

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

IN THE MATTER OF:)
)
WATER QUALITY STANDARDS AND)
EFFLUENT LIMITATIONS FOR THE) R08-09
CHICAGO AREA WATERWAY SYSTEM) (Rulemaking - Water)
AND LOWER DES PLAINES RIVER)
PROPOSED AMENDMENTS TO 35 ILL.)
ADM. CODE 301, 302, 303 AND 304)

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

Take notice that today I filed an Appearance and Questions Submitted by the Chemical Industry Council of Illinois with the Clerk of the Illinois Pollution Control Board.

Dated: January 18, 2008

Respectfully submitted,

**CHEMICAL INDUSTRY COUNCIL OF
ILLINOIS**

By: /s/Kevin B. Hynes
Kevin B. Hynes
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APPEARANCE

I, Kevin B. Hynes, enter my appearance on behalf of the Chemical Industry Council of Illinois.

Dated: January 18, 2008

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QUESTIONS SUBMITTED BY THE CHEMICAL INDUSTRY COUNCIL OF ILLINOIS

The Chemical Industry Council of Illinois (“CICI”) submits its preliminary comments and questions regarding the Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303, and 304.

The CICI is a not-for-profit, statewide association, which represents 203 corporations, including more than 100 chemical firms that manufacture, blend, distribute and sell chemicals. The Illinois chemical industry ranks third in the United States in chemical exports, fourth in value of chemical shipments, directly employees more than 50,000 people, with another 300,000 people that are employed in related industries. Moreover, approximately 1.8 million Illinois employees in other industries depend on chemical products or 31.1% of all jobs in Illinois. Many of CICI’s members depend on the Illinois Waterway System for their business. The Port of Chicago is ranked 32nd out of the 200 U.S. Ports and annually moves over 25 million tons of goods through the port. In 2005, the chemical industry moved approximately 17.7 million tons of the 25 million tons in the form of petroleum and chemicals.

CICI and its members have a significant interest in any proposed rulemaking dealing with changes to the water quality standards and effluent limitations. CICI objects to this rulemaking in its entirety and requests that the proposal be withdrawn. As pointed out below and the many comments submitted by other parties that use this waterway system, this proposal sorely lacks a connection between what the Illinois EPA proposes and the realities of this waterway.

COMMENTS/QUESTIONS

1. The proposal is a monumental undertaking for the regulated community, the Illinois EPA, and the Pollution Control Board. Indeed, this proposal could have wide-ranging economic impacts. Is there any intention of applying these standards, if enacted, to other waters of the State of Illinois?

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2. The Chicago Area Waterway System (CAWS) and Lower Des Plaines River comprise a vast and varying aquatic and navigational system, did the Agency consider breaking this proposal into more narrowly tailored segments rather than one massive proposal?
3. This proposal has standards for constituents such as temperature that will have major economic impacts on those that use the CAWS or Lower Des Plaines. Has the Agency considered subdividing this larger proposal into more manageable constituent-based proposals? If so, why was that option rejected?
4. The proposal currently before the Board differs from that submitted to the Governor in draft form in January 2007.
 - Is the Agency prepared to discuss those changes and the basis for the changes?
 - Who participated in drafting the changes?
5. In pre-filed testimony, the Agency states that the CAWS and Lower Des Plaines River's ". . . potential continues to be *somewhat* tempered by its unique physical and habitat characteristics as well as lingering, albeit diminishing, legacy contamination from prior decades of neglect." *Rob Sulski* at p. 4 (emphasis added). Is the Agency's position consistent with other statements that "irreversible human caused conditions and circumstances" limit aquatic life potential and recreation?
6. The Agency recognizes that the Board will need to consider additional data before a decision can be made on this proposal. *Scott Twait* at 15. Indeed, the Metropolitan Water Reclamation District, in conjunction with the University of Illinois at Chicago, is embarking on a multi-year study of the CAWS. Why is the Agency refusing to wait for the collection of additional data that will better clarify some of the issues at hand?
7. The Agency "recommends to defer setting numerical standard (sic) for bacterial parameters for all three of the proposed recreational use designations proposed pending completion of additional scientific evaluations." *Statement of Reasons* at 42. Why is the Agency willing to wait for this data, but not data collected for other parts of this proposal?
8. The Agency states that it networked with stakeholder groups in developing this proposal. *Rob Sulski* at p. 10.
 - Which stakeholder groups?
 - Did the Agency consult with local governments along the CAWS or the Lower Des Plaines?
 - Did the Agency consult with individual industrial users, other than Midwest Generation, on the CAWS or the Lower Des Plaines?

