

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
WATER QUALITY STANDARDS AND)	
EFFLUENT LIMITATIONS FOR THE)	
CHICAGO AREA WATERWAY SYSTEM)	R08-9(C)
AND THE LOWER DES PLAINES RIVER:)	(Rulemaking-Water)
Adm. Code Parts 301, 302, 303 and 304)	

NOTICE OF FILING

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

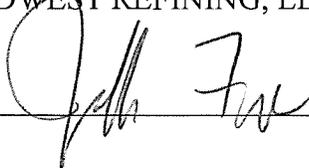
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Please take notice that on November 4, 2013, we filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the attached Added Comments on Proposed Second Notice Opinion and Order, a copy of which is served upon you.

CITGO PETROLEUM CORPORATION and
 PDV MIDWEST REFINING, LLC, Petitioners

By:  _____

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CHICAGO AREA WATERWAY SYSTEM) R08-9(C)
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PROPOSED AMENDMENTS TO 35 Ill.)
Adm. Code Parts 301, 302, 303 and 304)

**ADDED COMMENTS ON PROPOSED
SECOND NOTICE OPINION AND ORDER**

On October 3, 2013, the Illinois Pollution Control Board (“Board”) issued a proposed Second Notice Opinion and Order (“Second Opinion”) “to solicit comments from participants on the changes made from first notice.” The Board requested comments be filed by November 4, 2013. To that end, CITGO Petroleum Corporation and PDV Midwest Refining, LLC (collectively, the “Lemont Refinery”) submit this comment in support of the Board’s analysis with respect to the applicability factors for designating the Chicago Sanitary and Ship Canal (“CSSC”) as a “Use B” aquatic water, and also to call the Board’s attention to an inconsistency in its rationale with respect to the invasive species barrier(s) in the Lower Ship Canal.¹

The Board’s Second Opinion Addresses U.S.EPA’s Queries Regarding The Justification For The Proposed Aquatic Life Uses In The CSSC.

The Lemont Refinery agreed that the Board’s approach in the First Notice Opinion and Order, issued on February 21, 2013, was appropriate for the CSSC with respect to the Use Attainability Factors required by U.S.EPA. However, the U.S.EPA then filed its comment taking some issue with the Board’s approach. In response to the U.S.EPA’s concerns, the

¹ The Board should correct its list of witnesses who testified on the Asian carp issue at page 3: Robin Garibay testified for Citgo, not for Midwest Generation (Ex. 420).

Lemont Refinery submitted comments on July 1, 2013, with suggestions on how the Board could improve its analysis to meet the U.S.EPA's scrutiny. It is evident from the Second Opinion that the Board considered our suggestions, as well as those of the other participating entities, to enhance the proposed rule with respect to the designated uses in the CAWS and particularly the CSSC. While there may not be total consensus among the participants with respect to the Board's approach, we appreciate that the Board took the extra time to set forth its analysis, and also to request feedback before going to the final steps in the rulemaking process.

The Board has made several changes to the definitions for Aquatic Life "Use B." These changes appear to be sound and address the comments from U.S.EPA. Specifically, the Lemont Refinery agrees with the addition of Common Carp as one of the species indicated in Use B. Additionally, we urge the Board to include the Emerald Shiner in the listing of fish species in Use B. The Emerald Shiner is also a tolerant species and it comprised 16.3% of the Rotenone collection in December 2009. Indeed, with the addition of the Common Carp and the Emerald Shiner, the species specifically listed in the Use B definition account for approximately 82% of the species found in that Rotenone event.

The Second Notice Opinion and Order Would Be Strengthened By Expressly Recognizing An Invasive Species Barrier As A "Use" In The CSSC.

The Board did not include the "invasive species barrier" (or "electric fish barrier") as a recognized "use" in the CSSC. We respectfully ask the Board to reconsider this decision and recognize an "invasive species barrier" as a "use" in a portion of the CSSC.

At page 46 of the Second Opinion, the Board discusses the electric barrier as follows:

The Board agrees 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 waters. 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, which will be a consideration when examining water quality standards in Subdocket D.

However, citing the temporal nature of the electric barrier, at least with respect to the Lower Ship Canal, is no longer accurate because there is every indication that the electric fish barrier system in place now is a permanent fixture. Therefore, the Lemont Refinery submits that the Board’s decision would be stronger and more accurate if it expressly noted in the description of the uses that this portion of the CSSC contains an electric fish barrier to prevent invasive species from migrating between the Illinois River System and the Lake Michigan basin.

