

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**IN THE MATTER OF** )  
 )  
**WATER QUALITY STANDARDS AND** )  
**EFFLUENT LIMITATIONS FOR THE** ) **R08-9**  
**CHICAGO AREA WATERWAY** ) **(Rulemaking – Water)**  
**SYSTEM AND THE LOWER DES** )  
**PLAINES RIVER: PROPOSED** )  
**AMENDMENTS TO 35 Ill. Adm.** )  
**Code Parts 301, 302, 303 and 304** )

**STATEMENT OF SUPPORT AND OBJECTIONS TO THE  
PROPOSED RULES BY THE CHICAGO AREA  
SEA KAYAKERS ASSOCIATION AND VARIOUS CO-PETITIONERS**

Petitioner, the Chicago Area Sea Kayakers Association ("CASKA"), and various co-petitioners (collectively "Petitioners") submit this Statement of Support and Objections in the above-captioned rule making proceeding. This Statement includes an Introduction, a description of the importance of the Chicago Area Waterway System ("CAWS") and the Lower Des Plaines River ("LDPR") (collectively "Waterways") to the Chicago area paddling and rowing communities, and a discussion of the rules proposed ("Proposed Rules") by the Illinois Environmental Protection Agency ("ILEPA") for adoption by the Illinois Pollution Control Board ("IPCB").

Petitioners support the requirement in the Proposed Rules that sewage be disinfected before being discharged into the Waterways. Yet, Petitioners have several objections to the Proposed Rules. They believe that the recreational use water quality designations proposed by the ILEPA are not consistent with the requirements of the Clean Water Act ("CWA") and are not supported by the facts pertaining to the current recreational uses and the recreational potential of the Waterways. Petitioners urge the

Board to adopt final rules that require that the Waterways meet a General Use standard for recreational uses by 2016.

## INTRODUCTION

Petitioner Chicago Area Sea Kayaking Association

(<http://www.caska.org/home.htm>) has about 150 paying members and reaches a much larger number of paddlers in the Chicago area through its Yahoo Group, website and blog. CASKA is dedicated to encouraging safe and sustainable paddling practices. Each year CASKA and its members organize paddles on the Chicago River, the Calumet River/Lake Calumet area, the North Shore Channel and the LDPR. In addition, CASKA members regularly venture on the Cal Sag Channel and the Chicago Sanitary Ship Canal ("CSSC"). In recent years CASKA members have paddled every waterway that is the subject of this rulemaking.

Co-Petitioner Illinois Paddling Council ("IPC") ([www.illinoispaddling.org](http://www.illinoispaddling.org)) was organized in 1963 and is a statewide not-for-profit association that represents the interests of Illinois paddlers and paddling organizations. IPC strives to improve access to Illinois waterways, advocates for the conservation and restoration of Illinois rivers and lakes, provides paddlesport information, promotes paddling competitions, and recognizes excellent contributions to paddlesports in Illinois.

Co-petitioner Lincoln Park Boat Club ("LPBC") ([www.lincolnparkboatclub.com](http://www.lincolnparkboatclub.com)) is a sea kayaking, Olympic canoeing, sweep rowing and sculling club based in the Chicago area with approximately 400 paying members. LPBC reaches additional paddlers and rowers through its extensive instructional offerings and community outreach programs serving youth organizations throughout Chicago. LPBC's competitive rowing

teams as well as its competitive Olympic canoe racers use the Chicago River daily for their training. LPBC kayakers use the Chicago River frequently for group paddling trips into the downtown area, to Chinatown and north into Chicago's neighborhoods.

Co-Petitioner Prairie Coast Paddlers ("PCP") ([www.prairiecoastpaddlers.net](http://www.prairiecoastpaddlers.net)) is a sea kayaking club based in the Chicago area with approximately 70 paying members. PCP also reaches additional paddlers through its Yahoo group. PCP sponsors numerous trips and encourages safe and responsible paddling. Many of PCP's trips have been on various portions of the Chicago River during the club's 12-year history.

Co-Petitioner Chicago River Canoe and Kayak ("CRCK") ([www.chicagoriverpaddle.com](http://www.chicagoriverpaddle.com)) is a commercial outfitter that puts about 10,000 people into canoes and kayaks on the Chicago River system each year. CRCK launches approximately 8,000 people each year from its Chicago launch site. These people mostly paddle on the North Branch between about North Avenue and Peterson Ave. CRCK launches approximately 2,000 people each year from its Skokie launch, and these people mostly paddle on the North Shore Channel north of Oakton.

Co-Petitioner the Southwest Brigade ("SWB") is a group of historic re-enactors of the Voyageur era. The French-Canadian Voyageurs were the first Europeans to use the lower Des Plaines River. SWB sponsors two re-enactments each year on the lower Des Plaines River in which club members paddle big canoes, ranging from 22 feet to 26 feet in length. Club members also paddle on the lower Des Plaines for their own enjoyment in a variety of boats.

Co-Petitioner Des Plaines River Association ([www.canoemarathon.com](http://www.canoemarathon.com)) conducts the annual Des Plaines River Canoe Marathon, the fifty-first of which will take place on

May 18, 2008. The marathon occurs along an 18.5 mile section of the Des Plaines River from Libertyville to Mt. Prospect. The marathon attracts over 2,000 canoeists and kayakers each year.

