

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

METROPOLITAN WATER RECLAMATION	)	
DISTRICT OF GREATER CHICAGO,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 2016-028
	)	(Time-Limited Water Quality
	)	Standard)
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on July 26, 2018, the **Metropolitan Water Reclamation District of Greater Chicago** electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the **Amended Petition for Time Limited Water Quality Standards for Dissolved Oxygen**, a copy of which is hereby served upon you.

Dated: July 26, 2018

**METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO**

By: /s/ Fredric P. Andes
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PROOF OF SERVICE

The undersigned attorney certifies, under penalties of perjury pursuant to 735 ILCS 5/1-109, that he caused a copy of the foregoing **Amended Petition for Time Limited Water Quality Standards for Dissolved Oxygen** to be served via First Class U.S. Mail, from One North Wacker Drive, Chicago, Illinois, 60606 with a CD containing all documents on this 26th day of July, 2018 to:

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/s/ Fredric P. Andes
One of Its Attorneys

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DISTRICT OF GREATER CHICAGO,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 2016-028
	)	(Time-Limited Water
	)	Quality Standard)
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

AMENDED PETITION FOR TIME-LIMITED
WATER QUALITY STANDARDS FOR DISSOLVED OXYGEN

The Metropolitan Water Reclamation District (“MWRD”), by its attorneys, Barnes & Thornburg LLP, and pursuant to Interim Order of the Board in Docket PCB 2016-028 (Jun. 22, 2017) by the Illinois Pollution Control Board (“Board”), Section 38.5(b)(2) of the Act (415 ILCS 5/38.5(b)(2)), and 35 IAC § 104.520(b), hereby amends its July 21, 2015 Petition to the Board for a variance authorizing discharges from the Combined Sewer Overflow (“CSO”) outfalls governed by National Pollutant Discharge Elimination System (“NPDES”) Permits issued to its O’Brien, Calumet, and Stickney wastewater treatment plants (“Plants”) into the Chicago Area Waterways System (“CAWS”).

This Amended Petition for Time-Limited Water Quality Standards (“Amended Petition”) converts its prior filings in this cause to a petition for a time-limited water quality standard (“TLWQS”) subject to the terms and conditions outlined in herein, and supplements previous filings by the MWRD to provide the information required for the Board’s consideration of the requested TLWQS in accordance with Section 415 ILCS 5/38.5 and 35 IAC § 104, *et seq.* The Amended Petition also clarifies that the TLWQS sought applies only to CSO discharges governed by the NPDES Permits issued to the O’Brien, Stickney, and Calumet Plants, and not to

the discharges from the Plants themselves. This Amended Petition also includes information relevant to the requested TLWQS demonstrating compliance with 40 C.F.R. § 131.14.

The Amended Petition is timely filed as directed by the Board in its June 22, 2017 Interim Order (Docket PCB 2016-028) – being no more than ninety days after the Board adopted rules at 35 IAC § 104, *et seq.* as required by 415 ILCS 5/38.5(f), (k).

In Docket 2008-009, the Board engaged in an extensive rulemaking process regarding designated uses, effluent limitations and water quality standards for the CAWS. Subdockets C and D involved the setting of designated uses and water quality standards for the protection of aquatic life. In connection with those subdockets, the MWRD reached an agreement with the environmental organization parties¹ (“Environmental Groups”) on recommendations to the Board for aquatic life designated uses and water quality standards for each reach of the CAWS. (The agreement is attached as Exhibit A.) The original Petition and this Amended Petition are consistent with that agreement.

The Board adopted final aquatic life water quality standards for the CAWS, effective July 1, 2015. That rulemaking included new standards for dissolved oxygen (“DO”) that are consistent with the recommendations agreed to by the MWRD and Environmental Groups. Despite the MWRD’s efforts to address water quality issues in the CAWS, several reaches of the CAWS have not met the new DO standards, do not now consistently meet the standards, and cannot consistently meet the standards in the next five years. Accordingly, upon the adoption of the new DO standards, the MWRD filed its timely original Petition in this matter seeking a five-year variance from the DO standards because the requirements to bring about the immediate attainment of these standards would impose an arbitrary or unreasonable hardship on the MWRD. *See* 415 ILCS 5/35(a).

¹ Natural Resources Defense Council (“NRDC”), Environmental Law & Policy Center, Friends of the Chicago River, Openlands, Southeast Environmental Task Force, Prairie Rivers Network, and Sierra Club-Illinois Chapter.

While that original Petition was pending, Public Act 99-937 took effect on February 24, 2017; the Act establishes the Board's authority to adopt TLWQS and procedures to convert pending variance petitions to petitions for the new TLWQS; the Act also requires petitioners seeking a TLWQS (and associated stay) to make demonstrations that are different from those required by a Section 35 variance. *Compare* 415/ILCS 5/35 *and* 415 ILCS 5/38.5, *et seq.* Among the alternate demonstrations required is the need to justify that the requested term of the TLWQS is only as long as "necessary to achieve the highest attainable condition [of the water body segment]." 40 C.F.R. § 131.14(b)(1)(iii). The MWRD believes that the requested five-year term is necessary even under this standard; the MWRD plans to take interim measures to address water quality, and continue its evaluation of the issues and investigation of adequate solutions to address DO issues in the CAWS. That information will be used to determine the terms of any subsequently-requested TLWQS that may be needed to address the long-term water quality standard attainment issues in the CAWS.

The remainder of the Amended Petition addresses each element required by the Illinois regulation governing TLWQS petition contents, including references to 40 C.F.R. § 131.14. The Amended Petition therefore is responsive to the Board's June 22, 2017 Interim Order. Each required element is set forth in italics, below, and followed by the information sought.

I. 35 IAC § 104.530 REQUIREMENTS

A. Description of Petitioner, Watershed, and Time-Limited Water Quality Standard Sought

1) A statement indicating the type of time-limited water quality standard sought. 35 IAC 104.530(a)(1).

Petitioner, the MWRD, requests a single-discharger TLWQS.

2) Identification of the currently-applicable water quality standard for the pollutants or parameter for which a time-limited water quality standard is sought. 35 IAC 104.530(a)(2).