As an initial matter, the Board’s aforementioned statement is contrary to its own analysis of Factor 3 as applied to the CSSC. Notably, in its Second Opinion the Board cites “among the human caused conditions affecting the CSSC is an electric fish barrier that has been constructed to protect the Great Lakes from invasive species, particularly the Asian carp....” (Second Opinion at p. 37.) And in responding to the U.S.EPA’s inquiry regarding the differences between “Use A” waters and “Use B” waters, the Board states: “...the presence of the electrical barrier alone distinguishes the CSSC from ALU A waters.” (*Id.* at p. 41.) This is all true and if the electric barrier is being cited to distinguish the CSSC then it should also be listed as one of the uses in the CSSC.

Secondly, it is important to note that at the time this rulemaking proceeding commenced, only a “demonstration barrier” was in place in the Lower Ship Canal. This first barrier was operational in 2002 and intended to test and demonstrate the barrier’s effectiveness. However,

this initial demonstration barrier should not be conflated with what is in place now, as it is only one component of the current barrier system. The United States Army Corps of Engineers, which designed and built the invasive species barrier, describes the electric barrier system as “permanent” and conducts tests regularly to maintain high confidence in its effectiveness. (*See* Exhibit 1 hereto.)

Indeed, according to the Army Corps’ November 2009 publication regarding this barrier system, the Corps subsequently completed two additional permanent barriers known as Barrier IIA and Barrier IIB. (*See* Exhibit 2 hereto.) Furthermore, the Army Corps has also been authorized to replace, and is in the process of replacing, the demonstration barrier with a permanent one. (*Id.*) As such, the temporal nature of the initial demonstration barrier no longer applies to the electric barrier system in place now.

Moreover, there is an abundance of information from the other federal agencies involved with the invasive species barrier that supports the notion that the electric fish barrier is no longer temporary. For example:

- The U.S.EPA itself characterizes the electric barrier as a “permanent” feature. It states on its website for the Great Lakes National Program Office that it, along with other federal agencies, and the state of Illinois, “are working together to install and maintain a *permanent* electric barrier between the fish and Lake Michigan to prevent the carp from entering the Great Lakes”. *See* <http://www.epa.gov/glnpo/invasive/asiancarp/> last updated on Wednesday May 15, 2013, last visited on August 25, 2013.

- The U.S. Coast Guard made the Regulated Navigation Area and the Safety Zone surrounding the electric barrier a permanent feature of its regulations. Moreover, a number of other statements from the Coast Guard lead to the conclusion that the electric barrier is being treated as a permanent fixture. With respect to its regulations:

“The Coast Guard’s Ninth District Commander has decided to revise 33 CFR 165.923 via this final rule, **permanently** putting in place an RNA on all waters located adjacent to, and over, the electrical dispersal barriers on the CSSC between mile marker 295.5 and mile marker 297.2. An RNA of this size is necessary to account for situations where a vessel inside the barrier could come into contact with a vessel outside the barrier possibly causing sparking greater than 1,200 feet beyond the Romeo Road Bridge or the aerial pipeline arch.”

Link: <http://www.gpo.gov/fdsys/pkg/FR-2011-12-12/html/2011-31706.htm>

There can be no doubt that the Regulated Navigation Area and Safety Zone are intended to place restrictions on vessels transiting through the electric barrier:

SUMMARY: The Coast Guard is establishing both a safety zone and a Regulated Navigation Area on the Chicago Sanitary and Ship Canal near Romeoville, IL. This final rule places navigational, environmental, and operational restrictions on all vessels transiting the navigable waters located adjacent to and over the U.S. Army Corps of Engineers’ electrical dispersal fish barrier system.

In response to the threat of Asian carp reaching the Great Lakes and devastating the Great Lakes commercial and sport fishing industries, the U.S. Army Corps of Engineers (USACE) began in 2002 the operation of a series of electrical barriers in the Chicago Sanitary and Ship Canal (CSSC). These barriers are located approximately 30 miles from Lake Michigan and create an electric field in the water by pulsing low voltage DC current through steel cables secured to the bottom of the canal. Currently, three electrical barriers are in operation. These barriers are meant to prevent and reduce the dispersal of Asian carp in the CSSC.

