

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

APR 19 2010

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
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 Parts 301, 302, 303 and 304)

R08-09 (Sub-Docket A)
(Rulemaking – Water)

PC#298

NOTICE OF FILING

To: John Therriault, Clerk
Marie Tipsord, Hearing Officer
James R. Thompson Center
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution

Control Board POST-HEARING COMMENTS OF THE ILLINOIS

ENVIRONMENTAL PROTECTION AGENCY a copy of which is herewith served upon
you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Deborah J. Williams

Deborah J. Williams
Assistant Counsel

Dated: April 15, 2010
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

RECEIVED
CLERK'S OFFICE

APR 19 2010

STATE OF ILLINOIS
Pollution Control Board

)
)
)
)
)
)
)
)
)
)

R08-09 (Sub-Docket A)
(Rulemaking – Water)

POST-HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

The Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by and through its attorneys, hereby submits its Post-Hearing Comments pursuant to the Illinois Pollution Control Board’s (“Board”) March 18, 2010 Opinion and Order in the above-captioned rulemaking proceeding.

I. Procedural Background

On October 26, 2007, the Agency filed a rulemaking proposal to update the designated uses and accompanying water quality standards for the waters currently designated for Secondary Contact and Indigenous Aquatic Life Use which includes most waters in the Chicago Area Waterway System ("CAWS") and Lower Des Plaines River. In addition to proposed changes to the Board regulations, the rulemaking submittal included a lengthy Statement of Reasons and Attachments A through WW. On November 1, 2007, the Board accepted the Agency's proposal for hearing and granted the Agency's motion to hold hearings in Chicago and Joliet on the proposal.

On December 21, 2007, the Agency submitted the pre-filed testimony of four witnesses in support of its proposal. Ten days of hearings were held on the Agency's proposal. Since then, twenty-seven days of hearings have been held to accept testimony from interested parties on the recreational and aquatic life use designations in the proposal. Future hearings will address the numeric water quality standards necessary to protect the designated uses and the Agency's technology-based effluent disinfection proposal. On March 18, 2010, the Board issued an order dividing R08-09 into four separate subdockets; at that time, the Record included a total of 381 Exhibits and at least 285 public comments.

Pursuant to the Board's March 18, 2010 Opinion and Order, subdocket A will "deal with the issues related to recreational use designations." March 18, 2010, Slip Op. at 18. The Board also determined that "the issue of recreational use designations in subdocket A is ripe for decision." *Id.* at 19. Finally, the Board established a post-hearing comment period, ending April 15, 2010, for final comments on the recreational use designations.

II. Summary of Illinois EPA's Post-Hearing Comments on Subdocket A

Following the lengthy hearing process over the course of the last two ½ years, the Agency's recreational use proposal has been the subject of intense scrutiny. The purpose of these comments is to help summarize the relevant portions of the Record for the Board's consideration in developing a First Notice proposal establishing recreational uses and to identify why the extensive review in this matter has only served to confirm and solidify the Agency's initial conclusions and proposed recreational use designations. These comments will first provide a background of the legal framework

for the Board's decision. Then the Agency will highlight the specific regulatory provisions from its initial proposal that should be adopted in subdocket A. The Agency will also provide justification regarding the consistency of the proposed uses with the regulatory framework and defend the selection of designated uses that do not represent the Clean Water Act recreational goal uses (i.e., primary contact). Finally, the Agency will attempt to summarize the testimony, exhibits and comments that the Board should rely on in developing an opinion and order updating the recreational use designations of the CAWS and Lower Des Plaines River system.

III. Statutory and Regulatory Framework for the Board's Decision on Designated Recreational Uses

Pursuant to the Federal Water Pollution Control Act (hereafter "Clean Water Act" or "CWA"), the States have primary responsibility to set water quality standards for intrastate waters and submit changes to those standards to U.S. EPA for approval. 33 U.S.C. §1313. Section 101(a)(2) of the CWA provides that "it is the national goal that wherever attainable, 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 U.S.C. §1251(a)(2). The term "water quality standards" is defined as both the uses designated by the State and the numeric or narrative criteria needed to ensure protection of such uses. 40 C.F.R. §131.2(d). In this subdocket A, the Board will determine the appropriate recreational uses for the CAWS and Lower Des Plaines River, however, the issue of how to protect these uses will be addressed at a later date.

CWA Section 303 provides that "the State water pollution control agency . . . shall from time to time (but at least once each three year period beginning with October

18, 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards.” 33 U.S.C. 1313(c)(1). The requirement to periodically review and update standards is commonly referred to as the “triennial review” requirement. As with the numeric criteria or standards for particular pollutants, there is also an obligation to review the designated uses portion of State water quality standards every three years where a use has been established that falls short of the Clean Water Act aquatic life goal or recreational goal of Section 101(a)(2). 33 U.S.C. §1251(a)(2). (See 40 C.F.R. §131.20). A state must conduct a Use Attainability Analysis in order to adopt standards that are less stringent than CWA goals. The procedures for designating uses and conducting use attainability analyses are outlined by U.S. EPA in 40 C.F.R. §131.10. States may adopt sub-categories of a use with appropriate criteria that reflect the varying needs of such sub-categories [40 C.F.R. §131.10(c)] and they may also adopt seasonal uses [40 C.F.R. §131.10(f)]. To remove a designated use or establish sub-categories of uses other than the CWA recreational goals, States must follow the requirements in 40 C.F.R. §131.10(g). There are six Use Attainability Analysis (“UAA”) factors that can serve as the basis for adopting a use that falls short of the CWA goals:

- (1) Naturally occurring pollutant concentrations prevent the attainment of the use; or
- (2) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or
- (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 than to leave in place; or
- (4) Dams, diversions 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
- (5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or
 - (6) Controls more stringent than those required by sections 301(b) and 306 of the Act [CWA effluent standards] would result in widespread economic and social impact.

40 C.F.R. 131.10(g). Additionally, 40 C.F.R. §§131.10(h) and (i) prohibit States from removing or downgrading “existing” uses or uses that could be attained by implementing the CWA effluent limits. 40 C.F.R. §131.10. The term “existing use” is defined as “those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.” 40 C.F.R. §131.3. The requirement to adopt designated uses which, at a minimum, reflect existing uses of the waters is central to the Board’s decision in this subdocket.

With the exception of three General Use segments, the waters in the Agency’s proposal have never been designated as capable of attaining the CWA recreational goal. Although designated as General Use, the Record shows that primary contact has never been an existing use in Chicago River mainstem, North Shore Channel from the North Side Water Reclamation Plant to Lake Michigan, and Calumet River from the O’Brien Lock and Dam to Lake Michigan. (See, below).

