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	)	PCB 14-106 (O'Brien)
Petitioners,	)	PCB 14-107 (Calumet)
v.	)	PCB 14-108 (Stickney)
	)	(Third-Party Permit Appeals-Water)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY and METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO	)	(Consolidated)
Respondents.	)	

NOTICE OF ELECTRONIC FILING

To: see attached service list

PLEASE TAKE NOTICE that on August 22, 2014, the undersigned electronically filed the Metropolitan Water Reclamation District of Greater Chicago's Cross-Motion for Summary Judgment, a copy of which is herby served upon you.

I HEREBY CERTIFY that I served this Notice and the above referenced Cross-Motion for Summary Judgment 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 August 22, 2014.

Dated: August 22, 2014

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

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METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO'S CROSS-MOTION FOR SUMMARY JUDGMENT

Pursuant to Title 35, Part 101.516 of the Illinois Administrative Code, Respondent, Metropolitan Water Reclamation District of Greater Chicago ("District"), by its General Counsel, Ronald M. Hill, asks the Illinois Pollution Control Board ("Board") to: (1) deny the motion for summary judgment filed by the Prairie Rivers Network, Natural Resources Defense Council, Sierra Club, Environmental Law & Policy Center, Friends of the Chicago River, and Gulf Restoration Network (collectively, "Petitioners"); and (2) enter summary judgment in favor of the District. In support thereof, the District states as follows:

I. Introduction

On January 27, 2014, the Petitioners filed three petitions asking the Board to review the December 23, 2013 National Pollutant Discharge Elimination System ("NPDES") permits issued by the Illinois Environmental Protection Agency ("IEPA") for the District's Stickney, Calumet,

and Terrence J. O'Brien Water Reclamation Plants. The Petitioners principally appeal the provisions in the District's permits addressing the discharge of nutrients (i.e., phosphorus and nitrogen) from its plants. Specifically, the Petitioners contest the permits' effluent limits for phosphorus and the permits' lack of effluent limits for nitrogen. Petitioners also complain that the permits' compliance schedules related to the phosphorus limit are not stringent enough. In addition to these nutrients-related qualms, the Petitioners take issue with the permits' provisions that address sanitary sewer overflows ("SSOs").

The Board consolidated all three of the Petitioners' appeals by order dated March 6, 2014. On March 26, 2014, the IEPA filed the administrative record in this case. Nothing in the record suggests that IEPA was unreasonable in issuing the District's NPDES permits, or that those permits violate the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*, ("Act") or the Board's regulations.

The Board has not adopted water quality standards for nitrogen or phosphorus, and no applicable technology-based effluent limitations exist for those nutrients. Accordingly, IEPA's decision to impose a 1.0 mg/L effluent limit on phosphorus not only complies with the Act and the Board's regulations, but exceeds what is required by law.

The compliance schedules that correspond to that effluent limit impose numerous enforceable milestones. These milestones illustrate the complexity involved in implementing the new effluent limits and substantiate the time allotted for completion of the associated public-works projects. Petitioners fail to identify any provision in the Act or Board's regulations that prohibit the timeframes allotted for the District's compliance schedules.

Additionally, contrary to the Petitioners' argument, nothing in the District's permits exempts the District from compliance with the prohibition on SSOs. The Special Conditions that

Petitioners specifically oppose simply set forth conditions that aim to promote compliance with the SSO prohibition and, further, provide a plan for response and notification in case of a violation. Accordingly, Petitioners cannot meet their burden of proving that those provisions contravene the Act or Board's regulations, and the District is entitled to summary judgment in its favor.

II. Statement of Facts

A. Background

The District is a publicly-owned treatment works ("POTW") that is located in Cook County, Illinois. (R. 3381). It serves over five million people throughout an 883-square-mile service area that includes the city of Chicago and 128 suburban communities. (*Id.*). In its role as a POTW, the District treats approximately 1.4 billion gallons of wastewater per day at its seven water reclamation plants. (R. 3382). Those plants discharge treated effluent pursuant to NPDES permits issued by the IEPA.

