

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

NATURAL RESOURCES DEFENSE COUNCIL, INC., )		
SIERRA CLUB, INC., and PRAIRIE RIVERS )	)	
NETWORK, )	)	
	)	Case No. 11-CV-2937
Plaintiffs, )	)	
	)	
v. )	)	
	)	<b>COMPLAINT</b>
METROPOLITAN WATER RECLAMATION )	)	
DISTRICT OF GREATER CHICAGO, )	)	
	)	
Defendant. )	)	
	)	

**I. INTRODUCTION**

1. This is a Clean Water Act (“CWA”) citizen suit brought against the Metropolitan Water Reclamation District of Greater Chicago (“District”) for discharges that are injuring the health of Illinois’ waterways by causing oxygen levels to drop dangerously low, and algae and sludge levels to rise unnaturally high, in violation of CWA-based water quality standards (“WQS”). Specifically, discharges from District water reclamation plants (“WRPs”) of phosphorus, which acts as a fertilizer fueling growth of algae, is causing or contributing to exceedances of the narrative WQS requiring that waters be free of unnatural algal growth. Additionally, discharges of untreated sewage combined with stormwater released from the District’s overflow points are causing or contributing not only to violations of the narrative algal growth standard, but also to violations of the numeric dissolved oxygen (“DO”) standards, which specify the lowest allowable level of oxygen in the water; and to violations of the narrative standard requiring that waters be free of unnatural sludge and turbidity.

2. Clean Water Act (“CWA”) § 505, 33 U.S.C. § 1365, allows any person to bring suit against one who is alleged to be in violation of a CWA effluent standard or limitation, or in violation of a CWA permit issued by a state with respect to such standard or limitation. Defendant is in violation of provisions in its state-issued CWA permits prohibiting discharges that cause or contribute to violation of WQS. Plaintiffs seek a permanent injunction prohibiting these violations of the CWA, and requiring expeditious implementation of all actions necessary to prevent such violations; as well as appropriate penalties and fees.

## **II. JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to 33 U.S.C. § 1365, and 28 U.S.C. §§ 1331, 1355, 2201, and 2202.

4. The relief requested by the plaintiff is authorized in 28 U.S.C. §§ 2201, 2202, and 2461; and 33 U.S.C. § 1365.

5. Venue is proper pursuant to 33 U.S.C. § 1365 and 28 U.S.C. § 1391, because the sources of the discharges at issue are facilities located in the Northern District of Illinois, and the events or omissions giving rise to the claims herein occurred in the Northern District of Illinois.

6. On March 1, 2011, Plaintiffs served a Notice of Intent to Sue (“Notice”) upon the District, the United States Environmental Protection Agency (“USEPA”), the Illinois Environmental Protection Agency (“IEPA”), and the Illinois Attorney General, as required under 33 U.S.C. § 1365(b)(1). The Notice meets the requirements of 40 C.F.R. §§ 135.1 *et seq.*, and provided the District with notice of the CWA violations alleged in this Complaint. A copy of the Notice is Attachment 1 to this Complaint.

### **III. PARTIES**

7. Plaintiff Natural Resources Defense Council, Inc. (“NRDC”), a not-for-profit corporation organized and existing under the laws of the State of New York, is a national environmental organization with more than 400,800 members. More than 16,840 of these members live in the State of Illinois; more than 6,320 of those members live within Cook County, the primary county served by the District; and more than 7,650 of those members live in the counties through which flow the waters most heavily impacted by the District’s unlawful discharges (the Chicago Area Waterway System, the Lower Des Plaines River, and the Illinois River, collectively the “Affected Waters”). NRDC is dedicated to the preservation, protection, and defense of the environment, its wildlife and natural resources, and actively supports effective enforcement of the CWA on behalf of its members.

8. Plaintiff Sierra Club, Inc. (“Sierra Club”) a not-for-profit corporation organized and existing under the laws of the State of California, is a national environmental organization with more than 625,000 members, with offices and programs authorized and doing business in the State of Illinois. More than 21,000 of these members live in the State of Illinois; more than 9,500 of those members live within Cook County; and more than 11,000 of those members live in the counties through which the Affected Waters flow. The Sierra Club’s purpose is to protect the natural environment and promote the responsible use of the earth’s ecosystems and resources; and Sierra Club devotes substantial resources to CWA enforcement.