In these comments, the Agency will attempt to justify the designation of these waters as incapable of attaining full primary contact uses and identify how the proposed recreational use designations are supported by the evidence record. If the Agency fails to justify its proposal to designate uses that fall short of the CWA recreational goal based on one or more of the UAA factors, the Board is required under the CWA and

accompanying regulations to adopt uses consistent with the CWA recreational goal (in this case, primary contact uses).

The Board's obligation in this matter is twofold: first, the Board must adopt designated recreational uses for the CAWS and Lower Des Plaines River that protects the recreational uses that are found to be existing uses. Second, the Board must determine if additional and more intensive recreational uses, beyond those currently existing, are attainable in these waters. 40 C.F.R. §131.10(g). If it is determined that recreational uses do not exist, but that such uses are indeed attainable, then those attainable use designations must be adopted. The Agency believes that the ample evidence in the Record points the Board to a single conclusion. The variety of existing recreational uses of the CAWS and Lower Des Plaines River defined in the Agency's proposal to the Board reflects both the existing and attainable recreational uses, and the Board must adopt and designate the proposed new recreational uses for these waters. Although it is possible that the number of recreational users will increase or decrease over the foreseeable future, the nature of the recreational activity is limited by the physical conditions and hydrological modifications of these waters such that uses more intensive than those currently in existence are not attainable in the foreseeable future.

IV. USE ATTAINABILITY ANALYSIS STUDIES AND FACTORS

The Agency's proposal relied on two of the six UAA factors to support the conclusion that the Clean Water Act recreational goal of primary contact recreation is not attainable in the CAWS and Lower Des Plaines River. The two factors relied on were:

Factor 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 than to leave in place.

Factor 4 – Dams, diversion or other types of hydrological modifications preclude the attainment of the use and it is not feasible to restore the waterbody to its original condition or to operate such modifications in such a way that would result in the attainment of the use.

40 C.F.R. §131.10(g)(3) and (4); Statement of Reasons at 32; Exhibit 29. A more detailed discussion of the applicability of Factor 3 to recreational uses is found on pages 35-36 of the Statement of Reasons, while the discussion of Factor 4 can be found on pages 32-35. For the segments the Agency proposed to be able to attain the most intensive of the three recreational uses (Incidental Contact) the Agency relied on Factor 3 only; while the Agency relied on both Factors 3 and 4 for the segments proposed for Non-Contact Recreational Use and Non-Recreational Use. (Exhibit 29).

Attachments A and B to the Statement of Reasons contain voluminous reports by AquaNova /Hey and Associates ("AquaNova") for the Lower Des Plaines River UAA and by Camp, Dresser and McKee ("CDM") for the CAWS UAA. The studies performed by the two contractors were of great value to the Agency in developing its proposal and the Chapters of the reports which focus on recreational uses will likely assist the Board in developing a First Notice Opinion and Order in this matter. It should be noted that in the process of merging the CAWS and Lower Des Plaines River UAAs into one regulatory proposal and making the recommendations consistent with the regulatory structure in Illinois, the Agency made a number of changes to the recommendations in the reports. Such changes are reflected in the Agency's proposal to the Board and are summarized below. The attainable uses for the given waterway reaches include:

- 1) Non-Recreation Use, which Illinois EPA defines to include only commercial boat operations and large recreational boat passage and no human contact activity.
- 2) Non-Contact Recreation Use, which Illinois EPA defines to include these Non-Recreation Uses as well as powerboat passage.
- 3) Incidental Contact Recreation Use, which Illinois EPA defines to include: Non-Recreation and Non-Contact Recreation Uses as well as fishing, small craft boating and any limited contact associated with shoreline activity such as wading uses.

(Statement of Reasons at page 31).

Incidental Contact Recreational Use is any recreational activity in which human contact with the water is incidental and in which the probability of ingesting appreciable quantities of water is minimal, such as fishing, commercial boating, small craft recreational boating, and any limited contact associated with shoreline activity such as wading. Primary Contact recreational activities were not found to be attainable in Incidental Contact Recreational waters. Sulski testimony at 11.

Non-Contact Recreational Use is any recreational or other water use in which human contact with the water is unlikely, such as pass through commercial and recreational navigation, and where physical or flow conditions make direct human contact unlikely or dangerous. Illinois EPA has designated Calumet River from Lake Michigan to Torrence Avenue for Non-Contact Recreational Use due to the regularity of recreational power boat navigation to and from Lake Michigan and the relatively high concentration of marinas along Calumet and Little Calumet Rivers. Sulski testimony at 12.

The third category of recreational use defined in the Agency proposal is Non-recreational Use. Non-recreation waters do not support primary contact, incidental contact or non-contact recreation due to physical or flow conditions or other restrictions.

Illinois EPA included the Chicago Sanitary and Ship Canal downstream of its junction with Calumet-Sag Channel and the Brandon Pool in this category. Non-recreation waters are dominated by shipping traffic, are composed of vertical-walled, deep-draft channels and are lined with private industrial facilities that do not allow public access to the waterways.” Sulski testimony at 13.

Rob Sulski’s Pre-filed Testimony in this proceeding summarized the findings of AquaNova regarding attainable uses in the Lower Des Plaines River, including their reliance on multiple UAA factors: “AquaNova recommended setting a bacteria standard to protect two new recreational uses. The first recreational use was in the Upper Dresden Island Pool. AquaNova recommended that it should not be considered a zone for primary contact recreation. The report states that primary contact recreation should be infrequent or accidental because of the effluent dominated nature of the river and the risks associated with navigation traffic. . . . The second recreational use was for the Brandon Pool. AquaNova recommended that [it] should protect for recreation, but recognized the fact that primary contact either did not exist or would be very rare and incidental. The contractor recommended a standard should be set at the least restrictive allowed by the draft national criteria document.” Sulski testimony (Exhibit 1) at 7-8. AquaNova initially recommended protecting the use of the Brandon Pool for non-contact recreation such as boating, fishing and aesthetic enjoyment of the river and providing adequate protection for incidental contact with the water. After consideration, the Agency decided that the Brandon Pool warranted no protection of recreational use because such uses presently do not exist and are unlikely to ever exist due to safety concerns and risks associated with limited access and barge traffic. However, if

recreational opportunities are enhanced, the recreational use designation will need to be reevaluated. Statement of Reasons at 94. After reviewing the contractor's recommendations, the data upon which the contractor relied, and the comments of stakeholders, the Agency proposed assigning the highest proposed recreational use (Incidental Contact) to Upper Dresden Island Pool and the lowest use (Non-Recreational) to Brandon Pool.

