

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VILLAGE OF HOMEWOOD, HOMEWOOD)	
ILLINOIS, VILLAGE OF ORLAND PARK,)	
ORLAND PARK ILLINOIS, VILLAGE OF)	
MIDLOTHIAN, MIDLOTHIAN ILLINOIS,)	
VILLAGE OF TINLEY PARK, TINLEY PARK)	
ILLINOIS, EXXONMOBIL OIL)	
CORPORATION, VILLAGE OF WILMETTE,)	
WILMETTE ILLINOIS, CITY OF COUNTRY)	
CLUB HILLS, COUNTRY CLUB HILLS)	
ILLINOIS, NORAMCO-CHICAGO, INC.,)	
FLINT HILLS RESOURCES JOLIET LLC,)	
CITY OF EVANSTON, EVANSTON)	
ILLINOIS, VILLAGE OF SKOKIE, SKOKIE)	PCB 16-14 (Homewood)
ILLINOIS, ILLINOIS DEPARTMENT OF)	PCB 16-15 (Orland Park)
TRANSPORTATION, METROPOLITAN)	PCB 16-16 (Midlothian)
WATER RECLAMATION DISTRICT OF)	PCB 16-17 (Tinley Park)
GREATER CHICAGO, VILLAGE OF)	PCB 16-18 (ExxonMobil)
RICHTON PARK, RICHTON PARK)	PCB 16-20 (Wilmette)
ILLINOIS, VILLAGE OF LINCOLNWOOD,)	PCB 16-21 (Country Club Hills)
LINCOLNWOOD ILLINOIS, CITY OF OAK)	PCB 16-22 (Noramco-Chicago)
FOREST, OAK FOREST ILLINOIS, VILLAGE)	PCB 16-23 (Flint Hills Resources)
OF LYNWOOD, LYNWOOD ILLINOIS,)	PCB 16-25 (Evanston)
CITGO HOLDINGS, INC., VILLAGE OF)	PCB 16-26 (Skokie)
NEW LENOX, NEW LENOX ILLINOIS, CITY)	PCB 16-27 (IDOT)
OF LOCKPORT, LOCKPORT ILLINOIS,)	PCB 16-29 (MWRDGC)
CATERPILLAR, INC., CITY OF CREST)	PCB 16-30 (Richton Park)
HILL, CREST HILL ILLINOIS, CITY OF)	PCB 16-31 (Lincolnwood)
JOLIET, JOLIET ILLINOIS, MORTON SALT,)	PCB 16-33 (Oak Forest)
INC., CITY OF PALOS HEIGHTS, PALOS)	PCB 19-7 (Village of Lynwood)
HEIGHTS ILLINOIS, VILLAGE OF)	PCB 19-8 (Citgo Holdings)
ROMEOVILLE, ROMEOVILLE ILLINOIS,)	PCB 19-9 (New Lenox)
IMTT ILLINOIS LLC, STEPAN CO.,)	PCB 19-10 (Lockport)
VILLAGE OF PARK FOREST, PARK)	PCB 19-11 (Caterpillar)
FOREST ILLINOIS, OZINGA READY MIX)	PCB 19-12 (Crest Hill)
CONCRETE, INC., OZINGA MATERIALS,)	PCB 19-13 (Joliet)
INC., MIDWEST MARINE TERMINALS LLC,)	PCB 19-14 (Morton Salt)
VILLAGE OF MOKENA, MOKENA)	PCB 19-15 (Palos Heights)
ILLINOIS, VILLAGE OF OAK LAWN, OAK)	PCB 19-16 (Romeoville)
LAWN ILLINOIS, VILLAGE OF DOTON,)	PCB 19-17 (IMTT Illinois)
DOTON ILLINOIS, VILLAGE OF)	PCB 19-18 (Stepan)
GLENWOOD, GLENWOOD ILLINOIS,)	PCB 19-19 (Park Forest)
VILLAGE OF MORTON GROVE, MORTON)	PCB 19-20 (Ozinga Ready Mix)
GROVE ILLINOIS, VILLAGE OF LANSING,)	PCB 19-21 (Ozinga Materials)
LANSING ILLINOIS, VILLAGE OF)	PCB 19-22 (Midwest Marine)

