

**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 and 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 19th day of March, 2012, I, on behalf of the Metropolitan Water Reclamation District of Greater Chicago, electronically filed **RESPONSE OF METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO TO COMMENTS ON PROPOSED AQUATIC LIFE DESIGNATED USES** with the Office of the Clerk of the Illinois Pollution Control Board.

Dated: March 19, 2012

**METROPOLITAN WATER  
RECLAMATION DISTRICT OF  
GREATER CHICAGO**

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

Fredric P. Andes  
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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 **COMMENTS OF METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO ON PROPOSED AQUATIC LIFE DESIGNATED USES**, to be served via First Class Mail, postage paid, from One North Wacker Drive, Chicago, Illinois, on the 19th day of March, 2012, upon the attorneys of record on the attached Service List.

*/s/ Barbara E. Szynalik*

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Barbara E. Szynalik

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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WATER QUALITY STANDARDS AND ) R08-9  
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**RESPONSE OF METROPOLITAN WATER RECLAMATION  
DISTRICT OF GREATER CHICAGO TO COMMENTS ON  
PROPOSED AQUATIC LIFE DESIGNATED USES**

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 a possible resolution of some of the issues regarding aquatic life designated uses and aquatic life water quality standards for dissolved oxygen (DO). As a result of those discussions, the environmental groups and the District informed the Board that they had reached a tentative agreement on those issues, which was filed with the Board on January 27, 2012. (A copy of that tentative agreement is attached as Exhibit A.) One of the terms of that tentative agreement is 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

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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.

variance referenced in that statement, which is attached to this response as Exhibit B. 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. The discussions are ongoing. The District is hopeful that those discussions will lead to an agreement among all of those parties in the very near future. That agreement would need to be submitted to MWRD'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.

Such an agreement has not been reached as of today. Therefore, for purposes of this filing, the District continues to state the issues and concerns that it has raised as to the IEPA proposed aquatic life designated uses in its testimony in this matter. As stated in the comments that the District filed on March 5, 2012, its issues and concerns are best summarized in the testimony of Ms. Wasik (Exhibit #461) and Ms. Nemura (Exhibit #465), and the District's recommended solutions to those concerns are set forth in its proposal for aquatic life designated uses and DO water quality standards (PC #1031). If the Board decides to move toward a First Notice on aquatic life designated uses, then the District urges that those issues and concerns be addressed, and that its proposal be considered. The comments of other parties that were filed on March 5, 2012 do raise a number of issues that relate to the designated uses in the CAWS. The Wasik and Nemura

testimonies and the District's proposal address each of those issues that were raised in those comments, so if those comments are going to be considered by the Board, the District believes that it has already addressed each of those issues in its filings. However, the District suggests that it would be more appropriate for the Board to postpone a decision on this matter while the District and the other parties referenced above continue their discussions, since if a resolution is reached, the issues that will need resolution by the Board will change substantially. The District is hopeful that a resolution will be reached within the next few months. During that time, the District suggests that monthly progress reports to the Board by the parties involved in the discussions would help ensure that there is no undue delay in resolving those issues.

Respectfully submitted,

METROPOLITAN WATER  
RECLAMATION DISTRICT OF  
GREATER CHICAGO

By:

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# Exhibit A

1. *MWRD and the Environmental Groups agree that the record before the Board supports an aquatic life use 'B' designation for the Chicago Sanitary and Ship Canal.*
2. *MWRD and the Environmental Groups agree that 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.*
3. *MWRD and the Environmental Groups agree to propose to the IPCB that it create a separate docket or subdocket for Bubbly Creek and not take action in that docket or subdocket before the report being prepared by the U.S. Army Corps regarding Bubbly Creek is issued.*
4. *MWRD will withdraw its proposal for a wet-weather aquatic life use designation.*
5. *The Environmental Groups agree 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.*
6. *Existing SEPA stations 3, 4 and 5 will be operated during the months of April through October, except during occurrences of short-term equipment failure, weed control problems, mechanical problems and replacement of equipment for preventive maintenance purposes. Operation of those stations will not be required during any particular time period if it is not needed in order for the CAWS to meet the DO water quality standards.*
7. *The Environmental Groups agree that the record supports the MWRD's proposed standards changes for zinc.*
8. *The Environmental Groups and MWRD agree that the DO criteria proposed by IEPA are appropriate to protect to the 'A' and 'B' uses for which they are proposed.*

# Exhibit B

**PETITION FOR VARIANCE**

The Metropolitan Water Reclamation District (“MWRD”), by its attorneys, Barnes & Thornburg LLP, and pursuant to Section 35(a) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/35(a), and Part 104 of Title 35 of the Illinois Administrative Code, 35 Ill. Admin. Code § 104.100 *et seq.*, hereby petitions the Illinois Pollution Control Board (“Board”) for a variance authorizing discharges from its North Side, Calumet, and Stickney wastewater treatment plants (“Plants”) and from the Combined Sewer Overflow (“CSO”) outfalls into the Chicago Area Waterways System (“CAWS”) pursuant to the terms and conditions outlined in this Petition for Variance (“Petition”).

MWRD earlier reached an agreement with the environmental organization parties<sup>1</sup> (“Environmental Groups”) on recommendations to the Board for both designated uses and water quality criteria for each reach of the CAWS. That agreement is reflected in the comments that were filed by each of those parties in the rulemaking on March 19, 2012. This Petition is also consistent with that agreement.

