

**PROCEDURAL RULES APPLICABLE TO
ADMINISTRATIVE PROCEEDINGS
UNDER THE WATERSHED MANAGEMENT ORDINANCE**

1. Introduction

On October 3, 2013, the Board of Commissioners for the Metropolitan Water Reclamation District of Greater Chicago adopted the Watershed Management Ordinance. Articles 8, 11, 12, and 13 of the Watershed Management Ordinance provide for certain administrative proceedings and hearings. Each of those Articles require the Board of Commissioners to promulgate rules to govern administrative proceedings thereunder. The Board of Commissioners enacts these rules for that purpose.

2. Definitions

Within these rules, terms and words defined in Appendix A of the Watershed Management Ordinance shall have the same meaning as defined therein.

In addition, within the context of these rules, the following words and terms are defined as follows:

- A. Administrative Proceeding** - A Board Appeal, Show Cause Hearing, or Variance Petition brought pursuant to the Ordinance.
- B. Appeal Petition** - A petition filed under §1302 of the Ordinance seeking review by the Board of the Director of Engineering's determination of an appeal brought under §1301.
- C. Board** - The Board of Commissioners for the Metropolitan Water Reclamation District of Greater Chicago.
- D. Board Appeal** - An appeal to the Board from the Director of Engineering's determination as provided in §1302 of the Ordinance.
- E. Clerk** - The Clerk of the Metropolitan Water Reclamation District of Greater Chicago.
- F. Conflict of Interest** - A conflict of interest that would be prohibited by Illinois Rules of Professional Conduct 1.7, 1.8, 1.9, 1.10, 1.11, and 1.12.
- G. Director's Report** - As described in §1105.4, a report prepared by the Director of Engineering prior to a Variance Hearing recommending that the Petition be granted, granted with conditions, or denied.

- H. District Holiday** – A day set aside by the District for observing New Year's Day, Martin Luther King Jr.'s Birthday, Lincoln's Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, or Christmas Day; and any other day declared a holiday by the Board of Commissioners.
- I. Engineering Appeal** - An appeal to the Director of Engineering as provided in §1301 of the Ordinance.
- J. Engineering Appeal Determination** - The Director of Engineering's determination at the conclusion of an Engineering Appeal under §1301 of the Ordinance.
- K. *Ex Parte* Communication** - An oral or written communication between a Non-District Party and either the Director of Engineering, a member of the Board, or the Board's designated hearing officer, related to a pending proceeding governed by these Rules made outside the presence of, or without providing a copy to, all other Parties or Potentially Interested Persons.
- L. Hearing** - A hearing under the Ordinance generally, including a Board Appeal Hearing, a Show Cause Hearing, or Variance Hearing.
- M. Hearing Officer** - A Person qualified under these rules and designated by the Board pursuant to Ordinance to preside over a Hearing.
- N. Hearing Officer's Report** - The written report submitted to the Board by the Hearing Officer at the conclusion of a Hearing pursuant to the Ordinance.
- O. Initiating Document** - The initial document (e.g., Notice of Show Cause, Variance Petition, or Notice of Appeal to Board) filed with the Clerk which begins an Administrative Proceeding.
- P. Notice of Show Cause** – The formal notice issued by the Executive Director under §810 or §1202 of the Ordinance directing a Satellite Entity or Respondent to appear before the Board.
- Q. Party** - A Person who is either required to, or has elected to participate in an Administrative Proceeding under the Ordinance (e.g., the District, a Petitioner, Satellite Entity, Respondent, or any Potentially Interested Person who filed an appearance with the Clerk). All parties will be collectively referred to as Parties.

- R. Petition for Variance** - A Petition for Variance filed with the Clerk as provided in §1101 of the Ordinance.
- S. Petitioner** - A Person who files a Petition for Variance.
- T. Potentially Interested Person** - Any person entitled to notice under §1102.2 of the Ordinance including all owners of record located within 250 feet of the site of the proposed development for which a variance is requested, and any other persons in the vicinity of the proposed development who may potentially be affected by the requested variance.
- U. Show Cause Hearing** - A hearing at which a Satellite Entity or Respondent must show cause as provided in §811 and §1204 of the Ordinance.
- V. Variance Hearing** - A variance hearing as provided in §1105 of the Ordinance.

3. Rules For All Watershed Management Ordinance Administrative Proceedings

A. Applicability

Unless Sections 4, 5, and 6 of these Rules require that an alternative procedure apply, the Rules identified in the remainder of Section 3 apply to all Administrative Proceedings brought under the Ordinance.