Co-Petitioner Kayak Chicago ([www.kayakchicago.com](http://www.kayakchicago.com)) is a commercial outfitter that offers kayak rentals, guided tours and lessons on the Chicago River and Lake Michigan. Kayak Chicago and its clients paddle the North Branch and Main Branch of the Chicago River every day. Kayak Chicago enables thousands of recreational paddlers to enjoy the Chicago River each year.

Co-petitioner Chicago Whitewater Association ("CWA") ([www.chicagowhitewater.org](http://www.chicagowhitewater.org)) is a whitewater paddling club based in the Chicago area. CWA has been in existence for 36 years. CWA has approximately 115 paying members and almost 500 subscribers to its Yahoo group. The purposes of CWA include providing a fellowship vehicle for whitewater paddlers in the greater Chicago area, providing training in whitewater paddling, and advocating for whitewater paddling opportunities. When not traveling to whitewater rivers, CWA members paddle year-round on Chicago area rivers, as well as on Lake Michigan.

Co-Petitioner Geneva Kayak Center ("GKC") ([www.genevakayak.com](http://www.genevakayak.com)) is located in Geneva, Illinois and is the largest paddlesport retailer in the state of Illinois. GKC puts thousands of paddlers on the water each season through classes and the Windy City Kayak Symposium (<http://www.windycitykayaksymposium.org/>). This May GKC is opening a second retail store, in the city of Chicago. GKC believes that cleaner water in the Chicago River and Des Plaines River would certainly benefit canoeists and kayakers, and would also benefit other users such as sportsmen and

families that are located near the water's edge. GKC believes that cleaner waterways would be a boon to its business and all paddlesport businesses in the area.

Co-Petitioner Wisconsin Canoe Racing Association ("WCRA") ([www.wicanoeracing.com](http://www.wicanoeracing.com)) is a paddling association that has been in existence for over 40 years. WCRA's mission is to promote participation in the sport of paddling and to encourage safe and responsible paddling. WCRA members are found throughout Wisconsin and northern Illinois. These members train and attend races on rivers throughout northern Illinois, including on the Chicago and Des Plaines Rivers.

Co-Petitioner Prairie State Canoeists ("PSC") ([www.prairiestatecanoeists.org](http://www.prairiestatecanoeists.org)) is one of the Midwest' oldest and largest paddling clubs, with approximately 400 family memberships. The majority of PSC members live in the Chicago area. PSC maintains a very active presence on the Internet with its website and Yahoo group. Club volunteers lead over 150 paddling trip as year. In 2007 PSC paddlers spent 225 days on 182 trips and collectively paddled almost 21,000 miles. Over half of the miles (11,380 miles – 109 days) were on local waterways, including the Des Plaines River and the Chicago River. In addition to sponsoring paddling trips and advocating on behalf of improved access to rivers, PSC supports efforts to clean up waterways. In 2007 PSC sponsored 11 club clean-up trips with a total of 109 participants.

In addition to the activities sponsored by these organizations on the Waterways, the Friends of the Chicago River sponsors The Chicago River Flatwater Classic ([www.chicagoriver.org/events/flatwater\\_classic](http://www.chicagoriver.org/events/flatwater_classic)), an annual race for nearly 600 paddlers. The 7.25 mile course runs from Clark Park down the North Branch, through the downtown area on the South Branch to the finish line at Ping Tom Memorial Park in

Chinatown.

Paddlers and rowers share the Waterways with many others. We regularly encounter motorized pleasure craft and see many people fishing. We also see people strolling, jogging and biking on shore of the Waterways.

As a result of the frequent and ongoing involvement of their members with the Waterways, the Petitioners are especially well qualified to provide an assessment of the current condition and uses of the Waterways, their potential if substantial water quality improvements are made, and the real-life consequences of the water quality standards proposed by the ILEPA.

**I. THE IMPORTANCE OF THE WATERWAYS TO THE CHICAGO AREA PADDLING AND ROWING COMMUNITIES**

Chicago is developing into a regionally and nationally significant destination for paddle sports. Last year, for example, saw the first year of the Windy City Kayak Symposium (<http://www.windycitykayaksymposium.org/>), which attracted instructors and students from around the world and is being repeated this year. Notably, the Symposium offered guided trips on parts of the Waterways. Last year also saw the first edition of the Chicago Shoreline Marathon (<http://www.chicagoshorelinemarathon.com/>), an event that attracted kayak racers from around the world and is being repeated this year.

Looking ahead, Chicago may host the 2016 Summer Olympics, which will include many paddle sport and rowing competitions. The Waterways could provide a convenient and attractive venue for some of these events.

Besides the special events described above, the Waterways offer the paddling and rowing communities an environment that has important advantages over Lake Michigan.

Unlike Lake Michigan, the Waterways are ice-free in most winters, which allows for a year-round season for paddling and rowing. The Waterways are significantly more protected from wind and waves than Lake Michigan, which can experience ocean-like wave conditions. The Waterways are also significantly warmer than Lake Michigan, which reduces the possibility of cold shock and hypothermia in the event of a spill.

