

**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 III.	)	Subdocket B
Adm. Code Parts 301, 302, 303 and 304	)	

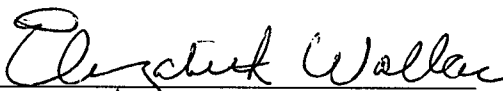
**NOTICE OF FILING**

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 8th day of October, 2010, I filed with the Office of the Clerk of the Illinois Pollution Control Board the attached Motion by the People of the State of Illinois to Bar Metropolitan Water Reclamation District of Greater Chicago From Filing Further Reports Related to the CHEERS Study, copies of which are hereby served upon you.

Respectfully submitted,

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Adm. Code Parts 301, 302, 303 and 304	)	Subdocket B

**MOTION BY THE PEOPLE OF THE STATE OF ILLINOIS TO BAR  
METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO  
FROM FILING FURTHER REPORTS RELATED TO THE UIC CHEERS STUDY**

The People of the State of Illinois (“the People”), by and through Illinois Attorney General Lisa Madigan, hereby move the Board for an order barring the Metropolitan Water Reclamation District of Greater Chicago (“District”) from filing any further reports related to the CHEERS study. The District’s newly-revealed intention to file a “supplement” to the final CHEERS report in December is contrary to its representations in earlier pleadings to the Board; is disruptive of the Board’s previously-set schedule for closing the record in this subdocket by the end of this year; and manifests a bad-faith effort on the District’s part to continue this rulemaking for as long as the District sees fit for it to last. In support of their motion, the People state as follows:

**PROCEDURAL HISTORY**

1. On February 3, 2010, the Environmental Groups filed a Motion to Sever, Open Subdocket, and Proceed to Decision Concerning Recreational Use Issues. In that motion, the Environmental Groups requested that the Board proceed to a decision on issues related to

recreational uses of the waterways that are the subject of this rulemaking, including the appropriateness of Illinois EPA's proposed rulemaking for disinfection of sewage discharge.

(2/3/10 Mtn. to Sever at 1.)

2. On March 8, 2010, the Metropolitan Water Reclamation District of Greater Chicago ("District") filed the only objection to the Environmental Groups' motion. In that response ("First Motion to Set CHEERS Hearing"), the District argued, *inter alia*, that the Board should not proceed to a decision on all issues related to recreational uses until the completion of its ongoing CHEERS epidemiological study. The District stated that it would "be filing technical reports on the [CHEERS study] by May 5, 2010 that will eventually form the basis for the study's conclusions, and the epidemiological report itself will be filed by September 15, 2010." (3/8/10 Dist. Mtn. at 2.) In a footnote, the District reiterated that "[t]he final report will be filed with the Board no later than September 15, and will be filed before that date if possible." (*Id.* at 2 n.1) (emphasis added.)

3. Based on that promised schedule, the District requested that the Board "set a schedule related to [the final CHEERS report], which would include setting deadlines for the filing of written testimony (October 15, 2010) and pre-filed questions (November 15, 2010), and then setting a hearing date soon after the filing of questions." (*Id.* at 5.)

4. On March 18, 2010, the Board deemed the information that the District had offered relating to the CHEERS study in its First Motion to Set CHEERS Hearings "helpful," and severed recreational use issues into two subdockets, including this Subdocket B, intended to "address issues relating to disinfection and whether or not disinfection may or may not be necessary to meet . . . use designations." (3/18/10 Order at 18.) The Board further directed the

Hearing Officer to set hearing dates for testimony on the CHEERS technical reports scheduled for filing on May 5, 2010. (*Id.* at 19.)

5. On June 14, 2010, prior to those hearings, the District filed another motion, seeking additional hearings on the CHEERS Study. In its Motion for Leave to File and Set a Hearing on the UIC CHEERS Report (“Second Motion to Set CHEERS Hearings”), the District asked the Board for leave to file the CHEERS report on or before August 31, 2010, and for the Board to set hearings on the CHEERS report thereafter. Specifically, the District made the following prayer for relief:

WHEREFORE, the [District] requests that the Board enter an Order granting the District leave to file the CHEERS Report by August 31, 2010, and scheduling a hearing shortly thereafter. Along with setting a hearing date, the District also requests that the Board set deadlines for the filing of pre-filed testimony and pre-filed questions prior to a hearing on the CHEERS Report.

(6/14/10 Dist. Mtn. at 11.)

6. Illinois EPA, the Environmental Groups, and the People all filed objections to the District’s Second Motion to Set CHEERS Hearings. Illinois EPA proposed that the Board close this subdocket “in the Fall of 2010,” (6/24/10 IEPA Resp. at 3), and the Environmental Groups and the People both suggested that, if the Board were to allow an additional hearing on the final CHEERS report, the Board should close this subdocket by the end of 2010. (*See* 6/28/10 Env’tl Groups’ Resp. at 3; 6/29/10 People’s Resp. at 3.)

