

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

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

NOTICE OF FILING

TO: Mr. John T. Therriault	Ms. Marie E. Tipsord
Assistant Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	100 West Randolph Street
Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)	(VIA FIRST CLASS MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board **RESPONSE TO PRE-FIRST NOTICE COMMENTS BY CORN PRODUCTS INTERNATIONAL, INC.**, a copy of which is herewith served upon you.

Respectfully submitted,

CORN PRODUCTS INTERNATIONAL,
INC.,

Dated: March 19, 2012

By: /s/ Katherine D. Hodge
Katherine D. Hodge

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THIS FILING SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached RESPONSE TO PRE-FIRST NOTICE COMMENTS BY CORN PRODUCTS INTERNATIONAL, INC. upon:

Mr. John T. Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
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via electronic mail on March 19, 2012; and upon:

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by depositing said documents in the United States Mail, postage prepaid, in Springfield,
Illinois on March 19, 2012.

/s/ Katherine D. Hodge

Katherine D. Hodge

CORN:006/Fil/NOF-COS –Response to Pre-First Notice Comments by Com Products International, Inc.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**RESPONSE TO PRE-FIRST NOTICE COMMENTS
BY CORN PRODUCTS INTERNATIONAL, INC.**

NOW COMES CORN PRODUCTS INTERNATIONAL, INC. (“Corn Products”), by and through its attorneys, HODGE DWYER & DRIVER, pursuant to the Hearing Officer Order dated February 3, 2012, and submits the following Response to Pre-First Notice Comments in Subdocket C.

I. OVERVIEW

On March 5, 2012, Corn Products filed Pre-First Notice Comments related to testimony given in Subdocket C. Those comments summarized testimony presented by Corn Products in Subdocket C related to the aquatic life use designation proposed by the Illinois Environmental Protection Agency (“Illinois EPA”) for the Chicago Sanitary and Ship Canal (“Sanitary & Ship Canal”). Illinois EPA proposes to designate the Sanitary & Ship Canal as “Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters” (hereinafter “Use B”). As discussed in prior comments, testimony presented by Corn Products demonstrates that Illinois EPA’s proposed use designation for the Sanitary & Ship Canal is inappropriate and that an alternative use designation is justified.

Similar to Corn Products, other participants in this rulemaking filed comments in Subdocket C. The Hearing Officer previously determined that commenters may file

responsive comments by March 19, 2012. Hearing Officer Order, *In the Matter of: 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 (Ill.Pol.Control.Bd. Feb. 3, 2012) (hereinafter rulemaking is cited as “CAWS/LDPR”). Pursuant to this Order, Corn Products now responds to comments filed by Illinois EPA and the Environmental Groups. Specifically, Corn Products reaffirms its position that the Sanitary & Ship Canal should not be designated as a Use B water, despite agreements made between other participants. Additionally, Corn Products notes that the economic impact of the proposed Use B designation should be considered by the Illinois Pollution Control Board (“Board”).

II. THE RECORD DOES NOT SUPPORT AN AQUATIC LIFE USE B DESIGNATION FOR THE SANITARY & SHIP CANAL.

Illinois EPA notes that the Metropolitan Water Reclamation District of Greater Chicago (“MWRDGC”) and the Environmental Groups agree that the record supports Illinois EPA’s proposed Use B designation for the Sanitary & Ship Canal. Post-Hearing Comments of the Illinois EPA for Subdocket C, *CAWS/LDPR*, R08-9 at 21 (Ill.Pol.Control.Bd. Mar. 5, 2012). Such an agreement was part of a larger negotiated agreement between MWRDGC and the Environmental Groups that encompasses other waterways and issues. *See* Attachment A, Statement of Environmental Groups and Metropolitan Water Reclamation District of Greater Chicago in Reply to Responses to the January 3, 2012 Update Status Report, *CAWS/LDPR*, R08-9 (Ill.Pol.Control.Bd. Jan. 27, 2012). This aspect of the agreement related to the Sanitary & Ship Canal is not supported by the record. Instead, it is the product of two participants negotiating a broad range of issues. Other dischargers did not participate in the negotiations. Therefore, this

agreement does not reflect the positions of industrial dischargers on the Sanitary & Ship Canal.

Corn Products presented testimony that demonstrates Illinois EPA's proposed use designation for the Sanitary & Ship Canal is inappropriate and that an alternative use designation is justified. Interestingly, the Environmental Groups appear to recognize the uniqueness of the Sanitary & Ship Canal since they believe that it alone should be grouped as a Use B waterway. *See* Environmental Groups' Post Hearing Comments Regarding Aquatic Life Use Designations for the Chicago Area Waterways System and Lower Des Plaines River, *CAWS/LDPR*, R08-9 at 3 (Ill.Pol.Control.Bd. Mar. 5, 2012) (hereinafter cited as "Environmental Groups' Comments"). However, Corn Products has demonstrated that Use B does not appropriately characterize the Sanitary & Ship Canal.

III. THE ACT REQUIRES THE BOARD TO CONSIDER THE ECONOMIC REASONABLENESS OF THE PROPOSED REGULATIONS.

The Environmental Groups argue that "economic factors" are irrelevant to Subdocket C. Environmental Groups' Comments at 10-11. In support of this argument, the Environmental Groups note that Illinois EPA did not rely on 40 C.F.R. § 131.10(g)(6), "which provides that a water body may in some limited circumstances be designated for a sub-fishable use where it would cause 'widespread economic and social impact,' as supporting a sub-fishable designation for any portion of the LDPR or the CAWS." *Id.* at 10.

However, the Environmental Groups fail to address the requirements of the Illinois Environmental Protection Act ("Act"). Illinois EPA appropriately filed this rulemaking "as a regulatory proposal of general applicability pursuant to Sections 27 and

28 of the Act.” Statement of Reasons, *CAWS/LDPR*, R08-9 at 2 (Ill.Pol.Control.Bd. Oct.

26, 2007). The Act requires the Board to take into account the following:

The existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, the nature of the existing air quality, or receiving body of water, as the case may be, and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution.

415 ILCS 5/27(a).

Accordingly, the Board is required to consider the economic reasonableness of Illinois EPA’s proposal. *See Granite City Division of National Steel Co. et al. v. The Illinois Pollution Control Board*, 155 Ill. 2d 149, 183, 613 N.E.2d 719, 734, 184 Ill. Dec. 402 (1993). As noted by Stepan Company (“Stepan”), the General Assembly has accepted the responsibility given to it by Congress and authorized the Board to adopt water quality standards. Post-Hearing Comments of Stepan Company, *CAWS/LDPR*, R08-9 (Ill.Pol.Control.Bd. Mar. 5, 2012) (citing 415 ILCS 5/13(a)(1)). In doing so, the Board is required to consider the economic reasonableness of Illinois EPA’s proposal.

IV. CONCLUSION

Corn Products filed comments demonstrating that Illinois EPA’s proposed use designation for the Sanitary & Ship Canal is inappropriate and that an alternative use designation is justified. Therefore, an agreement between participants suggesting otherwise is not supported by the record. Furthermore, the Board is statutorily required to consider the economic reasonableness of Illinois EPA’s proposal.

WHEREFORE, CORN PRODUCTS INTERNATIONAL, INC. respectfully requests that the Board consider testimony and comments and adopt its proposed Use C designation for the Sanitary & Ship Canal, as supported by the record.

Respectfully submitted,

CORN PRODUCTS
INTERNATIONAL, INC.,

By: /s/ Katherine D. Hodge
One of Its Attorneys

Dated: March 19, 2012

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CORN:006/Fil/Corn Products Pre-First Notice Comments Sub C