



Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street
Chicago, IL 60611

Legislation Text

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TRANSMITTAL LETTER FOR BOARD MEETING OF JANUARY 19, 2017

COMMITTEE ON JUDICIARY

Mr. David St. Pierre, Executive Director

Authority to settle Natural Resources Defense Council, Inc. et al. v. Metropolitan Water Reclamation District of Greater Chicago, pending in the United States District Court, Northern District of Illinois, Case No. 11- CV- 2937 and Prairie Rivers Network, et al. v. Illinois Environmental Protection Agency, et al., PCB Case Nos. 14- 106, 14-107, and 14-108 pending before the Illinois Pollution Control Board, and to execute documents necessary to effectuate settlement

Dear Sir:

Natural Resources Defense Council, Inc., Sierra Club, Inc., and Prairie Rivers Network ("Plaintiffs") filed a Complaint against the Metropolitan Water Reclamation District of Greater Chicago ("District") in the United States District Court for the Northern District of Illinois under the Citizen Suit provisions of the Clean Water Act ("CWA") (the "Citizens' Suit"). The Complaint alleged that the District violated certain Illinois water quality standards, resulting in violations of the District's National Pollutant Discharge Elimination System (NPDES) permits for the Calumet, O'Brien, and Stickney Water Reclamation Plants ("WRPs"). In their Complaint, the Plaintiffs seek a permanent injunction, an order requiring the District to complete all actions necessary to comply with its permits and the CWA, an award of civil penalties of up to \$37,500.00 per day for each violation, and Plaintiffs' costs and attorneys' fees. The District denied that it violated either its permits or the CWA.

In addition to filing the Citizens' Suit, the Plaintiffs in that case along with the Environmental Law and Policy Center, Gulf Restoration Network and Friends of the Chicago River (the "Environmental Groups") appealed the Illinois Environmental Protection Agency's ("IEPA") 2013 issuance of NPDES permits for the District's Calumet, O'Brien and Stickney WRPs (the "NPDES Permit Appeals"). The NPDES Permit Appeals have been consolidated and are currently pending before the Illinois Pollution Control Board ("IPCB"). In these appeals, the Environmental Groups allege, among other things, that the 1.0 mg/L total phosphorus numeric effluent limit is not stringent enough to comply with the Illinois Environmental Protection Act and corresponding regulations. The District denied that the permits were not stringent enough to comply with those applicable laws.

In an effort to avoid the high cost of trial and risks presented by a judicial determination of liability on the complex environmental issues of first impression raised in the Citizens' Suit, the District has engaged in extensive settlement negotiations with the Environmental Groups. These negotiations have resulted in a proposed global resolution of both the Citizens' Suit and the NPDES Permit Appeals. In short, the District and the Environmental Groups have agreed that certain special conditions be added to the existing language of the NPDES permits issued by the IEPA in 2013. These additional special conditions are summarized as follows:

First Recommended Special Condition (XXX)

- The District will submit an application for a permit modification to IEPA that will include a nutrient implementation plan for the Chicago Area Waterways System ("CAWS").

- The implementation plan will be prepared by the Chicago Area Waterways Nutrient Oversight Committee (“NOC”). The NOC will consist of three members, one chosen by the District, one chosen by IEPA, and one chosen by the Environmental Groups.
- The NOC will select a consultant to study, develop, and prepare the implementation plan. It will be the District’s responsibility to pay the costs of the consultant’s work.
- The consultant’s implementation plan will depend upon the action taken by the Illinois Nutrient Science Advisory Committee, a group that was convened by the State of Illinois pursuant to the Illinois Nutrient Loss Reduction Strategy, as follows:
 - If the Illinois Nutrient Science Advisory Committee releases numeric nutrient criteria or targets applicable to the CAWS by December 31, 2018, the consultant will develop the implementation plan in two phases. In Phase One, the consultant will identify phosphorus input reductions or other measures reasonably calculated to meet the numeric nutrient criteria or targets applicable to the CAWS that are released by the Illinois Nutrient Science Advisory Committee. In Phase Two, the consultant will submit to the NOC by December 31, 2023, an implementation plan of the phosphorus input reduction or other measures that were identified in Phase One.
 - If the Illinois Nutrient Science Advisory Committee fails to release numeric nutrient criteria or targets applicable to the CAWS by December 31, 2018, the consultant will develop the implementation plan also in two phases. In Phase One, the consultant will identify any areas in the CAWS that have certain recurring conditions that indicate the presence of unnatural plant or algal growth. If these areas exist, the consultant will propose phosphorus input reductions or other measures to attempt to reduce or eliminate the conditions, considering the effects of both point and non-point source discharges. In Phase Two, the consultant will prepare and submit to the NOC by December 31, 2023, an implementation plan for the phosphorus input reduction or other measures to address the areas identified in Phase One.
- If the District does not object to the consultant’s implementation plan, the District will begin implementation of the consultant’s plan. If the District objects to the consultant’s plan, the District will develop an alternative plan, and will be required to proceed on the design phase only of the consultant’s implementation plan.
- If monitoring of the Lower Des Plaines or Illinois Rivers indicates the presence of unnatural plant or algal growth, the recommended new permit condition will provide that the District will participate in any watershed group that may be formed for that area.
- The District may participate in any trading program that may be developed by the State to satisfy the District’s phosphorus reduction permit obligations.
- The District retains its rights to contest or appeal the permit conditions and any findings by the Illinois Nutrient Science Advisory Committee and/or the selected consultant.
- The District will be responsible for covering the costs of installation, and the operation and maintenance of a monitoring gauge in the Des Plaines River near Joliet, Illinois that will provide continuous monitoring of certain agreed parameters such as DO and phosphorus for a period of four years.