The Coast Guard’s Ninth District Commander has determined that the electric current radiated from the electric barriers poses certain

safety risks to commercial vessels, recreational boaters, and people on or in portions of the CSSC in the vicinity of the barriers.

Consequently, the Coast Guard's Ninth District Commander has concluded that an RNA is necessary to mitigate such risks. ... The electric barriers are still in operation, and there are no indications that their use will be terminated in the foreseeable future.

DATES: This rule is effective in the CFR on December 12, 2011. This rule is effective with actual notice for purposes of enforcement at 5:30 p.m. on December 1, 2011.

Link: <http://www.gpo.gov/fdsys/pkg/FR-2011-12-12/html/2011-31706.htm>

Beyond the clarity provided by the current regulations, studies about what the future of the CSSC may include continue to expect that the CSSC will be a feature in the battle to prevent migration of invasive species between the Great Lakes and the Illinois-Mississippi river systems. The Great Lakes Commission has identified the entire lower CSSC as a potential location for a future physical barrier to halt invasive species movement. Specifically, the Commission identifies a potential physical barrier as being "between the confluence of the Chicago Sanitary and Ship Canal and the Cal-Sag Channel and the Lockport Lock," *i.e.*, the location of the Lower CSSC. (See Attachment 5, page 16 to "Final Pre-First Notice Comments on Subdocket C" for the Lemont Refinery, filed March 5, 2012.) Thus, the entire Lower CSSC is a potential location for an invasive species barrier and the electric barrier at river mile 296.1 to 296.7 is already present along with a supporting Regulated Navigation Area from river mile 295.5 to 297.2. All of this information combined evidences that one of the uses of the CSSC, and the lower Ship Canal in particular, will continue to be to host an invasive species barrier.

While the Board's point that water will continue to flow through the electric barrier is true, this will nevertheless remain the case regardless of what the "uses" of the CSSC are.

Likewise this is also the case with the other physical conditions that the Board has accepted and included in the definition of Aquatic Life "Use B" waters. The uses of the CSSC are independent of what the Board decides is needed for downstream water quality below the I-55 Bridge, or even below the Brandon Locks. We are confident the Board can deal with the downstream water quality issues in the Docket D proceedings; that would be the case regardless of the "uses" selected for the Ship Canal. Put simply, there is no viable reason not to recognize that there is an invasive species barrier in the CSSC now. The barrier is there, it is not temporary, and it, along with the RNA and Safety Zone, clearly impact the Lower CSSC. Accordingly, the Lemont Refinery believes that the Board's Second Opinion would only be strengthened by recognizing the electric fish barrier among the uses for the lower portion of the CSSC.

If there were any doubt, a recent proposed amendment to U.S.EPA's regulations with respect to state water quality standards further supports our request. On September 4, 2013 the U.S.EPA published proposed changes to 40 CFR Part 131. The proposed regulation would maintain the various factors by which a UAA would conclude that water bodies could not attain the "fishable/swimmable" goals of the Clean Water Act. But it also proposes to revise the existing regulation to expressly allow the kind of description which we are urging here. The proposed rule states, "[i]f a State adopts new or revised water quality standards based on a use attainability analysis, the State shall also adopt the highest attainable use and the criteria to protect that use. To meet this requirement, States may, at their discretion, utilize their current use categories or subcategories, develop new use categories or subcategories, *or adopt another use which may include a location-specific use.*" (78 Fed Reg 54517 at 54544; proposed 40 CFR§ 131.10(g) (emphasis added).) It is clear that the U.S.EPA's revised regulations contemplates and expressly allows for "location specific" uses such as the invasive species barrier located in the

Lower Ship Canal. This emerging policy appears to be entirely consistent with listing the invasive species barrier as one of the "uses" of the CSSC. Accordingly, including the electric barrier as a "use" in the CSSC would be consistent with the proposed U.S.EPA regulations, as well as the positions of three federal agencies who are involved with this structure.

Conclusion

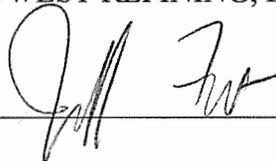
The Lemont Refinery supports the Proposed Second Opinion and Order with respect to the CSSC, but respectfully urges the Board to include the Invasive Species Barrier as an aspect of the "uses" in the CSSC.

