

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 PLAINES RIVER:)	Subdockets C & D
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 8th day of January, 2013, I, on behalf of the Metropolitan Water Reclamation District of Greater Chicago, electronically filed **REPORT OF METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO AND ENVIRONMENTAL GROUPS ON AGREEMENT REGARDING PROPOSED AQUATIC LIFE DESIGNATED USES** with the Office of the Clerk of the Illinois Pollution Control Board.

Dated: January 8, 2013

**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 AND ENVIRONMENTAL GROUPS REGARDING PROPOSED AQUATIC LIFE DESIGNATED USES**, to be served via First Class Mail, postage paid, from One North Wacker Drive, Chicago, Illinois, on the 8th day of January, 2013, upon the attorneys of record on the attached Service List.

/s/ Barbara E. Szynalik

Barbara E. Szynalik

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**REPORT OF METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO AND ENVIRONMENTAL GROUPS
REGARDING PROPOSED AQUATIC LIFE DESIGNATED USES**

As the Illinois Pollution Control Board (“IPCB”) is aware, the Metropolitan Water Reclamation District of Greater Chicago (“MWRD”) and various environmental groups¹ have been engaged in discussions with the hope of resolving some of the issues pertaining to aquatic life designated uses and aquatic life water quality standards for dissolved oxygen (DO). The Illinois Environmental Protection Agency (“IEPA”) and United States Environmental Protection Agency (“USEPA”) are aware that these discussions are on-going. The MWRD has submitted several status reports relative to these discussions to the IPCB. This report is intended to notify the IPCB that the MWRD and NGOs have finalized an agreement.²

The MWRD and NGOs are in agreement as to the following issues:

1. The record supports an aquatic life use ‘B’ designation for the Chicago Sanitary and Ship Canal.
2. The record supports an aquatic life use ‘A’ designation for all portions of the CAWS other than the Chicago Sanitary and Ship Canal and Bubbly Creek.

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

² It should be noted that nothing herein is intended to affect any party’s position in *NRDC v. MWRDGC*, 11-cv-02937 (N.D. Illinois).

3. The IPCB should create a separate docket or subdocket for Bubbly Creek and not take action in that docket or subdocket before the U.S. Army Corps of Engineers issues its report regarding Bubbly Creek, which is currently in progress.

4. The MWRD will withdraw its proposal for a wet-weather aquatic life use designation.

5. A 5-year variance allowing the MWRD time to work towards compliance with the proposed DO criteria is appropriate.³ During the variance term, the MWRD anticipates moving forward with completing TARP, moving ahead with green infrastructure, and taking other steps designed to reduce pollutant loadings to the CAWS. An additional variance at the conclusion of the initial variance term may be appropriate, with variance terms and requirements to be addressed at such time. The MWRD has developed a draft petition for the initial variance, which was attached (as Exhibit B) to the MWRD's March 19, 2012 filing with the Board, and which is hereby incorporated in this report by reference. However, since the subject of the variance petition is the set of DO standards that are currently before the IPCB, the MWRD would file a formal petition for variance with the IPCB after final DO standards have been adopted. If the requested variance is granted by the IPCB, and approved by USEPA⁴, the MWRD would comply with all commitments stated in the petition for variance, including working with the NGOs on agreed-upon habitat improvement projects in the CAWS. As part of the habitat improvement projects, the MWRD would commit to funding up to \$500,000 toward implementation of those projects. Additional funding from other parties may be applied toward those projects as well.

³ The Environmental Groups support issuance of a variance with regard to CSO discharges. In this proceeding in which nutrient discharges are not in issue, the Environmental Groups take no position at this time regarding issuance of a variance with respect to dissolved oxygen violations due to nutrient discharges from the District's wastewater reclamation plants.

⁴ A letter providing USEPA's views at this time regarding issuance of a variance is attached as Exhibit A.