Second Recommended Special Condition (YYY)

Beginning January 1, 2030, the District will be required to meet an effluent limit of 0.5 mg/L Total Phosphorus on an annual geometric mean basis, unless the District can demonstrate certain impediments to doing so, such as, the phosphorus limit is not technologically feasible, or would result in substantial economic impact, or could only be met by using phosphorus

reducing chemicals.

Third Recommended Special Condition (ZZZ)

Within 24 months of the effective date of the issuance of a modified permit, the District will prepare and submit to the IEPA a feasibility study that identifies the method, timeframe, and costs of reducing phosphorus limits in the District's discharge to a level consistently meeting a potential future effluent limit of 0.5mg/L, 0.3mg/L, and 0.1mg/L, using a range of treatment technologies. The District will bear the costs of the feasibility study.

If authority is granted, these proposed special conditions are part of two larger comprehensive Settlement Agreements that the Plaintiffs or the Environmental Groups, as applicable, and the District will execute.

In the Settlement Agreement for the Citizens Suit, the District agrees to pay One Million Seven Hundred and Sixty Two Thousand Six Hundred and fifty One and 95/100s Dollars (\$1,762,651.95) in attorneys' fees in exchange for a dismissal of the Citizens' Suit with prejudice and a full release of all past and future claims related to those giving rise to the Citizens' Suit. The Plaintiffs agree to dismiss the Citizens' Suit after the IEPA issues NPDES permits for the Calumet, O'Brien, and Stickney WRPs incorporating the recommended special conditions are final and effective. The District's obligation to pay attorneys' fees is not triggered until the Citizens' Suit is dismissed with prejudice.

In the Settlement Agreement for the NPDES Permit Appeals, once the IEPA issues NPDES permits for the Calumet, O'Brien, and Stickney WRPs incorporating the recommended special conditions, and the permits are final and effective, the Environmental Groups agree to voluntarily dismiss their NPDES Permit Appeals. The Environmental Groups also agree to release the District from any claims raised in the NPDES Permit Appeals, or similar claims arising from the IEPA's issuance of new NPDES Permits for the Calumet, O'Brien and Stickney WRPs in accordance with the terms of the proposed Settlement Agreement. In the NPDES Permit Appeal, each party agrees to bear its own attorneys' fees and costs.

Although the District denies the material allegations in both the Citizens' Suit and the NPDES Permit Appeals, in order to avoid the time and expense of trial, as well as the potential risk of an adverse decision, the General Counsel requests authority to settle Natural Resources Defense Council, Inc. et al. v. Metropolitan Water Reclamation District of Greater Chicago, pending in the United States District Court, Northern District of Illinois, Case No. 11- CV- 2937, and Prairie Rivers Network, et al. v. Illinois Environmental Protection Agency, et al., PCB Case Nos. 14-106, 14-107, and 14-108 pending before the Illinois Pollution Control Board, upon the general terms set forth herein. It is further requested that the Board authorize the Executive Director to execute all necessary documents in furtherance thereof.

Requested, Ronald M. Hill, General Counsel, RMH:LLD:EA:bh
Respectfully Submitted, Mariyana T. Spyropoulos, Chairman Committee on Judiciary
Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for January 19, 2017