

**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 )

R08-09  
(Rulemaking – Water)  
Sub-Docket A

**RECEIVED**  
CLERK'S OFFICE  
JUN 09 2011  
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

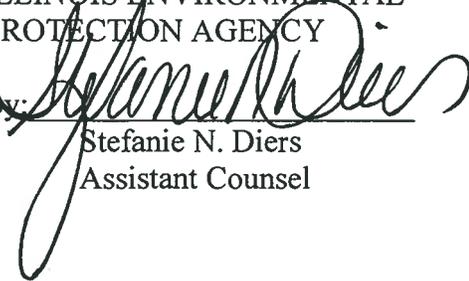
**ORIGINAL**

**SEE ATTACHED SERVICE LIST**

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board **ILLINOIS EPA'S MOTION TO WITHDRAW ITS MOTION TO STAY THE ISSUANCE OF A SECOND NOTICE OPINION AND ORDER IN SUB-DOCKET A** a copy of which is herewith served upon you.

Dated: June 8, 2011  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:   
Stefanie N. Diers  
Assistant Counsel

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

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**ILLINOIS EPA'S MOTION TO WITHDRAW ITS MOTION TO STAY THE ISSUANCE OF A SECOND NOTICE OPINION AND ORDER IN SUB-DOCKET A**

The Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by and through its attorneys, hereby submits its Motion to Withdraw its Motion to Stay the Issuance of a Second Notice Opinion and Order in Sub-Docket A. In support thereof, the Illinois EPA states as follows:

1. On October 26, 2007, the Agency filed a rulemaking proposal to update the designated uses and accompanying water quality standards and effluent limitations for the waters currently designated for Secondary Contact and Indigenous Aquatic Life Use which includes most waters in the Chicago Area Waterway System ("CAWS") and Lower Des Plaines River. The Illinois Pollution Control Board ("Board") docketed this proposal as R08-09.

2. On March 18, 2010, the Board issued an order dividing R08-09 into four separate sub-dockets. Post-Hearing Comments on Sub-Docket A were due on April 15, 2010. On April 15, 2010, the Agency submitted detailed Post-Hearing Comments. Exhibit A to the Agency's Post-Hearing Comments was a four page summary of all

documents, exhibits, testimony and public comments in the R08-09 proceeding that pertain to the topic of recreational use designations.

3. On August 5, 2010, the Board issued a First Notice Opinion and Order in Sub-Docket A establishing proposed Recreational Use Designations for all segments of the CAWS and Lower Des Plaines River covered by the Agency's rulemaking proposal. The Board's First Notice Proposal was published in Volume 34, Issue 35 of the Illinois Register on August 27, 2010.

4. Since the closing of the First Notice Comment Period, Illinois EPA received a letter dated May 11<sup>th</sup>, 2011 from the United States Environmental Protection Agency ("USEPA"). See Public Comment #584. A copy of this letter was also sent by USEPA to the Board's clerk. The letter specifically outlined certain segments of the CAWS that should be designated for recreation in the water (primary contact) instead of being designated as Incidental Contact Recreation Waters as previously proposed by Illinois EPA and adopted by the Board in its First Notice Opinion. USEPA further directs Illinois to expeditiously adopt new or revised water quality standards consistent with the findings outlined in the May 11, 2011 letter. Id. at P. 1.

5. Based on the contents of the USEPA letter, Illinois EPA needed time to evaluate USEPA's position to decide what action, if any, may need to be taken with respect to the waters outlined by USEPA for recreation in the water (primary contact). Therefore, on May 16, 2011, the Illinois EPA filed a Motion to Stay asking that the Board to take no action at the May 19, 2011 Board Meeting with respect to issuing a Second Notice Opinion and Order for Sub-Docket A.

6. Illinois EPA again filed for a Motion to Stay the issuing of a Second Notice Opinion and Order with respect to Sub-Docket A at the June 2, 2011 Board meeting arguing that a stay was necessary so that the Agency could amend its original proposal to address the directives raised by USEPA.

7. On June 2, 2011, the Board issued a Second Notice Opinion and Order in Sub-Docket A and specifically asked Illinois EPA for guidance on whether the Board should act on the request of the stay. See Opinion P. 1.

8. After reviewing the Proposed Second Notice Opinion and Order, Illinois EPA will not be filing an amended proposal in this Sub-Docket. Therefore, the Agency is withdrawing its Motion to Stay.

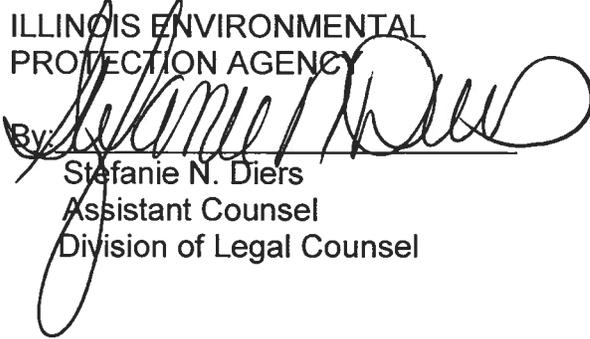
9. Also, the Board specifically requested comments regarding the effect that a stay would have on Sub-Docket B. Id. Since Illinois EPA is moving to withdraw its Motion to Stay in Sub-Docket A there will be no impact to Sub-Docket B. Illinois EPA expects to submit comments following issuance of the First Notice Opinion and Order in Sub-Docket B to address any remaining issues with respect to the directives outlined in the USEPA letter, specifically as to disinfection issues and methods.

10. Finally, the Illinois EPA recommends that the Board clarify in its Second Notice Opinion and Order that Illinois' existing federally-approved fecal coliform criteria for protection of primary contact recreation, 35 Ill. Adm. Code 302.209, apply to the five segments, identified in the USEPA May 11, 2011 determination letter.

WHEREFORE, the Illinois EPA respectfully requests to withdraw its Motion to Stay the Issuance of a Second Notice Opinion and Order in Sub-Docket A.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: 

Stefanie N. Diers  
Assistant Counsel  
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DATED: June 8, 2011

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STATE OF ILLINOIS )  
 )  
COUNTY OF SANGAMON ) SS  
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PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached ILLINOIS EPA'S  
MOTION TO WITHDRAW ITS MOTION STAY THE ISSUANCE OF A SECOND NOTICE  
OPINION AND ORDER OF SUB-DOCKET A upon the person to whom it is directed by  
placing it an **overnight** 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

ORIGINAL

and mailing it First Class Mail from Springfield, Illinois on June 8, 2011, with sufficient postage  
affixed to the addresses on the attached Service List.

*Meredith Kelly*

SUBSCRIBED AND SWORN TO BEFORE ME

This 8<sup>th</sup> day of June, 2011

Brenda Boehner  
Notary Public



THIS FILING IS SUBMITTED ON RECYCELD PAPER