FRANKFORT, FRANKFORT ILLINOIS,	)	PCB 19-23 (Mokena)
VILLAGE OF WINNETKA, WINNETKA	)	PCB 19-24 (Oak Lawn)
ILLINOIS, VILLAGE OF LA GRANGE, LA	)	PCB 19-25 (Dolton)
GRANGE ILLINOIS, VILLAGE OF	)	PCB 19-26 (Glenwood)
CHANNAHON, CHANNAHON ILLINOIS,	)	PCB 19-27 (Morton Grove)
COOK COUNTY DEPARTMENT OF	)	PCB 19-28 (Lansing)
TRANSPORTATION AND HIGHWAYS,	)	PCB 19-29 (Frankfort)
VILLAGE OF NILES, NILES ILLINOIS,	)	PCB 19-30 (Winnetka)
SKYWAY CONCESSION COMPANY LLC,	)	PCB 19-31 (La Grange)
VILLAGE OF ELWOOD, ELWOOD	)	PCB 19-33 (Channahon)
ILLINOIS, CITY OF CHICAGO, CHICAGO	)	PCB 19-34 (CCDTH)
ILLINOIS, VILLAGE OF CRESTWOOD,	)	PCB 19-35 (Niles)
CRESTWOOD ILLINOIS and VILLAGE OF	)	PCB 19-36 (Skyway)
RIVERSIDE, RIVERSIDE ILLINOIS	)	PCB 19-37 (Elwood)
	)	PCB 19-38 (Chicago)
Petitioners,	)	PCB 19-40 (Crestwood)
	)	PCB 19-48 (Riverside)
v.)	
	)	(Time-Limited Water Quality
ILLINOIS ENVIRONMENTAL PROTECTION	)	Standard)
AGENCY,	)	(Consolidated)
)	
Respondent.)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on April 21, 2020 IMTT Illinois, LLC electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, its Post-Hearing Comments, copies of which are hereby served upon you.

IMTT Illinois, LLC

By: /s/ David L. Rieser
One of Its Attorneys

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PROOF OF SERVICE

The undersigned attorney certifies, under penalties of perjury pursuant to 735 ILCS 5/1-109, that he caused a copy of the foregoing **Post-Hearing Comments** to be served by sending an email to the email addresses designated in the attached Service List on or before 5:00 pm on April 21, 2020.

