

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD \*\* PC# 1374 \*\*

IN THE MATTER OF:	)	
	)	
WATER QUALITY STANDARDS AND	)	R08-9
EFFLUENT LIMITATIONS FOR THE	)	(Rulemaking - Water)
CHICAGO AREA WATERWAY SYSTEM	)	
AND THE LOWER DES PLAINES RIVER:	)	Subdocket C
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 1<sup>st</sup> day of July, 2013, I, on behalf of the Metropolitan Water Reclamation District of Greater Chicago (the "District"), electronically filed **METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO'S COMMENTS ON PROPOSED AQUATIC LIFE DESIGNATED USES AND REQUEST FOR EXTENSION OF TIME TO RESPOND TO U.S. EPA COMMENTS** with the Office of the Clerk of the Illinois Pollution Control Board.

Dated: July 1, 2013

**METROPOLITAN WATER RECLAMATION  
DISTRICT OF GREATER CHICAGO**

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

Fredric P. Andes  
Erika K. Powers  
**BARNES & THORNBURG LLP**  
One North Wacker Drive  
Suite 4400  
Chicago, Illinois 60606  
(312) 357-1313

**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 **METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO'S COMMENTS ON PROPOSED AQUATIC LIFE DESIGNATED USES AND REQUEST FOR EXTENSION OF TIME TO RESPOND TO U.S. EPA COMMENTS**, to be served via First Class Mail, postage paid, from One North Wacker Drive, Chicago, Illinois, on the 1<sup>ST</sup> Day of July, 2013, upon the attorneys of record on the attached Service List.

/s/ Jeaninne Roraff

Jeaninne Roraff

**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 PLAINES RIVER:	)	
PROPOSED AMENDMENTS TO 35 Ill.	)	
Adm. Code Parts 301, 302, 303 and 304	)	

**SERVICE LIST**

Roy M. Harsch  
 Drinker, Biddle, Gardner, Carton  
 191 North Wacker Drive  
 Suite 3700  
 Chicago, IL 60606-1698

Claire A. Manning  
 Brown, Hay & Stephens LLP  
 700 First Mercantile Bank Building  
 205 South Fifth Street  
 P.O. Box 2459  
 Springfield, IL 62705-2459

Deborah J. Williams, Assistant Counsel  
 Stefanie N. Diers, Assistant Counsel  
 Illinois Environmental Protection Agency  
 Division of Legal Counsel  
 1021 North Grand Avenue East  
 P.O. Box 19276  
 Springfield, IL 62794-9276

Katherine D. Hodge  
 N. LaDonna Drive  
 Monica T. Rios  
 Alec M. Davis  
 Matthew C. Read  
 Hodge Dwyer & Driver  
 3150 Roland Avenue  
 P.O. Box 5776  
 Springfield, IL 62705-5776

Thomas W. Dimond  
 Ice Miller LLP  
 200 West Madison Street  
 Suite 3500  
 Chicago, IL 60606-3417

Lenore Beyer-Clow  
 Environmental Defenders of McHenry County  
 110 South Johnson Street  
 Suite 106  
 Woodstock, IL 60098

Robert VanGyseghem  
 City of Geneva  
 1800 South Street  
 Geneva, IL 60134-2203

Lisa Frede  
 Chemical Industry Council of Illinois  
 1400 East Touhy Avenue  
 Suite 110  
 Des Plaines, IL 60018

Matthew J. Dunn, Chief  
Susan Hedman  
Thomas H. Shepherd - Asst. Atty. General  
Office of the Attorney General  
Environmental Bureau North  
69 West Washington Street  
Suite 1800  
Chicago, IL 60602

James L. Daugherty, District Manager  
Thorn Creek Basin Sanitary District  
700 West End Avenue  
Chicago Heights, IL 60411

Thomas H. Shepherd  
Assistant Attorney General  
Environmental Bureau  
69 West Washington Street  
18th Floor  
Chicago, IL 60602

John J. Reichart, Corporate Counsel  
Illinois-American Water Company  
727 Craig Road  
St. Louis, MO 63141

Bernard Sawyer  
Thomas Granato  
Metropolitan Water Reclamation District  
6001 West Pershing Road  
Cicero, IL 60804-4112

Frederick D. Keady, P.E., President  
Vermilion Coal Company  
1979 Johns Drive  
Glenview, IL 60025

Keith I. Harley  
Elizabeth Schenkier  
Chicago Legal Clinic, Inc.  
211 West Wacker Drive  
Suite 750  
Chicago, IL 60606

James E. Eggen  
Director of Public Works & Utilities  
City of Joliet, Department of Public  
Works & Utilities  
921 East Washington Street  
Joliet, IL 60431