Several reaches of the CAWS do not consistently meet the recommended DO standards now and, because of wet and dry weather issues, and cannot do so in the next five years despite the MWRD’s efforts to address water quality issues in the CAWS. Therefore, requirements imposed to bring about the immediate attainment of these standards would impose an arbitrary or unreasonable hardship on the MWRD. *See* 415 ILCS 5/35(a). The MWRD is requesting the Board to grant it a five-year variance. During that time, the MWRD would take interim measures to address water quality and would continue its evaluation of the issues and investigation of adequate solutions to address DO issues in the CAWS. That information would

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<sup>1</sup> Natural Resources Defense Council (“NRDC”), Environmental Law & Policy Center, Friends of the Chicago River, Openlands, Southeast Environmental Task Force, Prairie Rivers Network, and Sierra Club-Illinois Chapter.

then be used to determine the terms of such subsequent variances as are needed to address the long-term water quality standard attainment issues in the CAWS.

**I. REQUIREMENTS FROM WHICH VARIANCE IS SOUGHT**

- a) A statement describing the regulation, requirement, or order of the Board from which a variance is sought. If variance from a regulation is sought, the statement must include the Illinois Administrative Code citation to the regulation as well as the effective date of that regulation. If variance from a requirement or order of the Board is sought, the statement must include the citation to that requirement or order of the Board promulgating that requirement, including docket number;

The MWRD and the Environmental Groups have agreed on recommendations to the Board as to designated uses for protection of aquatic life in the all of the CAWS reaches. Those parties have also agreed on recommendations to the Board as to revised water quality standards for dissolved oxygen (DO) in all the reaches of the CAWS based on protection of the designated aquatic uses. The new aquatic uses for all of the CAWS reaches are long-term goals. Currently, the DO standards that are based on those uses are not met on a consistent basis and cannot be met in any of the segments for at least five years and for at least some of the segments may not be able to be met for a period substantially longer than five years

The North Side Water Reclamation Plant discharges to the North Shore Channel, the Calumet Water Reclamation Plant discharges to the Little Calumet River, and the Stickney Water Reclamation Plant discharges to the Chicago Sanitary and Ship Canal. Each Plant is operating with an expired NPDES permit which is expected to be reissued soon. Once they are reissued, each permit will require MWRD to not cause or contribute to violations of water quality standards including those established in this rulemaking.

Therefore, it is necessary for MWRD to be issued a five-year variance for each Permit in the form suggested in this Petition in order to avoid the imposition of an arbitrary or unreasonable hardship on the MWRD.

**II. ACTIVITY OF THE MWRD**

b) A complete and concise description of the nature of petitioner's activity that is the subject of the proposed variance, including:

A. The location of, and area affected by, the petitioner's activity.

The facility name and address for the "North Side" treatment plant is:

MWRDGC North Side Water Reclamation Plant  
3500 West Howard Street  
Skokie, Illinois 60076

The facility name and address for the "Stickney" treatment plant is:

MWRDGC Stickney Water Reclamation Plant  
6001 West Pershing Road  
Cicero, Illinois 60804

The facility name and address for the "Calumet" treatment plant is:

MWRDGC Calumet Water Reclamation Plant  
400 East 130th Street  
Chicago, Illinois 60628

In addition, the permits also cover discharges from CSO outfalls operated by MWRD described in more detail below. The area affected by the MWRD's activities are the receiving waters which are identified below.

B. The location of points of discharge, and, as applicable, the identification of the receiving waterway or land, or, if known, the location of the nearest air monitoring station maintained by the Agency.

The North Side plant's point of discharge is the 001 Water Reclamation Plant Outfall and the receiving water is the North Shore Channel. The nearest air monitoring station is unknown

and not relevant for the requested variance. In addition, the plant's Permit authorizes the following Combined Sewer discharges:<sup>2</sup>

<b>Discharge Number</b>	<b>Location</b>	<b>Receiving Water</b>
101	Sheridan Road	North Shore Channel
102	Green Bay Road	North Shore Channel
103	Emerson Street	North Shore Channel
104	Lake Street	North Shore Channel
105	Howard Street	North Shore Channel
106	Morse Avenue	North Shore Channel
107	North Branch Pumping Station	North Branch of Chicago River
109	Rand Road	Des Plaines River
110	Niles Center Outlet Sewer – Oakton Street	North Shore Channel

The Stickney plant's point of discharge is the 001 Water Reclamation Plant Main Outfall and the receiving water is the Chicago Sanitary and Ship Canal. The nearest air monitoring station is unknown and not relevant for the requested variance. In addition, the plant's Permit authorizes the following Combined Sewer discharges:<sup>3</sup>

<b>Discharge Number</b>	<b>Location</b>	<b>Receiving Water</b>
131	Devon Avenue	Des Plaines River

<sup>2</sup> The Permit also authorizes discharges, under specified circumstances, from emergency high level bypass Outfall 108.

<sup>3</sup> The Permit also authorizes discharges, under specified circumstances, from emergency high level bypass Outfalls 002, 003 and 004.

132	Northwest Tollway	Des Plaines River
133	Foster Avenue	Des Plaines River
134	North Avenue	Des Plaines River
135	Chicago Avenue	Des Plaines River
136	Roosevelt Road	Des Plaines River
142	38th and Racine Avenue	S. Fork of S. Branch of Chicago River
143	Laramie Avenue	Chicago San. and Ship Canal
144	Lombard Avenue	Chicago San. and Ship Canal
145	East Avenue	Chicago San. and Ship Canal
146	13A Pump Station	Chicago San. and Ship Canal
147	67th Street	Chicago San. and Ship Canal
148	75th Street	Chicago San. and Ship Canal
149	Tri-State Tollway	Chicago San. and Ship Canal
150	Westchester Pump Station	Addison Creek

The Calumet plant's point of discharge is the 001 Water Reclamation Plant Outfall and the receiving water is the Little Calumet River. The nearest air monitoring station is unknown and not relevant for the requested variance. In addition, the plant's Permit authorizes the following Combined Sewer discharges:<sup>4</sup>

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<sup>4</sup> The Permit also authorizes discharges, under specified circumstances, from emergency high level bypass Outfalls 002, 003, 006, 007, 010, and 160.



