

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 ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S SUBDOCKET C RESPONSE TO FINAL PRE-FIRST NOTICE COMMENTS ON AQUATIC LIFE USE DESIGNATIONS on behalf of the Illinois Environmental Regulatory Group, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: March 19, 2012

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

Alec M. Davis
General Counsel
Illinois Environmental Regulatory Group
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Springfield, Illinois 62701
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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 RESPONSE TO FINAL PRE-FIRST NOTICE COMMENTS ON AQUATIC LIFE USE DESIGNATIONS 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 on March 19, 2012; and upon:

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Hearing Officer
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by depositing said documents in the United States Mail, postage prepaid, in
Springfield, Illinois on March 19, 2012.

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, (Subdocket C)
CHICAGO AREA WATERWAY SYSTEM))	(Rulemaking – Water)
AND LOWER DES PLAINES RIVER:)	
PROPOSED AMENDMENTS TO 35 ILL.)	
ADM. CODE 301, 302, 303 AND 304)	

**ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S
 SUBDOCKET C RESPONSE TO FINAL PRE-FIRST NOTICE
COMMENTS ON AQUATIC LIFE USE DESIGNATIONS**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”) by and through its attorney, Alec M. Davis, and pursuant to the February 3, 2012, Hearing Officer Order, hereby submits its response to final pre-first notice comments in the above captioned matter.

As set forth in IERG’s January 17, 2012, response to the updated status report of the Illinois EPA, Metropolitan Water Reclamation District (“MWRDGC” or “the District”) and environmental groups concerning proposed aquatic life use designations, the participants in this rulemaking have been awaiting the substance of the agreement between the MWRDGC, Environmental Groups, and Illinois EPA, in order to review and determine whether and to what extent they may be impacted by the changes to the proposal sought. Illinois Environmental Regulatory Group’s Response to the Updated Status Report of the Illinois EPA, Metropolitan Water Reclamation District, and Environmental Groups Concerning Proposed Aquatic Life Use Designations, *In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and the Lower Des Plaines River: Proposed Amendments to 35 Ill.*

Adm. Code Parts 301,302, 303 and 304, R08-09(C) (Ill.Pol.Control.Bd. Jan. 17, 2012)
(rulemaking hereafter cited as “R08-09”).

On January 27, 2012, the District and Environmental Groups filed an updated status report which included an attached single page describing the subject of the tentative agreement. *Statement of Environmental Groups and Metropolitan Water Reclamation District of Greater Chicago In Reply to Responses to the January 3, 2012 Update Status Report, R08-09*, (Ill.Pol.Control.Bd. Jan. 27, 2012). Exhibit A listed eight brief, but specific, issues tentatively agreed to by the District and Environmental Groups, but did not include any specific language that would implement those agreements. *Id.* Exhibit A did not include any of the outstanding issues that the District, Environmental Groups, and Illinois EPA continue to discuss. The January 27, 2012, Status Report states that “there remain a large number of matters that MWRD and the Environmental Groups continue to discuss regarding pending lawsuits in federal court, habitat projects, and permitting matters.” *Id.* at 2.

On March 5, 2012, the District filed comments describing its on-going discussions with environmental groups, Illinois EPA, and U.S. EPA with an aim towards reaching an agreement. *Comments of the Metropolitan Water Reclamation District of Greater Chicago on Proposed Aquatic Life Designated Uses, R08-09*, at 2, (Ill.Pol.Control.Bd. Mar. 5, 2012). The comments request that the Board postpone moving to First Notice in hopes that the parties will reach an agreement “that can be submitted to the Board in the very near future with a recommended course of action, including issuance of variances relating to the District’s NPDES permits.” *Id.* Once

again, no proposed regulatory language was submitted to the Board. In support of its request for postponement, the District stated that “the issues that will need resolution by the Board will change substantially” in the event that the parties reach an agreement. *Id.*

It is IERG’s understanding that no other parties have been privy to the issues being addressed, nor the substance of the terms of the agreement being discussed. Based on the contents of the tentative agreement filed, as well as other statements noted above, there is a real possibility that other dischargers could be impacted. IERG simply requests that, should the District, environmental groups, and Illinois EPA subsequently submit terms of an agreement in this proceeding, the Board allow other parties the opportunity to review, comment, and, if necessary, provide additional testimony on any agreement submitted in this rulemaking.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: March 19, 2012

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

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General Counsel
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