In August of 2006, the District applied to the IEPA for reissuance of its existing NPDES permits for the three plants at issue in this appeal. Specifically, on August 23, 2006, the District applied for the reissuance of its permit to discharge effluent to the North Shore Channel from its North Side Water Reclamation Plant (now known as the Terrence J. O'Brien Water Reclamation Plant), which is located at 3500 West Howard Street, Skokie, Illinois 60076 (the "O'Brien plant"). (R. 2680-2801). Two days later, the District applied to the IEPA for reissuance of its permit to discharge effluent to the Little Calumet River from its Calumet Water Reclamation Plant, which is located at 400 East 130th Street, Chicago, Illinois 60628, (the "Calumet plant"). (R. 2182-2335). Then on August 28, 2006, the District applied to the IEPA for reissuance of its permit to discharge effluent to the Chicago Sanitary and Ship Canal from its Stickney Water

Reclamation Plant, which is located at 6001 West Pershing Road, Cicero, IL 60804 (the "Stickney plant").

B. Draft permits and public comments

In November of 2009, the IEPA issued draft permits and associated fact sheets for the Stickney, Calumet, and O'Brien plants. (R. 2015-2038, 2475-2496, 3043-3063). Four months later, the IEPA held a public hearing on all three draft permits. (R. 3348-3502). Petitioners submitted pre- and post-hearing comments on the draft permits and testified at the public hearing. (R. 2051-2062, 2520-2526, 3073-3080 (initial comments); R. 3399-3425; 3477-3494 (hearing testimony); R. 5365-5377 (post-hearing comments) (collectively, "Comments")).

While the Petitioners raised numerous objections to the draft permits in their comments, their principal contention was that the permits lacked effluent limits for nutrients. (R. 3398-3325, 5365-5377). Petitioners also complained that the permits did not do enough to address SSOs. (R. 2053, 2521).

In response to Petitioners' objections regarding nutrients, IEPA explained that it would be premature to impose effluent limits because "the derivation process and the rulemaking has not gone about yet for nutrient standards..." (R. 3479-3480). IEPA further noted that "[t]here are no numeric criteria as of yet for algae content in the water." (R. 3480).

Further underscoring that nutrient effluent limits were unwarranted for any of its permits, the District reminded IEPA that "numerous studies conducted in Illinois for the purpose of determining defensible nutrient standards have failed to show any correlation between [total phosphorus] and algae...in Illinois streams." (R. 1212, 1274-1275). Additionally, the District noted that, although IEPA previously utilized a threshold value for phosphorus to determine water body impairments, IEPA ultimately abandoned this approach in 2012 based on the absence

of scientific evidence linking phosphorus to impacts on aquatic life in Illinois waters. (R. 1212-1213, 1274).

C. Phosphorus effluent limit

Notwithstanding the above, and in furtherance of its commitment to excellence in the field of wastewater treatment, the District volunteered to install biological nutrient removal technologies that would limit total phosphorus effluent to 1.0 mg/L in an environmentally conscious and sustainable manner. (R. 1274). Implementing the new technology will require significant modification to the infrastructure and operations of all three plants. (*Id.*). These efforts will yield a nearly fifty percent reduction in total phosphorus discharge. (*Id.* at 1276).

D. Final Permits

On December 23, 2013, the IEPA issued the final permits for the Stickney, Calumet, and O'Brien plants. (R. 2134-2162, 2620-2649[1], 3308-3337). Each of those permits imposes a 1.0 mg/L effluent limit for total phosphorus. (*Id.*) Additionally, each permit includes a detailed compliance schedule for that effluent limit with corresponding milestones, which were included in the permits at the USEPA's request. (R. 3202; *see also* R. 3278). Specifically, IEPA imposed 9 milestones for the Stickney compliance schedule, 13 milestones for the Calumet compliance schedule, and 20 milestones for the O'Brien compliance schedule. (R. 2134-2162, 3308-3337).

Finally, each of the permits contains Special Conditions that aim to promote compliance with the prohibition on SSOs, and provide a plan for response and notification in case of a violation. (R. 2157, 3329-3330).