With regard to the CAWS UAA study, Mr. Sulski testified that "Camp, Dresser and McKee, referred to as CDM, the contractor for the CAWS UAA concluded that while water quality in the CAWS was for the most part meeting Illinois' General Use numerical standards, none of the waterbodies could achieve Clean Water Act goals due to limitations described in the 6 UAA factors. . . . As a result, CDM recommended two recreational and two aquatic life uses for assignment to the waterways. One recommended recreational use would protect for hand-powered boating and wading and the second would apply to reaches where only commercial and power boating may safely occur. Illinois EPA has since renamed and redefined the recommended uses, including adding a third use, Non-recreational Use." Sulski testimony at 8 - 9. CDM used the terminology "Limited Contact Recreation" for CAWS reaches where hand-powered boating and wading take place and "Recreational Navigation" for CAWS reaches where only commercial and power boating may safely occur. (Statement of Reasons at 95).

Initially, the Agency had planned to propose that the Non-Recreational reach extend throughout the Chicago Sanitary and Ship Canal. However, before the Agency had completed its rulemaking proposal for the Board, the Agency became aware of boat

launches on the Chicago and Sanitary Ship Canal near Western Avenue in Chicago and near First Avenue in Summit, where no restrictions exist on the types of boats that may be launched. As a result of these new access points for small recreational watercraft, the Agency changed the proposed designation of this portion of the CAWS from Non-Recreational to Incidental Contact Recreation Use. See, Transcript of January 29, 2008 Hearing at pp. 160 -164.

The CAWS and Lower Des Plaines River UAA reports support the conclusion that the attainable recreational uses within the CAWS and Lower Des Plaines River are synonymous with the uses existing from the time the UAAs were performed to the present. Sulski testimony (Exhibit 1) at 11, Transcript of March 10, 2008 (afternoon) Hearing at 56-57. Mr. Sulski testified that "The UAA concluded that primary contact recreation is not attainable and that for some reaches, incidental and non-contact uses are not attainable in the UAA study area due to irreversible human caused conditions and circumstances described in UAA Factors 3 and 4." Because primary contact was not found to be an attainable use by either of the UAA contractors or the Agency for any of the CAWS and Lower Des Plaines River segments, the Agency developed definitions for three distinct attainable recreational uses to address the varying levels of human contact on the CAWS and Lower Des Plaines River waters.

Illinois EPA believes that the definitions it has developed for the CAWS and Lower Des Plaines River are not only an improvement over the one-size-fits all Secondary Contact designation but also an improvement over the typical view that recreational uses simply fall into one of two simplistic categories: primary contact and secondary contact. The tiered definitions of non-primary contact uses proposed for the

CAWS and Lower Des Plaines River will provide the Board with a solid foundation for future development of recreational criteria to protect the uses into the future. As the information and knowledge improve to more precisely determine the relative risks of different recreational activities, the Board will have more precise and adaptable use designations.

As mentioned by the Agency in footnote 3 on page 43 of Statement of Reasons, the Agency's proposal reflects the different levels of contact ranging from more intensive types of non-swimming recreational uses such as wading, and the type of flatwater kayaking and jet skiing that occurs in these waters, to less intensive types of secondary contact activities with little or no likelihood of contact with the water. See, Transcript of January 29, 2008 Hearing at pp. 215-218 and Transcript of March 10, 2008 (afternoon) Hearing at pp. 46 - 50.

V. General Use Segments

Another issue the Board should address in this subdocket A is the appropriate classification of the three segments of the CAWS which currently have a General Use designation. In order to include such segments in one of the three recreational use categories defined in the Agency's proposal, the Board must find that primary contact recreation is not an existing use in the three segments and that one or more of the UAA factors supports downgrading the segment's use designation.

A small portion of the CAWS is currently designated as General Use along with the presumption that primary contact recreation is an attainable use. The reaches are: Chicago River, North Shore Channel from the MWRDGC North Side Water Reclamation Plant to Lake Michigan, and Calumet River from the O'Brien Lock and Dam to Lake

Michigan. The North Shore Channel from the North Side Plant to Lake Michigan and Calumet River from the O'Brien Locks and Dam to Lake Michigan were upgraded from the Secondary Contact and Indigenous Aquatic Life Uses to General Use in R87-27 (May 19, 1988). While the North and South Branches of the Chicago River have consistently been designated for Secondary Contact and Indigenous Aquatic Life Uses, the main branch of the Chicago River was not included in this designation in R71-14, but was instead included in a list of waters specifically exempted from the Public and Food Processing Water Supply Use designation in Rule 303.

Based on the findings of the CAWS UAA, the Illinois EPA has proposed removing the three segments from the General Use designation and grouping them with the other reaches of the CAWS and Lower Des Plaines River. The CAWS UAA demonstrates through recreational surveys and other investigations that primary contact does not occur and is not attainable in North Shore Channel and Chicago River. Based on the available recreational survey information, the Agency also believes that primary contact recreation does not occur in the northern part of Calumet River. The reach of Calumet River from Torrence Avenue to the O'Brien Lock and Dam is being proposed for designation as Incidental Contact Recreation, because some smaller craft recreational boating occurs there. The remaining Torrence Avenue to Lake Michigan reach of Calumet River is being designated for Non-Contact Recreation as explained above. Sulski testimony at 11-12.

The three segments designated as General Use in the past were historically the segments most influenced by the addition of water from Lake Michigan, but these segments were not distinct in their recreational uses from the other CAWS segments.

In addition, each of these segments has been listed on Illinois' Section 303(d) list of impaired waters as being impaired for recreational uses. (See, Exhibits 34 and 45).

VI. Sections to be Amended

Based on the Illinois EPA's understanding of the Board's March 18, 2010 Opinion and Order, the following new Sections from the Agency's October 26, 2007 proposal should be included in the Board's subdocket A rulemaking: 35 Ill. Adm. Code 301.247, 301.282, 301.307, 301.323, 301.324, 303.220, 303.225 and 303.227. In addition, the Agency is recommending that the Board also include the amendments to 35 Ill. Adm. Code 302.402 and 303.204 in this rulemaking subdocket A.

A. Definitions to be Added to Part 301

A significant portion of the regulatory language relevant to the issues to be addressed in subdocket A are included in the definition provisions in 35 Ill. Adm. Code Part 301. Of these, the most significant are the new terms and definitions being proposed for the three distinct recreational use designations being established for the CAWS and Lower Des Plaines River. In addition, the Agency has concluded that the Board should also add definitions to the terms "Chicago Area Waterway System" and "Lower Des Plaines River" to the Board's existing rules as part of this subdocket because definitions of these terms are necessary to understand the other provisions. The following are the language changes to Part 301 that the Agency believes should be included in subdocket A as newly added definitions.

