

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

METROPOLITAN WATER RECLAMATION)
DISTRICT OF GREATER CHICAGO,)

Petitioner,)

v.)

PCB Nos. 14-103 and 14-104
Consolidated
(NPDES Appeal-Water)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

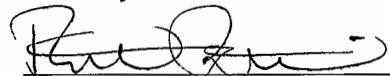
Respondent.)

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NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on the 19th day of November, 2014, the undersigned filed the attached Response in Support of the Cross-Motion for Summary Judgment by electronic filing.


ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,
By LISA MADIGAN
Attorney General of the State of Illinois



Robert W. Petti
Assistant Attorney General
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CERTIFICATE OF SERVICE

I, Robert W. Petti, an Assistant Attorney General, certify that on the 19th day of November, 2014, I caused to be served by U.S. Mail, the foregoing Notice of Filing, and Response in Support of the Cross-Motion for Summary Judgment, to the party named on the Notice of Filing, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



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REPLY IN SUPPORT OF THE CROSS-MOTION FOR SUMMARY JUDGMENT.

In its Response, to the Respondent's Cross-Motion for Summary Judgment, Petitioner argues that the dissolved oxygen monitoring parameters in the National Pollutant Discharge Elimination System ("NPDES") permit for the Terrence J. O'Brien Water Reclamation Plant ("O'Brien Permit") are unconstitutionally vague. First, Petitioner asserts that it is unsure what conduct is prohibited by the "continuous" monitoring requirement for dissolved oxygen at the O'Brien Plant. (Pet. Resp. p. 8). However, the O'Brien Permit expressly states the conduct prohibited, that dissolved oxygen "[s]hall not be less than 5 mg/l during 16 hours of any 24 hour period, nor less than 4 mg./l at any time." (R. at 3313). The plain language of the dissolved oxygen requirement is clear, unambiguous, and expressly provided in the O'Brien Permit.

Further, Petitioner asserts that the monitoring frequency and type for dissolved oxygen is also vague, claiming that the Petitioner is left to guess as to the interval of sampling necessary to avoid a violation, and the type of equipment necessary to satisfy the requirement. (Pet. Resp. p. 8). This assertion is false. As part of the O'Brien Permit, Standard Condition 10(d) states:

Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures have been specified in this permit. Where no test procedure under 40

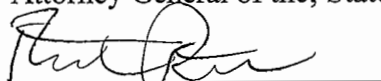
CFR Part 136 has been approved, the permittee must submit to the Agency a test method for approval. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals to ensure accuracy of measurements. (R. at 3335).

Standard Condition 10(d) eliminates the need for the Petitioner to 'guess' at the sampling methodology or the type of equipment required to comply with the continuous monitoring requirement for dissolved oxygen. Indeed, 40 C.F.R. Section 136 contains multiple approved methods for monitoring dissolved oxygen, including American Standards for Testing and Materials and United State Geologic Survey methods using the Winkler method and others using a probe. 40 C.F.R. Sec. 136. If the Petitioner finds that these approved test methods are not applicable to the continuous monitoring requirement in the O'Brien Permit, Standard Condition 10(d) requires the Petitioner submit a test methodology to the Respondent for approval.

Clearly, the requirement for continuous monitoring of dissolved oxygen is not vague or ambiguous regarding either the conduct prohibited by the O'Brien Permit or the methods to be utilized for monitoring dissolved oxygen. Accordingly, the Petitioner's Motion for Summary Judgment must be denied, and the Illinois EPA's Cross-Motion for Summary Judgment must be granted, and this appeal dismissed as a matter of law.

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