[1] The "Administrative Record Index" states that Bates Nos. 2620-2649 consist of the following: "Letter dated December 23, 2013, from Al Keller to MWRDGC, with attached final NPDES Permit No. IL0028061, issued December 23, 2013 and effective January 1, 2014." Yet, Bates Nos. 2624-2649 consist of the final Stickney permit (IL0028053), not the final Calumet permit (IL0028061). In fact, it appears that IEPA has inadvertently omitted the final Calumet permit from the record.

III. Standard of Review

The Illinois Environmental Protection Act ("Act") and the Board's regulations require that the Board's review of permit appeals be limited to the administrative record. 415 ILCS 5/40(e); 35 Ill. Adm. Code § 105.214(a). Accordingly, when the administrative record in a permit appeal demonstrates that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate. *City of Quincy v. IEPA*, 2010 WL 2547531, *26, PCB 08-86 (Jun. 17, 2010).

Furthermore, a party opposing a motion for summary judgment may not merely rest on its pleadings but must, instead, "present a factual basis which would arguably entitle [it] to a judgment." *Des Plaines River Watershed Alliance, et al. v. IEPA*, 2007 WL 1266926, *16, PCB 04-88 (Apr. 19, 2007) (quoting *Gauthier v. Westfall*, 639 N.E.2d 994, 999 (2d Dist. 1994)). Ultimately, if "the movant's right to relief is clear and free from doubt," then the Board should grant summary judgment. *Id.*

IV. Burden of Proof

A third-party cannot prevail on its appeal of an NPDES permit unless it proves that "the issuance of the permit violates the Act or Board's regulations." *NRDC, et al. v. IEPA and Dynergy Midwest Gen., Inc.*, 2014 WL 2591592, *34, PCB No. 13-17 (Jun. 5, 2014). Indeed, the Board "must review the entire record relied upon by IEPA to determine whether the third party has shown that IEPA failed to comply with criteria set forth in the applicable statutes and regulations before issuing the NPDES permit." *IEPA and the Village of New Lennox v. IPCB*, 896 N.E.2d 479, 487 (3d Dist. 2008). Although the IEPA's decision to issue a permit must be supported by substantial evidence, "this does not shift the burden away from the petitioners (Environmental Groups), who alone bear the burden in their appeal before the Board to prove

that the permit, as issued, violated either the Act or the Board's regulations." *Id.* at 486. Additionally, in examining what constitutes "substantial evidence" for purposes of administrative decisions, the Board has stated that "the main inquiry is whether on the record the agency could *reasonably* make the finding." *Waste Management, Inc. v. IEPA*, 1984 WL 37589, *7, PCB 84-45 (Nov. 26, 1984) (emphasis added).

V. Argument

The District is entitled to summary judgment in this appeal because Petitioners cannot meet their burden of proving that the conditions related to nutrients and SSOs in the District's permits violate the Act or the Board's regulations.

A. The nutrients-related conditions of the District's permits do not violate the Act or Board's regulations.

1. Applicable provisions of the Act and Board's regulations

The Act prohibits any discharge of contaminants to surface waters in Illinois without an NPDES permit or in violation of the terms and conditions of such permit. 415 ILCS 5/12(f). Section 402 of the Federal Water Pollution Control Act (33 U.S.C. § 1342) established the NPDES permit program as the national framework for permitting wastewater discharges. With its 1977 amendments, the Federal Water Pollution Control Act became commonly known as the "Clean Water Act" ("CWA"). 35 Ill. Adm. Code 301.240.

NPDES permits contain provisions that address two central and interrelated CWA elements: (1) technology-based effluent limitations, which are established by USEPA on an industry-specific basis; and (2) water quality standards, which are promulgated by the states and generally establish the desired condition of a waterway. *In Re: Town of Newmarket, New Hampshire*, 2013 WL 6439336 (E.P.A. Dec. 2, 2013). In Illinois, the Board is the entity that determines and promulgates statewide water quality standards. 415 ILCS 5/5, 5/13. The IEPA,

on the other hand, is the agency responsible for enforcing the Board's statewide standards. 415 ILCS 5/4.

