

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PRAIRIE RIVERS NETWORK, )  
NATURAL RESOURCES DEFENSE )  
COUNCIL, SIERRA CLUB, )  
ENVIRONMENTAL LAW & POLICY )  
CENTER, FRIENDS OF THE CHICAGO )  
RIVER, and GULF RESTORATION )  
NETWORK )

Petitioners, )

v. )

ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY and METROPOLITAN WATER )  
RECLAMATION DISTRICT OF GREATER )  
CHICAGO )

Respondents. )

PCB Nos. 14-106, 14-107, 14-108  
Consolidated  
Third Party NPDES Appeal-Water

**NOTICE OF ELECTRONIC FILING**

To: see attached service list

**PLEASE TAKE NOTICE** that on May 15, 2014, the undersigned electronically filed the Metropolitan Water Reclamation District of Greater Chicago's Petition for Partial Stay of NPDES Permit No. IL0028053, a copy of which is herby served upon you.

**I HEREBY CERTIFY** that I served this Notice and the above referenced Petition by placing a copy in an envelope, postage prepaid, and depositing it in the U.S. Mail, at 100 East Erie Street, at or before 5:00 p.m. on May 15, 2014.

Dated: May 15, 2014

METROPOLITAN WATER RECLAMATION  
DISTRICT OF GREATER CHICAGO

By: /s/ Ronald M. Hill  
Ronald M. Hill, General Counsel

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**METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO'S  
PETITION FOR PARTIAL STAY OF NPDES PERMIT NO. IL0028053**

Respondent, Metropolitan Water Reclamation District of Greater Chicago (“District”), by its General Counsel, Ronald M. Hill, petitions the Illinois Pollution Control Board (“Board”) to exercise its discretion and grant a partial stay of NPDES Permit No. IL0028053 (the “Stickney Permit”). In support hereof, the District states as follows:

**BACKGROUND**

1. Petitioners, Prairie Rivers Network, Natural Resources Defense Council, Sierra Club, Environmental Law & Policy Center, Friends of the Chicago River, and Gulf Restoration Network (collectively referred to as “Third Party Petitioners”) appealed certain conditions contained in the Stickney Permit. The Third Party Petitioners filed almost identical appeals of the NPDES permits for the District’s Calumet Water Reclamation Plant (IL0028061) (“Calumet

Permit”) and the Terrence J. O’Brien Water Reclamation Plant (IL0028088)(“O’Brien Permit”). Citing the similarity of the issues, record, and relief sought, the Board consolidated the Third Party Petitioners’ appeals. *See* March 6, 2014 Order of the Board (PCB 14-106).

2. In a separate action before the Board, the District appealed different conditions of the Calumet Permit (PCB 14-103) and the O’Brien Permit (PCB 14-104). The District did not appeal the Stickney Permit. As a result of the District’s appeal of the Calumet Permit and O’Brien Permit, the Calumet Permit and the O’Brien Permit are stayed. However, the Stickey Permit is in effect.

### **MOTION**

3. Through this Motion, the District requests that the Board stay Special Condition 18 of the Stickney Permit during the pendency of this Third-Party Appeal under its authority to grant discretionary stays from permit conditions. *See Dynegy Midwest Gen, Inc. v. IEPA*, PCB. 10-53 (Feb. 10, 2010).

4. As part of their broader appeal, the Third Party Petitioners seek review of Special Condition 18 of the Stickney Permit regulating the phosphorous effluent limitation, loading limitations, and schedule. *See* January 30, 2014 Petition for Administrative Review of an NPDES Permit issued by the Illinois Environmental Protection Agency at Count I (PCB 14-108).

5. Special Condition 18 of the Stickney Permit sets forth a forty nine (49) month schedule of design and construction milestones for the District to meet in order to achieve a phosphorous monthly average concentration effluent limitation of 1.0 mg/L and associated loading limitations. *See* Stickney Permit, attached hereto as Exhibit A, at Special Condition 18.

6. The Third Party Petitioners challenge the 1.0 mg/L phosphorous effluent limitation, presumably seeking a lower phosphorous effluent limitation. *See* Petition, Count I

¶¶26-38 (“[1.0 mg/L] will not prevent MWRD’s discharge from causing or contributing to impairment of receiving and downstream waters.”).

7. The District seeks a stay of Special Condition 18 of the Stickney Permit until the Board completes the requested review of this provision. Although the District remains committed to taking the necessary steps to reduce certain nutrient levels in its effluent, Special Condition 18 requires the District to expend significant resources with an eye to achieving the permitted 1.0 mg/L limitation while meeting interim design and construction milestones. Should the Board determine that the phosphorous 1.0 mg/L is insufficient to protect the receiving water and downstream waters, the District may have to re-evaluate, re-design, and/or re-construct the infrastructure in progress to meet the current phosphorous 1.0 mg/L limitation contained in the Stickney Permit.

8. The Board’s particular concern in determining whether or not to grant a discretionary stay is the likelihood of environmental harm if a stay is granted. *See Bridgestone/Firestone Off Road Tire Co. v. IEPA*, PCB 02-31, slip op. at 3 (November 1, 2001). In making this determination, the Board sometimes considers the following factors provided under Illinois law: (1) a certain and clearly ascertainable right needs protection; (2) irreparable injury will occur without the injunction; (3) no adequate remedy at law exists; and (4) there is a possibility of success on the merits. *See Community Landfill Co. and City of Morris v. IEPA*, PCB 01-48, 01-49, slip op. at 4 (Oct. 19, 2000). However, while the Board may look to those factors, it is not required to do so. *See Bridgestone/Firestone Off Road Tire Co.*, slip op. at 3.

9. In this third party appeal, the Board’s grant of a temporary stay of Special Condition 18 of the Stickney Permit would not result in any environmental harm. The District’s previous NPDES Permit for the Stickney Water Reclamation Plant contained no effluent

limitation for phosphorous. Before the issuance of the new Stickney Permit and its Special Condition 18, the District agreed to undertake measures to reduce phosphorous and other identified nutrients in its effluent. However, should Special Condition 18 of the Stickney Permit not be stayed, the District would suffer irreparable harm as detailed above. Further, a stay of Special Condition 18 of the Stickney Permit will maintain consistency with the District's Calumet Permit and O'Brien Permit which are stayed pending the District's appeal, but whose 1.0 mg/L phosphorous effluent limitation is also being challenged by the Third Party Petitioners in this consolidated appeal.

10. Therefore, the District urges the Board to stay Special Condition 18 during the pendency of this third party appeal.

WHEREFORE, Respondent, the Metropolitan Water Reclamation District of Greater Chicago respectfully requests that this Court grant this Motion Petition for Partial Stay of NPDES Permit No. IL0028053, stay Special Condition 18 of that permit, and for such further relief as the Illinois Pollution Control Board deems just.

Dated: May 15, 2014

METROPOLITAN WATER RECLAMATION  
DISTRICT OF GREATER CHICAGO

By: /s/ Ronald M. Hill  
Ronald M. Hill, General Counsel

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