

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUN 29 2011

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)	
)	
WATER QUALITY STANDARDS AND)	
EFFLUENT LIMITATIONS FOR THE)	R08-09
CHICAGO AREA WATERWAY SYSTEM)	(Rulemaking – Water)
AND THE LOWER DES PLAINES RIVER:)	Sub-Docket C-D
PROPOSED AMENDMENTS TO 35 Ill.)	
Adm. Code Parts 301, 302, 303 and 304)	

NOTICE OF FILING

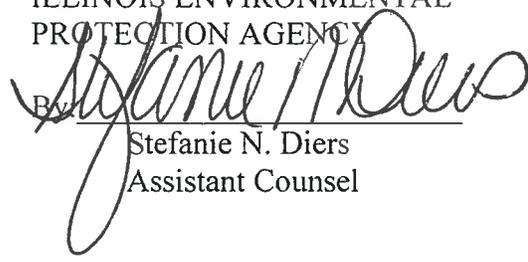
ORIGINAL

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

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board ILLINOIS EPA'S RESPONSE TO LEMONT REFINERY'S MOTION FOR EXPEDITED SUBDOCKET ADDRESSING USE C a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: 
 Stefanie N. Diers
 Assistant Counsel

Dated: June 28, 2011
 1021 North Grand Avenue East
 P.O. Box 19276
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THIS FILING IS SUBMITTED ON RECYCLED PAPER

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OF THE STATE OF ILLINOIS

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CHICAGO WATERWAY SYSTEM) Rulemaking-Water
AND THE LOWER DES PLAINES RIVER:) Subdocket C-D
Adm. Code Parts 301, 302, 303 and 304.)

ORIGINAL

ILLINOIS EPS'S RESPONSE TO LEMONT REFINERY'S MOTION FOR AN
EXPEDITED SUBDOCKET ADDRESSING USE C

The Illinois Environmental Protection Agency ("Illinois EPA") hereby submits its response to the CITGO Petroleum Corporation and PDV Midwest, LLC's ("Lemont Refinery") Motion for an Expedited Subdocket Addressing Use C. Illinois EPA states as follows:

1. On June 14, 2011, the Lemont Refinery filed its Motion with the Illinois Pollution Control Board ("Board").
2. The Lemont Refinery is asking the Board to open an expedited aquatic life standards subdocket to address the "simplified" issue of aquatic life at the Regulated Navigation Area ("RNA") surrounding the electric fish barrier. (Motion, p. 1). River Miles 295.5 to 297.2 of the Chicago Sanitary and Ship Canal ("CSSC") constitute the RNA. The Lemont Refinery argues that the electric fish barrier presents issues that are narrow enough to allow for an applicable water quality standard within the RNA to be more easily set than those concerning the Chicago Area Waterway System ("CAWS") and Lower Des Plaines River ("LDPR"). It further asserts that an expedited approach would achieve the result that has been sought throughout years of the rulemaking process.

3. The Illinois EPA strongly disagrees with the Lemont Refinery's request. The Lemont Refinery has applied for, and received, two variances allowing relief from the TDS standard. The second variance was granted through R08-33 on May 15, 2008, lasting for a five year period, thus allowing relief from this water quality standard until 2013. With time remaining on the variance, it would be unnecessary to grant an expedited subdocket.
4. The Lemont Refinery further argues that due to the unique and specific features of the RNA, a separate use designation is needed in order to address these features. (Motion, p. 2). However, in testimony before the Board on May 6, 2009, James E. Huff, P.E., stated that the features unique solely to the RNA include the economic viability, effluent load from combined sewer overflows, and storm water run-off, with the final two features occurring due to the presence of the Stickney facility. Mr. Huff further stated that many features of the CSSC are also present in the Cal Sag channel, including limited shallow areas along the shore line, silty substrate, little instream cover, dredging, and slope. (Transcript of May 6, 2009 hearing beginning at 9:00 am, p. 106-109.) The Lemont Refinery's request for an expedited subdocket is highly dependent upon the uniqueness of the segment; however the testimony shows that only a few features are unique only to these 1.7 miles of the CSSC.
5. The Lemont Refinery also states that absence of fish and fish passage also makes the RNA unique and further contributes to the need for an expedited subdocket. (Motion, p. 3). However, in the testimony of Mr. Huff, when asked about the electric fish barrier, he agreed that the upper CSSC, upstream of the electric fish barrier, constitutes a water link between the Chicago and Calumet systems. Mr. Huff also

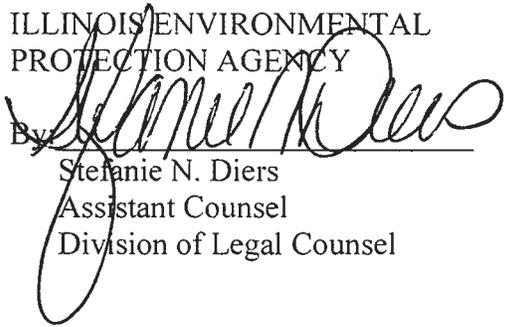
agreed that this link provides for aquatic life movement between the two systems, and that the fish barrier would not interfere with fish migration between the two systems. (Transcript of May 6, 2009 hearing beginning at 9:00 am, p. 91)

6. Should the Board find the RNA, River Miles 295.5 to 297.2 of the CSSC, to be a separate, Use C designation, then the aquatic life standards of this area should be determined in conjunction with the other segments of the CAWS and LDPR. If the Board agrees that a separate docket for consideration of the Lemont Refinery's Use C category is appropriate, it should occur at the conclusion of the other subdockets, after the Board has met its obligation to address the uses of waters that merit an upgraded use designation.

WHEREFORE, the Illinois EPA respectfully requests that the Lemont Refinery's Motion for an Expedited Subdocket Addressing Use C be denied. Alternatively, should the Board find a separate use category to be appropriate, it should be addressed after the completion of the existing subdockets.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By 

Stefanie N. Diers
Assistant Counsel
Division of Legal Counsel

DATED: June 28, 2011

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STATE OF ILLINOIS
COUNTY OF SANGAMON

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CLERK'S OFFICE
JUN 29 2011
STATE OF ILLINOIS
Pollution Control Board

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached ILLINOIS EPA'S
RESPONSE TO LEMONT REFINERY'S MOTION FOR AN EXPEDITED SUBDOCKET
ADDRESSING USE C upon the person to whom it is directed by placing it an **overnight**
envelope addressed to:

John Therriault, Clerk
Marie Tipsord, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

ORIGINAL

and mailing it First Class Mail from Springfield, Illinois on June __, 2011, with sufficient
postage affixed to the addresses on the attached Service List.

Meredith Kelley

SUBSCRIBED AND SWORN TO BEFORE ME

This 28th day of June 2011

Brenda Boehner
Notary Public



THIS FILING IS SUBMITTED ON RECYCLED PAPER