

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
)  
WATER QUALITY STANDARDS AND ) R08-9 Subdocket D  
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 )

**NOTICE OF FILING**

TO:

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

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

Persons included on the attached Service List

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the STEPAN COMPANY'S PUBLIC COMMENTS ON POLLUTION CONTROL BOARD'S PROPOSED RULE, SECOND NOTICE, a copy of which is herewith served upon you.

STEPAN COMPANY

DATE: June 1, 2015

/s/ Thomas W. Dimond  
Thomas W. Dimond

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on this 1st day of June 2015, I have served electronically the attached STEPAN COMPANY'S PUBLIC COMMENTS ON POLLUTION CONTROL BOARD'S PROPOSED RULE, SECOND NOTICE, and NOTICE OF FILING upon the following person:

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

and by U.S. Mail, first class postage prepaid, to the following persons:

Marie Tipsord, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
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The participants listed on the attached  
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/s/ Thomas W. Dimond  
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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WATER QUALITY STANDARDS AND ) R08-9 Subdocket D  
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 )

**STEPAN COMPANY'S PUBLIC COMMENT ON POLLUTION CONTROL BOARD'S  
PROPOSED RULE, SECOND NOTICE**

Stepan Company ("Stepan"), by and through its attorneys, Ice Miller LLP, submits the following Public Comment on the Pollution Control Board's ("Board") proposed rule in *In the Matter of: 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(D), Proposed Rule, Second Notice, Opinion and Order of the Board (Mar. 19, 2015) (hereafter, "*Second Notice*"). By Order dated May 21, 2015, the Board opened a period for public comment (through June 1, 2015) on the temperature criteria regulations within the *Second Notice* pursuant to an agreement between the Board and the Joint Committee on Administrative Rules. These comments are submitted in response to the May 21, 2015 Order.

Stepan previously submitted comments on the Board's proposed rule in *In the Matter of: 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(D), Proposed Rule, First Notice, Opinion and Order of the Board (Sept. 18, 2014) (hereafter, "*First Notice*"). See Stepan's Comments on Pollution Control Board's Proposed Rule, First Notice (Nov. 21, 2014) (hereafter, "*Public Comment 1419 or PC 1419*") and Stepan's Responses to Comments of Other Stakeholders on Pollution Control Board's Proposed Rule,

First Notice (Dec. 12, 2014) (hereafter, "*Public Comment 1426 or PC 1426*"). With regard to the Board's proposed temperature criteria regulations, as well as other substantive issues, Stepan has not changed the positions previously stated in *PC 1419* or *PC 1426* and does not waive them by not fully repeating them here.

Stepan offers two comments on the temperature criteria regulations in the Board's *Second Notice*. First, the proposed temperature criteria should apply "at representative locations in the main river," consistent with how General Use temperature criteria are applied. Second, if the proposed narrative temperature criteria are retained, then language in those proposed criteria referring to natural conditions or natural temperatures or normal temperature fluctuations should be changed to reflect the unique characteristics of the waters of the Chicago Area Waterway System ("CAWS") and Lower Des Plaines River ("LDPR").

**I. Proposed Section 302.408 Should Only Apply Temperature Criteria at Representative Locations in the Main River.**

The General Use temperature criteria regulations, which form the basis for the Board's proposed temperature regulations for the CAWS and LDPR, apply at representative locations in the main river.

"In addition, the water temperature at representative locations in the main river shall not exceed the maximum limits in the following table during more than one percent of the hours in the 12-month period ending with any month."

35 Ill. Adm. Code 302.211(e) (emphasis supplied). The Board omitted this key language from the proposed temperature criteria regulations for the CAWS and LDPR. *See Second Notice*, 116-118 (proposed Sections 302.408 omitting any reference to applying temperature criteria "at representative locations in the main river").

By omitting this key language in proposed Section 302.408, the proposed temperature criteria for the CAWS and LDPR waters apply more broadly and are thus more stringent than

those applicable in General Use waters. This is precisely the circumstance that the Board found untenable in rejecting the more stringent thermal criteria proposed by the Illinois Environmental Protection Agency (“IEPA”) and the Environmental Groups. *See First Notice*, 204-05 (“the Board finds that it would be inappropriate to adopt thermal standards for CAWS and LDPR that are more stringent than the current General Use standards”).

