

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

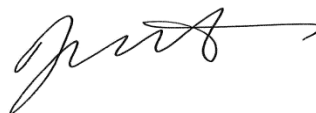
METROPOLITAN WATER	)	
RECLAMATION DISTRICT OF	)	
GREATER CHICAGO	)	
	)	PCB 14-103
Petitioners,	)	(Calumet)
	)	PCB 14-104
v.	)	(O'Brien)
	)	(Consolidated)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY	)	
	)	
Respondents.	)	

**NOTICE OF ELECTRONIC FILING**

To: Attached Service List

PLEASE TAKE NOTICE that on August 22, 2014 I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, **Public Comment of Environmental Groups on MWRDGC's Motion for Summary Judgment**, PCB no. 14-103; 104 a copy of which is attached hereto and herewith served upon you.

Respectfully Submitted,



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**ENVIRONMENTAL LAW & POLICY CENTER**  
Protecting the Midwest's Environment and Natural Heritage

August 22, 2014

Hearing Officer Bradley P. Halloran  
Illinois Pollution Control Board  
James R. Thompson Center, Ste. 11-500  
100 W. Randolph Street  
Chicago, Illinois 60601

**Re: Public Comment of Environmental Groups on MWRDGC's Motion for Summary Judgment, IPCB 14-103; 14-104.**

Pursuant to 35 Ill. Adm. Code 101.628 (c), the Environmental Law & Policy Center, Natural Resources Defense Council, Prairie Rivers Network and the Sierra Club ("Environmental Organizations") make this public comment on the motion for summary judgment of the Metropolitan Water Reclamation District of Greater Chicago ("MWRD") with regard to its appeal of certain monitoring requirements in the NPDES permits for the Calumet and O'Brien water reclamation plants.

In overview, MWRD makes several erroneous arguments in support of its position that continuous dissolved oxygen monitoring should not have been required at its O'Brien plant. However, MWRD also makes a number of valid points with which the Environmental Organizations agree. Accordingly, the Environmental Organizations urge that the Board remand the permits for re-consideration of the permit conditions to which MWRD objects as well as for reconsideration of the permit conditions and lack of permit conditions as to which the Environmental Organizations have appealed in IPCB 14-106, 14-107 and 14-108.

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David C. Wilhelm, Chairperson • Howard A. Learner, Executive Director  
Columbus, OH • Des Moines, IA • Duluth, MN • Jamestown, ND • Madison, WI • Sioux Falls, SD • Washington, D.C.

**I. MWRD misconstrues 35 Ill. Adm. Code 304.104 and offers unsupported and erroneous arguments with regard to the need for continuous dissolved oxygen monitoring.**

Whether a monitoring condition is reasonable or not naturally depends on the potential danger feared and the permit conditions for which monitoring is needed. Here, the relevant monitoring requirement in the O'Brien permit is that the dissolved oxygen concentration in the effluent be "not be less than 5 mg/L during any 16 hours of any 24 hour period, nor less than 4 mg/L at any time." This permit condition is needed because the O'Brien plant discharges to the North Shore Channel, where the dissolved oxygen water quality standard is currently 4 mg/L. 35 Ill. Adm. Code 302.405. The discharge from the O'Brien plant provides much or all of the flow in the North Shore Channel much of the time. Given this fact, if the flow from the plant has less dissolved oxygen than that required by the applicable water quality standard, the discharge is likely to cause or contribute to a violation of the standard.

MWRD does not object to the permit limit but to the continuous dissolved oxygen monitoring requirement that it claims is not required by Board rules or the Environmental Protection Act. In fact, Board regulations require continuous dissolved oxygen monitoring where such monitoring is required for a representative sample, because "All permits shall specify required monitoring including type, interval and frequency sufficient to yield data which are representative of the monitored activity, including, when appropriate, continuous monitoring." 35 Ill. Adm. Code 309.146 (c).

The question, then, is whether, under 35 Ill. Adm. Code 309.146, continuous monitoring is reasonably necessary to obtain representative samples. MWRD says it is not necessary (MWRD motion p. 12) but does not cite anything to support its contention and the mere say-so of a lawyer should not be the basis of a decision on a scientific or engineering issue.

Rather than offer information or discussion of the Board's regulations regarding monitoring and sampling requirements in 35 Ill. Adm. Code 309.146, MWRD cites to the averaging rules in §304.104(a)(1)-(3) used to determine proof of violation of the general effluent standards. These rules provide:

- a) Except as otherwise specifically provided, proof of violation of the numerical standards of this Part shall be on the basis of one or more of the following averaging rules:
  - 1) No monthly average shall exceed the prescribed numerical standard.
  - 2) No daily composite shall exceed two times the prescribed numerical standard.