Water quality standards have two primary components: (1) "designated uses" for each water body or water body segment in the state; and (2) a set of "criteria" specifying the maximum concentration of pollutants that may be present in the water without impairing its suitability for designated uses. *See* 33 U.S.C. § 1313(c)(2)(A). "Criteria, in turn, come in two varieties: specific numeric limitations on the concentration of a specific pollutant in the water (*e.g.,* no more than .05 milligrams of chromium per liter) or more general narrative statements applicable to a wide set of pollutants (*e.g.,* no toxic pollutants in toxic amounts)." *Am. Paper Inst., Inc. v. U.S. E.P.A.*, 996 F.2d 346, 349 (D.C. Cir. 1993).

Section 303(d) of the CWA requires states to identify water body segments that fail to meet state water quality standards. 33 U.S.C. § 1311(d)(1)(A). For such "impaired" waters states must develop a Total Maximum Daily Load ("TMDL") for each relevant pollutant, and USEPA has the authority to approve or disapprove the state's TMDL. 33 U.S.C. § 1311(d)(1)(C), 1311(d)(2); 40 C.F.R. 130.2(j), 130.7(d). Additionally, TMDLs establish specific wasteload allocations ("WLAs") for point sources that discharge to the water body in question, as well as load allocations for nonpoint sources in the watershed. 40 C.F.R. § 130.2(g)-(i).

The Board's regulations require that IEPA incorporate effluent limits in NPDES permits that are necessary to meet the Board's water quality standards and to comply with any corresponding TMDLs and WLAs. 35 Ill. Adm. Code § 309.141(d)(1), (3).

2. The effluent limits for nutrients in the District's permits do not violate any Illinois water quality standards

Petitioners' principal argument on appeal is that the effluent limits (or lack thereof) in the District's permits will result in a violation of Illinois water quality standards. Yet, nothing in the record or Illinois law supports this contention.

a. Nitrogen

No applicable technology-based effluent limit exists for nitrogen. Nor has the Board developed a water quality standard for that nutrient. Accordingly, nitrogen has not been designated as a cause of impairment for any Illinois waters, and there is nothing in the Act or the Board's regulations that prohibits the District's discharge of effluent containing that nutrient.

Therefore, Petitioners cannot satisfy their burden of proving that the IEPA acted unreasonably in refusing to set an effluent limit for nitrogen in the District's permits. To the contrary, neither the Act nor the Board's regulations provide any basis for a nitrogen effluent limitation.

b. Phosphorus

i. There is no water quality standard for phosphorus in Illinois

Similarly, there simply is no water quality standard for phosphorus in Illinois. Additionally, no applicable technology-based effluent limit exists for phosphorus. Based on these facts alone, IEPA was justified in imposing a 1.0 mg/L effluent limit on phosphorus. Indeed, the IEPA could have decided not to impose any phosphorus effluent limit at all and it still would not have run afoul of the Act or the Board's regulations.

Even where a numeric water quality standard exists for a pollutant (not just a nutrient such as phosphorous or nitrogen), and that pollutant is the source of impairment for a water body receiving a permittee's discharge, the Board has upheld IEPA's decision not to set a water

quality-based effluent standard. *NRDC, et al. v. IEPA and Dynergy Midwest Gen., Inc.*, 2014 WL 2591592, **35-38, PCB No. 13-17 (Jun. 5, 2014) (affirming IEPA's decision not to set an effluent limit for power plant's potential mercury discharges into mercury-impaired water body). In fact, the Board in that case did not even require the IEPA to perform an analysis on whether there was a "reasonable potential" that the relevant discharge would violate the applicable water quality standard. *Id.* at **37-38. If IEPA's actions in that case did not contravene the Act or the Board's regulations, then they certainly do not in this case, where IEPA has imposed a phosphorus limit of 1.0 mg/L despite the fact that the State has not even set a water quality standard for that nutrient.

