

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
 )  
WATER QUALITY STANDARDS AND )  
EFFLUENT LIMITATIONS FOR THE ) R08-9  
CHICAGO AREA WATERWAY SYSTEM ) (Rulemaking – Water)  
AND THE LOWER DES PLAINES RIVER )  
PROPOSED AMENDMENTS TO 35 ILL. )  
ADM. CODE 301, 302, 303 and 304 )

**NOTICE OF FILING**

TO: Mr. John T. Therriault	Ms. Marie E. Tipsord
Assistant Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	100 West Randolph Street
Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
<b>(VIA ELECTRONIC MAIL)</b>	<b>(VIA FIRST CLASS MAIL)</b>

**(SEE PERSONS ON ATTACHED SERVICE LIST)**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the **PRE-FILED TESTIMONY OF ROBERT S. ELVERT**, copies of which are herewith served upon you.

Respectfully submitted,

EXXONMOBIL OIL CORPORATION,

Dated: August 4, 2008

By: /s/ Katherine D. Hodge  
Katherine D. Hodge

Katherine D. Hodge  
Monica T. Rios  
HODGE DWYER ZEMAN  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
(217) 523-4900

**CERTIFICATE OF SERVICE**

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached **PRE-FILED TESTIMONY OF ROBERT S. ELVERT**, upon:

Mr. John T. Therriault  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

via electronic mail on August 4, 2008; and upon:

Ms. Marie E. Tipsord  
Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

Matthew J. Dunn, Esq.  
Chief  
Andrew Armstrong, Esq.  
Susan Hedman, Esq.  
Environmental Enforcement Division  
Office of the Attorney General  
69 West Washington, 18<sup>th</sup> Floor  
Chicago, Illinois 60602

Deborah J. Williams, Esq.  
Stefanie N. Diers, Esq.  
Illinois Environmental  
Protection Agency  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, Illinois 62794-9276

Roy M. Harsch, Esq.  
Drinker, Biddle, Gardner, Carton  
191 North Wacker Drive  
Suite 3700  
Chicago, Illinois 60606-1698

Frederick M. Feldman, Esq.  
Ronald M. Hill, Esq.  
Mr. Louis Kollias  
Margaret T. Conway  
Metropolitan Water  
Reclamation District  
100 East Erie Street  
Chicago, Illinois 60611

Claire A. Manning, Esq.  
Brown, Hay & Stephens, LLP  
700 First Mercantile Bank Building  
205 South Fifth Street  
Post Office Box 2459  
Springfield, Illinois 62705-2459

Kevin G. Desharnais, Esq.  
Thomas W. Dimond, Esq.  
Thomas V. Skinner, Esq.  
Mayer, Brown LLP  
71 South Wacker Drive  
Chicago, Illinois 60606-4637

Charles W. Wesselhoft, Esq.  
James T. Harrington, Esq.  
Ross & Hardies  
150 North Michigan Avenue  
Suite 2500  
Chicago, Illinois 60601-7567

**Electronic Filing - Received, Clerk's Office, August 4, 2008**

Mr. Robert VanGyseghem  
City of Geneva  
1800 South Street  
Geneva, Illinois 60134-2203

Mr. Jerry Paulsen  
Ms. Cindy Skrukrud  
McHenry County Defenders  
132 Cass Street  
Woodstock, Illinois 60098

Mr. Bernard Sawyer  
Mr. Thomas Grant  
Metropolitan Water  
Reclamation District  
6001 West Pershing Road  
Cicero, Illinois 60650

Ms. Lisa Frede  
Chemical Industry Council of Illinois  
2250 East Devon Avenue  
Suite 239  
Des Plaines, Illinois 60018-4509

Fredric P. Andes, Esq.  
Erika K. Powers, Esq.  
Barnes & Thornburg  
1 North Wacker Drive  
Suite 4400  
Chicago, Illinois 60606

Mr. James L. Daugherty  
Thorn Creek Basin Sanitary District  
700 West End Avenue  
Chicago Heights, Illinois 60411

Mr. Mark Schultz  
Navy Facilities and  
Engineering Command  
201 Decatur Avenue, Bldg. 1A  
Great Lakes, Illinois 60088-2801

Tracy Elzemeyer, Esq.  
American Water Company  
727 Craig Road  
St. Louis, Missouri 63141

Margaret P. Howard, Esq.  
Hedinger Law Office  
2601 South Fifth Street  
Springfield, Illinois 62703

