

ILLINOIS POLLUTION CONTROL BOARD

August 18, 2011

IN THE MATTER OF:)
)
WATER QUALITY STANDARDS AND) R08-9 (Subdocket A)
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 Notice.

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

The Board is adopting four categories of recreational use designation for the Chicago Area Waterway System (CAWS) and Lower Des Plaines River (LDPR): Primary Contact Recreation, Incidental Contact Recreation, Non-contact Recreation, and Non Recreation. At second notice, the Board responded to comments from participants by adding rules defining the recreational use designation, "Primary Contact Recreation", to identify segments of the CAWS where full body contact recreation is attainable in the foreseeable future. Primary Contact Recreation is intended to meet the CWA recreational use goal of recreating on and in the water (swimmable). The Board adopted this use based on comments received during the first notice period that drew the Board's attention to evidence in the record demonstrating that the CWA recreational use goal was attainable in specific segments.

Segments of the CAWS adopted for Primary Contact Recreation are: 1) Lower North Shore Channel from North Side Water Reclamation Plant to confluence with North Branch of the Chicago River; 2) 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; 3) Chicago River; 4) South Branch of the Chicago River; 5) Little Calumet River from its confluence with Calumet River and Grand Calumet River to its confluence with Calumet-Sag Channel; and 6) Calumet-Sag Channel.

Segments of the CAWS and LDPR adopted for Incidental Contact Recreation are: 1) Upper North Shore Channel from Wilmette Pumping Station to North Side Water Reclamation Plant; 2) South Fork of the South Branch of the Chicago River; 3) Chicago Sanitary and Ship Canal from its confluence with South Branch of the Chicago River to its confluence with Calumet-Sag Channel; 4) Calumet River from Torrence Avenue to its confluence with Grand Calumet River and Little Calumet River; 5) Lake Calumet and Lake Calumet Connecting Channel; 6) Grand Calumet River; and 7) Lower Des Plaines River from the Brandon Road Lock and Dam to the Interstate 55 bridge.

The Non-contact Recreation use designation is adopted for Calumet River from Lake Michigan to Torrence Avenue. The Non-recreation use designation is adopted for: 1) Chicago

Sanitary and Ship Canal from its confluence with the Calumet-Sag Channel to its confluence with Des Plaines River; and 2) Lower Des Plaines River from its confluence with Chicago Sanitary and Ship Canal to the Brandon Road Lock and Dam.

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 with 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 amended the Board's rules for Secondary Contact and Indigenous Aquatic Life Uses to update the designated uses and criteria necessary to protect the existing uses of the CAWS and the 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 that accompanied the proposal.

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., 2) Chemical Industry Council of Illinois, and 3) Stepan Company. On June 25, 2008, the Environmental Law & Policy Center, Natural Resources Defense Council, Openlands, Friends of the Chicago River, Prairie Rivers Network and the Illinois Chapter of Sierra Club (Environmental Groups) filed a response in opposition to the motion. Joining in the opposition to the motion was 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 hearings.

On March 18, 2010, the Board granted a motion filed by Citgo Petroleum Corporation and PDV Midwest LLC for an additional hearing on Asian Carp, but delayed that hearing until later in 2010.¹ The Board also granted a motion filed by the Environmental Groups to sever R08-9 into subdockets. The subdockets are: 1) Subdocket A deals with the issues related to recreational use designations, 2) Subdocket B addresses 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 involving proposed aquatic life uses, and 4) Subdocket D addresses the issues dealing with water quality standards and criteria which 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. As of the date of today's order, a total 51 days of hearing have been held in docket R08-9, with 3 more days of hearing scheduled in August 2011. Prior to the creation of 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,

¹ The Board held a hearing on Asian Carp in Subdocket C on November 4 and 5, 2010.