ii. State's efforts to develop a water quality standard for phosphorus

In Illinois, the Board is the entity that determines and promulgates statewide water quality standards. 415 ILCS 5/5, 5/13. To assist in the development of such water quality standards for nutrients, the State has initiated the "Illinois Nutrient Reduction Strategy" ("Nutrient Study"), which is an ongoing and comprehensive analysis regarding the impact of nutrients on Illinois waters. *See http://www.epa.state.il.us/water/nutrient/.*

Through this permit appeal, the Petitioners attempt to circumvent the abovementioned process of methodically developing science-based nutrient standards for the Board's adoption. Remarkably, Petitioners advance this end-around approach while at the same time serving as members of a "Policy Working Group" that is actively participating in the Nutrient Study. *Id.*

iii. The Board's interim phosphorus limits for water treatment plants

Moreover, in their appeal, Petitioners tellingly fail to mention that the Board has already set an interim phosphorus effluent limit for wastewater treatment plants that will remain in effect until the Board adopts a numeric water quality standard for that nutrient. 35 Ill. Adm. Code §

304.123(g). Specifically, the Board's regulations impose a 1.0 mg/L phosphorus effluent limit on any new or expanded discharges into general use waters from large treatment plants that primarily receive municipal or domestic wastewater. *Id.* at (g)(1).

It is important to note that the Joint Committee on Administrative Rules ("JCAR") objected to this effluent limit because it "imposes an undue economic and regulatory burden on the affected wastewater treatment facilities by requiring those facilities to meet interim standards for phosphorus discharges." *In the Matter of: Proposed 35 Ill. Adm. Code 304.123(g)*, 2006 WL 406637, *2, PCB No. R04-26 (Jan. 19, 2006). In deciding to adopt the regulation over JCAR's objection, the Board emphasized the fact that "the proposed rule applies to only new or expanding larger facilities [that] can incorporate the additional cost of phosphorus control in their overall expansion plans with an economically reasonable project." *Id.* at *3.

Although this interim effluent limit does not apply to the District because its plants are not "new or expanding," the District has nevertheless volunteered to comply with the 1.0 mg/L interim effluent limit for phosphorus despite the economic and regulatory burden recognized by JCAR. Compliance with this limit will reduce the phosphorus discharge from the District's Stickney, Calumet and O'Brien plants nearly fifty percent. (R. 1276). Not only can it be said that the 1.0 mg/L phosphorous effluent limit complies with the Act and Board's regulations, but it goes above and beyond what is legally required of the District.

iv. Petitioners' Argument in Favor of a More Stringent Limitation is Unsupported.

Rather than laud the District for volunteering to comply with the abovementioned Board-approved limit, Petitioners now seek to compel the Board to impose a more stringent limit on the District, which has no basis in Illinois law. The only support Petitioners offer in favor of a more stringent limit are Wisconsin's water quality standard for phosphorus as well as the phosphorus

standard recommended for "Ecoregion VI" in USEPA's nutrients-related criteria guidance. Yet, a closer look at these two standards reveals why neither is pertinent to the matter at hand.

For starters, the first page of USEPA's "Nutrient Criteria Guidance Manual" includes a "Disclaimer," which states as follows:

> While this manual constitutes [US]EPA's scientific recommendations regarding ambient concentrations of nutrients that protect resource quality and aquatic life, it does not substitute for the CWA or [US]EPA's regulations; nor is it a regulation itself. Thus, it cannot impose legally binding requirements on [US]EPA, States, Tribes, or the regulated community, and might not apply to a particular situation or circumstance.

(R. 4071). Indeed, the USEPA's recommended standards are meant to be general guidelines that do not take into account local, site-specific conditions and designated uses for particular water bodies. (R. 5118). Therefore, even Wisconsin—whose phosphorus standard the Petitioners repeatedly reference—chose not to adopt the specific phosphorus limit recommended by USEPA for the majority of that state. *See http://www2.epa.gov/nutrient-policy-data/ecoregional-nutrient-criteria-documents-rivers-streams*.

