

An Environmentalist Perspective on Use Attainability Analysis and the Lower Des Plaines River UAA

Albert Ettinger, Senior Staff Attorney
Environmental Law and Policy Center of the Midwest

The portion of the Des Plaines River below the river's confluence with the Chicago Sanitary and Ship Canal historically has had very poor water quality as a result of the reversal of the Chicago River, decades of untreated discharges of wastewater from Chicago, heat discharges from power plants, barge traffic and channel modifications. The Lower Des Plaines has been classified as "Secondary Contact and Indigenous Aquatic Life." The great improvement in water quality that has occurred in the last three decades makes it possible now to consider upgrading the designation of the Lower Des Plaines to General Use. The Illinois Environmental Protection Agency is leading a study of reclassification of the lower Des Plaines in which representative of Region 5 USEPA, dischargers and environmental groups are participating. Most of the issues presented by UAAs are now the subject of discussions occurring in the context of the Lower Des Plaines study.

The Des Plaines UAA is interesting in that it is an example of a UAA being performed to determine whether a classification lower than fishable and swimmable should be altered to increase applicable standards. Such reconsideration should be commonplace and required as part of state triennial reviews. Further, many of the basic problems of UAAs are well illustrated by consideration of the Lower Des Plaines, which is a water that certainly has been impacted by human uses and abuses, but which is increasingly becoming an important asset. Population growth and new parkland being developed in the region, including the Midewin National Tallgrass Prairie, have raised the stakes for the Lower Des Plaines.

Clearly there is a need for public participation in the UAA process and should be a strong bias under the Clean Water Act against designations that are less than fishable and swimmable. People generally do not want their local waters designated as "effluent modified waters" or otherwise surrendered to pollution. The Clean Water Act does not only require that water quality be restored where it is cheap and easy to do so. However, it is important to determine what uses can reasonably be hoped for given the legal and economic standard set forth by 40 CFR 131.10(g) and the current state of a highly-modified system. While some uses are not possible given the modifications that have occurred to the Lower Des Plaines, many natural recreational uses should be protected. This should involve a careful consideration of both biological and economic factors affecting the potential uses possible in the water.