

NORTHERN MORAINÉ WASTEWATER RECLAMATION DISTRICT
RESOLUTION NO. 24-03

**RESOLUTION APPROVING AND RATIFYING A MEMORANDUM OF UNDERSTANDING
WITH THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

WHEREAS, the Northern Moraine Wastewater Reclamation District (the “*District*”) is a sanitary district operating pursuant to the authority set forth in the Illinois Sanitary District Act of 1917, 70 ILCS 2405; and

WHEREAS, the Illinois Environmental Protection Agency (the “*IEPA*”) is responsible for administering National Pollutant Discharge Elimination System (“*NPDES*”) permits to the District in accordance with state and federal regulations; and

WHEREAS, the IEPA and the District have developed a Memorandum of Understanding (the “*MOU*”) for implementing a watershed-based nutrient reducing offset process for inclusion in future NPDES permits issued by the IEPA to the District; and

WHEREAS, the MOU offers a framework for the District to implement quantifiable pollutant load reduction models to calculate nutrient reduction offsets in compliance with NPDES permit requirements; and

WHEREAS, although efforts to negotiate the MOU have been longstanding, the terms of the MOU have only recently been finalized; and

WHEREAS, because the IEPA sought an immediate response from the District on the MOU, District President Michaels and District Manager Haque have signed the MOU, a true and correct copy of which is attached hereto as Exhibit A; and

WHEREAS, the District Board of Trustees (the “*Corporate Authorities*”) have determined that it is in the best interests of the District and its residents to have the District formally approve, accept, and ratify the MOU;

NOW, THEREFORE, BE IT RESOLVED BY THE CORPORATE AUTHORITIES OF THE NORTHERN MORAIN WASTEWATER RECLAMATION DISTRICT, LAKE AND McHENRY COUNTIES, ILLINOIS, as follows:

SECTION 1. INCORPORATION OF PREAMBLES. The Corporate Authorities hereby find that the recitals contained in the foregoing preambles are true and correct, and incorporate them into this Resolution by this reference.

SECTION 2. APPROVAL OF MOU; RATIFICATION. The Corporate Authorities of the District hereby approve, accept, and ratify the MOU as signed by the District President and District Manager in the form attached hereto as Exhibit A. The Corporate Authorities further authorize and direct the District President, District Clerk, and District Manager to execute, attest, and otherwise finalize and take any and all actions on behalf of the District pursuant to said MOU.

SECTION 3. EFFECTIVE DATE. This Resolution shall be in full force and effect upon its passage and approval in the manner provided by law.

PASSED by the Corporate Authorities on this 11th day of June, 2024.

AYES: 5

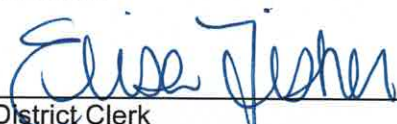
NAYS: 0

ABSENT: 0

ABSTAIN: 0

APPROVED on this 11th day of June, 2024.

ATTEST:


District Clerk


District President



EXHIBIT A

Memorandum of Understanding

4862-3747-5265, v. 2

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
AND
THE NORTHERN MORAINÉ WATER RECLAMATION DISTRICT**

This Memorandum of Understanding (MOU) between the Illinois Environmental Protection Agency (Illinois EPA) and the Northern Moraine Water Reclamation District (NMWRD), hereafter referred to as “Parties”, is effective on July 1, 2024.

1. Purpose. The purpose of this MOU is to set forth the Parties understanding of a watershed-based nutrient reducing offset process anticipated for inclusion in future National Pollutant Discharge Elimination System (NPDES) permits issued by the Illinois EPA to NMWRD. The nutrient offset process is intended to be consistent with State and federal law and regulation and will credit quantifiable nutrient reductions to NMWRD consistent with future Illinois EPA issued NPDES permits.
2. Parties. The Illinois EPA is an agency of the State of Illinois created by the Environmental Protection Act (Act) (415 ILCS 5/4) and is responsible for administering the NPDES permitting process in Illinois (415 ILCS 5/4(k)(1)). NMWRD is a unit of local government formed pursuant to the Sanitary District Act of 1917 (70 ILCS 2405) to provide sanitary sewer services and wastewater treatment to areas of McHenry County and Lake County, Illinois.
3. Guiding Principles. The NMWRD may use quantifiable pollutant load reduction models to calculate nutrient reduction offsets generated through the implementation of Best Management Practices (BMPs). This process will be conducted in compliance with NPDES permit requirements (to reduce nutrients in effluent beyond the effluent reductions necessary) to meet technology based effluent discharge regulatory standards.
4. Authority. The U.S. EPA has well-established programmatic support¹ for water quality programs that seek to restore, maintain, and enhance the surface water quality through effluent reduction, and offsets. The Illinois EPA will utilize authority in Section 39(b) of the Act² to authorize the inclusion of Nutrient Offset Process permit conditions in future NPDES permits issued to NMWRD.
5. Nutrient Offset Process Framework. Watershed level nutrient reduction work can provide a means to improve water quality, especially in cases where the technology does not exist, or is not affordable or feasible to allow a point source discharger to comply with permit nutrient requirements; or where the same or greater nutrient reductions can be achieved more quickly or at lower cost through implementing non-point agricultural and landscape nutrient reducing practices (nutrient reducing practices) or other nutrient reduction efforts. In future NPDES permit application(s), the NMWRD may submit a watershed-based nutrient reduction commitment plan (Plan) that explains the NMWRD's approach for implementing nutrient reducing practices within the watershed as described in this MOU. The Plan will document how NMWRD will meet NPDES permit conditions requiring nutrient reductions in effluent