The applicable water quality standards for DO are found at 35 IAC 302.206 . These DO standards are not currently met on a consistent basis and cannot be met on a consistent basis during the term of the TLWQS that is being requested.

3) The location of the petitioner's activity and the location of the points of its discharge. 35 IAC 104.530(a)(3).

The MWRD seeks the TLWQS for the CSO discharges covered in the Permits for its O'Brien, Stickney, and Calumet Plants. The facility names and addresses for each of the Plants, respectively, are as follows:

MWRDGC O'Brien Water Reclamation Plant
3500 West Howard Street
Skokie, Illinois 60076

MWRDGC Stickney Water Reclamation Plant
6001 West Pershing Road
Cicero, Illinois 60804

MWRDGC Calumet Water Reclamation Plant
400 East 130th Street
Chicago, Illinois 60628

Generally speaking, CSOs associated with the O'Brien Water Reclamation Plant discharge to the North Shore Channel, North Branch of the Chicago River, and Des Plaines River. CSOs associated with the Calumet Water Reclamation Plant discharge to the Little Calumet River, Calumet Sag Channel, North Creek², and Calumet River. CSOs associated with the Stickney Water Reclamation Plant discharge to the Des Plaines River, South Fork of the South Branch of the Chicago River, Chicago Sanitary and Ship Canal, and Addison Creek. The CSO discharges associated with each Plant are governed by the respective Plant's NPDES

² CSO Outfall 010, which has been listed in prior Permits for the Calumet facility as discharging to Deer Creek, actually discharges to North Creek. That correction has been made in the latest Calumet permit, issued in 2017,

permit, which requires the MWRD to not cause or contribute to violations of water quality standards, including those established in the R2008-09 rulemaking.

The NPDES Permits for the Plants specifically cover discharges from the CSO outfalls listed below, which discharge upstream of or directly to the CAWS and are operated by the MWRD.³ Discharges from CSO outfalls that are not owned and operated by the MWRD, which are listed in the NPDES Permits issued to other entities, are not covered by this Amended Petition.

The O'Brien plant's point of discharge is the 001 Water Reclamation Plant Outfall and the receiving water is the North Shore Channel. In addition, the plant's Permit authorizes the following Combined Sewer discharges:

Discharge Number	Location	Receiving Water
101	Sheridan Road	North Shore Channel
102	Green Bay Road	North Shore Channel
103	Emerson Street	North Shore Channel
104	Lake Street	North Shore Channel
105	Howard Street	North Shore Channel
106	Morse Avenue	North Shore Channel
107	North Branch Pumping Station	North Branch of Chicago River
109	Rand Road	Des Plaines River
110	Niles Center Outlet Sewer – Oakton Street	North Shore Channel

³ The CSO outfall on North Creek is upstream of the CAWS. It is included in this TLWQS because it may contribute to exceedances of the applicable DO standards within the CAWS. CSOs that are located on the Des Plaines River and Addison Creek are listed here, since they are covered in the Permits, but they are not included in this Amended Petition, since they are not upstream of the CAWS.

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The Stickney plant's point of discharge is the 001 Water Reclamation Plant Main Outfall and the receiving water is the Chicago Sanitary and Ship Canal. In addition, the plant's Permit authorizes the following Combined Sewer discharges:⁴

Discharge Number	Location	Receiving Water
131	Devon Avenue	Des Plaines River
132	Northwest Tollway	Des Plaines River
133	Foster Avenue	Des Plaines River
134	North Avenue	Des Plaines River
135	Chicago Avenue	Des Plaines River
136	Roosevelt Road	Des Plaines River
142	38th and Racine Avenue	S. Fork of S. Branch of Chicago River
143	Laramie Avenue	Chicago San. and Ship Canal
144	Lombard Avenue	Chicago San. and Ship Canal
145	East Avenue	Chicago San. and Ship Canal
146	13A Pump Station	Chicago San. and Ship Canal
147	67th Street	Chicago San. and Ship Canal
148	75th Street	Chicago San. and Ship Canal
149	Tri-State Tollway	Chicago San. and Ship Canal
150	Westchester Pump Station	Addison Creek

⁴ The Permit also authorizes discharges, under specified circumstances, from emergency high level bypass Outfalls 002, 003 and 004.

The Calumet plant's point of discharge is the 001 Water Reclamation Plant Outfall and the receiving water is the Little Calumet River. In addition, the plant's Permit authorizes the following Combined Sewer discharges:⁵

Discharge Number	Location	Receiving Water
004	WRP TARP Bypass (Bulkheaded)	Little Calumet River
006	Calumet 18H Inverted Syphon	Calumet Sag Channel
007	Calumet 20B Interceptor	Calumet Sag Channel
010	Glenwood Pump Station	North Creek
151	94th Place	Calumet River
152	122nd Street Pump Station	Calumet River
153	Edbrook Avenue	Little Calumet River
154	Throop Street	Calumet Sag Channel
156	Francisco Avenue	Calumet Sag Channel
157	Central Park	Calumet Sag Channel
158	Pulaski Road	Calumet Sag Channel
160	Ridgeland Avenue	Calumet Sag Channel
163	Sacramento	Calumet Sag Channel

- 4) A map of the proposed watershed, water body, or waterbody segment to which the time-limited water quality standard will apply, including a written description of the watershed, water body, and/or waterbody segment including the associated segment code. 35 IAC 104.530(a)(4).**

The area affected by the MWRD's requested TLWQS is the CAWS, which includes each of the receiving waters which are identified below. A map of the CAWS, for which the TLWQS for DO is requested, is included as Exhibit B.

⁵ The Permit also authorizes discharges, under specified circumstances, from emergency high level bypass Outfalls 002 and 003.

The CAWS, as defined in the Board's completed 2008-009 rulemaking, consists of almost 100 miles of canals and waterways, including the following reaches: the Chicago River, a portion of the North Branch of the Chicago River, the South Branch of the Chicago River, the Chicago Sanitary and Ship Canal, the Cal-Sag Channel, the Grand Calumet River, Lake Calumet, the Lake Calumet Connecting Channel, portions of the Calumet and Little Calumet Rivers, the North Shore Channel, and the South Fork of the South Branch of the Chicago river (Bubbly Creek).⁶

5) Designated uses of the waterbody or waterbody segment identified above. 35 IAC 104.530(a)(5).