7. In their response, the People contended that granting the District’s motion would threaten to “delay any decision on disinfecting for an unknown period of time.” (6/29/10 People’s Resp. at 1.) In its July 12, 2010 reply brief, the District dismissed the People’s concern as “misleading and exaggerated,” stating as follows:

The District has requested leave to file the CHEERS Report by August 31, 2010, which is less than two months from today, and then have the Board schedule a hearing shortly afterward. It is simply not true this request will somehow lead to an unknown delay in the Board's decision on disinfection in Subdocket B. Instead, if the District's request is granted, the Board will receive the CHEERS Report and related testimony in the next few months.

(7/12/10 Dist. Reply at 12-13.)

8. On August 5, 2010, the Board entered an order granting the District's Second Motion to Set CHEERS Hearing, giving the District leave to file "the CHEERS final report" by August 31, 2010, and directing the Hearing Officer to set a hearing on that report. (8/5/10 Order at 1.) The Board did, however, agree with Illinois EPA, the Environmental Groups, and the People that this subdocket "should proceed to closure promptly." (*Id.* at 3.) Therefore, the Board directed the Hearing Officer to "expeditiously complete the hearings on the CHEERS final report and to set a final comment date for no later than December 31, 2010." (*Id.*)

9. On August 31, 2010, the District filed what it had promised in its First Motion to Set CHEERS Hearings would be the "final CHEERS report." That description of the report matched the caption on almost every page of the document, which reads "CHEERS FINAL REPORT." A few scattered references in the text indicated, however, that the District now intended to release yet another CHEERS-related report. On page xxv of the report, for example, the authors, referring to three purported objectives of the CHEERS Study, stated that one of the study objectives "will be met when a supplement to this report is submitted to the Illinois Pollution Control Board in Fall, 2010."

10. The District's newly proposed supplement to the CHEERS report received another release date when the District submitted Samuel Dorevitch's pre-filed testimony on

September 20, 2010. In that testimony, Dr. Dorevitch stated that the supplemental CHEERS report would be submitted to the Board “by December 6, 2010.” (9/20/10 Dorevitch Test. at 3.)

**ARGUMENT**

11. Far from being “exaggerated,” the People’s concern that the District would continue to attempt to extend this already record-breaking rulemaking by trying to file even more testimony has turned out to be well-founded. Instead of seeking leave to file additional CHEERS-related testimony or reports, though, as the District has done on two earlier occasions, the District has simply announced that it *will* file such testimony “in Fall, 2010,” “by December 6, 2010,” or presumably whenever else it sees fit. The Board should reject the District’s unmade request now, and bar the filing of any more testimony or reports relating to the CHEERS study as untimely.

12. The Board has set a firm deadline of December 31, 2010 for the submission of final comments in this subdocket, and the People contend that the deadline is long overdue. That deadline was based on the District’s assurances, beginning in its First Motion to Set CHEERS Hearings, filed in March 2010, and continuing in its reply brief in support of its Second Motion to Set CHEERS Hearings, filed in July 2010, that the “final CHEERS report” would indeed be final, and that no other business would remain in this subdocket after its filing, other than a hearing related to the report and the submission of final comments.

13. Now, the District proposes to file yet another report less than four weeks before the deadline for final comments. The District must understand that this proposal would create significant difficulty for every participant in this subdocket; yet the District said nothing when the Board created the December 31, 2010 deadline in its August 5, 2010 order, and nothing when

the Board referred to the CHEERS report to be filed by the end of August as the "final CHEERS report." (See 8/5/10 Order at 3.) If the District were allowed to file this additional material, there simply would be inadequate time for review and consideration of it before final comments are due in this rulemaking. In that case, obviously the only remedy for the other parties (as the District is sure to argue) would be to extend the subdocket to allow for review and comment of the new material; we wholeheartedly reject this approach. We urge the Board to pre-emptively reject the District's attempts to subvert the Board's December 31, 2010 deadline and enter an order barring the District from submitting any more reports relating to the CHEERS study.

### CONCLUSION

Throughout this rulemaking, the District has vociferously disclaimed any intention of delaying these proceedings. Those words have been contradicted repeatedly by the District's actions. Now, the District has announced its intention to file new testimony less than four weeks before the date on which the Board has ordered the record in the subdocket to be closed. The People respectfully request that this Board bar any further CHEERS-related filings from the District as untimely, so that this proceeding can finally come to an end and the Board's order to close this subdocket by year's end will be met.

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State of Illinois

By:



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DATE: October 8, 2010

**CERTIFICATE OF SERVICE**

I, ELIZABETH WALLACE, do certify that I filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the foregoing Notice of Filing and Entries of Appearance and caused them to be served this 8th day of October, 2010, upon the persons listed on the attached Service List by depositing true and correct copies of same in an envelope, first class postage prepaid, with the United States Postal Service at 69 West Washington Street, Chicago, Illinois, unless otherwise noted on the Service List.

  
ELIZABETH WALLACE



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