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 initial 39 days of hearing is relevant to Subdocket A. Participants providing testimony relevant to Subdocket A are:

Rob Sulski of IEPA (Exhibit 1)
 Richard Lanyon of the District (Exhibit 60)
 William J. Stuba of the District (Exhibit 62)
 Samuel G. Dennison of the District (Exhibit 65)
 Samuel Dorevitch of the District (Exhibit 100)
 Adrienne D. Nemura of the District (Exhibit 116)
 Thomas Granato of the District
 Margaret Frisbee of the Friends of the Chicago River (Exhibit 259)
 Thomas J. Bamonte on behalf of the Environmental Groups (Exhibit 284)
 Robert S. Elvert of ExxonMobil Oil Corporation (Exhibit 324)
 Victor Crivello on behalf of SETF (Exhibit 330)
 Laura Barghusen on behalf of Openlands (Exhibit 338)
 Gerald W. Adelman on behalf of Openlands (Exhibit 344)

In addition to hearing testimony, the Board received over 350 exhibits and over 300 public comments, prior to the docket being divided. Not all those comments and exhibits are relevant to a determination of recreational use, and therefore will not be listed. In the March 18, 2010 opinion, the Board set April 15, 2010, as the date for filing final comments in this subdocket. After the docket was split, the Board received the following comments that are relevant to Subdocket A:

PC 287 Eric Kerlow
 PC 288 James Des Jardins
 PC 290 United States Environmental Protection Agency
 PC 291 Southeast Environmental Task Force
 PC 292 Citgo Petroleum Corporation and PDV Midwest
 PC 293 ExxonMobil Oil Corporation
 PC 294 Environmental Law & Policy Center, Natural Resources Defense Council, Openlands, Friends of the Chicago River, Prairie Rivers Network and the Illinois Chapter of Sierra Club
 PC 295 Metropolitan Water Reclamation District of Greater Chicago
 PC 296 The People of the State of Illinois
 PC 298 Illinois Environmental Protection Agency
 PC 300 Metropolitan Water Reclamation the District of Greater Chicago
 PC 301 Abigail Lantz of Lincoln Park Juniors
 PC 302 Environmental Groups
 PC303 John R. Kindra, Kindra Lake Towing, L.P.

On August 5, 2010, the Board adopted a first-notice opinion and order, taking into consideration the comments, testimony and evidence relevant to Subdocket A. The first notice was published in the *Illinois Register* on August 27, 2010. See 34 Ill. Reg. 12521. During the first notice period in Subdocket A, the total number of public comments has reached over 1000. The public comments numbered PC 307-483, 485-490, 492-494, 501-504, 506-551, 557-558 573-578 and were comments that were nearly identical and supported the Board's first notice opinion and order. In addition comments 585 -972, 974-993, 995-1002, 1004-1007, 1012-1015 were filed after the USEPA's determination letter, and support the USEPA's position. The Board received more detailed and extensive comments as follows:

PC 496 ExxonMobil Oil Corporation
 PC 497, 584, 994 United States Environmental Protection Agency
 PC 498, 1010 Metropolitan Water Reclamation District of Greater Chicago
 PC 499, 1009 American Waterways Operators
 PC 500 John R. Kindra
 PC 552, 1003 Illinois Environmental Protection Agency
 PC 554, 1008 The People of the State of Illinois
 PC 555, 973 Environmental Law & Policy Center, Natural Resources Defense Council, Openlands, Friends of the Chicago River, Prairie Rivers Network and the Illinois Chapter of Sierra Club
 PC 1011 Citgo Petroleum Corporation and PDV Midwest

On August 11, 2010, in accordance with Section 27(b) of the Act (415 ILCS 5/27(b) (2010)), the Board requested that the Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study for this rulemaking. On September 27, 2010, the Board received a response from DCEO, indicating that no economic impact study would be performed. At the public hearing held on October 19 and 20, 2010, the Board solicited comments on DCEO's decision not to conduct an economic impact study. The Board received no comments. 10/19/10Tr. at 5-6 and 10/20/10Tr. at 4-5.

On May 17, 2011, the Board received a motion filed by the IEPA asking the Board to stay consideration of the second-notice opinion an order at the Board's May 19, 2011 meeting. R08-9A was on the Board's agenda under pending decisions on the May 19, 2011 meeting, a section of the agenda where no substantive action is taken. Therefore, the IEPA's motion is moot.

On May 18, 2011, the Board received a response in opposition to the motion filed by the Environmental Law & Policy Center, Natural Resources Defense Council, Openlands, Friends of the Chicago River, Prairie Rivers Network and the Illinois Chapter of Sierra Club (Environmental Groups). As the motion is moot, the Board need not address the motion or response to the motion.

