

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

To:

John Therriault, Clerk
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 James R. Thompson Center
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Marie Tipsord, Hearing Officer
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Persons included on the attached
SERVICE LIST

PLEASE TAKE NOTICE that on August 30, 2013, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois **ENVIRONMENTAL GROUPS' COMMENTS IN RESPONSE TO THE COMMENTS OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, a copy of which is attached hereto and herewith served upon you.

Respectfully Submitted,



Albert Ettinger
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DATED: August 30, 2013

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**ENVIRONMENTAL GROUPS' COMMENTS IN RESPONSE TO THE COMMENTS OF
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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”) agree with many of the comments submitted by the United States Environmental Protection Agency (USEPA) regarding the proposed use designations for the Chicago Area Waterways System (CAWS) and the Lower Des Plaines River (LDPR). In particular, while adhering to our agreement with the Metropolitan Water Reclamation District (MWRD) regarding the proper designations for the CAWS, the Environmental Groups agree with USEPA that the presence of pollutants from combined sewer overflows (CSOs) and other pollutants in these water bodies should not form the basis for a sub-fishable/swimmable use designation. Further, the Board should reconsider its “B” designation for the Brandon Pool of the LDPR, as discussed in our earlier comments.

The Environmental Groups also agree with USEPA that the aquatic life use standards should protect all aquatic life, not just fish, and that Illinois should update its recreational use criteria.

I. Pollution that can be remedied should not be used as the basis for designating uses less protective than fishable/swimmable.

It is clear from the record that many of the water quality problems in the CAWS and LDPR stem from CSOs controlled by the MWRD or others, and from phosphorus, suspended solids and other pollutants discharged by the MWRD and smaller sources. The fact that this pollution will take time to correct may form part of the justification for a variance, but cannot be used to justify a use designation below the Clean Water Act goal under 40 CFR 131.10(g).

The Environmental Groups do not agree with USEPA that the record shows that the Tunnel and Reservoir Plan (TARP) will eliminate CSOs. There is considerable evidence in the UAA record provided by MWRD itself that TARP alone will not eliminate CSOs. However, although the record shows that TARP alone will not resolve CSOs, the record does not show that TARP in combination with other measures such as green infrastructure, stormwater regulation and CSO treatment cannot eliminate CSOs. As such, the existence of CSOs in itself is not a sufficient basis for designating uses less protective than fishable/swimmable.

II. The Board should reconsider its “B” Designation of the Brandon Pool.

The Environmental Groups agree with the USEPA that the record does not establish that the hydro-modification present in the Brandon Pool prevents attainment of at least the “A” use designation (US EPA comment, June 27, 2013, p. 3). Many Illinois waters upstream of dams are currently designated as general use. In addition, the fact that the Brandon pool is polluted by inadequately treated sewage, CSOs, and other forms of pollution has not been shown to be beyond remedy.

Further, as USEPA suggests with regard to other water segments (US EPA comment, p.2), the fact that a water segment is “hydrologically connected” to another segment may be relevant to its designation. The Brandon Pool is directly connected to the Upper Des Plaines

River, which is designated general use. Finally, as shown in testimony and comments presented in our Post-Hearing and First Notice comments, it is clear that fish do travel from the Upper Des Plaines into the Brandon Pool, and that much habitat in the Upper Des Plaines is available to fish and other aquatic life in the Brandon Pool.

CONCLUSION

The Board should revise its Subdocket C decision to the limited extent that it relies on CSOs or other forms of pollution to justify use designations below the Clean Water Act goal, and should reconsider its decision to designate the Brandon Pool as Aquatic Life Use B.

Dated: August 30, 2013

Respectfully submitted,



ENVIRONMENTAL LAW & POLICY CENTER
FRIENDS OF THE CHICAGO RIVER
NATURAL RESOURCES DEFENSE COUNCIL
OPENLANDS
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*Authorized to represent the parties listed above for
the purposes of these post-hearing comments*

CERTIFICATE OF SERVICE

I, Albert Ettinger, hereby certify that I have served the attached ENVIRONMENTAL GROUPS' COMMENTS IN RESPONSE TO THE COMMENTS OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY upon the below service list via the United States Mail, postage prepaid, in Chicago, Illinois on August 30, 2013.



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