

ILLINOIS POLLUTION CONTROL BOARD

February 6, 2014

IN THE MATTER OF:)
)
WATER QUALITY STANDARDS AND) R08-9 (Subdocket C)
EFFLUENT LIMITATIONS FOR THE) (Rulemaking - Water)
CHICAGO AREA WATERWAY SYSTEM)
AND LOWER DES PLAINES RIVER:)
PROPOSED AMENDMENTS TO 35 ILL.)
ADM. CODE 301, 302, 303, and 304)

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by D. Glosser):

SUMMARY

The Board today adopts a rule that designates aquatic life uses for the Chicago Area Waterways Systems (CAWS) and Lower Des Plaines River (LDPR). After reviewing the record and examining the Clean Water Act (CWA) goal of “water quality which provides for the protection and propagation of fish, shellfish, and wildlife. . .” (33 U.S.C. § 1251(a)(2)), the Board is adopting three aquatic life use designations and has developed definitions of those aquatic life use designations. The Board adopts a CAWS Aquatic Life Use (ALU) A, CAWS and Brandon Pool Aquatic Life Use (ALU) B, and Upper Dresden Island Pool (UDIP) Aquatic Life Use (ALU).

Generally, CAWS ALU A waters are capable of maintaining tolerant and intermediately tolerant species such as channel catfish, largemouth bass, bluegill, black crappie, spotfin shiner, orangespotted sunfish, common carp, and goldfish. The Board adopts as CAWS ALU A waters: Upper North Shore Channel, Lower North Shore Channel, North Branch of the Chicago River, South Branch of the Chicago River, Calumet-Saganashkee (Cal-Sag) Channel, Calumet River, Little Calumet River, Grand Calumet River, Lake Calumet, and Lake Calumet Connecting Channel.

CAWS and Brandon Pool ALU B waters are capable of protecting aquatic life populations predominated by individuals of tolerant types such as common carp, golden shiner, bluntnose minnow, yellow bullhead, and green sunfish. The Board adopts as ALU B waters the Chicago Sanitary and Ship Canal and Brandon Pool.

The Board revisited the designation of the UDIP as a General Use water at second notice. Upon re-examination, the Board proposed at second notice a UDIP ALU designation rather than designating UDIP as General Use. The UDIP ALU is defined as waters capable of maintaining, and having quality sufficient to protect, aquatic-life populations consisting of individuals of tolerant, intermediately tolerant, and intolerant types such as largemouth bass, bluntnose

minnow, channel catfish, orangespotted sunfish, smallmouth bass, shorthead redhorse, and spottail shiner. The Board today adopts that designation.

The Board has determined that maintaining the General Use standard for the Chicago River is appropriate as the Chicago River can meet the CWA goals in the foreseeable future. Therefore, the Board adopts no change in the aquatic life use designation for the Chicago River.

The Board also adopts language to establish numeric water quality standards for fecal coliform bacteria applicable to Primary Contact Recreation Waters.

The Board's opinion will begin with a recitation of the procedural background. The Board will then summarize the first-notice proposal and second-notice proposal. The Board will then discuss proceeding to adoption of this rule.

PROCEDURAL BACKGROUND

On October 26, 2007, the Illinois Environmental Protection Agency (IEPA) filed a proposal under the general rulemaking provisions of Sections 27 and 28 of the Environmental Protection Act (Act) (415 ILCS 5/27, 28 (2010)). Generally, the proposal amends the Board's rules for Secondary Contact and Indigenous Aquatic Life Use to update the designated uses and criteria necessary to protect the existing uses of CAWS and LDPR. On November 1, 2007, the Board accepted the proposal for hearing. On November 15, 2007, the Board granted a motion to hold hearings in Chicago and Joliet.

On June 12, 2008, the Metropolitan Water Reclamation District of Greater Chicago (District) filed a motion to stay the rulemaking proceeding, which was supported by: 1) Midwest Generation L.L.C (Midwest Generation), 2) Chemical Industry Council of Illinois (CICI), and 3) Stepan Company (Stepan). On June 25, 2008, the Environmental Law and Policy Center, Friends of the Chicago River, Sierra Club Illinois Chapter, Natural Resources Defense Council and Openlands (Environmental Groups) filed a response in opposition to the motion. Joining in opposition to the motion were the Southeast Environmental Task Force (SETF), the People of the State of Illinois (People), and IEPA. On July 21, 2008, the Board denied the motion to stay and directed the parties to proceed with additional hearings already scheduled.

On March 18, 2010, the Board granted a motion filed by Citgo Petroleum Corporation & PDV Midwest, LLC (Citgo/PDV) for an additional hearing on Asian carp, but delayed that hearing until later in 2010. The Board also granted a motion filed by the Environmental Groups to sever the dockets. The Board severed the dockets as follows: 1) Subdocket A dealt with the issues related to recreational use designations, 2) Subdocket B addressed issues relating to disinfection and whether or not disinfection may or may not be necessary to meet those use designations, 3) Subdocket C addresses the issues related to aquatic life use designations, and 4) Subdocket D addresses the issues dealing with water quality standards and criteria that are necessary to meet the aquatic life use designations.

The Board held 39 days of hearing as of March 18, 2010, when the docket was divided, and additional hearings proceeded in the Subdockets. Hearings were held in Chicago: January

28, 2008 through February 1, 2008, June 16, 2008, September 8, 2008 through September 10, 2008, September 23, 2008 through September 25, 2008, February 17 and 18, 2009, March 3 and 4, 2009, April 15, 2009, May 5, 6, and 20, 2009, July 28 and 29, 2009, August 13 and 14, 2009, October 5, 2009, November 9 and 10, 2009, and January 13 and 14, 2010. Hearings were held in Joliet: March 10, 2008 through March 12, 2008, October 27 and 28, 2008 and November 17, 2008. Hearings were held in Des Plaines: April 23 and 24, 2008, and December 2 and 3, 2008.

