

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

JUN 5 2003

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO:)
PART 309 SUBPART A-)
35 Ill. Adm. Code 309.105, 309.7, 309.8,)
309.9, 309.10, 309.12, 309.13, 309.14,)
309.117, 109.119, 309.143, 309.147; and)
PROPOSED 35 Ill. Adm. Code 120 through)
122—NPDES PERMITS AND PERMITTING)
PROCEDURES)

R03-19
(NPDES Rulemaking)

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST.

PLEASE TAKE NOTICE that on Thursday, June 5, 2003, we filed the attached **Metropolitan Water Reclamation District's Comments to Proposed Revisions and Amendments** with the Clerk of the Pollution Control Board, a copy of which is herewith served upon you.

METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO

BY: Michael G. Rosenberg
Michael G. Rosenberg, its Attorney

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Metropolitan Water Reclamation
District of Greater Chicago
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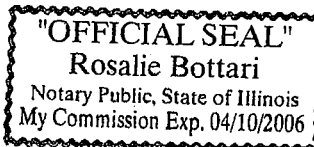
CERTIFICATE OF SERVICE

I, Michelle Valdez, being duly sworn on oath, certify that I caused a copy of the attached **Comments of the Metropolitan Water Reclamation District of Greater Chicago** to be sent via first class U.S. Mail to the individuals identified on the attached service list their addresses as shown, with proper postage prepaid, from 100 E. Erie Street, Chicago, Illinois, at or near the hour of 4:00 p.m., this 5th day of June, 2003.

Michelle Valdez

SUBSCRIBED and SWORN to before
me this 5th day of June, 2003.

Rosalie Bottari
Notary Public



RH:me

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METROPOLITAN WATER RECLAMATION DISTRICT'S
COMMENTS TO PROPOSED REVISIONS AND AMENDMENTS

The Metropolitan Water Reclamation District of Greater Chicago ("District"), submits the following comments concerning the proposed amendments and adoptions to 35 Ill. Adm. Code Part 309, Subpart A, NPDES Permits and Permitting Procedures.

The District is a unit of local government created by the state legislature for the purpose of collecting and disposing of sewerage, reducing pollution of the waterways and preventing flooding. 70 ILCS 2605/1, *et seq.* ("District Act"). The District's service area is most of Cook County. In its capacity as a public health agency, the District operates seven treatment facilities in its service area, serves five million residents and treats an average of 1.4 billion gallons of sewage daily. The District has seven wastewater treatment plant NPDES permits issued by the Illinois Environmental Protection Agency ("IEPA").

The District is in favor of public participation in the NPDES permitting process. However, many of the proposed amendments utilize language that creates an amorphous standard that injects excessive subjectivity into the application and interpretation of the rules. The District

believes that the rules now in effect provide adequate participation without imposing procedural delays that will remove the certainty and finality at various stages in the permitting process. Such delays and uncertainties are not only unfair to the participants, but also increase the costs of the proceedings.

In these comments, the District will address several of the proposed amendments that the District believes should not be adopted or, at the very least, modified prior to adoption.

Section 309.105(f)

The current rules provide notice and opportunity for public participation. The Petitioners' proposed subsection (f) seeks to purportedly enhance public participation by prohibiting issuance of an NPDES permit if the public "has not had a *fair opportunity* to comment on all *substantial terms* of the permit." (emphasis added). The terms "fair opportunity" and "substantial terms" are vague. This language will not improve public participation, but simply enable a party to challenge any permit regardless of the amount of public participation by alleging that although opportunity to comment was provided, it was not "fair." This will only inject further uncertainty, delay and expense.

Section 309.120

The District concurs with the recommendations of the Agency in its April 29, 2003, filing that the proposed provisions not be adopted. The proposed amendments are troubling in several respects.

For example, the Petitioners proposed language removes the certainty and finality of the comment period by only requiring that parties raise "all *reasonably ascertainable* issues and submit all *reasonably available* arguments..."(emphasis added). This language will enable parties to advance issues and arguments after the close of the comment period, and in all

likelihood, could result in additional motion practice or hearings on the issue of whether such issues or arguments were reasonably ascertainable or available during the comment period.