9. Plaintiff Prairie Rivers Network (“PRN”), a not-for-profit corporation organized and existing under the laws of the State of Illinois, is a statewide environmental organization with more than 650 members. More than 100 of these members live within Cook County; and

150 of those members live in the counties through which the Affected Waters flow. PRN is dedicated to river protection, conservation, and restoration in Illinois.

10. Members of NRDC, Sierra Club, and PRN reside near the Affected Waters, and engage in recreation on or adjacent to them, including boating, fishing, and walking. The District's unlawful discharges diminish these members' recreational and aesthetic enjoyment of the Affected Waters. Some of these members would use and enjoy the Affected Waters in more ways and/or more frequently but for the pollution alleged in this complaint. Members of these organizations also suffer from or fear health risk from toxins associated with algal growth.

11. NRDC, Sierra Club, and PRN and their members are "citizens" for purposes of 33 U.S.C. § 1365(g), as they have an interest in this matter which is or may be adversely affected by the District's CWA violations.

12. Defendant Metropolitan Water Reclamation District of Great Chicago is an entity organized and operating pursuant to the Metropolitan Water Reclamation District Act, 70 ILCS 2605. The District is vested with the power to sue and be sued, and is a "person" and a "governmental instrumentality or agency" under 33 U.S.C. § 1365(a)(1). The District is responsible, *inter alia*, for the operation and management of the wastewater collection, treatment, discharge, and disposal facilities in a service area of more than 800 square miles. Sewage entering the District's system comes from community and municipal sewer systems.

13. The District owns and operates a system of interceptors and other wastewater conveyance and treatment equipment and infrastructure. It owns and operates, *inter alia*, the following WRPs: the Calumet WRP located at 400 East 130th Street, Chicago, Illinois, which discharges into the Calumet-Sag Channel; the North Side WRP located at 3500 West Howard Street, Skokie, Illinois, which discharges into the North Shore Channel; and the Stickney WRP

located at 6001 West Pershing Road in Cicero, Illinois, which discharges into the Chicago Sanitary and Ship Canal. In addition, the District owns and operates combined sewers, which convey both sanitary sewage and storm water. On numerous occasions, the District discharges combined sewage and stormwater into Receiving Waters (as defined in ¶ 18) through combined sewer overflow (“CSO”) outfalls.

#### **IV. STATUTORY BACKGROUND**

14. Section 301(a) of the CWA, 33 U.S.C. § 1311(a) prohibits the “discharge of pollutants” into navigable waters by any person except, *inter alia*, in compliance with an NPDES permit issued by USEPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

15. At all times relevant to this complaint, IEPA has been and continues to be authorized by the Administrator to implement the NPDES permit program for discharges into navigable waters within its jurisdiction pursuant to CWA § 402, 33 U.S.C. § 1342.

16. Section 402(a) of the CWA, 33 U.S.C. § 1342(a) provides that the permit issuing authority may issue an NPDES permit that authorizes the discharge of any pollutant directly into navigable waters of the United States, but only in compliance with the applicable requirements of CWA § 301, 33 U.S.C. § 1311, and such other conditions as the authority determines are necessary to carry out the provisions of the CWA.

17. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Section 301 of the CWA or violates any permit condition or limitation in an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty. Pursuant to the Federal Civil Penalties Inflation Adjustment Act as amended by the Debt Collection Improvement Act, the maximum civil penalty for violations occurring between

March 15, 2004 and January 12, 2009 is \$32,500 per violation per day, and the maximum civil penalty for violations occurring on or after January 12, 2009 is \$37,500 per violation per day. 28 U.S.C. § 2461, 31 U.S.C. § 301 note; 40 C.F.R. §§ 19.1-19.4.

### **GENERAL ALLEGATIONS**

18. At all times relevant to this complaint, the District has discharged and continues to discharge “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12), into “navigable waters” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7). These waters include the North Shore Channel, the Calumet-Sag Channel, and the Chicago Sanitary and Ship Canal (collectively “Receiving Waters”).

