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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

APR 29 2003

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO:)
PUBLIC PARTICIPATION RULES IN 35)
ILL. ADM. CODE PART 309 NPDES)
PERMITS AND PERMITTING)
PROCEDURES)

RO3-19
(NPDES Rulemaking)

STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

TO: Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(VIA AIRBORNE EXPRESS)

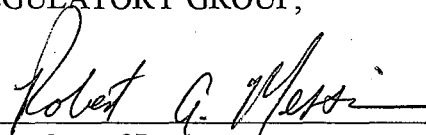
Marie E. Tipsord
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(VIA AIRBORNE EXPRESS)

(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 an original and nine copies of a **MOTION FOR LEAVE TO FILE REPLY TO PETITIONERS' RESPONSE TO IERG'S MOTION FOR A THIRD HEARING**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

By: 
One of Its Attorneys

Dated: April 28, 2003

Robert A. Messina
ILLINOIS ENVIRONMENTAL
REGULATORY GROUP
3150 Roland Avenue
Springfield, Illinois 62703
(217) 523-4942

CERTIFICATE OF SERVICE

I, Robert A. Messina, hereby certify that I have served copies of the foregoing MOTION
FOR LEAVE TO FILE REPLY TO PETITIONERS' RESPONSE TO IERG'S MOTION FOR
A THIRD HEARING upon:

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Albert Ettinger, Esq.
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Chicago, Illinois 60601-2110

Mr. Ron Hill
Metropolitan Water Reclamation District
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Ms. Vicky McKinley
Evanston Environment Board
223 Grey Avenue
Evanston, Illinois 60202

Mr. Sanjay Sofat
Ms. Connie Tonsor
Illinois EPA
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Springfield, Illinois 62794-9276

Mr. Larry Cox
Downers Grove Sanitary District
1710 Curtiss Street
Downers Grove, Illinois 60515

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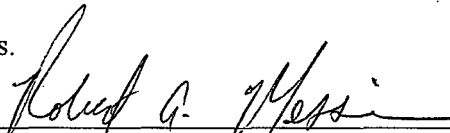
Mr. Irwin Polls
Metropolitan Water Reclamation District
6001 West
Cicero, Illinois 60804

by placing said documents in the United States Mail in Springfield, Illinois, postage prepaid, on April 28, 2003; and upon:

Ms. Dorothy M. Gunn
Clerk, Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Marie Tipsord, Esq.
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

/via Airborne Express on April 28, 2003, in Springfield, Illinois.



Robert A. Messina

ERG:001/R Dockets/Fil/R-013/COS - Motion for Leave

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO:) R03-19
PUBLIC PARTICIPATION RULES IN 35) (NPDES Rulemaking)
ILL. ADM. CODE PART 309 NPDES)
PERMITS AND PERMITTING PROCEDURES)
)

**MOTION FOR LEAVE TO FILE REPLY TO
PETITIONERS' RESPONSE TO IERG'S MOTION FOR A THIRD HEARING**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP ("IERG") by and through one of its attorneys, Robert A. Messina, pursuant to 35 Ill. Admin. Code § 102.402, and for its Motion for Leave to File Reply, states as follows:

1. On March 26, 2003, IERG filed with the Illinois Pollution Control Board ("Board") a Motion to request a Third Hearing in the above-captioned matter.
2. On April 14, 2003, Petitioners filed their Response to that Motion.
3. In their objection, Petitioners argue that IERG has not sufficiently explained its reasons for requesting a Third Hearing. Further, in their Response, Petitioners make arguments that are contradicted by Petitioners' own testimony before the Board in this matter.
4. IERG has not addressed the issues raised by the Petitioners in its Motion to request a Third Hearing, and feels that if it is given the opportunity to address these issues, the Board will be better able to rule on that Motion.
5. For the reasons cited above, IERG respectfully moves the Board for leave to file a Reply to Petitioners' Response to IERG's Motion for a Third Hearing.
6. A copy of IERG's Reply is attached hereto as Exhibit A.

7. IERG hereby moves the Board to grant this Motion and deem its Reply filed as of the date that the Board grants this Motion.

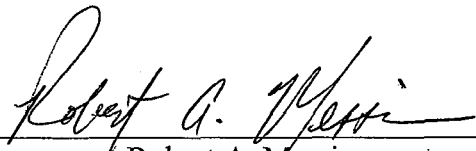
8. Granting this Motion will not delay the Board's consideration of IERG's Motion to Request a Third Hearing.

9. IERG does not make this Motion for purposes of delay or for any other improper purpose, but rather for the reason stated above.

