

Appeals panel: IL pollution board wrong to uphold permits for Metro Water District sewage plants without stricter phosphorus limit

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Environmental action groups have secured a legal victory in their efforts to force the region's largest treater of wastewater to limit the amount of phosphorus – a fertilizing chemical that can cause destructive algae blooms in rivers and streams – put into local streams by its sewage treatment plants, as an Illinois appellate panel said state regulatory bodies were wrong to grant permits for three of the region's largest treatment plants without more stringent phosphorus limits in place.

When the Illinois Environmental Protection Agency issued permits for three sewage plants under jurisdiction of the Metropolitan Water Reclamation District of Greater Chicago, six agencies jointly filed petitions for review with the Illinois Pollution Control Board. After that board ultimately sided with the IEPA, the groups — Prairie Rivers Network, Natural Resources Defense Council, Sierra Club, Environmental Law & Policy Center, Friends of the Chicago River, and Gulf Restoration Network — appealed.

On Feb. 26, a three-justice panel of the Illinois First District Appellate Court reversed the Pollution Control Board's decision and remanded the case for further proceedings. Justice Mary K. Rochford wrote the opinion, with justices Thomas Hoffman and Mathias W. Delort concurring.

The environmental groups, in their initial petition to the Pollution Control Board, alleged the IEPA did not include on its permits any conditions ensuring phosphorous discharges wouldn't violate the state's applicable clean water standards.

IEPA's permits for the sewage treatment plants are a component of the National Pollutant Discharge Elimination System, which falls under the Federal Water Pollution Control Act. The three permits in question are renewals for the district's Stickney, Calumet and O'Brien treatment plants, the three largest plants operated by the district. The district launched the permit renewal process in 2006.

The Stickney plant, in Cicero, discharges treated water to the Chicago Sanitary and Ship Canal. The Calumet plant, in the city of Chicago, discharges to the Little Calumet River. The O'Brien plant, in Skokie, discharges to the North Shore Channel.

IEPA issued draft permits in November 2009, which didn't include numeric limits on the amount of phosphorus discharged, and established a public comment period through mid-December 2013. Before the end of 2009, the environmental groups submitted comments calling for the permits to include language concerning the amount of phosphorous in the plants' outflow.

The concern, as restated in Rochford's opinion, is that high phosphorous levels “contribute to the growth of excess levels of algae and plants in both receiving and downstream waters, which in turn leads to wide fluctuations in dissolved oxygen levels over a 24-hour period, as the plants and algae produce oxygen during daytime hours and breathe it at night.”

Though the final permits issued in December 2013 did include a phosphorous effluent limit, the petitioning groups argued it wasn't stringent enough to prevent water quality standards violations. They alleged the standard applied by the IEPA was chosen based on negotiations with the Reclamation District, and not to actually prevent quality violations.

Rochford noted the Control Board “developed narrative statements calling for waters to be free from unnatural plant or algal growth.” But justices said the environmental groups supplied scientific evidence supporting a more stringent acceptable level, while noting the government agencies apparently failed to derive their limit from any previously accepted state or federal standards.

Evidence shows that “the IEPA's ... phosphorus effluent limit is about 10 times the limit of out-of-state and federal standards,” Rochford wrote. She said that issue raises concerns the IEPA's recommended limit “allows for a level of phosphorus so high that it has the reasonable potential of violating Illinois water quality standards by causing unnatural plant or algal growth contrary to the Board's narrative standard.”

Whether the waters currently contain unnatural growth, Rochford notes, is not the issue. Rather, she said, it is whether there is “reasonable potential” for such growth under the limits detailed on the permits. That, justices said, made the Control Board's decision to uphold the IEPA's permits inappropriate.

In a blog post published following the decision on Switchboard, the staff blog for the Natural Resources Defense Counsel, Ann Alexander, a Chicago-based NRDC senior attorney, hailed the decision, saying environmental groups “have reason to hope that the Appellate Court's decision will help force U.S. EPA, Illinois EPA and the MWRD to get serious about what is really needed to stop the algae mess in the Chicago River system and the Illinois River.”

She said the next steps in the process still need to play out, “but it's pretty clear that Illinois EPA is going to need to take a harder look at the phosphorus limit.”

Organizations in this story

Natural Resources Defense Council

(/organizations/645056501-natural-resources-defense-council/stories)

40 W 20th St
New York, NY 10011

Environmental Law & Policy Center

(/organizations/645047985-environmental-law-policy-center/stories)

35 E Upper Wacker Dr

Chicago, IL 60601

Metropolitan Water Reclamation District of Greater Chicago

(/organizations/645069903-metropolitan-water-reclamation-district-of-greater-chicago/stories)

100 East Erie Street
Chicago, IL 60611

Illinois Environmental Protection Agency

(/organizations/645043019-illinois-environmental-protection-agency/stories)

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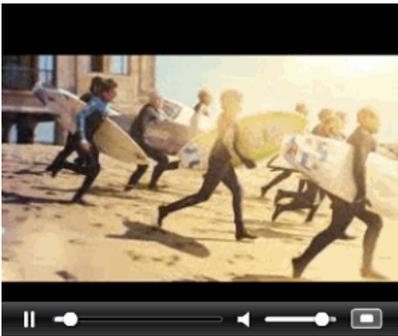
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