

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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APR 19 2013

STATE OF 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(C)  
(Rulemaking – Water)

NOTICE OF FILING



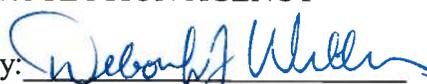
ORIGINAL

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

**SEE ATTACHED SERVICE LIST**

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the Illinois Environmental Protection Agency's Response to 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.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:   
Deborah J. Williams  
Assistant Counsel

Dated: April 17, 2013  
1021 North Grand Avenue East  
P.O. Box 19276  
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(217) 782-5544

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

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R08-09(C) )  
(Rulemaking – Water)

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

The Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by and through its attorneys, hereby submits its Response to the Motion for Clarification regarding the First Notice Opinion and Order in Subdocket C submitted to the Pollution Control Board ("Board") by the Illinois Environmental Regulatory Group ("IERG") in the above-captioned rulemaking proceeding. In support thereof, Illinois EPA states as follows:

1. On February 21, 2013, the Board issued a first notice opinion and order in Subdocket C of rulemaking docket R08-09. The first notice opinion contained the Board's summary of the voluminous proceedings in this matter and the Board's findings and conclusions regarding the appropriate aquatic life use designations for the Chicago Area Waterway System ("CAWS") and Lower Des Plaines River. The first notice order was published in the *Illinois Register* on March 15, 2013. See, 37 Ill. Reg. 2851.

2. On April 5, 2013, IERG filed a Motion for Clarification regarding the First Notice Opinion and Order in Subdocket C pursuant to 35 Ill. Adm. Code 101.500.

IERG's motion sought additional clarification regarding the Board's proposal to reclassify the Upper Dresden Island Pool as a General Use water.

3. On March 22, 2013, the Hearing Officer issued an order indicating that first notice comments on the opinion and order were to be postmarked by April 30, 2013. On April 15, 2013, the Hearing Officer rescinded the March 22<sup>nd</sup> order pending a ruling by the Board on IERG's Motion for Clarification.

4. In light of the Hearing Officer's April 15<sup>th</sup> order, the Illinois EPA would like to provide the Board with a response to IERG's Motion for Clarification.

5. In its opinion, the Board stated: "The Board does not propose an aquatic life use for the Upper Dresden Island Pool (UDIP) designation. Instead, the Board proposes that the UDIP be classified as General Use, based on its ability to meet the CWA goals. However, the Board will revisit the issue of appropriate water quality standards for UDIP in Subdocket D." *In the Matter of: Water Quality Standards and Effluent Limitations for the CAWS and the Lower Des Plaines River, R08-09(C)*, First Notice Opinion and Order (February 21, 2013), Slip Op. at 1. IERG's motion seeks clarification from the Board on the intent behind this proposal, the interpretation of which water quality standards in Subpart B of Part 302 would apply and the interaction between this opinion and the Board's holding on recreational uses for this segment in R08-09(A).

6. The Agency shares some of IERG's uncertainty as to how the Board's proposal is to be interpreted and implemented. As the Board stated on page 173 of its opinion, "...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.” *Id.* Slip op. at 173. A goal of the Agency’s proposal of a unique aquatic life use for the Upper Dresden Island Pool was to reflect with regulatory language the conclusion that the Clean Water Act aquatic life uses could be attained in this segment in the foreseeable future but the Clean Water Act recreational uses could not. It is not clear whether the Board intends that upon final adoption of its proposal that all existing general use water quality standards would be applicable to the Upper Dresden Island Pool until an opinion is issued in Subdocket D. Under the first notice proposal it would appear that all of the General Use standards would become immediately applicable when the proposal becomes effective including the fecal coliform bacteria standards. It is also not clear what impact, if any, the proposal will have on the Incidental Contact Recreation Use designation of the Upper Dresden Island Pool.

7. The Agency would like to point the Board’s attention to an issue similar to the one raised by IERG, but not applicable to the Upper Dresden Island Pool. The Board has “determined that maintaining the General Use standard for the Chicago River is appropriate as the Chicago River can meet the CWA goals in the foreseeable future. Therefore no change is proposed for the Chicago River.” *Id.* Slip. Op. at 1. Unlike the Upper Dresden Island Pool proposal, this proposal maintains the existing aquatic life use designation of this segment. However, in May 2012, U.S. EPA approved changing the Chicago River from General Use to the Board’s new Primary Contact Recreation Use designation for purposes of recreational uses. There may be no practical difference between the General Use recreational use designation and the Primary

Contact Recreation use designation, but the Board's opinion is not clear as to which regulation should be applicable in the Chicago River.<sup>1</sup>

8. Illinois EPA would like to raise one final point at this time that is similar to the issues raised by IERG's motion, but also not specifically mentioned. In the first notice opinion, the Board agreed to open a new Subdocket E to address the aquatic life use potential of the South Fork of the South Branch Chicago River (also called Bubbly Creek). In May 2012, U.S. EPA approved the Board's designation of the South Fork of the South Branch Chicago River as an Incidental Contact Recreation use water in Section 303.225(b). The Agency anticipates that Subdocket E will not impact this adopted and approved recreational use designation. What is less clear to the Agency is which non-recreational use standards are applicable to the South Fork South Branch Chicago River while Subdocket E is pending. Under Section 303.441 (which was repealed in R08-09(A)) this segment was not specifically identified but was considered a part of the South Branch Chicago River. Creation of Subdocket E without some type of placeholder language to indicate which standards are applicable during the pendency of Subdocket E may leave room for confusion.

The Agency appreciates the opportunity to respond to the Motion for Clarification filed by IERG and looks forward to submitting First Notice Comments in

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<sup>1</sup> 35 Ill. Adm. Code 301.323 defines "Primary Contact Recreation" as the use designation applicable to certain CAWS and Lower Des Plaines River segments while Section 301.355 defines the term "primary contact" as used in the General Use regulations.

Subdocket C.

Respectfully Submitted,

By:  \_\_\_\_\_

Deborah J. Williams  
Assistant Counsel  
Division of Legal Counsel

Date: April 17, 2013

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

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STATE OF ILLINOIS )  
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COUNTY OF SANGAMON )

SS

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Illinois Environmental Protection Agency's Response to Illinois Environmental Regulatory Group's Motion for Clarification Regarding the First Notice Opinion and Order for Subdocket C upon the person to whom it is directed by placing it an 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

and mailing it by First Class U.S. Mail from Springfield, Illinois on April 17, 2013, with sufficient postage affixed and by mailing it by First Class U.S. Mail from Springfield, Illinois on April 17, 2013 with sufficient postage affixed to the **ATTACHED SERVICE LIST**.

*Meredith Kelly*

SUBSCRIBED AND SWORN TO BEFORE ME

This 17<sup>th</sup> day of April, 2013

Brenda Boehmer  
Notary Public



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