Due to Lake Michigan's challenging conditions, almost all rowing activities in the City of Chicago and environs occur in protected waters like the Waterways, which explains the physical location of the various rowing clubs along the Waterways. *See, e.g.,* Chicago River Rowing and Paddling Center (located on main branch of Chicago River) (<http://www.chicagorowing.org/index.html>).

Lake Michigan may be the premiere local destination for sea kayaking, but the Waterways are a close second. CASKA, for example, regularly receives requests for information from out-of-town paddlers interested in paddling on the Chicago River to and around the downtown area or paddling down the CSSC to the LDPR and from there to the Illinois River and beyond.

The Waterways also offer a water environment that is, in some ways, more varied than Lake Michigan. Some stretches of the Waterways run through wooded areas. Other stretches pass through crowded urban environments such as the Loop. Many stretches of the Waterways offer paddlers a unique view of the industrial sector of the local economy. Paddlers, rowers, and other recreational boaters find this varied paddling environment extremely attractive. Indeed, one of the most popular paddles for kayakers and commercial outfitters is to paddle through the heavily industrialized south reach of the North Branch of the Chicago River to the Loop and then out to the locks near Lake

Michigan and back.

Local paddlers and rowers are acutely aware of the challenges facing the Waterways. We see first hand the trash that floats down the river. We paddle by pipes that appear to be discharging industrial waste into the water. We monitor the Metropolitan Water Reclamation District of Greater Chicago ("MWRDGC") reports indicating when untreated sewage is being dumped into these waters as a result of combined sewer overflow ("CSO") events. We are acutely aware of the high bacteria counts that result from CSO events and the MWRDGC's failure to disinfect the sewage it discharges into these waters, and sometimes suffer intestinal discomfort after a paddle or row in these waters.

We are also aware that the public's negative opinion of the water quality in the Waterways is a major obstacle to expanded recreational use of the Waterways. As we paddle the Waterways we regularly encounter comments from skeptical onlookers to the effect that we are paddling in a "sewer" and are putting our lives at great risk.

Despite these many challenges and the public's skepticism that the Waterways can ever support full recreational uses, these Waterways continue to attract paddlers, rowers, and many other recreational users in greater numbers each year. Public agencies and private landowners continue to make shoreline improvements along the Waterways. The Petitioners understand first hand how water quality improvements in these Waterways can drive major recreational, educational, commercial and cultural improvements for this region.

## **II. PETITIONERS' OBJECTIONS THE PROPOSED RULES**

The Petitioners believe that the disinfection requirements of the Proposed Rules will result in major improvements in both water quality for recreational purposes and the public perception of the Waterways. Petitioners support this aspect of the proposed Rules. Nevertheless, Petitioners believe that the Proposed Rules are deficient in several important respects. They address these deficiencies in this Part and urge the IPCB to do more for recreational water quality in the Waterways than the ILEPA recommends.

### **A. The Deficiencies In The ILEPA's Proposed Rules**

#### **1. Introduction**

As the Use Attainability Analyses ("UUA") for the Chicago Area Waterway System ("CAWS UAA") and the Lower Des Plaines River ("LDPR UAA") describe, the Waterways comprise a manmade hydrologic infrastructure built on top of several existing rivers. For the past century, the Waterways have allowed the Chicago region to flush its wastes away from Lake Michigan and to access bulk goods through commercial shipping. Both water quality and native habitat were sacrificed for these important missions.

Understanding this history and the current state of the Waterways does not mean, however, that this IPCB rulemaking process has to be a prisoner of that history. The UAAs acknowledge that major positive changes have occurred in the Waterways over the past 25 years. *See, e.g.*, CAWS UAA at pg. 2-1 ("There have been dramatic improvements in water quality and shoreline development in the last 25 years."). Yet, the Proposed Rules lack a full understanding of what might be possible with these waters if they are designated for General Use recreation in the foreseeable future (e.g., 2016) and

the regional benefits that will result from such a designation. In other words, the Proposed Rules fail to fully reflect and sustain the positive momentum that has resulted in “dramatic improvements” in recent years.

The key flaw in the Proposed Rules and the supporting UAAs is that they rest on the incorrect assumption that unless the Waterways can be made to meet both “swimmable” and “fishable” standards akin to that which would be found on a natural river, then they do not meet a General Use standard for either purpose. Instead, the IPCB needs to reckon with the possibility that some or all of the Waterways can be upgraded to the General Use standard for recreation in the foreseeable future even if their aquatic use potential is less than that found in a high-quality free-flowing river.

**2. The CWA Requires Consideration of Individual Uses Such As Recreation Rather Than A Single Bundled Fishable/Swimmable Use**

The CWA provides in relevant part an “interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife *and* provides for recreation in and on the water be achieved by July 1, 1983.” 33 ILCS §1251(a)(2) (emphasis added). Likewise, the U.S. EPA (“USEPA”) rules recognize that aquatic life and recreational uses are distinct: “[W]ater quality standards should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife *and for recreation in and on the water.*” 40 C.F.R. §131.2 (emphasis added).