Section 301.247 Chicago Area Waterway System

"Chicago Area Waterway System" means Calumet River, Grand Calumet River, Little Calumet River downstream from the confluence of Calumet River and Grand Calumet River, Calumet-Sag Channel, Lake Calumet, Chicago River and its branches

downstream from their confluence with North Shore Channel, North Shore Channel and Chicago Sanitary and Ship Canal.

Section 301.282 Incidental Contact Recreation

"Incidental Contact Recreation" means any recreational activity in which human contact with the water is incidental and in which the probability of ingesting appreciable quantities of water is minimal, such as fishing; commercial boating; small craft recreational boating; and any limited contact associated with shoreline activity such as wading.

Section 301.307 Lower Des Plaines River

"Lower Des Plaines River" means Des Plaines River from the confluence with Chicago Sanitary and Ship Canal to the Interstate 55 bridge.

Section 301.323 Non-contact Recreation

"Non-contact Recreation" means any recreational or other water use in which human contact with the water is unlikely, such as pass through commercial or recreational navigation, and where physical conditions or hydrologic modifications make direct human contact unlikely or dangerous.

Section 301.324 Non-recreational

"Non-recreational" means a water body where the physical conditions or hydrologic modifications preclude primary contact, incidental contact and non-contact recreation.

B. Applicability of Each Recreational Use Designation to Waterbody Segments

The next category of regulatory language to be addressed in subdocket A is language to indicate which recreational use designation is applicable to each of the individual CAWS and Lower Des Plaines River segments. The CAWS and Lower Des Plaines River, as evaluated in the UAAs, comprise waterbodies and five controlling structures stretching from Lake Michigan to the Interstate-55 bridge crossing on Des Plaines River near Channahon. For use designation purposes, the waterbodies are subdivided into 17 reaches. Starting at the far north end, the CAWS begins at the

Wilmette Pumping Station and Controlling Works on the artificially constructed North Shore Channel at Lake Michigan in Wilmette. The CAWS ends and Lower Des Plaines River begins just south of the Lockport Lock and Power House at the Elgin, Joliet and Eastern Railroad bridge crossing over Des Plaines River in Joliet. The 17 waterbody reaches of the CAWS and Lower Des Plaines River are defined on pages 27 through 30 of the Statement of Reasons. The assignment of new recreational use classifications for each segment of the CAWS and Lower Des Plaines River is included in the proposed new Sections 303.220, 303.225 and 303.227.

Section 303.220 Incidental Contact Recreation Waters

The following waters are designated as Incidental Contact Recreation waters and must protect for incidental contact recreational uses as defined in 35 Ill. Adm. Code 301.282.

- a) North Shore Channel;
- b) North Branch Chicago River from the confluence with North Shore Channel to the confluence with South Branch Chicago River and Chicago River;
- c) Chicago River;
- d) South Branch Chicago River and its South Fork;
- e) Chicago Sanitary and Ship Canal from the confluence with South Branch Chicago River to the confluence of Calumet-Sag Channel;
- f) Calumet River, from Torrence Avenue to the confluence with Grand Calumet River and Little Calumet River;
- g) Lake Calumet;
- h) Lake Calumet Connecting Channel;
- i) Grand Calumet River;
- j) Little Calumet River from the confluence with Calumet River and Grand Calumet River to the confluence with Calumet-Sag Channel;

k) Calumet-Sag Channel; and

l) Lower Des Plaines River from the Brandon Road Lock and Dam to the Interstate 55 bridge.

Section 303.225 Non-Contact Recreation Waters

Calumet River from Lake Michigan to Torrence Avenue is designated as a Non-Contact Recreation water and must protect for non-contact recreational uses as defined in 35 Ill. Adm. Code 301.323.

Section 303.227 Non-Recreational Waters

The following waters are designated as Non-Recreational waters as defined in 35 Ill. Adm. Code 301.324.

a) Chicago Sanitary and Ship Canal from its confluence with the Calumet-Sag Channel to its confluence with Des Plaines River; and

b) Lower Des Plaines River from its confluence with Chicago Sanitary and Ship Canal to the Brandon Road Lock and Dam.

C. Miscellaneous Provisions to include in the Recreational Use docket

The Agency suggests that the Board include in this subdocket A the amendments proposed by the Agency to clarify 35 Ill. Adm. Code 302.402 (Purpose) and 35 Ill. Adm. Code 303.204 (Secondary Contact and Indigenous Aquatic Life Use Waters). Although subdocket A is intended to address recreational uses only, Sections 302.402 and 303.204 provide introduction to the applicability and scope of the use designations for the CAWS and Lower Des Plaines River waters. Therefore, it seems appropriate to address the amended language in these Sections in the initial R08-09 subdocket. The provisions clearly have a recreational use component, which is the current issue before the Board, and are necessary for a logical reading of the remaining

provisions in Subpart D of Part 302 and in Part 303. Therefore, the Agency suggests that the Board include the following amendments to Sections 302.402 and 303.204:

Section 302.402 Purpose

The Chicago Area Waterway System and Lower Des Plaines River standards shall protect incidental contact or non-contact recreational uses, except where designated as non-recreational waters; commercial activity, including navigation and industrial water supply uses; and the highest quality aquatic life and wildlife that is attainable, limited only by the physical condition of these waters and hydrologic modifications to these waters. The numeric and narrative standards contained in this Part will assure the protection of the aquatic life and recreational uses of the Chicago Area Waterway System and Lower Des Plaines River as those uses are defined in 35 Ill. Adm. Code Part 301 and designated in 35 Ill. Adm. Code Part 303. ~~Secondary contact and indigenous aquatic life standards are intended for those waters not suited for general use activities but which will be appropriate for all secondary contact uses and which will be capable of supporting an indigenous aquatic life limited only by the physical configuration of the body of water, characteristics and origin of the water and the presence of contaminants in amounts that do not exceed the water quality standards listed in Subpart D.~~

Section 303.204 Chicago Area Waterway System and Lower Des Plaines River ~~Secondary Contact and Indigenous Aquatic Life Waters~~

The Chicago Area Waterway System and Lower Des Plaines River Waters which are designated to protect for incidental contact or non-contact recreational uses, except where designated as non-recreational waters; commercial activity, including navigation and industrial water supply uses; and the highest quality aquatic life and wildlife that is attainable, limited only by the physical condition of these waters and hydrologic modifications to these waters. These waters are required to meet the secondary contact and indigenous aquatic life standards contained in of Subpart D, of Part 302, but are not required to meet the general use standards or the public and food processing water supply standards of Subparts B and C, of Part 302. Designated recreational and aquatic life uses and subcategories or seasonal uses for each segment of the Chicago Area Waterway System and Lower Des Plaines River are identified in this Subpart.