- 3) No grab sample shall exceed five times the prescribed numerical standard. 35 Ill. Admin. Code 304.104 (a)

It is by no means clear what these averaging rules could possibly indicate about proper monitoring. The Section 304.104 itself makes clear that monitoring is covered by other rules stating:

- c) Subsection (a) establishes a method of interpretation of the effluent standards of this Part. The Agency shall consider the averaging rule in deciding whether an applicant has demonstrated that a facility complies with this Part for purposes of permit issuance and in writing the effluent standards into permit conditions. **Reporting and monitoring requirements are established by way of permit condition pursuant to 35 Ill. Adm. Code 305.102 and 309.146.** (emphasis added)

Further, the averaging provision is plainly irrelevant to the permit condition being monitored. Section 304.104 begins with the language “Except as otherwise specifically provided....” Here the permit specifically provides the averaging provision for the 5 mg/L requirement and explicitly provides that dissolved oxygen should not fall below 4 mg/L “at any time.” Moreover, the provision is obviously senseless as applied to a condition regarding dissolved oxygen given that it does not violate the condition for dissolved oxygen to “exceed” the limit and there is no straightforward way to reinterpret “exceed” in this context that makes any sense.

MWRD also claims that continuous dissolved oxygen monitoring is an “onerous” and “imperfect” technology but provides no data from the record or elsewhere in support of this claim. In fact, Special Condition 10 of the O’Brien permit requires MWRD to collect continuous dissolved oxygen monitoring data in the North Shore Channel, North Branch of the Chicago River, Chicago River, South Branch of the Chicago River and its South Fork, and in the Chicago Sanitary and Ship Canal in accordance with a continuous dissolved oxygen monitoring plan approved by the IEPA. MWRD has raised no objection to this requirement.<sup>1</sup> In addition, MWRD has apparently thought that continuous dissolved oxygen data were good enough to use in making regulatory decisions. In the CAWS UAA rulemaking proceedings, MWRD presented testimony to the Board based on continuous dissolved oxygen data and argued that these data should lead the Board to draw conclusions regarding the water quality standards that should be applicable to the Chicago Area Waterway System. IPCB R08-09 Ex. 468. It also has large amounts of continuous dissolved oxygen monitoring data on its website. See, [www.mwrd.org/irj/portal/anonymous/WQM](http://www.mwrd.org/irj/portal/anonymous/WQM).

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<sup>1</sup> Indeed, had it done so, the Environmental Organizations would have emphatically opposed removal of the in-stream continuous dissolved oxygen monitoring. In stream continuous dissolved oxygen monitoring is often critical, particularly as here where high nutrient levels are causing plant and algal growth that leads dissolved oxygen levels to vary greatly during the course of a day. See textbooks and studies cited at AR 5370-1

**II. MWRD makes numerous arguments relating to the law and required procedures that do have merit.**

That MWRD has made some highly imperfect arguments does not mean, however, that it is wrong that the permits should be remanded. MWRD also makes a number of very good arguments. In particular:

MWRD is correct that the record must contain evidence to support IEPA decisions. (MWRD Motion for SJ p. 9) Further, MWRD is correct that IEPA cannot rely simply on “because USEPA says so” (MWRD Motion p.10) as sole support for IEPA’s decisions. In fact, generally “because I say so” (ipse dixit) does not constitute evidence or otherwise form a basis to uphold an agency decision that is not supported by the record. *Letourneau v. Department of Registration*, 212 Ill. App. 717, 728 (1991).

MWRD is also correct (MWRD Motion p. 9) that IEPA should have addressed comments made by MWRD in the responsiveness summary.

Finally, MWRD is correct that IEPA should have provided an opportunity for MWRD to comment on changes that IEPA made to the permit. (MWRD Motion p. 12) MWRD and other interested parties cannot be expected to address in their permit comments matters of which they had no notice before the permit was issued. Where substantial modifications are made to permits after the close of the comment period, an opportunity for further comment must be allowed. 35 Ill. Adm. Code 309.120.

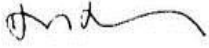
In conclusion, while the Environmental Organizations do not agree with some of the contentions in the MWRD Motion for Summary Judgment, MWRD makes some strong arguments for remanding portions of the permits for further consideration by IEPA after allowing additional public comment.

Thank you for your consideration of these comments.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I, Jessica Dexter, hereby certify that I have served the attached **Public Comment of Environmental Groups on MWRDGC's Motion for Summary Judgment**, PCB no. 14-103; 104 upon:

Mr. John T. Therriault  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

via electronic filing on August 22, 2014; and upon the attached service list by depositing said documents in the United States Mail, postage prepaid, in Chicago, Illinois on August 22, 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JD', with a long horizontal flourish extending to the right.

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