Discharge Number	Location	Receiving Water
004	WRP TARP Bypass	Little Calumet River
151	94th Place	Calumet River
152	122nd Street Pump Station	Calumet River
153	Edbrook Avenue	Little Calumet River
154	Throop Street	Calumet Sag Channel
156	Francisco Avenue	Calumet Sag Channel
157	Central Park	Calumet Sag Channel
158	Pulaski Road	Calumet Sag Channel
163	Sacramento	Calumet Sag Channel
165	Western Avenue	Midlothian Creek
166	Campbell Ext., S. Bank Cal. Slough	Midlothian Creek
167	Campbell Ext., N. Bank Cal. Slough	Midlothian Creek
168	Chatham Street	Midlothian Creek

C. An identification, including docket number, of any prior variance issued to the petitioner and, if known, the petitioner's predecessors, concerning similar relief.

There have been no variances issued to the MWRD concerning similar relief.

D. An identification, including number, of the environmental permits held by petitioner for the activity which may be affected by grant of variance.

The following permits held by MWRD would be affected by the grant of the requested variances:

North Side:

NPDES Permit No. IL0028088  
Issue Date: January 22, 2002  
Effective Date: March 1, 2002  
Expiration Date: February 28, 2007

Stickney:

NPDES Permit No. IL0028053  
Issue Date: January 22, 2002  
Effective Date: March 1, 2002  
Expiration Date: February 28, 2007

Calumet:

NPDES Permit No. IL0028061  
Issue Date: January 22, 2002  
Effective Date: March 1, 2002  
Expiration Date: February 28, 2007

E. The number of persons employed by the petitioner's facility at issue and the age of that facility.

The MWRD has a total of approximately 1950 employees.

North Side began operations in 1928, and has 189 employees.

Stickney began operations on the west side portion of the plant in 1930. The southwest portion of the plant was placed into service in 1939. The plant has 667 employees.

Calumet began operations in 1922, and has 259 employees.

F. The nature and amount of the materials used in the process or activity for which the variance is sought and a full description of the particular process or activity in which the materials are used.

The Plants are wastewater treatment facilities for the treatment of municipal sewage. The associated CSO outfalls provide relief from local flooding during heavy wet weather events due to finite pumping and hydraulic capacity of the collection system and treatment plants. The

Permits, attached hereto as Exhibits A, B and C , provide details concerning each Plant's processes and authorized discharges as well as the discharge limits that will be affected by the requested variances.

G. A description of the relevant pollution control equipment already in use.

North Side: Treatment consists of screening, grit removal, sedimentation, activated sludge and final settling. Sludge generated during the wastewater treatment processes is pumped to Stickney for further treatment. North Side treats domestic wastewater for part of the City of Chicago, Evanston, Skokie, Glenview, and other surrounding municipalities.

Stickney: Treatment consists of both primary and secondary treatment. Primary treatment is divided between two sets of processes, with flow entering on the "West Side" and the "Southwest Side." The West Side treats through screenings, skimming tanks, and Imhoff tanks, with grit flowing through channels and sludge going directly to digesters. The Southwest Side treats via screenings, aerated grit tanks, and preliminary gravity settling tanks. Grit is dewatered and preliminary sludge is screened and concentrated before digestion. All flow then goes through a common secondary system of four-pass aeration tanks and final settling clarifiers. Sludge is anaerobically digested and then dewatered and aged for land application and other beneficial reuse. Stickney treats domestic and industrial wastewater for Berwyn, a portion of Chicago, Cicero, Des Plaines, Maywood, Melrose Park, Oak Park, Park Ridge and 38 other cities.

Calumet: Treatment consists of screening, grit removal, primary settling, activated sludge, final settling, and sludge handling facilities. Calumet treats domestic wastewater for part of the City of Chicago, Calumet City, Oak Lawn, Tinley Park and other surrounding municipalities.

- H. The nature and amount of emissions, discharges or releases of the constituent in question currently generated by the petitioner's activity.

The discharges for each Plant and CSO Outfall are described in the respective permit applications and permits which are attached hereto as Exhibits A-F. In addition, Dr. Melching's report attached hereto as part of Exhibit G (described in III below) provides specific information with regard to DO in the CAWS.

**III. COMPLIANCE WITH THE REGULATION CANNOT BE ACHIEVED BY THE COMPLIANCE DATE**

Data describing the nature and extent of the present or anticipated failure to meet the regulation, requirement, or order of the Board from which variance is sought and facts that support petitioner's argument that compliance with the regulation, requirement, or order of the Board was not or cannot be achieved by any required compliance date;

In Subdocket C of the rulemaking, data and analysis have been presented to the Board demonstrating that the various reaches of the CAWS do not and cannot meet the new DO standards for five years or longer. Information has also been presented concerning the extraordinary measures that would be needed to move the reaches closer to attainment in the immediate future. See Pre-Filed Testimony of David Zenz – Cost Estimates to Meet Proposed Dissolved Oxygen Water Quality Standards for the Chicago Area Waterway System attached hereto as Exhibit G. Included with that testimony is a Technical Report submitted by Charles S. Melching, Ph.D., P.E., entitled: *Development of Integrated Strategies to Meet Proposed Dissolved Oxygen Standards for the Chicago Waterway System*.