Dated: November 4, 2013

Respectfully submitted

CITGO PETROLEUM CORPORATION and
PDV MIDWEST REFINING, LLC, Petitioner

By: _____



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CERTIFICATE OF SERVICE

I, the undersigned, certify that on November 4, 2013, I served electronically the attached

Added Comments on Proposed Second Notice Opinion and Order, upon the following:

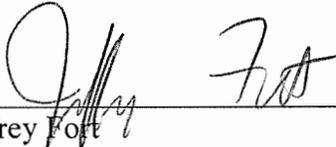
John Therriault, Clerk
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and by U.S. Mail, first class postage prepaid, to the following persons:

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The participants listed on the attached
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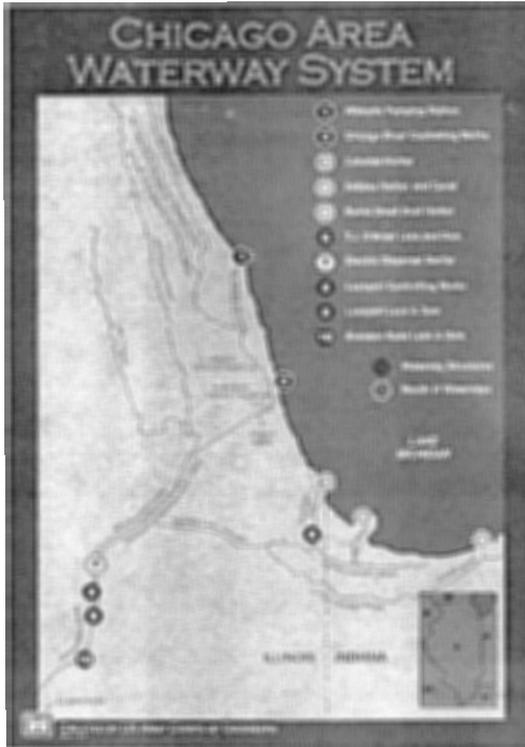


Jeffrey Fort

EXHIBIT 1

Location

The Chicago Area Waterway System (CAWS) is the only known continuous connection between the Great Lakes and Mississippi River basins and poses the greatest potential risk for the transfer of aquatic nuisance species.

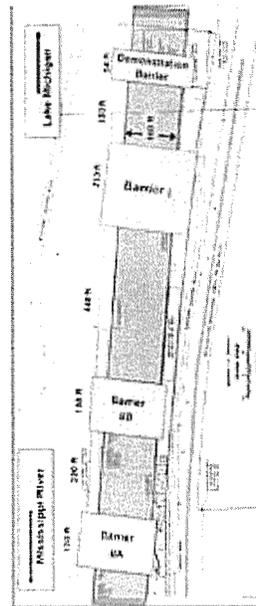


The Electric Dispersal Barriers are located near Romeoville, Ill., in the Chicago Sanitary and Ship Canal (CSSC) within the CAWS. The CSSC is a man-made hydrologic connection between the Great Lakes and Mississippi River basins that was completed in the early 20th century to address sanitation and flooding. Construction of the CSSC allowed the reversal of the flow direction in the Chicago River and accommodated increased shipping.

About the U.S. Army Corps of Engineers

The USACE Chicago District mission is to provide valued, world class leadership, engineering services, and management capabilities to the diverse stakeholders and partners within the greater Chicagoland metropolitan area and the nation.

The Chicago District is responsible for water resources development in the Chicago metropolitan area, an area of about 5,000 square miles with a population of about nine million. The district is involved in a variety of projects stemming from flood-risk management, coastal storm damage reduction, navigation, ecosystem restoration, emergency management and interagency and international support.



*Barrier 1 is in design phase. Tentative location shown above.

For more information about the Chicago District, please visit www.lrc.usace.army.mil or call the public affairs office at 312-846-5330.

-  www.facebook.com/usacechicago
-  www.flickr.com/photos/usacechicago/
-  www.youtube.com/chicagousace