B. Calculating Time

The following rules apply in computing any time period specified in these Rules.

- a. Period Stated in Days. When the period is stated in days or a longer unit of time:
 - i. exclude the day of the event that triggers the period;
 - ii. count every day, including intermediate Saturdays, Sundays, and District holidays; and
 - iii. include the last day of the period, but if the last day is a Saturday, Sunday, or District holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or District holiday.

- b. Period Stated in Working Days. When the period is stated in working days:
 - i. exclude the day of the event that triggers the period;
 - ii. count every weekday, excluding intermediate Saturdays, Sundays, and District holidays; and
 - iii. include the last day of the period, but if the last day is a Saturday, Sunday, or District holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or District holiday.
- c. Inaccessibility of the Clerk's Office. If the Clerk's office is inaccessible on the last day for filing, then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or District holiday.

C. Filing of Documents

- 1. Any document needed to adjudicate an Administrative Proceeding under the Ordinance, including, but not limited to, Initiating Documents, Appearances, Notices (including Notices of Non-Compliance (NONC), Notices of Violation (NOV), Notices of Show Cause, Notice of Pre-Hearing Conference, Notice of Hearing, Notice of Procedural Deficiency), Procedural Questions and responses thereto, Requests for Technical Information and responses thereto, motions and responses, orders regarding motions, Director's Report, and Hearing Officers' Reports, shall be filed with the Clerk.
- 2. Documents may be filed with the Clerk by certified, registered, or first-class mail, by messenger service, or by hand-delivery at the Clerk's office at 100 East Erie Street, Chicago, Illinois, 60611 during normal business hours (8:45 a.m. – 4:30 p.m.). Documents filed by mail will be deemed filed on the day received by the Clerk.
- 3. Exhibits exchanged between the Parties shall not be filed at the time of exchange. Instead, exhibits that have been admitted into evidence or were sought to be admitted via a proper offer of proof shall be filed with the Clerk by the Hearing Officer at the time the Hearing Officer issues a Hearing Officer's Report, or by the Board at the time the Board issues its decision.
- 4. Each document filed with the Clerk in an Administrative Proceeding must be accompanied by a Certificate of Service verifying that all Parties have been served, the method of service, and the dates of filing and service.

5. Other than those documents protected from disclosure, documents that are maintained by the Clerk pertaining to Administrative Proceedings governed by these Rules shall be open to inspection during normal business hours upon written request delivered not less than two working days in advance. Copies of documents contained in the Administrative Proceeding files maintained by the Clerk are available upon payment of reasonable copying costs as determined by the Clerk.
6. The Clerk shall assign a unique case number to each Administrative Proceeding at the time an Initiating Document is filed.
7. After a case number is assigned to an Administrative Proceeding, the case number must appear on the first page of all documents related to that Administrative Proceeding filed with the Clerk.

D. Appearances

1. Any Person who has a legally cognizable interest in the outcome of an Administrative Proceeding and who wishes to appear and take part in an Administrative Proceeding's Pre-Hearing Conference or Hearing must file an appearance with the Clerk. The filing of an appearance will make the filer a Party to an Administrative Proceeding entitled to service documents, notices, and any other rights provided by these Rules.
2. Any Person who is not an individual is required to be represented by an attorney duly licensed in the State of Illinois in good standing to participate in a Pre-Hearing Conference or Hearing.

E. Hearing Officers

1. The Board shall establish a panel of independent Hearing Officers any one of which may be designated to oversee any Hearing under the Ordinance. The Hearing Officers must be attorneys licensed to practice law in the State of Illinois who are in good standing.
2. Hearing Officers shall disclose to the Parties any matter that could be considered a Conflict of Interest with the Hearing Officer's duty to render fair and impartial recommendations to the Board. If the Hearing Officer has a Conflict of Interest, the Hearing Officer must disqualify himself/herself from continued participation in the Administrative Proceeding, and another Hearing Officer will be appointed.
3. The Hearing Officer must refrain from engaging in any *Ex Parte* Communication with any Party or their counsel, except by express

agreement of the Parties or for non-substantive communication involving scheduling or procedure.

