



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 5
 77 WEST JACKSON BOULEVARD
 CHICAGO, IL 60604-3590

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STATE OF ILLINOIS
 Pollution Control Board

REPLY TO THE ATTENTION OF:
 WQ-16J

Illinois Pollution Control Board, Clerk's Office
 James R. Thompson Center, Suite 11-500
 100 West Randolph Street
 Chicago, Illinois 60601



ORIGINAL

PC# 1388

Re: R2008-009 (Subdocket C)

Dear Illinois Pollution Control Board:

The U.S. Environmental Protection Agency has reviewed the Illinois Pollution Control Board's (IPCB) October 3, 2013, Proposed Second Notice Opinion and Order. In that opinion, the IPCB attempted to address a number of comments that we submitted to them in our June 26, 2013 letter. EPA is providing additional comments to assist the IPCB in adopting revisions to Illinois' water quality standards that are consistent with the Clean Water Act (CWA) and federal regulations.

I. UAA Analysis

EPA believes that the information summarized in the IPCB's October 3, 2013, opinion does not appear to support the conclusion that it is not feasible for the waters in the Chicago Area Waterway (CAWS) and Lower Des Plaines River (LDPR) that are the subject of the proposal to attain the aquatic life uses specified in section 101(a)(2) of the CWA based upon the reasons specified at 40 CFR 131.10(g)(3) and (5). With regard to 131.10(g)(3), EPA agrees that CSOs and stormwater discharges are human caused sources of pollution that cannot be remedied immediately. However, there does not appear to be sufficient information affirmatively demonstrating that those sources cannot eventually be remedied such that it is warranted to adopt lower aquatic life use designations per 40 CFR 131.10(g)(3). EPA similarly believes that 40 CFR 131.10(g)(5) does not appear to be an appropriate basis for adoption of lower aquatic life use designations because that provision applies only in situations where natural conditions preclude attainment of the aquatic life use. However, Illinois may be able to justify adoption of aquatic life uses less than the CWA section 101(a)(2) goal based on 40 CFR 131.10(g)(4) for many of the segments in the CAWS and LDPR.

II. EPA Recommendations on the IPCB's Proposed Second Notice

EPA recommends that the following revisions (as noted via underline and strikethrough below) be made to the IPCB's October 3, 2013, proposed aquatic life uses:

Section 303.230 Chicago Area Waterway System Aquatic Life Use A Waters and Upper Dresden Island Pool Aquatic Life Use Waters

a) Chicago Area Waterway 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 an aquatic life use consistent with the interim Clean Water Act section 101(a)(2) goal as dams, diversion or other types of hydrologic modifications preclude attainment of the aquatic life use-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.

b) Upper Dresden Island Pool Aquatic Life Use Waters

1) 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 sunfish, smallmouth bass and spottail shiner. These waters are capable of attaining the Clean Water Act section 101(a)(2) aquatic life use goal.

2) 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.

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

a) 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 carp, golden shiner, bluntnose minnow, yellow bullhead and green sunfish.

b) Waters designated as Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters are not presently capable of maintaining an aquatic life use consistent with the interim Clean Water Act section 101(a)(2) goal as dams, diversion or other types of hydrologic modifications preclude attainment of the aquatic life use—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.

III. Explanation of EPA's Recommendations

First, EPA recommends that Illinois include clarifying language that the quality of the waters shall protect the aquatic life use as described in section 303.230(a)(1) and (b)(1) and section 303.235(a), as opposed to the current language that is limited to what use the waters are “capable of” maintaining. EPA believes that this addition would improve the designated use language and reflects the IPCB's intent as to the level of protection to be afforded to these waters upon adoption of the revised aquatic life uses. It is EPA's understanding that Illinois environmental Protection Agency (Illinois EPA) also suggested clarifying that Aquatic Life Use A and Dresden Island Pool Use waters shall protect intermediately tolerant types of aquatic life, as opposed to the IPCB's suggested inclusion of moderately tolerant types. EPA concurs with Illinois EPA's clarification.

