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Environmental groups win a round in the war on green slime

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[Ann Alexander](#)



For anyone despairing over the mats of pollution-fueled algae taking over our waters - and the [steadfast determination](#) of environmental agencies to not do a damn thing about it - take heart. Environmental attorneys won an important round on Friday in the war on green slime. A two-year legal battle culminated in a [decision](#) by an Illinois appellate court vindicating our position

that the permits issued to the [Metropolitan Water Reclamation District](#) of Greater Chicago for its sewage treatment plants do not sufficiently address algae-fueling pollution.

The legal battle centers around the pollutant phosphorus, referred to as a "nutrient" because it acts as a fertilizer - in a good way when it makes crops grow, but in a bad way when you dump it into the water and it makes algae grow, sometimes the toxic variety. The Clean Water Act requires that any time an agency like Illinois EPA issues a water discharge permit, it must analyze the potential impact of any pollutant in the discharge effluent. Specifically, it needs to make sure the discharge won't make the receiving waterbody violate its established "water quality standards" - meaning the regulatory determination that has been made of what is the highest and best use of the waterbody, and what the chemical composition of the water needs to be in order to protect that use.

For years, MWRD has had no limit on phosphorus in its Clean Water Act permits for its three Chicago metro area sewage treatment plants - just a general, one-sentence prohibition on discharging anything that would cause a water quality standards violation, which MWRD has pretty consistently ignored as it relates to phosphorus. Not at all coincidentally, waters downstream of the plants have been choked with algae, particularly in the warm summer months. And the Chicago area watershed - which consists predominantly of MWRD's treated sewage - has been determined to be the largest single contributor to the enormous algae-fueled "dead zone" at the mouth of the Mississippi.

Following much well-placed railing about that problem by our legal team - NRDC, [Environmental Law & Policy Center](#), and attorney [Albert Ettinger](#) representing [Sierra Club](#), [Prairie Rivers Network](#), [Friends of the Chicago River](#), and [Gulf Restoration Network](#) - Illinois EPA finally put a limit on phosphorus in the MWRD permits issued in December 2013. That may sound like a happy ending, [but it wasn't](#). The limit - 1 milligram per liter (mg/L) of phosphorus - is way too high to even make a dent in the algae problem. By comparison, Wisconsin is imposing a limit that's 10 times less, and the U.S. EPA has determined that an

even lower number (.076) is generally required in this region to keep the slime mats from forming. More to the legal point, Illinois EPA did none of the calculation legwork required by the Clean Water Act to determine whether the high number they picked would prevent water quality standards violations - probably because everyone pretty much knows it won't. Instead, it just slapped in the number that MWRD volunteered for. Yup, you heard that right. Our pollution watchdog agency is letting polluters pick their own limits.

So we appealed the permit. And lost the first round. In our initial permit challenge before the Illinois Pollution Control Board, the Board upheld the permits issued by Illinois EPA. But the Illinois Appellate Court on Friday reversed the Board's decision and sent the permits back for further review. Specifically, the Court held that the Board was wrong to grant "summary judgment" against us and in favor of MWRD - that is, a determination that there are no factual disputes that need to be resolved before a ruling can be made. The Appellate Court said that there was, indeed, a critical factual question whether the very high phosphorus limit that MWRD volunteered for is sufficient to prevent water quality standards violations - with the pretty strong implication being that it isn't.

Interestingly as well, the court supported its decision through reference to another [recent clean water victory by NRDC](#) concerning invasive species in ballast water, noting that the general prohibition in MWRD's permits on causing water quality standards violations has been supplemented by something more specific, since general language does not really tell the discharger what to do and can be complicated to enforce; and hence is often simply ignored by both dischargers and enforcement authorities. Which is well known to our legal team here, as some of us have been fighting for nearly five years in [another case](#) to enforce the general limit in MWRD's permit. We have also been fighting - with [some success](#) - for more specific water quality standards for phosphorus and other nutrients, to make it harder for agencies like Illinois EPA to try to wriggle out of putting hard, protective numbers in permits.

So our intertwined skirmishes continue while the war on algae rages on. But we 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. We don't know exactly what the next steps will be now that the Appellate Court has sent the permits back, but it's pretty clear that Illinois EPA is going to need to take a harder look at the phosphorus limit. And we, in turn, will be taking a hard look over their shoulder. We expect that the Court's decision may ripple out to persuade more permitting agencies around the country to stop going AWOL in the war on green slime and start setting the tough, thoughtful limits on polluters that the Clean Water Act requires.

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ABOUT THE AUTHORS



ANN ALEXANDER

Senior Attorney, Midwest program

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