

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**NOTICE OF FILING**

To: ALL COUNSEL OF RECORD  
(Service List Attached)

**PLEASE TAKE NOTICE** that on the 10th day of June, 2011, I electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, the **Comments of Metropolitan Water Reclamation District of Greater Chicago on Proposed Second Notice.**

Dated: June 10, 2011.

**METROPOLITAN WATER  
RECLAMATION DISTRICT OF  
GREATER CHICAGO**

By: /s/ Fredric P. Andes  
One of Its Attorneys

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**PROOF OF SERVICE**

The undersigned attorney certifies, under penalties of perjury pursuant to 735 ILCS 5/1-109, that I caused a copy of the foregoing, **Notice of Filing and Comments of Metropolitan Water Reclamation District of Greater Chicago on Proposed Second Notice**, to be served via First Class Mail, postage prepaid, from One North Wacker Drive, Chicago, Illinois, on the 10th day of June, 2011, upon the attorneys of record on the attached Service List.

*/s/ David T. Ballard*

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David T. Ballard

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**COMMENTS OF METROPOLITAN WATER RECLAMATION DISTRICT OF  
GREATER CHICAGO ON PROPOSED SECOND NOTICE**

The Metropolitan Water Reclamation District of Greater Chicago (the "District"), pursuant to 35 Ill. Adm. Code 101.522, and through its counsel, hereby submits the following comments on the Pollution Control Board's Proposed June 2, 2011 Second Notice in Subdocket A.

1. On June 2, 2011, the Board issued a Proposed Second Notice in this Subdocket, and specified that comments on the Notice will only be allowed until 4:30 p.m. on June 10, 2011.

2. In the Proposed Second Notice, the Board explains the unique procedural posture of this Subdocket, and the need to take action quickly, before the one-year period for adoption of a final decision expires. The District understands that concern. However, the District believes that the Board's proposed schedule, which allows the District and other parties only 8 days to review and respond to the Proposed Second Notice, is not fair or appropriate given the extensive and complex issues that need to be addressed.

3. The Proposed Second Notice reflects a fundamental change from the Board's First Notice in this matter. For most of the segments in the Chicago Area

Waterways System, the Board has changed the use designation from Incidental Contact Recreation to Primary Contact Recreation. For obvious reasons, that change will make an enormous difference in the potential regulatory obligations that are eventually imposed on the District, and probably on other parties as well.

4. Under the Incidental Contact Recreation designation that was proposed by Illinois EPA and adopted in the Board's First Notice (and which no party objected to), any water quality standards adopted would have been based on secondary contact (i.e., kayaking and canoeing). There are currently no secondary contact criteria that are recommended by U.S. EPA, and the District's testimony in this matter has shown that there is currently no scientific basis to establish those criteria based on a connection between bacteria levels in the CAWS and risks of illness from secondary contact recreation. Any such criteria would have to be developed by Illinois EPA, after gathering adequate scientific information, and then adopted through the standard Board rulemaking process.

5. That process is entirely different than the process that will likely take place if the Board adopts Primary Contact Recreation uses. U.S. EPA has adopted recommended primary contact water quality criteria. It is highly possible that Illinois EPA would propose those criteria for adoption by the Board. Those criteria are quite stringent, especially within the context of a highly-modified urban waterway system, such as the CAWS. In addition, US EPA is currently reevaluating those criteria; new criteria will be issued in October 2012, and may be even more stringent than the current criteria. No evidence has been presented in this rulemaking as to whether the primary contact use is actually attainable in the CAWS, other than anecdotal information as to

swimming or tubing in specific locations. Further, no evidence has been presented as to the costs of complying with that primary contact use and the water quality criteria that would be based on those uses.