The USEPA’s Use Attainability Analysis factors likewise are framed in terms of individual uses. The factors most relevant to the recreational designations in the Proposed Rules provide:

(2) *Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use. . .;*

(3) *Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct or to leave in place; or*

(4) *Dams, diversion or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or . . .*

40 C.F.R. §131.10(g) (emphasis added).

The CWA and the USEPA's implementing regulations thus require the IPCB to consider aquatic life and recreational uses separately. They contemplate situations where a water body may be able to support one kind of use more robustly than another kind of use due to the factors considered in the UAA analysis.

Consistent with these legal requirements, the ILEPA's Statement of Reasons criticizes those who characterize the CWA as mandating a single "fishable/swimmable" goal. ILEPA Statement at pg. 3. The ILEPA properly recognizes in this part of its Statement that the CWA has an "aquatic life goal" and a "recreational goal." *Id.* Unfortunately, in the body of its Statement the ILEPA conflates the two goals in its own analysis and the Proposed Rules. As a result, the ILEPA wrongly recommends rolling back existing General Use recreational designations on certain stretches of the Waterways. This error also accounts for the ILEPA's wrongful failure to recommend assigning a General Use designation for recreation for any part of the Waterways at any time.

**3. The ILEPA Erred By Using A Bundled Fishable/Swimmable Standard To Justify No General Use Standard For Recreation In The Waterways**

In its Statement the ILEPA agrees with the CAWS UAA that "CAWS water quality was for the most part meeting Illinois' General Use standards." ILEPA Statement at pg. 95. Likewise, the LDPR UAA found that in the LDPR "the potential water quality could meet the [E-Coli] based standards for swimming derived from a higher, yet, acceptable risk level." LDPR UAA at pg. 306.

Despite this evidence that a General Use designation for recreation in the Waterways is within reach in the foreseeable future, the ILEPA goes on to recommend that none of the reaches of CAWS deserve a General Use designation because "primary parameters not meeting General Use standards . . . are temperature, dissolved oxygen [and] bacteria." ILEPA Statement at pg. 95. Instead, the ILEPA recommends "Limited Contact Recreation" and "Recreational Navigation" designations that fall well short of the "swimmable" goal mandated by the CWA. The ILEPA also recommends stripping General Use designations from the existing stretches of the Waterways that have that designation, a retreat that will have adverse public perception implications and possibly allow a decline in water quality in these areas. The ILEPA's approach is not well founded.

The ILEPA Statement fails to establish how various water quality deficiencies in the Waterways that adversely impact aquatic life also make these waters unfit for primary contact recreational use. For example, when discussing the North Shore Channel, which is currently has a General Use designation, the CAWS UAA (pg. 5-1) states:

*Due to the limitations on the quantity of discretionary diversion from Lake Michigan, extended periods of low flow in the channel can create adverse water quality conditions (e.g., low D.O.) that can prevent the attainment of a higher aquatic life designated use. (Emphasis added.)*

Note that this discussion of the second UAA factor under the USEPA rules (40 C.F.R. §131.10(g)) makes no mention how the low flow conditions, low levels of dissolved oxygen or inability to attain a high level of *aquatic life* prevent a General Use designation for primary contact *recreation*. Yet, the ILEPA concludes that the existing General Use designation for the North Shore Channel should be eliminated for recreation as well as aquatic life purposes.

ILEPA should have considered whether the Waterways can reach a General Use designation for recreation by reference to only those water quality issues that pertain to whether the water can support primary contact recreation like swimming. Instead, the ILEPA proposes setting water quality standards for recreation by basing those standards on the capability of the Waterways to support a full range of aquatic life.

Basing water quality standards for recreational uses on the aquatic life potential of the body of water conflicts with the requirement of the CWA (see Part II.A.2 above) and is not well supported by the facts. The UAAs and the ILEPA Statement fail to establish that some of the factors that inhibit aquatic life in the Waterways, such as occasional periods of low levels of dissolved oxygen, make the Waterways unacceptable for primary contact recreation.

After all, human beings, unlike fish, do not rely on dissolved oxygen in water to breath. If low levels of dissolved oxygen justify lower water quality standards for recreational use by humans, then presumably the ILEPA would have the IPCB adopt lower water quality standards for aquatic life because of the presence of smog in the

Chicago region that adversely affects humans. That would be absurd, yet this is just the kind of the approach the ILEPA wrongly adopted when recommending that none of the Waterways be given a General Use designation for human recreation based on factors like low dissolved oxygen that adversely affect aquatic life.

Petitioners thus urge the IPCB to carefully consider recreational and aquatic use designations on their individual merits rather than adopting the lowest common denominator approach followed by the ILEPA. Given that the biggest obstacle to primary contact recreation use is the high levels of bacteria and that the water in the Waterways is otherwise largely suitable for a General Use designation for recreation, the IPCB should focus on whether bacteria levels can be reduced to acceptable levels in the foreseeable future.

**4. The ILEPA's Proposed Recreational Use Designations Fail To Take Into Account The Positive Effects Of Disinfection And The Next Phase Of The TARP**

While current elevated bacterial counts prevent much of the Waterways from being designated General Use at this time, the ILEPA is recommending that a major source of that bacteria—sewage dumped by the MWRD—be disinfected beginning in 2011. ILEP Statement at 92. The next phase of the Tunnel and Reservoir Project (“TARP”) project will further reduce the instances of Combined Sewer Outflows that currently contribute excess bacteria periodically. These two developments put a General Use designation for some or preferably all of the Waterways within reach by 2016. The final rules adopted by the IPCB should include a target date certain for General Use designation.