W.C. Blanton  
Husch Blackwell Sanders LLP  
4801 Main Street  
Suite 1000  
Kansas City, MO 64112

Ann Alexander, Sr. Attorney  
Natural Resources Defense Council  
2 North Riverside Plaza  
Suite 2250  
Chicago, IL 60606

Traci Barkley  
Prarie Rivers Networks  
1902 Fox Drive  
Suite 6  
Champaign, IL 61820

Beth Steinhorn  
2021 Timberbrook  
Springfield, IL 62702

James Huff, Vice President  
Huff & Huff, Inc.  
915 Harger Road  
Suite 330  
Oak Brook, IL 60523

Dr. Thomas J. Murphy  
DePaul University  
2325 North Clifton Street  
Chicago, IL 60614

Joe Deal  
City of Chicago - Mayor's Office of  
Intergovernmental Affairs  
121 North LaSalle Street  
City Hall - Room 509  
Chicago, IL 60602

Vicky McKinley  
Evanston Environment Board  
223 Grey Avenue  
Evanston, IL 60202

Irwin Polls  
Ecological Monitoring and Assessment  
3206 Maple Leaf Drive  
Glenview, IL 60025

Kenneth W. Liss  
Andrews Environmental Engineering  
3300 Ginger Creek Drive  
Springfield, IL 62711

Olivia Dorothy, Senior Policy Advisor  
Office of Lt. Governor Pat Quinn  
Room 414 State House  
Springfield, IL 62706

Bob Carter  
Bloomington Normal Water  
Reclamation District  
P.O. Box 3307  
Bloomington, IL 61702-3307

Jessica Dexter  
Environmental Law & Policy Center  
35 East Wacker Drive  
Suite 1600  
Chicago, IL 60601

Kay Anderson  
American Bottoms RWTF  
One American Bottoms Road  
Sauget, IL 62201

Tom Muth  
Fox Metro Water Reclamation District  
682 State, Route 31  
Oswego, IL 60543

Kristy A. N. Bulleit  
Hunton & Williams LLP  
2200 Pennsylvania Ave., N.W.  
Washington, DC 20037

Jack Darin  
Sierra Club  
Illinois Chapter  
70 East Lake Street  
Suite 1500  
Chicago, IL 60601-7447

Lyman C. Welch  
Manager, Water Quality Programs  
Alliance for the Great Lakes  
17 North State Street  
Suite 1390  
Chicago, IL 60602

Marie Tipsord, Hearing Officer  
John Therriault, Assistant Clerk  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

Mark Schultz  
Regional Environmental Coordinator  
Navy Facilities and Engineering Command  
201 Decatur Avenue  
Building 1A  
Great Lakes, IL 60088-2801

Stacy Meyers-Glen  
Openlands  
25 East Washington  
Suite 1650  
Chicago, Illinois 60602

Susan M. Franzetti  
Nijman Franzetti LLP  
10 South LaSalle Street  
Suite 3600  
Chicago, IL 60603

Jeffrey C. Fort  
Ariel J. Teshar  
Sonnenschein Nath & Rosenthal LLP  
233 South Wacker Drive  
Suite 7800  
Chicago, IL 60606-6404

Kristen Laughridge Gale  
Nijman Franzetti LLP  
10 South LaSalle Street  
Suite 3600  
Chicago, IL 60603

Frederick M. Feldman  
Ronald M. Hill  
Margaret T. Conway  
Metropolitan Water Reclamation District  
100 East Erie Street  
Chicago, IL 60611

Albert Ettinger – Senior Staff Attorney  
53 West Jackson  
Suite 1664  
Chicago, IL 60604

**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 PLAINES RIVER:	)	Subdocket C
PROPOSED AMENDMENTS TO 35 Ill.	)	
Adm. Code Parts 301, 302, 303 and 304	)	

**METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO'S  
COMMENTS ON PROPOSED AQUATIC LIFE DESIGNATED USES AND REQUEST  
FOR EXTENSION OF TIME TO RESPOND TO U.S. EPA COMMENTS**

On February 21, 2013, the Board issued an Opinion and Order (Opinion) proposing for first-notice designations of aquatic life use for the Chicago Area Waterways System (CAWS) and the Lower Des Plaines River (LDPR), as well as language to establish numeric water quality standards for fecal coliform bacteria applicable to Primary Contact Recreation Waters. On May 16, 2013, a Hearing Officer Order was issued, which indicated that the first-notice comment period in Subdocket C will close on July 1, 2013. The Metropolitan Water Reclamation District of Greater Chicago (the District) offers the comments set forth below.