On May 24, 2011, the Board received another motion from the IEPA asking that the Board stay this proceeding to allow the IEPA to develop an amendment to the proposal to address a May 16, 2011 United States Environmental Protection Agency (USEPA)

determination. On May 31, 2011, the Environmental Groups filed a response to IEPA's motion agreeing that the Board should stay the proceeding.

On June 2, 2011, the Board adopted a proposed second notice, allowing for comments on the Board's second notice proposal. The Board allowed participants until June 10, 2011 to comment on the Board's second-notice opinion and order. The Board reserved ruling on the motion to stay and asked that the IEPA and the Environmental Groups provide guidance on whether or not they wish the Board to act on the request for stay. The Board also specifically requested comments regarding the effect that a stay of Subdocket A would have on Subdocket B.

On June 6, 2011, in response to the Board's proposed second notice, the Environmental Groups filed a comment indicating that they believed a stay was not appropriate. PC 973 at 1.

On June 9, 2011, the IEPA filed a motion to withdraw the motion for stay (PC 1003), which the Board granted on June 16, 2011. On June 16, 2011, the Board adopted a second notice opinion and order.

On July 12, 2011, the Joint Committee on Administrative Rules (JCAR) and the Board agreed to extend the second notice period until August 16, 2011. On August 16, 2011, JCAR issued a certificate of no objection.

STATUTORY BACKGROUND

This proposal was filed as a regulatory proposal of general applicability pursuant to Sections 27 and 28 of the Act (415 ILCS 5/27, 28 (2010)) and as a general rulemaking pursuant to Section 5-40 of the IAPA (5 ILCS 100/5-40 (2010)). SR at 2. Pursuant to Section 27(a) of the Act (415 ILCS 5/27(a) (2010)), the Board is required to take into account "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) (2010).

SUMMARY OF FIRST NOTICE

In adopting the first-notice proposal, the Board did not proceed with IEPA's proposed amendment to Section 302.402 and amended the language of Section 303.204. Also, the Board proposed to repeal Section 303.441, a section not a part of the IEPA's original proposal.

At first notice, the Board determined that the CAWS and the LDPR cannot attain the Clean Water Act recreational use goal of recreating on and in the water (swimmable) at this time. However, the Board's examination of the record provided clear evidence of existing recreational uses in the CAWS and LDPR that must be protected. Therefore, the Board sent to first notice a proposal that individual reaches of the CAWS and LDPR would be designated either as incidental contact recreation, non-contact recreation, or non-recreational waters.

In finding that the CAWS and LDPR could not meet the Clean Water Act recreational use goal of recreating on and in the water, the Board examined the record in the proceeding and reviewed procedures outlined by the USEPA under the Clean Water Act (33 U.S.C. § 1313). USEPA developed rules for designating uses and conducting use attainability analyses, permitting states to adopt sub-categories of a use with appropriate criteria as well as seasonal uses. To remove a designated use or establish a use other than the CWA aquatic life and recreational goals, States must consider six Use Attainability Analysis (UAA) factors in order to adopt such a use. *See* 40 C.F.R. § 131.10(g). The six UAA factors are:

- 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 . . . ; 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. *Id.*

After reviewing the evidence, including the UAA reports (Attach A and B) and the testimony in this proceeding, including comments from the IEPA and USEPA, the Board disagreed with the USEPA's suggestion that the CAWS and LDPR should be classified for recreation in and on the water. The Board found that the evidence supported the findings enunciated by the CAWS UAA and LDPR UAA that the Clean Water Act recreational use goal (swimmable) is not attainable because:

- 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. 40 C.F.R. § 131.10(g)(3) and (4).

Having found that the CAWS and LDPR cannot attain the Clean Water Act recreational use (swimmable) goal, the Board evaluated the proposed designated uses for the CAWS and LDPR based on the existing uses of the CAWS and LDPR. An existing use cannot be removed according to federal regulations. 40 C.F.R. §131.10(h) and (i). Based on the CAWS and LDPR UAA studies, three categories of recreational use designations for the CAWS and LDPR were proposed: Incidental Contact Recreation, Non-contact Recreation, and Non-recreational waters. The CAWS and LDPR were separated into 14 segments and the Board examined physical, chemical, biological, and waterway use data to determine the existing uses of the CAWS. After reviewing the segments the Board proposed the following uses for each segment, as set out in Table 1.