35 IAC 303, Subparts B and C define the designated uses of the CAWS. Specifically, the designated aquatic life uses for the CAWS (which are the relevant uses for purposes of the TLWQS) are provided in 35 IAC 303.235 and 303.240. Reaches that are not covered by any of those regulations are General Use waters. The Chicago River, which is included in the CAWS, is a General Use water, as is North Creek (discussed in footnote 3).

6) Identification, including any Board docket number, of any prior variances or time-limited water quality standards issued to the Petitioner, watershed, water body, waterbody segment, and if known, the petitioner's predecessors, concerning similar relief. 35 IAC 104.530(8).

There has been no variance or TLWQS issued to the MWRD concerning similar relief.

B. Activity of the MWRD

1) Identification, by name, of the permit holder and permit number of the permits held by dischargers which may be affected by the adoption of the time-limited water quality standard. 35 IAC 104.530(9).

The following Permits held by MWRD would be affected by the grant of the requested TLWQS:

⁶ The South Fork of the South Branch of the Chicago River, also known as Bubbly Creek, is not subject to the new DO standards. However, because Bubbly Creek is subject to a DO standard (in 35 IAC 302.405(a)), and discharges to Bubbly Creek can contribute to nonattainment of the DO standards for other reaches of the CAWS, discharges to Bubbly Creek are included in this Amended Petition.

O'Brien:

NPDES Permit No. IL0028088
Issue Date: July 6, 2017
Effective Date: August 1, 2017
Expiration Date: July 31, 2022

Stickney:

NPDES Permit No. IL0028053
Issue Date: December 23, 2013
Effective Date: January 1, 2014
Modification Date: July 6, 2017
Expiration Date: December 31, 2018

Calumet:

NPDES Permit No. IL0028061
Issue Date: July 6, 2017
Effective Date: August 1, 2017
Expiration Date: July 31, 2022

2) Identification and description of any process, activity, or source that contributes to a violation of a water quality standard, including the material used in that process or activity. 35 IAC 104.530(10).

The MWRD's CSO outfalls contribute to nonattainment of the DO water quality standards for the CAWS. The MWRD's CSO outfalls provide relief from local flooding during heavy wet weather events due to finite pumping and hydraulic capacity of the collection system and treatment plants; it is these CSO outfalls that require the relief sought by the Amended Petition. The discharges for each CSO Outfall are described in the respective permit applications and Permits attached as Exhibits C - H. In addition, Dr. Melching's report (referenced by David Zenz's Pre-filed Testimony, and included as part of Exhibit I), provides specific information with regard to DO in the CAWS.

As explained in more detail in Exhibit J, Supplemental Information Concerning MWRD Dissolved Oxygen Amended TLWQS Petition, while none of the reaches in the CAWS consistently attain the new water quality standard for DO, during and after wet-weather events, the DO levels can be significantly lower than the standards. Additionally, recent reductions in

the amount of water that the MWRD is allowed to divert from Lake Michigan into the CAWS, and further reductions that are expected to occur in the future, should only increase the frequency of DO nonattainment situations in the CAWS. Exhibit J, Sections I. and II.

The NPDES Permits, attached as Exhibits C, D and E, also provide details concerning MWRD's processes and authorized discharges. To be clear, the discharges from the O'Brien, Stickney, and Calumet Plants themselves are not intended to be covered by the requested TLWQS for DO; the Amended Petition relates only to discharges from the combined sewer overflow ("CSO") outfalls that are owned and operated by the MWRD, identified above in Part I.A.3.⁷

3) Description and copy of all Pollutant Minimization Programs that are relevant to the relief requested and are currently being implemented or were implemented in the past. 35 IAC 104.530(11).

Each of the MWRD Plants' NPDES Permits includes conditions applicable to the CSO discharges that are the subject of this Amended Petition. As explained in more detail in Exhibit J, in Sections III. and IV., CSO discharges are subject to technology-based requirements that apply under Sections 301(b) and 306 of the CWA are, at a minimum, the Nine Minimum Controls (NMC), as specified in the U.S. EPA's Combined Sewer Overflow (CSO) Control Policy and associated NMC guidance. 59 Fed. Reg. 18,688 (Apr. 19, 1994); Combined Sewer Overflows, Guidance for Nine Minimum Controls, U.S. EPA Office of Water (May 1995). The permitting authority is required to include all such technology-based requirements in permits for discharges from CSOs, which IEPA : The MWRD is already required to meet all such requirements, including the NMC, under the terms of the O'Brien, Stickney and Calumet Permits. Moreover, the Consent Decree between U.S. EPA, IEPA, and the MWRD (Exhibit L) specifies additional NMC-related requirements.

⁷ This scope is consistent with the USEPA letter that is attached as Exhibit K.

In addition, the MWRD is implementing major construction projects to minimize the occurrence of CSO events. The Consent Decree (Exhibit L) also specifies detailed plans and the MWRD's obligations regarding the Tunnel and Reservoir Plan (TARP), under which the MWRD is implementing measures to control CSO discharges that are contributing to low DO, but those measures are not yet complete. The TARP system will not be complete until 2029, and its effectiveness will not be determined for several years after that point. More information regarding the TARP is available in Exhibit J, in Section III.

To date, approximately \$3.8 billion has been spent on TARP, including about \$1.8 billion in MWRD funds. The completion of TARP, between 2018 and 2029, is expected to cost about \$48 million, of which about \$13 million will be borne by the MWRD. In addition, modified operation of the aeration stations during the TLWQS period is estimated to result in additional operation and maintenance costs of at least \$300,000 per year. Habitat improvement projects (discussed later in this Petition) have received funding from the MWRD of \$500,000. Nevertheless, these interim measures will not result in consistent attainment of the new DO standards. Even installation of 28 new aeration stations and 3 new aerated flow augmentation stations (evaluated as an option below), which would carry a total cost of over \$650 million, would not result in attainment on a consistent basis.