4. Hearing Officers are assigned to Hearings on a rotational basis by the District's Law Department. Whenever a Hearing Officer is unable to serve in this position, the Hearing Officer will be replaced by the next available Hearing Officer in the rotational order of selection.
5. Hearing Officers may issue, in the name of the Board, Notices requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in an Administrative Proceeding. Any such Notice must be filed with the Clerk and served upon the Parties.

F. Notice of Pre-Hearing Conference

1. Within seven days of the filing of an Initiating Document, the District shall serve a Notice of Pre-Hearing Conference ("Notice of Pre-Hearing Conference"), which shall specify the assigned Hearing Officer, if any, and provide the date, time, and location of a Pre-Hearing Conference.
2. The Notice of Pre-Hearing Conference shall be served by certified mail upon all Parties and, in Administrative Proceedings related to a Variance Petition, upon all Potentially Interested Persons. If a Party or its designated representative has provided an e-mail address, the Notice shall also be e-mailed to the Party.
3. The Notice of Pre-Hearing Conference shall also specifically state that any Party who is not an individual must be represented by an attorney licensed to practice law in Illinois to further participate in the Administrative Proceeding.
4. Service of the Notice of Pre-Hearing Conference must be made no less than ten days prior to the date of the scheduled Pre-Hearing Conference.

G. Pre-Hearing Conference

1. The Board or its designated Hearing Officer shall preside over the Pre-Hearing Conference ("Conference"). The Conference shall be open to any Party, or Potentially Interested Person who files an appearance.
2. The purpose of the Conference shall be to allow the Board or its designated Hearing Officer, the Parties, and Potentially Interested Persons to address the following topics: (1) scheduling issues related to the Hearing, (2) any anticipated motions, (3) the need for any additional technical information to allow the Parties to prepare for the Hearing, (4) to confirm which Parties

intend to introduce evidence, examine witnesses or argue at the Hearing, and (5) to set a deadline for the exchange of exhibit lists and witness lists.

3. At the outset of the Conference, if any Party who is not an individual is not represented by a duly licensed attorney, the Board or its designated Hearing Officer will enter an order continuing the Conference to a future date and time, no less than seven days from the date of the original Conference, to allow that Party to retain counsel. An order continuing a Conference will be filed with the Clerk.
4. Any admissions or declarations against interest, written or oral, made by any Party during or in the course of a Conference are not binding and are not admissible for any purpose at a Hearing, unless they are reduced to written stipulation.
5. In the event it becomes clear during the course of the Conference that all Parties agree upon a proposed resolution, the Board, or its designated Hearing Officer, shall ask every Party or other person in attendance to sign a written stipulation detailing that resolution.

H. Motions

1. All motions are to be in writing, filed with the Clerk, and served upon the Parties and the Board or its designated Hearing Officer.
2. Every motion must clearly state the reasons for and grounds upon which the motion is made and also contain a statement of the relief sought.
3. All motions must include a "Notice of Motion" indicating the time, place, and/or manner (e.g., phone, in-person) in which the motion will be heard. If the motion is an "Agreed" or "Routine" motion, the caption of the motion shall so indicate. The moving Party may schedule an "Agreed" or "Routine" motion for ruling by telephone conference with the other Parties and the Board or its designated Hearing Officer. All other motions and those which require argument, and/or a briefing schedule, shall be scheduled for argument at the District's Main Office Building located at 100 East Erie Street, Chicago, Illinois.
4. The moving Party is required to contact all other Parties to establish an agreed upon briefing schedule for the motion. The Parties shall then report that briefing schedule to the Board or its designated Hearing Officer, who shall file an order with the Clerk reflecting the agreement, which shall be served upon all Parties. In the event the Board or its designated hearing officer determines argument on a motion is necessary, the briefing schedule order entered by the Board or its designated Hearing Officer shall include the date, time and location for argument on the motion.