Table 1
Proposed First Notice Recreational Use Designations for CAWS and LDPR Segments

Waterway Reaches	Current Use Designation 35 IAC 303.441	Proposed Use Designation 35 IAC 303.220 -303.227
Upper North Shore Channel from Wilmette Pumping Station to North Side Water Reclamation Plant	General Use	Incidental Contact Recreation
Lower North Shore Channel from North Side Water Reclamation Plant to confluence with North Branch of the Chicago River	Secondary Contact	Incidental Contact Recreation
North Branch of the Chicago River from its confluence with North Shore Channel to confluence with the Chicago River & South Branch of the Chicago River	Secondary Contact	Incidental Contact Recreation
Chicago River	General Use	Incidental Contact Recreation
South Branch of the Chicago River	Secondary Contact	Incidental Contact Recreation
South Fork of the South Branch of the Chicago River (Bubbly Creek)	Secondary Contact	Incidental Contact Recreation
Chicago Sanitary & Shipping Canal from its confluence with South Branch of the Chicago River to Calumet-Sag Channel	Secondary Contact	Incidental Contact Recreation
Calumet-Sag channel	Secondary Contact	Incidental Contact Recreation
Little Calumet River from its confluence with Calumet River and Grand Calumet River to its confluence with Calumet-Sag Channel	Secondary Contact	Incidental Contact Recreation
Grand Calumet River	Secondary Contact	Incidental Contact Recreation

**Table 1 (cont.)
Proposed First Notice Recreational Use Designations for CAWS and LDPR Segments**

Waterway Reaches	Current Use Designation 35 IAC 303.441	Proposed Use Designation 35 IAC 303.220 -303.227
Lake Calumet & Lake Calumet connecting Channel	Secondary Contact	Incidental Contact Recreation
Calumet River from Lake Michigan to Torrence Avenue	General Use	Non-Contact Recreation
Calumet River from Torrence Avenue to its confluence with Grand Calumet River and Little Calumet River	Secondary Contact	Incidental Contact Recreation
Chicago Sanitary and Ship Canal from its confluence with the Calumet-Sag Channel to its confluence with Des Plaines River	Secondary Contact	Non-Recreation
LDPR from its confluence with Chicano Sanitary and Ship Canal to the Brandon Road Lock and Dam	Secondary Contact	Non-Recreation
LDPR from the Brandon Road Lock and Dam to the Interstate 55 bridge	Secondary Contact	Incidental Contact Recreation

The Board also addressed concerns raised by the District. Specifically, the District first challenged the IEPA position that fishing is an incidental contact recreational use. Second, the District believed that safety and physical hazards in the CAWS make incidental contact recreational use unattainable. Third, the District argued that the IEPA did not account for wet weather events when designating recreational uses. And, fourth, the District asserted that the IEPA did not account for Asian Carp preventative measures when drafting this rulemaking proposal.

In the first notice opinion, the Board made findings on the four major issues raised by the District, but encouraged participants to comment on fishing as incidental contact while asking for more information on the wet weather issue in Subdocket B. The Board listed fishing among the activities under incidental contact recreation and found that fishing was consistent with the type of contact expected under the incidental contact designation. The Board also found that safety and physical hazards in the CAWS do not make incidental contact recreational use unattainable. On the Asian Carp issue, the Board found that the Asian Carp preventive measures do not change the existing uses.

Prior to the Board's first notice opinion, ExxonMobil raised concerns that barge traffic and security issues for ExxonMobil's facility on the Lower Des Plaines River create an operating environment where recreational activities should not be encouraged. The Board found that the record supported proceeding with a designated use of incidental contact for the LDPR from Brandon Road Lock and Dam to the I-55 Bridge. However, the Board invited additional comment and in particular invited the US Coast Guard to provide insights on this issue.