In addition to submitting these comments, the District notes that on Thursday, June 27, 2013, comments were submitted as to this Subdocket by the U.S. Environmental Protection Agency (USEPA). (The comments have been included in the docket for Subdocket D, at <http://www.ipcb.state.il.us/documents/dsweb/Get/Document-80642> (PC #1372), but relate solely to aquatic life uses issues, so should properly be included in the docket for Subdocket C instead.) These comments by USEPA raise significant new issues as to the designated uses that were proposed by Illinois EPA (IEPA) in this rulemaking, including as to whether it has been demonstrated that more stringent uses are not attainable. The District submits that the information necessary to respond to the USEPA comments is contained in the record of this

proceeding, but it will take some time to compile that information from the numerous documents and hearing transcripts that are in this Subdocket and present it in a useful form. We believe that it would be helpful for the Board to be able to review such responses before taking any action on the issues raised in the USEPA comments. Therefore, we are here asking for an opportunity for the District, and other parties as well, to file supplemental comments concerning the issues raised in the USEPA comments, within thirty (30) days after the Board acts on this request.

### **Aquatic Life Uses for CAWS**

The District testimony, summarized in the Opinion, included issues similar to those raised by the Board: a lack of definition of the biological basis for the proposed designated uses; the failure to establish a connection between the proposed use designations and water quality standards; and the lack of definition of the biological communities intended to be protected. However, the District and the Environmental Groups were able to reach agreement on a number of these issues. On January 9, 2013, the District filed a Report of Metropolitan Water Reclamation District of Greater Chicago and Environmental Groups Regarding Proposed Aquatic Life Designated Uses (Report) with the Board documenting the following agreement, among others, between the District and the Environmental Groups: "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." Report at p. 1.

As a result of the agreement documented in the Report, attached as Exhibit A, the District has no objection to the Board's proposed designation of the following CAWS segments as Aquatic Life Use (ALU) A<sup>1</sup>:

- Upper North Shore Channel

---

<sup>1</sup> The District and the Environmental Groups also agreed that the record supports an ALU A designation for the Chicago River. The Board, however, proposed that the General Use standard continue to apply to the Chicago River. The District has no objection.

- Lower North Shore Channel
- North Branch of the Chicago River
- South Branch of the Chicago River (excluding Bubbly Creek)
- Cal-Sag Channel
- Calumet River
- Grand Calumet River
- Lake Calumet
- Lake Calumet Connecting Channel

### **Aquatic Life Uses for South Fork of the South Branch of the Chicago River (Bubbly Creek)**

The District appreciates the Board's action to open Subdocket E to examine issues surrounding the South Fork of the South Branch of the Chicago River (Bubbly Creek), as requested by the District and the Environmental Groups in the attached Report. The District is concerned, however, that the Board's proposed ALU A designation for the South Branch of the Chicago River could be interpreted to apply to the entire South Branch of the Chicago River, including Bubbly Creek. Until Subdocket E is resolved, the District requests that the Board clarify that any aquatic life use designated for the South Branch of the Chicago River would not apply to Bubbly Creek. In the alternative, the District proposes that the Board adopt the following narrative standard, which could be replaced upon conclusion of Subdocket E:

The South Fork of the South Branch Chicago River (Bubbly Creek) is capable of maintaining transient populations of tolerant aquatic-life dominated by species that are adaptive to several of the following stressors: habitat modifications, extended periods of low DO, widespread siltation, and toxic sediment. Bubbly Creek waters are isolated quiescent waters that often exhibit very low to no flow. They are subject to variable DO concentrations resulting from stagnant low flow conditions and, in some cases, high-velocity flow patterns during wet weather pump station discharges designed for flood control.

### **Definition of Species Included in ALU Designations**

The Board has proposed a definition of ALU A that includes the following as examples of tolerant and moderately tolerant fish species:

- Channel catfish

- Largemouth bass
- Bluegill
- Northern pike
- Black crappie
- Tadpole madtom
- Spotfin shiner
- Orange spotted sunfish

The proposed definition of ALU B includes the following as examples of tolerant fish species:

- Central mudminnow
- Golden shiner
- Bluntnose minnow
- Yellow bullhead
- Green sunfish

Although the District believes that it is helpful to identify examples of moderately tolerant and tolerant fish species that might be found in CAWS ALU A and ALU B waters, we have concerns about a few of the fish species identified in the Opinion. Specifically, the Board proposed that ALU A waters be defined as those capable of supporting northern pike. During the past 12 years of fish collections from the CAWS, this District has collected only three northern pike: one each in the North Shore Channel, the Calumet River, and the Little Calumet River. Page 195 of the Opinion indicates that the Illinois Department of Natural Resources (IDNR) observed northern pike during their rotenone event on the Chicago Sanitary and Ship Canal (CSSC) in 2009. However, this event was below the electric barrier, near Lockport. It is not possible for the fish observed by IDNR to migrate above the barrier into the rest of the CAWS, so those observations should not be considered representative of CAWS ALU A waters. Although northern pike are tolerant of low dissolved oxygen, their small numbers in the CAWS likely is due to a lack of habitat, because they prefer shallow weedy areas that generally are not

present in the CAWS. The District requests that the Board remove northern pike from the list of species expected to be supported by ALU A waters.