Dr. Zenz concludes that the total present worth cost for the MWRD to attempt to bring the CAWS reaches into attainment of the new DO standards is approximately \$669,900,000. Such costs include the addition of 28 supplementary aeration stations and 3 proposed aerated

flow augmentation stations, plus additional operating hours for pumps at existing Sidestream Elevated Pool Aeration (SEPA) stations. This high figure would place a very large burden on the MWRD, and on the ratepayers in Cook County who would ultimately bear the cost through rate increases. Moreover, it is not likely that this costly program would actually result in consistent attainment of the DO standards. It would also take years to install the needed equipment and put it into operation, so that is another reason why immediate compliance is clearly not possible. Also, it is important to note that during the period in which that equipment would be designed, installed and brought on-line, the MWRD would be moving forward to complete TARP (at a remaining cost of about \$400 million), which is expected to significantly reduce wet-weather discharges to the CAWS and therefore assist in bringing the CAWS reaches closer to attainment of the new DO standards. Installation of new aeration stations and aerated flow augmentation facilities would be duplicative and a wasteful use of public resources.

#### **IV. EFFORTS NECESSARY TO ACHIEVE IMMEDIATE COMPLIANCE**

- d) A description of the efforts that would be necessary for the petitioner to achieve immediate compliance with the regulation, requirement, or Board order at issue. All possible compliance alternatives, with the corresponding costs for each alternative, must be set forth and discussed. The discussion of compliance alternatives must include the availability of alternate methods of compliance, the extent that the methods were studied, and the comparative factors leading to the selection of the control program proposed for compliance. The discussion of the costs of immediate compliance may include the overall capital costs and the annualized capital and operating costs;

As stated in III above, immediate compliance with the new DO standards is simply not possible. The information provided by Dr. Zenz and Dr. Melching supports this finding, and also shows that the measures needed to move the CAWS reaches in the direction of compliance – 28 new aeration stations and 3 new aerated flow augmentation stations – would carry extraordinary costs, yet still not provide for consistent attainment under all conditions. It should

also be noted that besides the MWRD's Plants and CSO outfalls, there are other sources that are relevant to attainment of the new DO standards, including 178 CSO outfalls that are operated by the City of Chicago, over 50 CSO outfalls that are operated by various suburban communities, permitted discharges from municipal separate storm sewer systems (MS4s) operated by area communities, tributaries (such as the Grand Calumet River and the Upper North Branch of the Chicago River), and other sources in the pertinent reaches of the CAWS. These sources are not covered by the MWRD's Permits. It is expected that contributions from some of these sources will be reduced as the MWRD implements the remaining elements of TARP but, as noted above, it is not expected that the proposed DO standards would be met consistently under all conditions..

**V. ARBITRARY OR UNREASONABLE HARDSHIP**

- e) Facts that set forth the reasons the petitioner believes that immediate compliance with the regulation, requirement, or order of the Board would impose an arbitrary or unreasonable hardship;

Immediate compliance with the new DO standards is not possible, and efforts to move in that direction would impose an arbitrary and unreasonable hardship on the MWRD. To install additional aeration stations and aerated flow augmentation stations is very expensive and still unlikely to make the CAWS compliant with water quality standards for DO according to the expert testimony of Dr. Melching. In sum, it would be both arbitrary and an unreasonable hardship to require the MWRD to spend over \$650 million to try to comply with the new DO water quality standards, especially when all of the available evidence indicates that such

expenditures would still not achieve consistent compliance under all conditions, and that major investments are being made in other projects (*e.g.*, TARP) that will help address the DO issue.<sup>5</sup>

## **VI. COMPLIANCE PLAN AND SUGGESTED CONDITIONS**

- f) A detailed description of the compliance plan, including:
  - A. A discussion of the proposed equipment or proposed method of control to be undertaken to achieve full compliance with the regulation, requirement, or order of the Board.

MWRD will implement interim measures to improve DO levels in the CAWS while long-term solutions such as TARP, are being completed. Such measures include:

North Side:

As part of the plan to make progress toward attainment of the long-term designated use goals, the MWRD is working with other stakeholders to assess possible habitat improvement projects. The MWRD will commit funding of \$ \_\_\_\_\_ toward implementation of agreed-upon habitat improvement projects in the CAWS. [NOTE: A specific funding commitment will be brought to the MWRD Board of Commissioners for approval before this petition is filed with the Pollution Control Board.] Funding from other parties may be applied toward those projects as well.

Under this variance, existing aeration stations at Devon and Webster will be operated during the months of April through October. For this purpose, “operable” periods shall not include occurrences of short-term equipment failure, weed control problems, mechanical problems and replacement of equipment for preventive maintenance purposes. Operation of those stations will not be required during any particular time period if it is not needed in order for the CAWS to meet the new DO water quality standards.

No other DO-related control requirements will apply to the North Side Plant or the CSOs covered in the North Side Plant permit during the term of the variance. (This is not intended to refer to the control of any nutrients including nitrogen and phosphorus.) Any water quality-related requirements in the permit that accompanies this variance are subject to this condition.

Continuous monitoring of DO will be done at the following continuous dissolved oxygen monitoring (CDOM) stations: Foster Avenue on the North Shore Channel, and Addison Street and Kinzie Street on the North Branch Chicago River.

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<sup>5</sup> In addition, it should be noted that over the next several years, the District will be spending several hundred million dollars to design, install and operate disinfection facilities at the Calumet and North Side facilities. Also, the District expects to be incurring substantial costs to address nutrient discharge issues.

A report on DO results will be submitted by the MWRD each year, summarizing the prior year's data.

Stage I of the McCook reservoir is scheduled to be completed by December 31, 2017.