5. Motions for continuance of the Hearing must be in writing, state the grounds for the motion, and list dates within the following 30 working days, when the moving Party is available to attend a Hearing.
 - a. Motions for continuance of the Hearing must be filed with the Clerk and served upon all Parties and the Board or its designated Hearing Officer at least five working days prior to the date of the Hearing. If the motion is granted, the Board or its Hearing Officer shall reschedule the Hearing and serve an order upon all Parties which reflects the rescheduled hearing date(s).
 - b. Unless good cause is shown by the moving Party, motions for continuance of a Hearing made less than five working days prior to the scheduled hearing date, and all subsequent requests for a continuance after a Party's initial request for a continuance has been granted, must be made in person before the Board or its designated Hearing Officer at the Hearing. If the motion for a continuance is granted on the scheduled hearing date, but the Board or its Hearing Officer determines that the moving Party has not shown good cause, the moving Party must pay all reasonable costs of the Hearing caused by the continuance, including costs and fees for Parties' attendance, court reporter, and Hearing Officer fees, if any. The Hearing Officer may enter an order regarding the payment of costs under this subsection.
6. Where the Parties are unable to agree to a briefing schedule and/or hearing date for the motion within seven days of its filing, the Board or its designated Hearing Officer shall order a briefing schedule and argument date. The Clerk shall provide notice of the briefing schedule and hearing date to all Parties.
7. Any Party may schedule a court reporter at its own cost to attend any hearing on a motion; however, if any Party does so, they must inform the other Parties and the Board or its designated Hearing Officer.
8. After a motion is heard by the Board or a Hearing Officer, an order shall be filed with the Clerk granting or denying the motion, which shall also be served upon all Parties.
9. The Board or its designated Hearing Officer must rule upon all pending motions. The ruling on any motion must be in writing or on the stenographic record. At the discretion of the Board or its designated Hearing Officer, a motion raised during a Hearing must be ruled on either during the Hearing, or in a written decision following the Hearing.

I. Notice of Hearing

1. No later than seven days after the completion of a Pre-Hearing Conference, the District shall file a Notice of Hearing with the Clerk specifying the date(s), time(s), and place of the Hearing.
2. Unless otherwise agreed upon by the Parties and the Board or its designated Hearing Officer, Hearings shall take place at the District's Main Office Building at 100 East Erie Street, Chicago, Illinois.
3. The Notice of Hearing shall be served by certified mail on all Parties or their designated representatives. If any Party has provided an e-mail address, the Notice of Hearing shall also be e-mailed to that Party.

J. Hearings

1. Unless otherwise agreed upon by the Parties in writing, all Hearings must be conducted on the record, and all testimony must be under oath and recorded stenographically by the court reporting service commissioned by the District.
2. The Board or its designated Hearing Officer has the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order and insure the development of a clear, complete, and concise record. The Board or its designated Hearing Officer shall give each Party the opportunity to present evidence and to cross-examine the witnesses of any other Party. To the extent allowed by these Rules, all Parties will be given the opportunity to respond to arguments raised by others. The Board or its designated Hearing Officer may examine witnesses.
3. The Board or its designated Hearing Officer shall determine the order in which the parties will present their arguments and evidence.
4. The Illinois Rules of Evidence shall be followed; however, evidence not admissible under the Rules may be admitted if the Board or its Hearing Officer determines that it is the type of evidence commonly relied upon by reasonably prudent persons in conducting their affairs.
5. The Board or its designated Hearing Officer may take official notice of matters which Illinois courts take judicial notice of.
6. In the event that a Party fails to attend a Hearing, the Board or its designated Hearing Officer shall note the Party's failure to attend on the record, and shall conduct the Hearing with all other Parties present.

7. The Board or its designated Hearing Officer may establish reasonable limits on the duration of the testimony and questioning of any witness and may limit or exclude irrelevant, immaterial, or overly repetitious and cumulative testimony, questioning, or evidence. The Board or its Hearing Officer may recess or continue the Hearing as may be necessary.
8. Hearing transcripts shall be made available to any Party or any member of the public upon payment of the usual charges for transcripts as designated by the court reporting service.
9. The Board or its designated Hearing Officer may require each Party to submit post-Hearing written statements or proposed findings of fact and conclusions of law.
10. In hearings presided over by the Board directly, its determination must be committed to writing and state with specificity the factual findings and conclusions of law upon which it is based.

K. Hearing Officer's Report

1. In Administrative Proceedings in which a Hearing Officer was appointed, the Hearing Officer shall file a Report with the Clerk and serve copies upon the Parties, within 30 days of the latter of (1) the conclusion of the Hearing, or (2) the deadline of any post-Hearing written statements.
2. The Hearing Officer's Report must state the Hearing Officer's recommendation as to the resolution of the Administrative Proceeding. The Hearing Officer's Report shall include a recommendation regarding each and every alternative relief expressly sought. The Hearing Officer's Report shall include findings of fact and conclusions of law.
3. If the Hearing Officer is unable to file a Report with the Clerk within the deadline established in Section 3(K)(1), they shall notify the Parties and the Clerk regarding the expected completion date and explain the reason for the delay.
4. If the Hearing Officer is unable to file a Hearing Officer's Report, upon notice to the Parties and the Clerk, the Board may reassign the matter to another Hearing Officer who must either reconvene the Hearing or file a Hearing Officer's Report with the Clerk based upon the record of the Hearing, if the new Hearing Officer determines that the credibility of witnesses is not an issue. If the new Hearing Officer determines that there is no issue regarding credibility and thus no need to reconvene the Hearing, the new Hearing Officer must explicitly make that finding in the Hearing Officer's Report. The new Hearing Officer will be the next available Hearing

Officer who will be selected on a rotational basis from the panel of Hearing Officers.