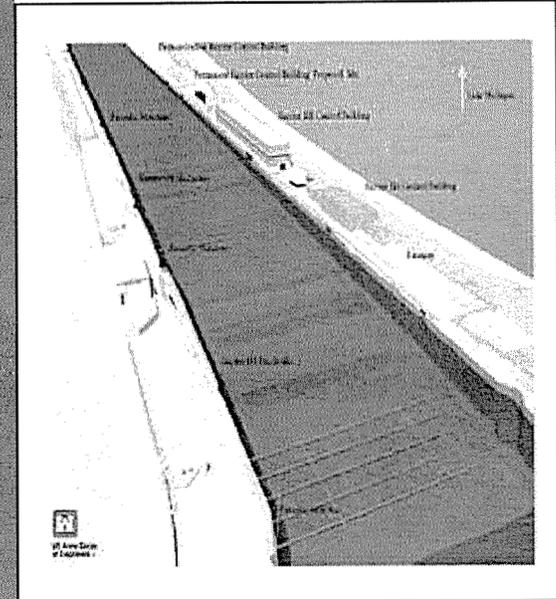
US Army Corps of Engineers

www.asiancarp.us

11/2012



US Army Corps of Engineers



The Electric Dispersal Barriers

Overview

The Electric Dispersal Barriers deter the inter-basin establishment of Asian carp and other aquatic nuisance species via the Chicago Sanitary and Ship Canal.

The barriers, located approximately 25 miles from Lake Michigan and within a 1,500-foot section of the CSSC, are formed of steel electrodes that are secured to the bottom of the canal. The electrodes are connected to a raceway, consisting of electrical connections to a control building. Equipment in the control building generates a DC pulse through the electrodes, creating an electric field in the water that discourages fish from crossing.



The Demonstration Barrier has been operational since 2002. Barrier IIA was placed into full-time operation in 2009, and Barrier IIB was placed into full-time operation in 2011. In 2013, USACE begins construction of permanent Barrier I, authorized by Congress as an upgrade of the Demonstration Barrier. Permanent Electric Barrier I will be situated between Barrier IIB and the Demonstration Barrier.

Demonstration Barrier: Operates at 1 volt/inch, 5 hertz (cycles per second), 4 ms (pulse duration in milliseconds)

Barrier IIA: Operates at 2.3 volts/inch, 30 hertz, 2.5 ms
-Located 1,150 feet downstream of Barrier I

Barrier IIB: Operates at 2.3 volts/inch, 30 hertz, 2.5 ms

The Demonstration Barrier consists of 12 bundled steel cables (shown at left) to generate the electric field. One of the improvements incorporated into the design of Barriers IIA and IIB was to use 32 solid steel bars (shown at right) for each barrier for a total of 64 electrodes. The solid steel bars will corrode less over time, which reduces the frequency of replacement.



Effectiveness

To ensure the barriers' success, Congress directed USACE to study a range of factors that could potentially reduce their effectiveness. USACE is analyzing various technical, environmental and biological factors.

The first report USACE completed under this authority identified areas of potential bypass through adjacent waterways upstream of the electric barriers during flooding and recommended construction of a barricade along the Des Plaines River, which was completed in the fall of 2010, along with a stone berm in the Illinois and Michigan Canal, completed in the summer of 2010.



These project features reduce the likelihood of any Asian carp in the Des Plaines River potentially bypassing the electric barriers during a high-water event.

The Des Plaines River barricade, funded by the Great Lakes Restoration Initiative, extends approximately 13 miles from Romeoville, Ill. to Willow Springs, Ill. It consists of concrete barriers and a specially-fabricated wire mesh that allows water to flow through the fence but prevents the passage of juvenile and adult fish.

Other interim reports led to increasing the operating settings at Electric Barriers IIA and IIB that research indicated would immobilize very small fish, recommending the construction and installation of bar screens for two sluice gates at both the O'Brien and Chicago locks and studying how technologies such as bubbles, lights and sounds can inhibit Asian carp movement.

USACE also works closely with other agencies to monitor the CSSC to determine the effectiveness of the barriers, as well as the location and abundance of Asian carp in the waterway. Monitoring methods include netting, electrofishing, underwater cameras, tracking fish through implanted tags and collecting water samples for Asian carp environmental DNA.

Quick Facts

Authorization

In 1996, the National Invasive Species Act authorized USACE to construct a demonstration electric dispersal barrier on the CSSC. USACE received additional authorization, including Section 3061 of the Water Resources Development Act of 2007, to construct Barriers IIA and IIB.

Uniqueness

This technology has been used in other places, but typically in smaller, shallower waterways. The CSSC barriers are in waters generally 20 to 25 feet deep and approximately 160 feet wide. To our knowledge, our barriers are the largest of their kind in the world and the only on a highly-trafficked, commercially-navigable waterway.

The barriers do not block the flow of water or the movement of vessels. Therefore, the canal can continue to serve intended purposes for treated wastewater and stormwater management and navigation.