SECOND NOTICE PROPOSAL

Based on more extensive comments from USEPA and the request of the Environmental Groups, the Board examined the record to consider a primary contact recreational use designation for segments of the CAWS. The Board examined the record and these comments in context with the CWA and the rules implementing the CWA. The goal under the CWA is to protect the waters of Illinois to allow for recreation on and in the water (swimmable) wherever attainable. Under the federal rules implementing the CWA, uses are deemed attainable if they can be achieved by the imposition of effluent limits under the CWA. 40 C.F.R. § 131.10(d). States may remove a designated use which is not an existing use or create sub-categories of uses by performing a UAA. 40 C.F.R. § 131.10(g). Furthermore an existing use may not be removed. 40 C.F.R. § 131.10(h). Thus, the CWA and the rules implementing the CWA clearly envision that all waters are swimmable unless one of the UAA factors establishes otherwise.

Both USEPA and the Environmental Groups questioned whether the record and the Board's evaluation of the record at first notice was sufficient to find that the CWA goal of swimmable could not be met in all segments of the CAWS and LDPR. The Environmental Groups opine that the Board placed a "reverse burden" on the USEPA to demonstrate that primary contact is not achievable. *See* PC 555 at 8. The Board reexamined the issue on a segment by segment basis. As a result the Board found that six segments of the CAWS could achieve the goal of "swimmable" in the foreseeable future. Those six segments are: 1) Lower North Shore Channel from North Side Water Reclamation Plant to confluence with North Branch Chicago River; 2) North Branch Chicago River from its confluence with North Shore Channel to its confluence with South Branch Chicago River and Chicago River; 3) Chicago River; 4) South Branch Chicago River; 5) Little Calumet River from its confluence with Calumet River and Grand Calumet River to its confluence with Calumet-Sag Channel; and 6) Calumet-Sag Channel.

Segments of the CAWS and LDPR proposed for Incidental Contact Recreation are: 1) Upper North Shore Channel from Wilmette Pumping Station to North Side Water Reclamation Plant; 2) South Fork of the South Branch Chicago River; 3) Chicago Sanitary and Ship Canal from its confluence with South Branch Chicago River to its confluence with Calumet-Sag Channel; 4) Calumet River from Torrence Avenue to its confluence with Grand Calumet River and Little Calumet River; 5) Lake Calumet and Lake Calumet Connecting Channel; 6) Grand Calumet River; and 7) Lower Des Plaines River from the Brandon Road Lock and Dam to the Interstate 55 bridge.

The final three segments of the CAWS and LDPR that at first notice were designated for Non-contact Recreation or Non-recreation remain the same for second notice. The Non-contact Recreation use designation is proposed for Calumet River from Lake Michigan to Torrence Avenue. The Non-recreation use designation is proposed for: 1) Chicago Sanitary and Ship Canal from its confluence with the Calumet-Sag Channel to its confluence with Des Plaines River; and 2) Lower Des Plaines River from its confluence with Chicago Sanitary and Ship Canal to the Brandon Road Lock and Dam.

In addition to the issue of establishing a “Primary Contact Recreation” use designation the Board reviewed comments from the District and ExxonMobil. ExxonMobil raised concern about safety and security around the Joliet Refinery. The District’s comments focused on three main concerns: 1) incidental contact recreation should not be an existing use where conditions are unsafe; 2) a wet weather recreation use subcategory should be considered as part of Subdocket A to protect existing uses; and 3) the Board should consider Asian carp preventive measures. The Environmental Groups specifically responded to the comments of the District noting: 1) the District incorrectly applies the UAA standard, including the impact the presence of Asian Carp has on the proposed designated uses; and, 2) a wet weather standard is premature.

The Board was unconvinced by the arguments of the District regarding the Asian Carp issue. Further, ExxonMobil and the District did not convince the Board that safety issues preclude the use designations proposed for second notice. The Board also continued to believe that the issue of a wet weather standard should be addressed in setting the water quality standards in Subdocket B.

The AWO and Mr. Kindra also expressed concern that the proposed use designations not interfere with the existing use of commercial traffic on the CAWS and LDPR. The Board found that, based on the evidence in the record, that the proposed uses will impact commercial navigation.

The Board recognized that the Asian Carp preventative measures may have a significant impact on the CAWS and LDPR; however, the Board did not believe that the Asian Carp issue impacts a decision on recreational uses.

DISCUSSION

Through the efforts of the IEPA, regulated community, environmental groups and members of the public this rulemaking has proceeded. The Board held multiple days of hearings and received over 1000 public comments on this subdocket. The Board appreciates these efforts and all the comments, testimony and exhibits which make up this record. The Board finds that the record supports proceeding to adoption with this rule. The Board adopts four recreational use categories for the CAWS and LDPR: Primary Contact Recreation, Incidental Contact Recreation, Non-contact Recreation, and Non-Recreation. The following table delineates the segments and the corresponding existing use designation and use designation adopted in this rulemaking.