6. As to the need for the Board to go through that rulemaking process to establish primary contact criteria, US EPA's comments on the Proposed Second Notice, filed on June 8, 2011, and Illinois EPA's filing in this Subdocket on June 9, 2011 appear to claim that the Board does not need to have that rulemaking. That claim is simply not correct. US EPA and Illinois EPA indicate that the Board should "clarify" that the existing bacterial criteria for "primary contact recreation" in the Board's regulations will now apply automatically to the waters that are designated for the Primary Contact Recreation use in the Proposed Second Notice. That is just not the case. The criteria that US EPA and Illinois EPA refer to (in 35 IAC 302.209) apply only to General Use waters. The Primary Contact Recreation waters will not be General Use waters, so the General Use criteria will not apply to them. Instead, there will need to be a Board rulemaking that addresses what criteria are proper to apply to these and other CAWS waters. It has always been clear in this rulemaking that that would happen. The Board states in the Proposed Second Notice (at page 26) that water quality standards for the CAWS waters would be established in Subdocket B. US EPA, in fact, agreed with that principle in its May 11, 2011 letter to Illinois EPA (PC #584), which stated that Illinois must adopt "new or revised designated uses that provide for recreation in and on the water, and the criteria necessary to protect such uses." As to the new criteria, US EPA even provides advice as to how those standards should be developed – "Such criteria should be based on EPA's 1986 Ambient Water Quality for Bacteria, which EPA developed in accordance with

Section 304(a) of the CWA, the 304(a) guidance modified to reflect site-specific conditions, or other scientifically defensible methods.” The decisionmaking process to set those criteria, which has not yet begun, must be accomplished through a Board rulemaking.

7. The costs to meet those new levels would likely be significantly higher than for the secondary contact uses that were included in the Board’s First Notice, and the costs would not be only for the District’s treatment plants. In order to meet those uses and criteria, other sources would also likely have to be controlled, including all of the combined sewer overflow (CSO) discharge points to the CAWS (only some of which are controlled by the District), and other wet-weather sources, including municipal separate storm sewer systems (MS4s) that are owned and operated by other municipal agencies in the area.<sup>1</sup> The additional costs to control those other sources to meet a primary contact use could be higher than the separate costs that the District would have to incur for treatment at its plants, and the combined costs could raise significant issues of economic attainability for the District and for its residential taxpayers and business ratepayers.

8. The District has been carefully considering the issues raised by Subdockets A and B of this proceeding. As a result, the District’s Board of Commissioners, on June 7, 2011, adopted a new policy under which the District will install and operate disinfection equipment at the Northside and Calumet plants, which are located on waters that would be designated for the Primary Contact Recreation use in the

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<sup>1</sup> The Board’s indication in the Proposed Second Notice (at page 32) that the primary contact uses are attainable once the District is disinfecting at its plants and has completely implemented its Tunnel and Reservoir Plan (TARP) has no basis in the record, and the District believes that that is not the case. Other sources, such as MS4s and any CSOs that remain after TARP implementation, would still have to be addressed. In addition, the final stage of TARP is not expected to be completed until 2029, which leaves open the question of whether CSOs and other sources will need to be addressed in the interim.

Proposed Second Notice. Under the resolution adopted on June 7, the District will hold a series of public meetings concerning these actions, to inform and hear from affected residents and businesses. The District also intends to engage in discussions with US EPA, Illinois EPA and other stakeholders regarding its future plans.

9. It is expected that these discussions and meetings will address issues regarding implementation of the Primary Contact Recreation designations in addition to the plans to disinfect at the Northside and Calumet plants. It is also expected that these discussions and meetings will address issues regarding other segments in the Chicago Area Waterways System and the District's Stickney facility, which is located on the Chicago Sanitary and Ship Canal. Therefore, the District requests that the Pollution Control Board not issue any First Notice in Subdocket B concerning disinfection requirements, which would directly affect the Stickney facility, until those discussions and meetings are held and a status report is provided to the Board. We would propose to file that status report within 60 days.

Dated: June 10, 2011

**METROPOLITAN WATER  
RECLAMATION DISTRICT OF  
GREATER CHICAGO**

By: /s/ Fredric P. Andes  
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