C. Compliance with the Regulation Cannot Be Achieved by the Compliance Date

- 1) Data describing the nature and extent of the present or anticipated failure to meet the water quality standards and facts that support Petitioner's argument that compliance with the water quality standards regulation cannot be achieved by any required compliance date. 35 IAC 104.530(a)(6).**

In the CAWS rulemaking, data and analysis were presented to the Board demonstrating that the various reaches of the CAWS do not and cannot meet the new DO standards for five years or longer. Information has also been presented concerning the extraordinary measures that would be needed to move the reaches closer to attainment in the immediate future. *See* Pre-Filed

Testimony of Dr. David R. Zenz – Cost Estimates to Meet Proposed Dissolved Oxygen Water Quality Standards for the Chicago Area Waterway System attached hereto as Exhibit I. Included with that testimony is a Technical Report submitted by Charles S. Melching, Ph.D., P.E., entitled: *Development of Integrated Strategies to Meet Proposed Dissolved Oxygen Standards for the Chicago Waterway System*.

Dr. Zenz concludes that the total present worth cost for the MWRD to attempt to bring the CAWS reaches into attainment of the new DO standards is approximately \$669,900,000. Such costs include the addition of 28 supplementary aeration stations and 3 proposed aerated flow augmentation stations, plus additional operating hours for pumps at existing Sidestream Elevated Pool Aeration (SEPA) stations. This high figure would place a very large burden on the MWRD, and on the taxpayers in Cook County who would ultimately bear the cost through tax increases. Moreover, it is not likely that this costly program would actually result in consistent attainment of the DO standards. It would also take years to install the needed equipment and put it into operation, so that is another reason why compliance in the next few years is clearly not possible. Also, it is important to note that during the period in which that equipment would be designed, installed and brought on-line, the MWRD would be moving forward to complete TARP (at a remaining cost of about \$48 million, \$13 million of which will be borne by the MWRD), which is expected to significantly reduce wet-weather discharges to the CAWS and therefore assist in bringing the CAWS reaches closer to attainment of the new DO standards. Installation of new aeration stations and aerated flow augmentation facilities would be duplicative and a wasteful use of public resources.

2) Demonstration that attainment of the designated use(s) and criteria are not feasible throughout the term of the time-limited water quality standard because at least one factor, as described by 35 IAC 104.560(a), exists. 35 IAC 104.530(7).

As stated in Part I.C.1, above, compliance with the new DO standards within the next several years is simply not feasible. The information provided by Dr. Zenz and Dr. Melching

supports this finding, and shows that the measures needed to move the CAWS reaches in the direction of compliance – 28 new aeration stations and 3 new aerated flow augmentation stations – would carry extraordinary costs, take at least 8.5 years to complete, and still not provide for consistent attainment under all conditions. Exhibit J, Section III.

- a. Human caused conditions or sources of pollution prevent the attainment of the designated use and cannot be remedied or would cause more environmental damage to correct than to leave in place. 35 IAC 104.560(a)(3).

The existence of the CSO outfalls is a human-caused condition, and it cannot be remedied for the term of the TLWQS. The CSO outfalls exist because during wet weather events, the MWRD's system simply does not have the capacity to address these waters and water flow in the MWRD's combined system that is beyond the storage capacity of the system has to be discharged through the CSO outfalls. Massive flooding of streets and basements, plus severe damage to the sewer system, would result if the CSO outfalls did not exist. Therefore, elimination of the outfalls is not possible. .

The MWRD's ongoing implementation of TARP will add additional storage capacity to the system. If CSOs were immediately eliminated, before completion of the remaining TARP projects, wet weather flows will have nowhere to go, necessarily causing extensive flooding of streams and streets, sewage backups in buildings and homes, and potential damage and overflows throughout the combined sewer system. The extent of the potential damage to public infrastructure and other public and private property would substantially exceed the annual value of the benefits anticipated from the remaining phases of TARP projects. In addition to widespread property damage, the potential adverse health effects of having diluted sewage backing up into so many buildings and homes include risks of electrocution, disease, and mold.

As to the noncompliance with the DO criteria that results from CSO discharges, that is also a human-caused condition that cannot be remedied. Over the long term, MWRD will reduce CSO discharges through completion and implementation of the TARP.

Exhibit J, in Section III., discusses in greater detail the capacity needed in the MWRD system that will be added by the TARP.

It should also be noted that there are other sources that are relevant to attainment of the new DO standards, including 167 CSO outfalls that are operated by the City of Chicago, 49 CSO outfalls that are operated by various suburban communities, permitted discharges from municipal separate storm sewer systems (MS4s) operated by area communities, tributaries (such as the Grand Calumet River and the Upper North Branch of the Chicago River), and other sources in the pertinent reaches of the CAWS. These sources are not covered by the MWRD's Permits. Each of these sources is also considered a human-caused condition. It is expected that contributions from some of these sources will be reduced as the MWRD implements the remaining elements of TARP but, as noted above, it is not expected that the proposed DO standards would be met consistently under all conditions.

- b. Controls more stringent than those required by CWA Sections 301(b) and 306 would result in substantial and widespread economic and social impact. 35 IAC 104.560(a)(6).

Compliance with the new DO standards within the next several years is not possible, and efforts to move in that direction would impose substantial and widespread economic and social impact in the areas served by the MWRD.

As noted in Part I.C.2.a., above, elimination of CSOs in the near term, before completion of the remaining TARP projects, will result in sewer flows having nowhere else to go, necessarily causing extensive flooding of streams and streets, sewage backups in buildings and homes, and potential damage and overflows throughout the combined sewer system. The extent of the potential damage to public infrastructure and other public and private property would substantially exceed the annual value of the benefits anticipated from the remaining phases of TARP projects. In addition to widespread property damage, the potential adverse health effects

of having diluted sewage backing up into so many buildings and homes include risks of electrocution, disease, and mold.

Moreover, to install additional aeration stations and aerated flow augmentation stations is very expensive and still unlikely to make the CAWS compliant with water quality standards for DO, according to the expert testimony of Dr. Melching. In sum, it would be a substantial hardship to require the MWRD and its customers to spend over \$650 million to try to comply with the new DO water quality standards, especially when all of the available evidence indicates that such expenditures would still not achieve consistent compliance under all conditions, and that major investments are being made in other projects (*e.g.*, TARP) that will help address the DO issue.⁸

D. Proposed Highest Attainable Condition of the Watershed

Identification of the proposed highest attainable condition of the watershed, water body, or waterbody segment identified, expressed as set forth in 35 IAC 104.565(d)(4), including projected changes in the highest attainable condition throughout the proposed term of the time-limited water quality standard. 35 IAC 104.530(12).