The Board also included tadpole madtom in its definition of ALU A species. However, the District has not collected a single tadpole madtom over the past 12 years of collection in the CAWS. These fish prefer an abundance of instream cover, which is absent in the CAWS. The District has collected tadpole madtom from the shallow portion of the Des Plaines system where instream cover is present. The only references to tadpole madtom are contained in Opinion pp. 119 and 218; both of which refer to the Upper Dresden Island Pool rather than the CAWS. No other data referenced by the Board supports the presence of tadpole madtom in the CAWS. As a result, the District requests that the Board remove tadpole madtom from the list of species expected to be supported by ALU A waters.

Finally, the Board included the central mudminnow in its definition of ALU B species. The ALU B designation is proposed to apply to the CSSC and Brandon Pool. The District has collected four central mudminnow over the past 12 years, all of which were collected at a single sampling station in the Little Calumet River. No central mudminnow have been collected in ALU B waters. The central mudminnow is very tolerant of low dissolved oxygen, but prefers swamp and creek habitat. The Board referenced no data indicating the presence of central mudminnow in the CSSC and Brandon Pool. As a result, the District requests that the Board remove central mudminnow from the list of species expected to be supported by ALU B waters.

#### **Focus on CAWS Segments**

The Board expressed a concern with “the record’s focus on the stream segments as opposed to the CAWS and LDPR system as a whole” when evaluating appropriate aquatic life use designations. Opinion at p. 176. Due to the substantial differences in characteristics and conditions among CAWS segments, however, the District believes it most appropriate to

determine applicable aquatic life uses on a segment-by-segment basis. Although it may be intuitive to believe that fish would move throughout the entire 76 miles of CAWS waterways, fish data show that there are limited pockets of better aquatic habitat that are home to more desirable game fish species, which do not necessarily reside throughout the CAWS. The District believes that two different aquatic life uses are appropriate in the CAWS due to differences in the dominant habitat characteristics observed among reaches. Fish preferences for particular habitat characteristics generally determine the segments in which they will be present in the CAWS. As a result, it makes sense to apply a different aquatic life use designation to parts of the system that lack positive habitat attributes, such as the CSSC.

#### **Numeric Fecal Coliform Criteria for Primary Contact Waters**

The Board has proposed to add a requirement that primary contact waters comply with the existing numeric water quality standard for fecal coliform bacteria applicable to protected waters in 35 Ill. Adm. Code 302.209. The District has no objection to this proposal.

In addition, however, the Board requested comment concerning whether the USEPA adoption of new recreational water quality criteria would impact the water quality standards for primary contact recreational use or the need for water quality standards for incidental contact recreational use. Opinion at p. 222. The District believes that the new USEPA recreational water quality criteria should have no effect on this rulemaking.

However, IEPA and the Board will need to consider whether to adopt the new USEPA criteria statewide through a new rulemaking effort. The USEPA recommended criteria would apply generally throughout the state, rather than to the CAWS specifically. As a result, no action on CAWS waters is necessary at this time. In addition, the USEPA recommended criteria apply only to primary contact waters, so should have no effect on the need for water quality standards for incidental contact recreational use.

**Dated: July 1, 2013**

Respectfully submitted,

**METROPOLITAN WATER RECLAMATION  
DISTRICT OF GREATER CHICAGO**

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

Fredric P. Andes  
**BARNES & THORNBURG LLP**  
Suite 4400  
One North Wacker Drive  
Chicago, Illinois 60606  
(312) 357-1313

**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 PLAINES RIVER:	)	Subdockets C & D
PROPOSED AMENDMENTS TO 35 Ill.	)	
Adm. Code Parts 301, 302, 303 and 304	)	

**NOTICE OF FILING**

To: ALL COUNSEL OF RECORD  
(Service List Attached)

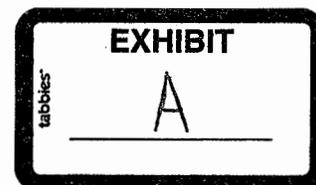
**PLEASE TAKE NOTICE** that on the 8th day of January, 2013, I, on behalf of the Metropolitan Water Reclamation District of Greater Chicago, electronically filed **REPORT OF METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO AND ENVIRONMENTAL GROUPS ON AGREEMENT REGARDING PROPOSED AQUATIC LIFE DESIGNATED USES** with the Office of the Clerk of the Illinois Pollution Control Board.

