

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
WATER QUALITY STANDARDS AND)	
EFFLUENT LIMITATIONS FOR THE)	
CHICAGO AREA WATERWAY SYSTEM)	R08-9(C-D)
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

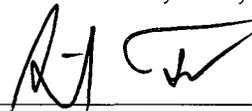
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 SERVICE LIST

Please take notice that on July 8, 2011, we filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the attached Reply in Support of an Expedited Subdocket Addressing Use C, a copy of which is served upon you.

CITGO PETROLEUM CORPORATION, and
 PDV MIDWEST, LLC, Petitioners

By: 

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REPLY IN SUPPORT OF AN EXPEDITED SUBDOCKET ADDRESSING USE C

CITGO PETROLEUM CORPORATION, and PDV MIDWEST, LLC, operate and own, respectively, a refinery in Lemont Illinois (“Lemont Refinery” or “Refinery”). On June 1, 2011, the Illinois Pollution Control Board (“Board”) issued an Order requesting motions on the issue of proceeding through the aquatic life uses and standards subdockets in the above-captioned rulemaking and setting a schedule for response and reply briefing. On June 14, 2011, the Lemont Refinery filed a Motion for an Expedited Subdocket Addressing Use C. On June 29, 2011, the Illinois Environmental Protection Agency (“IEPA” or “Agency”) filed a response opposing portions of that Motion; no other party objected. In accordance with the aforementioned, the Lemont Refinery submits the following Reply to the Agency’s filing and respectfully renews its request that the Board open an expedited aquatic life standards Subdocket to address the simplified issue of what water quality standards for the protection of aquatic life at the Regulated Navigation Area (“RNA”) surrounding the electric fish barrier are appropriate at this time.

1. The Lemont Refinery’s proposed expedited Use C Subdocket was not opposed by the Environmental Groups, although those groups did oppose the other proposals to delay the start of Subdocket D. Nonetheless, the Agency filed a response opposing portions of the Lemont

Refinery's proposal by requesting that it be delayed until the end of Subdocket D and by claiming that the existing variance in PCB08-33 provides complete regulatory relief until its expiration in May of 2013.

2. The current PCB08-33 variance obliges the Refinery to take actions long before its expiration on May 15, 2013. In addition to the ongoing monitoring, sample collection, and analysis obligations, the variance also has concrete action requirements that begin to come due on February 15, 2012. The Refinery expects that the Agency is aware of those requirements contained in the variance, as they were written by the Agency and adopted by the Board in its Opinion and Order.

3. The Agency's suggestion that any Use C Subdocket "should occur at the conclusion of the other subdockets" would undermine the reasoning behind this expedited Use C First, one of the principal reasons for suggesting a Use C is to be clear to other states, and other stakeholders, that the State of Illinois is supportive of the efforts of the Army Corps of Engineers and other agencies to maximize the effectiveness of the electric barrier and the Restricted Navigation Area with respect to the spread of invasive species from the Illinois River System to Lake Michigan. Further, the Lemont Refinery has long been asking the Board to revise the water quality standards of the Ship Canal with respect to the impact from snow melt and deicing activities in the Chicagoland area. The Refinery has been seeking that relief since 2004, and it has repeatedly been told to wait. (See PCB05-85, R07-9, and PCB08-33.) Moreover, the Agency's response to our Motion ignores the fact that the variance schedule in PCB08-33 requires action long before the expected end of this ongoing regulatory process. This is particularly true given the Agency's support for a partial delay of Subdocket D until after the issuance of a First Notice in Subdocket C. Even assuming that the Board denies the other

pending motions and moves forward simultaneously with Subdockets C and D, those subdockets would not be able to address the regulatory needs present surrounding the RNA in a timely fashion. Finally, it is important that the Board be clear of its support for maintaining the effectiveness of the RNA and the electric barrier and not be seen as intent on upgrading the uses or the water quality standards for this part of the Ship Canal.

4. While the Lemont Refinery takes no position regarding the proposals to delay the beginning of Subdocket D, it notes that any such delay would create more time and opportunity for the pursuit of the expedited Use C Subdocket. However, should the delay move forward without the initiation of an expedited Use C Subdocket, then the Refinery would be particularly harmed by the delay in the rulemaking.

5. The Agency also appears to assert that the waters in the RNA surrounding the electric fish barrier are not unique. (Agency Response at ¶5.) In support of that assertion, the Agency claims that testimony given by James E. Huff, P.E. in May of 2009, before the Board split this proceeding into subdockets, supports the notion that the RNA does not affect fish migration between the Chicago and Calumet systems. However, the transcript page cited by the Agency does not support this characterization in any fashion. Neither the page they cite (page 91 of the Transcript of the May 6, 2009 hearing beginning at 9:00 am) nor page 90 before it nor page 92 after it discuss this issue at all. Pages 90-92 contain Mr. Huff's analysis of whether UAA Factor 5 should be applied, whether "the attainable uses for the lower Chicago Sanitary and Ship Canal" were properly set by the Agency, and a short discussion with Albert Ettinger of the ELPC regarding the entities on whose behalf Mr. Huff was providing testimony.

6. Putting aside the problems with the Agency's characterization of page 91 of the transcript, the Agency's assertion is irrelevant. If some other portion of the Chicago Area Waterway System contains a link between the Chicago and Calumet systems, that does not affect the question of whether the waters of the RNA surrounding the three electric fish barriers (which put out 1-4 volts/in² a piece) are capable of supporting aquatic life. The Refinery further hopes that the Agency is not attempting to suggest that the RNA and electric fish barriers do not help prevent invasive species from accessing Lake Michigan.

7. As set out in the Refinery's June 14, 2011 Motion, both Mr. Huff and Robin L. Garibay, REM provided direct and relevant testimony setting out the uniqueness of the RNA and the grounds that support this Motion. Rather than repeat that testimony again, the Refinery refers the Agency to those applicable portions of the record, including testimony, pre-filed documents, and public comments, which were cited in the Motion.

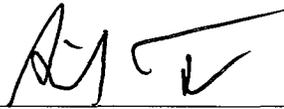
8. The Lemont Refinery is prepared to quickly file a proposal for water quality standards in an expedited Use C Subdocket so that hearings can be focused on that topic alone. As a result, the other more contentious issues can be addressed in Subdocket D without the need to focus on the RNA or the electric fish barrier.

WHEREFORE, the Lemont Refinery respectfully renews its request 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 Use C for the purposes of aquatic life and proceed to a new expedited Subdocket to determine the appropriate aquatic life standards applicable to such a Use C in accordance with the maps and language submitted alongside its Motion filed on June 14, 2011.

Dated: July 8, 2011

Respectfully submitted,

CITGO PETROLEUM CORPORATION, and
PDV MIDWEST, LLC, Petitioners

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 8th day of July, 2011, I have served electronically the attached Reply in Support of an Expedited Subdocket Addressing Use C and Notice of Filing upon the following person:

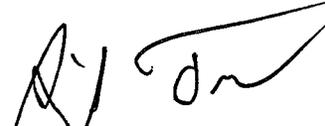
John Therriault, Clerk
Pollution Control Board
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and by U.S. Mail, first class postage prepaid, to the following persons:

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