Not all the testimony received during the 39 days of hearing held prior to March 18, 2010 is relevant to this Subdocket. Those whose testimony is relevant are the following:

Rob Sulski of IEPA (Exhibit 1)
 Roy Smogor of IEPA (Exhibit 3)
 Charles S. Melching on behalf of District (Exhibit 169)
 Jennifer Wasik on behalf of District (Exhibit 187, 230)
 Samuel G. Dennison on behalf of District (Exhibit 191, 192, 209)
 Marcelo H. Garcia on behalf of District (Exhibit 193)
 Paul L. Freedman on behalf of District (Exhibit 204)
 John Mastracchio on behalf of the District (Exhibit 223)
 Alan L. Jirik on behalf of Corn Products (Exhibit 303)
 James E. Huff, P.E. on behalf of Citgo/PDV (Exh. 285) and Corn Products (Exhibit 304)
 Joseph V. Idaszak on behalf of Corn Products (Exhibit 305)
 Dr. David Thomas on behalf of the Environmental Groups (Exhibit 327)
 Laura Barghusen on behalf of the Environmental Groups (Exhibit 338)
 Julia Wozniak on behalf of Midwest Generation (Exhibit 364)
 Greg Seegert on behalf of Midwest Generation (Exhibit 366)
 Dr. G. Allen Burton on behalf of Midwest Generation (Exhibit 369)

In addition to hearing testimony, the Board received 381 exhibits and over 500 public comments, prior to the dockets being divided on March 18, 2010. Many of the comments and exhibits are not relevant to a determination of aquatic life use, and therefore will not be listed. The comments from participants received prior to March 18, 2010 relevant to aquatic life use are:

The District PC 284
 Midwest Generation PC 285
 United States Environmental Protection Agency (USEPA) PC 286

Proceedings Since March 18, 2010

The Board has held an additional ten days of hearings all in Chicago in Subdocket C. The first of those on November 9 and 10, 2010, were devoted to the issue of the impact of Asian carp prevention measures on the CAWS aquatic life use. The Board held hearings on additional issues regarding aquatic life use designations in 2011 on: March 9 and 10, May 15, 16, and 17, June 27, and August 15 and 16.

By hearing officer order, the pre-first notice comment period was closed on October 3, 2011, with responsive comments to be filed by October 17, 2011. However, on September 22, 2011, the hearing officer received a “Joint Emergency Motion to Vacate Deadlines in Subdocket C and Set Date for Filing of Joint Status Report”, which was granted. After receiving status reports on November 21, 2011, and January 3, 2012, a new comment deadline was established. Final comments were due on March 5, 2012, and responsive comments were due by March 19, 2012.

The following individuals representing industry, environmental organizations, and State agencies testified at the ten days of hearings held on Subdocket C:

Robin L. Garibay on behalf of Midwest Generation (Exhibit 420)
 Julia Wozniak on behalf of Midwest Generation (Exhibit 425)
 Greg Seegert on behalf of Midwest Generation (Exhibit 428)
 Darren Melvin on behalf of American Waterway Operators (AWO) (Exhibit 434)
 John Kindra on behalf of AWO (Exhibit 435)
 Delbert Wilkins on behalf of AWO (Exhibit 436)
 James E. Huff on behalf of Citgo/PDV (Exhibit 437)
 Ray E. Henry on behalf of Midwest Generation (Exhibit 440)
 Scott B. Bell on behalf of the District (Exhibit 447)
 Jennifer Wasik on behalf of District (Exhibit 431, 461)
 Scudder D. Mackey on behalf of District (Exhibit 457)
 Adrienne D. Nemura on behalf of the District (Exhibit 465)
 Paul Botts on behalf of Wetlands Initiative (Exhibit 473)
 Dr. David Thomas on behalf of the Environmental Groups (Exhibit 474)
 Kimberly Rice on behalf of the Friends of the Chicago River (Exhibit 475)
 Roy Smogor on behalf of IEPA (Exhibit 476)

In addition to hearing testimony, the Board received 469 exhibits and over 1300 public comments. Not all comments and exhibits are relevant to a determination of aquatic life use, and therefore will not be listed. Further, many public comments consist of one page or less from numerous individuals. Those comments are: PC 397, 307-483, 485-494, 501-504, 507-510, 1258-1274, 1294-1329, 1330-1336, and 1339-1354. Those comments express support for cleaning up the waters. The public comments from participants received prior to first notice are:

IEPA PC 286, 495, 1275, 1289
 Illinois Department of Natural Resources (IDNR) PC 505
 American Waterway Operators PC 552
 David L. Thomas, PhD PC 560
 The Environmental Groups PC 1283, 1293
 The District PC 1031, 1276, 1292, 1366
 Citgo/PDV PC 1278, 1287
 Stepan Company PC 1279, 1291
 Illinois Environmental Regulatory Group (IERG) PC 1280, 1284
 Corn Products International, Inc. PC 1281, 1288
 ExxonMobil Oil Corporation PC 1282, 1290

Midwest Generation PC 1277, 1285, 1286

On February 21, 2013, the Board adopted a first-notice opinion and order in Subdocket C. On March 15, 2013, pursuant to the Administrative Procedure Act (5 ILCS 100/5-40 (2010)), the rule was published in the *Illinois Register*. 37 Ill. Reg. 2851 (Mar. 15, 2013). On March 22, 2013, the hearing officer issued an order noting that publication in the *Illinois Register* begins a 45-day comment period. The hearing officer set a comment deadline of April 30, 2013.

On April 4, 2013, IERG filed a motion for clarification of the Board's first-notice opinion and order. On April 8, 2013, CICI filed a comment in support of IERG's motion. PC 1368. On April 19, 2013, IEPA and the Environmental Groups filed responses to IERG's motion. On May 16, 2013, the Board granted the motion in part and denied the motion in part. Also on May 16, 2013, the hearing officer issued an order closing the comment period on July 1, 2013.

The Board received final comments from:

USEPA PC 1372
 IEPA PC 1373, 1387
 The District PC 1374, 1386
 ExxonMobil PC 1375
 IERG PC 1376
 Citgo/PDV PC 1377, 1385
 Stepan PC 1378
 CICI PC 1379
 Ingredion Incorporated (Ingredion)¹ PC 1380
 Midwest Generation PC 1381, 1383
 Environmental Groups PC 1382, 1384

Several participants asked for additional time to respond to the USEPA comment (PC 1372). On July 30, 2013, the hearing officer granted additional time for comments until August 30, 2013.

On October 3, 2013, the Board adopted a proposed second notice, allowing for comments on the second notice proposal. The Board allowed participants until November 4, 2013, to comment on the proposed second notice. The Board received the following comments on November 4, 2013:

USEPA PC 1388
 CICI PC 1389
 IEPA PC 1390
 Citgo/PDV PC 1391
 IERG PC 1392
 ExxonMobil PC 1393.