Keith I. Harley, Esq.  
Ms. Elizabeth Schenkler  
Chicago Legal Clinic, Inc.  
205 West Monroe Street  
4th Floor  
Chicago, Illinois 60606

Frederick D. Keady, P.E.  
Vermillion Coal Company  
1979 Johns Drive  
Glenview, Illinois 60025

W.C. Blanton, Esq.  
Husch Blackwell Sanders LLP  
4801 Main Street  
Suite 1000  
Kansas City, Missouri 64112

Mr. Dennis L. Duffield  
City of Joliet, Department of Public  
Work and Utilities  
921 East Washington Street  
Joliet, Illinois 60431

Ms. Kay Anderson  
American Bottoms RWTF  
One American Bottoms Road  
Sauget, Illinois 62201

Mr. Jack Darin  
Sierra Club  
70 East Lake Street  
Suite 1500  
Chicago, Illinois 60601-7447

Mr. Bob Carter  
Bloomington Normal Water  
Reclamation District  
Post Office Box 3307  
Bloomington, Illinois 61702-3307

**Electronic Filing - Received, Clerk's Office, August 4, 2008**

Mr. Tom Muth  
Fox Metro Water Reclamation District  
682 State Route 31  
Oswego, Illinois 60543

Mr. Kenneth W. Liss  
Andrews Environmental Engineering  
3300 Ginger Creek Drive  
Springfield, Illinois 62711

Albert Ettinger, Esq.  
Jessica Dexter, Esq.  
Environmental Law & Policy Center  
35 East Wacker  
Suite 1300  
Chicago, Illinois 60601

Ms. Vicky McKinley  
Evanston Environment Board  
223 Grey Avenue  
Evanston, Illinois 60202

Mr. Marc Miller  
Mr. Jamie S. Caston  
Office of Lt. Governor Pat Quinn  
Room 414 State House  
Springfield, Illinois 62706

Susan M. Franzetti, Esq.  
Nijman Franzetti LLP  
10 South LaSalle Street  
Suite 3600  
Chicago, Illinois 60603

Mr. Irwin Polls  
Ecological Monitoring and Assessment  
3206 Maple Leaf Drive  
Glenview, Illinois 60025

Dr. Thomas J. Murphy  
2325 North Clifton Street  
Chicago, Illinois 60614

Ms. Cathy Hudzik  
City of Chicago – Mayor's Office  
of Intergovernmental Affairs  
121 North LaSalle Street  
City Hall – Room 406  
Chicago, Illinois 60602

Ms. Beth Steinhour  
2021 Timberbrook  
Springfield, Illinois 62702

Mr. James Huff  
Huff & Huff, Inc.  
915 Harger Road  
Suite 330  
Oak Brook, Illinois 60523

Ann Alexander, Esq.  
Natural Resources Defense Council  
101 North Wacker Drive  
Suite 609  
Chicago, Illinois 60606

Ms. Traci Barkley  
Prairie Rivers Network  
1902 Fox Drive  
Suite 6  
Champaign, Illinois 61820

Jeffrey C. Fort, Esq.  
Ariel J. Teshler, Esq.  
Sonnenschein Nath & Rosenthal  
7800 Sears Tower  
233 South Wacker Drive  
Chicago, Illinois 60606-6404

Kristy A. N. Bulleit, Esq.  
Brent Fewell, Esq.  
Hunton & Williams LLC  
1900 K Street, NW  
Washington, DC 20006

Ms. Stacy Meyers-Glen  
Openlands  
25 East Washington Street, Suite 1650  
Chicago, Illinois 60602

Mr. Lyman C. Welch  
Manager, Water Quality Program  
Alliance for the Great Lakes  
17 N. State St., Suite 1390  
Chicago, Illinois 60602

by depositing said documents in the United States Mail, postage prepaid, in  
Springfield, Illinois on August 4, 2008.

/s/ Katherine D. Hodge

Katherine D. Hodge

MOBO:032/Fil/NOF-COS – Prefiled Testimony, R08-9

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
)  
WATER QUALITY STANDARDS AND )  
EFFLUENT LIMITATIONS FOR THE ) R08-9  
CHICAGO AREA WATERWAY SYSTEM ) (Rulemaking – Water)  
AND THE LOWER DES PLAINES RIVER )  
PROPOSED AMENDMENTS TO 35 ILL. )  
ADM. CODE 301, 302, 303 and 304 )

**PRE-FILED TESTIMONY OF ROBERT S. ELVERT**

NOW COMES EXXONMOBIL OIL CORPORATION (“ExxonMobil”), by and through its attorneys, HODGE DWYER ZEMAN, and submits the following PRE-FILED TESTIMONY OF ROBERT S. ELVERT for presentation at the September 2008 hearings scheduled in the above-referenced matter.