**5. The Conclusions ILEPA Draws From The Physical Characteristics Of The Waterways Are Faulty**

Another ILEPA error is the conclusion it reaches from the current physical structure of the Waterways that a General Use designation anywhere on the Waterways at any time during the next decade is impossible. The ILEPA's conclusion in this regard with respect to the CAWS is as follows:

*Due to the many physical limitations to access the waterbodies, the access limitations placed upon most of the waterways by MWRDGC and other riparian landowners, the physical hazards in the waterways and the high use of commercial navigation traffic, the attainment of primary contact recreation is not feasible at this time. Additionally, no communities along CAWS have plans to establish recreational facilities along the waterways to support swimming.*

ILEPA Statement at pg. 5-2. Similar conclusions drive the ILEPA's failure to recommend a General Use designation for recreation for the LDPR. *See, e.g.,* ILEPA Statement at pg. 94 ("the Agency decided that the Brandon Pool warranted no protection of recreation use because of the risks associated with any type of recreation in the Brandon Pool").

The ILEPA's reliance on "the many physical limitations to access the waterbodies" to justify lower quality standards is misplaced. Physical barriers limiting access to a waterway are not an appropriate basis for weakening water quality standards. If this were the case, then some of the most pristine waters in the country running through canyons and other areas that are difficult to access would be stripped of their General Use designation on that basis. Such a result would be unacceptable for those waters and it should be unacceptable here, where the barriers are manmade and hence more easily subject to change.

The ILEPA makes much of the fact that the "physical hazards" inherent in the

design of the Waterways (e.g., shear walls) make small boat navigation impractical or unsafe and hence mandate a lesser recreational use designation than General Use:

*Wakes coupled with vertical-wall construction in many of the waterway reaches make recreational uses dangerous. Small craft can easily be capsized and persons in the water will have little if any route for escape.*

ILEPA Statement at pg. 33.

Boating safety and water quality are separate issues. The ILEPA errs by making its proposed water quality designations dependent on the hazards associated with recreational use of the waters. If ILEPA is correct, then we would expect the mountain streams with the most hazardous rapids to have the lowest water quality designations. That approach would turn the CWA on its head. ILEPA's attempt to link its view of recreational boating hazards to water quality use designation is similarly misguided and lacks a rational basis.

The ILEPA is also wrong as a factual matter with respect to the hazards associated with small craft on the Waterways. Even with shear walls and occasional commercial barges, the Waterways are significantly safer for kayaks, rowing shells and other human-powered watercraft than other waters in the region.

Lake Michigan is colder, its waves and winds are much higher than on the Waterways, and the sea wall along much of the Chicago shore is even more foreboding than are the walls along the Waterways, due to the presence of rebounding waves. It is much easier for kayakers and other boaters to engage in self-rescue techniques in the relatively protected waters found in the Waterways than in harsh conditions created by the winds and waves often found on Lake Michigan. Even along the most industrialized stretches of the Waterways there are often options for boaters in trouble to scramble out

of the water and get on dry land. These include ladders built into breakwalls, large blocks of stones lining the bank, and tiny "beaches" at the water's edge. While these options are not perfect, they are better and much closer at hand than the options available to a capsized boater even a few hundred yards off shore on Lake Michigan.

Likewise, the boat wakes encountered in the Waterways pale in comparison to the wakes kicked up by powerboats going at full speed on Lake Michigan and the confused rebound waves that result from wind-driven waves hitting breakwaters along the Lake Michigan shore. Certainly, Lake Michigan is far more hazardous than the Waterways to rowers, whose specialized boats require calm waters. The calmer conditions on the Waterways are the reason why the lion's share of people new to kayaking in Chicago get their introduction to paddling with commercial outfitters on the northern and southern reaches of the NBCR and on the North Shore Channel rather than on Lake Michigan.

Inland rivers such as the Fox River have significant hazards that are not found, or are found to a much lesser extent, on the Waterways. The currents are greater than the currents on the Waterways. Low head dams, which have claimed lives repeatedly in their deadly backwashes, create a major hazard for all boaters and swimmers in area rivers. Rivers often have fallen tree "strainers" that can trap small boats and cause a hazardous capsize.

The boat traffic on inland lakes in the region large enough to accommodate motorized boat traffic poses a significant risk to paddlers and rowers. Many of them have higher levels of boat traffic than that found on the Waterways, making them more hazardous than the Waterways with their occasional barges and pleasure craft.

