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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 26 2012

REPLY TO THE ATTENTION OF:

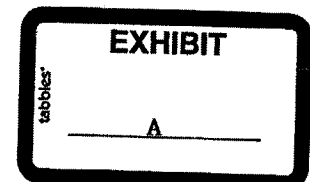
WQ-16J

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

Dear Mr. St. Pierre:

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

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



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

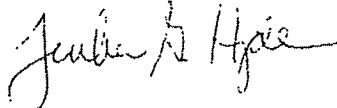
In describing the proposed variance, MWRD offered terms and conditions to be included in its three NPDES permits listed above that include continual DO monitoring plans and will ensure completion of TARP in accordance with the schedule set forth in the lodged consent decree. These terms and conditions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

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

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Tinka G. Hyde".

Tinka G. Hyde
Director, Water Division

cc: Marcia Willhite, Illinois EPA