

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

METROPOLITAN WATER RECLAMATION	)	
DISTRICT OF GREATER CHICAGO,	)	PCB 2016-028
	)	
Petitioner,	)	(Variance -Water)
	)	
v.	)	
	)	
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.		

**NOTICE OF FILING**

To: Don Brown , Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
**VIA Electronic Email**

Brad Halloran, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
**VIA Electronic Email**

PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board a RESPONSE TO THE VARIANCE PETITION for the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:           /s/ Stefanie Diers            
Stefanie Diers  
Assistant Counsel  
Division of Legal Counsel

DATED: March 16, 2017

1021 N. Grand Ave. East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(217) 782-5544

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AGENCY,	)	
	)	
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**ILLINOIS EPA’S RESPONSE TO THE VARIANCE PETITION**

The Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by and through its attorney, hereby submits its Response to the Variance Petition pursuant to 415 ILCS 5/38.5(e)(1-4). In support thereof, the Illinois EPA states as follows:

1. On July 21, 2015, the Petitioner filed its Variance Petition from the dissolved oxygen water quality standards recently adopted by the Illinois Pollution Control Board (“Board”) in *In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and Lower Des Plaines River: Proposed Amendments to 301, 302 and 304*, R-08-09 (Subdocket D) slip op. June 18, 2015.

2. Since the filing of the Petition, legislative changes have been made with respect to water quality standard variances. On February 24, 2017, P.A. 99-937 was signed into law. This legislation creates a new Section 5/38 of the Illinois Environmental Protection Act, which gives the Illinois Pollution Control Board (“Board”) the authority to adopt time-limited water quality standards.

3. Under Section 38.5(e), the Agency is required to submit a response to the Petition that identifies the discharger or classes of dischargers, identifies the watershed, water bodies, or waterbody segments affected, identifies the appropriate type of time-limited water quality standard, and recommends prompt deadlines. 415 ILCS 5/38.5

4. The Agency identifies the discharger or classes of dischargers affected by the water quality standard from which relief is being sought as:

**This petition was filed as an individual variance by the Metropolitan Water Reclamation District of Greater Chicago (MWRD). This petition could be amended to an individual time-limited water quality standard. The Board could also create a waterbody segment time-limited water quality standard with a class of dischargers of Combined Sewer Overflow (CSOs) if one was to file a petition within an appropriate deadline. The Agency suggests if one wants to join the proceeding they should do this before the Board issues an Opinion under 38.5(f). This would then allow the City of Chicago and other CSO communities discharging into the waterbodies identified below to be included in a waterbody segment time-limited water quality standard.**

5. The Agency identifies the watershed, water bodies, or waterbody segments affected by the water quality standard from which relief is sought as:

**MWRD has CSO discharges to streams that are in the Chicago Area Waterway System (CAWS). A stay is applicable to the CSO discharges since the water quality standards changed. Those streams are identified as:**

**North Shore Channel (7 CSO outfalls)  
North Branch of the Chicago River (1 CSO outfall)  
South Fork of the South Branch of the Chicago River (Bubbly Creek) (1 CSO outfall)  
Chicago Sanitary and Ship Canal (7 CSO outfalls)  
Little Calumet River (2 CSO outfalls)  
Calumet Sag Channel (8 CSO outfalls)  
Calumet River (2 CSO outfalls)**

**MWRD may be requesting relief for streams that are not in the CAWS. These discharges are not eligible for a stay, except for the outfalls that influence downstream waters that are eligible for a stay. The petition should identify those outfalls that are eligible for a stay since they are upstream and influence the waters eligible for a stay. Those streams are identified as:**

**Des Plaines River (7 CSO outfalls)  
Addison Creek (1 CSO outfall)**

**Deer Creek (1 CSO outfall)**

6. The Agency identifies the appropriate type of time-limited water quality standard, based on factors, such as the nature of the pollutant, the conditions of the affected water body, and the number of and type of dischargers as:

**The original petition was filed as an individual variance. This could be amended as an individual or waterbody segment time-limited WQS to potentially add the City of Chicago and other CSO communities discharging into the waterbodies identified above.**

**The petitioner(s) should provide a map with their petition(s) identifying the CSO outfalls and impacted segments.**

7. The Agency recommends, for purposes of 415 ILCS 5/38.5(h), prompt deadlines for the classes of dischargers to file a substantially compliant as:

**The Agency suggests that an amended petition should be filed with Board no later than 90 days after the adoption of the rules the Agency will be proposing pursuant to 415 ILCS 5/38.5(k).**

WHEREFORE, the Agency respectfully submits its Response.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

By: s/s Stefanie N. Diers  
Stefanie N. Diers  
Assistance Counsel  
Division of Legal Counsel

DATED: March 16, 2017

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**CERTIFICATE OF SERVICE**

I, the undersigned, an attorney, state that I have served the attached NOTICE OF FILING AND RESPONSE TO THE VARIANCE PETITION for the Illinois Environmental Protection Agency upon the person to whom it is directed by electronic email, to the following persons:

Don Brown, Clerk of the Board  
Brad Halloran, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601-3218

Fredric P. Andes  
Barnes & Thornburg  
1 North Wacker Suite 4400  
Chicago, Illinois 60606

Albert Ettinger  
53 W. Jackson  
Suite 1664  
Chicago, IL 60604

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:           /s/ Stefanie Diers            
Stefanie Diers  
Assistant Counsel  
Division of Legal Counsel

DATED: March 16, 2017

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