¹ The United States Environmental Protection Agency issued a policy memorandum on February 6, 2019, entitled "Updating the Environmental Protection Agency's (EPA) Water Quality Trading Policy to Promote Market-Based Mechanisms for Improving Water Quality" which states “[t]he EPA has long interpreted the Clean Water Act to allow pollutant reductions from water quality trading, offsets and other similar programs to be used for ensuring compliance with regulatory requirements.”

² “The Agency may include, among such conditions, effluent limitations and other requirements established under this Act, Board regulations, the Federal Water Pollution Control Act, as now or hereafter amended, and regulations pursuant thereto, and schedules for achieving compliance therewith at the earliest reasonable date.” 415 ILCS 5/39(b).

discharge within the watershed below the technology-based limit of 1.0 mg/L to achieve an effluent discharge limit of 0.5 mg/L for total phosphorus. Existing HUC-8, HUC-10, and HUC-12 watershed management plans (WMP), or plans developed as part of a Nutrient Assessment Reduction Plan (NARP), may serve as a portion of the Plan provided the WMP or NARP is approved by the Illinois EPA and meets the requirements specified in a future NPDES permit condition(s). The Plan should include the following:

- a. Location. The NMWRD must select a watershed planning area or multiple areas in the watershed(s) identified in Attachment A.
- b. Baseline. Baseline conditions must be established based on field use data and conditions present in 2024 prior to the implementation of any nutrient reducing practice. If field use data is not available for 2024, the baseline may be established using the most recent field use data available. Other information may include photographs, soil samples, and pertinent history, as appropriate. For nutrient reducing practices, baseline conditions may be further defined in terms of geographic scale, existing nutrient reducing practices within the watershed, and schedule of implementation to facilitate improved environmental performance to achieve nutrient load reductions. Baseline data will be verified and will be stored as a part of the model runs necessary to calculate nutrient reductions.
- c. Practice Criteria. Nutrient reducing practices must be installed and maintained according to United States Department of Agriculture Natural Resources Conservation Service (NRCS) Manual, Illinois Urban Manual (IUM), or other standard agreed upon by the Parties. Work shall be done in accordance with generally accepted engineering practices and shall document the modeled estimates of pounds reduced as compared to nutrient loading conditions prior to the installation of the practice. Novel practices not included in the NRCS or the IUM may be used provided they are approved by Illinois EPA prior to implementation. Annual generation of offsets is limited to the useful life of the nutrient reducing practice used to generate the offset.
- d. Partnerships, Contractual Relationships, Watershed Management Authorities, Third- Party Designees, and Other Arrangements. NMWRD may work through a partnership, contractual relationship, or third-party entity. NMWRD may not claim offsets for nutrient reducing practices funded in whole or in part by funds which have restrictions on use for meeting other specific regulatory requirements. If the NMWRD is working with a third-party aggregator, the third party may assign nutrient reducing offsets for use in the NMWRD's NPDES permit compliance efforts or transfer registration of the nutrient reducing practices to the NMWRD. If NMWRD chooses to work through any third-party entity, NMWRD shall retain responsibility for compliance with this MOU, NPDES permit(s), and any statutory or regulatory requirement.
- e. Monitoring and Modeling Practices. The NMWRD must develop a monitoring strategy to quantify and document overall Nutrient pollutant load reductions to document compliance with the NPDES permit condition(s). NMWRD's estimates of load reductions for the proposed nutrient reducing practices must be calculated using the Nutrient Tracking Tool (NTT) provided by the U.S. Department of Agriculture's Environmental Markets Division; USEPA's Spreadsheet Tool for Estimating Pollutant Loads (STEP-L), or its successor Pollutant Load Estimation Tool (PLET) model; or in another model mutually agreed to by the Parties. Currently, nutrient reducing practices will be modeled at the field scale using the NTT or STEP-L, or PLET Models. Other models or methods may be substituted as deemed appropriate, subject to agreement by the Parties to this MOU.