¹ Ingredion notes that since the last filing, Corn Products International, Inc. changed its name to Ingredion.

On November 21, 2013, the Board adopted a second-notice opinion and order. The Board filed the rule with the Joint Committee on Administrative Rules (JCAR) pursuant to the Illinois Administrative Procedure Act (IAPA) (5 ILCS 100/5-40 (2012)). On January 14, 2014, JCAR issued a certificate of no objection.

Department of Commerce and Economic Opportunity

On November 16, 2007, and July 7, 2011, in accordance with Section 27(b) of the Act (415 ILCS 5/27(b) (2012)), the Board requested that the Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study for this rulemaking. The Board did not receive a response to those letters, and the Board received no comment on DCEO's decision. The Board also notified DCEO of the proposed rulemaking on August 11, 2010, and DCEO responded on September 27, 2010, indicating that no economic impact study would be performed. No comment was received on DCEO's response.

SUMMARY OF BOARD'S FIRST NOTICE

After reviewing the record and examining the CWA goal of "water quality which provides for the protection and propagation of fish, shellfish, and wildlife. . . ." 33 U.S.C. § 1251(a)(2), the Board proposed two aquatic life use designations and developed definitions of those aquatic life use designations. The Board proposed a CAWS ALU A and a CAWS and Brandon Pool ALU B. At first notice the definition of CAWS ALU A included waters as being capable of supporting communities of native fish that are tolerant and moderately tolerant and may include sport fish species such as channel catfish, largemouth bass, bluegill, northern pike, and black crappie, and non-game fish species such as the tadpole madtom, spotfin shiner, and orangespotted sunfish. At first notice, the definition of CAWS and Brandon Pool ALU B included waters as being capable of supporting primarily tolerant fish species, such as central mudminnow, golden shiner, bluntnose minnow, yellow bullhead and green sunfish.

The Board proposed as CAWS ALU A waters: Upper North Shore Channel, Lower North Shore Channel, North Branch of the Chicago River, South Branch of the Chicago River, Cal-Sag Channel, Calumet River, Little Calumet River, Grand Calumet River, Lake Calumet, and Lake Calumet Connecting Channel. The Board proposed as ALU B waters the Chicago Sanitary and Ship Canal (CSSC) and Brandon Pool.

The Board did not propose an aquatic life use for the Upper Dresden Island Pool (UDIP). Instead, the Board proposed that the UDIP be classified as General Use, based on its ability to meet the CWA goals. However, the Board stated that it would visit the issue of appropriate water quality standards for UDIP in Subdocket D.

The Board also determined that maintaining the General Use standard for the Chicago River is appropriate as the Chicago River can meet the CWA goals in the foreseeable future. Therefore, no change was proposed for the Chicago River.

The Board opened a Subdocket E to examine issues surrounding Bubbly Creek (the South Fork of the South Branch Chicago River) as requested by the District and the Environmental Groups.

MOTION TO CLARIFY

In response to IERG's motion, the Board expressed appreciation for the concerns raised by IERG and IEPA, and clarified the Board's first-notice opinion and order in two areas. First, the Board noted it does not intend that the General Use water quality standard will apply to the UDIP until the conclusion of Subdocket D. In Subdocket D, the Board will examine the record to determine appropriate water quality standards for UDIP. The Board invited the participants to provide clarification for the rule to alleviate any confusion. The Board offered two examples of potential clarification.

Second, by designating the UDIP as General Use and retaining the General Use designation for the Chicago River the Board did not intend to change or alter the Recreational Use designations and standards decided in Subdockets A and B. The Board asked participants to suggest rule language. Likewise, the Board suggested that if IEPA believes language is necessary as a placeholder for Bubbly Creek during the pendency of Subdocket E, the Board invited suggestions.

As to the other issues raised by IERG and IEPA, the Board agreed with the Environmental Groups that these are clarifications that can be made as a part of the first notice process. The Board's first-notice proposal allows for comment, and the Board intended that the proposal elicit discussion. IERG's motion and IEPA's response touch on some of the areas in which the Board had anticipated receiving comments. The Board invited all participants to provide suggestions, comments, and to propose alternative language where appropriate.

SUMMARY OF SECOND NOTICE PROPOSAL

As a result of the comments received, the Board addressed multiple issues at second notice. The Board separately addressed USEPA's comments. Next, the Board addressed the issue of the UDIP designation as General Use. The Board then discussed issues regarding the definitions of ALU A and ALU B. The Board proceeded next to address the confusion generated by the designation of the Chicago River as a General Use water for aquatic life uses and the Primary Contact Use for recreational use. The Board moved on to a discussion of Bubbly Creek and the standards that apply to Bubbly Creek while Subdocket E proceeds. The Board next addressed concerns raised regarding the designation of the CSSC as ALU B and Brandon Pool as ALU B. Finally, the Board listed some issues raised in this proceeding that will be addressed more thoroughly in Subdocket D.

USEPA's Comment

The Board separately addressed the comments filed by USEPA during first notice in an attempt to illustrate to USEPA the portions of the record that support the Board's decision. The Board then addressed USEPA's comments on the proposed second notice.

The Board noted that other than the Upper North Shore Channel, the Calumet River from Lake Michigan to Torrence Avenue, and the Chicago River, the remaining portions of the CAWS and LDPR have not been found to meet the CWA goal of fishable since the adoption of the CWA. Further, those segments have previously been classified less than General Use. However, the Board appreciated the concerns expressed by USEPA and pointed USEPA to the evidence in the record that supports the Board's decision.

