



**Chemical Industry  
Council of  
Illinois**

November 4, 2013

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

**Re: COMMENTS OF THE CHEMICAL INDUSTRY COUNCIL OF ILLINOIS  
ON SECOND NOTICE OPINION AND ORDER OF THE BOARD (R08-9C)**

Dear Ms. Tipsord,

The Chemical Industry Council of Illinois ("CICI") submits its comments on the Second Notice Opinion and Order of the Illinois Pollution Control Board ("Board"), R08-9 (Subdocket C), dated October 3, 2013, regarding the Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System ("CAWS") and the Lower Des Plaines River ("LDPR"): Proposed Amendments to 35 Ill. Adm. Code 301, 302, 302, and 304 ("Second Notice").

The CICI is a statewide trade association representing the chemical industry in Illinois. CICI represents 211 member companies employing more than 45,000 workers at an average annual wage of \$90,000 in 726 manufacturing facilities and 877 wholesale and distribution facilities in Illinois. CICI has several member companies that will be affected by the proposed rulemaking, and because of the potential impact to our member companies, CICI believes that there are several aspects of the proposed rule that need to be clarified before moving on to a final order.

In its Second Notice, the Board proposes to designate the Upper Dresden Island Pool ("UDIP") as UDIP Aquatic Life Use ("UDIP ALU"). The Board initially proposed to designate the UDIP as General Use "[b]ecause the UAA factors do not justify an aquatic life use less than the CWA [Clean Water Act] goal." The Board now explains that the UDIP can only "minimally" meet the CWA aquatic life use goal. Therefore, the Board's UDIP ALU is intended to be reflective of waters "nearly capable of meeting the CWA goal and includes aquatic-life populations consisting of individuals of tolerant, moderately tolerant, and intolerant types."

In proposing a designation "nearly capable" of meeting the CWA goal, the Board does not rely on applicable Use Attainability Analysis ("UAA") Factors from 40 C.F.R. § 131.10. However, in the proposed definition of UDIP ALU, the Board recognizes that the UDIP has unique physical conditions, flow patterns, and operational controls necessary to maintain navigational use and flood control. These characteristics of the UDIP are the basis for an ALU designation not capable of fully achieving the ALU goal of the CWA. In addition, these characteristics recognized by the Board, at a minimum, embody UAA Factors 4 and 5 as noted below.

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CICI reiterates its earlier comments submitted on July 1, 2013 that describe data and information submitted into the record, including from the Illinois Environmental Protection Agency's contractor, that demonstrate that physical conditions, which are irreversible, prevent the UDIP from fully meeting the ALU goal of the CWA. CICI specifically pointed to information in the record that supports applying three UAA Factors to the UDIP. In particular, CICI noted information that supported applying the following three factors to the UDIP: 1) UAA 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); 2) UAA Factor 4 (Dams, diversions or other 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); and 3) UAA Factor 5 (Physical conditions related to the natural features of the water body, such as the lack of proper substrate, cover, flow, depth, pools, riffles and the like, that are unrelated to water quality, preclude attainment of aquatic life protection uses). As CICI summarized in its previous comments, the influx of sediment and the hydrologic effects of dams, barge traffic, and flood control limit habitat and limit areas for fish spawning, foraging, and rearing.

Contrary to the Board's proposal for UDIP ALU, intolerant fish species will not be present in the UDIP. Typically, intolerant fish species require a more diverse and higher quality habitat that is also not subjected to siltation, elevated oxygen concentrations, relatively clear water, and oligotrophic to mesotrophic waters. Even if chemical quality of the UDIP improves over time, the irreversible habitat and sedimentation characteristics will limit the UDIP's ability to sustain an intolerant fish assemblage. Thus, the Board should remove the reference to intolerant species from the definition of the UDIP ALU and instead include only the moderately tolerant and tolerant species that are supportable by the UDIP.

To summarize, CICI requests that the Board recognize the applicability of UAA Factors to the UDIP and the inability of the UDIP to meet the CWA ALU goal. As such, CICI requests that the Board revise the UDIP ALU definition accordingly.

CICI appreciates the opportunity to offer these comments.

Sincerely,

A handwritten signature in cursive script that reads "Lisa Frede". The signature is written in black ink on a white background.

Lisa Frede  
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