

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
)  
WATER QUALITY STANDARDS AND ) R08-9  
EFFLUENT LIMITATIONS FOR THE ) (Rulemaking - Water)  
CHICAGO AREA WATERWAY )  
SYSTEM AND THE LOWER DES ) Subdockets C & D  
PLAINES RIVER: PROPOSED )  
AMENDMENTS TO 35 Ill. Adm. Code )  
Parts 301, 302, 303 and 304

**NOTICE OF FILING**

To: ALL COUNSEL OF RECORD  
(Service List Attached)

**PLEASE TAKE NOTICE** that on the 10th day of May, 2012, I, on behalf of the Metropolitan Water Reclamation District of Greater Chicago, electronically filed **REPORT OF METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO ON STATUS OF DISCUSSIONS REGARDING RESOLUTION OF CONCERNS WITH PROPOSED AQUATIC LIFE DESIGNATED USES** with the Office of the Clerk of the Illinois Pollution Control Board.

Dated: May 10, 2012

**METROPOLITAN WATER  
RECLAMATION DISTRICT OF  
GREATER CHICAGO**

By: /s/ Fredric P. Andes  
One of Its Attorneys

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**PROOF OF SERVICE**

The undersigned, a non-attorney, certifies, under penalties of perjury pursuant to 735 ILCS 5/1-109, that I caused a copy of the forgoing, the **REPORT OF METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO ON STATUS OF DISCUSSIONS REGARDING RESOLUTION OF CONCERNS WITH PROPOSED AQUATIC LIFE DESIGNATED USES**, to be served via First Class Mail, postage paid, from One North Wacker Drive, Chicago, Illinois, on the 10th day of May, 2012, upon the attorneys of record on the attached Service List.

*/s/ Barbara E. Szynalik*

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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WATER QUALITY STANDARDS AND ) R08-9  
EFFLUENT LIMITATIONS FOR THE ) (Rulemaking - Water)  
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**REPORT OF METROPOLITAN WATER RECLAMATION  
DISTRICT OF GREATER CHICAGO ON STATUS OF DISCUSSIONS  
REGARDING RESOLUTION OF CONCERNS WITH  
PROPOSED AQUATIC LIFE DESIGNATED USES**

I. SUMMARY

As the Board is aware, the Metropolitan Water Reclamation District of Greater Chicago (the “District”) has recently been engaged in discussions with other parties to this rulemaking – the Environmental Groups<sup>1</sup> and Illinois EPA – regarding possible resolution of some of the issues pertaining to aquatic life designated uses and aquatic life water quality standards for dissolved oxygen (DO). In its response to comments filed on March 19, 2012, the District provided a status report on those discussions. The District is filing this update to keep the Board apprised of the latest developments. Details concerning those developments are provided below.

Discussions between all the concerned parties are ongoing, and a meeting has been scheduled with U.S. EPA. If the discussions with U.S. EPA are successful, then the District expects to enter into an agreement that will resolve its issues in this Subdocket. If those discussions prove unsuccessful, the District has no choice but to press forward

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<sup>1</sup> The term “Environmental Groups” refers to the following organizations: Natural Resources Defense Council, Environmental Law and Policy Center, Friends of the Chicago River, Openlands, Southeast Environmental Task Force, and Sierra Club – Illinois Chapter.

with all of the issues stated in its testimony and other filings. Given the current stage of the negotiations, the District suggests that the Board postpone issuing a First Notice in this Subdocket until it is known whether an agreement will be reached that resolves all or most of the District's issues. While negotiations are ongoing, the District will submit regular progress reports. If the Board decides to proceed with a First Notice, the District strongly urges the Board to consider all of the District's previously submitted testimony and other filings in reaching its decision.

## II. STATUS OF DISCUSSIONS

The tentative agreement between the environmental groups and the District includes the statement that "a 5 year variance allowing MWRD to work towards compliance with the proposed DO criteria is appropriate for the CAWS while MWRD works to complete TARP, installs green infrastructure and takes other steps that will reduce pollutant loadings to the CAWS, and that an additional variance at the conclusion of the initial variance may be appropriate with variance terms and requirements to be addressed at such time." The District has developed a draft petition for the initial variance referenced in that statement, which was attached to its March 19 response to comments. Since the subject of the variance petition is the DO standards that are currently before the Board, MWRD would not file a formal petition for variance with the Board until after final DO standards have been adopted by the Board.

The environmental groups and the District have continued discussing the issues covered in their tentative agreement, and both Illinois EPA and U.S. EPA have been involved in those discussions as well. Any agreement that is reached must be submitted to the District's Board of Commissioners for formal approval, after which it would be

submitted to the Pollution Control Board with a recommended course of action, including issuance of variances relating to the District's NPDES permits. As part of that agreement, the District would withdraw its objections to the designated uses proposed by Illinois EPA, and would also withdraw its proposal for adoption of a wet-weather designated use. This action would substantially expedite the Subdocket C rulemaking, since there would be no need for the Board to address the issues and concerns raised by the District in its testimony and filings in this Subdocket.

The District is currently in active discussions with U.S. EPA concerning the Agency's views on the variance, to ensure that the variance would be approved by U.S. EPA, assuming that it is first submitted to and approved by the Board after adoption of the final DO standards. A meeting with U.S. EPA is scheduled for May 23, 2012. Without eventual approval of a variance by U.S. EPA, the District would be faced with designated uses, and resulting DO standards, that would simply be unattainable in the CAWS. Thus, absent an agreement, the District must strongly object to the proposed designated uses and advocate for a wet-weather designated use.

### III. CONCLUSION

The District respectfully suggests it would be more judicious for the Board to postpone a First Notice decision while discussions are ongoing. The District is hopeful that a resolution will be reached within the next few months. During that time the District will submit progress reports on a schedule determined by the Board.

Respectfully submitted,

METROPOLITAN WATER  
RECLAMATION DISTRICT OF  
GREATER CHICAGO

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