VII. Evidence in the Record

The Agency attempted to compile a comprehensive list of the documents that are relevant to the Board's consideration of recreational uses and has provided the list as Exhibit A to these comments. Due to the extensive nature of the Record in this

proceeding, the list should not be viewed as exhaustive; some documents may inadvertently be omitted. The following is a summary of the key documents that the Board should consider and that the Agency believes supports its recreational use proposal.

A. Statement of Reasons and Attachments and Supplemental Filings

The Agency's Statement of Reasons in this proceeding is 115 pages and as explained above, provides a detailed explanation of the Agency's proposal and the documents relied on in developing the proposal. The voluminous UAA reports themselves are included as Attachments A and B to the Statement of Reasons. In addition to these reports, there are several other Attachments to the Statement of Reasons that are relevant to the Board's consideration of Recreational Use designations, including Attachments H, J, K, L, N, P and JJ.

Attachment H contains a map of the Recreational Use Designations in the Agency's proposal. Several of the attachments describe restrictions that local units of government place on more intensive recreational uses, and such restrictions provide evidence that such uses are much less likely to occur. These include the Cook County Forest Preserve Recreational Ordinance in Attachment J and the Metropolitan Water Reclamation District wading prohibition in Attachment N. The joint agency pamphlet included as Attachment P is evidence of the efforts used to warn the public of the dangers associated with the more intensive recreational uses of the CAWS. The inventory of public access points along the CAWS that was submitted as Attachment L to the Statement of Reasons helps to demonstrate where the most intensive recreational uses are likely to be focused and assisted in identifying which segments

should be designated as Incidental Contact Recreation waters. Minutes from a November 19, 2003 meeting on Safety and Navigational issues was relied on to confirm that recreational uses are occurring in conjunction with navigational uses and that authority to prohibit these activities is limited.

Attachment K summarizes the recreational data that was collected to document the existing uses of the CAWS. A record of the raw data used to compile the summary has also been made part of the Record. This recreational data was included in a separate filing with the Board on March 3, 2008. (See, Exhibit A, #19).

B. Agency Testimony

Illinois EPA submitted Pre-Filed Testimony from four witnesses, but it was the written testimony of Rob Sulski that contains testimony related to the recreational use designations. Mr. Sulski summarized the basis for the Agency's recreational use determinations as follows:

"The recreational use attainment determinations were initially based on existing use information obtained during aircraft-, boat- and postcard-conducted surveys; during meeting and phone solicitations; and by networking with the stakeholder groups. In order to explore whether other recreational uses could be attained, Illinois EPA reviewed several local ordinances and sent a letter to all agencies owning or leasing land along the CAWS. The letter was sent to Metropolitan Water Reclamation District of Greater Chicago (referred to MWRDGC), municipalities, park districts and forest preserve districts and solicited information concerning any and all recreational and other use opportunities within and along the CAWS planned for the foreseeable future. None of the responses to the letter contained definitive plans for new uses that do not already exist."

Sulski Testimony (Exhibit 1) at p. 9.

Mr. Sulski's testimony also addressed the Agency's bases for concluding that conditions within the CAWS and Lower Des Plaines River justify the adoption of use designations distinct from other waters of the State.

"There was and continues to be sound reasoning to custom tailor water quality standards for this system to coincide with its own unique configuration and functions as we establish environmental uses and goals to achieve and protect its ecological and recreational potential. The system still must support other critical functions, particularly urban drainage, flood control and navigation. Its 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."

Sulski testimony (Exhibit 1) at pp. 3-4.

In addition to presenting testimony on the actions taken by Illinois EPA to gather information and data relevant to determining the recreational use designations for the CAWS, Mr. Sulski also testified to his extensive personal experience in and on the waters impacted by this rulemaking. Mr. Sulski testified that: "I grew up and continue to live in the CAWS area and have on numerous occasions professionally and personally power boated every length of the CAWS; and I have fished, waded and paddled in and hiked and hunted along much of the CAWS and most of its tributaries." Sulski, Testimony (Exhibit 1) at p. 2.

C. Public testimony and comments

The Board held a public hearing on June 16, 2008 for the specific purpose of taking oral testimony from members of the public who use the CAWS and Lower Des Plaines River for recreational purposes. Sworn testimony was taken from 44 witnesses. Forty-three of the witnesses supported recreational activities on the CAWS and Lower Des Plaines River and one witness, Mr. Wally Van Buren, testified on behalf of the

Illinois Association of Wastewater Agencies in support of delaying the rulemaking proceeding altogether. All but two or three of the 43 remaining witnesses testified in support of the Illinois EPA's proposal.

Prior to the Board's March 18, 2010 opinion and order, a total of 285 written public comments had been received in this proceeding. All of the written public comments that addressed recreational use designations have advocated for the Board to enhance the protection of recreational activities that are occurring in and on the CAWS.

Approximately 250 members of the public have provided letters to the Board generally in support of the Agency's proposal and in support of the CAWS as a recreational resource. Comments were also provided from the Illinois Department of Natural Resources (PC#182), the Forest Preserve District of Will County (PC#4), the Forest Preserve District of Cook County (PC #187) and the Chicago Park District (PC #249) detailing the importance of recreational uses of the CAWS or the Lower Des Plaines River to their Agency missions. Alan Mammoser of the Southeast Environmental Task Force submitted pre-filed testimony regarding land use planning for open space and recreation in the Calumet region which was made a public comment (PC #184) rather than testimony. Public Comment #1 from Environmental Law and Policy Center, Natural Resources Defense Council, Prairie Rivers Network and Sierra Club provided a summary of the standard of review for Use Attainability Analyses and the relevant Clean Water Act requirements. Public Comment #250 from Sharon Boyd-Peshkin provided information on how the amount of contact with water while kayaking differs in the CAWS from kayaking in other waters.

In addition to support from individual members of the public and government agencies, written comments in support of the recreational use portions of the Illinois EPA proposal were submitted by elected officials, not-for-profit agencies and trade associations. (Exhibit A, #87). The Agency could find no written public comments specifically opposing the Agency's recreational use designations. The only exception may be public comment #23 submitted by a number of recreational boating groups which criticizes the Agency for failing to propose "General Use" recreational designations for the CAWS and Lower Des Plaines River.

D. Witness testimony and Exhibits

Most of the prefiled testimony that has been presented to the Board on the topic of recreational uses has actually focused on whether additional disinfection technology should be used to protect the existing and attainable uses. There were some witnesses representing environmental organizations that testified in support of the Agency's proposal and provided additional evidence on the nature of the existing and foreseeable recreational activities in the CAWS and Lower Des Plaines River. These witnesses were Margaret Frisbie of Friends of the Chicago River, Thomas J. Bamonte of the Chicago Area Sea Kayakers Association, Victor Crivello on behalf of the Southeast Environmental Task Force, and Laura Barghusen and Gerald Adelman of Openlands. (Exhibits 259, 284, 330, 338 and 344).