USEPA questioned the support in the record for the Board to designate several segments in the CAWS and LDPR as not meeting the CWA goal by relying upon UAA Factors 3, 4 and 5. USEPA questioned:

1. Whether [combined sewer overflows] CSOs can be "remedied through the completion of the Tunnel and Reservoir Plan" and therefore whether or not UAA Factor 3 provides a basis for finding that segments of CAWS and LDPR cannot meet the CWA goal,
2. Whether low flow conditions prevent attainment of the aquatic life use therefore whether or not UAA Factor 5 provides a basis for finding that certain segments of CAWS and LDPR cannot meet the CWA goal,
3. What information demonstrates that the hydrological modifications "preclude the attainment of the use," based upon the administrative record regarding existing physical and biological conditions, and
4. The basis for concluding that "it is not feasible to restore the water body to its original condition to operate such modification in a way that would result in the attainment of the use." Therefore, whether or not UAA Factor 4 provides a basis for finding that certain segments of CAWS and LDPR cannot meet the CWA goal. PC 1372

The Board considered USEPA's comment and reviewed the record. The Board remained convinced, based on this extensive record, that UAA Factor 3 limits the ability of many CAWS and LDPR segments from attaining the CWA goal of fishable. The Board agreed that the completion of the District's Tunnel and Reservoir Plan (TARP) will help with stormwater events and runoff; however, TARP is not scheduled for completion for over 15 years. In the meantime, the waters will continue to be severely impacted by storm events. Furthermore, even with the completion of TARP, many stream segments will still be impacted by human caused conditions such as the electric fish barrier, flow control and channelization all of which also prevent the attainment of the CWA goal.

Likewise, the Board indicated that the extensive record supports a finding that UAA Factor 4 prevents the CAWS and LDPR from achieving the CWA goal of fishable. The Board also noted that while USEPA raised concerns with the record as to whether or not the Board's decision is supported by the record, USEPA has offered no contrary evidence. The Board cannot, based on this record, endorse a concept that would require hydrologic modifications in

the CAWS and LDPR to be removed. The record simply contains no evidence that such an outcome is feasible or even possible.

The Board was unconvinced by USEPA's comment concerning UAA Factor 5. The Board remained convinced that the evidence in the record is overwhelming that the physical limitations of the CAWS and LDPR prevent attainment of the CWA goal. The evidence is not merely that low flow impacts the aquatic life use, but that many other limitations exist. Therefore, the Board found that the record supports its decision that UAA Factor 5 establishes that the CWA goal cannot be attained in all segments of the CAWS and LDPR

With regard to specific stream segments the Board explained its reasoning as to why the portions of the Calumet River system connected to Lake Michigan are not capable of meeting the CWA goal. In the Board's first-notice opinion, the Board accepted the agreed designation of ALU A for the Calumet River. The Board noted that the District and Environmental Groups agreed to this designation, while IEPA had originally proposed ALU B. *See Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303, and 304, R08-9(C)*, slip op. at 199-203 (Feb. 21, 2013). The Board reviewed the record and found that based on "biologic, habitat, and water quality conditions" the CWA goal could not be achieved. The index of biological integrity (IBI) and macroinvertebrate biotic index (MBI) scores in the Calumet River and physical attributes were factors the Board considered in making its determination. In addition, the Calumet River System is and will continue to be impacted by stormwater runoff and combined sewer overflows (CSO). As discussed above, the Board examined the extensive record in deciding that, even though the Calumet River System is connected to Lake Michigan, other limitations prevent attainment of the CWA goal. The Board has attempted to point USEPA to evidence in this record that supports the Board's finding on the Calumet River System.

USEPA asks for more specific information regarding the Grand Calumet River, North Shore Channel, North Branch of the Chicago River and the impact of hydrologic modifications on these stream segments and why such modifications prevent attainment of the CWA goal. The Board provided more detailed explanations, noting that the Grand Calumet River was reversed to flow west and during low flow periods exhibits stagnant conditions. The North Shore Channel (NSC) is a man-made channel, and the flow to upper NSC comes from Lake Michigan, flow diversion from Lake Michigan is dictated by law and cannot be changed. Thus, flow alterations that limit aquatic life use cannot be modified. In the North Branch, the channel has been either straightened or relocated into straight segments with steep earthen side slopes. The Board examined the extensive record in deciding that hydrologic modifications prevent attainment of the CWA goal in these segments. The Board pointed USEPA to evidence in this record that supports the Board's findings.

UDIP

At first notice, the Board declined to invoke any of the UAA Factors for UDIP, as suggested by several participants. However, the Board clarified its position regarding the issue of attainment of the CWA goal in UDIP. The Board's finding at first notice was based on the

recognition that the biologic condition in UDIP may not fully meet the CWA aquatic life goal. As such, the Board noted that “[t]he Board is mindful that, particularly in the area of temperature, water quality standards may need to be adapted for the UDIP.” *Id.* at 221. At second notice, the Board believed that the proposed UDIP ALU designation better reflects the Board’s intent with respect to attainment of CWA aquatic life goal, and also avoids certain unintended consequences discussed below. Further, the proposed UDIP ALU designation is consistent with IEPA’s finding that UDIP minimally meets the CWA aquatic life goal. A discussion of the definition of the UDIP ALU will be included below with the discussion of the ALU A and ALU B definitions.

In comments to the proposed second notice, ExxonMobil and IERG continued to disagree with the Board’s conclusion that UDIP can meet the CWA aquatic life goal of “fishable”. In contrast, IEPA recommended that the Board clarify its position and make clear whether or not the Board believes UDIP is meeting the CWA goal, or is the Board merely saying it can meet that goal in the future. The Board’s finding is that the UDIP cannot fully meet the CWA goal.

The Board’s finding is also clear from the Board’s decision to move UDIP from a proposed General Use water to its own unique use. UDIP, as a part of the Lower Des Plaines River, was previously designated as Secondary Contact under Section 303.441(i) before that section was repealed in Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303, and 304, R08-9(A), (Aug. 18, 2011). If the Board believed that the UDIP presently met the CWA aquatic life goal, then the Board would designate UDIP as a General Use water. The fact that the Board decided not to do so makes clear the Board’s decision that the UDIP does not presently fully attain the CWA aquatic use goal.

ALU Definitions

USEPA commented that the ALU definitions seem to protect only fish and not other aquatic life and offered suggestions including that the Board revert to the language proposed by IEPA. IEPA took issue with using fish species in the definitions and suggests a continuum of tolerance be used instead. IEPA also recommended against the use of the term “native”, the phrase “a balanced integrated, adaptive community”, and “waste transport or waste assimilation”. IEPA suggested stating only what the waters are capable of achieving and reverting to its proposed language.

The District, Environmental Groups, Citgo/PDV and Midwest Generation supported the use of fish species and suggested specific changes to the species. The Environmental Groups also asked that the definitions clarify that fish eggs, larvae, and young-of-the-year fish have been found in both ALU A and ALU B waters and should be protected. Some participants asked that the definition for ALU B include a reference to the electric barrier in the CSSC as a protected use.

