

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
WATER QUALITY STANDARDS AND)	
EFFLUENT LIMITATIONS FOR THE)	
CHICAGO AREA WATERWAY SYSTEM)	R08-9(A)
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
 Illinois Pollution Control Board
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 Illinois Environmental Protection Agency
 1021 N. Grand Ave. East
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Persons included on the attached
 SERVICE LIST

Please take notice that on April 15, 2010, we filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the attached Final Comments on Recreational Uses, a copy of which is served upon you.

CITGO PETROLEUM CORPORATION, and
 PDV MIDWEST, LLC, Petitioners

By: 

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FINAL COMMENTS ON RECREATIONAL USE ISSUES

CITGO PETROLEUM CORPORATION, and PDV MIDWEST, LLC, operate and own, respectively, a refinery in Lemont Illinois (The “Lemont Refinery”). On March 18, 2010, the Illinois Pollution Control Board (“Board”) issued an Order which, *inter alia*, severed the docket of this rulemaking and directed participants to file final comments on the recreation use designations for the Chicago Area Waterways (CAWS) and the Lower Des Plaines River (LPDR) by April 15, 2010. In accordance with the aforementioned, the Lemont Refinery submits the following Final Comments regarding the recreational use designations which are the subject of the newly-created Subdocket A.

1. The Lemont Refinery agrees with the Illinois Environmental Protection Agency’s (IEPA) designation of the Chicago Sanitary and Ship Canal (“Ship Canal”) from its confluence with the Calumet-Sag Channel to its confluence with the Des Plaines River as non-recreational.¹

¹ On March 26, 2010, the IEPA filed comments sent to it by the USEPA on January 29, 2010. While those comments include broad conclusory statements, those statements provide no basis (evidentiary or otherwise) for revision of the non-recreational use designation proposed by the IEPA. The Board has received voluminous written testimony, conducted multiple hearings, and collected other evidence regarding the use designation. As a result, the Board has not been presented with any evidence supporting any recreational use on the Ship Canal between the Cal-Sag Channel and the Des Plaines River. Despite its letter, the USEPA has not testified to any contradictory conclusion in the record for this matter.

2. The federal regulations governing the designation of uses in these proceedings provide for removal of any designated use which is not an existing use. 40 CFR 131.10(g). Those regulations set out six criteria, any one of which can support such a removal. Removal is authorized if:

(1) Naturally occurring pollutant concentrations prevent the attainment of the use; or (2) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or (3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or (4) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or (5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or (6) Controls more stringent than those required by sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.

Id.

3. The Ship Canal is a fundamentally unique body of water that is unsuitable for any recreational uses, in accordance with the above regulations, due to, among other features: its vertical walls, steep embankments, proximity to the electric fish barrier and the likely future location of additional electric barriers, commercial shipping, discharge loadings, and lack of appropriate habitat for aquatic life.

4. The physical uniqueness described above cause severe wave amplification that makes the Ship Canal particularly dangerous for canoes, sculling, or other hand-powered boating activities. *See* 40 CFR 131.10(g)(5).

5. The electric barriers pose yet another unique danger to any potential recreational uses, as even the U.S. Army Corps of Engineers noted when saying “the safest thing is to keep people out of the water entirely.” (U.S. Army Corps of Engineers News Release, “Army Corps and Coast Guard Kick off Barrier Safety Campaign,” March 27, 2008.) The impact of these barriers cannot be remedies, and their removal could cause more environmental damage to correct. *See* 40 CFR 131.10(g)(3).

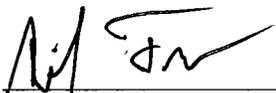
6. This dangers posed by the physical uniqueness are further increased by the barge traffic which can be difficult for small boaters to safely avoid. *See* 40 CFR 131.10(g)(5).

WHEREFORE, the Lemont Refinery respectfully requests that the Board designate Chicago Sanitary and Ship Canal (Ship Canal) from its confluence with the Calumet-Sag Channel to its confluence with the Des Plaines River as “non-recreational,” in accordance with the IEPA’s proposal.

Dated: April 15, 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 15th day of April, 2010, I have served electronically the attached Final Comments on Recreational Uses and Notice of Filing upon the following person:

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

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

Marie Tipsord, Hearing Officer
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