Stepan raised this precise issue in comments on the Board's *First Notice*. *Public Comment 1426*, 13-14. And, the Board acknowledged that it understood Stepan's comment. *Second Notice*, 51. Despite this acknowledgment, the Board did not modify proposed Section 302.408 to be the same as the General Use temperature criteria in this regard and it offered no explanation for refusing to make this change. *Id.*, 70-79 (Board discussion of proposed temperature criteria with no mention of the “at representative locations in the main river” issue). Perhaps the Board’s failure to include this key language in proposed Section 302.408 was an oversight. The record and the comments on the *First Notice* certainly raised enough issues that it would be easy to overlook one. Still, the failure to amend the proposed regulations to be consistent with the General Use regulations in response to an acknowledged comment is particularly ironic given the Board’s insistence on doing exactly that with regard to the General Use narrative temperature criteria comments of IEPA, the United States Environmental Protection Agency (“EPA”) and the Environmental Groups. The failure to limit the application of the temperature criteria in proposed Section 302.408 to representative locations in the main river is inconsistent with the Board’s own conclusions and would be arbitrary and capricious if left to stand in the final regulations.

Accordingly, the Board should amend proposed Section 302.408(b) so that the proposed temperature standards in Sections 302.408(c) through (i) apply "at representative locations in the main river."

**II. If Adopted, the Language of the Narrative Temperature Criteria Should Be Modified to Omit References to Natural Conditions and Substitute Language Appropriate to the Unique Character of the CAWS and LDPR Waters.**

The narrative temperature criteria regulations added by the Board at *Second Notice* are inappropriate for application to the CAWS and LDPR waters. *See Public Comment* 1426, Section II.B. If the Board is determined to include those narrative criteria despite the cogent objections already in the record, the adopted narrative criteria should at least be modified to recognize the unique characteristics of the CAWS and LDPR waters.

In the course of this proceeding, the Board has repeatedly acknowledged the unique character of the CAWS and LDPR waters. Commenting on its statutory charge when adopting regulations under Section 27 of the Environmental Protection Act to consider the existing conditions and character of the area being regulated, the Board stated "[i]n this rulemaking these considerations are particularly unique. The record is replete with evidence of the unique character and history of both CAWS and LDPR, and the economic importance of these waters is also clear." *Second Notice*, 67; *see also In the Matter of: 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), Adopted Rule, Final Order, Opinion and Order of the Board, 15 (Feb. 6, 2014). These were not mere platitudes. When challenged by the EPA to justify its conclusion that the CAWS and LDPR waters were unique and different, the Board launched into a lengthy defense of its conclusion.

In Subdocket C, the Board had concluded that most of the segments of the CAWS and LDPR did not meet the Clean Water Act ("CWA") goal of being fishable. EPA challenged that

conclusion and the Board responded. *In the Matter of: 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), Proposed Rule, Proposed Second Notice, Opinion and Order of the Board, 34-40 (Oct. 3, 2013) (hereafter "Subdocket C Proposed Second Notice")*. The Board cited the use attainability analysis ("UAA") reports as containing evidence that the CAWS and LDPR could not meet the CWA goal due to human caused conditions, including combined sewer overflows and the navigational and flood-control uses of the CAWS and LDPR associated with the extensive residential, commercial and industrial development of the Chicago metropolitan area along the CAWS and LDPR waters. *Id.*, 36-37. The Board rejected EPA's suggestion that the completion of the TARP project would eliminate these impacts from human caused conditions. *Id.*, 37. The Board found based on the UAA reports and the LimnoTech Habitat Study that habitat quality in most of the CAWS and LDPR segments was negatively impacted by channel morphology, hydrology and flow regime and bank and riparian conditions and that habitat improvement would cost millions of dollars. *Id.*

The Board also found overwhelming evidence that dams, diversions, flow control, channelization and other hydrologic modifications associated with the operation of the locks and dams of the CAWS and LDPR to reduce pollution of Lake Michigan, to support navigation, to convey stormwater and to transport wastewater treatment plant effluent "is not possible." *Id.*, 38. "[A]dding flow from Lake Michigan is legally prohibited and allowing flow reduction to protect against floods during stormwater events is essential. If channelization were stopped, navigation would become difficult if not impossible, and navigation is a protected use [under the CWA]." *Id.* The Board also cited the evidence that such hydrologic modifications can change waterway

systems by modifying the riverine nature of a waterbody and thereby limiting riffles and reducing fast water and increasing sedimentation. *Id.* Based on this evidence, the Board adhered to its conclusion that the hydrologic modifications legitimately prevented the CAWS and LDPR from attaining the CWA fishable goal. *Id.*, 39.