Operations

Upon construction completion, each barrier undergoes ongoing comprehensive safety and operational testing.

The barrier electric field can be characterized by the equipment parameters of frequency, length (duration) and amplitude (voltage) of the DC pulses. Effective operation is dependent on a proper combination of these parameters.

Multiple barriers are needed to provide redundancy. The barriers are complex electrical and mechanical systems and must periodically be powered down for maintenance. More than one barrier is needed so that at least one barrier can be active when another barrier, or barriers, is offline for maintenance.

Parasitic structures secured to the bottom of the CSSC, made of structural steel shapes and woven-wire rope, limit the extent of the electric fields generated by the dispersal barriers to the areas designed for fish deterrence.

The Fish Barrier Total Control System is an automated computer system that can run the barriers remotely in the event of power loss.

Effectiveness

Past and ongoing field testing of the efficacy of the barriers gives high confidence in the effectiveness.

Since 2003, USACE has been participating in telemetry studies that use transmitters to track tagged fish in the vicinity of the barriers.

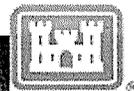


EXHIBIT 2



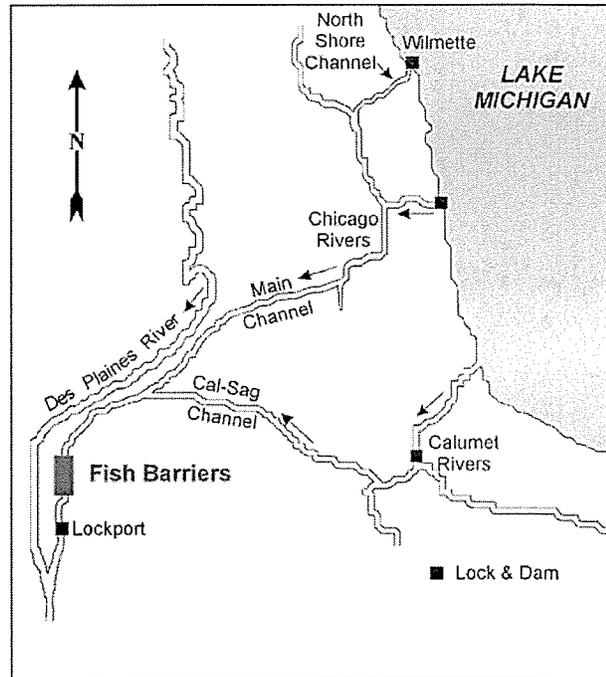
**US Army Corps
of Engineers**

Chicago Sanitary & Ship Canal Dispersal Barrier System

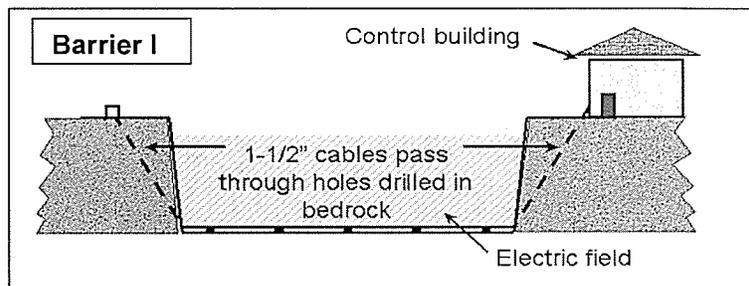
Location and Purpose: The dispersal barriers are located in the Chicago Sanitary and Ship Canal (CSSC), which is a man-made waterway creating the only continuous connection between Lake Michigan and the Mississippi River basin. The dispersal barrier system was developed to prevent the spread of invasive fish species between these watersheds.

Project History: Operation of the first barrier (Barrier I) began in April 2002 by the Corps, demonstrating a new technology for preventing the spread of aquatic nuisance species.

Barrier I, which is located at river mile 296.5 in Romeoville, IL, is formed of steel cables (see diagram below right) that are secured to the bottom of the canal. A low-voltage, pulsing DC current is sent through the cables, creating an electric field in the water. The electric field is uncomfortable for fish and they do not swim across it.



In 2004, the Corps initiated construction of a permanent barrier (Barrier II) to prevent the migration of fish, including Asian carp, between the watersheds. Barrier II, which is located 800 to 1,300 feet downstream of Barrier I, also uses a pulsed electric field, but includes several design improvements identified during monitoring and testing of Barrier I.



