

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
WATER QUALITY STANDARDS AND)	
EFFLUENT LIMITATIONS FOR THE)	
CHICAGO AREA WATERWAY SYSTEM)	R08-9
AND THE LOWER DES PLAINES RIVER:)	(Rulemaking-
Adm. Code Parts 301, 302, 303 and 304)	Water)

NOTICE OF FILING

To: John Therriault, Clerk
 Illinois Pollution Control Board
 James R. Thompson Center
 100 West Randolph Street - Suite 11-500
 Chicago, IL 60601

Marie Tipsord, Hearing Officer
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Persons included on the attached
 SERVICE LIST

Please take notice that on January 29, 2010, we filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the attached Reply to Other Participants' Response Briefs Regarding the Impact of the Litigation before the United States Supreme Court Relating to the Migration of Asian Carp Through the Chicago Sanitary and Ship Canal, a copy of which is served upon you.

CITGO PETROLEUM CORPORATION, and
 PDV MIDWEST, LLC, Petitioners

By: 
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**REPLY TO OTHER PARTICIPANTS' RESPONSE BRIEFS REGARDING THE
IMPACT OF THE LITIGATION BEFORE THE UNITED STATES SUPREME COURT
RELATING TO THE MIGRATION OF ASIAN CARP THROUGH THE CHICAGO
SANITARY AND SHIP CANAL**

CITGO PETROLEUM CORPORATION, and PDV MIDWEST, LLC, operate and own, respectively, a refinery in Lemont Illinois. (The "Lemont Refinery") On January 7, 2010, the Lemont Refinery filed a motion asking the Board to hold hearings on the impact of ongoing litigation regarding Asian carp and their potential passage through the Ship Canal. Numerous participants to this rulemaking filed responses to that motion, including the Attorney General of the State of Illinois and the Metropolitan Water Reclamation District of Greater Chicago (the "District"), both of whom are parties to the current litigation before the United States Supreme Court. On January 28, 2010, the Hearing Officer filed an Order granting leave to file reply briefs. In accordance with the aforementioned, the Lemont Refinery submits the following Reply to the various responses filed by participants to this rulemaking.

1. On January 22, 2010, the Attorney General of the State of Illinois, a party to the current litigation before the United States Supreme Court, filed a reply brief opposing the request for a hearing. In support of that position, the Attorney General stated that "the proposed hearing could interfere with pending litigation before the United States Supreme Court... The prospect of a State agency holding a hearing to consider the impacts ... would be highly irregular and quite inappropriate." (Attorney General Response at 2.)

2. On January 25, 2010, the District, a party to the current litigation before the United States Supreme Court, filed a reply brief supporting the request for a hearing. In addition to supporting the motion, the District suggests that the Board consider "deferral of all or a portion of this rulemaking while the carp-related actions are being taken. It may be that after certain carp-related issues are resolved, the Board would be able to make better-informed, definitive decisions about the proper uses and standards." (District Response at 5.)

3. In light of the conflicting positions taken by these two parties to the current litigation, and in an effort to most efficiently promulgate this rulemaking without causing undue harm to the litigation positions taken by the State of Illinois, the Lemont Refinery hereby proposes an alternative to the hearings it requested. If the Board decides not to hold hearings on the issue of Asian carp migration through the Ship Canal and, more generally, the Chicago Area Waterways ("CAWS"), then it should defer all or a portion of the rulemaking that concerns this litigation.

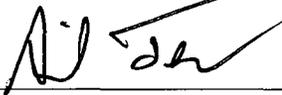
4. If this rulemaking proceeds without deferring aspects that relate to the Asian carp potential migration through the Ship Canal, and without a special hearing on the matter, the issue will nonetheless come up in the upcoming general rulemaking hearings. We would expect to provide testimony on how the measures pending before the Supreme Court or any lower court would affect the appropriate water quality standards for at least that portion of the Sanitary and Ship Canal into which the Lemont Refinery discharges—which is within a mile of the electric barriers. Should the issue be addressed in those general rulemaking hearings, it will present exactly that problem which the Attorney General seeks to avoid: discussion of some of the very same issues that are involved in the pending litigation to which the State of Illinois is a party. The only solution to this problem is to segregate and defer the rulemaking until the litigation has progressed so that hearings being held by the Board in this proceeding to not overlap with the subject matter and timing of the Supreme Court litigation or litigation before a lower court.

WHEREFORE, the Lemont Refinery respectfully requests that, if the Board declines to schedule a hearing on the impact of the possible migration of Asian carp and the resulting interstate litigation, the Board defer the portion of the rulemaking that concerns the Ship Canal and other areas of Asian carp migration towards Lake Michigan.

Dated: January 29, 2010

Respectfully submitted,

CITGO PETROLEUM CORPORATION, and
PDV MIDWEST, LLC, Petitioners

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 29th day of January, 2010, I have served electronically the attached Reply to Other Participants' Response Briefs Regarding the Impact of the Litigation before the United States Supreme Court Relating to the Migration of Asian Carp Through the Chicago Sanitary and Ship Canal and Notice of Filing upon the following person:

John Therriault, Clerk
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and by U.S. Mail, first class postage prepaid, to the following persons:

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