The Board also found the record was replete with evidence that flow reversals, sedimentation and low-flow conditions in the CAWS and LDPR negatively impacted habitat resulting in "few shallows near shore areas, lack of cover, lack of riffles, poor substrate and polluted substrate." *Id.* Also, manmade channels associated with navigational use of the CAWS and LDPR have virtually eliminated floodplain connectivity which is important for aquatic habitat. *Id.*, 39-40. Thus, the Board found these facts to further support the conclusion that the CAWS and LDPR could not attain the CWA fishable goal at this time. *Id.*, 40.

These unique characteristics cited by the Board in responding to EPA's challenge are even reflected in the use designations adopted by the Board for the CAWS and LDPR waters. *See e.g.* 35 Ill. Adm. Code 303.230(a) (Upper Dresden Island Pool or UDIP waters, a subset of LDPR waters, are capable of supporting aquatic life "adaptive to the unique flow conditions necessary to maintain navigational use and upstream flood control functions of the waterway system") (emphasis supplied); 35 Ill. Adm. Code 303.235(b) (CAWS ALU B waters capable of supporting aquatic life "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.") (emphasis supplied).

Moreover, as specifically related to temperature, the Board found that the CAWS and LDPR waters are effluent-dominated. *See e.g. In the Matter of: 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), Proposed Rule, First Notice, Opinion and Order of the Board, 38, 211 (Feb. 21, 2013) (hereafter "Subdocket C First Notice").* Indeed, public wastewater treatment plant flow, principally from the plants of the Greater Chicago Metropolitan Water Reclamation District ("MWRD"), constitutes 90% of LDPR flow during low flow conditions and almost the entire flow during winter. *See* IEPA Statement of Reasons, Attachment A, p. 1-8 (UAA report for the LDPR). The effluent-dominated waters of the CAWS and LDPR are the opposite of natural waters – particularly as regards thermal characteristics. There are no “natural temperatures” or “normal daily and seasonal temperature fluctuations.” There is only the rather consistent thermal discharge of treated wastewater from the MWRD plants which sets the CAWS and LDPR thermal regime. *See id.* at p. 2-81 (UAA sponsored by the IEPA for the LDPR found the temperature of effluents determines the base temperature of the river more so than it having a natural temperature). The Board specifically cited page 2-81 of the UAA report for the LDPR in concluding that "the temperature of the effluents determines the base temperature of the river more so than it having a natural temperature." *Subdocket C First Notice, 38.*

Despite this overwhelming evidence of the unique character of the CAWS and LDPR waters, both generally and specifically with regard to temperature, in adding the narrative criteria at *Second Notice*, the Board ignored its own findings by not changing a single word of the General Use narrative criteria. Proposed Sections 302.408(c), (d) and (e) are exactly identical to their General Use counterparts. *Compare Second Notice, 117, with 35 Ill. Adm. Code 302.211 (b), (c) and (d).* The General Use narrative temperature criteria refer to "natural conditions," "normal daily and seasonal temperature fluctuations," and "natural temperatures," but the Board

did not change a single word in adding the language to the proposed criteria for the CAWS and LDPR.

That action by the Board is diametrically opposed to its findings as to the unique character of the waters of the CAWS and the LDPR. *See* above at 4-7. The findings by the Board of the distinctly unnatural temperature regime for the CAWS and LDPR waters undercuts any rationale for including references to "natural temperatures" or similar phrases in any narrative criteria that might be applied to the CAWS and LDPR. The Board attempted to address this issue by speculating that "dischargers can rely on temperature data of streams in the region and tributaries to CAWS and LDPR, as well as historical temperature data of the CAWS and LDPR." *Second Notice*, 75-76. The suggestion of referring to temperature data for other streams in the region is utterly inconsistent with the Board's finding that the CAWS and LDPR waters are unique, in no small part because they are dominated by wastewater treatment plant effluent and have a thermal regime determined by the temperature of that effluent. As to historical data for the CAWS and LDPR, it may provide data on background or ambient temperatures but not temperatures that could accurately be described as natural.

As reflected in Stepan's *PC 1426*, if narrative criteria are to be applied to the CAWS and LDPR, the language of those criteria should be modified to reflect the unique characteristics of the CAWS and LDPR waters.

### CONCLUSION

Stepan appreciates the efforts of the Board and its staff to review the proposals and extensive record presented in Subdocket D and the opportunity to provide comment on the *Second Notice*. Stepan requests that the Board share these comments with the Joint Committee

on Administrative Rules so that it can make appropriate recommendations regarding the *Second Notice* proposed rules.

STEPAN COMPANY

Date: June 1, 2015

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