

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
MARATHON PETROLEUM)	
COMPANY LP,)	
)	
Petitioner,)	
)	
v.)	PCB No. 2018-049
)	
ILLINOIS ENVIRONEMNTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

Don Brown, Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
Don.Brown@illinois.gov
(via electronic mail)

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
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(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Pollution Control Board ILLINOIS EPA'S REPLY, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIORMENTAL PROTECTION
AGENCY

Dated: April 12, 2019

1021 N. Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794
217-782-5544

By: /s/ Sara G. Terranova
Sara G. Terranova
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ILLINOIS EPA’S REPLY

NOW COMES the Illinois Environmental Protection Agency (Illinois EPA or Agency), by and through one if its attorneys, Sara G. Terranova, in response to the Illinois Department of Natural Resources’ (IDNR) Response to Illinois EPA’s Recommendation. In support of this Reply, Illinois EPA states as follows:

I. The Agency Filed a Complete Recommendation

On September 10, 2018, the Agency filed with the Illinois Pollution Control Board (Board) a recommendation to grant Marathon Petroleum Company LP’s (Marathon or Petitioner) Petition to Approve Alternative Thermal Effluent Limitations. Included in the Agency’s recommendation was a statement that the Agency was “not rendering an opinion regarding [IDNR’s] March 29, 2018 letter” or Marathon’s response to that letter. Agency Recommendation at 4. IDNR asserts that because the Agency did not provide an opinion on the consultation letter or Marathon’s response, the Agency’s recommendation is therefore incomplete. IDNR Response at ¶ 13. IDNR claims the Illinois EPA “reserved its findings” regarding the consultation letter and Marathon’s response. IDNR Response at ¶ 5. However, IDNR cited no legal authority requiring the Agency’s

recommendation to include an opinion on a consultation letter and that by not rendering an opinion the Agency had therefore reserved its findings.

In fact, the Illinois EPA did not “reserve its findings” as IDNR claims, but rather, filed a complete recommendation in accordance with Section 106.1145. The Agency’s recommendation to grant Marathon’s petition was made after consideration of each required element as provided in Section 106.1145(b). *See* Agency’s Recommendation at 4-11; 35 Ill. Adm. Code 106.1145(b). Additionally, pursuant to Section 106.1145(b)(6), as to whether the Agency communicated with or received comments from IDNR, the Agency noted all communication with IDNR, including IDNR’s March 29, 2018, consultation letter to the Agency. *See* Agency’s Recommendation at 10. After considering all the information the Agency was required to consider under Section 106.1145, the Agency recommended that the Board grant Marathon’s requested relief; and the Agency considers the recommendation to be complete.

II. Protection and Propagation

The Agency believes the Petitioner met its burden of proof in accordance with Section 106.1160. The Agency provided a rationale for this position in the Agency’s recommendation. *See* Agency Recommendation at 4-7. As a result of the concern raised by IDNR that Marathon failed to address the issue of “protection and propagation”, Marathon has reexamined this issue and provided a Reply . *See* IDNR Response at ¶21; Marathon’s Reply at 7-12. The Agency supports the arguments raised by the Petitioner in its Reply, and the Agency reiterates its belief that the Petitioner has met its burden of proof in accordance with Section 106.1160.

To further address IDNR’s concern that the Petitioner will assure the protection and propagation of the Bigeye Chub in Robinson creek, the Agency requested spawning temperature data for the Bigeye Chub and if necessary, a representative important species (RIS) from the

Petitioner. Based on the data received, the range of spawning temperatures for the Bigeye Chub and an RIS of the Bigeye Chub are protected by the temperature limits proposed by the alternative thermal effluent limit. *See* Marathon's Spawning Information BEC SS, Attachment A. For protection to occur, the water temperatures in Robinson Creek should not exceed lethal temperatures during summer months. The maximum limits requested by the Petitioner do not exceed the upper incipient lethal temperatures of the RIS. For propagation to occur, the alternative thermal limits should allow for a seasonal regime that does not exclude the ranges of temperatures that resident or transient organisms would utilize for spawning. The incremental increases (and decreases) of monthly temperatures limits proposed by the Petitioner provides a more natural progression of temperatures compared to the General Use standard currently applicable to the Petitioner. For organisms preparing for spawning during the months of March, April, and May, the stepwise temperature increase from 74, to 82, to 88 °F, respectively, is much more amenable to spawning compared to temperatures of 60, 90, and 90 °F, respectively.

III. UIUC Bioassay

The UIUC study has not changed the Agency's recommendation to grant the proposed alternative thermal effluent limit. As expected, the response temperatures for the Bigeye Chub were in line with the thermal response temperatures of other cyprinids that were already represented in the Fish Temperature Modeling System (FTMS) used by the Petitioner. *See* Table 13 of the Technical SD. Inclusion of the Bigeye Chub critical thermal maximum temperature (96.8 °F) into the FTMS has not modified the model outputs that were developed for protection of all RIS. Long-term and short-term survival of all RIS in Robinson Creek will be protected by a summer average water temperature of 87.1 °F and a summer maximum water temperature of 90 °F (93 °F one percent of the time), respectively.

IV. Conclusion

The Agency recommends that after review and consideration of all relevant information as required in a 35 Ill. Adm. Code 106 Subpart K proceeding, the Board must grant Marathon's Petition for Alternative Thermal Effluent Limitations.

WHEREFORE, the Agency respectfully submits its Reply.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

Dated: April 12, 2019

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ATTACHMENT A

Spawning information for species that are "closely related" to Bigeye Chub.

References				
Species	Becker (1983)	Etnier & Starnes (1993)	Pflieger (1997)	Smith (1979)
Bigeye Chub	--	late-spring to early-summer	Breeding adults in June indicating late-spring or early-summer	Gravid females observed in early June
Sand Shiner	late-May to mid-August; Kansas obs. late-July and August 80.6 - 98.6°F (27 - 37°C)	May/June through August	late-April through August	Presumed late-spring to early-fall; Des Moines River obs. August and early-September

Becker, G.C. 1983. Fishes of Wisconsin. The University of Wisconsin Press. Madison, Wisconsin. 1052 pp.

Etnier, D.A., and W.C. Starnes. 1993. The Fishes of Tennessee. University of Tennessee Press. Knoxville, TN. 689 pp.

Pflieger, W.L. 1997. The fishes of Missouri. Missouri Department of Conservation. 372 pp.

Smith, P.W. 1979. The fishes of Illinois. University of Illinois Press, Urbana. 314 pp.

Trautman, M.B. 1981. The fishes of Ohio. 2nd Edition. Ohio State University Press, Columbus, Ohio. 683 pp.

CERTIFICATE OF SERVICE

I, Sara G. Terranova, Assistant Counsel for the Illinois EPA, herein certifies that I have served a copy of the foregoing Notice of Filing and the Illinois EPA's Reply, via electronic mail upon:

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Clerk of the Board
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Respectfully submitted,

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