**Testimony of Robert S. Elvert**

**I. INTRODUCTION**

My name is Bob Elvert, and I am the State Regulatory Advisor for the Midwest Region at ExxonMobil Oil Corporation in Channahon, Illinois. I have more than seventeen years of experience working in the environmental field. My responsibilities include advocating ExxonMobil’s perspective on environmental issues that may impact the procedures and/or operations of the ExxonMobil Joliet Refinery (“Refinery”) and other company owned facilities within those states of my responsibility.

ExxonMobil’s Refinery is located at the southern most point at the I-55 Bridge of the segment of the Lower Des Plaines River (“LDPR”) commonly referred to as the Upper Dresden Island Pool (“Dresden Pool”), which encompasses the stretch

of the LDPR north of the I-55 Bridge and south of the Brandon Road Lock and Dam. The Illinois Environmental Protection Agency's ("Agency") proposed designated recreational use for the Dresden Pool where ExxonMobil is located is Incidental Contact, which is defined in the Agency's proposal as follows:

any recreational activity in which human contact with the water is incidental and in which the probability of ingesting appreciable quantities of water is minimal, such as fishing; commercial boating; small craft recreational boating; and any limited contact associated with shoreline activity such as wading.

Proposed 35 Ill. Admin. Code § 301.282.

If the Illinois Pollution Control Board ("Board") adopts the recreational uses as proposed by the Agency for the LDPR, ExxonMobil anticipates that the designation of Incidental Contact for the Dresden Pool will encourage increased recreational use of the Dresden Pool, which raises safety and security concerns. ExxonMobil appreciates the opportunity to present testimony on such concerns before the Board and requests that the Board take the following testimony under consideration in its evaluation of the proposed recreational use designations.

## **II. SAFETY-RELATED ISSUES**

As noted previously, the Agency's proposed recreational use designation for the Dresden Pool is Incidental Contact. Of the three recreational uses proposed by the Agency, Incidental Contact allows for the largest degree of human contact with the waterway. Incidental Contact includes contact with the water during such activities as fishing, wading, or small craft recreational boating. The designation of the Dresden Pool as Incidental Contact will encourage increased use of the Dresden Pool, and consequently, increased numbers of recreational users may be placed in

danger since the Dresden Pool, in particularly the segment where ExxonMobil's Refinery is located, is heavily used to navigate barges in and out of the area.

Barge traffic on the LDPR is a constant twenty-four hour a day, seven days a week activity. In 2007, 825 barges were unloaded or loaded at the ExxonMobil Refinery dock, with each barge being moved across the river or upstream on the river by a tugboat two to three times during loading and unloading operations. This amounts to hundreds of trips by tugboats and over 2,400 barge movements back and forth across the width of the LDPR. In addition to the barges that are unloaded or loaded at the Refinery, several other facilities along the LDPR are served by barges, and thus, the actual number of barges on the LDPR could be substantially greater than that noted above.

To get an idea of the close quarters that the tugboats and the barges must work within, based upon Corps of Engineers Illinois Waterway charts, the LDPR is about 1000 feet wide at the I-55 Bridge (mile marker 278) and narrows to about 500 feet for most of the segment upstream to mile marker 279. The average size of a barge used at the Refinery is 55 feet wide and 300 feet long, and when the length of the tugboat is added, the available water space in the Dresden Pool for recreational use watercraft of any size is considerably reduced. In addition, on a daily basis, it is common practice for tugboat owners to temporarily store multiple barges side by side along the northern shoreline of the LDPR, thus further restricting the area of the LDPR in which barges, as well as recreational users, can maneuver. Further, a natural consequence of the barge movement, which includes not only individual barges being moved in and out of fleeting near the Refinery, but also tugboats transporting multiple

tows of up to three barges long (900 feet) and two barges wide (110 feet), through the Dresden Pool is increased wakes that can easily overwhelm small watercraft such as kayaks, canoes, fishing boats, jet skis, and/or powerboats, causing the novice paddler or even expert boatman to capsize. Also note that during the public hearing held on June 16, 2008, in Chicago, witnesses indicated that the CAWS and the LDPR will continue to see an increased use by canoes, kayaks, and other small watercraft if the proposed rules are adopted. Unfortunately, in the past, boaters in this area of the LDPR have drowned. See Exhibit 9,<sup>1</sup> January 28, 2008 Hearing, *In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Admin. Code Parts 301, 302, 303 and 304*, R08-09 (Ill.Pol.Control.Bd. Jan. 28, 2008) (rulemaking hereinafter cited as “CAWS/LDPR”).