/s/ David L. Rieser

One of Its Attorneys

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BEFORE THE ILLINOIS POLLUTION
CONTROL BOARD

VILLAGE OF HOMEWOOD,)	
HOMEWOOD ILLINOIS, VILLAGE OF)	
ORLAND PARK, ORLAND PARK)	
ILLINOIS, VILLAGE OF MIDLOTHIAN,)	
MIDLOTHIAN ILLINOIS, VILLAGE OF)	
TINLEY PARK, TINLEY PARK ILLINOIS,	)	PCB 16-14 (Homewood)
EXXONMOBIL OIL CORPORATION,	)	PCB 16-15 (Orland Park)
VILLAGE OF WILMETTE, WILMETTE	)	PCB 16-16 (Midlothian)
ILLINOIS, CITY OF COUNTRY CLUB	)	PCB 16-17 (Tinley Park)
HILLS, COUNTRY CLUB HILLS	)	PCB 16-18 (ExxonMobil)
ILLINOIS, NORAMCO-CHICAGO, INC.,	)	PCB 16-20 (Wilmette)
FLINT HILLS RESOURCES JOLIET LLC,	)	PCB 16-21 (Country Club Hills)
CITY OF EVANSTON, EVANSTON	)	PCB 16-22 (Noramco-Chicago)
ILLINOIS, VILLAGE OF SKOKIE,	)	PCB 16-23 (Flint Hills Resources)
SKOKIE ILLINOIS, ILLINOIS	)	PCB 16-25 (Evanston)
DEPARTMENT OF TRANSPORTATION,	)	PCB 16-26 (Skokie)
METROPOLITAN WATER	)	PCB 16-27 (IDOT)
RECLAMATION DISTRICT OF	)	PCB 16-29 (MWRDGC)
GREATER CHICAGO, VILLAGE OF	)	PCB 16-30 (Richton Park)
RICHTON PARK, RICHTON PARK	)	PCB 16-31 (Lincolnwood)
ILLINOIS, VILLAGE OF	)	PCB 16-33 (Oak Forest)
LINCOLNWOOD, LINCOLNWOOD	)	PCB 19-7 (Village of Lynwood)
ILLINOIS, CITY OF OAK FOREST, OAK	)	PCB 19-8 (Citgo Holdings)
FOREST ILLINOIS, VILLAGE OF	)	PCB 19-9 (New Lenox)
LYNWOOD, LYNWOOD ILLINOIS,	)	PCB 19-10 (Lockport)
CITGO HOLDINGS, INC., VILLAGE OF	)	PCB 19-11 (Caterpillar)
NEW LENOX, NEW LENOX ILLINOIS,	)	PCB 19-12 (Crest Hill)
CITY OF LOCKPORT, LOCKPORT	)	PCB 19-13 (Joliet)
ILLINOIS, CATERPILLAR, INC., CITY	)	PCB 19-14 (Morton Salt)
OF CREST HILL, CREST HILL ILLINOIS,	)	PCB 19-15 (Palos Heights)
CITY OF JOLIET, JOLIET ILLINOIS,	)	PCB 19-16 (Romeoville)
MORTON SALT, INC., CITY OF PALOS	)	PCB 19-17 (IMTT Illinois)
HEIGHTS, PALOS HEIGHTS ILLINOIS,	)	PCB 19-18 (Stepan)
VILLAGE OF ROMEOVILLE,	)	PCB 19-19 (Park Forest)
ROMEOVILLE ILLINOIS, IMTT	)	PCB 19-20 (Ozinga Ready Mix)
ILLINOIS LLC, STEPAN CO., VILLAGE	)	PCB 19-21 (Ozinga Materials)
OF PARK FOREST, PARK FOREST	)	PCB 19-22 (Midwest Marine)
ILLINOIS, OZINGA READY MIX	)	PCB 19-23 (Mokena)
CONCRETE, INC., OZINGA	)	PCB 19-24 (Oak Lawn)
MATERIALS, INC., MIDWEST MARINE	)	PCB 19-25 (Dolton)
TERMINALS LLC, VILLAGE OF	)	PCB 19-26 (Glenwood)
MOKENA, MOKENA ILLINOIS,	)	PCB 19-27 (Morton Grove)
VILLAGE OF OAK LAWN, OAK LAWN	)	PCB 19-28 (Lansing)

ILLINOIS, VILLAGE OF DOLTON,	)	PCB 19-29 (Frankfort)
DOLTON ILLINOIS, VILLAGE OF	)	PCB 19-30 (Winnetka)
GLENWOOD, GLENWOOD ILLINOIS,	)	PCB 19-31 (La Grange)
VILLAGE OF MORTON GROVE,	)	PCB 19-33 (Channahon)
MORTON GROVE ILLINOIS, VILLAGE	)	PCB 19-34 (CCDTH)
OF LANSING, LANSING ILLINOIS,	)	PCB 19-35 (Niles)
VILLAGE OF FRANKFORT,	)	PCB 19-36 (Skyway)
FRANKFORT ILLINOIS, VILLAGE OF	)	PCB 19-37 (Elwood)
WINNETKA, WINNETKA ILLINOIS,	)	PCB 19-38 (Chicago)
VILLAGE OF LA GRANGE, LA GRANGE	)	PCB 19-40 (Crestwood)
ILLINOIS, VILLAGE OF CHANNAHON,	)	PCB 19-48 (Riverside)
CHANNAHON ILLINOIS, COOK	)	(Time-Limited Water Quality
COUNTY DEPARTMENT OF	)	Standard)
TRANSPORTATION AND HIGHWAYS,	)	(Consolidated)
VILLAGE OF NILES, NILES ILLINOIS,)	
SKYWAY CONCESSION COMPANY)	
LLC, VILLAGE OF ELWOOD, ELWOOD)	
ILLINOIS, CITY OF CHICAGO,)	
CHICAGO ILLINOIS, VILLAGE OF)	
CRESTWOOD, CRESTWOOD ILLINOIS)	
and VILLAGE OF RIVERSIDE,)	
RIVERSIDE ILLINOIS,)	
)	
Petitioners,)	
)	
v.)	
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	
)	