Thus, in many respects the Waterways offer the safest and most suitable

environment for human powered watercraft in the Chicago area despite the physical characteristics and commercial traffic given such weight by the ILEPA. Petitioners do not wish to be seen, however, as minimizing the risks that human powered craft face on the Waterways. They believe that they and the public authorities will have to work together to minimize these boating risks through education and enforcement efforts.<sup>1</sup>

The ILEPA's mission, however, is to protect and enhance the water quality of rivers and lakes in the State of Illinois, not set standards for boater safety. Thus, the ILEPA should not have relied upon its assessment of boating hazards in the Waterways to set water quality standards lower than that mandated by the CWA. Further, the ILEPA erred in its assessment of the hazards faced by boaters on the Waterways compared to the hazards they face in other area waters. If boating hazard levels truly are relevant when setting water quality standards—and they are not—then Lake Michigan would have the lowest water quality designation for recreation in the region because by any objective assessment Lake Michigan is the most hazardous body of water for boating.

The IPCB should reject the ILEPA's boater safety rationale for recommending only "incrementally higher uses" for some stretches of the Waterways (ILEPA Statement at pg. 94) and, in some stretches, use designations lower than what exist today.

**6. The ILEPA's Reduction Of Water Quality Standards Based On Local Community Investment Decisions Is Misguided**

The ILEPA also errs by relying on the fact that no communities along CAWS have plans in place to establish facilities along the waterways to support swimming and other primary contact recreation as a reason for rejecting any General Use designation anywhere on the CAWS at any time. See ILEPA Statement at pg. 37. ILEPA's rationale

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<sup>1</sup> For one example of a paddling safety initiative see CASKA's Safety Center: <http://www.caska.org/safety.htm>

for stripping a General Use designation from anywhere on the Waterways at any time is faulty and, indeed, offensive under the circumstances.

It is no wonder that communities bordering the Waterways have no current plans to establish swimming facilities on the Waterways. After all, the ILEPA and the IPCB appear to have allowed this region to become the only major urban area in the country where sewage is dumped into local waters without being disinfected. These agencies appeared to have failed to perform the kind of meaningful triennial water quality assessments required by the CWA. They have failed to impose a regulatory regime that assures local communities that the water quality in the Waterways will continue to improve and reach a swimmable level at any point in the future.

Given this lax and unfocused regulatory regime established by ILEPA and the IPCB, it is not surprising that local communities are not rushing to plan for and invest in swimming facilities or encourage primary contact water recreation on the Waterways. It is thus grossly unfair for the ILEPA, which is largely responsible for that regulatory regime, to rely on the lack of community investment in swimming facilities on the Waterways to justify a water quality standard for recreation well short of a General Use standard.

Until local communities receive credible regulatory assurances from the ILEPA and the IPCB that the water quality in the Waterways will improve to a General Use recreational standard they will not give serious consideration to investing in swimming and other such recreational facilities. Unfortunately, the Proposed Rules fail to provide those assurances because they do not establish any timeline for the achievement of General Use recreation in any reach of the Waterways.

To prevent the continuation of this cycle of insufficiently ambitious rules that discourage public investment in recreational facilities that in turn is used to justify another round of insufficiently ambitious rules, the IPCB should establish a date or dates by which the Waterways must meet the General Use recreational standard. The Petitioners recommend that this date be no later than 2016, when sewage dumped in the Waterways will be disinfected, the reservoir phase of TARP will come on line to further reduce the frequency of CSO events and, perhaps, Chicago will be the host of the Olympics. By establishing such a date certain for a General Use water quality standard for recreational uses, the IPCB will encourage the kind of public (and private) investment in recreational facilities that the ILEPA not surprisingly finds is lacking today.

**7. The ILEPA's Proposed Reduction Of Water Quality Standards Based On Existing Water Use Restrictions Is Similarly Misguided**

In a similarly disingenuous fashion, the ILEPA points to current prohibitions that various public authorities place on primary contact recreation in the Waterways as justification for water quality standards that are significantly lower than the General Use standard for recreation. *See* ILEPA Statement at pgs. 36-37 (citing MWRDGC and Cook County Forest Preserve bans on direct contact with the water in the Waterways).

Here again, the ILEPA is improperly using the prudent responses of public authorities to the water quality regulatory regime established and enforced by the ILEPA itself to justify lower water quality standards. This is blame-the-victim regulation. It is the ILEPA's failure to ensure that these waters are suitable for primary contact recreation that has forced the public authorities to take action to protect their constituents from the consequences of the ILEPA's own actions. The IPCB should not allow the ILEPA to, in

effect, use its past inaction to justify insufficiently ambitious rules this time.

Rather than setting regulatory standards based on how local communities have responded to the ILEPA's current regulatory regime, the ILEPA should have explored how local communities will respond if the Waterways are to become suitable for primary contact recreation. There no evidence in the record to suggest that, in the event the Waterways were rendered safe for primary contact recreation, local communities would refuse to provide their residents with opportunities to enjoy those benefits, or would keep in place existing rules that bar primary contact recreation.

For the same reason, the ILEPA should not have relied on the relatively limited existing primary contact recreational uses in the Waterways. Why would anyone choose to swim in waters in which the ILEPA itself allows sewage to be dumped without being disinfected, contrary to industry best practices? By relying on current investment levels in primary contact recreational facilities, current regulations barring primary contact recreation, and current limited primary contact uses by a wary public, the ILEPA's recommendations are inevitably and improperly tilted in favor of the status quo. The CWA demands more from the ILEPA and the IPCB.