Barrier II is able to generate a more powerful electric field over a larger area and consists of two sets of electrical arrays and control houses, known as Barriers IIA and IIB. Each control house and set of arrays can be operated independently, but ultimately goal is to operate both concurrently.

In 2007, Congress authorized the Corps to complete Barrier II, to upgrade Barrier I and make it permanent, and to operate the barrier system at full federal cost.

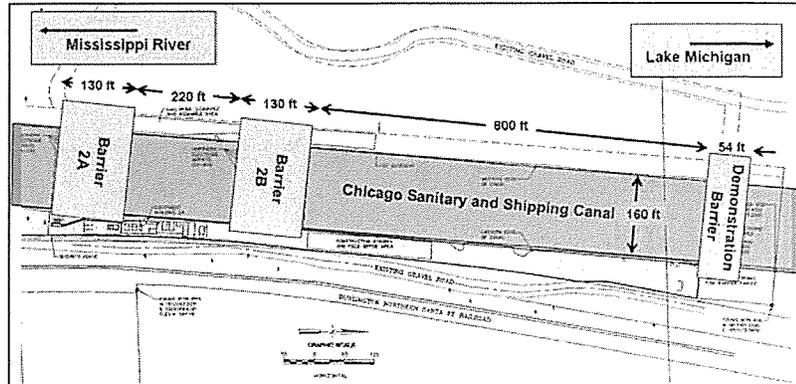
Status: Barrier I and Barrier IIA are operating continuously. Barrier IIB is partially constructed.

Due to its original demonstration status, Barrier I was designed and built with materials that were not intended for long-term use. Significant repairs were successfully completed at Barrier I in October 2008. These repairs will allow Barrier I to remain in service for several more years until

November 24, 2009

Barrier IIB is completed and fully functional. Once Barrier II is fully operational, Barrier I will be taken off line and replaced with a more permanent facility.

Barrier IIA was activated in April 2009 at the same operational settings as Barrier I. Construction of Barrier IIB began in the Fall of 2009 and will be completed in 2010.



A study by independent researchers indicated that operating parameters used at Barrier I may not be effective for deterring smaller fish so the Corps initiated a research program to identify the optimal operating settings for the dispersal barriers. Based on initial results from this research the operating settings at Barrier IIA were increased in August 2009 to an operational setting of 15 pulses per second with each pulse 6.5 milliseconds long and maximum in-water field strength of 2 Volts per inch to repelling both adult and juvenile fish. The operating settings at Barrier I were not adjusted because the equipment at Barrier I is unable to operate at the higher operating settings.

The Corps also directs a monitoring program to identify the location of Asian carp relative to the barriers. In the summer of 2009 the Corps contracted with the University of Notre Dame to deploy environmental DNA monitoring (eDNA), a new monitoring method developed at Notre Dame. This method does not rely on direct observation of Asian carp to evaluate their presence. In November 2009, the eDNA method detected Asian carp as far upstream of the barriers as the O'Brien Lock on the Calumet River, seven miles from Lake Michigan; however, no Asian carp have been captured or seen above the barriers.

Studies: Two studies related to the CSSC Barriers were authorized by Congress in 2007. The first is an investigation of hazards that might compromise the effectiveness of the barriers, including potential bypassing of the barriers through the Des Plaines River or other waterways during flood flows. This study is part of the ongoing barriers project and was initiated in 2009. The second study is a comprehensive investigation of the feasibility of other approaches to prevent the inter-basin transfer of aquatic nuisance species between the Great Lakes and Mississippi River basins. The feasibility study is a separate project that was also initiated in 2009.

Maintenance: Performing scheduled maintenance is necessary to maintain reliability of the structures and minimize the risk of unplanned outages. During the first week of December 2009, the U.S. Army Corps of Engineers is planning to perform scheduled maintenance on Barrier IIA. During the maintenance shutdown, Barrier I will remain active. However, because of late summer detection of Asian carp near the barrier system and concern that Barrier I may not be effective in deterring juvenile fish, a fish toxicant called rotenone will be applied to the canal between the barrier and the Lockport Lock and Dam. This will allow for the removal of Asian carp and other fish to keep them from advancing past the barrier toward Lake Michigan. The Illinois Environmental Protection Agency will conduct water sampling to ensure that the waters of the state are protected.

Project Manager: Chuck Shea, USACE Chicago District, 312-846-5568.

November 24, 2009

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