There were three witnesses that presented testimony on appropriate recreational use designations on behalf of the regulated community. Robert S. Elvert of Exxon Mobil testified regarding the safety and homeland security concerns posed by small craft recreational uses of the Lower Des Plaines River. (Exhibit 324). William J. Stuba and

Samuel G. Dennison testified on behalf of the Metropolitan Water Reclamation District of Greater Chicago regarding recreational use designations. (Exhibits 62 and 65). Mr. Stuba testified to the recreational surveys conducted by the district and the absence instances of primary contact recreational activities during the districts surveys. (See Exhibits 62, 63 and 64). Mr. Dennison's testimony focused primarily on the District's desire for certain Incidental Contact segments to be classified as Non-Contact segments.

Of the 381 Exhibits entered in the R08-09 docket prior to the Board's March 18, 2010 opinion, the Agency identified 67 Exhibits that are relevant to the Board's consideration of recreational use designations. In addition to pre-filed testimony, these Exhibits include many photographs that demonstrate recreational uses or the opportunities for recreational uses along the CAWS and Lower Des Plaines River. (See, e.g., Exhibits 61, 66, 82, 87, 264, 265, 266, 266a, 272, 273, 279, 311, 325, 350, 351, and 353). Some of these photos also document the co-existence of Incidental Contact and Non-Contact recreational uses along-side commercial barge traffic.

The Exhibits also include documentation of past recreational events and current and future plans for the recreational events and land use planning along the CAWS and Lower Des Plaines River. (See, e.g., Exhibits 260, 262, 263, 267, 268, 269, 270, 271, 274, 275, 276, 332, 345, 347, 349, 352, 354, 358, 359, 360, 361, 362 and 363). Also included in the Exhibits are several maps of the areas included in the UAA studies. (Exhibit 25, 27, 264, 273, 326, 331, 346 and 350).

Taken together, the Exhibits support the Agency's conclusions that primary contact recreation is not an existing or attainable use in the CAWS or Lower Des

Plaines River waters. The Exhibits provide extensive documentation of the wide variety of less intensive uses that are occurring in the Incidental Contact Recreation waters, while not contradicting the conclusion that much less intensive uses are occurring in the Non-Contact Recreational Use waters and only very limited pass-through boating is occurring in the Non-Recreational waters.

While the Agency is also quite sympathetic to some of the evidence presented by Exxon-Mobil and MWRDGC regarding safety concerns with some of the activities that are occurring today, the Clean Water Act obliges the Board to adopt uses that reflect existing and attainable uses and State law does not give the Board authority to prohibit unsafe recreational activities if such activities are regularly occurring in portions of the CAWS and Lower Des Plaines River. See, January 29, 2008 Hearing Transcript at 220-222. On the other hand, it also seems clear that the Board need not adopt a primary contact use simply because one swimmer or water skier is discovered on a single day of observations, but must examine the totality of recreational use evidence in the Record to determine the existing and attainable recreational uses of the subject waterways.

VII. Technical Feasibility and Economic Reasonableness.

The Board is required to consider the technical feasibility and economic reasonableness of any rulemaking pursuant to Section 27(a) of the Environmental Protection Act. Although this may be a key issue to the Board's analysis in one or more of the subdockets of this proceeding, there is no economic or technological impact of establishing the designated uses in these waters. Until the Board determines the criteria necessary to protect the attainable uses or considers establishment of a

technology-based effluent disinfection requirement, there will be no economic impact to the Board's decision in this matter. In addition, the adoption of the proposed recreational use designations is clearly technologically feasible, because there is no technology requirement. No dischargers will have any additional requirements placed on them as a result of the Board's actions in this subdocket.

VIII Conclusion

Wherefore, for the reasons and based on the evidence outlined above, the Agency asks the Board to proceed to First Notice on R08-09 (Subdocket A) with the recreational use designations and related provisions contained in the Agency's proposed 35 Ill. Adm. Code Sections 301.247, 301.282, 301.307, 301.323, 301.324, 302.402, 303.204, 303.220, 303.225 and 303.227.

Respectfully submitted,

By: Deborah J. Williams

Deborah J. Williams
Assistant Counsel
Division of Legal Counsel

Date: April 15, 2010

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

EXHIBIT A

Documents Containing Recreational Use Information

1. Statement of Reasons (Initial Filing).
2. Lower Des Plaines River UAA Report (Attachment A of Initial Filing).
3. CAWS UAA Report (Attachment B of Initial Filing).
4. Map of Recreational Use Designations (Attachment H of Initial Filing)(Exhibit 27).
5. Ordinance: Code of Forest Preserve District of Cook County, Title 2: Forest Preserve District Lands and Properties, Chapter 4: Recreation in the Forest Preserve (Attachment J of Initial Filing).
6. List of recreational use data sources (Attachment K of Initial Filing).
7. Inventory of Public Access Locations along the Chicago Area Waterway System (Attachment L of Initial Filing).
8. Written Notice of Wading as a Prohibited Use in Waterways. Letter from MWRDGC General Superintendent, John C. Farnan, to Illinois EPA Division of Water Pollution Control Manager, Toby Frevert (Attachment N of Initial Filing).
9. Chicago Area Waterways Health Precautions Pamphlet (Attachment P of Initial Filing)(Also Exhibit 261).
10. Minutes from November 19, 2003 SAC Meeting on Safety and Navigational Issues Applicable to CAWS (Attachment JJ of Initial Filing).
11. Hearing Transcripts of Agency Testimony (e.g., January 29, March 10, and April 24, 2008).
12. June 16, 2008 Transcript of Public Testimony at MWRDGC Board Room.
13. September 8, 2008 (afternoon) Transcript of Testimony of William Stuba and Samuel Dennison.
14. May 6, 2009 Transcript of Testimony of Margaret Frisbie and Thomas Bamonte.
15. August 13, 2009 (afternoon) Transcript of Testimony of Robert Elvert.
16. October 5, 2009 Transcript of Testimony of Victor Crivello, Laura Barghusen and Gerald Adelman.
17. ELPC Pre-Hearing Memorandum (Public Comment (PC) #1).
18. Pre-filed Testimony of Rob Sulski (Exhibit 1).
19. March 4, 2008 filing of IEPA in response to Hearings held the week of Jan 28, 2008.
 - a. Lower Des Plaines and CAWS Stakeholder meeting minutes (Attachment 6).
 - b. Comments received by Illinois EPA from the City of Evanston and the City of Chicago on the CAWS UAA (Attachment 7).
 - c. Recreational surveys to local governments units and responses (Attachment 8).
 - d. Recreational information pertaining to boat launches, sculling activities and other recreational information obtained by Illinois EPA (Attachment 9).
 - e. Recreational data from 2005 from the MWRD boat crew (Attachment 10).
20. Publication: HERALD-NEWS, Publication date: 8/19/2002 "Fishermen died by drowning" (Exhibit 9).

