

ILLINOIS POLLUTION CONTROL BOARD
August 6, 2015

METROPOLITAN WATER)
RECLAMATION DISTRICT OF GREATER)
CHICAGO,)
)
Petitioner,)
)
v.) PCB 16-28
) (Variance – Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by G.M. Keenan):

On July 21, 2015, the Metropolitan Water Reclamation District of Greater Chicago (MWRD) filed a petition for a variance authorizing discharges from its O’Brien, Calumet, and Stickney Water Reclamation Plants and the Combined Sewer Outfalls into the Chicago Area Waterways System (CAWS). The plants are located, respectively, in Skokie, Chicago, and Cicero. Each plant’s National Pollutant Discharge Elimination System (NPDES) permit prohibits, among other things, violating the water quality standards for dissolved oxygen (DO) for the CAWS that the Board finalized on July 1, 2015 in R08-09. The MWRD asserts that requiring immediate compliance with these permit provisions would impose an arbitrary or unreasonable hardship and seeks a five-year variance. This order accepts the petition for variance and grants the MWRD’s request to hold a hearing on this matter.

BACKGROUND

The MWRD asserts that “immediate compliance with the new DO standards is simply not possible.” Pet. at 11. The fastest path to compliance, it argues, would entail constructing additional equipment at a substantial expense over several years. Pet. at 9-11. Furthermore, the MWRD is already progressing on a separate project, the Tunnel and Reservoir Plan (TARP), which it asserts will help bring compliance with DO standards within reach, making the equipment necessary to comply with DO standards as fast as possible redundant. *Id.*

The MWRD anticipated that immediate compliance with the DO standards adopted in the R08-09 rulemaking would be difficult. So, while the Board worked on adopting the rule, the MWRD and several environmental groups¹ that were party to the rulemaking reached an agreement on recommendations to the Board for water quality standards. These recommendations, the MWRD asserts, include granting this present petition for a variance. Pet.

¹ Natural Resources Defense Council, Environmental Law & Policy Center, Friends of the Chicago River, Openlands, Southeast Environmental Task Force, Prairie Rivers Network, and Sierra Club – Illinois Chapter.

at 1-2. The MWRD also lists several interim measures it proposes to take to improve DO levels while work continues on the TARP. Pet. at 12-16. If the Board grants a five-year variance, the MWRD may request an additional variance in five years' time because the TARP will not be completely constructed by then. Pet. at 23.

Due to these circumstances, the MWRD argues that immediate compliance with the DO standards, as required by its NPDES permits, would be an arbitrary or unreasonable hardship. *See* 415 ILCS 5/35(a) (2014).

NOTICE AND AGENCY RECOMMENDATION

The Environmental Protection Act requires the MWRD to publish notice of this variance petition in a newspaper of general circulation in Cook County, where all of the plants are located. 415 ILCS 5/37(a) (2014). The Board has yet to receive proof of this notice and directs the MWRD to do so before hearing.

The Illinois Environmental Protection Agency (Agency) must file its recommendation on this variance with the Board by September 4, 2015 or at least 30 days before a scheduled hearing, whichever is earlier. 35 Ill. Adm. Code 104.216. The MWRD may respond or may file an amended petition within 14 days after service of the Agency's recommendation. 35 Ill. Adm. Code 104.220.

HEARING AND DECISION DEADLINE

The Board accepts the MWRD's variance petition but does not yet make a determination on its merits or whether the information in the petition is sufficient. *See* 35 Ill. Adm. Code 104.204. The Board will assign a hearing officer to this proceeding and may direct the MWRD to provide additional information. The Board may submit questions to the MWRD through the hearing officer or a Board order.

The MWRD requested that a hearing be held. Pet. at 25. The Board grants the request and directs the hearing officer to schedule a hearing. *See* 35 Ill. Adm. Code 104.234(a).

The assigned hearing officer is responsible for guiding the parties toward prompt resolution of this matter through any necessary status calls and hearing officer orders. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline. *See* 415 ILCS 5/38(a). Currently, the decision deadline is November 18, 2015. The MWRD may extend this deadline by waiver. 35 Ill. Adm. Code 101.308. If the Board fails to take final action by the decision deadline, the MWRD may deem the requested variance granted for a period not to exceed one year. 415 ILCS 38(a) (2014). The Board meeting immediately before the decision deadline is scheduled for November 5, 2015.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 6, 2015, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board