WHEREFORE, the ILLINOIS ENVIRONMENTAL REGULATORY GROUP respectfully prays that the Illinois Pollution Control Board grant its Motion for Leave to File Reply and for such other relief as is just and proper.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

By: 
Robert A. Messina

Dated: April 28, 2003

Robert A. Messina, Esq.
ILLINOIS ENVIRONMENTAL REGULATORY GROUP
3150 Roland Avenue
Springfield, Illinois 62703
(217) 523-4942

IERG:001/Fil/Motion for Leave to File R

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO:) R03-19
PUBLIC PARTICIPATION RULES IN 35) (NPDES Rulemaking)
ILL. ADM. CODE PART 309 NPDES)
PERMITS AND PERMITTING)
PROCEDURES)

**REPLY TO PETITIONERS' RESPONSE TO
IERG'S MOTION FOR A THIRD HEARING**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP ("IERG"), by and through one of its attorneys, Robert A. Messina, pursuant to 35 Ill. Admin. Code § 102.402, and hereby respectfully replies to the response filed by the Environmental Law and Policy Center of the Midwest, Illinois Chapter of the Sierra Club, and Prairie Rivers Network ("Petitioners") opposing IERG's request for a Third Hearing. Without a trace of shame or even irony, IERG states as follows:

1. On March 26, 2003, IERG filed with the Illinois Pollution Control Board ("Board") a Motion to Request a Third Hearing in the above-captioned matter. IERG filed that motion for a number of reasons, but primarily for the purpose of providing sufficient time to review the hearing transcript, prepare detailed, meaningful testimony for submittal to the Board, and to meet with the Illinois Environmental Protection Agency ("Illinois EPA") to discuss its intention to modify the proposed language and to analyze the impact of the language on IERG's member companies.

2. On April 14, 2003, the Petitioners filed a response to that motion. Counsel for the Petitioners makes much ado in his response about the amount of time IERG had to review the Petitioners' proposal. That IERG had several months to review the initial proposal is a correct assertion. What the Petitioner fails to mention is the amount of time

IERG and the other stakeholders had to review the first draft of the Illinois EPA's proposal before the second hearing. For IERG, this time consisted of a few days; for other stakeholders, this consisted of hours.

3. Of primary concern to IERG and its Members, however, is the possible inclusion of new language drafted by the Illinois EPA in the Board's proposal issued at first notice. If included by the Board, this language would introduce a mechanism and concepts that have never been the subject of testimony by the Illinois EPA or cross-examination by interested stakeholders, such as counsel for the Petitioners. To the Illinois EPA's credit, it has spent considerable time and effort meeting with the various stakeholders to explain its position on all of the issues raised by the Petitioners' proposal and, particularly, the re-notice mechanism that they have crafted. IERG believes, without detailing the entire rulemaking process and the policy behind its various steps and accompanying safeguards, that the Board has sought to create a pre-First Notice process whereby it can accept a proposal, take testimony, and allow for interested parties to cross-examine those who testify, in an effort to develop a well thought out regulatory proposal that, to the extent possible, was crafted in light of the concerns of all of the stakeholders. IERG wholeheartedly agrees with the policies behind this approach and believes that the Board should use this same approach in this rulemaking.

4. Evidently, Petitioners also agree that this pre-First Notice process is a sound one. Counsel for IERG has searched for the Petitioners' objection to the Board's scheduling of two hearings before issuing its First Notice Opinion Order. Shockingly, despite continuing Illinois EPA "decisions on numerous NPDES permits every month," I have found no such objection. Perhaps, this silence is because counsel for the Petitioners

recognizes the importance and value to the Board and the various stakeholders of such hearings before the Board accepts the proposal and makes it its own. Perhaps he simply forgot to object to those hearings as well.

5. Counsel for the Petitioners also urges the Board to deny IERG's motion on the grounds that untold numbers of permits will continue to be issued by the Illinois EPA under its current, allegedly deficient, program. While recognizing that no such action could be taken by the Board, counsel chides IERG for not requesting a moratorium on the issuance of such permits during this rulemaking. Of course, the Petitioners too were silent on such a moratorium, raising the question of why it was even included in the response. But more importantly, this concern is contradicted by Petitioners' own testimony before the Board in this matter. On numerous occasions, counsel suggested that these changes would not have much affect on the day-to-day operations of the Agency, as it is only the rare case when this proposal would come in to play (*See*, i.e., page 8, line 8 or page 38, line 15, Transcript of March 17, 2003, hearing). If what counsel for the Petitioners says is true, then the chance that the issues in this rulemaking will arise in the near future is small, and no harm will come from allowing the Board to hold a third hearing to consider testimony and examination on new language that the Board has not previously seen.

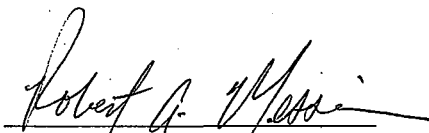
6. Finally, there is not currently a deadline by which the Board is required to adopt the regulations proposed in this rulemaking. There is no pending notice of deficiency from the United States Environmental Protection Agency threatening withdrawal of its delegation, because that Agency has not identified any shortcomings with the State of Illinois' National Pollutant Discharge Elimination program. As such, no

material prejudice would result if the Board were to grant IERG's Motion, and hold a Third Hearing in this matter.

WHEREFORE, for the above and foregoing reasons, ILLINOIS ENVIRONMENTAL REGULATORY GROUP respectfully requests the Illinois Pollution Control Board hold a Third Hearing in the above-referenced matter.

Respectfully,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

By: 
Robert A. Messina

Dated: April 28, 2003

Robert A. Messina, Esq.
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IERG:001/Fil/Third Hearing Reply