**Table 2
Recreational Use Designation for CAWS and LDPR**

Waterway Segments	Current Use Designation 35 IAC 303.441	Adopted Recreational Use Designation
Upper North Shore Channel from Wilmette Pumping Station to North Side Water Reclamation Plant	General Use	Incidental Contact Recreation

Table 2
Recreational Use Designation for CAWS and LDPR (cont.)

Waterway Segments	Current Use Designation 35 IAC 303.441	Adopted Recreational Use Designation
Lower North Shore Channel from North Side Water Reclamation Plant to confluence with North Branch of the Chicago River	Secondary Contact	Primary Contact Recreation
North Branch of the Chicago River from its confluence with North Shore Channel to confluence with the Chicago River & South Branch of the Chicago River	Secondary Contact	Primary Contact Recreation
Chicago River	General Use	Primary Contact Recreation
South Branch of the Chicago River	Secondary Contact	Primary Contact Recreation
South Fork of the South Branch of the Chicago River (Bubbly Creek)	Secondary Contact	Incidental Contact Recreation
Chicago Sanitary & Shipping Canal from its confluence with South Branch of the Chicago River to Calumet-Sag Channel	Secondary Contact	Incidental Contact Recreation
Calumet-Sag channel	Secondary Contact	Primary Contact Recreation
Little Calumet River from its confluence with Calumet River and Grand Calumet River to its confluence with Calumet-Sag Channel	Secondary Contact	Primary Contact Recreation
Grand Calumet River	Secondary Contact	Incidental Contact Recreation
Lake Calumet & Lake Calumet connecting Channel	Secondary Contact	Incidental Contact Recreation
Calumet River from Lake Michigan to Torrence Avenue (North Reach)	General Use	Non-Contact Recreation
Calumet River from Torrence Avenue to its confluence with Grand Calumet River and Little Calumet River (South Reach)	Secondary Contact	Incidental Contact Recreation
Chicago Sanitary and Ship Canal from its confluence with the Calumet-Sag Channel to its confluence with Des Plaines River	Secondary Contact	Non Recreation
LDPR from its confluence with Chicago Sanitary and Ship Canal to the Brandon Road Lock and Dam	Secondary Contact	Non-Recreation
LDPR from the Brandon Road Lock and	Secondary Contact	Incidental Contact

Dam to the Interstate 55 bridge		Recreation
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The Board will not amend the use designations because of the Asian Carp strategies and the Board is not convinced that safety of recreators supports a change to any of the use designations. Therefore, the Board will proceed to adopt the rule as proposed for second notice.

Pursuant to Section 27 of the Act (415 ILCS 5/27 (2010)) when promulgating a rule, the Board must take into account several matters including existing water quality and the technical feasibility and economic reasonableness of reducing pollution. 415 ILCS 5/27(a) (2010) Further, the Board must make a determination as to whether the proposed rule has any adverse economic impact on the people of Illinois. 415 ILCS 5/27(b) (2010). The record in this proceeding establishes that the historically improved water quality in the CAWS and LDPR has enhanced opportunities for recreation and is leading to increased public and private investment along the waterways. The use designations proposed in this rulemaking will further allow for recreation on and in the waters of the CAWS and LDPR. The record does not indicate any adverse economic impact for upgrading the uses of the CAWS and LDPR. Therefore, the Board finds that the proposed rule is economically reasonable and technically feasible.

CONCLUSION

The Board is adopting four categories of recreational use designation for the Chicago Area Waterway System and Lower Des Plaines River: Primary Contact Recreation, Incidental Contact Recreation, Non-contact Recreation, and Non Recreation. At second notice, the Board responded to comments from participants by adding rules defining the recreational use designation, “Primary Contact Recreation”, to identify segments of the CAWS where full body contact recreation is attainable in the foreseeable future. Primary Contact Recreation is intended to meet the CWA recreational use goal of recreating on and in the water (swimmable). The Board adopted this use based on comments received during the first notice period that drew the Board’s attention to evidence in the record demonstrating that the CWA recreational use goal was attainable in specific segments.