19. Pollutants discharged by the District into the Receiving Waters flow downstream into other navigable waters, including but not limited to the Chicago River, the Des Plaines River below the I-55 Bridge (“Lower Des Plaines River”), the Illinois River, and the Gulf of Mexico.

20. On or about January 22, 2002, IEPA issued NPDES Permit No. IL002808 for the North Side WRP, NPDES Permit No. IL0028061 for the Calumet WRP, and NPDES Permit No. IL0028053 for the Stickney WRP under the authority of Section 402(b) of the CWA, 33 U.S.C. § 1342(b), and 415 ILCS 5/39 (collectively “Permits”). The Permits became effective March 1, 2002 and expired under their own terms on February 28, 2007. However, pursuant to 35 ILL. ADMIN. CODE § 309.104, the terms and conditions in the Permits continue in force until, and then pursuant to, a final administrative disposition of the District’s pending application for renewal of the Permits.

21. The Permits authorize discharge of pollutants from the WRPs and specified CSO outfalls to the Receiving Waters, subject to specified conditions and limitations. These conditions and limitations include, but are not limited to (i) Condition 5 of the Permits, which

provides that the “effluent, alone or in combination with other sources, shall not cause a violation of any applicable water quality standard outlined in 35 ILL. ADMIN. CODE § 302”; and (ii) Condition 10 of the Permits, which provides that “[a]ll CSO discharges authorized by this Permit shall be treated, in whole or in part, to the extent necessary to prevent accumulations of sludge deposits, floating debris and solids in accordance with 35 Ill. Adm. Code 302.203 and to prevent depression of oxygen levels below the applicable water quality standard.”

22. The Chicago River, the Calumet-Sag Canal, the North Shore Channel, and the Sanitary and Ship Canal have all been designated as Secondary Contact and Indigenous Aquatic Life (“Secondary Contact”) waters in regulations promulgated by IPCB pursuant to the CWA and the Illinois Environmental Protection Act, 415 ILCS 5/ (“the Act”). 35 ILL. ADMIN. CODE § 303.441(g)-(h). As such, their ambient waters must meet the WQS for Secondary Contact waters, including numeric limits for DO and the narrative offensive conditions standard set forth in 35 ILL. ADMIN. CODE § 302 Subpart D.

23. The Lower Des Plaines River, the Illinois River, and other navigable waters into which flow pollutants discharged by the District have been designated as General Use waters in regulations promulgated by IPCB pursuant to the CWA and the Act. As such, they must meet the WQS for General Use waters, including numeric limits for DO set forth in 35 ILL. ADMIN. CODE § 302.206, and the narrative offensive conditions standard set forth in 35 ILL. ADMIN. CODE § 302.203.

24. The Secondary Contact WQS specify that “Dissolved Oxygen ... shall not be less than 4.0 mg/L at any time except that the Calumet-Sag Channel shall not be less than 3.0mg/L at any time.” 35 ILL. ADMIN. CODE § 302.405. The General Use WQS specify DO levels that vary seasonally, at 35 ILL. ADMIN. CODE § 302.206.

25. The Secondary Contact offensive conditions narrative WQS specifies that waters “shall be free from unnatural sludge or bottom deposits, floating debris, visible oil, odor, unnatural plant or algal growth, or unnatural color or turbidity.” 35 ILL. ADMIN. CODE § 302.403. The General Use offensive conditions narrative WQS provides that waters “shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin.” 35 ILL. ADMIN. CODE § 302.203. Reports prepared on behalf of MWRDGC indicate that the receiving waters are impaired by sludge and turbidity caused in whole or in part by CSO discharges.

