

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

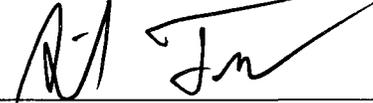
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Persons included on the attached  
 SERVICE LIST

Please take notice that on June 10, 2011, we filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the attached Comments on The Proposed Second Notice, a copy of which is served upon you.

CITGO PETROLEUM CORPORATION, and  
 PDV MIDWEST, LLC, Petitioners

By:   
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**COMMENTS ON THE PROPOSED SECOND NOTICE**

CITGO PETROLEUM CORPORATION, and PDV MIDWEST, LLC, operate and own, respectively, a refinery in Lemont Illinois (“Lemont Refinery”). On June 2, 2011, the Illinois Pollution Control Board (“Board”) issued an Order setting out a Proposed Second Notice for the above-captioned rulemaking in Subdocket A and invited comments. In accordance with the aforementioned, the Lemont Refinery submits the following Comments regarding the recreational use designations set out in the Proposed Second Notice.

1. While the Lemont Refinery agrees with the Proposed Second Notice’s 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, we urge the Board to take into account the electric fish barrier and Regulated Navigation Area (“RNA”) in setting specific recreational use designations pursuant to 40 CFR 131.10(g). The RNA is defined by the U.S. Coast Guard as the area of the Chicago Sanitary and Ship Canal from River Mile 295.5 to River Mile 297.2.

2. On March 18, 2010, when subdividing the docket, the Board delayed all testimony regarding the issue of the electric fish barrier and invasive species until November hearings for Subdocket C, despite the fact that the electric fish barrier does impact recreation by

prohibiting such recreation and making any recreation activity potentially fatal. (Proposed Second Notice at 4.)

3. James E. Huff, P.E., testified before the Board on May 6, 2009 regarding the uniqueness of the Ship Canal, including the specific unique characteristics in the RNA surrounding the electric fish barrier. (See Exh. 285, Pre-Filed Testimony of James E. Huff, P.E.) In his pre-filed testimony, Mr. Huff quoted the U.S. Army Corps of Engineers' (COE) Col. Jack Drolet as saying "The safest thing is to keep people out of the water entirely" (Exh. 285, p.4).<sup>1</sup> The Illinois Environmental Protection Agency, in questioning Mr. Huff, asked "do you know if the U.S. Army Corps of Engineers prohibit recreation in and around the electric barrier," to which Mr. Huff responded that they do prohibit such recreation. (Transcript of May 6, 2009 hearing beginning at 9:00 am, p.106.)

4. During the testimony that the Board set aside for consideration of the electric fish barrier, Robin L. Garibay, REM, testified on behalf of the Lemont Refinery.<sup>2</sup> In describing the impact of the electric barrier and the uniqueness of the RNA, Ms. Garibay said, "[w]hen I say it's a unique waterway it is the only one in the nation that is both a regulated navigation area as well as a safety zone. It's pretty unique." (Transcript of November 8, 2010 hearing beginning at 9:00 am, p.96.) The safety zone, also known as a "Black Zone," abuts the Lemont Refinery such that the Refinery had to move its boat dock to a new location lest it be prevented from using its boats.

5. Initial demonstration Barrier I, energized in 2002, created an electric field in the RNA of 1 volt/in<sup>2</sup>. (75 Fed. Reg. 75146.) Barrier IIA, which is currently online, generates a

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<sup>1</sup> The Lemont Refinery similarly quoted these recommendations in its April 15, 2010 Comments under Subdocket A. (P.C. 292 at ¶5.)

<sup>2</sup> Although this testimony was delayed until Subdocket C per the Board's Order, its recreational content is both relevant and important to Subdocket A.

larger electric field of up to 4 volts/in<sup>2</sup>. (*Id.*) An additional barrier, Barrier IIB, will also be capable of generating 4 volts/in<sup>2</sup>. (*Id.*) Even at the 1 volt/in<sup>2</sup> electric field, however, the ACE “found a serious risk of injury or death” to those who found themselves in the water. (*Id.*) The Navy Experimental Diving Unit (NEDU) found that the possible effects to a person immersed in the RNA “include paralysis of body muscles, inability to breathe, and ventricular fibrillation.” (75 Fed. Reg. 75147.) In response to these severe risks, the Department of Homeland Security rule for the Coast Guard sets out requirements for any vessel that enters the RNA. Below is a partial list of such requirements:

- a. **No personal watercraft of any kind are allowed;**
- b. **Fishing is prohibited;**
- c. Vessels must be greater than twenty feet in length;
- d. Persons on board any vessel passing through the RNA are advised that they do so **at their own risk;**
- e. All commercial tows containing flammable liquid cargos must use a bow boat at all times while within the RNA;
- f. **Loitering in the RNA is prohibited;**
- g. Only law enforcement and emergency response personnel are permitted to be outside the cabin while in the RNA. Others must be inside where practicable or wearing a Coast Guard approved personal floatation device;
- h. Commercial service vehicles may not pass (meet or overtake) within the RNA;

- i. Commercial tows must only be made up with wire rope to ensure electrical connectivity.

75 Fed. Reg. 75147-48, 75150-51 (emphasis added).

6. Ms. Garibay further testified regarding the NAVSEA report which describes the impact of the electric barrier on any person who makes contact with the waters surrounding it. (Exh. 424.) She said that, if you fell into the water “you only had minutes [to live] and ... you had a better chance of recovery and survival if you were in cold water than in this area .... It’s sobering.” (Transcript of November 8, 2010 hearing beginning at 9:00 am, p.97.) This is the only water body in which the Coast Guard refuses to rescue a victim who has fallen within it.

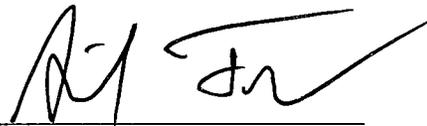
7. The Board’s Proposed Second Notice discusses neither the testimony of Huff nor of Garibay, and it discusses neither the COE’s nor NAVSEA’s statements regarding the risk to human health and life were a person to recreate in the RNA. Instead, the Proposed Second Notice contains a statement that “the Board at this time does not believe that the Asian Carp issue impacts a decision on recreational uses” and that “there is in fact no evidence in the record that the Asian Carp preventative measures, implemented after the UAA was completed, have permanently impacted recreational activity.” (Proposed Second Notice at 27.) While the Board does drop a footnote referencing the “rotenone activity [which] shut the waterway in a segment for a few days and the Coast Guard ... restricted navigational area around the electric barrier,” that footnote does not address the Huff or Garibay testimony and it does not cite to the COE or NAVSEA warnings regarding recreation.

WHEREFORE, the Lemont Refinery respectfully requests that the Board designate the RNA and the Black Zone, defined as the area of the Chicago Sanitary and Ship Canal from River Mile 295.5 to River Mile 297.2, as a Recreation Prohibited area. Such a definition would supplement the proposed Section 301.324 with a sub-paragraph c: “Recreation Prohibited’ means a water body where the physical conditions or hydrologic modifications preclude *and prohibit* primary contact, incidental contact, and non-contact recreation.” (Cf. Proposed Second Notice at 52.) Such a recreational use designation will better protect those who recreate in or on the Chicago Area Waterways and it will properly reflect the existing conditions that the board notes are “irreversible in the foreseeable future.” (Proposed Second Notice at 40.)

Dated: June 10, 2011

Respectfully submitted,

CITGO PETROLEUM CORPORATION, and  
PDV MIDWEST, LLC, Petitioners

By: 

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on this 10<sup>th</sup> day of June, 2011, I have served electronically the attached Comments on The Proposed Second Notice 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:

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