

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 ENVIROMENTAL PROTECTION
AGENCY,

Respondent.)

NOTICE OF FILING

To: Don Brown, Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
Via Electronic Mail
(SEE PERSONS ON ATTACHMENT)

Brad Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
Via Electronic Mail

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Pollution Control Board ILLINOIS EPA's POST HEARING COMMENTS, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

Dated: September 30, 2020
1021 North Grand Avenue East
PO Box 19276
Springfield, Illinois 62794

By: /s/ Stefanie N. Diers
Stefanie N. Diers
Assistant Counsel
Division of Legal Counsel

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ILLINOIS EPA'S POST HEARING COMMENTS

NOW COMES the Illinois Environmental Protection Agency (Illinois EPA or Agency), by and through one of its attorneys, provides its post hearing comments for a Dissolved Oxygen Time-Limited Water Quality Standard (TLWQS). The Agency states as follows:

- 1) This proceeding involves the MWRD requests of for a TLWQS for those Combined Sewer Overflows (CSO) outfalls potentially impacting the Chicago Area Waterway System (CAWS), governed by National Pollutant Discharge Elimination System (NPDES) permits issued to its O'Brien, Calumet and Stickney Wastewater treatment plants in the CAWS.

2) Initially, in 2015, the Petitioner sought a variance from the recently adopted dissolved oxygen standard. (35 Ill. Adm. Code 302.405 (c) and (d))¹. The Board converted the petitioner to TLWQS petitions by operation of law in February 2017.

3) On June 22, 2017, the Board determined that the previously filed petition for a variance was not in substantial compliance with the requirements for TLWQS.

¹ The Amended Petition incorrectly cites to 35 Ill. Admin. Code 302.206 as the standard they are seeking a TLWQS from.

4) On April 12, 2017, the Board granted the Petitioner and any other potential member of the discharger classes 90 days from its Order to file an amended petition. At this time no other participants have come forward, so this will proceed as an individual TLWQS.

5) The amended petition in this TLWQS proceeding was filed on July 26, 2018. On March 28, 2019, the Board found the amended petition to be in substantial compliance. Therefore, the Agency's recommendation was due on May 13, 2019.

6) The Clean Water Act, and regulations adopted thereunder by United States Environmental Protection Agency (USEPA), allow for variances from a water quality standard for a limited period of time. *See* 40 CFR 131.14. A water quality standards variance is defined as a "time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the WQS variance." In Illinois, water quality standard variances are called TLWQS. 415 ILCS 5/3.488. USEPA will approve a water quality standard variance if a state can prove, among other things, that attaining the designated use and criterion are not feasible throughout the term of the water quality standard variance because of one of the factors listed in 40 C.F.R. 131.13(10)(g) (10(g) factors). 40 C.F.R.131.14(b)(2)(i)(A)(2)

7) In this proceeding, the Petitioner is asking for a TLWQS for dissolved oxygen for a 5-year time-period. Petitioner believes the requested five-year term is necessary and plans to take interim measures to address water quality and continue its evaluation of the issues and investigations of adequate solutions to address dissolved oxygen in the CAWS. Amended Petition, at 3. The Petitioner also notes that they may need to come back to the Board and ask for another TLWQS at the end of the five years because attainment issues will continue over a much longer time. Amended Petition, at 21. The terms of the TLWQS beyond the initial five-year period will

likely be different than the current one being sought because of improvements to TARP that will likely change dissolved oxygen attainment. TARP will not be completed until 2029. Petitioner expects to seek a revised TLWQS before the term of this TLWQS is completed. Id.

8) Petitioner asserts they cannot meet the dissolved oxygen water quality standard and it is not feasible because of two of the 10(g) factors:

Factor 3: Human cause 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.

Factor 6: Widespread economic and social impact would result from controls more stringent than those required by the CWA Section 301(b) and 306.

See, Amended Petition at 13-14; See 35 Ill. Adm. Code 104.560(a)(3), (6); 40 C.F.R. 131.10(g)(3) and (6).

9) During the term of the TLWQS, the Petitioner proposes the highest attainable condition is the effluent condition authorized by the existing NPDES permits that address MWRD's CSO outfalls and conditions of the 2011 Consent Decree. Amended Petition, at 16 and Petitioner's Exhibit L. Additionally, the Petitioner proposes a series of conditions and interim measures that will apply to MWRD during the term of the TLWQS, which will help minimize dissolved oxygen nonattainment and reduce any possible impacts from the nonattainment. Amended Petition, P. 16-21. As the interim measures are implemented, MWRD will analyze the data it collects from such actions and make modifications and adjustments to improve dissolved oxygen levels in the CAWS.

10) A hearing was held before the Board on August 4, 2020.

11) On August 14, 2020, the hearing officer ordered a briefing schedule with briefs due

by September 30, 2020. Reply briefs are due by November 13, 2020.

12) The Agency believes the Board should adopt the proposed dissolved oxygen TLWQS with conditions for the O'Brien and Stickney CSO discharges.