5. Within seven days of the filing of the Hearing Officer's Report with the Clerk, the Hearing Officer's Report and any attachments or exhibits thereto will be transmitted by District staff to the Board for review.

L. Review of Hearing Officer's Report by the Board of Commissioners

1. Within 60 days of the transmittal of the Hearing Officer's Report to the Board, the Board shall either approve or reject the Hearing Officer's Report at a regularly scheduled Board meeting.
 - a. If the Hearing Officer's Report is accepted by the Board, it shall constitute the final order of the Board.
 - b. If the Hearing Officer's Report is rejected, the Board shall remand the matter to the Hearing Officer for further proceedings.
 - c. If the Board does not accept or reject a Hearing Officer's Report within 40 days of its receipt of the Hearing Officer's Report, it will be deemed rejected and the Administrative Proceeding shall be remanded to the Hearing Officer for further proceedings.
2. If a Hearing Officer's Report is remanded to a Hearing Officer, the record compiled in the Hearing shall be reviewed by the Hearing Officer who shall then file with the Clerk a revised Hearing Officer's Report within 40 days of the latter of (1) date the matter was remanded, or (2) after the conclusion of a reconvened Hearing.
 - a. Upon remand, the Hearing Officer shall also have the right to reconvene the Hearing for the purpose of taking further evidence.
 - b. If a Hearing Officer determines a Hearing should be reconvened, Notice will be provided as originally required.
 - c. Hearings reconvened will proceed in the same manner as the initial hearing and shall be subject to these Rules.
 - d. After submission of the Revised Hearing Officer's Report to the Clerk, the Revised Report will be subject to the Board Review procedures stated in Section 3(L)(1).

M. Service and Publication of Board's Final Action

1. The final action of the Board in any Administrative Proceeding shall be served by certified mail to all Parties or Potentially Interested Persons within seven days of the Board's final action.
2. For any Administrative Proceeding in which the Board's final action is taken during a regularly scheduled Board meeting, the Administrative Proceeding shall also be included as part of the agenda of that meeting and the Board's final actions shall be documented in the minutes of that meeting. Any publication under this subsection shall not satisfy the service required by section 3(M)(1) of these rules.

4. Rules Applicable To Show Cause Hearing Proceedings

A. Applicability

The Rules found in this section apply to Administrative Proceedings brought as a result of the filing or service of a Notice of Show Cause under either Article 8 or Article 12 of the Ordinance.

B. Hearing Officers to Preside Over Show Cause Hearings

By adoption of these rules, the Board appoints a Hearing Officer to oversee any Administrative Proceeding initiated by the service and filing of a Notice of Show Cause under either Article 8 or Article 12 of the Ordinance.

C. Notice of Show Cause

1. If the Executive Director receives a Recommendation for Show Cause under either §808.7 or §1201.6 of the Ordinance from the Director of Engineering, and the Executive Director determines that a Show Cause Hearing is necessary, a Notice of Show Cause shall be filed with the Clerk and served on the Satellite Entity or Person required to show cause.
2. The Notice of Show Cause shall specify the date, time, and location of the Show Cause Hearing.
3. Service of the Notice of Show Cause shall be made by personal service or by certified or registered mail on the Satellite Entity or Person required to show cause before the Board through its designated Hearing Officer.
4. At the discretion of the District, the Notice of Show Cause may be served at the same time as the Notice of Pre-Hearing Conference required in Section 3(F) of these Rules.

5. Unless otherwise agreed upon by the Parties and the Board's designated Hearing Officer, the Show Cause Hearing shall be scheduled no less than 14 days following the Pre-Hearing Conference.