26. The District’s CSO discharges are causing or contributing to violations of the Secondary Contact WQS by (i) causing or contributing to DO levels below the numeric standard set forth in 35 ILL. ADMIN. CODE § 302.405, and (ii) causing or contributing to unnatural plant or algal growth, unnatural sludge, bottom deposits, and floating debris, and/or unnatural color or turbidity in violation of the offensive conditions narrative standard set forth in 35 ILL. ADMIN. CODE § 302.403. The District’s Monitoring and Research Department Reports from 2006-2009 report overall non-compliance with the DO WQS in the Receiving Waters as much as 72 percent of the time, and 100 percent of the time at some locations and time periods. The District has admitted in testimony before the Illinois Pollution Control Board that its discharges at times drive DO levels to zero mg/L.

27. The District’s WRP discharges are causing or contributing to violations of the Secondary Contact and General Use offensive conditions WQS, set forth in 35 ILL. ADMIN. CODE § 302.403 and 35 ILL. ADMIN. CODE § 302.203, by discharging levels of phosphorus that are causing or contributing to unnatural plant or algal growth in the Receiving Waters and in downstream waters as described in paragraph 19. Waters downstream from WRPs are listed by

IEPA as impaired or potentially impaired by phosphorous. The District is the significant contributor of phosphorous to the Receiving Waters and downstream waters.

**FIRST CLAIM FOR RELIEF**  
**CSO Discharges in Violation of WQS and Permits**

28. Paragraphs 1 through 27 are realleged and incorporated herein by reference.

29. On various dates from May, 2006 through the present, the District discharged pollutants from some or all of the CSO locations specified in the Permits.

30. These discharges violated the terms and conditions of the Permits, including but not limited to the Special Condition 5 requirement that effluent, alone or in combination with other sources, shall not cause a violation of any applicable WQS; and/or the Special Condition 10 requirement that all CSO discharges authorized by the Permits be treated, in whole or in part, to the extent necessary to prevent accumulations of sludge deposits, floating debris and solids in accordance with 35 Ill. Adm. Code 302.203 and to prevent depression of oxygen levels below the applicable WQS.

31. These discharges violated Section 301 of the CWA, 33 U.S.C. § 1311.

32. Unless enjoined by the Court, the District will continue to discharge in violation of the Permits and Section 301 of the CWA, 33 U.S.C. § 1311.

33. Pursuant to Sections 309 and 505 of the CWA, 33 U.S.C. §§ 1319 and 1365, the District is liable for injunctive relief and civil penalties of up to \$32,500 for each violation occurring between May, 2006 and January 12, 2009, and up to \$37,500 for each violation on or after January 12, 2009.

**SECOND CLAIM FOR RELIEF**  
**WRP Discharges in Violation of WQS and Permits**

34. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

35. On various dates from May, 2006 through the present, the District discharged pollutants from the North Side, Calumet, and Stickney WRPs, including but not limited to phosphorus.

36. These discharges of phosphorus violated the terms and conditions of the Permits, including but not limited to the Special Condition 5 requirement that effluent, alone or in combination with other sources, shall not cause a violation of any applicable WQS.

37. These discharges violated Section 301 of the CWA, 33 U.S.C. § 1311.

38. Unless enjoined by the Court, the District will continue to discharge in violation of the Permits and Section 301 of the CWA, 33 U.S.C. § 1311.

39. Pursuant to Sections 309 and 505 of the CWA, 33 U.S.C. §§ 1319 and 1364, the District is liable for injunctive relief and civil penalties of up to \$32,500 for each violation occurring between May, 2006 and January 12, 2009, and up to \$37,500 for each violation on or after January 12, 2009.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that the Court:

1. Issue a permanent injunction preventing the District from committing any further violations of the CWA, 33 U.S.C. § 1251 *et seq.*, and the Permits.

2. Order the District to expeditiously complete all actions necessary to ensure that the District complies with the Permits and all applicable requirements of the CWA.

3. Order the District to pay a civil penalty to the United States of up to \$32,000 for each violation occurring between May, 2006 and January 12, 2009, and up to \$37,500 for each violation on or after January 12, 2009.

4. Award plaintiffs their costs and attorneys' fees; and

5. Grant the plaintiffs such further relief as the Court deems just and proper.

Dated: Chicago, Illinois  
May 3, 2011

Respectfully submitted,

A handwritten signature in blue ink that reads "Albert Ettinger". The signature is written in a cursive, flowing style.

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