USEPA and IEPA offered specific suggestions to the proposed second notice definitions. The Board discusses those comments below.

Inclusion of Fish Species

Participants, for the most part, found the inclusion of fish species to be helpful in understanding the degrees of “tolerance”. The Board noted that the proposed revisions are not intended to change how the tolerance levels are applied to define the aquatic life uses, but they are meant to provide clarity by giving examples of the fish species. The Board continued to believe that the inclusion of the fish species is helpful to understand the biologic intent represented by the tolerance levels initially proposed by IEPA. Therefore, the Board will retain the fish species with some changes. For example, the Board will retain the phrase “but not limited to” for purposes of clarifying the list is not exhaustive. Additionally, the Board has reformatted the definitions by dividing them into subsections to clarify the proposed intent. In response to comments, the Board added and deleted certain species from the lists.

In its second notice comment, IEPA suggested that in the ALU A and UDIP definitions, the phrase “moderately tolerant” be changed to “intermediately tolerant”. USEPA agrees with this suggestion. IEPA maintained that “intermediately tolerant” is more inclusive than “moderately tolerant” and is the more appropriate term. The Board made that change in the definitions.

Electric Barrier

The Board agreed that the electric barrier is at least for now a “temporary” use that is protected in the lower CSSC, which is designated an ALU B water. However, inclusion of the electric barrier in the definition of ALU B waters would not be correct as the electric barrier is not in place in all ALU B waters. Also, even though this barrier restricts movement of fish, water continues to move downstream, which affects fish there and will be a consideration when examining water quality standards in Subdocket D.

Defining Aquatic Life Uses

The Board looked to the outstanding resource waters definitions in Section 303.205 to ensure consistency in the formatting of the definitions. As a result, the Board divided the definitions into subsections so that language and intent are clear. The distinctions between the definitions are subtle, but significant. UDIP aquatic life use includes waters that are nearly capable of meeting the CWA goal and includes aquatic-life populations consisting of individuals of tolerant, moderately tolerant, and intolerant types. By contrast, ALU A waters are capable of maintaining aquatic life populations predominated by individuals of tolerant and moderately tolerant types. ALU B waters have irreversible modifications and are capable of maintaining aquatic life populations predominated by individuals of tolerant types.

In the Board’s proposed second notice, the definition of UDIP Aquatic Life Use was added to Section 303.230, and that section renamed and renumbered to accommodate the inclusion. IEPA urged the Board to include the definition of UDIP in its own section or to at least group ALU A and ALU B waters into one definition. The Board cannot open a new section at second notice, but will give each aquatic life use definition its own section when moving forward with Subdocket D. The Board accepted IEPA’s suggestion to include ALU A and ALU

B in the same section at this time, Section 303.235, and place UDIP in its own section, Section 303.230. The rule was renumbered and titled consistent with this change.

In its comments on the proposed second notice, USEPA suggested that the phrase “and shall have quality sufficient to protect” be added in each definition after the phrase “capable of maintaining”. The Board agrees that this phrase clarifies the definitions and will add that phrase to each definition.

ALU A. The list of waters designated as ALU A is not changed and will not be repeated here. The Board proposed the following definition for ALU A at second notice:

a) Chicago Area Waterways System Aquatic Life Use A Waters

- 1) Waters designated as Chicago Area Waterway System Aquatic Life Use A Waters are capable of maintaining, and shall have quality sufficient to protect, aquatic life populations predominated by individuals of tolerant and ~~moderately~~ intermediately tolerant types that are adaptive to the unique physical conditions, flow patterns, and operational controls necessary to maintain navigational use, flood control, and drainage functions of the waterway system. Such aquatic life may include, but is not limited to, fish species, such as channel catfish, largemouth bass, bluegill, black crappie, spotfin shiner, orangespotted sunfish, common carp, and goldfish.
- 2) Waters designated as Chicago Area Waterway System Aquatic Life Use A Waters are not ~~presently~~ capable of ~~maintaining~~ attaining an aquatic life use consistent with the Section 101(a)(2) of the Clean Water Act goal (33 U.S.C. §1251(a)(2)) a balanced, integrated, adaptive aquatic community of organisms having a species composition, diversity, and functional organization comparable to that of the natural habitat of the region, due to the unique physical conditions, flow patterns, and operational controls necessary to maintain navigational use, flood control, and drainage functions of the waterway system.
- 3) The following waters are designated as Chicago Area Waterway System Aquatic Life Use A Waters and must meet the water quality standards of 35 Ill. Adm. Code 302. Subpart D:

ALU B. The list of waters listed as ALU B is not changed and will not be repeated here. The Board proposed the following definition for ALU B at second notice:

b) Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters.

- 1) Waters designated as Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters are capable of maintaining, and shall have quality sufficient to protect, aquatic life populations predominated by

individuals of tolerant types that are adaptive to unique physical conditions and modifications of long duration, including artificially constructed channels consisting of vertical sheet-pile, concrete and rip-rap walls designed to support commercial navigation, flood control, and drainage functions in deep-draft, steep-walled shipping channels. Such aquatic life may include, but is not limited to fish species, such as common carp, golden shiner, bluntnose minnow, yellow bullhead and green sunfish.

- 2) Waters designated as Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters are not presently capable of maintaining attaining an aquatic life use consistent with the Section 101(a)(2) of the Clean Water Act goal (33 U.S.C. §1251(a)(2)) ~~a balanced, integrated, adaptive aquatic community of organisms having a species composition, diversity, and functional organization comparable to the natural habitat of the region due to irreversible modifications that result in limited physical habitat and stream hydrology.~~
- 3) The following waters are designated as Chicago Area Waterway System and Brandon Pool Aquatic Life Use B waters and must meet the water quality standards of 35 Ill. Adm. Code 302. Subpart D:

UDIP. As discussed above, the Board will amend the rules to designate a UDIP aquatic life use. The definition will be formatted similarly to the ALU A and ALU B definitions. The Board proposed the following definition for UDIP aquatic life use at second notice:

- a) Lower Des Plaines River from the Brandon Road Lock and Dam to the Interstate 55 bridge ~~shall be~~ is designated as the Upper Dresden Island Pool Aquatic Life Use. These waters are capable of maintaining, and shall have quality sufficient to protect, aquatic-life populations consisting of individuals of tolerant, moderately intermediately tolerant, and intolerant types that are adaptive to the unique flow conditions necessary to maintain navigational use and upstream flood control functions of the waterway system. Such aquatic life may include, but is not limited to largemouth bass, bluntnose minnow, channel catfish, ~~orange-spotted~~ orangespotted sunfish, smallmouth bass, shorthead redhorse, and spottail shiner.
- ~~b) Upper Dresden Island Pool Aquatic Life Use Waters are not presently capable of maintaining a balanced, integrated, adaptive aquatic community of organisms having a species composition, diversity, and functional organization comparable to that of the natural habitat of the region due to the unique physical conditions, flow patterns, and operational controls necessary to maintain navigational use and flood control functions of this waterway system.~~
- b) Upper Dresden Island Pool Aquatic Life Use Waters must meet the water quality standards of 35 Ill. Adm. Code 302. Subpart D.