The specific date will be determined under the Consent Decree concerning TARP between US EPA, IEPA and the MWRD. (The proposed Consent Decree in *United States of America, State of Illinois v. Metropolitan Water Reclamation District of Greater Chicago*, Case No. 11-cv-08859, was filed in the United States District Court for the Northern District of Illinois, Eastern Division, on December 14, 2011.) Stage II of the McCook reservoir is scheduled to be completed by December 31, 2029. The specific date will be determined under the TARP Consent Decree.

During the 12-month period after Stage I of the McCook reservoir comes on-line, the MWRD will evaluate the DO impacts of McCook operation, and will submit a report to IEPA 6 months after the completion of that 12-month study period.

The report will provide conclusions regarding expected nonattainment rate of the new DO standard with Stage I of McCook on-line, separately analyzing wet weather events and dry weather time periods (assuming continued operation of aeration stations whenever operable)

The report will incorporate an assessment of impacts on DO standards attainment due to the expected reduction in discretionary diversion from the Lake as of October 2014, pursuant to the terms of the Consent Decree in *Wisconsin v. Illinois*, 388 U.S. 426 (1967), as amended by *Wisconsin v. Illinois*, 449 U.S. 48 (1980).

The report will include an assessment of feasible options to further increase DO levels in the North Shore Channel and other relevant reaches of the CAWS.

The results of the report will be assessed in determining whether a variance will be issued to accompany the next permit that is issued after submittal of the report. Such a variance, if issued, would incorporate the results of the report, specifying the expected nonattainment rate of the new DO standard during the variance term, requiring continued operation of the aeration stations whenever operable (from April through October), consider the feasibility of taking other steps to address low DO in the North Shore Channel, and specifying that no other DO-related control requirements (other than with regard to nutrients) would apply during the term of the variance except such steps as are found by the MWRD or the Board to be feasible and appropriate given the goals of the Clean Water Act.

The same procedure will be followed for completion of Stage II of the McCook reservoir, but given its completion date, such issues will be addressed in a subsequent permit and variance for the North Side Plant and related CSO Outfalls.

Stickney:

As part of the plan to make progress toward attainment of the long-term designated use goals, the MWRD is working with other stakeholders to assess possible habitat improvement projects. The MWRD will commit funding of \$ \_\_\_\_\_ toward implementation of agreed-upon habitat improvement projects in the CAWS. [NOTE: A specific funding commitment will be brought to the MWRD Board of Commissioners for approval before this petition is filed with the Pollution Control Board.] Funding from other parties may be applied toward those projects as well.



No other DO-related control requirements will apply to the Stickney Plant or the CSOs covered in the Stickney Plant permit during the term of the variance. (This is not intended to refer to the control of any nutrients including nitrogen and phosphorus.) Any water quality-related requirements in the permit that accompanies this variance are subject to this condition.

Continuous monitoring of DO will be done at the following continuous dissolved oxygen monitoring (CDOM) stations: Cicero Avenue, B&O Railroad, and Lockport on the Chicago Sanitary and Ship Canal.

A report on DO results will be submitted by the MWRD each year, summarizing the prior year's data.

Stage I of the McCook reservoir is scheduled to be completed by December 31, 2017.

The specific date will be determined under the TARP Consent Decree.

Stage II of the McCook reservoir is scheduled to be completed by December 31, 2029.

The specific date will be determined under the TARP Consent Decree.

During the 12-month period after Stage I of the McCook reservoir comes on-line, the MWRD will evaluate the DO impacts of McCook operation, and will submit a report to IEPA 6 months after the completion of that 12-month study period.

The report will provide conclusions regarding expected nonattainment rate of the new DO standard with Stage I of McCook on-line, separately analyzing wet weather events and dry weather time periods

The report will incorporate an assessment of impacts on DO standards attainment due to the expected reduction in discretionary diversion from the Lake as of October 2014, pursuant to the terms of the Consent Decree in *Wisconsin v. Illinois*, 388 U.S. 426 (1967), as amended by *Wisconsin v. Illinois*, 449 U.S. 48 (1980).

The report will include an assessment of feasible options to further increase DO levels in the relevant reaches of the CAWS.

The results of the report will be assessed in determining whether a variance will be issued to accompany the next permit that is issued after submittal of the report. Such a variance, if issued, would incorporate the results of the report, specifying the expected nonattainment rate of the new DO standard during the variance term, and specifying that no other DO-related control requirements (other than with regard to nutrients) would apply during the term of the variance except such steps as are found by the MWRD or the Board to be feasible and appropriate given the goals of the Clean Water Act.

The same procedure will be followed for completion of Stage II of the McCook reservoir, but given its completion date, such issues will be addressed in a subsequent permit and variance for the Stickney Plant and related CSO Outfalls.

Calumet:

As part of the plan to make progress toward attainment of the long-term designated use goals, the MWRD is working with other stakeholders to assess possible habitat improvement projects. The MWRD will commit funding of \$\_\_\_\_\_ toward implementation of agreed-upon habitat improvement projects in the CAWS. [NOTE: A specific funding commitment will be brought to the MWRD Board of Commissioners for

approval before this petition is filed with the Pollution Control Board.] Funding from other parties may be applied toward those projects as well.

Under this variance, existing SEPA stations 3, 4 and 5 will be operated during the months of April through October. (Existing SEPA stations 1 and 2, which are located in areas with already high DO levels and/or are not effective in increasing DO levels, will continue to be operated with one pump during the months of April through October.) For this purpose, "operable" periods shall not include occurrences of short-term equipment failure, weed control problems, mechanical problems and replacement of equipment for preventive maintenance purposes. Operation of those stations will not be required during any particular time period if it is not needed in order for the CAWS to meet the new DO water quality standards.