21. Three Rivers Manufacturers' Association letter to Toby Frevert dated June 6, 2003 (Exhibit 10).
22. Map entitled "Chicago Area Waterway System and Des Plaines River UAA Segments" (Exhibit 25).
23. Map entitled "Proposed Recreational Use Designation" (Exhibit 27).
24. UAA Factor Application to the Lower Des Plaines River and CAWS (Exhibit 29).
25. Information on Impaired Segments of the Lower Des Plaines River and the CAWS (Exhibit 34).
26. "Meeting Minutes from the Lower Des Plaines River Workgroup and the CAWS Stakeholders Group" (Exhibit 36).
27. Additional Information on Impaired Segments of the Lower Des Plaines River and the CAWS (Exhibit 45).
28. Alliance for the Great Lakes "Protecting Public Health, Caring for Chicago's Waters" (Exhibit 55).
29. "Reconnaissance Report Great Lakes Navigation System Review Appendix D – Chicago Sanitary & Ship Canal" Army Corp of Engineers, June 2002 (Exhibit 57).
30. Attachment 1, Openlands Questions, color photos (Exhibit 61).
31. Prefiled Testimony of Williams J. Stuba (Exhibit 62).
32. Table entitled "Annual Summaries of Recreational Activities Observations" (Exhibit 63).
33. Trip log dated 7-16-08, Patrol CAL DO NPDES (Exhibit 64).
34. Prefiled Testimony of Samuel G. Dennison on Recreational Designations (Exhibit 65).
35. Color Photo of Barge on Calumet-Sag Channel looking west from 104th Street Bridge (Exhibit 66).
36. Openlands Attachment 1 to Prefiled Question of Keith Tolson, color photo (Exhibit 82).
37. "Lease Amendment Agreement Ronan Park Expansion" September 19, 1990 (Exhibit 83).
38. Color Photo of two-person Jet Ski (Exhibit 87).
39. Prefiled Testimony of Margaret Frisbie, Friends of Chicago River (Exhibit 259).
40. United States Canoe Association Competition Events, USCA Sanctioning Guidelines (Exhibit 260).
41. Brochure entitled "It's Our River Day A celebration of Illinois watersheds through Education Recreation Conservation Saturday September 19, 2009" (Exhibit 262).
42. CD-Rom entitled "Illinois Bureau of Tourism Commercial" (Exhibit 263).
43. Series of pictures and maps with cover page "Boat Launches Clark Park (1) to River North Park (47) Direction: South to North Number of Launches: 47 (45 private red, 2 public green) (Exhibit 264).
44. Series of pictures with cover page "Egress Points on the CAWS" (Exhibit 265).
45. CD-Rom entitled "CAWS Circle tour Photos" (Exhibit 266).
46. Pictures from CD-Rom with cover page "CAWS Circle tour Photo Handouts" (Exhibit 266(a)).
47. Chart entitled "Friends of the Chicago River Individual Canoe Trips by Reach 1998-2008" (Exhibit 267).
48. Chicago River Canoe and Kayak Liveries (Exhibit 268).
49. Crew Teams on the Chicago River (Exhibit 269).

50. Chart entitled "Friends of the Chicago River Chicago Park District Canoe Trips 2005-2008" (Exhibit 270).
51. Letter to Margaret Frisbie from Cathy Hudzik Assistant to the Mayor, City of Chicago dated November 7, 2008 (Exhibit 271).
52. Pictures of Chicago River with Marina Towers in one picture (Exhibit 272).
53. Pictures with cover page "Bubbly Creek May 15, 2008" (Exhibit 273).
54. Memorandum of the Chicago Park District dated December 17, 2008 on FOIA Chicago River Projects (Exhibit 274).
55. Map entitled "Ping Tom Shoreline Improvements" (Exhibit 275).
56. Chicago River Agenda City of Chicago Richard M. Daley, Mayor (Exhibit 276).
57. Sun Times column from Neighborhoods with Mark Konkol entitled "River Rats" (Exhibit 277).
58. Chart entitled "Public comments: Friends of the Chicago River v. Non-members as of April 24, 2009" (Exhibit 278).
59. Series of pictures with cover page "Wading on the CAWS" (Exhibit 279).
60. Pre-filed Testimony of Thomas J. Bamonte, Chicago Area Sea Kayakers Association. (CASKA) (Exhibit 284).
61. Response to IEPA Prefiled Question 7 for A. Jirik -- pictures (Exhibit 311).
62. Prefiled Testimony of Robert S. Elvert (Exhibit 324).
63. Seven Pictures beginning with one marked I-55 Bridge, Boat-Barge (Exhibit 325).
64. Two US Army Corps of Engineers Illinois Waterway maps (Exhibit 326).
65. Pre-filed Testimony of Victor Crivello (Exhibit 330).
66. Color Map listing 12 points beginning with Alsip Boat Launch and ending with Worth Board Launch (Exhibit 331).
67. Series of pages describing the boat launches and marines mapped on Exhibit 331, beginning with Alsip Boat Launch and ending with Worth Board Launch (Exhibit 332).
68. Pre-filed Testimony of Laura Barghusen, Openlands (Exhibit 338).
69. Pre-filed Testimony of Gerald W. Adelman (Exhibit 344).
70. CD Rom entitled "Northeastern Illinois Regional Water Trail Plan (1999)" dated May 20, 2009 (Exhibit 345).
71. Color Map entitled "Chicago Area Waterway System Recreational Access Points and Proposed Uses" Openlands testimony (Laura Barghusen) (Exhibit 346).
72. 2006 Paddling Survey (Exhibit 347).
73. Pictures entitled "Examples of Signage Viewed Along the Chicago Area Waterways System" submitted by Laura Barghusen, Openlands (Exhibit 348).
74. Openlands Answer to MWRD Prefiled Question #6(A) for Laura Barghusen (Exhibit 349).
75. "Examples of Ladders Along the Chicago Area Waterways System" Laura Barghusen, Openlands (Exhibit 350).
76. Pictures entitled "Gradually Sloping Banks and Shallow Water in the Chicago Area Waterways System" (Exhibit 351).
77. Openlands response to MWRD Prefiled Question 3(a) for Gerald Adelman (Exhibit 352).
78. Pictures entitle "Examples of Boat Launches in and near the Chicago Area Waterway System" (Exhibit 353).
79. Openlands Answer by Jerry Adelman, Openlands to MWRD Prefiled Question #1 in R08-9 (Exhibit 354).
80. Brochure entitled "Calumet-Sag Trail" (Exhibit 358).