D. Burden of Proof

As the Party initiating the proceeding for a Show Cause Hearing, the District shall bear the burden of proof to show by a preponderance of the evidence that either: (1) the Satellite Entity is in non-compliance with the Infiltration/Inflow Control Program detailed in Article 8, or (2) the Person served is in violation of other provisions of the Ordinance as provided in Article 12.

E. Pre-Hearing Conference

In addition to the other proceedings at the Pre-Hearing Conference required by Section 3(G), the District shall advise the Satellite Entity or Person served with a Notice of Show Cause of the penalty that the District will seek to have imposed if it sustains its burden of proof.

F. Hearing Officer's Report

1. In any Hearing Officer's Report following a Show Cause Hearing in which the Hearing Officer determines that the District has met its burden, the Hearing Officer's Report shall specifically state a recommendation regarding the penalty to be assessed.
 - a. For any Show Cause Hearing brought under Article 8, the penalties that may be assessed are set forth in §811.8 of the Ordinance.
 - b. For any Show Cause Hearing brought under Article 12, the penalties that may be assessed are set forth in §1204.8 of the Ordinance.

G. Penalty Enforcement

1. Any penalty recommended by a Hearing Officer following a Show Cause Hearing shall only become effective if the Board accepts the Hearing Officer's Report. If the Board accepts a Hearing Officer's Report, it shall become the final order of the Board.
2. All monetary penalties or costs imposed by the final order of the Board shall be payable within 30 days of the date the Satellite Entity or Person served with a Notice of Show Cause is served with the Board's acceptance of the Hearing Officer's Report. Any penalties or costs imposed shall be made payable to and delivered to the Clerk.

3. If the Satellite Entity or Person served with a Notice of Show Cause seeks judicial review of the Board's order and obtains a stay, the penalty shall not be deemed due until the stay has been lifted.

5. Rules Applicable to Petition for Variance Proceedings

A. Publication of All Materials to District Website

Within seven days of receiving any documents related to an Administrative Proceeding related to a Petition for Variance, the documents shall be published to a page of the District's website dedicated to the Petition for Variance.

B. Notice of Pre-Hearing Conference

In addition to the information required in Section 3(G) above, any Notice of Pre-Hearing Conference related to a Petition for Variance shall also contain the following information: (1) that any Potentially Interested Person must file an Appearance either prior to or at the Pre-Hearing Conference, (2) that the Petition, public comments, requests for technical information, and the Report related to the Petition are available on the District's website, and (3) that the merits of the Petition will not be addressed at a Pre-Hearing Conference.

C. Expedited Variance Hearing Procedure

If during the Pre-Hearing Conference the Parties agree and stipulate to an expedited Hearing, the Board or its Hearing Officer shall follow the following procedure: (1) prior to or at the commencement of the expedited Hearing, the Parties shall submit an agreed-upon draft Hearing Officer's Report for the Hearing Officer's review and approval; (2) the expedited Hearing shall be on the record, and the proceedings shall be recorded stenographically; (3) the Petitioner shall make a statement to which any other Party may respond, and (4) all evidence shall be submitted and accepted by written stipulation. Nothing contained in this subsection shall be interpreted to prevent public comment at an expedited Hearing.

D. Public Notice of Board Determination

As required by §1105.9 and §1105.10 within 30 days of the Board's determination of any Variance Hearing, the Clerk shall provide written notice of the Board's determination by certified mail, return receipt requested, to all Parties and any Person who submitted public comment related to the Petition for Variance.

E. Burden of Proof

Petitioner has the burden of proving by a preponderance of the evidence that: (1) the Development meets the requirements in §501.1A-C of the Ordinance, and (2) the Variance meets the standards established in §1103.1 of the Ordinance.

F. Appearances of Potentially Interested Persons

A Potentially Interested Person who wishes to take part in a Hearing related to a Variance Petition shall file an appearance with the Clerk either at or before the Pre-Hearing Conference. A Potentially Interested Person who fails to file an Appearance at a Pre-Hearing Conference shall not become a Party and will be precluded from examining witnesses, introducing evidence, or presenting argument at the Hearing.

G. Submission of Procedural Questions

1. From the time of filing of the Petition to the pre-hearing conference, the Petitioner may submit any procedural questions regarding the Petition by e-mail to the District at WMOvariances@mwr.org. If the Petitioner is unable to submit questions electronically, a procedural question may be filed in-person with the Clerk as provided in Section 3(C) of these Rules.
2. The District will respond by e-mail to any procedural question submitted by e-mail within seven working days. The District will serve by certified mail its responses to any procedural question that was filed in-person with the Clerk within seven working days of the in-person filing of that question.
3. The Clerk shall cause any procedural questions received and the answers provided, if any, to be posted on a page of the District's website dedicated to the Petition.