The District also has concerns with the wording of the last line. While the District obviously has no objection to the Board granting extensions of time, such requests should be discretionary with the Board, made within the original comment period and be based upon a showing of good cause. In the event section 309.120 is adopted, which the District opposes, the District proposes changing the final line to read as follows: "Additional time may be granted at the discretion of the Agency if a commenter requests such additional time within the original comment period and sets forth good cause for such additional time."

Section 309.121

The District is opposed to the addition of this section because it removes the certainty and finality of the permitting process, and replaces it with the possibility of numerous rounds of public comment. For example, in the first sentence of paragraph one, what exactly is the standard to be utilized in determining whether "the procedures of this paragraph could expedite the decision making process." In the second sentence, those submitting comments need only submit "all *reasonably available* factual grounds supporting their position." What if such grounds are allegedly not "reasonably available?" Can they then seek to reopen the record again when such grounds purportedly become "reasonably available?"

In the event these provisions are adopted, paragraph 4 should be limited and more certain. For purposes of clarity and in order to ensure that requests are made in a timely fashion, the District suggests the following modifications to the Petitioners' proposed language:

A comment period of longer than 60 days ~~will often~~ may be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with requirements of

~~this section. Commenters may request longer up to an additional 60 days to comment comment periods and they shall be granted to the extent they appear necessary. Such requests for additional time must be submitted prior to the expiration of the original comment period and set forth good cause for the request. The Agency shall have the discretion to grant or deny such request.~~

The District has reviewed the proposed language of the Agency suggested in its April 29th filing. The District supports the language suggested by the Agency.

Section 309.122(A)

The District concurs with the Agency' suggested language for section 309.121, which would eliminate the need for 309.122. With respect to the Petitioners' proposed language, the District objects to the lack of finality in the process.

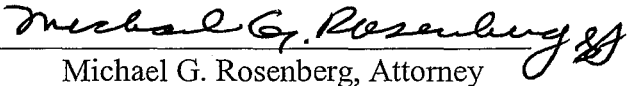
As a matter of fairness and in the interest of moving the process along, finality is required at various points in the proceedings. To the extent further comments are accepted on a new draft permit, those comments should be restricted to those parts of the permit that have been substantially modified. Parties will have already had an opportunity to comment on those portions of the permit not modified and should not be granted a second bite at the apple. Therefore, the second sentence should be changed to read as follows:

The Agency ~~may~~ shall restrict comments on the modified draft permit to significant issues on which there has not been a previous opportunity to comment.

WHEREFORE, the Metropolitan Water Reclamation District of Greater Chicago, requests that in the event the Board adopts any amendments to the Illinois Administrative Code, they be consistent with the District's comments.

Respectfully submitted,

Metropolitan Water Reclamation
District of Greater Chicago


Michael G. Rosenberg, Attorney

DATED: June 5, 2003

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(312)751-6583

THIS FILING IS SUBMITTED ON RECYCLED PAPER

STATE OF ILLINOIS
COUNTY OF COOK

I, Louis Kollias, being first duly sworn, on oath, depose and state that I am the Assistant Chief Engineer of Research & Development for the Metropolitan Water Reclamation District of Greater Chicago, and that to the best of my knowledge and belief, the facts contained in the Metropolitan Water Reclamation District's Comments to Proposed Revisions and Amendments to 35 Ill. Adm. Code Part 309, Subpart A, NPDES Permits and Permitting Procedures (R03-19) are true and correct.

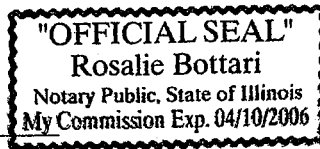
Louis Kollias
Louis Kollias, Assistant Chief Engineer of
Research & Development, Metropolitan Water
Reclamation District of Greater Chicago

Subscribed and Sworn to Before Me

This 30th day of May 2003.

Rosalie Bottari

Notary Public



THIS FILING IS SUBMITTED ON RECYCLED PAPER