

Electronic Filing - Received, Clerk's Office, August 14, 2008

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

IN THE MATTER OF:)
)
PROPOSED ADJUSTED STANDARD FOR)
AMMONIA NITROGEN DISCHARGE LEVELS) AS 08-08
APPLICABLE TO CITGO PETROLEUM) (Adjusted Standard - Water)
CORPORATION AND PDV MIDWEST)
REFINING, L.L.C., PETITIONERS)

NOTICE OF FILING

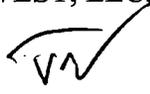
To: Dorothy Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street - Suite 11-500
Chicago, IL 60601

Bradley Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson
100 W. Randolph, Suite 11-500
Chicago, IL 60601-3218

Jason R. Boltz
Illinois EPA
1021 N. Grand Ave. East
Springfield, IL 62794

Please take notice that on August 14, 2008, we filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the attached Motion to Exclude Un-Filed IEPA Testimony, a copy of which is served upon you.

CITGO PETROLEUM CORPORATION, and
PDV MIDWEST, LLC, Petitioners

By:  

One of Its Attorneys

Jeffrey C. Fort
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MOTION TO EXCLUDE UN-FILED IEPA TESTIMONY

CITGO Petroleum Corporation and PDV Midwest Refining, LLC (“CITGO” or “Petitioner”) moves the Illinois Pollution Control Board (“Board”) to exclude any proposed oral testimony by the Illinois Environmental Protection Agency (“the Agency”) for failure to file its testimony in accordance with the Hearing Office Order of July 9, 2008 (attached hereto as Exhibit A).

Petitioner has made numerous attempts to work with the Agency on this matter, and it initiated meetings with the Agency in November of 2007. As suggested by the Agency at that time, Petitioner agreed to separate the Total Dissolved Solids issues from the ammonia nitrogen issues. Pursuant to additional Agency suggestions, it also agreed to use the adjusted standard approach rather than the site-specific rule change in order to meet the requirements of U.S.EPA in reviewing Illinois’s water quality standards. While Petitioner is disappointed that the Agency declined to engage in any technical discussions on the content of its proposal in filing its Recommendation to deny our petition, Petitioner is particularly troubled by the Agency’s refusal to pre-file its expected testimony.

At the July 8, 2008, telephonic status conference, the Agency distinctly advocated for its preferred schedule of deadlines for both sides’ pre-filed testimony. The Agency refused to agree

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to a simultaneous filing of testimony with a subsequent right to rebuttal. It insisted on the right to review Petitioner's testimony prior to filing its own, and Petitioner acceded to the Agency's suggested schedule for both sides' filing of testimony.

Although Petitioner timely filed its testimony in accordance with the August 1, 2008, deadline, the Agency refused to file any testimony by its requested August 6, 2008, deadline. At the August 7, 2008, telephonic pre-hearing conference, the Agency declared that it would not, in fact, be filing any testimony. Instead, the Agency indicated that it would present up to two Agency witnesses at the hearing who would provide testimony with no pre-filed documentation. Thus, while Petitioner complied with the Hearing Office Order and filed 473 pages of testimony and supporting exhibits, the Agency ignored the Hearing Officer Order and filed no testimony whatsoever.

Petitioner moves the Board to prevent the Agency from presenting witnesses at the Hearing. If the Agency is allowed to present witnesses in violation of the Hearing Officer Order, it will wield the unfair advantage of having reviewed Petitioner's extensively filed testimony while preventing Petitioner from the opportunity to review its own testimony. Petitioner further requests that the Board not reconcile this problem by postponing the hearing or extending the hearing to later dates. As noted above, Petitioner has spent over six months attempting to engage the Agency on this matter. Moreover, the Agency has already delayed this process repeatedly. On May 5, 2008, the Agency filed a Motion for Extension of Time to File Recommendation at the same time that it filed its appearance in this case; the Board granted the extension on May 15, 2008. On May 30, 2008, the Agency filed a second motion for extension; the Board Hearing Officer granted that extension on June 3, 2008. The Agency's decision not to file its testimony, without warning and in contravention of the Hearing Officer's July 9, 2008 Order, should not

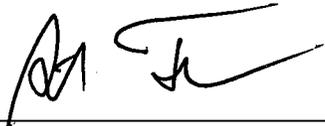
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serve as yet another extension for the Agency. Petitioner has pursued this process in good faith and with all possible notice to the Agency. Petitioner would be unduly burdened by further delays, as the rule under which it currently operates is set to expire on December 31, 2008.

WHEREFORE, Petitioner requests that the Board grant this motion.

CITGO PETROLEUM CORPORATION, and

PDV MIDWEST REFINING, L.L.C., Petitioners

By: 

One of Its Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that I have served upon the individuals named on the attached Notice of Filing true and correct copies of the Motion to Exclude Un-Filed IEPA Testimony, via electronic filing, on August 14, 2008.

A handwritten signature in black ink, appearing to be "A. J. Smith", is written above a solid horizontal line.