

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

To:

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Persons on the attached service list

Please take notice that on the 22th Day of July, 2010, I filed with the Office of the Clerk of the Illinois Pollution Control Board the attached **Environmental Groups' Memorandum in Opposition to Metropolitan Water Reclamation District's Motion for Leave to File**, a copy of which is hereby served upon you.



By: _____
Ann Alexander, Natural Resources Defense Council

Dated: July 22th, 2010

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CERTIFICATE OF SERVICE

I, Ann Alexander, the undersigned attorney, hereby certify that I have served the attached **Environmental Groups' Memorandum in Opposition to Metropolitan Water Reclamation District's Motion for Leave to File** on all parties of record (Service List attached), by depositing said documents in the United States Mail, postage prepaid, from 227 W. Monroe, Chicago, IL 60606, before the hour of 5:00 p.m., on this 22th Day of July, 2010.

A handwritten signature in blue ink that reads "Ann Alexander". The signature is written in a cursive style.

Ann Alexander, Natural Resources Defense Council

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WATER QUALITY STANDARDS AND)	
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CHICAGO AREA WATERWAY SYSTEM)	(Rulemaking – Water)
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Adm. Code Parts 301, 302, 303, and 304)	

**ENVIRONMENTAL GROUPS' MEMORANDUM
IN OPPOSITION TO METROPOLITAN WATER
RECLAMATION DISTRICT'S MOTION FOR LEAVE TO FILE**

Natural Resources Defense Council, Openlands, Sierra Club – Illinois Chapter, Environmental Law and Policy Center, Friends of the Chicago River, Southeast Environmental Task Force, and Alliance for the Great Lakes (collectively, “Environmental Groups”) respectfully submit this memorandum in opposition to the motion of the Metropolitan Water Reclamation District (“MWRD” or “District”) for leave to file a combined reply brief in support of its motion for leave to file and set a hearing on the UIC CHEERS report.

The Board’s rules state, “The moving person will not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice.” 35 Ill. Adm. Code 101.500(e). MWRD has utterly failed to demonstrate material prejudice in support of its motion. Both its motion to file the reply brief, and the proposed reply brief itself, are devoid of any new information that was unavailable when the District’s original motion papers were filed. Indeed, the bulk of the citations in the proposed reply memorandum are dated 2008. The sole citation from the most recent round of testimony merely reiterates an essentially undisputable proposition that MWRD’s own witness Samuel Dorevich stated clearly in prefiled testimony filed by the District. See proposed reply memorandum at 5; June 14, 2010 prefiled testimony of

Samuel Dorevich at 3 (statement of Dr. Marc Gorelick that the Technical Report “should not form the basis” for study conclusions reiterates statement by Dr. Dorevich that “[t]he summaries that comprise the Interim Technical Report . . . should not be viewed as answers to primary study questions”). Neither the motion nor the reply brief purport to identify any misrepresentations of fact that require correction. The reply brief is simply another round of argument on the motion – to which the Environmental Groups could in turn respond extensively but will not, in deference to the Board’s decision to limit parties to one brief each except in unusual circumstances.

The District asserts that it will be “greatly prejudiced” if it is not allowed to present the completed CHEERS study, and in view of the “great costs that the District’s taxpayers will face if the disinfection requirement is approved.” Motion for Leave at 2-3, ¶ 5. These, however, are arguments as to why a substantive outcome against the District on the *underlying issues* – either on its motion to file or on the proposed rule itself – would purportedly be prejudicial, not why rejection of its reply brief would be prejudicial. Under 35 Ill. Adm. Code 101.500(e), the issue is whether the reply brief itself is necessary to “prevent material prejudice.” The Board’s rule clearly does not contemplate a right of moving parties to file reply briefs as a matter of course, regardless of the nature of the underlying matter. If “material prejudice” were found to exist every time a movant had arguments to counter an opposition brief, and something to lose from a decision against it, then section 101.500(e) would be rendered so broad as to be meaningless.

Conclusion

For the foregoing reasons, the Board should deny MWRD’s motion for leave to file a reply brief.

Dated: July 22, 2010

Respectfully submitted,

NATURAL RESOURCES DEFENSE COUNCIL

SOUTHEAST ENVIRONMENTAL TASK
FORCE

SIERRA CLUB-ILLINOIS CHAPTER

OPENLANDS

ENVIRONMENTAL LAW & POLICY CENTER

FRIENDS OF THE CHICAGO RIVER

ALLIANCE FOR THE GREAT LAKES

A handwritten signature in blue ink that reads "Ann Alexander". The signature is written in a cursive style.

By: _____

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Authorized to represent the parties listed above for
purposes of this motion