35 IAC 104.565(d)(4) requires the MWRD, as a single discharger seeking a TLWQS where there is no feasible DO control technology that can be identified [to meet the current water quality standard], to state “the highest attainable condition of the waterbody or water segment as a quantifiable expression of ... the interim criterion or interim effluent condition that reflects the greatest pollutant reduction achievable with the pollutant control technologies installed at the time the Board adopts the [TLWQS], and the adoption and implementation of a Pollutant Minimization Plan.” Accordingly, the effluent condition reflecting the greatest pollution reduction achievable is the effluent condition authorized by the existing NPDES Permits that

⁸ In addition, it should be noted that MWRD is operating disinfection facilities at the Calumet and O’Brien facilities, resulting in over \$95 million in capital costs and an estimated \$5.6 million in annual operation and maintenance costs. Also, MWRD will be incurring substantial costs to achieve phosphorus effluent limits at its O’Brien, Calumet and Stickney WRPs.

address the MWRD's CSO outfalls, and conditions of the Consent Decree, as discussed in Part I.B.3.

Additionally, the Amended Petition contains a series of conditions and interim measures (Part I.E.1) that will apply to MWRD during the term of the TLWQS, which will help minimize DO nonattainment and reduce any possible impacts from the nonattainment. These actions may not achieve total compliance with the new DO water quality standards, but they should reduce the number of times that the standards will not be attained. As the interim measures are implemented, MWRD will analyze the data it collects from such actions and make modifications and adjustments in an effort to improve DO levels in the CAWS. In addition, such data will support MWRD's likely request for issuance of another, revised TLWQS after the 5 year term being requested here.

E. Proposed TLWQS Terms and Suggested Conditions

1) Demonstration of the pollutant control activities proposed to achieve the highest attainable condition, including those activities identified through a Pollutant Minimization Program. 35 IAC 104.530(13).

In addition to continued compliance with existing conditions imposed on the MWRD's CSO outfall discharges by the current NPDES Permits, the MWRD will implement interim measures to improve DO levels in the CAWS while long-term solutions, such as TARP, are being completed. Such measures include:

O'Brien:

-) As part of the plan to make progress toward attainment of the long-term designated use goals, the MWRD has been working with other stakeholders to assess possible habitat improvement projects. The MWRD provided funding of \$500,000 toward implementation of habitat improvement projects in the CAWS through the Chi-Cal Rivers Fund. (This agreement is attached as Exhibit M.) This funding was leveraged with funding from other parties that contributed to these projects.
-) Under the TLWQS, existing aeration stations at Devon and Webster will be operated in operable periods. For this purpose, "operable" periods shall not include 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 in order for the CAWS to meet the new DO water quality standards.

-) No other DO-related control requirements will apply to the CSOs covered in the O'Brien Plant permit during the term of the TLWQS. (This is not intended to refer to the control of any nutrients, including nitrogen and phosphorus, discharged from the Plant.) Any water quality-related requirements applicable to CSO discharges in the permit that accompanies this TLWQS are subject to this condition.
-) Continuous monitoring of DO will be done at the following continuous dissolved oxygen monitoring (CDOM) stations: Foster Avenue and Church Street on the North Shore Channel; and Addison Street and Division Street on the North Branch Chicago River.
-) A report on DO results will be submitted by the MWRD each year, summarizing the prior year's data.
-) In accordance with the Consent Decree (Exhibit L) concerning TARP between U.S. EPA, IEPA and the MWRD, Stage 1 and 2 of the McCook Reservoir are required to be completed by December 31, 2017 (which has been accomplished) and December 31, 2029, respectively.
-) Pursuant to the Consent Decree, the MWRD is required to verify the operational plan and commence full operation of Stage 1 of the McCook reservoir no later than one year after Stage 1 is placed into operation. During the 24-month period after Stage 1 of the McCook reservoir has commenced full operation, the MWRD will evaluate the DO impacts of the McCook operation, and will submit a report to IEPA 6 months after the completion of that 24-month study period.
-) The report will provide conclusions regarding expected nonattainment rate of the new DO standard with Stage 1 of McCook in full operation, analyzing wet weather events and dry weather time periods (assuming continued operation of aeration stations whenever operable).
-) The report will incorporate an assessment of the impacts on DO standards attainment due to reductions in the State's discretionary diversion allocation.
-) The report will include an assessment of feasible options to further increase DO levels in the North Shore Channel and other relevant reaches of the CAWS. This assessment will include, as appropriate, consideration of non-TARP measures such as green infrastructure to reduce CSO discharges and DO violations resulting from CSO discharges.
-) The results of the report will be considered in determining whether a TLWQS will be issued to accompany the next permit that is issued after submittal of the report, and will be included in any MWRD petition requesting a TLWQS for any subsequent permit. Such a TLWQS, if issued, would incorporate the results of the report, specifying the expected nonattainment rate of the new DO standard during the TLWQS term, requiring continued operation of the aeration stations whenever operable, considering the feasibility of taking other steps to address low DO in the North Shore Channel, and specifying that no other DO-related control requirements applicable to CSO discharges would be imposed during the term of the TLWQS except such steps as are found by the MWRD or the Board to be feasible and appropriate given the goals of the Clean Water Act.

-) The same procedure will be followed for completion of Stage 2 of the McCook reservoir, but given its completion date, such issues will be addressed in a subsequent permit and TLWQS for the O'Brien Plant and related CSO Outfalls.