Segments of the CAWS adopted for Primary Contact Recreation are: 1) Lower North Shore Channel from North Side Water Reclamation Plant to confluence with North Branch of the Chicago River; 2) 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; 3) Chicago River; 4) South Branch of the Chicago River; 5) Little Calumet River from its confluence with Calumet River and Grand Calumet River to its confluence with Calumet-Sag Channel; and 6) Calumet-Sag Channel.

Segments of the CAWS and LDPR adopted for Incidental Contact Recreation are: 1) Upper North Shore Channel from Wilmette Pumping Station to North Side Water Reclamation Plant; 2) South Fork of the South Branch of the Chicago River; 3) Chicago Sanitary and Ship Canal from its confluence with South Branch of the Chicago River to its confluence with Calumet-Sag Channel; 4) Calumet River from Torrence Avenue to its confluence with Grand Calumet River and Little Calumet River; 5) Lake Calumet and Lake Calumet Connecting

Channel; 6) Grand Calumet River; and 7) Lower Des Plaines River from the Brandon Road Lock and Dam to the Interstate 55 bridge.

The Non-contact Recreation use designation is adopted for Calumet River from Lake Michigan to Torrence Avenue. The Non-recreation use designation is adopted for: 1) Chicago Sanitary and Ship Canal from its confluence with the Calumet-Sag Channel to its confluence with Des Plaines River; and 2) Lower Des Plaines River from its confluence with Chicago Sanitary and Ship Canal to the Brandon Road Lock and Dam.

ORDER

The Board directs the Clerk to submit the following rule to Secretary of State for adoption and publication in the *Illinois Register*:

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

PART 301
INTRODUCTION

Section	
301.101	Authority
301.102	Policy
301.103	Repeals
301.104	Analytical Testing
301.105	References to Other Sections
301.106	Incorporations by Reference
301.107	Severability
301.108	Adjusted Standards
301.200	Definitions
301.205	Act
301.210	Administrator
301.215	Agency
301.220	Aquatic Life
301.221	Area of Concern
301.225	Artificial Cooling Lake
301.230	Basin
301.231	Bioaccumulative Chemicals of Concern
301.235	Board
301.240	CWA
301.245	Calumet River System
<u>301.247</u>	<u>Chicago Area Waterway System</u>
301.250	Chicago River System
301.255	Combined Sewer
301.260	Combined Sewer Service Area

301.265	Construction
301.267	Conversion Factor
301.270	Dilution Ratio
301.275	Effluent
301.280	Hearing Board
<u>301.282</u>	<u>Incidental Contact Recreation</u>
301.285	Industrial Wastes
301.290	Institute
301.295	Interstate Waters
301.300	Intrastate Waters
301.301	Lake Michigan Lakewide Management Plan
301.305	Land Runoff
<u>301.307</u>	<u>Lower Des Plaines River</u>
301.310	Marine Toilet
301.311	Method Detection Level
301.312	Minimum Level
301.313	Metals Translator
301.315	Modification
301.320	New Source
<u>301.323</u>	<u>Non-Contact Recreation Primary Contact Recreation</u>
<u>301.324</u>	<u>Non-Contact Recreation and Non-Recreational</u>
301.325	NPDES
301.330	Other Wastes
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301.APPENDIX A	References to Previous Rules

AUTHORITY: Implementing Section 13 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/13 and 27].

SOURCE: Filed with the Secretary of State January 1, 1978; amended at 3 Ill. Reg. 25, p. 190, effective June 21, 1979; amended at 5 Ill. Reg. 6384, effective May 28, 1981; codified at 6 Ill. Reg. 7818; amended in R88-1 at 13 Ill. Reg. 5984, effective April 18, 1989; amended in R88-21(A) at 14 Ill. Reg. 2879, effective February 13, 1990; amended in R99-8 at 23 Ill. Reg. 11277, effective August 26, 1999; amended in R02-11 at 27 Ill. Reg. 158, effective December 20, 2002; amended in R08-9(A) at 35 Ill. Reg. _____, effective _____.

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.

(Source: Added at 35 Ill. Reg. _____, effective _____)

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.

(Source: Added at 35 Ill. Reg. _____, effective _____)

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.