81. Brochure entitled "Discover the South Suburban Calumet Region Notes on the Natural Areas, Rivers, and Trails" (Exhibit 359).
82. Print out of website for the City of Blue Island Calumet Rivers Development Projects (Exhibit 360).
83. "Calumet River Corridor Economic Development vision and Strategy Robbins, Blue Island, Calumet Park, Riverdale, Dolton, Calumet City, Burnham" Draft Final Report of the Calumet Rivers Development Project March 2007 (Exhibit 361).
84. "Green River pattern Book an Illustrated Guide to Sustainable Urban Planning and Design Principles and Environmental Design Energy Conservation Best Practices" Created and published by South Suburban Mayors & Managers Association and Chicago Southland Economic Development Corporation (Exhibit 362).
85. Brochure/pamphlet entitled "Calumet Open Space Reserve Plan" (Exhibit 363).
86. General public comments in support of Agency proposal: PC#s 2-3, 7, 9, 11-22, 24-36, 39-42, 44-50, 52, 54-57, 59-60, 62-65, 69-70, 73-74, 76-80, 83-164, 166-173, 178 -181, 185, 188-239, 241 – 246, 248, 251, and 252-283.
87. Specific public comments in support of Agency proposal from Agencies, Groups or Elected Officials:

PC #4 Forest Preserve District of Will County, PC#5 Prairie Parklands Partnership, PC#8 Illinois Paddling Council, PC#10 Suzanne Malec-McKenna, City of Chicago Department of Environment Commissioner, PC#37 Congressman Jesse L. Jackson, Jr., PC#38 State Representative Elizabeth Coulson, PC#43 Alderman Scott Waguespack, PC#51 Lieutenant Governor Pat Quinn, PC#53 National Marine Manufacturers Association, PC#58 State Representative Elizabeth Hernandez, PC#61 State Representative Kevin Joyce, PC#68 County Commissioner Mike Quigley, PC#75 Congressman Mark Kirk, PC#81 Friends of the Forest Preserves, PC#82 Neighbor Space, PC#176 Lower Des Plaines Ecosystem Partnership, PC# 182 Illinois Department of Natural Resources, PC#184 Pre-filed Testimony of Alan Mammoser, #187 Forest Preserve of Cook County, and PC# 249 Chicago Park District.

88. Statement of Support and Objections of the Chicago Area Sea Kayaking Association (CASKA), Illinois Paddling Council, Lincoln Park Boat Club, Prairie Coast Paddlers, Chicago River Canoe and Kayak, Southwest Brigade, the Des Plaines River Association, Kayak Chicago, Chicago Whitewater Association, Geneva Kayak Center, Wisconsin Canoe Racing Association, and the Prairie Coast Canoeists submitted by Thomas J. Bamonte, CASKA President (PC #23).
89. PC# 250 Comments of Sharon Boyd-Peshkin

STATE OF ILLINOIS
COUNTY OF SANGAMON

)
)
)
)

SS

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached POST HEARING
COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY upon the
person to whom it is directed by placing it in an envelope addressed to:

John Therriault, Clerk
Marie Tipsord, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

SEE ATTACHED SERVICE LIST

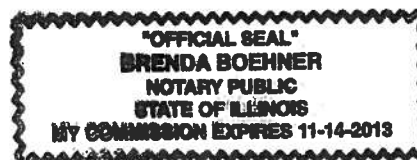
and mailing it First Class Mail from Springfield, Illinois on April 15, 2010, with sufficient
postage affixed.

Maureen Kelly

SUBSCRIBED AND SWORN TO BEFORE ME

This 15th day of April, 2010

Brenda Boehner
Notary Public



THIS FILING IS SUBMITTED ON RECYCLED PAPER

Service List for R08-9

Elizabeth Schenkier
Keith Harley
Chicago Legal Clinic, Inc.
205 W. Monroe, 4th Floor
Chicago, IL 60606

Susan M. Franzetti
Nijman Franzetti LLP
10 South LaSalle St.
Ste. 3600
Chicago, IL 60603

Katherine D. Hodge
Monica Rios
Matthew C. Read
Hodge Dwyer Driver
3150 Roland Ave.
P.O. Box 5776
Springfield, IL 62702

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Ste 11-500
Chicago, IL 60601

Susan Hedman
Andrew Armstrong
Office of the Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, IL 60602

Jeffrey C. Fort
Ariel J. Teshner
Sonnenschein Nath & Rosenthal LLP
7800 Sears Tower
233 S. Wacker Drive
Chicago, IL 60606-6404

Ann Alexander
Senior Attorney
Natural Resources Defense Council
2 N Riverside Plaza, Suite 2250
Chicago, IL 60606

Fredrick M. Feldman
Ronald M. Hill
Margaret T. Conway
Metropolitan Water Reclamation District
of Greater Chicago
111 East Erie Street
Chicago, IL 60611

Mitchell Cohen
Illinois DNR, Legal
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62705-5776

Marie Tipsord, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Ste 11-500
Chicago, IL 60601

Albert Ettinger, Senior Staff Attorney
Jessica Dexter
Environmental Law & Policy Center
35 E. Wacker Dr., Suite 1300
Chicago, IL 60601

Jennifer A. Simon
Kevin Desharnais
Thomas W. Dimond
Thomas V. Skinner
Mayer Brown LLP
71 South Wacker Drive
Chicago, IL 60606-4637

Service List for R08-9 Continued

Fredric P. Andes
Carolyn S. Hesse
David T. Ballard
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, IL 60606

Kristy A.N. Bulleit
Brent Fewell
Hunton & Williams LLC
1900 K Street, NW
Washington, DC 20006

Stacy Meyers-Glen
Openlands
25 E. Washington, Ste. 1650
Chicago, IL 60602

Cathy Hudzik
City of Chicago's Mayor's
Office of Intergovernmental Affairs
121 North LaSalle Street
City Hall Room 406
Chicago, IL 60602

Lisa Frede
Chemical Industry Council of Illinois
1400 E. Touhy Ave.
Des Plaines, IL 60019

Lyman C. Welch
Alliance for the Great Lakes
17 North State Street, Suite 1390
Chicago, IL 60602

Jack Darin
Cindy Skrukrud
Sierra Club, Illinois Chapter
70 East Lake Street, Ste. 1500
Chicago, IL 60602