Stickney:

-) As part of the plan to make progress toward attainment of the long-term designated use goals, the MWRD has been working with other stakeholders to assess possible habitat improvement projects. The MWRD provided funding of \$500,000 toward implementation of habitat improvement projects in the CAWS through the Chi-Cal Rivers Fund. This agreement is attached as Exhibit M.) This funding was leveraged with funding from other parties that contributed to these projects.
-) No other DO-related control requirements will apply to the CSOs covered in the Stickney Plant permit during the term of the TLWQS. (This is not intended to refer to the control of any nutrients, including nitrogen and phosphorus, discharged from the Plants.) Any water quality-related requirements applicable to CSO discharges in the permit that accompanies this TLWQS are subject to this condition.
-) Continuous monitoring of DO will be done at the following continuous dissolved oxygen monitoring (CDOM) stations: Cicero Avenue, B&O Railroad, and Lockport on the Chicago Sanitary and Ship Canal.
-) A report on DO results will be submitted by the MWRD each year, summarizing the prior year's data.
-) Stage 1 of the McCook reservoir is required to be completed by December 31, 2017. (This has been accomplished.)
-) Stage 2 of the McCook reservoir is required to be completed by December 31, 2029.
-) Pursuant to the Consent Decree (Exhibit L), the MWRD will verify the operational plan and commence full operation of Stage 1 of the McCook reservoir no later than one year after Stage 1 is placed into operation. During the 24-month period after Stage 1 of the McCook reservoir has commenced full operation, the MWRD will evaluate the DO impacts of the McCook operation, and will submit a report to IEPA 6 months after the completion of that 24-month study period.
-) The report will provide conclusions regarding expected nonattainment rate of the new DO standard with Stage 1 of McCook in full operation, analyzing wet weather events and dry weather time periods
-) The report will incorporate an assessment of the impacts on DO standards attainment due to reductions in the State's discretionary diversion allocation.
-) The report will include an assessment of feasible options to further increase DO levels in the relevant reaches of the CAWS. This assessment will include, as appropriate, consideration of non-TARP measures such as green infrastructure to reduce CSO discharges and DO violations resulting from CSO discharges.

- J The results of the report will be considered in determining whether a TLWQS will be issued to accompany the next permit that is issued after submittal of the report, and will be included in any MWRD petition requesting a TLWQS for any subsequent permit. Such a TLWQS, if issued, would incorporate the results of the report, specifying the expected nonattainment rate of the new DO standard during the TLWQS term, and specifying that no other DO-related control requirements applicable to CSO discharges would be imposed during the term of the TLWQS except such steps as are found by the MWRD or the Board to be feasible and appropriate given the goals of the Clean Water Act.
- J The same procedure will be followed for completion of Stage 2 of the McCook reservoir, but given its completion date, such issues will be addressed in a subsequent permit and TLWQS for the Stickney Plant and related CSO Outfalls.

Calumet:

- J As part of the plan to make progress toward attainment of the long-term designated use goals, the MWRD has been working with other stakeholders to assess possible habitat improvement projects. The MWRD provided funding of \$500,000 toward implementation of habitat improvement projects in the CAWS through the Chi-Cal Rivers Fund. This agreement is attached as Exhibit M.) This funding was leveraged with funding from other parties that contributed to these projects.
- J Under the TLWQS, existing SEPA stations 3, 4 and 5 will be operated in operable periods. (Existing SEPA stations 1 and 2, which are located in areas with already high DO levels and/or are not effective in increasing DO levels, will continue to be operated with one pump in operable periods) For this purpose, “operable” periods shall not include 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 in order for the CAWS to meet the new DO water quality standards.
- J No other DO-related control requirements will apply to the CSOs covered in the Calumet Plant permit during the term of the TLWQS. (This is not intended to refer to the control of any nutrients, including nitrogen and phosphorus, discharged from the Plants.) Any water quality-related requirements applicable to CSO discharges in the permit that accompanies this TLWQS are subject to this condition.
- J Continuous monitoring of DO will be done at the following continuous dissolved oxygen monitoring (CDOM) stations: C&W Indiana RR and Halsted Street on the Little Calumet River, and Route 83 on the Cal-Sag Channel.
- J A report on DO results will be submitted by the MWRD each year, summarizing the prior year’s data.
- J The Thornton Composite Reservoir came on-line December 31, 2015.
- J Pursuant to the Consent Decree (Exhibit L), the MWRD will verify the operational plan and commence full operation of the Thornton reservoir no later than one year after the reservoir is placed into operation. (This has been accomplished.) During the 24-month period after the

Thornton reservoir has commenced full operation, the MWRD will evaluate the DO impacts of the Thornton operation, and will submit a report to IEPA 6 months after the completion of that 24-month study period.

-) The report will provide conclusions regarding expected nonattainment rate of the new DO standard with Thornton in full operation, analyzing wet weather events and dry weather time periods (assuming continued operation of SEPA stations whenever operable).
-) The report will incorporate an assessment of the impacts on DO standards attainment due to reductions in the State's discretionary diversion allocation.
-) The report will include an assessment of feasible options to further increase DO levels in the relevant reaches of the CAWS. This assessment will include, as appropriate, consideration of non-TARP measures such as green infrastructure to reduce CSO discharges and DO violations resulting from CSO discharges.
-) The results of the report will be considered in determining whether a TLWQS will be issued to accompany the next permit that is issued after submittal of the report, and will be included in any MWRD petition requesting a TLWQS for any subsequent permit. Such a TLWQS, if issued, would incorporate the results of the report, specifying the expected nonattainment rate of the new DO standard during the TLWQS term, requiring continued operation of the aeration stations whenever operable, and specifying that no other DO-related control requirements applicable to CSO discharges would apply during the term of the TLWQS except such steps as are found by the MWRD or the Board to be feasible and appropriate given the goals of the Clean Water Act.

While these interim measures may not achieve total compliance with the new DO water quality standards, these actions should reduce the number of times that the standards will not be attained. As the interim measures are implemented, MWRD will analyze the data it collects from such actions and make modifications and adjustments in an effort to improve DO levels in the CAWS. In addition, such data will support MWRD's likely request for another, revised TLWQS after the 5 year term being requested here.

Further actions and milestones with respect to TARP set forth in the Consent Decree among MWRD, IEPA and USEPA (Exhibit L), that may be used to minimize and monitor DO discharges to the CAWS resulting from the CSO outfalls that are the subject of this Amended Petition include:

-) The Thornton Composite Reservoir for the Calumet TARP System must commence full operation no later than one year after it was placed into operation on December 31, 2015, or by December 31, 2016 (Consent Decree, para. 16). (This has been accomplished.)