No other DO-related control requirements will apply to the Calumet Plant or the CSOs covered in the Calumet Plant permit during the term of the variance. (This is not intended to refer to the control of any nutrients including nitrogen and phosphorus.) Any water quality-related requirements in the permit that accompanies this variance are subject to this condition.

Continuous monitoring of DO will be done at the following continuous dissolved oxygen monitoring (CDOM) stations: C&W Indiana RR and Halsted Street on the Little Calumet River, and Route 83 on the Cal-Sag Channel.

A report on DO results will be submitted by the MWRD each year, summarizing the prior year's data.

The Thornton reservoir is expected to be on-line by December 31, 2015. The specific date will be determined under the TARP Consent Decree.

During the 12-month period after the Thornton reservoir comes on-line, the MWRD will evaluate the DO impacts of Thornton operation, and will submit a report to IEPA 6 months after the completion of that 12-month study period.

The report will provide conclusions regarding expected nonattainment rate of the new DO standard with Thornton on-line, separately analyzing wet weather events and dry weather time periods (assuming continued operation of SEPA stations whenever operable)

The report will incorporate an assessment of impacts on DO standards attainment due to the expected reduction in discretionary diversion from the Lake as of October 2014, pursuant to the terms of the Consent Decree in *Wisconsin v. Illinois*, 388 U.S. 426 (1967), as amended by *Wisconsin v. Illinois*, 449 U.S. 48 (1980).

The report will include an assessment of feasible options to further increase DO levels in the relevant reaches of the CAWS.

The results of the report will be assessed in determining whether a variance will be issued to accompany the next permit that is issued after submittal of the report. Such a variance, if issued, would incorporate the results of the report, specifying the expected nonattainment rate of the new DO standard during the variance term, requiring continued operation of the aeration stations whenever operable (from April through October), and specifying that no other DO-related control requirements (other than with regard to nutrients) would apply during the term of the variance except such steps as are found by the MWRD or the Board to be feasible and appropriate given the goals of the Clean Water Act.

MWRD does not contend that its interim measures will achieve total compliance with the new DO water quality standards. However, these actions should reduce the number of times that the standards will not be attained. As each interim measure is implemented, MWRD will analyze the data it collects from such actions and make modifications and adjustments in an effort to improve DO levels in the CAWS. In addition, such data will support MWRD's likely request for extension of these variances after the initial 5 year term.

- B. A time schedule for the implementation of all phases of the control program from initiation of design to program completion.

The interim measures to help improve compliance with the new DO water quality standards will be implemented upon approval of the variances. Further milestones with respect to TARP are set forth in the proposed consent decree among MWRD, IEPA and USEPA.

- C. The estimated costs involved for each phase and the total cost to achieve compliance.

The completion of TARP, between 2012 and 2029, is expected to cost about \$400 million, of which about \$278 million will be borne by the MWRD. In addition, the expanded operation of the aeration stations during the initial variance period is estimated to result in additional operation and maintenance costs of at least \$300,000 per year. The habitat improvement projects discussed above will involve a funding commitment from the MWRD of \$ \_\_\_\_\_. [NOTE: A specific funding commitment will be brought to the MWRD Board of Commissioners for approval before this petition is filed with the Pollution Control Board.] These interim measures will not result in consistent attainment of the new DO standards. Even installation of the 28 new aeration stations and 3 new aerated flow augmentation stations discussed above, and referenced in the reports by Dr. Zenz and Dr. Melching, which would carry a total cost of over \$650 million, would not result in attainment on a consistent basis.

## **VII. ENVIRONMENTAL IMPACT**

- g) A description of the environmental impact of the petitioner's activity including:

- 1) The nature and amount of emissions, discharges, or releases of the constituent in question if the requested variance is granted, compared to that which would result if immediate compliance is required;\_

Immediate compliance with the new DO standards is not possible. Even installation of the extraordinary measures referred to above would not result in attainment on a consistent basis. These measures would take years to implement, and would cost over \$650 million. The MWRD believes, as set forth in its testimony in this matter, that those measures would not make a significant difference in the nature and health of the aquatic community in the CAWS. Moreover, the additional energy needs to run the additional equipment would increase the MWRD's carbon footprint, thereby possibly causing adverse environmental impacts.

- 2) The qualitative and quantitative description of the impact of petitioner's activity on human health and the environment if the requested variance is granted, compared to the impact of petitioner's activity if immediate compliance is required. Cross-media impacts, if any, must be discussed; and

See response to item 1 above.

- 3) A statement of the measures to be undertaken during the period of the variance to minimize the impact of the discharge of contaminants on human, plant, and animal life in the affected area, including the numerical interim discharge limitations that can be achieved during the period of the variance;

The interim measures that would be taken during the period of the variance to address DO levels and habitat issues are described in Section VI above.

- h) Citation to supporting documents or legal authorities whenever they are used as a basis for the petition. Relevant portions of the documents and legal authorities other than Board decisions, reported state and federal court decisions, or state and federal regulations and statutes must be appended to the petition;

Relevant portions of supporting documents and legal authorities are appended as Exhibits \_\_\_.

If the requested variance involves an existing permit or a pending permit application, a copy of the material portion of the permit or permit application must be appended to the petition;

The relevant permits and permit applications are appended as Exhibits A-F.

### **VIII. SUGGESTED CONDITIONS OF THE VARIANCE**

Any conditions petitioner suggests for the requested variance;

North Side -- NPDES Permit No. IL0028088

As part of the plan to make progress toward attainment of the long-term designated use goals, the MWRD is working with other stakeholders to assess possible habitat improvement projects. The MWRD will commit funding of \$500,000 toward implementation of agreed-upon habitat improvement projects in the CAWS. Funding from other parties may be applied toward those projects as well.