Furthermore, by recognizing that Wisconsin and Illinois are located in separate "ecoregions," USEPA's Guidance Manual underscores the fact that Wisconsin's water quality standard for phosphorus should not be a model for Illinois. (*See* R. 4101). USEPA recommends significantly more stringent phosphorus standards for Ecoregions VII or VIII—which cover most of Wisconsin—than it does for Ecoregion VI—which covers most of northern and central Illinois. (R. 5121); *see also http://www2.epa.gov/nutrient-policy-data/ecoregional-nutrient-criteria-documents-rivers-streams*. Accordingly, Petitioners cannot provide an in-state basis or precedent for imposing a more stringent phosphorus limit on the District. Petitioners reliance on the Wisconsin standard in their motion is a mere distraction.

Another red herring repeatedly weaved into Petitioners' arguments is their claim that the District's facilities discharge into phosphorus-impaired waters. Petitioners conveniently fail to acknowledge that, although IEPA previously utilized a threshold value for phosphorus to determine water body impairments, it ultimately abandoned this approach in 2012 based on the absence of scientific evidence linking phosphorus to impacts on aquatic life in Illinois waters. (R. 1212-1213, 1274). As stated above, the Board is the only entity that may determine and promulgate statewide water quality standards in Illinois, and the Board may not delegate this rule-making authority. *Peabody Coal Co. v. IPCB*, 36 Ill. App. 3d 5, 20 (5th Dist. 1976); 415 ILCS 5/5, 5/13. Determining impairments using non-scientific standards that were never adopted by the Board contravenes the Act and Illinois case law. Accordingly, IEPA's previous impairment listings arising from the now-abandoned phosphorus threshold provide no basis for effluent limitations in the District's permits.

Even if those impairment listings were valid, the IEPA is not prohibited from permitting the District's discharge into impaired waters. *NRDC, et al. v. IEPA and Dynergy Midwest Gen., Inc.*, 2014 WL 2591592, **35-38, PCB No. 13-17 (Jun. 5, 2014) (affirming IEPA's decision not to set an effluent limit for power plant's potential mercury discharges into mercury-impaired water body). The U.S. Supreme Court has held that the CWA does not mandate a ban on discharges into a waterway that is in violation of water quality standards, and it has further held that the CWA "vests in the [US]EPA and the States broad authority to develop long-range, area-wide programs to alleviate and eliminate existing pollution." *Arkansas v. Oklahoma*, 503 U.S. 91, 108 (1992).

Accordingly, the IEPA was reasonable in imposing a 1.0 mg/L interim effluent limit for phosphorus while the State works on developing a long-range, statewide standard for that

nutrient. In the absence of such a statewide water quality standard, the Petitioners cannot meet their burden of proving that the District's 1.0 mg/L effluent limit violates the Act or the Board's rules.

c. Unnatural Plant or Algal Growth

Petitioners implicitly suggest that the phosphorus effluent limit in the District's permits will somehow result in a violation of the State's narrative water quality standards relative to unnatural plant or algal growth. (*See* Pet. Memo in Supp. of MSJ, 15, citing 35 Ill. Adm. Code §§ 302.203, 302.403). Yet, the State has not listed unnatural plant or algal growth as a cause for impairment of any of the stream segments downstream of the plants at issue in this appeal. Moreover, "numerous studies conducted in Illinois for the purpose of determining defensible nutrient standards have failed to show any correlation between [total phosphorus] and algae...in Illinois streams." (R. 1212; *see also* R. 304). In light of the above, Petitioners can neither satisfy their burden of proving that the IEPA was unreasonable in imposing a 1.0 mg/L effluent limit on phosphorus; nor can they prove that this effluent limit violates the Act or the Board's regulations.

3. The permits' compliance schedules for phosphorus reduction do not violate the Act or the Board's regulations

The Act provides that "[a]ll NPDES permits shall contain those terms and conditions, including but not limited to schedules of compliance, which may be required to accomplish the purposes and provisions of this Act." 415 ILCS 5/39(b) (2014). Neither the Act nor the Board's regulations proscribe a ceiling on the time allowed to achieve compliance. Rather, the Act and Board's regulations merely require that compliance be achieved as early as reasonably possible. *Id.* (permittee should achieve compliance at the "earliest reasonable date"); *see also* 35 Ill. Adm. Code 309.148(a) (requiring compliance within "the shortest reasonable period of time").

