

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
WATER QUALITY STANDARDS AND)
EFFLUENT LIMITATIONS FOR THE) R08-09B
CHICAGO AREA WATERWAY SYSTEM) (Rulemaking – Water)
AND THE LOWER DES PLAINES RIVER:)
PROPOSED AMENDMENTS TO 35 ILL..)
ADM. CODE PARTS 301, 302, 303 and 304)

NOTICE OF FILING

To:

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Persons on the attached service list

Please take notice that on the 10th Day of November, 2011, I filed with the Office of the Clerk of the Illinois Pollution Control Board the attached **Environmental Groups' Comments Concerning Proposed Effluent Bacteria Standards**, a copy of which is hereby served upon you.



By: _____
Ann Alexander, Natural Resources Defense Council

Dated: November 10th, 2011

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CERTIFICATE OF SERVICE

I, Ann Alexander, the undersigned attorney, hereby certify that I have served the attached **Environmental Groups' Comments Concerning Proposed Effluent Bacteria Standards** on all parties of record (Service List attached), by depositing said documents in the United States Mail, postage prepaid, from 227 W. Monroe, Chicago, IL 60606, before the hour of 5:00 p.m., on this 10th Day of November, 2011.

A handwritten signature in blue ink that reads "Ann Alexander". The signature is written in a cursive style.

Ann Alexander, Natural Resources Defense Council

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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| IN THE MATTER OF: |) | |
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| WATER QUALITY STANDARDS AND |) | |
| EFFLUENT LIMITATIONS FOR THE |) | R08-09B |
| CHICAGO AREA WATERWAYS SYSTEM |) | (Rulemaking- Water) |
| (CAWS) AND THE LOWER DES PLAINES |) | |
| RIVER: PROPOSED AMENDMENTS TO |) | |
| 35 Ill. Adm. Code Parts 301, 302, 303 and 304 |) | |
| (Recreational Use Designations) |) | |

**ENVIRONMENTAL GROUPS' COMMENTS
CONCERNING PROPOSED EFFLUENT BACTERIA STANDARDS**

Natural Resources Defense Council (“NRDC”), Environmental Law & Policy Center, Friends of the Chicago River, Openlands, Alliance for the Great Lakes, Southeast Environmental Task Force, Prairie Rivers Network, and Sierra Club-Illinois Chapter (collectively, “Environmental Groups”) submit these comments concerning the Board’s decision on first notice in Subdocket B dated July 7, 2011 (“First Notice Decision”).

The decision is a worthy culmination of a long process and much hard work by everyone involved, most notably the Board. We are pleased both that the Board has ordered long-overdue disinfection for wastewater treatment plants (“WWTPs”) discharging into much of the CAWS, and that the Environmental Groups have succeeded in reaching agreement with Illinois Environmental Protection Agency (“IEPA”) and the Metropolitan Water Reclamation District (“MWRD”) concerning the major substantive issues on which the Board requested comment. That agreement is set forth in a joint statement being filed contemporaneously with this comment (“Joint Statement”).

The purpose of this separate comment from the Environmental Groups is to clarify our position concerning the Board's decision concerning two particular issues: (i) the length of the recreational season, which in turn governs the annual duration of the requirement of disinfection at the Northside and Calumet WWTPs; and (ii) the determination that effluent disinfection is unnecessary at the Stickney WWTP, together with the related determination that numeric recreational use criteria are unnecessary in the Chicago Sanitary and Ship Canal ("CSSC") and other waters not designated Primary Contact Recreational use by the Board. In sum, with respect to (i), we strongly support the Board's determination to adopt the IEPA proposal for a March 1 through November 30 recreational season, given information indicating that the CAWS is used by a significant number of recreators (especially rowing teams) before and after the shorter General Use season. With respect to (ii), we believe it is critical that the Board recognize the insufficiency of the CHEERS study as a basis for concluding that disinfection is unnecessary for the incidental contact waters, and base the decision instead on the currently minimal use of the CSSC for purposes likely to result in significant water contact.