Bubbly Creek

The District supported the Board's action to open Subdocket E to address issues associated with the South Fork of the South Branch of the Chicago River (Bubbly Creek). However, the District is concerned that the Board's proposal to designate the South Branch of the Chicago River as ALU A could be interpreted to include Bubbly Creek. PC 1374 at 3. The District requested the Board either "clarify that any aquatic life use designated for the South Branch of the Chicago River would not apply to Bubbly Creek" or adopt a narrative standard for Bubbly Creek at the conclusion of Subdocket E.

The Board found that adding clarifying language is unnecessary. Throughout this proceeding the South Branch of the Chicago River and the South Fork of the South Branch of the Chicago River (Bubbly Creek) have been treated separately. The recreational use designations in Subdocket A are separate (*see* 35 Ill. Adm. Code 303.220 and 303.225). Therefore, the Board declined to clarify that the South Branch of the Chicago River designated as ALU A does not include Bubbly Creek in the rule language. However, the Board noted that Bubbly Creek will be subject to the Board's secondary contact and indigenous aquatic life use standards under Part 302 Subpart D pursuant to Section 302.304 until specific use designation and water quality standards are adopted in Subdocket E. The current Subpart D water quality standards will remain in effect until they are amended or repealed in Subdocket E.

Issues Raised That Will Be Considered in Subdocket D

Chlorides

ExxonMobil and IERG raised the issue of chlorides and urged the Board to account for the concern that the chloride standard cannot be met when designating aquatic life uses. The Board agreed that chloride levels in the waters will need to be addressed particularly in the CSSC and LDPR. The Board believed that the proposed ALU designations for CSSC, Brandon Pool, and UDIP allow for the consideration of chloride issues in adopting water quality standards. The Board will consider appropriate chloride levels in Subdocket D.

Connectivity of the System

The Board invited comment on the issue of connectivity stating: "[t]he data presented in the record emphasize stream segments, but do not appear to address the larger aquatic systems and the connectivity inherent to these systems." Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303, and 304, R08-9(C), slip op. at 175 (Feb. 21, 2013). Participants did offer comment on this issue; however, after reviewing these comments, the Board believed that the connectivity of the system is an issue to consider in Subdocket D.

Economic Reasonableness and Technical Feasibility

As stated above, Section 27 of the Act requires the Board to consider "the existing physical conditions, the character of the area involved, including the character of surrounding

land uses, zoning classifications, the nature of the existing air quality or receiving body of water, as the case may be, and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution.” 415 ILCS 5/27(a) (2012). In this rulemaking these considerations are particularly unique. The record is replete with evidence of the unique character and history of both the CAWS and LDPR, and the economic importance of the waters is also clear. USEPA questioned the Board’s findings concerning low flow conditions, the impact of hydrologic modifications, and the Board’s basis for finding that the waters could not be restored to original conditions in a way that would result in meeting the CWA goal. As the Board explained above, the record clearly demonstrates that the Board’s findings are supported by the record, and the Board has provided USEPA with additional citations to evidence supporting the Board’s decisions. Equally important though is that in most instances restoring the waters to the original condition, correcting low flow, and even easing impacts of hydrologic modifications are neither economically reasonable nor technically feasible.

The Board found that the record supports the Board’s findings at first-notice and at second notice. Further, the Board found that the proposed rule as adopted at first-notice and as amended in the second-notice opinion and order is economically reasonable and technically feasible.

Changes to the Rule Language

The Board also amended the rule language to provide consistency in the rule. Specifically, each segment is named consistent with the names used in Subdocket A. *See Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303, and 304, R08-9(A) (Aug. 18, 2011)*.

DISCUSSION ON FINAL ADOPTION

The substantial record in this proceeding, developed over multiple days of hearings and testimony along with voluminous public comments, supports the Board’s decision to establish three aquatic life use designations. These waters have seen improvement, but are still unable to fully meet the CWA goals. The Board is grateful to IEPA, USEPA, the regulated community, environmental groups, and members of the public for their efforts, comments, and testimony that have helped to develop this record.

The Board finds that the record supports proceeding to adoption of the aquatic life uses as proposed at second notice. Furthermore, having considered “the existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, the nature of the existing air quality or receiving body of water, as the case may be, and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution” (415 ILCS 5/27(a) (2012)), the Board finds that the adopted rule is technically feasible and economically reasonable.

CONCLUSION

The Board today adopts a rule that designates aquatic life uses for the CAWS and LDPR. After reviewing the record and examining the CWA goal of “water quality which provides for the protection and propagation of fish, shellfish, and wildlife. . .” (33 U.S.C. § 1251(a)(2)), the Board is adopting three aquatic life use designations and has developed definitions of those aquatic life use designations. The Board adopts CAWS ALU A, CAWS and Brandon Pool ALU B, and UDIP ALU.

Generally CAWS ALU A waters are capable of maintaining tolerant and intermediately tolerant species such as channel catfish, largemouth bass, bluegill, black crappie, spotfin shiner, orangespotted sunfish, common carp, and goldfish. The Board adopts as CAWS ALU A waters: Upper North Shore Channel, Lower North Shore Channel, North Branch of the Chicago River, South Branch of the Chicago River, Calumet-Saganashkee (Cal-Sag) Channel, Calumet River, Little Calumet River, Grand Calumet River, Lake Calumet, and Lake Calumet Connecting Channel.