Dated: January 8, 2013

**METROPOLITAN WATER RECLAMATION  
DISTRICT OF GREATER CHICAGO**

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

Fredric P. Andes  
David T. Ballard  
**BARNES & THORNBURG LLP**  
One North Wacker Drive  
Suite 4400  
Chicago, Illinois 60606  
(312) 357-1313



**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 **REPORT OF METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO AND ENVIRONMENTAL GROUPS REGARDING PROPOSED AQUATIC LIFE DESIGNATED USES**, to be served via First Class Mail, postage paid, from One North Wacker Drive, Chicago, Illinois, on the 8th day of January, 2013, upon the attorneys of record on the attached Service List.

/s/ Barbara E. Szynalik

Barbara E. Szynalik

SERVICE LIST

Roy M. Harsch  
 Drinker, Biddle, Gardner, Carton  
 191 North Wacker Drive  
 Suite 3700  
 Chicago, IL 60606-1698

Claire A. Manning  
 Brown, Hay & Stephens LLP  
 700 First Mercantile Bank Building  
 205 South Fifth Street  
 P.O. Box 2459  
 Springfield, IL 62705-2459

Deborah J. Williams, Assistant Counsel  
 Stefanie N. Diers, Assistant Counsel  
 Illinois Environmental Protection Agency  
 Division of Legal Counsel  
 1021 North Grand Avenue East  
 P.O. Box 19276  
 Springfield, IL 62794-9276

Katherine D. Hodge  
 N. LaDonna Drive  
 Monica T. Rios  
 Alec M. Davis  
 Matthew C. Read  
 Hodge Dwyer & Driver  
 3150 Roland Avenue  
 P.O. Box 5776  
 Springfield, IL 62705-5776

Thomas W. Dimond  
 Ice Miller LLP  
 200 West Madison Street  
 Suite 3500  
 Chicago, IL 60606-3417

Lenore Beyer-Clow  
 Environmental Defenders of McHenry County  
 110 South Johnson Street  
 Suite 106  
 Woodstock, IL 60098

Robert VanGyseghem  
 City of Geneva  
 1800 South Street  
 Geneva, IL 60134-2203

Lisa Frede  
 Chemical Industry Council of Illinois  
 1400 East Touhy Avenue  
 Suite 110  
 Des Plaines, IL 60018

Matthew J. Dunn, Chief  
 Susan Hedman  
 Thomas H. Shepherd - Asst. Atty. General  
 Office of the Attorney General  
 Environmental Bureau North  
 69 West Washington Street  
 Suite 1800  
 Chicago, IL 60602

James L. Daugherty, District Manager  
 Thorn Creek Basin Sanitary District  
 700 West End Avenue  
 Chicago Heights, IL 60411

Thomas H. Shepherd  
 Assistant Attorney General  
 Environmental Bureau  
 69 West Washington Street  
 18th Floor  
 Chicago, IL 60602

John J. Reichart, Corporate Counsel  
 Illinois-American Water Company  
 727 Craig Road  
 St. Louis, MO 63141

Bernard Sawyer  
Thomas Granato  
Metropolitan Water Reclamation District  
6001 West Pershing Road  
Cicero, IL 60804-4112

Frederick D. Keady, P.E., President  
Vermilion Coal Company  
1979 Johns Drive  
Glenview, IL 60025

Keith I. Harley  
Elizabeth Schenkier  
Chicago Legal Clinic, Inc.  
211 West Wacker Drive  
Suite 750  
Chicago, IL 60606

James E. Eggen  
Director of Public Works & Utilities  
City of Joliet, Department of Public  
Works & Utilities  
921 East Washington Street  
Joliet, IL 60431

W.C. Blanton  
Husch Blackwell Sanders LLP  
4801 Main Street  
Suite 1000  
Kansas City, MO 64112

Ann Alexander, Sr. Attorney  
Natural Resources Defense Council  
2 North Riverside Plaza  
Suite 2250  
Chicago, IL 60606

Traci Barkley  
Prarie Rivers Networks  
1902 Fox Drive  
Suite 6  
Champaign, IL 61820

Beth Steinhorn  
2021 Timberbrook  
Springfield, IL 62702

James Huff, Vice President  
Huff & Huff, Inc.  
915 Harger Road  
Suite 330  
Oak Brook, IL 60523