Second, to the extent that Illinois includes a species list, EPA understands that the IPCB's intent that this language be merely informative as to the types of organisms that may be present and does not limit the species that will be considered in deriving water quality criteria to protect the uses in the waters.

Third, EPA reiterates its support of IPCB's determination that no Use Attainability Analysis (UAA) factor applies to the Upper Dresden Island Pool (UDIP). Specifically, the IPCB states in its October 3, 2013 proposal that, “The Board declines to invoke any of the UAA Factors for UDIP...”. IPCB continues to say that, “the proposed UDIP [aquatic life use] ALU designation is consistent with IEPA's finding that UDIP minimally meets the CWA aquatic life goal.” EPA believes that the language at section 303.230(b)(1) that states “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” is consistent with the CWA section 101(a)(2) goal.

Fourth, EPA recommends that the IPCB eliminate the unnecessary language in the designated use for the UDIP that refers to the unique flow conditions present in the water. While EPA agrees that, as explained by the IPCB in its proposed second notice, there is substantial information in the record demonstrating the role that the waterways, including the UDIP, play in supporting navigation, flood control and drainage functions, the IPCB and Illinois EPA have determined that these factors do not preclude attainment of the CWA section 101(a)(2) goal for

the UDIP. Therefore, EPA recommends that the IPCB delete the phrase “that are adapted to the unique flow conditions necessary to maintain navigational use and upstream flood control functions of the waterway system” from the rule. Further, EPA recommends that the IPCB remove in its entirety section 303.230(b)(2) in light of the IPCB’s determination that no 40 CFR 131.10(g) factor applies. EPA is also aware that Illinois EPA has proposed alternative language to address the concerns that EPA has expressed here regarding section 303.230(b). It is EPA’s understanding that Illinois EPA intends to propose the following modified language for the IPCB’s consideration regarding the last sentence in section 303.230(b)(1), “These waters are capable of attaining balanced aquatic life.” While EPA prefers directly citing the CWA section 101(a)(2) goal, to the extent that Illinois explains that the term “balanced aquatic life” is meant to be equivalent to and/or consistent with the 101(a)(2) aquatic life goal, EPA believes that Illinois EPA’s recommended language, with the subsequent deletion of Section 303.230(b)(2), is appropriate.

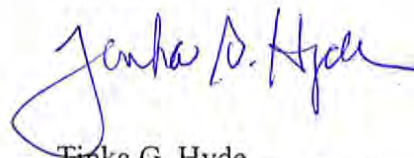
Last, designated uses are intended to describe the uses a water body is capable of supporting. It is not necessary for Illinois to include the description of the uses that are not supported. Thus, EPA recommends that sections 303.230(a)(2) and 303.235(b) be removed from the rule language. However, if such language is retained in sections 303.230(a)(2) and 303.235(b), EPA recommends that the language be modified as suggested above in order to specifically reference the CWA section 101(a)(2) aquatic life use goal and federal regulations at 40 CFR 131.10(g)(4). Alternatively, EPA suggests that the IPCB modify the proposal consistent with Illinois EPA’s recommendation, which adds the following language to sections 303.230(a)(1) and 303.235(a), “These waters are not capable of attaining balanced aquatic life” and then deletes sections 303.230(a)(2) and 303.235(b).

IV. Conclusion

EPA commends the IPCB’s progress toward adoption of new and revised water quality standards for the CAWS and LDPR. We look forward to IPCB’s adoption of aquatic life uses and bacterial water quality standards in this subdocket, as well as future revisions to the IPCB’s previously adopted standards that are necessary to address EPA’s May 16, 2012, disapprovals.

Please contact Candice Bauer of my staff if you have any questions. She can be reached at (312) 353-2106 or bauer.candice@epa.gov.

Sincerely,



Tinka G. Hyde
Director, Water Division

cc: Marcia Willhite, Illinois Environmental Protection Agency