CAWS and Brandon Pool ALU B waters are capable of protecting aquatic life populations predominated by individuals of tolerant types such as common carp, golden shiner, bluntnose minnow, yellow bullhead, and green sunfish. The Board adopts as ALU B waters the Chicago Sanitary and Ship Canal and Brandon Pool.

The Board revisited the designation of the UDIP as a General Use water at second notice. Upon re-examination, the Board proposed at second notice a UDIP ALU rather than designating UDIP as General Use. The UDIP ALU is defined as waters capable of maintaining, and having quality sufficient to protect, aquatic-life populations consisting of individuals of tolerant, intermediately tolerant, and intolerant types such as largemouth bass, bluntnose minnow, channel catfish, orangespotted sunfish, smallmouth bass, shorthead redhorse, and spottail shiner. The Board today adopts that designation.

The Board has determined that maintaining the General Use standard for the Chicago River is appropriate as the Chicago River can meet the CWA goals in the foreseeable future. Therefore, the Board adopts no change in the aquatic life use designation for the Chicago River.

The Board also adopts language to establish numeric water quality standards for fecal coliform bacteria applicable to Primary Contact Recreation Waters.

ORDER

The Board directs the Clerk to provide the following rule to the Secretary of State for publication in the *Illinois Register* as an adopted rule:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE C: WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 303
WATER USE DESIGNATIONS AND SITE-SPECIFIC WATER QUALITY STANDARDS

SUBPART A: GENERAL PROVISIONS

| | |
|---------|--------------------------------|
| Section | |
| 303.100 | Scope and Applicability |
| 303.101 | Multiple Designations |
| 303.102 | Rulemaking Required (Repealed) |

SUBPART B: NONSPECIFIC WATER USE DESIGNATIONS

| | |
|----------------|---|
| Section | |
| 303.200 | Scope and Applicability |
| 303.201 | General Use Waters |
| 303.202 | Public and Food Processing Water Supplies |
| 303.203 | Underground Waters |
| 303.204 | Chicago Area Waterway System and Lower Des Plaines River Outstanding Resource Waters |
| 303.205 | Outstanding Resource Waters |
| 303.206 | List of Outstanding Resource Waters |
| 303.220 | Primary Contact Recreation Waters |
| 303.225 | Incidental Contact Recreation Waters |
| 303.227 | Non-Contact Recreation Waters and Non-Recreational Waters |
| <u>303.230</u> | <u>Upper Dresden Island Pool Aquatic Life Use Waters</u> |
| <u>303.235</u> | <u>Chicago Area Waterway System Aquatic Life Use A Waters and Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters</u> |

SUBPART C: SPECIFIC USE DESIGNATIONS AND SITE
SPECIFIC WATER QUALITY STANDARDS

| | |
|---------|--|
| Section | |
| 303.300 | Scope and Applicability |
| 303.301 | Organization |
| 303.311 | Ohio River Temperature |
| 303.312 | Waters Receiving Fluorspar Mine Drainage (Repealed) |
| 303.321 | Wabash River Temperature |
| 303.322 | Unnamed Tributary of the Vermilion River |
| 303.323 | Sugar Creek and Its Unnamed Tributary |
| 303.326 | Unnamed Tributary of Salt Creek, Salt Creek, and Little Wabash River |
| 303.331 | Mississippi River North Temperature |
| 303.341 | Mississippi River North Central Temperature |
| 303.351 | Mississippi River South Central Temperature |
| 303.352 | Unnamed Tributary of Wood River Creek |
| 303.353 | Schoenberger Creek; Unnamed Tributary of Cahokia Canal |
| 303.361 | Mississippi River South Temperature |

| | |
|---------|--|
| 303.400 | Bankline Disposal Along the Illinois Waterway/River |
| 303.430 | Unnamed Tributary to Dutch Creek |
| 303.431 | Long Point Slough and Its Unnamed Tributary |
| 303.441 | Secondary Contact Waters (Repealed) |
| 303.442 | Waters Not Designated for Public Water Supply |
| 303.443 | Lake Michigan Basin |
| 303.444 | Salt Creek, Higgins Creek, West Branch of the DuPage River, Des Plaines River |
| 303.445 | Total Dissolved Solids Water Quality Standard for the Lower Des Plaines River |
| 303.446 | Boron Water Quality Standard for Segments of the Sangamon River and the Illinois River |
| 303.447 | Unnamed Tributary of the South Branch Edwards River and South Branch Edwards River |
| 303.448 | Mud Run Creek |

SUBPART D: THERMAL DISCHARGES

| | |
|----------------|-----------------------------------|
| Section | |
| 303.500 | Scope and Applicability |
| 303.502 | Lake Sangchris Thermal Discharges |
| 303.APPENDIX A | References to Previous Rules |
| 303.APPENDIX B | Sources of Codified Sections |

AUTHORITY: Implementing Section 13 and authorized by Sections 11(b) and 27 of the Environmental Protection Act [415 ILCS 5/13, 11(b) and 27].

SOURCE: Filed with the Secretary of State January 1, 1978; amended at 2 Ill. Reg. 27, p. 221, effective July 5, 1978; amended at 3 Ill. Reg. 20, p. 95, effective May 17, 1979; amended at 5 Ill. Reg. 11592, effective October 19, 1981; codified at 6 Ill. Reg. 7818; amended at 6 Ill. Reg. 11161, effective September 7, 1982; amended at 7 Ill. Reg. 8111, effective June 23, 1983; amended in R87-27 at 12 Ill. Reg. 9917, effective May 27, 1988; amended in R87-2 at 13 Ill. Reg. 15649, effective September 22, 1989; amended in R87-36 at 14 Ill. Reg. 9460, effective May 31, 1990; amended in R86-14 at 14 Ill. Reg. 20724, effective December 18, 1990; amended in R89-14(C) at 16 Ill. Reg. 14684, effective September 10, 1992; amended in R92-17 at 18 Ill. Reg. 2981, effective February 14, 1994; amended in R91-23 at 18 Ill. Reg. 13457, effective August 19, 1994; amended in R93-13 at 19 Ill. Reg. 1310, effective January 30, 1995; amended in R95-14 at 20 Ill. Reg. 3534, effective February 8, 1996; amended in R97-25 at 22 Ill. Reg. 1403, effective December 24, 1997; amended in R01-13 at 26 Ill. Reg. 3517, effective February 22, 2002; amended in R03-11 at 28 Ill. Reg. 3071, effective February 4, 2004; amended in R06-24 at 31 Ill. Reg. 4440, effective February 27, 2007; amended in R09-8 at 33 Ill. Reg. 7903, effective May 29, 2009; amended in R09-11 at 33 Ill. Reg. 12258, effective August 11, 2009; amended in R08-9(A) at 35 Ill. Reg. 15078, effective August 23, 2011; amended in R11-18 at 36 Ill. Reg. 18898, effective December 12, 2012; amended in R08-9(C) at 38 Ill. Reg. _____, effective _____.