Dr. Thomas J. Murphy  
DePaul University  
2325 North Clifton Street  
Chicago, IL 60614

Joe Deal  
City of Chicago - Mayor's Office of  
Intergovernmental Affairs  
121 North LaSalle Street  
City Hall - Room 509  
Chicago, IL 60602

Vicky McKinley  
Evanston Environment Board  
223 Grey Avenue  
Evanston, IL 60202

Irwin Polls  
Ecological Monitoring and Assessment  
3206 Maple Leaf Drive  
Glenview, IL 60025

Kenneth W. Liss  
Andrews Environmental Engineering  
3300 Ginger Creek Drive  
Springfield, IL 62711

Olivia Dorothy, Senior Policy Advisor  
Office of Lt. Governor Pat Quinn  
Room 414 State House  
Springfield, IL 62706

Bob Carter  
Bloomington Normal Water  
Reclamation District  
P.O. Box 3307  
Bloomington, IL 61702-3307

Jessica Dexter  
Environmental Law & Policy Center  
35 East Wacker Drive  
Suite 1600  
Chicago, IL 60601

Kay Anderson  
American Bottoms RWTF  
One American Bottoms Road  
Sauget, IL 62201

Tom Muth  
Fox Metro Water Reclamation District  
682 State, Route 31  
Oswego, IL 60543

Kristy A. N. Bulleit  
Hunton & Williams LLP  
2200 Pennsylvania Ave., N.W.  
Washington, DC 20037

Jack Darin  
Sierra Club  
Illinois Chapter  
70 East Lake Street  
Suite 1500  
Chicago, IL 60601-7447

Lyman C. Welch  
Manager, Water Quality Programs  
Alliance for the Great Lakes  
17 North State Street  
Suite 1390  
Chicago, IL 60602

Marie Tipsord, Hearing Officer  
John Therriault, Assistant Clerk  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

Mark Schultz  
Regional Environmental Coordinator  
Navy Facilities and Engineering Command  
201 Decatur Avenue  
Building 1A  
Great Lakes, IL 60088-2801

Stacy Meyers-Glen  
Openlands  
25 East Washington  
Suite 1650  
Chicago, Illinois 60602

Susan M. Franzetti  
Nijman Franzetti LLP  
10 South LaSalle Street  
Suite 3600  
Chicago, IL 60603

Jeffrey C. Fort  
Ariel J. Teshar  
Sonnenschein Nath & Rosenthal LLP  
233 South Wacker Drive  
Suite 7800  
Chicago, IL 60606-6404

Kristen Laughridge Gale  
Nijman Franzetti LLP  
10 South LaSalle Street  
Suite 3600  
Chicago, IL 60603

Frederick M. Feldman  
Ronald M. Hill  
Margaret T. Conway  
Metropolitan Water Reclamation District  
100 East Erie Street  
Chicago, IL 60611

Albert Ettinger – Senior Staff Attorney  
53 West Jackson  
Suite 1664  
Chicago, IL 60604

**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 PLAINES RIVER:	)	Subdockets C and D
PROPOSED AMENDMENTS TO 35 Ill.	)	
Adm. Code Parts 301, 302, 303 and 304	)	

**REPORT OF METROPOLITAN WATER RECLAMATION  
DISTRICT OF GREATER CHICAGO AND ENVIRONMENTAL GROUPS  
REGARDING PROPOSED AQUATIC LIFE DESIGNATED USES**

As the Illinois Pollution Control Board (“IPCB”) is aware, the Metropolitan Water Reclamation District of Greater Chicago (“MWRD”) and various environmental groups<sup>1</sup> have been engaged in discussions with the hope of resolving some of the issues pertaining to aquatic life designated uses and aquatic life water quality standards for dissolved oxygen (DO). The Illinois Environmental Protection Agency (“IEPA”) and United States Environmental Protection Agency (“USEPA”) are aware that these discussions are on-going. The MWRD has submitted several status reports relative to these discussions to the IPCB. This report is intended to notify the IPCB that the MWRD and NGOs have finalized an agreement.<sup>2</sup>

The MWRD and NGOs are in agreement as to the following issues:

1. The record supports an aquatic life use ‘B’ designation for the Chicago Sanitary and Ship Canal.
2. 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.

---

<sup>1</sup> The term “Environmental Groups” or “NGOs” refers to the following organizations: Natural Resources Defense Council, Environmental Law and Policy Center, Friends of the Chicago River, Openlands, Southeast Environmental Task Force, Prairie Rivers Network and Sierra Club – Illinois Chapter.