**B. The Vision For The Waterways That Is Missing From The ILEPA's Proposed Rules**

In addition to the technical deficiencies outlined in Section A, the Proposed Rules also fail to adequately recognize the potential benefits from significant water quality improvements to the Waterways. Such water quality improvements will fundamentally alter the public and the market perceptions of the Waterways. They will stimulate investment, increase property values (and tax receipts) and add another major recreational

resource to the region that will relieve pressure on an already overcrowded Lake Michigan lakefront.

*Recreation:* The existing recreational uses of the Waterways are but a hint of the potential and much more extensive recreational uses of the Waterways if the public perception of the Waterways is changed in a positive way. Millions of people live within the immediate proximity of the Waterways. Rowing, kayaking, canoeing, and the like could easily increase tenfold if the public perceived that the water quality of the Waterways was sufficient to allow significant bodily exposure to the water without fear of illness. These expanded recreational uses are important because they result in a healthier general population and reduce pressure on existing parks and the Lake Michigan waterfront.

In addition, increased recreational activity on the Waterways will have economic benefits. Rowing centers, kayak outfitters and fishing outlets generate jobs and economic activity. Hungry paddlers will patronize restaurants and shops they can access from the Waterways. The presence of those activities helps make businesses and residential areas near the Waterways more attractive and hence more valuable.

These recreational activities do not require a massive reengineering of the Waterways. Floating docks, such as those used on both sides of the NBCR just south of North Avenue for rowing (east bank) and kayaking (west bank) illustrate how access can be gained without tearing down breakwalls or making huge infrastructure investments. The popularity of the canoe/kayak launch at Clark Park, a few miles north, shows how a relatively small access point can support substantial private and commercial recreational activity on the Waterways.

*Real estate values:* Real estate values will increase to the extent that the Waterways are improved. As the UAAs note, industrial and other such uses continue to predominate near much of the Waterways. Yet, as our regional economy continues to transition from manufacturing to other economic activities, the Waterways must adjust as well. As the Chicago region has seen over the past thirty years, industrial facilities are often transformed into residences and/or non-industrial workspaces. An attractive environment on the Waterways helps stimulate real estate and commercial investment when an existing industrial use closes down, consolidates or moves elsewhere.

There is also the possibility that in certain locations the Waterways could themselves provide needed residential real estate. Portland and Seattle, for example, have extensive houseboat developments on urban waterways. There may well be stretches of the Waterways where houseboat developments may be possible. Such development would add taxable property to the tax rolls.

*Transportation:* Parts of the Waterways, such as on the Chicago River, are used for public transportation already. There is no reason why there could not be an expansion of the use of Waterways for commuting purposes as water quality and access improve. This commuting might be by individual paddlers, such as in Portland, Oregon, where paddlers commute to a downtown paddling center by kayak, take a shower at the paddling center, and go to work. Ferry services also might be viable as more residential developments pop up around the Waterways.

*Education:* There are many schools on or near the Waterways. Most if not all of them turn their backs on the Waterways. However, to the extent that significant water quality improvements are made, the Waterways could become a place for rowing and

other water sports as well as a place for educational activities such as water quality monitoring, biology studies, wildlife population monitoring, and the like. In a crowded urban environment, the value of such access to a major water system for study and sports is high.

*Cultural:* The building and maintenance of the Waterways and the development on its shores are major human achievements. Greater access to the Waterways provides a way for people to become familiar with this history. Substantial water quality improvements would open the door for the Waterways to achieve national park status akin to that of the I&M Canal Heritage Corridor. This kind of recognition of one of the great engineering feats of the modern era and the role of the Waterways in the development of a major urban region would stimulate the economy in the form of tourism and, just as importantly, stimulate the imaginations of visitors and residents alike.

*Environmental:* With growing water scarcity, even in this region, and the unknown effects from global warming, it is prudent to start treating the Waterways as a water resource rather than just a sewer system. The IPCB should treat this rulemaking as an opportunity to begin shifting the regulatory regime to a new paradigm where wastewater is treated as precious water and not as just as waste.

*Wildlife:* While the Waterways will not be restored to slowly meandering prairie rivers, surely there are habitat improvements that could be made within the existing environment. Petitioners have observed abundant life on many stretches of the Waterways and the UAAs note various areas (e.g., Lake Calumet) where there are sizeable wildlife populations. Even in their existing states, the Waterways provide plenty of opportunities for the many people who fish these waters. While the existing aquatic

life may not be as abundant or as varied as it is in an untouched regional river--assuming you could find one--that aquatic life indicates the potential of these waters to support substantial wildlife. Surely there are successful examples where similar waterway environments have been improved to support greater wildlife.

**C. Specific Regulatory Recommendations**

Petitioners believe that the Proposed Rules do not go far enough to ensure sufficient continued improvement of the Waterways necessary to realize their recreational, economic and cultural potential while still serving their existing uses. It took great imagination and bold steps a century ago to build the Waterways. In this rulemaking the IPCB should demonstrate similar qualities to set the stage for an equally ambitious second century of operations.

First, the final rules should provide a date certain by which the Waterways must meet a General Use standard for recreation. Petitioners suggest that the IPCB establish 2016 as that date. That date is feasible because by then the MWRD will be disinfecting the sewage it dumps in the Waterways and the next phase of the TARP system will be in operation, reducing the number and severity of CSO events.