13) With respect to Calumet CSO discharges, the Agency agrees with USEPA and believes over the term of this TLWQS, MWRD should work to address the following:

- A) Whether, and to what extent, there will still be CSOs now that Thornton Reservoir is in full operation;
- B) If additional CSOs are expected, to what extent those CSOs will still be contributing to low dissolved oxygen levels;
- C) If additional CSOs are expected, the potential alternatives to reduce or eliminate the number of CSOs or to provide additional aeration to mitigate the effects of CSOs on dissolved oxygen;
- D) The feasibility of implementing each potential alternative; and
- E) What other conditions exist that contribute to low dissolved oxygen levels and what activities could be implemented to mitigate those conditions or otherwise improve aquatic life. See, USEPA September 2020 Letter filed with the IPCB.

14) The Agency has attached a list of the conditions in Attachment 1, it believes should be included if the Board grants the requested relief.

15) Only the outfalls that are in and upstream of the CAWS should be part of the relief requested by the Petitioner.

16) The Agency agrees with the Petitioners that attainment of the designated use and dissolved water quality standard is not feasible because of human caused conditions (Factor 3).

17) The Agency does not believe that the petition sufficiently makes the case for substantial and widespread negative economic and social impact on the public because it is lacking information on of the cost per user and whether it is affordable.

18) Only one factor is required, therefore, the petition has satisfied the requirement to

demonstrate that attainment of the designated use(s) and criteria are not feasible throughout the term of the TLWQS because of their Factor 3 analysis.

19) The highest attainable condition of a watershed must be specified as a quantifiable expression that is one of the following:

1) The highest attainable interim use and interim criterion; or

2) If no additional feasible pollutant control technology can be identified, the interim use and interim criterion that reflect the greatest pollutant reduction achievable with the pollutant control technologies installed at the time the Board adopts the time-limited water quality standard and with the adoption and implementation of a Pollutant Minimization Program.

35 Ill. Adm. Code 104.565(d)(4)(B).

20) The Agency believes the highest attainable condition in this case must be expressed as set forth in paragraph 2 above. This approach requires the Petitioners to identify the interim use and interim criterion that reflects the greatest reduction achievable with the currently installed technologies and the adoption and implementation of a pollutant minimization program. It is the Agency's belief that the petitioner has made its demonstration, for the CSOs impacted by the McCook and Thornton (consistent with paragraph 13) Reservoirs, under Section 104.560(c), including the petitioner's proposed highest attainable condition.

21) The Agency agrees with the petitioner that the highest attainable condition for the receiving streams are the continued use of TARP and the Implementation of the Pollutant Minimization Program that has been proposed with the addition of the language suggested by the Agency to require MWRD to analyze the data it collects from the interim measures that are implemented and make modifications and adjustment to improve DO levels in the CAWS.

22) The Agency supports the best management practice and pollution minimization programs suggested by the Petitioner in its Amended Petition along with the conditions

recommended by the Agency in Attachment 1.

23) The Agency agrees with the proposed 5-year term of the dissolved oxygen TLWQS. As noted in the Amended Petition, MWRD expects to apply for a revised TLWQS before the 5-year term expires, since the McCook Reservoir is not scheduled to be completed until 2029.

WHEREFORE, Illinois EPA respectfully requests the Board grant the TLWQS and adopt the language as proposed by the Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: /s/Stefanie N. Diers
Stefanie N. Diers
Assistant Counsel
Division of Legal Counsel

Date: September 30, 2020

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

ATTACHMENT 1: IEPA's Proposed Conditions to be included in a Dissolved Oxygen TLWQS

The Agency recommends that the Board grant Petitioners' requested time-limited water quality standard with the following conditions:

1. Conditions currently in the permits for Calumet, Stickney and O'Brien.
2. Suggested Conditions in the Amended Petition in Par I.E.1. (Amended Petition, P.16-20)
3. A requirement that MWRD will analyze the instream dissolved oxygen data and make modification and adjustments to improve DO levels in the CAWS
4. Follow actions and achieve milestones set forth in the Consent Decree detailed in Part I.E.1 of the Amended Petition. (Amended Petition, P. 20-21)

CERTIFICATE OF SERVICE

I, STEFANIE N. DIERS, Assistant Counsel for the Illinois EPA, herein certifies that she has served a copy of the foregoing NOTICE OF FILING and ILLINOIS EPA'S POST HEARING COMMENTS , upon persons listed on the Service List, by sending an email from my email account (Stefanie.diers@illinois.gov) to the email addresses designated below with the following attached as a PDF document in an e-mail transmission on or before 5:00 pm on September 30, 2020.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Stefanie Diers
Stefanie Diers
Assistant Counsel
Division of Legal Counsel

DATED: September 30, 2020

1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544

Service List

Don Brown, Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
Don.brown@illinois.gov

Brad Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
brad.halloran@illinois.gov

Albert Ettinger
53 W. Jackson
Suite 1664
Chicago, IL 60604
Ettinger.albet@gmail.com

Stacy Meyers
25 E. Washington Street
Suite 1650
Chicago, IL 60602
smeyers@openlands.org

Dave Pfeifer
USEPA Region V
Pfeifer.david@epa.org

Margaret Conway
100 E. Erie Street
Chicago, IL 60611
Margaret.conway@mwrdr.org

Fredric Andes
Barnes and Thornburg, LLP
One Wacker Drive
Suite 4400
Chicago, IL 60606
Fredric.andes@btlaw.com