SUBPART B: NONSPECIFIC WATER USE DESIGNATIONS

Section 303.204 Chicago Area Waterway System and Lower Des Plaines River

The Chicago Area Waterway System and Lower Des Plaines River Waters are designated to protect for primary contact recreation, incidental contact or non-contact recreational uses (except where designated as non-recreational waters) ~~and~~ commercial activity (including navigation and industrial water supply uses) and the highest quality aquatic life and wildlife 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 35 Ill. Adm. Code 302, Subpart D, but are not required to meet the General Use standards or the public and food processing water supply standards of 35 Ill. Adm. Code 302, Subpart B and C, except that the waters designated as Primary Contact Recreation Waters in Section 303.220 must meet the numeric water quality standard for fecal coliform bacteria applicable to protected waters in 35 Ill. Adm. Code 302.209. Designated recreational uses and aquatic life use for each segment of the Chicago Area Waterway System and Lower Des Plaines River are identified in this Subpart.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 303.220 Primary Contact Recreation Waters

The following waters are designated as Primary Contact Recreation Waters and must be protected for Primary Contact Recreation uses as defined in 35 Ill. Adm. Code 301.323. These waters must meet the numeric water quality standard for fecal coliform bacteria applicable to protected waters in 35 Ill. Adm. Code 302.209.

- a) Lower North Shore Channel from North Side Water Reclamation Plant to confluence with North Branch of the Chicago River;
- b) North Branch of the Chicago River from its confluence with North Shore Channel to its confluence with South Branch of the Chicago River and Chicago River;
- c) Chicago River;
- d) South Branch of the Chicago River;
- e) Little Calumet River from its confluence with Calumet River and Grand Calumet River to its confluence with ~~Cal~~Calumet-Sag Channel; and
- f) ~~Cal~~Calumet -Sag Channel.

(Source: Amended at 38 Ill. Reg. _____, effective _____)

Section 303.230 Upper Dresden Island Pool Aquatic Life Use Waters

Upper Dresden Island Pool Aquatic Life Use Waters

- a) Lower Des Plaines River from the Brandon Road Lock and Dam to the Interstate 55 bridge is designated as the Upper Dresden Island Pool Aquatic Life Use. These waters are capable of maintaining, and shall have quality sufficient to protect, aquatic-life populations consisting of individuals of tolerant, intermediately tolerant, and intolerant types that are adaptive to the unique flow conditions necessary to maintain navigational use and upstream flood control functions of the waterway system. Such aquatic life may include, but is not limited to, largemouth bass, bluntnose minnow, channel catfish, orangespotted sunfish, smallmouth bass, shorthead redhorse, and spottail shiner.
- b) Upper Dresden Island Pool Aquatic Life Use Waters must meet the water quality standards of 35 Ill. Adm. Code 302. Subpart D.

(Source: Added at 38 Ill. Reg. _____, effective _____)

Section 303.235 Chicago Area Waterway System Aquatic Life Use A Waters and Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters

- a) Chicago Area Waterways System Aquatic Life Use A Waters
- 1) Waters designated as Chicago Area Waterway System Aquatic Life Use A Waters are capable of maintaining, and shall have quality sufficient to protect, aquatic-life populations predominated by individuals of tolerant and intermediately tolerant types that are adaptive to the unique physical conditions, flow patterns, and operational controls necessary to maintain navigational use, flood control, and drainage functions of the waterway system. Such aquatic life may include, but is not limited to, fish species such as channel catfish, largemouth bass, bluegill, black crappie, spotfin shiner, orangespotted sunfish, common carp, and goldfish.
 - 2) Waters designated as Chicago Area Waterway System Aquatic Life Use A Waters are not capable of attaining an aquatic life use consistent with the section 101(a)(2) of the Clean Water Act goal (33 USC 1251(a)(2)
 - 3) The following waters are designated as Chicago Area Waterway System Aquatic Life Use A Waters and must meet the water quality standards of 35 Ill. Adm. Code 302. Subpart D:
 - A) Upper North Shore Channel from Wilmette Pumping Station to North Side Water Reclamation Plant;
 - B) Lower North Shore Channel from North Side Water Reclamation Plant to confluence with North Branch of the Chicago River;

- C) North Branch of the Chicago River from its confluence with North Shore Channel to its confluence with South Branch of the Chicago River and Chicago River;
 - D) South Branch of the Chicago River;
 - E) Calumet-Sag Channel;
 - F) Calumet River from Lake Michigan to its confluence with Grand Calumet River and Little Calumet River;
 - G) Little Calumet River from its confluence with Calumet River and Grand Calumet River to its confluence with Calumet-Sag Channel;
 - H) Grand Calumet River;
 - I) Lake Calumet; and
 - J) Lake Calumet Connecting Channel.
- b) Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters
- 1) Waters designated as Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters are capable of maintaining, and shall have quality sufficient to protect, aquatic life populations predominated by individuals of tolerant types that are adaptive to unique physical conditions and modifications of long duration, including artificially constructed channels consisting of vertical sheet-pile, concrete and rip-rap walls designed to support commercial navigation, flood control, and drainage functions in deep-draft, steep-walled shipping channels. Such aquatic life may include, but is not limited to, fish species such as common carp, golden shiner, bluntnose minnow, yellow bullhead and green sunfish.
 - 2) Waters designated as Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters are not capable of attaining an aquatic life use consistent with the section 101(a)(2) of the Clean Water Act goal (33 USC 1251(a)(2)).
 - 3) The following waters are designated as Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters and must meet the water quality standards of 35 Ill. Adm. Code 302. Subpart D:
 - A) Chicago Sanitary and Ship Canal; and

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

(Source: Added at 38 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2012); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 6, 2014, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board