

ILLINOIS POLLUTION CONTROL BOARD

December 20, 2007

CITGO PETROLEUM CORPORATION and)	
PDV MIDWEST REFINING, L.L.C.,)	
)	
Petitioners,)	
)	
v.)	PCB 08-33
)	(Variance – Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by T.E. Johnson):

On November 14, 2007, CITGO Petroleum Corporation (CITGO) and PDV Midwest Refining, L.L.C. (PDVMR) (petitioners) filed a petition to extend the variance issued by the Board in CITGO Petroleum Corporation and PDV Midwest Refining, L.L.C. v. IEPA, PCB 05-85 (Apr. 21, 2005). The variance and the petition for extension (Pet.) concern an oil refinery in Lemont, Will County (Lemont Refinery), which CITGO operates and PDVMR owns. Petitioners have waived hearing. In this order, the Board first generally describes the PCB 05-85 proceeding and the requested variance extension. The Board then identifies several informational deficiencies in the petition and directs petitioners to file an amended petition to provide the additional information.

BACKGROUND ON PCB 05-85

In PCB 05-85, the Board granted CITGO and PDVMR a variance from two Board water quality standards for Total Dissolved Solids (TDS): the general use water quality standard for TDS of 1,000 milligrams per liter (mg/L) at 35 Ill. Adm. Code 302.208(g); and the secondary contact and indigenous aquatic life water quality standard for TDS of 1,500 mg/L at 35 Ill. Adm. Code 302.407. The variance relief lasts through December 15, 2009, and is subject to various conditions. Before granting the variance, the Board found that petitioners proved that compliance with the TDS water quality standards would impose an arbitrary or unreasonable hardship on petitioners, and that the requested variance is not inconsistent with federal law and may be issued without any significant impact on public health or the environment.

The variance is intended to allow petitioners greater amounts of TDS in their wastewater discharge to the Chicago Sanitary and Ship Canal, which leads to the Des Plaines River. The higher levels of TDS in petitioners' effluent would come from air pollution control equipment that petitioners must install and use under a Consent Decree with the United States Environmental Protection Agency, the State of Illinois, and several other states. The Illinois

Environmental Protection Agency (Agency) recommended that the Board grant the variance requested in PCB 05-85, which the Board did on April 21, 2005.

REQUESTED VARIANCE EXTENSION

Petitioners now seek to extend the PCB 05-85 variance relief for three years, through December 15, 2012, as well as modify a number of internal dates within the conditions of the variance. According to petitioners, since the variance was granted, “several material facts have changed” that warrant the extension. Pet. at 2. First, petitioners state that in a concluded site-specific rulemaking, Revisions to Water Quality Standards for Total Dissolved Solids in the Lower Des Plaines River for ExxonMobil Oil Corporation: Proposed 35 Ill. Adm. Code 303.445, R06-24 (Feb. 15, 2007), the Board increased the water quality standard for TDS at the I-55 Bridge in the Des Plaines River, and in the Des Plaines River to its confluence with the Kankakee River. *Id.* at 2, 7 (limit applies during winter months). Second, in a pending rulemaking, Triennial Review of Sulfate and Total Dissolved Solids Water Quality Standards: Proposed Amendments to 35 Ill. Adm. Code 302.102(b)(6), 302.102(b)(8), 302.102(b)(10), 302.208(g), 309.103(c)(3), 405.109(b)(2)(A), 409.109(b)(2)(B), 406.100(d); Repealer of 35 Ill. Adm. Code 406.203 and Part 407; and Proposed New 35 Ill. Adm. Code 302.208(h), R07-9 (Sept. 20, 2007) (R07-9 Triennial), the Board proposed first-notice amendments to eliminate the TDS general use water quality standard. *Id.* Third, the Board stated in R07-9 Triennial:

While the Board declines to eliminate TDS standard for secondary contact waters, the Board recognizes that CITGO may face some hardship if TDS standard for secondary contact waters is not resolved in a timely manner. Specifically, CITGO may have to expend funds on designing wastewater storage system for wastewater from refinery’s wet gas scrubber in order to comply with CITGO’s variance conditions [PCB 05-85]. In this regard, the Board believes that CITGO has a number of options CITGO can pursue to avoid undertaking any exercise that may be unnecessary in the future, including seeking an extension of the current variance with amended conditions. R07-9 Triennial, slip op. at 30.

Fourth, in another pending rulemaking, Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303 and 304, R08-9, the Agency “has proposed to remove the TDS standard in the Canal.” Pet. at 2.