Taking into account the offsets described in Section 5f, an appropriate safety factor with conservative assumptions must be applied to account for additional uncertainty in the estimated offset. These calculated estimates are for planning purposes only. After the nutrient reducing

practice is installed, a qualified professional must certify the installation, and NMWRD must submit proof of certification to Illinois EPA. NMWRD will evaluate the effectiveness of the nutrient reducing practice using U.S. EPA published guidance including “Monitoring and Evaluating Nonpoint Source Watershed Projects” (May 2016, 841-R-16-010).

For nutrient reducing practices not included in the NTT or STEP-L/PLET Models, the NMWRD may present the Illinois EPA with a proposal for approval for new nutrient reducing practices which includes an analysis using one or more models in use by the academic, regulatory, or engineering community of the expected reduction in nutrients.

Offset-generating nutrient reducing practices must not include actions required by another NPDES permit (including compliance schedules), law, regulation, ordinance, or a Total Maximum Daily Load.

- f. Offset Ratios. Risk and uncertainty will be managed with the application of different offset ratios based on location as identified in Attachment A. For nutrient reducing practices undertaken in Area 1, an offset ratio of at least 1.3:1 will be utilized. For nutrient reducing practices undertaken in Area 2, an offset ratio of at least 1.5:1 will be utilized. For nutrient reducing practices in Area 3, an offset ratio of at least 1.8:1 will be utilized. Offsets ratios increase by 0.2 if the STEP-L or PLET models are used. Offset ratios increase by 0.2 for non-structural projects.
 - g. Nutrient Reducing Practice Certification. All nutrient reducing practices must undergo review and certification by qualified professionals and the certification submitted to the Illinois EPA. Qualified independent professionals will audit the practices in the second and fourth years of a permit. Project certification for nutrient reducing practices must include the following components:
 - i. Confirmation that NMWRD completed all nutrient reducing practice reporting or document submittal as required by NPDES permit(s);
 - ii. Confirmation that a nutrient reducing practice review has been successfully completed; and
 - iii. Signed certification of the number of offsets resulting from the nutrient reducing practice(s) estimated annually over the life of the nutrient reducing practice.
 - h. Reporting. NMWRD shall comply with reporting requirements of future Illinois EPA issued NPDES permit(s).
6. No transfer of liability. NMWRD shall remain responsible and liable for compliance with the applicable NPDES permit. NMWRD may not alter or transfer, through any means, to any third-party the responsibility for compliance with NPDES permits.
 7. Banking. To encourage additional nutrient reducing practices in the watershed and to provide for a level of certainty of the success of BMPs for use, nutrient offsets may be banked for use against permit requirements in future years. All banked offsets must be accounted for in the annual report. Banking surpluses and uses, as well as monitoring data, shall be reviewed during the NPDES permit renewal cycle to determine if adjustments to BMP practice implementation are necessary to meet NPDES permit requirements. Banked offsets may not be traded with other entities, including other NPDES permit holders. Banked offsets expire after ten (10) years.
 8. Modification and Termination of Agreement. This agreement shall be in effect unless modified or terminated by mutual agreement of the Parties. If the Illinois EPA elects to terminate this MOU, it must submit written notice to the NMWRD one-hundred eighty (180) calendar days in advance of the current permit's expiration date. This initial agreement will terminate twenty years after the date of signing.

In witness whereof, the Parties hereto have caused this MOU to be executed by their duly authorized representatives.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: 
Signature of John J. Kim

By: _____
Signature of Designee

Date: 5/28/24

Printed Name: John J. Kim

Printed Title: Director

NORTHERN MORAIN WASTEWATER RECLAMATION DISTRICT

By: 
Signature of Authorized Representative

By: 
Signature of Designee

Date: MAY 22, 2024

Printed Name: KEN MICHAELS, PRESIDENT

Printed Title: MOHAMMED HAQUE, DISTRICT MANAGER

E-mail: trustees@nmwr.org
haque@nmwr.org

Attachment A

Upper Fox River Watershed (Illinois portion)

