do not object to severing the docket. The District opposes the motion. No other participants have filed responses to the motion to sever.

The Board finds that the time has come to separate issues in this rulemaking. Given the substantial record already in place, the Board believes that separating the docket will allow for the Board and the participants to make better use of resources. The most expedient way to separate issues is to sever the docket into multiple subdockets and the Board will do so. First, subdocket A, will deal with the issues related to recreational use designations and subdocket B will address issues relating to disinfection and whether or not disinfection may or may not be necessary to meet those use designations. Subdocket C, will be created to address the issues involving proposed aquatic life uses. Subdocket D, will be created to address the issues dealing with water quality standards and criteria which are necessary to meet the aquatic life use designations.

By separating the dockets in this manner, the Board will be able to proceed along parallel tracks in this rulemaking, without causing the record in the proceeding to become impossible to follow. This separation will also allow participants whose issues may be narrower to focus only on those issues, while at the same time having very little impact on the participants who are

active in all phases of the proceeding. Furthermore, this will allow the Board to reach decisions on issues when those issues are ripe for decision and, where appropriate, to proceed to first notice with portions of the proposal without waiting for completion of the entire docket.

On the issue of additional hearings concerning the epidemiological study by the District, the Board is persuaded that the information the District is offering would be helpful in making a decision on what if any criteria will be necessary to support proposed recreational use designations. The District states that it would welcome the opportunity to testify on the epidemiological study technical reports that will be completed on May 5, 2010. The Board accepts the District's offer and directs the Hearing Officer to outline a schedule for prefiled testimony and prefiled questions for a hearing to be held at the end of June on the epidemiological study technical reports.

The Board is also convinced that the issue of recreational use designations in subdocket A is ripe for decision. Therefore, the Board directs the participants to file final comments on the recreation use designations for CAWS and LDPR by April 15, 2010. The Board will refrain from deciding whether or not to require disinfection to support the proposed designated uses until at least the conclusion of the hearing on the epidemiological study technical reports.

Motion for Additional Hearings on Asian Carp

The Board has reviewed the arguments both for and against holding additional hearings on the issue of dispersal of Asian Carp in Lake Michigan and the waterways that are subject to this rulemaking. The arguments in opposition to holding the hearings express concerns that the issues raised may unnecessarily delay the proceeding, may be premature and speculative, or may interfere with a case filed before the US Supreme Court. However, given the Board decision today to sever the docket, and to hold additional hearings on aquatic life uses as requested by the District, the Board finds that speculative concerns about an Asian Carp hearing are lessened because any hearings on the Asian Carp issue would not be held before the fall at the earliest.

The Board appreciates the District's suggestions for limiting the scope of the hearing and agrees that any hearings on Asian Carp should be focused on issues concerning the implications of the presence of Asian Carp on the proposed rulemaking. However, since any hearing on the Asian Carp issue will not be held before the fall, and, undoubtedly, the Asian Carp issue will continue to develop, the Board will wait until any hearing is scheduled before outlining the scope of the hearing. The Board is granting the request for a hearing on the Asian Carp issue, but directs that the hearing be delayed until the completion of hearings on the CAWS Habitat Report discussed below.

CAWS Habitat Reports

The Board has not received any responses to the District's motion; however, the Board finds that undue delay will occur if the Board does not rule on this motion today. The Board is cognizant that participants may oppose additional hearings on aquatic life uses and the District's Habitat Reports. Any opposition to these hearings cannot offset the Board's belief that the District's information is relevant and important to the rulemaking. The Board finds that holding

a hearing on these reports, which are already a part of the record, is warranted and directs the hearing officer to schedule such hearings.

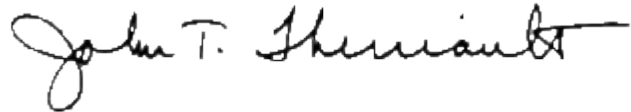
CONCLUSION

The Board grants the motion filed by Citgo/PDV for an additional hearing on Asian Carp, but delays that hearing until later this year. The Board also grants the motion filed by Environmental Groups. The Board severs the docket. Subdocket A, will deal with the issues related to recreational use designations and subdocket B will address issues relating to disinfection and whether or not disinfection may or may not be necessary to meet those use designations. Subdocket C, will be created to address the issues involving proposed aquatic life uses. Subdocket D, will be created to address the issues dealing with water quality standards and criteria which are necessary to meet the aquatic life use designations..

In addition, the Board proceeds immediately to decision on recreational uses; however, the Board reserves ruling on the disinfection issue until at least the conclusion of the hearing on the epidemiological study technical reports. The Board instructs the Hearing Officer to schedule a hearing in June on the epidemiological study technical reports being prepared by the District. Finally, the Board grants the motion filed by the District to hold hearings on aquatic life uses and the District's Habitat Reports.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 18, 2010, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board