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**NATURAL RESOURCES DEFENSE
COUNCIL**

**ENVIRONMENTAL LAW AND
POLICY CENTER**

OPENLANDS

SIERRA CLUB—ILLINOIS CHAPTER

PRAIRIE RIVERS NETWORK

FRIENDS OF THE CHICAGO RIVER

By: /s/ Albert Ettinger
Albert Ettinger

Authorized to represent all of the above
parties with regard to this document

Given EPA's understanding of the proposed variance, it appears that MWRD's variance request would be based primarily upon MWRD's assertions that: 1) the DO criteria that are being considered for adoption by the IPCB are not attainable because, at a minimum, the Combined Sewer Overflow (CSO) controls specified in the Tunnel and Reservoir Project (TARP) are a necessary precursor to attainment of those DO criteria; 2) there is a schedule for completion of TARP included in the consent decree pertaining to MWRD, Illinois EPA and EPA that has been lodged in federal district court; and 3) TARP cannot be completed within five years, such that the DO criteria are not attainable for at least the first proposed five-year variance term. Further, MWRD might apply for additional variances to the extent aspects of TARP remain to be completed for certain segments. It appears to EPA that MWRD is asserting that CSOs are human caused conditions or sources of pollution that prevent the attainment of the DO criteria and cannot be remedied within the term of the variance, in accordance with 40 CFR 131.10(g)(3) (factor 3). EPA's initial review of MWRD's proposed variance suggests that an adequate variance demonstration may be able to be based on factor 3. MWRD has also suggested that 40 CFR 131.10(g)(4) and (5) (factors 4 and 5) might also support the granting of the proposed variance. However, based upon the information that MWRD has asked EPA to consider in providing this preliminary feedback, EPA does not believe that either factor 4 or 5 would provide an appropriate basis for the proposed variance.

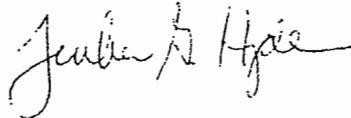
In describing the proposed variance, MWRD offered terms and conditions to be included in its three NPDES permits listed above that include continual DO monitoring plans and will ensure completion of TARP in accordance with the schedule set forth in the lodged consent decree. These terms and conditions will result in elimination of CSOs over time and require continual DO monitoring such that adequate data are collected in order to determine the highest attainable water quality and evaluate the appropriateness of additional variance terms. To the extent that TARP comes on-line, the human-caused conditions preventing attainment of the DO criteria will be remedied for certain segments such that a variance would likely not be appropriate so long as water quality in the segment is not influenced by CSOs in other segments that have not yet been controlled. For example, the Thornton Reservoir (which will impact the Calumet portion of the Chicago Area Waterway System (CAWS)) is scheduled to be completed in 2015. Completion of the reservoir would mean that CSOs would not be a human-caused source of pollution that prevents attainment of the DO criteria in the Calumet portion of the CAWS.

EPA notes that the information that MWRD has asked EPA to consider in providing this preliminary feedback does not appear to support MWRD's assertion that the DO variance should apply to the three wastewater treatment plants' effluents since the information provided by MWRD focuses on CSOs. To the extent that MWRD would be seeking to have the variance apply to the wastewater treatment plant effluents, MWRD should demonstrate what DO-related water quality-based permit conditions applicable or expected to be applicable to the treated effluent discharges from its plants cannot be complied with, why those compliance problems could not be remedied in five years (the term of the proposed variance), what conditions are currently attained, and what actions MWRD could take to achieve the highest attainable effluent quality during the term of the variance.

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I hope that this letter provides useful information as you decide whether to move forward with a request for a DO variance. We would be happy to meet with you again to discuss these comments in greater detail. Please feel free to contact me at (312) 353-2147, or Linda Holst of my staff at (312) 886-6758.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tinka G. Hyde".

Tinka G. Hyde
Director, Water Division

cc: Marcia Willhite, Illinois EPA