I. The March 1 Through November 30 Season Should Apply to Both the Effluent Disinfection Requirement and the Agreed-Upon Fecal Coliform Criteria

In its First Notice Decision, the Board observed as follows concerning the appropriate length of the recreational season on the CAWS:

The IEPA originally proposed that effluent limits for human pathogen discharges be imposed during the time period March 1 through November 30 based on observations of recreational use of the waterways *See* PC 568 at 8. For example, rowing teams use segments of the CAWS designated for Primary Contact Recreation use as early as March and as late as November. *Id.* Therefore, the Board will propose a rule applying the effluent limit for fecal coliform of 400 CFU per 100 mL from March 1 to November 30.

First Notice Decision at 113-14. This determination was sound and supported by the record in this proceeding.¹ Additionally, given the agreement set forth in the Joint Statement concerning numeric recreational criteria, the Environmental Groups ask that the Board apply those standards for the extended March 1 to November 30 recreation season.

The case for doing so is particularly strong given that, in the intervening time since the First Notice Decision was filed, Friends of the Chicago River conducted additional polling concerning the seasonal time from for CAWS recreation, in particular crew team usage. The results strongly support the Board's decision. The Friends polling identified the following teams with seasons extending beyond the April through October general use season:

1. Chicago Training Center (middle school and high school): March 1 through October 31.
2. Lincoln Park Juniors (middle school and high school): March 1 through June, September through Thanksgiving.
3. New Trier Rowing (high school): March 1 through June, August through October 31
4. North Park University (college): Mid-March through Mid-May, September 1 into Mid-October
5. Northwestern University (college): March 1 through May, September into the first week of November
6. St. Ignatius College Prep (high school): March 1 through June, August October 31

The survey is incomplete, as not all teams have responded to it. But this sampling strongly supports the need to protect some of the most frequent – and, in the case of the younger middle school children, vulnerable – populations on the River.

¹ See PC 568, "Post Hearing Comments of the Illinois EPA," p. 8; IEPA Statement of Reasons, Att. B.

II. The CHEERS Study Should Not Be, and Need Not Be, the Basis for the Board's Determination the Disinfection is Unnecessary to Support Incidental Contact Recreation

As set forth in the accompanying joint statement, the Environmental Groups are in agreement with the Board's conclusion that disinfection need not be required at the Stickney WWTP at this time based on currently available information, nor is there currently sufficient information to conclude that numeric or narrative criteria are necessary to protect the Incidental Contact Recreation use in the CSSC. We further understand that, given the thrust of USEPA's focus on the Primary Contact Recreation waters and what is needed to protect them, the Board may well have seen fit – appropriately, in our view – to follow the federal lead and confine its focus to those waters as well. As such, the Board undoubtedly did not see the need for protracted analysis of what is necessary to protect the Incidental Contact Recreation waters, and hence referenced the CHEERS study as conclusive.

However, the wholesale reliance the Board has placed on the CHEERS results is both unnecessary and, we believe, prone to being misinterpreted as bad precedent. It would be unfortunate if future decisionmakers, in Illinois or elsewhere, were to conclude that a single epidemiologic study is sufficient basis for concluding that public health protections are unnecessary, given the overwhelming scientific consensus against this approach.² The Board would do better to hold only to its more basic and more sound conclusion that “Currently the record for establishing an effluent standard for Incidental Contact Recreation is not as convincing as for Primary Contact Recreation” (First Notice Decision at 115) and leave it at that.

² See Comments of Environmental Groups on the Proposed Rules Establishing Recreational Use Designations for the Chicago Area Waterway System and the Lower Des Plaines River dated January 3, 2011 (“January 3 Comments”) at 36.

There is no need to revisit here the extensive testimony and briefing concerning the identified shortcomings with CHEERS.³ But our concern is that the Board has needlessly placed more reliance than necessary on a problematic study, and in doing so invites other wastewater treatment and public health decisionmakers – in Illinois and perhaps elsewhere – to put misplaced reliance on insufficient epidemiologic research.⁴

We believe there is a better approach, which avoids these problems while still supporting the Board's conclusion. The CSSC below Stickney differs from the other waterways originally proposed by IEPA as Incidental Contact Recreation (now designated Primary Contact Recreation) in that there are currently fewer boat launches on this stretch⁵, fewer recreators using it, and in particular fewer canoers, kayakers, and jet skiers⁶ – *i.e.*, uses most likely to get one wet, as opposed to drier activities such as power boating – as compared to the now-Primary Contact Recreation stretches.⁷ Thus, we can agree to disagree as to whether the upriver Primary Contact

