



November 28, 2000

Suite 1650
25 East Washington Street
Chicago, Illinois
60602-1708

Tel: 312-427-4256
Fax: 312-427-6251

www.openlands.org

Board of Directors

President
Tony Dean

Treasurer
J. Timothy Ritchie

Secretary
Janis W. Notz

*Vice President
Administration*
Charles Saltzman

*Vice President
Development*
J. Bradley Davis

*Vice President
Program*
Ellen C. Newcomer

*Vice President
Policy*
Iris J. Krieg

Past President
Stephen W. Baird

Donn F. Bailey, Ph.D.
Susan S. Bell
Shaun C. Block
Richard J. Carlson, Ph.D.
Forrest E. Claypool
George W. Davis
Victoria C. Drake
Richard L. Ettlenger
Lynn B. Evans
Thomas M. Flavin
H. James Fox
John M. Haight, III
Andrew Otting
George W. Overton
Jeffrey R. Short, Jr.
Alexander D. Stuart
Mrs. William L. Taylor, Jr.
George H. Ware, Ph.D.

Honorary Directors
William J. Beecher, Ph.D.
Marshall Field V
Jack Guth
Brooks McCormick
Louise B. Young

Executive Director
Gerald W. Adelman

Affiliate
CorLands

Ms. Dorothy Gunn
Clerk of the Board
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, Illinois 60601

P.C.#14

**Re: Public Comment on R01-13: Revisions to Antidegradation Rules
(35 Ill. Adm. Code 302.105, 303.205, 303.206, and 106.990-106.995)**

Dear Ms. Gunn:

My name is Richard Acker, and I am the Regional Land Use Coordinator for Openlands Project, a non-profit organization which has been dedicated to preserving and enhancing public open space since our formation in 1963.

Openlands Project is very pleased that the State of Illinois is now considering the adoption of these antidegradation rules, which are crucial for preserving the improvements in water quality that Illinois has worked so hard to achieve. We urge the Illinois Pollution Control Board ("Board") to adopt rules that recognize the importance of protecting Illinois's waters for future generations.

We believe the proposed rules are an important step in that direction. However, the proposed rules contain several flaws that we feel should be corrected.

1.1 Our first concern is the unnecessarily difficult process for nominating an Illinois waterway for status as an Outstanding Resource Water ("ORW"). Adopting such a burdensome process would create a serious risk that citizens would seldom if ever be able to nominate Illinois waterways for ORW status.

The Board should make two changes to the proposed ORW petition process. First, it should scale back the list of entities receiving copies of an ORW petition under proposed section 106.992. It is not clear why a process to protect waterways should be so much more difficult than the process for seeking variances, NPDES permits, site-specific standards, and so on. The Board should require for ORW petitions the same type of notification as required for the vast majority of the other notification procedures in 35 IAC 106: simply filing copies with the Illinois Environmental Protection Agency ("IEPA") and the Board.

Tracking down the names and addresses of all NPDES permit holders, not to mention all those who have merely applied for NPDES permits or for section 401 certification, would be nearly impossible for citizens or public interest groups. It is also unnecessarily burdensome to require copies be sent to the Attorney General, the States Attorney of each county through which the nominated water runs, and each member of the General Assembly through whose district the nominated water runs. None of the other notification procedures in 35 IAC 106 requires notification of these individuals.

If the Board believes that entities in addition to IEPA and the Board should be notified, it should eliminate the requirement that those entities be served – a potentially expensive and difficult process – rather than simply notified by mail. Furthermore, the Board should allow those entities to be sent a notification only, instead of the entire petition, which could be quite large.

1.2. The Board should also relax the informational requirements for the ORW petition. Citizens and public interest groups are unlikely to know “current, verifiable information” on the regional economy, regional employment, and the community. Local businesses and chambers of commerce are much likelier to have that sort of information. The rules should ask those entities, not the proponents of an ORW designation, for such information.

2. Our second concern is with proposed section 302.105(a)(2), which currently gives the impression that the loss of a resident or indigenous species would not be a “degradation of an existing use” unless the species is necessary for commercial or recreational activities. Because the existence of indigenous aquatic life is itself a protected use under Subpart D of 35 IAC 302, apart from any commercial or recreational activities, proposed section 302.105(a)(2) should be clarified by ending the sentence at the word “species.”

3. Our third concern is with proposed section 302.105(d)(6), which should be deleted. There may be many cases where complying with a general NPDES permit will still cause some harm to a stream – especially where numerous discharges occur – and could degrade existing uses. Industrial and construction-site stormwater runoff, which are typically covered under general permits, have high potentials to degrade streams and rivers. These discharges should be evaluated on a case-by-case basis for their degradation potential, just like any other discharge.

4. Our fourth concern is with proposed section 303.205(b), which should also be deleted. Many low-flow streams can support diverse and important aquatic communities, and fully deserve strong protections. If a particular stream has a 7Q10 flow of zero, then that factor should be weighed as one of many considerations in determining potential ORW status – not as a general disqualification.

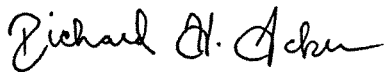
Openlands Project wishes to commend IEPA for proposing rules that do not exempt small increases in pollution from the antidegradation rules, for even small increases can eventually add up to significant harm, and must therefore be examined. Openlands also commends IEPA for not limiting the scope of the proposed rules to only the highest quality streams. The goal of antidegradation policies is to protect all waters that exceed standards, not to protect some waters while allowing backsliding on others.

Ms. Dorothy Gunn

Page 3 of 3

Openlands Project thanks the Illinois Pollution Control Board for the opportunity to submit these comments. We understand the considerable effort that the Board, IEPA, and many stakeholders have put into this process. Openlands hopes that our comments will help the Board achieve the goals of protecting Illinois' high quality waters and ensuring that the progress we make in cleaning up our state's waters is never lost.

Sincerely,

A handwritten signature in cursive script that reads "Richard H. Acker".

Richard H. Acker
Regional Land Use Coordinator
Openlands Project
25 East Washington Street, Suite 1650
Chicago, Illinois 60602-1708