PETITIONER IMTT’S POST HEARING COMMENTS

IMTT Illinois, LLC (“IMTT”) by and through its attorneys, K&L Gates, LLP, submits these Post-Hearing Comments.

With the following exception, IMTT agrees with and adopts the Post-Hearing Comments submitted by MWRD. That exception is the MWRD’s comments on the issue of watershed workgroups.

During the hearing and in comments afterwards there were a number of statements lauding the importance of participating in groups. EPA, in their comments, went so far as to say that work group participation will result in the “highest attainable condition.” All of these hortatory comments assume that the groups will achieve positive results, but as anyone who has participated in groups knows, this is far from a sure thing. Groups can be highly functional or highly dysfunctional depending on any number of factors including the quality of leadership, the commitment of the members, the clarity of their goals and the rules they adopt to function. It may be, as MWRD states, that groups can be useful tools in achieving the limited goals of fostering communications among stakeholders and sharing information as necessary for five year reports. Yet, the regulated community is capable of working together to achieve a common goal outside of a formal group structure, as the Petitioners have shown in this proceeding.

There are at least three central problems with mandating group participation in NPDES permits and as a condition for obtaining relief under this variance. First, there is not a shred of legal authority to make group participation mandatory. When directly asked, Illinois EPA could not point to any statute that authorized making workgroup participation a permit condition but stated that it wasn't specifically prohibited. Yet, as the Board is aware, administrative agencies only have the power granted to them by statutes and the lack of prohibition is not the same thing as a grant of authority. This issue is heightened in environmental statutes which have civil and criminal penalties for non-compliance. There is no federal statutory authority either and EPA did not point to any in its comments.

The second issue is the lack of specific goals for the groups to achieve. Participation is mandated but the main stakeholders have divergent ideas about what that participation is intended to accomplish. This divergence points to the lack of need for these groups: if there is no

clarity or agreement on what they are to accomplish, there is probably no need for mandatory participation, let alone making non-participation punishable by fines. Similarly if there are no goals there are no criteria by which to judge the effectiveness of the group or individual participation.

The final issue is the lack of procedures. The decisions of these groups are intended to be a basis for determining compliance with the individual members' permits but there is no clear standard for how the groups will be governed and what rights individual members might have. The individual members may or may not have any control over what decisions these groups make. If the group decision is contrary to what they believe is necessary to comply, the member is in an untenable position. Leaving the group would create non-compliance but staying with the group might create non-compliance with different rules.

In short, no one has made the case for why workgroups are necessary and why participation should be mandated by variance and permit conditions. In addition no one has identified the problem with allowing a workgroup to develop organically in response to a specific need. The Board need look no further than this proceeding for a clear example of that. Petitioners here worked cooperatively in responding to the Board's questions and in managing the hearing even without a mandated structure. MWRD unquestionably took a lead role, but individual petitioners took the opportunity to address their own issues as they saw fit. In the absence of a specific role for the workgroup, the Board should consider allowing the Petitioners to use their actual experience in determining whether a work group is a necessity.

As always, IMTT appreciates the opportunity to submit these comments.

Dated: April 21, 2020

Respectfully submitted,

IMTT Illinois, LLC

By: /s/ David L. Rieser
One of Its Attorneys

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