³ We note that the Board does not provide a complete and accurate characterization of the plethora of concerns expressed regarding the CHEERS study as a basis for decision. The First Notice Decision states that “[t]he relevance of CHEERS has been challenged by IEPA and others; however, the Board cannot ignore the results.” In fact, however, neither the Environmental Groups nor USEPA – which, we note, was even more vocal than IEPA in its critique of CHEERS – challenged the “relevance” of CHEERS, or suggested that it should be “ignored” and not considered at all. The Environmental Groups in particular went out of their way to make clear that the CHEERS study was fundamentally sound scientifically, and that any study of this nature is *one piece* of information that should be considered. January 3 Comments at 29. What concerned us, however, were twin problems: first, that replication is particularly critical given the nature of epidemiologic research – particularly where, as here, prior research results are contradicted (January 3 Comments at 45); and second, that there were a host of gaps and flaws in the CHEERS study, none fatal to its overall scientific integrity but all casting serious doubt on the appropriateness of basing a large-scale public health decision on this one study (or any one study).

⁴ We note, in particular, that the Board's brief reference to the CHEERS study disregards a critical problem identified by both the Environmental Groups and USEPA, which may needlessly invite others to do the same. The Board references the CHEERS study finding that “recreators on the CAWS are at no more risk of gastrointestinal illness than those recreating on GUW,” without reference to the extensive testimony and comment by both the Environmental Groups and USEPA demonstrating that the comparison was made to contaminated GUW waters and was hence entirely inapt. *Id.* at 33 *et seq.*

⁵ See *e.g.* Exh. 346, “Chicago Area Waterway System Recreational Access Points and Proposed Uses”; Exh. 264, “Boat Launches Clark Park to River North Park.”

⁶ See “Comments of the First Notice of Proposed Rules Establishing Recreational Use Designations for the Chicago Area Waterway System and the Lower Des Plaines River,” PC# 555, Att. A.

⁷ *Id.*; See also PC 584, cc of Letter from Nancy K. Stoner, Acting Assistant Administrator of USEPA to Lisa Bonnett, Interim Director, IEPA.

stretches would have required disinfection had they been designated Incidental Contact instead as originally proposed. The Environmental Groups made a case that it would have been necessary particularly given the extensive presence of “wet” activities (canoeing, kayaking, jet skiing) in those stretches, and the many pre-existing epidemiologic studies linking such activities to health risks on sewage-contaminated waterways. However, that question is no longer before the Board. Given that recreational uses, and in particular “wet” uses, are far less prevalent in the area below Stickney, it would be entirely appropriate and consistent with the record for the Board to find simply that there is insufficient basis to conclude based on current use patterns that the area below Stickney requires disinfection.

Accordingly, the Environmental Groups respectfully request that the Board’s decision be amended to eliminate the current discussion of the CHEERS study (third full paragraph at 115 of the First Notice Decision) and replace it with a statement that there is currently insufficient data in CHEERS or otherwise to support the need for disinfection at Stickney given current use patterns. The Board should also note that both those use patterns and the level of available information are likely to change over time, and that accordingly IEPA must re-evaluate the matter in connection with both triennial reviews of the CAWS and 5-year renewals of MWRD’s Stickney NPDES permit. We note, in this regard, that the First Notice Decision appropriately invites IEPA to propose bacterial standards for the CAWS and Lower Des Plaines River after USEPA provides guidance for such standards, currently anticipated in 2012.

Conclusion

The Environmental Groups therefore respectfully request that the Board (i) adopt the provisions identified in the Joint Statement of IEPA, MWRD, and the Environmental Groups that accompanies this comment, (ii) apply the March 1 through November 30 recreational season

to both the effluent discharge limitation and the numeric recreational criteria, and (iii) amend the language in the First Notice Decision concerning disinfection at the Stickney WWTP as described in Point II herein.

Dated: November 10, 2011

Respectfully submitted,

NATURAL RESOURCES DEFENSE
COUNCIL

ENVIRONMENTAL LAW & POLICY
CENTER

OPENLANDS

SIERRA CLUB—ILLINOIS CHAPTER

SOUTHEAST ENVIRONMENTAL TASK
FORCE

PRAIRIE RIVERS NETWORK

FRIENDS OF THE CHICAGO RIVER

ALLIANCE FOR THE GREAT LAKES

By:



NRDC Senior Attorney and authorized to
represent all of the above parties with regard
to this objection