<sup>2</sup> It should be noted that nothing herein is intended to affect any party’s position in *NRDC v. MWRDGC*, 11-cv-02937 (N.D. Illinois).

3. The IPCB should create a separate docket or subdocket for Bubbly Creek and not take action in that docket or subdocket before the U.S. Army Corps of Engineers issues its report regarding Bubbly Creek, which is currently in progress.

4. The MWRD will withdraw its proposal for a wet-weather aquatic life use designation.

5. A 5-year variance allowing the MWRD time to work towards compliance with the proposed DO criteria is appropriate.<sup>3</sup> During the variance term, the MWRD anticipates moving forward with completing TARP, moving ahead with green infrastructure, and taking other steps designed to reduce pollutant loadings to the CAWS. An additional variance at the conclusion of the initial variance term may be appropriate, with variance terms and requirements to be addressed at such time. The MWRD has developed a draft petition for the initial variance, which was attached (as Exhibit B) to the MWRD's March 19, 2012 filing with the Board, and which is hereby incorporated in this report by reference. However, since the subject of the variance petition is the set of DO standards that are currently before the IPCB, the MWRD would file a formal petition for variance with the IPCB after final DO standards have been adopted. If the requested variance is granted by the IPCB, and approved by USEPA<sup>4</sup>, the MWRD would comply with all commitments stated in the petition for variance, including working with the NGOs on agreed-upon habitat improvement projects in the CAWS. As part of the habitat improvement projects, the MWRD would commit to funding up to \$500,000 toward implementation of those projects. Additional funding from other parties may be applied toward those projects as well.

---

<sup>3</sup> The Environmental Groups support issuance of a variance with regard to CSO discharges. In this proceeding in which nutrient discharges are not in issue, the Environmental Groups take no position at this time regarding issuance of a variance with respect to dissolved oxygen violations due to nutrient discharges from the District's wastewater reclamation plants.

<sup>4</sup> A letter providing USEPA's views at this time regarding issuance of a variance is attached as Exhibit A.

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 for the CAWS to meet the DO water quality standards.

7. The record supports the District's proposed standards changes for zinc.

8. The DO criteria proposed by IEPA are appropriate to protect to the 'A' and 'B' uses for which they are proposed.

The District and the NGOs request that the IPCB consider the foregoing areas of agreement in reaching its final decisions in Subdockets C and D. Adopting the areas of agreement would substantially expedite the Subdocket C and Subdocket D rulemakings since there would be no need for the Board to address the issues and concerns raised by the MWRD in its testimony and filings in those Subdockets.

Respectfully submitted,

**METROPOLITAN WATER  
RECLAMATION DISTRICT OF  
GREATER CHICAGO**

By: /s/ Fredric P. Andes  
Fredric P. Andes  
David T. Ballard  
BARNES & THORNBURG LLP  
One North Wacker Drive  
Suite 4400  
Chicago, Illinois 60606  
(312) 357-1313

**NATURAL RESOURCES DEFENSE  
COUNCIL**

**ENVIRONMENTAL LAW AND  
POLICY CENTER**

**OPENLANDS**

**SIERRA CLUB—ILLINOIS CHAPTER**

**PRAIRIE RIVERS NETWORK**

**FRIENDS OF THE CHICAGO RIVER**

By: /s/ Albert Ettinger  
Albert Ettinger

Authorized to represent all of the above  
parties with regard to this document

\*\*\*\*\* PCB 1366 \*\*\*\*\*

\*\*\* PC# 1374 \*\*\*



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUN 26 2012

REPLY TO THE ATTENTION OF:  
WQ-16J

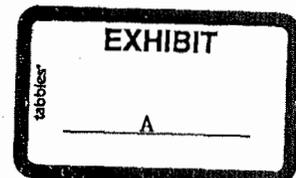
2012 JUN 27 AM 11:09  
GSA ADM  
MWRD  
CHICAGO

Mr. David St. Pierre  
Executive Director  
Metropolitan Water Reclamation District of Greater Chicago  
100 East Erie Street  
Chicago, Illinois 60611-3154

Dear Mr. St. Pierre:

At our May 23, 2012 meeting, you requested U.S. Environmental Protection Agency's reaction to a possible variance from dissolved oxygen (DO) criteria that are being considered for adoption by the Illinois Pollution Control Board (IPCB) at some point in the future. You referred us to the information presented to the IPCB by the Metropolitan Water Reclamation District of Greater Chicago (MWRD) as support for the proposed variance. You suggested that this would affect MWRD's permits for the Northside, Stickney and Calumet plants. This letter provides preliminary EPA feedback. This letter does not constitute a formal EPA decision. No such decision can or will be made until after the state of Illinois adopts a variance and submits it to EPA for review and approval as a new or revised water quality standard in accordance with section 303(c) of the Clean Water Act. In the event that the state does in fact adopt a variance and submit it to EPA, EPA's decision to approve or disapprove the variance will be based upon a review of the information submitted at that time by Illinois in support of the variance, any public comments made on the proposed variance in the state administrative proceedings, and applicable law.