(Source: Added at 35 Ill. Reg. _____, effective _____)

Section 301.323 ~~Non-Contact Recreation~~ Primary Contact Recreation

“Primary Contact Recreation” means any recreational activity in which human contact consists of full body contact with the waters such as swimming, diving, or jumping; and, including all Incidental 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.~~

(Source: Added at 35 Ill. Reg. _____, effective _____)

Section 301.324 Non-Contact Recreation and Non-Recreational

a) “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.

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

(Source: Added at 35 Ill. Reg. _____, effective _____)

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

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

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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. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 303.102 Rulemaking Required (Repealed)

~~Designation of waters to meet secondary contact and indigenous aquatic life standards is governed by Part 102 of Subtitle A.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

SUBPART B: NONSPECIFIC WATER USE DESIGNATIONS

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), and commercial activity, (including navigation and industrial water supply uses), 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 of Subpart D, Part 302, 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 Subparts B and C, Part 302. Designated recreational uses for each segment of the Chicago Area Waterway System and Lower Des Plaines River are identified in this Subpart.

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 303.220 Primary Contact Recreation Waters ~~Incidental 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.

- 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 Calumet-Sag Channel; and
- f) Calumet-Sag Channel.

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 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 and its South Fork;~~
- ~~e) Chicago Sanitary and Ship Canal from its confluence with South Branch of the Chicago River to its confluence with Calumet Sag Channel;~~
- ~~f) Calumet River from Torrence Avenue to its 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 its confluence with Calumet River and Grand Calumet River to its 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.~~

(Source: Added at 35 Ill. Reg. _____, effective _____)

Section 303.225 Incidental Contact Recreation Waters ~~Non-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) Upper North Shore Channel from Wilmette Pumping Station to North Side Water Reclamation Plant;
- b) South Fork of the South Branch of the Chicago River (Bubbly Creek) and its South Fork;

- c) Chicago Sanitary and Ship Canal from its confluence with South Branch of the Chicago River to its confluence with Calumet-Sag Channel;
- d) Calumet River from Torrence Avenue to its confluence with Grand Calumet River and Little Calumet River;
- e) Lake Calumet;
- f) Lake Calumet Connecting Channel;
- g) Grand Calumet River;
- h) Lower Des Plaines River from the Brandon Road Lock and Dam to the Interstate 55 bridge.

~~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.~~

(Source: Added at 35 Ill. Reg. _____, effective _____)

Section 303.227 Non-Contact Recreation Waters and Non-Recreational Waters

- a) Non-Contact Recreation. 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 301.324.
- b) The following waters are designated as Non-Recreational waters as defined in 35 Ill. Adm. Code 301.324.
 - 1a) Chicago Sanitary and Ship Canal from its confluence with the Calumet-Sag Channel to its confluence with Des Plaines River; and
 - 2b) Lower Des Plaines River from its confluence with Chicago Sanitary and Ship Canal to the Brandon Road Lock and Dam.

(Source: Added at 35 Ill. Reg. _____, effective _____)

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

Section 303.441 Secondary Contact Waters (Repealed)

The following are designated as secondary contact and indigenous aquatic life waters and must meet the water quality standards of 35 Ill. Adm. Code 302.Subpart D:

- a) ~~The Chicago Sanitary and Ship Canal;~~
- b) ~~The Calumet Sag Channel;~~
- c) ~~The Little Calumet River from its junction with the Grand Calumet River to the Calumet Sag Channel;~~
- d) ~~The Grand Calumet River;~~
- e) ~~The Calumet River, except the 6.8 mile segment extending from the O'Brien Locks and Dam to Lake Michigan;~~
- f) ~~Lake Calumet;~~
- g) ~~The South Branch of the Chicago River;~~
- h) ~~The North Branch of the Chicago River from its confluence with the North Shore Channel to its confluence with the South Branch;~~
- i) ~~The Des Plaines River from its confluence with the Chicago Sanitary and Ship Canal to the Interstate 55 bridge; and~~
- j) ~~The North Shore Channel, excluding the segment extending from the North Side Sewage Treatment Works to Lake Michigan. The dissolved oxygen in said Channel shall be not less than 5 mg/l during 16 hours of any 24 hour period, nor less than 4 mg/l at any time.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 18, 2011, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board