

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 LOWER DES PLAINES RIVER:)	
PROPOSED AMENDMENTS TO 35 ILL.)	
ADM. CODE 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 THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S MOTION FOR CLARIFICATION REGARDING THE FIRST NOTICE OPINION AND ORDER FOR SUBDOCKET C, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: April 5, 2013

By: /s/ Alec M. Davis
Alec M. Davis

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CERTIFICATE OF SERVICE

I, Alec M. Davis, the undersigned, hereby certify that I have served the attached THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S MOTION FOR CLARIFICATION REGARDING THE FIRST NOTICE OPINION AND ORDER FOR SUBDOCKET C upon:

Mr. John T. Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

via electronic mail on April 5, 2013; and upon:

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by depositing said documents in the United States Mail, postage prepaid, in
Springfield, Illinois on April 5, 2013.

By: /s/ Alec M. Davis
Alec M. Davis

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**THE ILLINOIS ENVIRONMENTAL REGULATORY
GROUP'S MOTION FOR CLARIFICATION REGARDING
THE FIRST NOTICE OPINION AND ORDER FOR SUBDOCKET C**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP ("IERG") by and through its attorney, Alec M. Davis, pursuant to 35 Ill. Admin. Code § 101.500, and hereby submits this Motion for Clarification regarding the First Notice Opinion and Order in Subdocket C. In support of this Motion, IERG states as follows:

1. IERG is an Illinois non-profit corporation organized to promote and advance the interests of its members in matters involving environmental regulation. Its members are companies doing business in Illinois that are engaged in industry, commerce, manufacturing, agriculture, trade, energy, and transportation. Several of IERG's members have facilities that are located on and discharge to the Chicago Area Waterways System ("CAWS") and the Lower Des Plaines River ("LDPR"), the waterways subject to this rulemaking.

2. On behalf of its members that discharge to the subject waterways, IERG requests clarification regarding the Illinois Pollution Control Board's ("Board") proposal to designate the Upper Dresden Island Pool ("UDIP") of the LDPR as General Use for Aquatic Life, as described in the Board's First Notice Opinion and Order. Clarification on the issues and questions raised below is necessary to understand how the proposed amendments will impact facilities on the

UDIP, as well as the implications for proceedings under Subdocket D. Accordingly, IERG respectfully requests that the Board consider the following and provide clarification on the items identified below.

3. On February 21, 2013, the Board issued its First Notice Opinion and Order in Subdocket C, which was established as the subdocket for the Board to evaluate the aquatic life use designations proposed by the Illinois Environmental Protection Agency (“Illinois EPA”) and stakeholder testimony regarding the same for the CAWS and LDPR. First Notice Opinion and Order, *In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River: Proposed 35 Ill. Adm. Code Parts 301, 302, 303 and 304*, R08-9, (Ill.Pol.Control.Bd. Feb. 21, 2013) (hereafter “Opinion and Order”). In the Opinion and Order, the Board proposes aquatic life designations for the CAWS and LDPR. The Board proposes a CAWS Aquatic Life Use A and a CAWS and Brandon Pool Aquatic Life Use B. *Id.* at 1. However, the Board declines to propose a special aquatic life use designation for the UDIP, as proposed by Illinois EPA and, instead, states that “identifying the UDIP as General Use is appropriate.” *Id.* at 1 and 215.

4. Based on its review of the record, the Board determined that the UDIP should be designated as General Use for aquatic life. The Board appears to recognize that the General Use water quality standards may need revision in regards to the UDIP, and in relevant part, states:

The Board will examine water quality standards for UDIP in Subdocket D to ensure that the UDIP can meet the water quality standards applicable under the General Use standard. The Board is mindful that, particularly in the area of temperature, water quality standards may need to be adapted for the UDIP.

Id. at 221.

5. The Board’s decision to designate the UDIP as General Use may have far reaching implications not considered by the Board. In order to provide clarification for IERG’s

Members, who are preparing to participate in Subdocket D, where the Board will adopt water quality standards for the CAWS and LDPR, IERG respectfully requests that the Board consider the following questions and provide a response to clarify its position with respect to the UDIP as a General Use water:

- The Board has proposed to designate the UDIP as a General Use water. Water quality standards for General Use waters have already been established. *See* 35 Ill. Admin. Code Part 302 Subpart B. Does the Board, by proposing to designate the UDIP as General Use, intend for all of the Subpart B water quality standards to apply to the UDIP? Does the Board intend only Subpart B standards derived from aquatic life uses to apply to the UDIP? Either way, how does the Board intend for **all** of the Subpart B standards to be implemented in the UDIP?
- The Board notes that it will examine water quality standards in Subdocket D for the UDIP, and it specifically states that the thermal standard “may need to be adapted.” These statements create uncertainty for dischargers to the UDIP. If the General Use designation for the UDIP is finalized in Subdocket C, and approved by U.S. EPA, as Subdocket D proceedings are underway, what is the status in the UDIP in terms of applicable water quality standards, i.e. do the already established Subpart B standards apply, including the thermal standard, although hearings are being held to establish a thermal standard for the UDIP? In short, does the General Use designation in Subdocket C impose any requirements on the UDIP prior to the conclusion of Subdocket D? Further, does the Board intend for any amendments made to the General Use standards in Subdocket D to apply all waters in the State designated as General Use?
- In August 2011 in Subdocket A of this rulemaking, the Board adopted recreational use designations for the CAWS and LDPR, including the UDIP and made clear that General Use recreational standards would not apply to those waterbodies. *See* 35 Ill. Admin. Code § 303.204 (stating that the CAWS and LDPR are not required to meet the general use standards); § 303.225 (designating the UDIP as an Incidental Contact Recreation Water). Yet, the February 2013 First Notice observes that General Use generally entails both aquatic life uses and recreational uses. Opinion and Order at 173 (stating “Illinois’ current designation of General Use addresses aquatic life together with recreational use without providing for the possibility that a segment may attain one but not the other”). It would seem extraordinary for the Board to revisit the recreational use designations made only 19 months before in an opinion that only addresses aquatic life use evidence and where the participants in the rulemaking had no notice that the recreational use designations would be reconsidered. How does the Board intend for the recreational use designation adopted for the UDIP (incidental contact) to interact with the proposed designation of the UDIP as General Use?

6. IERG anticipates that its members will be submitting comments during the Subdocket C First Notice Period on several issues, including the implications of the Board's proposal to designate the UDIP as a General Use water. IERG requests that the Board be cognizant of the fact that participants are not only preparing such comments, but are also preparing for Subdocket D. Due to the uncertainties regarding the water quality standards for the UDIP, the requested clarifications are necessary before IERG members can begin to prepare for Subdocket D proceedings. IERG appreciates the opportunity to seek clarification on these issues, and thanks the Board for its consideration.

WHEREFORE the ILLINOIS ENVIRONMENTAL REGULATORY GROUP respectfully requests that the Illinois Pollution Control Board grant this Motion for Clarification and provide a response to the issues and questions raised herein.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: April 5, 2013

By: /s/ Alec M. Davis
Alec M. Davis

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