

ILLINOIS POLLUTION CONTROL BOARD
March 11, 1993

MARATHON OIL COMPANY,)
)
 Petitioner,)
)
 v.) PCB 92-166
) (Permit Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by R.C. Flemal):

On February 25, 1993, Marathon Oil Company (Marathon) filed a motion to supplement the record in this proceeding. Marathon contends that a number of documents that were not included in the record have a bearing on the proceeding and were contemplated by Illinois Environmental Protection Agency (Agency) personnel during the period that Marathon's application was pending. The material Marathon seeks to have included in the record are summarized as follows:

The Discharge Monitoring Reports (DMRs) for each permitted discharge upstream of Marathon's discharge for the two years preceding the issuance of the permit.

Any other documentation in the possession of the Agency concerning other dry weather, man-made sources of flow upstream of Marathon's discharge.

All documents prepared by Illinois State Water Survey in determining the stream flow rate.

Any rules used by the Agency governing the issuance of NPDES permits.

Any documents relating to the identification of this stream segment as toxic.

All documents relating to acute or chronic toxicity in discharges upstream of Marathon's discharge.

Reports prepared by Marathon and its consultants relating to stream toxicity, upstream flows, and stream biota that have been submitted to the Agency.

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The Agency filed its response to the motion on March 5, 1993. The Agency argues that the Board's rules at 35 Ill. Adm. Code 105.102(b)(5) only require that the Agency answer or record in NPDES permit appeals contain the hearing file of any hearing held before the Agency with exhibits, the NPDES permit application, NPDES permit denial or issuance letter, and all correspondence with the applicant concerning the application. The Agency states that it has filed all such documents that existed at the time it filed its answer on December 2, 1992. In general, the Agency objects to the inclusion of the all the documents that Marathon requests to be submitted by the Agency.

The Board notes that portions of Marathon's motion are in the nature of a discovery request. A motion to supplement the record is not the proper avenue for discovery to take place. Further, Marathon does not allege that Section 105.102(b)(5) has not been complied with, but rather that the record does not contain documents the Agency could have or should have considered at the time the Agency reviewed Marathon's application. The Board finds that if Marathon believes that certain documents it possesses may have been considered by the Agency, it may include these documents as exhibits to its petition and argue the merits of their inclusion in the Board's record at hearing.

The Board hereby denies Marathon's motion to supplement the record. However, Marathon may raise the issue at hearing subject to the directives of this order.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 17th day of March, 1993, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board