According to petitioners, they seek to extend the dates of the current variance “to avoid unnecessary activities.” Pet. at 4. Moreover, petitioners state that:

If the Board removes the existing water quality standard for TDS in the Ship Canal, this variance will become moot according to its terms, and not require further action by the Board. *Id.*

INFORMATIONAL DEFICIENCIES

The Board finds that petitioners have not provided all of the information required by the Board's procedural rules for the contents of a petition for variance extension. *See* 35 Ill. Adm. Code 104.204, 104.210. Below, the Board identifies, and directs petitioners to remedy, those informational deficiencies. The Board recognizes that some of the requested information may have been provided to the Agency over time, but these items need to be developed in the record of this proceeding.

1. In PCB 05-85, petitioners expected that by July 2006, construction of the Fluid Catalytic Converter Unit (FCCU) wet gas scrubber would be complete and the discharge would begin. *See* PCB 05-85 Exhibit 4 at 12. The November 2007 petition for variance extension, however, states that "CITGO *will install* a wet gas scrubber in the Fluid Catalytic Converter ('FCC') unit." Pet. at 8 (emphasis added). Please explain whether the FCCU wet gas scrubber is operating and, if so, when its effluent began being discharged through Outfall 001. *See* 35 Ill. Adm. Code 104.204(b)(7).
2. Petitioners state that the water quality sampling data "continue to show elevated TDS and chloride levels during periods of snow-melt conditions," but the "recent data does not indicate an exceedance of the applicable water quality standards at the I-55 Bridge." Pet. at 10-11. According to petitioners, "[i]t would appear that there is no relationship between the discharges from the [Lemont] Refinery and the water quality conditions relating to TDS." *Id.* at 10. Please explain whether these statements take into account the discharge from the FCCU wet gas scrubber. *See* 35 Ill. Adm. Code 104.210(d)(1), (2); *see also* Pet. at 9 (projected impact from the wet gas scrubber).
3. Data recorded at the I-55 Bridge, states the petition, indicate that "elevated TDS levels may be longer than previously thought," referring to "elevated TDS levels over a three week long stretch" in the winter of 2006-2007. Pet. at 11. Petitioners also acknowledge that the existing variance "assumes that storage could occur for a long enough time so that the [Lemont] Refinery could avoid discharging during these events." *Id.* Please elaborate upon petitioners' conclusion that "the length of time and the volume of water required is greater than assumed when CITGO put together its compliance plan for the variance in PCB 05-[85]." *Id.*; *see* 35 Ill. Adm. Code 104.204(f), 104.210(d)(1), (2).
4. According to the petition, "CITGO has undertaken the activities required by the prior variance." Pet. at 2. Please provide a statement in accordance with 35 Ill. Adm. Code 104.210(d)(2).
5. The petition attaches as Exhibit A and incorporates the Board's April 21, 2005 opinion and order from PCB 05-85. As indicated above, petitioners have waived hearing in the instant proceeding. Pet. at 14. Please provide, as appropriate, a

“motion to incorporate any material from the record of the prior variance proceeding.” 35 Ill. Adm. Code 104.210(d)(3).

6. To avoid any ambiguity in the record, please reconcile the petition’s request for a three-year extension of the variance (Pet. at 3-4) with the petition’s request for a five-year variance (Pet. at 15). *See* 35 Ill. Adm. Code 104.204(k).

Before this proceeding can continue, petitioners must remedy these informational deficiencies by filing an amended petition. The amended petition “need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear.” 35 Ill. Adm. Code 104.226(c). The Board allows petitioners until January 22, 2008, to file the amended petition. Failure to timely file the amended petition will subject this matter to dismissal. *See* 35 Ill. Adm. Code 104.230. If petitioners require additional time to file the amended petition, they may file a motion for a filing extension, but must do so by the January 22, 2008 filing deadline.

Though petitioners have waived hearing, whether the Board will nevertheless order a hearing depends on several factors, including the adequacy of petitioners’ responses to the identified informational deficiencies. *See* 35 Ill. Adm. Code 104.234. The Agency has not yet filed its recommendation. The Agency’s recommendation will be due within 45 days after the filing of the amended petition. *See* 35 Ill. Adm. Code 104.216(b), 104.226(b). Petitioners will have 14 days after service to respond to the Agency’s recommendation. *See* 35 Ill. Adm. Code 104.220. The 120-day statutory period for the Board to decide this case will recommence upon the filing of the amended petition. *See* 35 Ill. Adm. Code 104.232(a)(2).

CONCLUSION

The Board finds that petitioners have not provided all of the necessary information in their petition for variance extension and directs petitioners to file an amended petition to cure these shortcomings.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 20, 2007, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board