Under this variance, existing aeration stations at Devon and Webster will be operated during the months of April through October. For this purpose, "operable" periods shall not include occurrences of short-term equipment failure, weed control problems, mechanical problems and replacement of equipment for preventive maintenance purposes. Operation of those stations will not be required during any particular time period if it is not needed in order for the CAWS to meet the new DO water quality standards.

No other DO-related control requirements will apply to the North Side Plant or the CSOs covered in the North Side Plant permit during the term of the variance. (This is not intended to refer to the control of any nutrients including nitrogen and phosphorus.) Any water quality-related requirements in the permit that accompanies this variance are subject to this condition.

Continuous monitoring of DO will be done at the following continuous dissolved oxygen monitoring (CDOM) stations: Foster Avenue on the North Shore Channel, and Addison Street and Kinzie Street on the North Branch Chicago River.

A report on DO results will be submitted by the MWRD each year, summarizing the prior year's data.

Stage I of the McCook reservoir is scheduled to be completed by December 31, 2017.

The specific date will be determined under the TARP Consent Decree.

Stage II of the McCook reservoir is scheduled to be completed by December 31, 2029.

The specific date will be determined under the TARP Consent Decree.

During the 12-month period after Stage I of the McCook reservoir comes on-line, the MWRD will evaluate the DO impacts of McCook operation, and will submit a report to IEPA 6 months after the completion of that 12-month study period.

The report will provide conclusions regarding expected nonattainment rate of the new DO standard with Stage I of McCook on-line, separately analyzing wet weather events and dry weather time periods (assuming continued operation of aeration stations whenever operable)

The report will incorporate an assessment of impacts on DO standards attainment due to the expected reduction in discretionary diversion from the Lake as of October 2014, pursuant to the terms of the Consent Decree in *Wisconsin v. Illinois*, 388 U.S. 426 (1967), as amended by *Wisconsin v. Illinois*, 449 U.S. 48 (1980).

The report will include an assessment of feasible options to further increase DO levels in the relevant reaches of the CAWS.

The results of the report will be assessed in determining whether a variance will be issued to accompany the next permit that is issued after submittal of the report. Such a variance, if issued, would incorporate the results of the report, specifying the expected nonattainment rate of the new DO standard during the variance term, requiring continued

operation of the aeration stations whenever operable (from April through October), and specifying that no other DO-related control requirements (other than with regard to nutrients) would apply during the term of the variance except such steps as are found by the MWRD or the Board to be feasible and appropriate given the goals of the Clean Water Act..

The same procedure will be followed for completion of Stage II of the McCook reservoir, but given its completion date, such issues will be addressed in a subsequent permit and variance for the North Side Plant and related CSO Outfalls.

Stickney – NPDES Permit No. IL0028053

As part of the plan to make progress toward attainment of the long-term designated use goals, the MWRD is working with other stakeholders to assess possible habitat improvement projects. The MWRD will commit funding of \$500,000 toward implementation of agreed-upon habitat improvement projects in the CAWS. Funding from other parties may be applied toward those projects as well.

No other DO-related control requirements will apply to the Stickney Plant or the CSOs covered in the Stickney Plant permit during the term of the variance. (This is not intended to refer to the control of any nutrients including nitrogen and phosphorus.) Any water quality-related requirements in the permit that accompanies this variance are subject to this condition.

Continuous monitoring of DO will be done at the following continuous dissolved oxygen monitoring (CDOM) stations: Cicero Avenue, B&O Railroad, and Lockport on the Chicago Sanitary and Ship Canal.

A report on DO results will be submitted by the MWRD each year, summarizing the prior year's data.

Stage I of the McCook reservoir is scheduled to be completed by December 31, 2017.

The specific date will be determined under the TARP Consent Decree.

Stage II of the McCook reservoir is scheduled to be completed by December 31, 2029.

The specific date will be determined under the TARP Consent Decree.

During the 12-month period after Stage I of the McCook reservoir comes on-line, the MWRD will evaluate the DO impacts of McCook operation, and will submit a report to IEPA 6 months after the completion of that 12-month study period.

The report will provide conclusions regarding expected nonattainment rate of the new DO standard with Stage I of McCook on-line, separately analyzing wet weather events and dry weather time periods

The report will incorporate an assessment of impacts on DO standards attainment due to the expected reduction in discretionary diversion from the Lake as of October 2014, pursuant to the terms of the Consent Decree in *Wisconsin v. Illinois*, 388 U.S. 426 (1967), as amended by *Wisconsin v. Illinois*, 449 U.S. 48 (1980) .

The report will include an assessment of feasible options to further increase DO levels in the relevant reaches of the CAWS.

The results of the report will be assessed in determining whether a variance will be issued to accompany the next permit that is issued after submittal of the report. Such a variance, if issued, would incorporate the results of the report, specifying the expected

nonattainment rate of the new DO standard during the variance term, and specifying that no other DO-related control requirements (other than with regard to nutrients) would apply during the term of the variance except such steps as are found by the MWRD or the Board to be feasible and appropriate given the goals of the Clean Water Act.

The same procedure will be followed for completion of Stage II of the McCook reservoir, but given its completion date, such issues will be addressed in a subsequent permit and variance for the Stickney Plant and related CSO Outfalls.

Calumet – NPDES Permit No. IL0028061

As part of the plan to make progress toward attainment of the long-term designated use goals, the MWRD is working with other stakeholders to assess possible habitat improvement projects. The MWRD will commit funding of \$500,000 toward implementation of agreed-upon habitat improvement projects in the CAWS. Funding from other parties may be applied toward those projects as well.

