

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
WATER QUALITY STANDARDS AND) R08-9 Subdocket C
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)

NOTICE OF FILING

TO:

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

Marie Tipsord, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

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 STEPAN COMPANY'S RESPONSE TO UPDATED JOINT STATUS REPORT OF ILLINOIS EPA, METROPOLITAN WATER RECLAMATION DISTRICT, AND ENVIRONMENTAL GROUPS CONCERNING PROPOSED AQUATIC LIFE USE DESIGNATIONS, a copy of which is herewith served upon you.

STEPAN COMPANY

DATE: January 17, 2012

/s/ Thomas W. Dimond
Thomas W. Dimond

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 17th day of January 2012, I have served electronically the attached STEPAN COMPANY'S RESPONSE TO UPDATED JOINT STATUS REPORT OF ILLINOIS EPA, METROPOLITAN WATER RECLAMATION DISTRICT, AND ENVIRONMENTAL GROUPS CONCERNING PROPOSED AQUATIC LIFE USE DESIGNATIONS, and NOTICE OF FILING upon the following person:

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

and by U.S. Mail, first class postage prepaid, to the following persons:

Marie Tipsord, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
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The participants listed on the attached
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/s/ Thomas W. Dimond

Thomas W. Dimond

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WATER QUALITY STANDARDS AND) R08-9 Subdocket C
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ADM. CODE 301, 302, 303, and 304)

**STEPAN COMPANY'S RESPONSE TO UPDATED JOINT STATUS REPORT
OF ILLINOIS EPA, METROPOLITAN WATER RECLAMATION DISTRICT, AND
ENVIRONMENTAL GROUPS
CONCERNING PROPOSED AQUATIC LIFE USE DESIGNATIONS**

Stepan Company submits the following Response to Updated Joint Status Report of Illinois EPA, Metropolitan Water Reclamation District, and Environmental Groups Concerning Proposed Aquatic Life Use Designations.

1. Last September, by emergency motion, the Illinois Environmental Protection Agency ("Agency"), the Metropolitan Water Reclamation District of Greater Chicago ("MWRD") and several organizations¹ sought a delay in the briefing schedule in Subdocket C of this rulemaking. The Agency, the MWRD and the organizations (collectively, the "Negotiating Parties") represented that they were involved in three-way negotiations that could "resolve a substantial portion of the issues presented in Subdockets C and D, thereby significantly reducing the number of issues the Board would need to address in those Subdockets." *Joint Emergency Motion to Vacate Deadlines in Subdocket C and Set Date for Filing of Joint Status Report*, ¶3 (Sept. 22, 2011).

¹ The organizations that joined the emergency motion were the Natural Resources Defense Council, the Environmental Law & Policy Center, Friends of the Chicago River, Openlands, Alliance for the Great Lakes, Southeast Environmental Task Force, Prairie Rivers Network and the Sierra Club-Illinois Chapter.

2. The Hearing Officer granted the Joint *Emergency* Motion, in part, vacated the deadlines for briefing on Subdocket C and ordered the Negotiating Parties to submit a joint status report on November 21, 2011. On that date, the Negotiating Parties submitted a joint report stating that they had discussed dissolved oxygen criteria and habitat improvement issues. *See* Joint Status Report of Illinois EPA, Metropolitan Water Reclamation District, and Environmental Groups Concerning Resolution of Aquatic Life Use Issues at 1-2 (Nov. 21, 2011). They reported that progress was being made but no agreement had been reached and requested more time to see if they could reach an agreement. *Id.* at 2.

3. The Hearing Officer granted that request too and ordered the Negotiating Parties to submit a further status report on January 3, 2012. The Negotiating Parties then reported that they had "reached tentative agreements regarding habitat restoration, variances and permit terms that will be needed to make workable and effective the agreements regarding designations and criteria." Updated Joint Status Report of Illinois EPA, Metropolitan Water Reclamation District, and Environmental Groups Concerning Proposed Aquatic Life Use Designations, at 1 (Jan. 3, 2012). But, they offered no details on what the nature of the agreement was, what water segments at issue in this proceeding would be directly (not to mention indirectly) impacted by those agreements, how it would impact aquatic life use designations, how it might impact dissolved oxygen criteria (if those were even part of the agreement), or any other details.

4. Despite offering no details on the "agreement," the Negotiating Parties requested that the Hearing Officer require the filing of post-hearing briefs on Subdocket C on February 17, 2012 with no subsequent date for the participants to comment on the February 17 submissions of other participants or on the "agreement," whenever its details might be revealed.

5. The entire premise of the delay in the post-hearing briefing on Subdocket C (and a quite reasonable one) was that the Negotiating Parties might reach agreements that would alter

the regulatory proposal that all the other participants would be commenting on and that the Board would be requested to consider. Now the Negotiating Parties are suggesting that all participants should submit their post-hearing briefs even though we know no more about the "agreement" that may alter the regulatory proposal than we did last September. The need for all participants to understand the "agreement" and be able to comment on it to the Board is no less now than it was last Fall. It is highly prejudicial for the Negotiating Parties to suggest that briefing should resume when they have not set forth the manner in which the proposed regulatory language would change, what water segments are impacted (directly or indirectly) or even given the other participants an inkling of what the "agreement" is.

6. Moreover, if the Agency has indeed entered into an "agreement" to amend its regulatory proposal, then that is a significant fact that needs to be put on the record so that the participants and the Board know where the Agency stands. While the Board's procedural rules do not seem to expressly address changes to regulatory proposals by a proponent, it is entirely consistent with those rules to require the Agency (and their fellow Negotiating Parties) to explain any change resulting from their "agreement." Among other things, a regulatory proposal is required to set forth the language of the proposed rule and how it differs from any existing language, to state the reasons supporting the proposal, and to summarize all testimony intended to support the proposal. 35 Ill. Adm. Code §102.202(a)-(c). If a proponent, such as the Agency, changes its position mid-stream, the Board and other participants should know more than the simple fact of the change. Consistent with §102.202(a)-(c), they should know how it will affect the language proposed, what reasons support the changed language and whether additional testimony will be needed to support the change. There is no sense in having the participants comment on regulatory language and use designations that the Agency no longer supports or

comment in the absence of the specific proposal that the other Negotiating Parties intend to offer to the Board.

7. Finally, the Updated Joint Status Report only suggested that the Board establish February 17 as the post-hearing briefing date and did not request the establishment of a second date at which each participant could comment on the post-hearing briefs of other participants. This was a critical feature of the post-hearing briefing schedule established by the Hearing Officer that no one opposed and that was crucial to many participants. *See* Hearing Officer Order (Aug. 16, 2011) (establishing October 17, 2011 for participants to respond to the post-hearing briefs of other participants).

WHEREFORE, Stepan Company requests that the Hearing Officer enter an order (1) directing the Negotiating Parties to file a further status report explaining the "agreement" that has been reached, if any, the manner in which it will alter the regulatory language on aquatic life use designations proposed by the Agency, the reasons for the change and any testimony to be offered in support; and (2) continuing the setting of a post-hearing briefing schedule for Subdocket C until after the Negotiating Parties have disclosed any changes to the Agency's proposed regulatory language on aquatic life uses and any other aspects of the "agreement."

Respectfully submitted,
STEPAN COMPANY

DATE: January 17, 2012

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One of its Attorneys

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