-) A final post construction monitoring report for the Calumet TARP System will be submitted by MWRD by June 30, 2019.
-) Stage 1 of the McCook Reservoir for the Mainstream/Lower Des Plaines TARP System must be placed into operation no later than December 31, 2017 (which has been accomplished), and will commence full operation no later than December 31, 2018 (Consent Decree, para 17).
-) Stage 2 of the McCook Reservoir for the Mainstream/Lower Des Plaines TARP System will be placed into operation no later than December 31, 2029, and will commence full operation no later than December 31, 2030.
-) A post construction monitoring plan for the Mainstream/Lower Des Plaines TARP System will be submitted for approval by January 6, 2019 and a final report will be submitted by the MWRD within six months of the end of the monitoring period specified in the approved plan.

2) The proposed term of the time-limited water quality standard and justification that it is only as long as necessary to achieve the highest attainable condition, which includes a description of the relationship between the proposed pollution control activities and the proposed term. 35 IAC 104.530(14).

The MWRD has requested a term of five years for the TLWQS. As shown in this Amended Petition, it is not possible during this time to attain consistent compliance with the DO standards in the CAWS. In fact, the attainment issues will continue over a much longer time period, so it is likely that the MWRD will need TLWQS coverage for longer than five years. However, the terms of the TLWQS beyond the initial five year period will likely be different than for the initial TLWQS because TARP completion and other developments will change the DO attainment situation in the CAWS with respect to the CSO outfalls, and therefore likely modify the extent to which application of the TLWQS terms will be needed. Therefore, the MWRD is asking for a five-year term for this TLWQS, and expects to apply for a revised TLWQS before the term of this initial TLWQS is completed.

In this Amended Petition, as allowed by 35 IAC 104.565(d)(7), the MWRD expects that the minimum time needed to achieve the highest attainable condition of the CAWS for DO is at least five years. As stated above, the expected time period during which a TLWQS will be needed is longer - through December 31, 2029. This 2029 timeframe is supported by the

implementation schedule of the TARP as approved in the Consent Decree between U.S. EPA, IEPA, and the MWRD (Exhibit L). This time frame would be needed to ensure that the maximum capacity to be added to the MWRD's system would be effective in a manner that may eliminate most, if not all, CSO events that result in CSO discharges controlled by the MWRD to the CAWS.

- 3) If the proposed term is longer than five years, a proposed reevaluation schedule to reevaluate the highest attainable condition during the term of the time-limited water quality standard, pursuant to 35 IAC 104.580. 35 IAC 104.530(15).**

The proposed term of the TLWQS is not longer than five years, so this provision does not apply to this Amended Petition.

- 4) A demonstration to assure that the proposed highest attainable condition does not conflict with the attainment of downstream water quality standard for the pollutant or parameter for which the time-limited water quality standard is sought. 35 IAC 104.530(17).**

The proposed highest attainable condition would not conflict with the attainment of downstream water quality standards for dissolved oxygen. Due to the TARP actions and interim DO-related measures described in this Amended Petition, it is expected that the CSO discharges that are the subject of the Amended Petition should decrease over the term of the TLWQS. Of course, the occurrence of weather events that lead to CSO discharges remains beyond the control of Petitioners. Nonetheless, the series of TARP conditions and interim measures that will apply during the term of the TLWQS will help to minimize DO nonattainment and reduce any possible impacts from the nonattainment, including in downstream areas not covered by the Amended Petition. Further, any downstream impacts are expected to be significantly less than impacts in the CAWS, due to attenuation and dilution effects.

F. Citation to Supporting Documents or Legal Authorities

Any other documentation necessary to support the Petitioner's demonstration as specified in 35 IAC 104.560 (and used in Chapter 3). 35 IAC 104.530(16).

Relevant portions of supporting documents and legal authorities are cited throughout this document, with Exhibit numbers, and are appended.

- A. Report Of Metropolitan Water Reclamation District Of Greater Chicago And Environmental Groups Regarding Proposed Aquatic Life Designated Uses
- B. Map of CAWS with CSO Outfalls and Impacted Segments
- C. NPDES Permit No. IL0028088 (Northside/O'Brien)
- D. NPDES Permit No. IL0028053 (Stickney)
- E. NPDES Permit No. IL0028061 (Calumet)
- F. Application for Renewal of NPDES Permit No. IL0028088
- G. Application for Renewal of NPDES Permit No. IL0028053
- H. Application for Renewal of NPDES Permit No. IL0028061
- I. Pre-Filed Testimony of Dr. David R. Zenz, Dissolved Oxygen Enhancement Studies (incorporating report of Dr. Melching)
- J. Supplemental Information Document
- K. Letter from Tinka Hyde, Director, Water Division, U.S. EPA Region V, to David St. Pierre, Executive Director, Metropolitan Water Reclamation District of Greater Chicago (Jun. 26, 2012).
- L. Consent Decree, filed in United States, et al. v. Metropolitan Water Reclamation District of Greater Chicago (N.D. Ill. 2011), No. 11-C-8859
- M. Letter and Intergovernmental Agreement between State of Illinois, Department of Natural Resources and The Metropolitan Water Reclamation District of Greater Chicago, IGA Number MWRD-1301
- N. Response to Comments from Environmental Groups and USEPA

II. 40 C.F.R. § 131.14 REQUIREMENTS

Pursuant to 35 IAC 104.545, the Board must determine whether the Amended Petition meets the requirements of 35 IAC 104.530. It must also determine the Amended Petition's compliance with 40 C.F.R. 131.14. The demonstrations required by a discharger under 40 C.F.R. § 131.14 are found in 40 C.F.R. § 131.14(b). As an overall matter, MWRD is satisfying

the Federal requirements by complying with the requirements set forth in the Board's TLWQS regulations, since those Board regulations were specifically designed to satisfy the EPA requirements in 40 CFR 131. 14. In addition, in this Part of the Amended Petition, the MWRD, seeking an individual TLWQS, describes how Part I of the Amended Petition satisfies the specific requirements of 40 C.F.R. § 131.14. It should be noted that Exhibit J to this Amended Petition (Supplemental Information Concerning MWRD Dissolved Oxygen Amended TLWQS Petition), which is referenced in Part I, contains additional detailed information that addresses certain requirements of the federal regulation. Exhibit J provides information on the documentation of nonattainment, justification of the existence of a human-caused condition, confirmation that technology-based limits are insufficient to result in attainment, documentation to justify the five-year term of the TLWQS, demonstration of the highest attainable condition, and confirmation that the TLWQS requirements will be enforceable. On the basis of the information provided in the Amended Petition, including Exhibit J, the TLWQS meets the requirements of 40 C.F.R. § 131.14.⁹

A. Identification of the pollutant(s) or water quality parameter(s), and the water body/waterbody segment(s) to which the WQS variance applies. Discharger(s)-specific WQS variances must also identify the permittee(s) subject to the WQS variance. 40 C.F.R. § 131.14(b)(1)(i).