ExxonMobil has raised these safety concerns since the beginning of the LDPR Use Attainability Analysis (“UAA”) process in 2001 and throughout all associated stakeholders meetings, as well as the open meeting held in Joliet in March 2007. Representatives of ExxonMobil have actively participated in the stakeholder process that was initiated during the development of the UAA project. I attended workgroup meetings and was present when safety concerns regarding barge traffic and increased use of the LDPR by recreational users were raised during the LDPR UAA process. Further, ExxonMobil is a member of the Three Rivers Manufacturing Association (“TRMA”), a local trade association that serves and represents the needs of local

---

<sup>1</sup> Exhibit 9 is an article from the Herald-News entitled “Fishermen died by drowning” dated August 19, 2002.

manufacturers. In 2002 and 2003,<sup>2</sup> TRMA sent three letters to the Agency expressing its concerns with the development of the UAA and specifically made the Agency aware of its safety concerns regarding the impact of increased recreational users on barge operations in the LDPR, but never received a specific formal response to its members' safety concerns. *See* Initial Filing, Attachment A, Appendix A, *CAWS/LDPR*, R08-9 (Ill.Pol.Control.Bd. Oct. 26, 2007).

### **III. SECURITY-RELATED ISSUES**

In addition to safety-related issues, ExxonMobil would also like to briefly discuss increased security concerns resulting from the proposed designation of the Dresden Pool as Incidental Contact. ExxonMobil is a federally protected Energy facility that requires additional security measures. In addition, the Refinery as a U.S. Coast Guard governed facility is subject to increased security measures, such as implementing the recently established Transportation Workers Identification Credential program that requires extensive background checks for anyone who is within a specific designated area along a facility's river edge.

As previously noted, a designation of Incidental Contact will encourage increased use of the LDPR. Increased recreational users increases the security threat to ExxonMobil, as well as other facilities located on the LDPR. As with the safety-related issues, ExxonMobil representatives were present at meetings where security-related issues were raised during the stakeholder process. However, as with safety

---

<sup>2</sup> The TRMA letters (collectively "Letters") are dated June 11, 2002, July 18, 2002, and June 6, 2003. The Letters are included in Appendix A to the UAA for the LDPR. Initial Filing, Attachment A, Appendix A, *CAWS/LDPR*, R08-9 (Ill.Pol.Control.Bd. Oct. 26, 2007).

issues, the Agency has not specifically addressed any such concerns. In addition, TRMA has not received a formal response from the Agency regarding its expressed security concerns for its members.

Unlike a specific meeting regarding safety and security concerns held with local, state, and federal officials during the stakeholder process for the Chicago Area Waterway System ("CAWS") UAA, to my recollection, as an active participant in the LDPR stakeholder process, there has never been an official meeting between government officials and stakeholders to discuss safety and security issues for the LDPR, in particularly the Dresden Pool segment. In addition, during previous hearings in this rulemaking, neither the Agency nor other parties acknowledged that any such meeting on safety and security concerns regarding the LDPR had been held. Perhaps such a meeting held in the near future would provide valuable information on additional security concerns held by stakeholders and the response that local and state agencies can provide.

#### **IV. CONCLUSION**

On behalf of ExxonMobil, I thank the Board for providing the opportunity to present testimony in this rulemaking, and look forward to the opportunity to provide additional information as it may come available. Please note that during the upcoming September hearings, ExxonMobil intends to provide the Board with photographs depicting the barge traffic on the LDPR near where the Refinery is located. In addition, ExxonMobil intends to offer testimony at a later date regarding the impact of the numeric water quality standards derived from the Agency's proposed designated uses. ExxonMobil reserves the right to supplement the

testimony provided today. I would be happy to respond to any questions regarding my testimony.

Respectfully submitted,

By: /s/ Katherine D. Hodge  
Katherine D. Hodge

Dated: August 4, 2008

Katherine D. Hodge  
Monica T. Rios  
HODGE DWYER ZEMAN  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
(217) 523-4900

MOBO:032/Filings/Pre-filed Testimony of R. Elvert – Final