- Did the Agency consult with the Coast Guard?
- Did the Agency consult with the Illinois Department of Transportation?
- Did the Agency consult with the U.S. Department of Homeland Security?

For each of these questions, what information or data was obtained from each “stakeholder”?

9. The Agency recommends waterway flow augmentation, effluent cooling and effluent disinfection as options for overcoming limitations due to dissolved oxygen, temperature, and bacteria limitations. The cost to implement these recommendations could be staggering, if not prohibitive. Did the Agency independently examine the cost implications for each recommendation? If so, is the Agency prepared to testify about those costs? If not, why was cost not considered as required by Section 27(a) of the Act, 415 ILCS 5/27(a)?
10. As proposed, Section 302.401 states that the Subpart B (General Use) and Subpart C public water supply standards do not apply to the CAWS or the Lower Des Plaines. When put side-by-side, however, the Subpart D standards are identical or more stringent than the Subpart B General Use standards. Indeed, in several parts of the *Statement of Reasons* the Agency notes that it is adopting the General Use Standard. If these waters do not have to comply with Subpart B General Use standards, why are they subject to the same or more stringent standards?
11. Why are general use standards being proposed in light of Agency statements/findings such as “. . . it is not uncommon for some portions of the CAWS to experience changes in depth of four to six feet in a 24 to 48 hour period and rapid changes in flow velocity. Such rapid fluctuations result in sediment scouring and resuspension plus alternate drying and wetting of shoreline habitat for aquatic life.” *Statement of Reasons* at 33. Are the proposed standards set so low as to guaranty failure?
12. The Agency admits that it “expects that there will be violations of the chloride standard during the winter months when road salting takes place. . . .” *Scott Twait* at 9. Essentially, the Agency is saying that it knows that there are problems with the proposal, but it will fix it after the proposal is promulgated. If the Agency knows that there will be violations, why is that not already accounted for in the proposed standard?
13. Growth estimates indicate that in Will County alone population will be approximately 800,000 by 2012 and over 1 million by 2030. Did the Agency consider the impacts of population growth on the quality of the CAWS or Lower Des Plaines?
14. The Agency relies heavily on the Ohio IBI. Did the Agency compare the Illinois IBI and the Ohio IBI for other impounded reference sites before deciding to rely on the Ohio IBI?

15. In its prefiled testimony the Agency states that:

“[d]eveloping the Agency’s proposal to the Board for thermal water quality standards was one of the most challenging aspects of the rule development process and there will likely be additional information developed in the Record of this proceeding that the Board will have to consider in making a final decision.”

Scott Twait at 15. This statement raises several questions such as:

- What additional information does the Agency anticipate being presented to the Board?
- Could the Agency have developed this information?
- Are the Board, the Agency and the regulated community better served by waiting until that information is developed before proceeding with this rulemaking?

16. What is the point at which something becomes “an adverse socio-economic impact”? *Id.* at 22.

17. Section 301.282 defines “Incidental Contract Recreation,” to include small craft recreational boating. CICI understands that jet skiing is considered an incidental contact recreational use.

- Is jet skiing more akin to swimming in its exposure risk?
- How prevalent is jet skiing on the waters designated as incidental contact recreation waters?
- What does “infrequently” mean in Attachment B at 1-11?
- Did the Agency consider the safety risks attributed to promoting incidental contact recreation such as jet skiing in areas utilized by barges such as in the Calumet Sag Channel?

18. The Agency recognizes that contaminated sediments are significant concern. *Statement of Reasons* at 68-69. If that is the case, is it practical to expect compliance with the proposed standards in the waterways impacted by contaminated sediment?

19. The Agency states that “[i]t is believed that these concentrations will continue to decrease as contaminated sediment stabilizes or is covered by cleaner sediment.” *Id.* at 69.

- At what rate is the concentration decreasing?

CERTIFICATE OF SERVICE

I, Kevin B. Hynes, an attorney, certify that on January 18, 2008, I caused the foregoing Notice of Filing, Appearance, and Questions Submitted by the Chemical Industry Council of Illinois to be served on the following people by the following methods:

By Electronic Mail (via IPCB)

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