Part I.A. provides this requested information.

B. The requirements that apply throughout the term of the WQS variance. The requirements shall represent the highest attainable condition of the water body or waterbody segment applicable throughout the term of the WQS variance based on the documentation required in [40 C.F.R. § 131.14(b)(2)]. The requirements shall not result in any lowering of the currently attained ambient water quality, unless a WQS variance is necessary for restoration activities.... The State must specify the highest attainable condition of the water body or waterbody segment as a quantifiable expression that is one of the following: (A) For discharger(s)-specific WQS variances: ...(3) If no additional feasible pollutant control technology can be identified, the interim criterion or interim effluent condition that reflects the greatest pollutant reduction achievable

⁹ Additional information concerning compliance with applicable Federal and State requirements is contained in Appendix N, which provides detailed responses to comments filed by environmental groups and USEPA on the initial petition that was filed by the MWRD in this matter.

with the pollutant control technologies installed at the time the State adopts the WQS variance, and the adoption and implementation of a Pollutant Minimization Program. 40 C.F.R. § 131.14(b)(1)(ii).

Part I.E.1 provides the requirements that will apply throughout the term of the TLWQS. As demonstrated in Part I.D., these requirements represent the highest attainable condition of the CAWS and are the “greatest pollutant reduction achievable;” documentation of this is provided in Parts I.C.1-2. and Parts I.E.1-3. The requested TLWQS shall not result in any lowering of the currently attained ambient water quality, as the interim conditions proposed in the Amended Petition are expected to result in continued reductions in CSO discharges to the CAWS. Finally, the interim effluent condition is described in Part I.D.

C. A statement providing that the requirements of the WQS variance are either the highest attainable condition identified at the time of the adoption of the WQS variance, or the highest attainable condition later identified during any reevaluation consistent with paragraph (b)(1)(v) of this section, whichever is more stringent. 40 C.F.R. § 131.14(b)(1)(iii).

As discussed in Part I.D., the TLWQS as requested, including the conditions contained in Part I.E.1, will ensure the highest attainable condition for the CAWS at the time the TLWQS is adopted. As this is the initial TLWQS, and not a reevaluation of the TLWQS, there are no more stringent conditions that apply.

D. The term of the WQS variance, expressed as an interval of time from the date of EPA approval or a specific date. The term of the WQS variance must only be as long as necessary to achieve the highest attainable condition and consistent with the demonstration provided in paragraph (b)(2) of this section. The State may adopt a subsequent WQS variance consistent with this section. 40 C.F.R. § 131.14(b)(1)(iv).

Parts I.E.2 responds to this requirement.

E. For a WQS variance with a term greater than five years, a specified frequency to reevaluate the highest attainable condition using all existing and readily available information and a provision specifying how the State intends to obtain public input on the reevaluation. Such reevaluations must occur no less frequently than every five years after EPA approval of the WQS variance and the results of such reevaluation must be submitted to EPA within 30 days of completion of the reevaluation. 40 C.F.R. § 131.14(b)(1)(v).

Not applicable.

- F. A provision that the WQS variance will no longer be the applicable water quality standard for purposes of the Act if the State does not conduct a reevaluation consistent with the frequency specified in the WQS variance or the results are not submitted to EPA as required by (b)(1)(v) of this section. 40 C.F.R. § 131.14(b)(1)(vi).**

Not applicable.

- G. Supporting documentation ...demonstrating the need for a WQS variance. 40 C.F.R. § 131.14(b)(2)(i).**

The requested TLWQS is to “a use specified in section 101(a)(2) of the Act or a sub-category of such a use[.]” *Id.* The MWRD explains how several of the factors listed in 40 C.F.R. § 131.10(g) (and 35 IAC 104.560(a)) is met in Part I.C.2, which shows that attaining the designated use and criterion is not feasible throughout the term of the TLWQS.

- H. Supporting documentation ...demonstrating that the term of the WQS variance is only as long as necessary to achieve the highest attainable condition. Such documentation must justify the term of the WQS variance by describing the pollutant control activities to achieve the highest attainable condition, including those activities identified through a Pollutant Minimization Program, which serve as milestones for the WQS variance. 40 C.F.R. § 131.14(b)(2)(ii).**

Part I.E.2 addresses this requirement.

III. ADDITIONAL INFORMATION SOUGHT BY THE BOARD

In addition to specific items that the Board ordered to be incorporated into the Amended Petition in its June 22, 2017 Order (PCB 16-028), the order also sought “an annotated map that identifies outfall and impacted segments to which the TLWQS would apply” and a clarification of “whether non-CSO WRP discharges from O’Brien, Stickney and Calumet plants should be covered by the requested TLWQS. The requested map is included as Exhibit B. The Amended Petition clarifies in several places that the requested TLWQS applies only to discharges from CSO outfalls.

Finally, , the Board’s order also seeks “limitations and requirements necessary to implement the TLWQS” pursuant to 40 C.F.R. § 131.14(c). The MWRD believes that Parts.

I.E.1-4, above, provide the best source for potential limitations that would be included in a TLWQS issued as a result of this Amended Petition. Additional relevant information that the Board may consider, regarding existing Permits, TARP implementation activities, and locations of discharge points, is located in Parts I.A-B.

IV. REQUEST FOR HEARING

Finally, the MWRD requests that a hearing be held in this matter.

Dated: July 26, 2018

**METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO**

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One of Its Attorneys

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