2016 also is of great symbolic importance because it is the date when Chicago may host the Olympics. If Chicago is chosen to host the Olympics then there will be intensified capital investment throughout the region. By establishing 2016 for achievement of a General Use recreational standard, the Rules will help put water quality improvements on the region's public policy and capital improvement agenda. The prospect of holding Olympic events on stretches of the Waterways could be a powerful incentive for the investments necessary to reach a General Use recreational standard.

Even without the Olympics, a date certain for a General Use recreational standard will make clear that these waters are on a trajectory of improvement that will result in compliance with the CWA with respect to recreation. This level of certainty will help attract both public and private investment along the Waterways and in the infrastructure necessary to achieve the General Use standard. In contrast, the Proposed Rules provide no such assurances and hence no incentive for such investments.

Some will no doubt argue that the IPCB should not set such a General Use requirement because there is no assurance that such a requirement can or will be met. Petitioners believe, however, that imposition of a General Use standard that goes into effect almost a decade in the future is reasonable under the circumstances and far better than codifying the status quo plus disinfection of sewage, which is what the ILEPA is recommending. The final rules adopted by the IPCB should be on the ambitious side of what is feasible, rather than be a mish-mash of partial advances (e.g., disinfection) and partial retreats (e.g., stripping away existing General Use designations), which is what the ILEPA is recommending.

Others may argue that the time to consider whether to impose a General Use requirement for recreation is after the effects of the MWRD's disinfection of sewage and implementation of the next phase of TARP are known, as part of another triennial review under section 303 of the CWA. However, we know from experience that the next substantive rulemaking process involving the Waterways may not occur for many years. Now is thus the time for the IPCB to set a General Use standard for recreation at some reasonable date in the future.

Second, the IPCB should not roll back the existing General Use designations for

recreation for certain stretches of the Waterways. By rolling back the existing General Use designations, the Proposed Rules signal a retreat from the water quality standards mandated by the CWA. This is just the kind of negative signal the IPCB and the State of Illinois should not be sending. Preserving the existing General Use designations and gradually expanding them to cover the complete Waterways is consistent with the principles and intent of the Clean Water Act.

Third, disinfection of sewage should be required. This requirement is in the Proposed Rules and no doubt will come under attack by various parties. That requirement is essential because it will put the Chicago area on par with other urban regions that disinfect their sewage before discharge into local waterways.

Disinfection is also essential because it will do more than any other pollution control measure to turn around the current public perception that the Waterways are irreversibly polluted and that even limited contact poses high risks. Petitioners are quite familiar with how members of the general public regard these waters. We have found that the public's primary concern is not the industrial character of the Waterways, the sometimes forbidding breakwalls, the commercial traffic or the fear of industrial pollution. Rather, the public perceives the Waterways as "open sewers" and fears most the risk of infection and disease from direct contact with the water.

Disinfection, by significantly reducing the bacteria count and the risks associated with water contact, will dramatically change the public's perception of the Waterways. A more positive public perception of the Waterways will have significant economic benefits in the form of greater public and private investment in and around the Waterways and increased property values. Recreational use of the Waterways will increase dramatically.

Finally, the rules adopted by the IPCB should not consign some stretches of the Waterways to a lower designation of water quality and recreational uses than other stretches. As discussed above, the ILEPA should not have set lower water quality standards based on its erroneous assessment of the recreational risks and potential of these waters. Instead, the IPCB should put the entire Waterways on a path to a General Use designation for recreation.

### CONCLUSION

As representatives of paddlers and rowers throughout the region who have extensive direct experience with the Waterways, Petitioners are well qualified to comment on the Proposed Rules. While Petitioners support the disinfection requirement in the Proposed Rules, they believe that the IPCB should reject several rules proposed by the ILEPA that are inconsistent with the requirements of the CWA and are not well supported by the facts or public policy considerations. Instead, the IPCB should retain the current General Use designations and extend this designation for recreational use to the rest of the Waterways by some date certain. Petitioners recommend that the IPCB select 2016 as that date, because by then both sewage disinfection and TARP will be in place and Chicago may be the host of the Olympics.

Dated: April 17, 2008

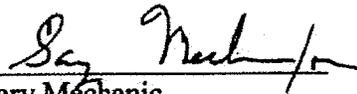
Petitioner, Chicago Area Sea  
Kayaking Association

By: \_\_\_\_\_

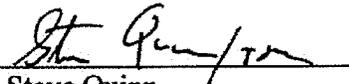


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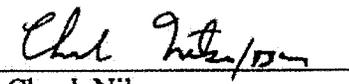
Co-Petitioner, Illinois Paddling  
Council

By:   
Gary Mechanic  
President

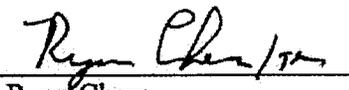
Co-Petitioner, Lincoln Park Boat  
Club

By:   
Steve Quinn  
Commodore

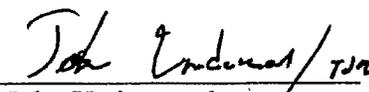
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