H. Notice of Procedural Deficiency

1. From the time of filing of the Petition until the issuance of the Director's Report, the District may advise the Petitioner of any deficiency with any requirement of Article 11 of the Ordinance or these Rules by serving a Notice of Procedural Deficiency upon Petitioner.
2. The Notice of Procedural Deficiency will be served on the Petitioner, or its designated representative, by certified mail. If the Petitioner or its designated representative has provided the District with an e-mail address, a copy of the Notice of Procedural Deficiency will also be sent electronically to the email address provided.

3. Within 14 days of the District's service of the Notice of Procedural Deficiency, the Petitioner shall either (1) correct the apparent deficiency; (2) provide evidence that the deficiency had been corrected prior to the Notice of Procedural Deficiency; or (3) withdraw the Petition. If the Petitioner takes no action within the prescribed time, the Petition will be deemed withdrawn.
4. Within 14 days of the District's service of the Notice of Procedural Deficiency, the Petitioner shall submit a written response to said Notice that indicates which of the actions set forth in Section 5(H)(3) that Petitioner has undertaken. Petitioner shall file this response with the Clerk and shall send a copy to the Director of Engineering by electronic mail unless the Petitioner is unable to receive or send electronic mail.
5. The Clerk shall cause any Notice of Procedural Deficiency and response to be posted to a page of the District's website dedicated to the Petition.
6. The issuance of a Notice of Procedural Deficiency will temporarily stay any deadlines related to the Petition which are placed upon the District in either the Ordinance or these Rules until the Petitioner undertakes one of the actions identified above in Section 5(H)(3) of these Rules.

I. Requests for Technical Information

1. From the time of filing of the Petition up to the issuance of the Director's Report, the Director of Engineering, or the Director's designee, may request additional technical information from the Petitioner related to the Petition.
2. The Director of Engineering or the Director's designee will file the Request for Technical Information with the Clerk. The District will then serve the Request for Technical Information on the Petitioner, or its designated representative, by certified mail. If the Petitioner or its designated representative has provided the District with an e-mail address, a copy of the Request for Technical Information will also be sent electronically to the email address provided.
3. Within seven days of the date on the Request for Technical Information, the Petitioner shall either (1) respond to the Director of Engineering, or the Director's designee with additional information or evidence to be considered, (2) request additional time to comply with the Request for Technical Information, or (3) withdraw the Petition.
4. The Petitioner shall file any response to a Request for Technical Information with the Clerk and shall also serve a copy of that response on the District. If the Petitioner or its designated representative received the

Request for Technical Information electronically, an electronic copy of the response may also be sent.

5. The Clerk shall cause any Request for Technical Information and response to be posted to a page of the District's website dedicated to the Petition.

J. Director of Engineering's Report

1. The Director of Engineering shall utilize best efforts to issue a Director's Report within 30 days of the latter of: (1) the date the Clerk transmits the Petition and all other information to the Director of Engineering as required in §1105.1 of the Ordinance, or (2) the date on which the Petitioner provided any additional technical information requested under Section 5(I) above.
2. The Director's Report shall be in writing and shall recommend one of the following actions on each variance proposed to the Ordinance: (1) grant, (2) grant with conditions, or (3) deny.
3. The Director's Report shall contain the basis for the Director of Engineering's recommendations as well as (1) any public comments received under §1104 of the Ordinance, (2) any responses to any Requests for Technical Information, and (3) any other evidence or exhibits necessary to support the Director of Engineering's recommendations.
4. Upon completion, the Director of Engineering or the Director's designee shall file the Director's Report and all its attachments with the Clerk who shall cause it to be posted to a page of the District's website dedicated to the Petition within five working days.
5. The Report and its exhibits shall then be transmitted to the Board along with the Petition and all public comments received.

K. Notice of Variance Hearing

1. Within seven days of the Pre-Hearing Conference, the District shall file a Notice of Variance Hearing with the Clerk specifying the date(s), time(s), and place of the Variance Hearing.
2. At the discretion of the District, the Variance Hearing shall take place either at: (1) the District's Main Office Building at 100 East Erie Street, Chicago, Illinois 60611, (2) the District-owned facility nearest to the proposed development to be impacted by the Petition, or (3) another publicly-owned facility nearest to the proposed development to be impacted by the Petition.