For EPA to approve a variance from water quality standards granted by a state, the state should provide documentation that addresses the considerations in the Water Quality Standards Handbook (see Chapter 5, Section 3) and demonstrates that water quality standards cannot be attained for one or more of the reasons found at 40 CFR 131.10(g) for a definite period of time. In addition, a variance should include a definite expiration date, limits based on the level of effluent quality currently achievable by the variance applicant to ensure that existing uses are protected, and some description of the highest level of water quality attainable during the course of the variance. The attainable level can be described in terms of attainable ambient water quality, attainable effluent quality, and/or specific actions to be completed by the variance holder over the course of the variance that are expected to result in the highest attainable water quality. In situations where a substantial number of documents are related to the variance request, it is helpful if the key points are summarized with detailed citations to the parent documents that exist in the record.



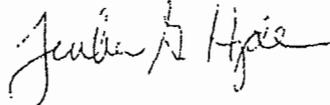
Given EPA's understanding of the proposed variance, it appears that MWRD's variance request would be based primarily upon MWRD's assertions that: 1) the DO criteria that are being considered for adoption by the IPCB are not attainable because, at a minimum, the Combined Sewer Overflow (CSO) controls specified in the Tunnel and Reservoir Project (TARP) are a necessary precursor to attainment of those DO criteria; 2) there is a schedule for completion of TARP included in the consent decree pertaining to MWRD, Illinois EPA and EPA that has been lodged in federal district court; and 3) TARP cannot be completed within five years, such that the DO criteria are not attainable for at least the first proposed five-year variance term. Further, MWRD might apply for additional variances to the extent aspects of TARP remain to be completed for certain segments. It appears to EPA that MWRD is asserting that CSOs are human caused conditions or sources of pollution that prevent the attainment of the DO criteria and cannot be remedied within the term of the variance, in accordance with 40 CFR 131.10(g)(3) (factor 3). EPA's initial review of MWRD's proposed variance suggests that an adequate variance demonstration may be able to be based on factor 3. MWRD has also suggested that 40 CFR 131.10(g)(4) and (5) (factors 4 and 5) might also support the granting of the proposed variance. However, based upon the information that MWRD has asked EPA to consider in providing this preliminary feedback, EPA does not believe that either factor 4 or 5 would provide an appropriate basis for the proposed variance.

In describing the proposed variance, MWRD offered terms and conditions to be included in its three NPDES permits listed above that include continual DO monitoring plans and will ensure completion of TARP in accordance with the schedule set forth in the lodged consent decree. These terms and conditions will result in elimination of CSOs over time and require continual DO monitoring such that adequate data are collected in order to determine the highest attainable water quality and evaluate the appropriateness of additional variance terms. To the extent that TARP comes on-line, the human-caused conditions preventing attainment of the DO criteria will be remedied for certain segments such that a variance would likely not be appropriate so long as water quality in the segment is not influenced by CSOs in other segments that have not yet been controlled. For example, the Thornton Reservoir (which will impact the Calumet portion of the Chicago Area Waterway System (CAWS)) is scheduled to be completed in 2015. Completion of the reservoir would mean that CSOs would not be a human-caused source of pollution that prevents attainment of the DO criteria in the Calumet portion of the CAWS.

EPA notes that the information that MWRD has asked EPA to consider in providing this preliminary feedback does not appear to support MWRD's assertion that the DO variance should apply to the three wastewater treatment plants' effluents since the information provided by MWRD focuses on CSOs. To the extent that MWRD would be seeking to have the variance apply to the wastewater treatment plant effluents, MWRD should demonstrate what DO-related water quality-based permit conditions applicable or expected to be applicable to the treated effluent discharges from its plants cannot be complied with, why those compliance problems could not be remedied in five years (the term of the proposed variance), what conditions are currently attained, and what actions MWRD could take to achieve the highest attainable effluent quality during the term of the variance.

I hope that this letter provides useful information as you decide whether to move forward with a request for a DO variance. We would be happy to meet with you again to discuss these comments in greater detail. Please feel free to contact me at (312) 353-2147, or Linda Holst of my staff at (312) 886-6758.

Sincerely,



Tinka G. Hyde  
Director, Water Division

cc: Marcia Willhite, Illinois EPA