Although it is Petitioners' burden to do so, they fail to point to any facts in support of their claim that the compliance schedules in this case are unreasonable. Instead, they simply assert that IEPA did not adequately justify these compliance schedules. Yet, the Petitioners "alone bear the burden in their appeal before the Board to prove that the permit, as issued, violated either the Act or the Board's regulations." *IEPA and the Village of New Lennox v. IPCB*, 896 N.E.2d 479, 486 (Ill. App. 3d Dist. 2008).

While the Petitioners attack the timeframes of the District's compliance schedules, they tellingly fail to mention the significant milestones that correspond to those schedules, which were included in the permits at the USEPA's request. (R. 3202; *see also* R. 3278). Specifically, IEPA has imposed 9 milestones for the Stickney compliance schedule, 13 milestones for the Calumet compliance schedule, and 20 milestones for the O'Brien compliance schedule. Each milestone requires a corresponding "progress report."

The following is an excerpt from just one of the twenty milestones in the O'Brien plant's compliance schedule:

> Complete Construction of Additional Sidestream Phosphorus Recovery Process; Evaluate and Optimize Bio-P Removal in All Batteries and Develop Process Control Protocols; Complete Final Tank Enhancements Project; Final Progress Report on Phosphorus Source control if Viable Option, and the Use of Algae to Recover Phosphorus if Viable Option.

(R. 3332). Thus, the terms of the compliance schedules themselves illustrate the complexity involved in implementing the new effluent limits and substantiate the time allotted for completion of these significant public-works projects.

Indeed, even "[a] public-works project that takes *decades* to complete is not inherently unreasonable." *U.S. v. MWRD*, 2014 WL 64655, *9 (N.D. Ill. 2014) (emphasis added). Courts around the country have approved decades-long time frames for achieving compliance with

certain requirements of the Clean Water Act. *See United States v. City of Welch, WV,* Case No. 1:11–00647, 2012 WL 385489 (S.D.W.V. Feb. 6, 2012) (approving consent decree with respect to long term control plan for CSOs that will take until December 31, 2027 to complete); *United States v. City of Evansville, IN,* Case No. 3:09–cv–128, 2011 WL 2470670 (S.D.Ind. June 20, 2011) (approving consent decree with respect to overflow control plan that will take until 2032 to complete).

Accordingly, the Petitioners have failed to meet their burden of proving that the compliance schedules set by IEPA in this case are unreasonable, or that those compliance schedules violate the Act or Board's regulations.

B. The Provisions of the District's permits addressing sanitary sewer overflows do not violate the Act or Board's regulations.

The Petitioners do not claim that the permits at issue in this appeal exempt the District from the prohibition on sanitary sewer overflows ("SSOs"). (Pet. Memo. in Supp. of MSJ, 19-20). Rather, they merely assert that the District's permits "*could be construed* as allowing SSOs..." *Id.* at 19 (emphasis added). Yet, as acknowledged by the Petitioners in their own motion, "[t]he Permits do contain a Standard Condition that...incorporates the regulatory prohibition on SSOs." *Id.* at 20.

Moreover, the Special Conditions that Petitioners specifically oppose simply set forth conditions that aim to promote compliance with the overall SSO prohibition. (R. 2157, 3329-3330). Those provisions also provide a plan for response and notification in case there is a violation of the SSO prohibition. Nothing in these Special Conditions, however, can be construed as exempting the District from compliance.

It is a longstanding principle of Illinois law that the grant of a permit does not insulate permittees from enforcement actions for violating the Act. *Landfill, Inc. v. IPCB*, 74 Ill.2d 541,

549 (1978). Accordingly, the Petitioners' concerns regarding the SSO-related provisions of the District's permits are unfounded and they cannot satisfy their burden of proving that those SSO provisions violate the Act or Board's regulations.

VI. Conclusion

For all the reasons stated above, the District requests that the Board: (1) deny Petitioners' motion for summary judgment; (2) enter summary judgment in the District's favor; and (3) grant such other further relief as the Board deems just and appropriate.

Dated: August 22, 2014

Respectfully submitted,

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

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