

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 SUBDOCKET C SECOND NOTICE COMMENTS, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: November 4, 2013

By: /s/ Alec M. Davis
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 ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S SUBDOCKET C SECOND NOTICE COMMENTS 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 November 4, 2013; and upon:

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by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on November 4, 2013.

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

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)
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PROPOSED AMENDMENTS TO 35 ILL.)
ADM. CODE 301, 302, 303 AND 304)

**ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S
SUBDOCKET C SECOND NOTICE COMMENTS**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”)
by and through its attorney, Alec M. Davis, and pursuant to the October 3, 2013 Proposed
Second Notice Opinion and Order of the Board, hereby submits its comments in the above-
captioned matter.

IERG is a not-for-profit Illinois corporation affiliated with the Illinois Chamber of
Commerce. IERG is composed of fifty-one (51) member companies that are regulated by
governmental agencies that promulgate, administer or enforce environmental laws, regulations,
rules or other policies. A number of IERG member companies have facilities located along, and
discharging to, the waterways subject to this rulemaking. Additionally, the precedent set in this
rulemaking has the potential to affect IERG members state-wide. As such, IERG and its member
companies have participated in this rulemaking, and IERG offers the following comments in
support of many of the changes proposed by the Illinois Pollution Control Board (“Board”) to its
First-Notice proposal, as reflected by the Proposed Second Notice. IERG looks forward to
continuing to work through the remaining outstanding issues that it has raised throughout this
rulemaking in the Board’s Subdocket D.

I. EXPLICIT JUSTIFICATION FOR THE USE ATTAINABILITY CONCLUSIONS

IERG is encouraged by the Board's addressing U.S. EPA's comments by explicitly detailing the aspects of the voluminous record in the rulemaking upon which it relied in analyzing the Use Attainability Analysis ("UAA") Factors 3, 4, and 5. Proposed Second Notice Opinion and 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(C) at 36-41 (Ill.Pol.Control.Bd. October 3, 2013) (hereinafter rulemaking is cited as "R08-9(C)" and Opinion and Order cited and referred to as "Proposed Second Notice").

Regarding Factor 3, focusing on human caused conditions or sources of pollution that prevent attainment, the Board rightly recognizes that the completion of the Tunnel and Reservoir Plan ("TARP") is more than 15 years away. *Id.* at 37. Because the TARP is intended to provide water quality benefits necessary to bring the waterways subject to this rulemaking closer to full Clean Water Act uses, it seems obvious to conclude that those uses are not attainable at this time. The Board also properly identifies such human caused conditions as poor habitat quality and the electric fish barrier as providing adequate basis for concluding that UAA Factor 3 limits the attainability of many segments of the Chicago Area Waterway System ("CAWS") and Lower Des Plaines River ("LDPR"). *Id.* at 37-38. IERG would further suggest that, in light of the expansive testimony it has heard on the subject, the Board consider including reference to measures to impede the migration of invasive species as a recognized use of the segments where those activities are occurring.

Regarding Factor 4, focusing on the presence of dams, diversions, or other hydrologic modifications that prevent attainment, the Board is right to identify that U.S. EPA provided no contrary evidence to the Board's findings, and IERG agrees with the Board's conclusion that Factor 4 prevents the CAWS and LDPR from attaining the CWA fishable goal. *Id.* at 38-39.

Regarding Factor 5, focusing on physical conditions related to natural features of the water bodies that prevent attainment, the Board maintains its First-Notice position that Factor 5 limits the attainability of many segments of the CAWS and LDPR. *Id.* at 39-40. IERG agrees with the Board's characterization of the evidence in support of its conclusion as "overwhelming" and not merely based on low-flow impacts. *Id.* at 40.

II. REVISED DESIGNATION FOR THE UPPER DRESDEN ISLAND POOL

IERG supports the Board's decision to revise its First-Notice proposal to designate the Upper Dresden Island Pool ("UDIP") as General Use, and instead to create a UDIP-specific aquatic life use designation. *Id.* at 42-44. Although IERG does not necessarily agree with the Board's continued belief "that CWA aquatic life goal is attainable in UDIP" – particularly in light of apparently contradictory statements within the Board's opinion, including "the biologic condition in UDIP may not fully meet the CWA aquatic life goal" – the Board's decision does recognize and alleviate a number of concerns that IERG had with including the UDIP among the General Use waters. *Id.* at 42 and 43. IERG suggests that one or more of the above-identified limitations on attainability are similarly applicable to the UDIP, and the Board should be mindful of that in proceeding to adopt standards to protect the UDIP aquatic life use in Subdocket D.

III. WATER QUALITY STANDARDS

There are a number of issues that remain unresolved as the Board proceeds to consider amendments to its rules in Subdocket D. For instance, as has been raised repeatedly by IERG in

this rulemaking, the Agency has proposed a chlorides standard that will be violated regularly if adopted by the Board. *See* Illinois Environmental Regulatory Group's Subdocket C Final Pre-First Notice Comments on Aquatic Life Use Designations, R08-9(C) (Ill.Pol.Control.Bd. March 5, 2012); Illinois Environmental Regulatory Group's Subdocket C First Notice Comments on Aquatic Life Use Designations, R08-9(C) at 6-11 (Ill.Pol.Control.Bd. July 1, 2013); and Illinois Environmental Regulatory Group's Response to Comments of the United States Environmental Protection Agency, R08-9(C) at 11-12 (Ill.Pol.Control.Bd. August 30, 2013). IERG remains convinced the chloride standards previously proposed for this rulemaking are simply not achievable or appropriate. IERG is encouraged, based on discussions with the Illinois EPA and as recognized by the Board in its Proposed Second Notice, that an alternate numeric chloride standard appropriate for these waters and achievable for the timeframe envisioned by this triennial review will be included within the Subdocket D proceedings. Proposed Second Notice at 51. In a similar fashion, IERG supports the Board's recognition at First Notice that issues relating to temperature will be resolved in Subdocket D. IERG looks forward to participating in that process.

IV. CONCLUSION

IERG has participated in this rulemaking because its member companies will be directly impacted by the proposed aquatic life use designations and corresponding water quality standards developed during this proceeding and because of its potential to have a precedential impact on its members state-wide. IERG is pleased to see that the Board addressed the comments of U.S. EPA through providing additional justification for its First-Notice decisions, rather than changing its findings. IERG also is encouraged that the Board chose to create a UDIP-specific aquatic life use classification to avoid the numerous complexities involved in

designating it as General Use. Finally, IERG reiterates its desire to find a solution to the outstanding issues in developing applicable water quality standards in the Board's Subdocket D.

IERG appreciates the opportunity to provide these comments. Thank you for your consideration.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: November 4, 2013

By: /s/ Alec M. Davis
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