Under this variance, existing SEPA stations 3, 4 and 5 will be operated during the months of April through October. (Existing SEPA stations 1 and 2, which are located in areas with already high DO levels and/or are not effective in increasing DO levels, will continue to be operated with one pump during the months of April through October.) For this purpose, “operable” periods shall not include occurrences of short-term equipment failure, weed control problems, mechanical problems and replacement of equipment for preventive maintenance purposes. Operation of those stations will not be required during any particular time period if it is not needed in order for the CAWS to meet the new DO water quality standards.

No other DO-related control requirements will apply to the Calumet Plant or the CSOs covered in the Calumet Plant permit during the term of the variance. (This is not intended to refer to the control of any nutrients including nitrogen and phosphorus.) Any water quality-related requirements in the permit that accompanies this variance are subject to this condition.

Continuous monitoring of DO will be done at the following continuous dissolved oxygen monitoring (CDOM) stations: C&W Indiana RR and Halsted Street on the Little Calumet River, and Route 83 on the Cal-Sag Channel.

A report on DO results will be submitted by the MWRD each year, summarizing the prior year’s data.

The Thornton reservoir is expected to be on-line by December 31, 2015. The specific date will be determined under the TARP Consent Decree.

During the 12-month period after the Thornton reservoir comes on-line, the MWRD will evaluate the DO impacts of Thornton operation, and will submit a report to IEPA 6 months after the completion of that 12-month study period.

The report will provide conclusions regarding expected nonattainment rate of the new DO standard with Thornton on-line, separately analyzing wet weather events and dry weather time periods (assuming continued operation of SEPA stations whenever operable)

The report will incorporate an assessment of impacts on DO standards attainment due to the expected reduction in discretionary diversion from the Lake as of October 2014,

pursuant to the terms of the Consent Decree in *Wisconsin v. Illinois*, 388 U.S. 426 (1967), as amended by *Wisconsin v. Illinois*, 449 U.S. 48 (1980).

The report will include an assessment of feasible options to further increase DO levels in the relevant reaches of the CAWS.

The results of the report will be assessed in determining whether a variance will be issued to accompany the next permit that is issued after submittal of the report. Such a variance, if issued, would incorporate the results of the report, specifying the expected nonattainment rate of the new DO standard during the variance term, requiring continued operation of the aeration stations whenever operable (from April through October), and specifying that no other DO-related control requirements (other than with regard to nutrients) would apply during the term of the variance except such steps as are found by the MWRD or the Board to be feasible and appropriate given the goals of the Clean Water Act.

#### **IX. BEGINNING AND END DATE OF THE VARIANCE**

- k) A proposed beginning and ending date for the variance. If the petitioner requests that the term of the variance begin on any date other than the date on which the Board takes final action on the petition, a detailed explanation and justification for the alternative beginning date;

The proposed beginning date for the initial variance for each Plant would be the date that the Permit for that Plant is modified to include the variance, and the term for the initial variance would be for a maximum of five years, ending no later than the end of the term for that Plant's Permit. Since the attainment issues will continue over the long-term, it is likely that additional variances will need to be issued. However, the terms of those variances will likely be different than for the initial variance, since TARP completion and other developments will change the DO attainment situation in the waters, and modify the extent to which application of the variance terms will be needed.

#### **X. CONSISTENCY WITH FEDERAL LAW**

A discussion of consistency with federal law, including an analysis of applicable federal law and facts that may be necessary to show compliance with federal law as set forth in Section 104.208 of this Part;



Under Title IX of the Act (415 ILCS 5/35-38), the Board is responsible for granting variances when a petitioner demonstrates that immediate compliance with the Board regulation(s) would impose an “arbitrary or unreasonable hardship” on the petitioner. 415 ILCS 5/35(a). The Board may grant a variance, however, only to the extent consistent with applicable federal law. *Id.*

Section 104.28(b) of the Board rules states the following with regard to consistency with federal law for all petitions for variances from the Board’s water pollution regulations:

(b) All petitions for variances from Title III of the Act, from 35 Ill. Adm. Code Subtitle C, Ch. I “Water Pollution”, or from water pollution related requirements of any other Title of the Act or Chapter of the Board's regulations, must indicate whether the Board may grant the relief consistent with the Clean Water Act (CWA) (33 USC 1251 et seq.), USEPA effluent guidelines and standards, any other federal regulations, or any area-wide waste treatment management plan approved by the Administrator of USEPA pursuant to Section 208 of the CWA (33 USC 1288).

The requested variances in this matter will be consistent with federal law. More specifically, the variance must meet one or more of the conditions in 40. C.F.R. § 131.10(g) which provides:

(g) States may remove a designated use which is not an existing use, as defined in Sec. 131.3, or establish sub-categories of a use if the State can demonstrate that attaining the designated use is not feasible because:

(1) Naturally occurring pollutant concentrations prevent the attainment of the use; or

(2) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

(3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

(4) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or

(5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or

(6) Controls more stringent than those required by sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.

Under the circumstances here, there are natural conditions, man-caused conditions, hydrologic modifications, and physical conditions as to the CAWS that will prevent attainment of the use within the next five years. Therefore, the variance would be justified pursuant to 131.10(g)(2), (g)(3), (g)(4) and (g)(5).

**XI. AFFIDAVITS IN SUPPORT**

An affidavit verifying any facts submitted in the petition

An affidavit from \_\_\_\_\_ is attached as Exhibit \_\_\_.

**XII. WAIVER OF REQUEST FOR HEARING**

m) A statement requesting or denying that a hearing should be held in this matter.

The MWRD requests that a hearing be held in this matter.