3. The Notice of Variance Hearing shall be served by certified mail on all Parties or their designated representatives as well as on any Person who submitted written comment. If any Party has provided an e-mail address, the Notice of Variance Hearing shall also be e-mailed to that Party.
4. In addition to the Notice provided in Section 5(L)(3), the Clerk shall cause the Notice of Variance Hearing to be posted to a page of the District's website dedicated to the Petition.

L. Withdrawal of Petition

1. The Petitioner has the absolute right to withdraw the Petition at any time, except that a Petitioner who chooses to withdraw a Petition after a Variance Hearing, may be assessed fees and costs, including court reporter costs, and Hearing Officer's fees incurred by the other Parties due to the Variance Hearing.
2. The Petitioner will be entitled to a full refund of the fee paid to file the Petition in the event the Petition is withdrawn prior to the filing of the Director's Report with the Clerk. In the event the Director's Report recommends that the Petition be denied because it would exceed the District's statutory authority or would violate the minimum standards for floodplain management established by the OWR and the requirements of FEMA for participation in the NFIP, the Petitioner will be entitled to a refund of one-half of the fee paid to file the Petition if the Petition is withdrawn within 14 days of the filing of the Director's Report with the Clerk. If the Petition is withdrawn more than 14 days after the Director's Report is filed with the Clerk, the Petitioner is not entitled to a refund of the fee paid to file the Petition.
3. To withdraw the Petition, the Petitioner shall file a written Notice of Withdrawal with the Clerk and provide the Notice of Withdrawal by certified mail to all other Parties.
4. The Clerk shall cause the Notice of Withdrawal to be posted to a page of the District's website dedicated to the Petition.

M. Acceptance of Conditional Variance

If the Board determines that a Variance is granted with conditions, the Petitioner and the applicable Permittee must each file a notarized affidavit with the Clerk indicating acceptance of the conditions and/or limitations, and indicating agreement to comply with those conditions and/or limitations.

6. Rules Applicable to Board Appeals under the Watershed Management Ordinance

A. Timing of Filing and Service of Appeal Petition

1. Following the completion of any Engineering Appeal, an appellant seeking to appeal an Engineering Appeal Determination to the Board must file a written Appeal Petition seeking a Board Appeal with the Clerk within 30 days of the service of the Engineering Appeal Determination.
2. In addition to filing with the Clerk, the Appeal Petition must be served on the Director of Engineering and the President of the Board of Commissioners at 100 East Erie Street, Chicago, Illinois 60611 by regular, certified, or registered mail.
3. The Board shall summarily deny any Appeal Petition served outside of this time period.

B. Scope of Review

1. Pursuant to §1302.9, the Board Appeal shall be limited to those issues raised by the Appellant in the Engineering Appeal. Any issues not raised during the Engineering Appeal are waived.
2. Neither the Board nor its designated Hearing Officer shall consider any technical information not presented to the Director of Engineering in the Engineering Appeal.
3. Given this limited scope, if the Engineering Appeal Determination fails to sufficiently detail the evidence, technical information, or arguments raised, the Board or its designated Hearing Officer may order the Director of Engineering to supplement the written determination to include sufficient detail of the evidence, technical information, or arguments raised in the Engineering Appeal meeting required in §1301.4

C. Burden of Proof

Petitioner has the burden of proving that the Engineering Appeal Determination should be overturned because it was based on either: (1) an erroneous interpretation of the Ordinance or other applicable law; (2) a factual determination which is against the manifest weight of the evidence; or (3) was clearly erroneous.

7. Judicial Review

The Administrative Review Law, 735 ILCS 5/3-101 *et seq.*, and the regulations adopted under that Law, govern all proceedings for the judicial review of final orders of the Board issued under these Rules.

8. Savings Clause

If the provisions of any paragraph or section of these Rules are declared unconstitutional or invalid by the final decision of any court of competent jurisdiction, the provisions of the remaining paragraphs and sections shall continue in full force and effect.

9. Effective Date

These Rules shall take effect immediately upon passage by the Board.

Dated: This 5th day of September

Approved as to Form and Legality:

John M. Ang

Head Assistant Attorney

Susan T. Morakalis

Susan T. Morakalis
General Counsel

Approved:

Kari K. Steele

Kari K. Steele, President
Board of Commissioners
Metropolitan Water Reclamation
District of Greater Chicago