

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) AS 2024-003
PETITION OF MARATHON PETROLEUM) (Adjusted Standard – Air)
COMPANY, LLC FOR AN ADJUSTED)
STANDARD FROM 35 ILL. ADM. CODE)
PART 201 AND SECTION 216.361)

NOTICE OF FILING

TO: See Certificate of Service

PLEASE TAKE NOTICE THAT on the 11th day of September 2023, I caused to be electronically filed with the Clerk of the Illinois Pollution Control Board, via the “COOL” System, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S MOTION FOR STAY OF PROCEEDINGS, OR IN THE ALTERNATIVE MOTION FOR EXTENSION OF TIME TO FILE A RECOMMENDATION on behalf of the Illinois Environmental Protection Agency, true and correct copies of which are attached hereto and hereby served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Audrey L. Walling
Audrey L. Walling
Assistant Counsel
Division of Legal Counsel

DATED: September 11, 2023

1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544
Audrey.L.Walling@illinois.gov

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PETITION OF MARATHON PETROLEUM) (Adjusted Standard – Air)
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S MOTION FOR STAY OF PROCEEDINGS, OR IN THE ALTERNATIVE, MOTION FOR EXTENSION OF TIME TO FILE A RECOMMENDATION

NOW COMES the respondent, the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by one of its attorneys, Audrey Walling, Assistant Counsel, and pursuant to 35 Ill. Adm. Code 101.514 and 101.522, hereby requests that the Illinois Pollution Control Board (“Board”) grant a stay of proceedings in AS24-003, or in the alternative, an extension of time in which to file a recommendation. In support thereof, the Illinois EPA respectfully states as follows:

I. BACKGROUND AND STATUS REPORT

A. R23-18(A) Sub Docket

On July 20, 2023, the Board adopted amendments to 35 Ill. Adm. Code 201, 202, and 212, to remove provisions that allowed sources to request, and the Illinois EPA to grant, advance permission to continue operating during a malfunction or to violate emission limitations during startup. R23-18 Final Opinion and Order (July 20, 2023). The repealed provisions provided certain sources with a possible affirmative defense regarding emission exceedances during periods of malfunction or startup should enforcement be pursued. R23-18 Final Opinion and Order (July 20, 2023).

In response to comments from participants in that rulemaking, on April 6, 2023, the Board opened a sub-docket to consider any proposed Alternative Emission Limitation (“AEL”) during periods of startup, shutdown, or malfunction (“SSM”). R23-18 Second Notice Opinion and Order (April 6, 2023). On July 6, 2023, the Board ordered anyone who wished to file a rulemaking proposal for alternative standards during SSM in the R23-18(A) sub docket to do so by August 7, 2023. R23-18(A) Board Order at p. 6 (July 6, 2023).

On August 7, 2023, American Petroleum Institute (“API”) filed a proposal to amend 35 Ill. Adm. Code Part 216, Carbon Monoxide Emissions, specifically amending Section 216.103 (Definitions), Section 216.104 (Incorporations by Reference), and Section 216.361 (Petroleum and Petrochemical Processes). API Proposal at p. 1 (August 7, 2023). API’s proposed amendments to 216.361 entail the inclusion of alternative CO standards for petroleum and petrochemical processes that would apply during periods of startup through the incorporation by reference of 40 CFR 63 Subpart UUU by adding a new subsection (d). API Proposal at p. 16

(August 7, 2023). Proposed additions to 216.103 “Definitions” would see the language from 40 CFR 63.1579 incorporated by reference as it applies to the definitions of “catalytic cracking unit” and “hot standby.” API Proposal at p. 25 (August 7, 2023). API’s proposed amendments to 216.104 “Incorporations by Reference” would see 40 CFR 63 incorporated by reference. API proposal at p. 25 (August 7, 2023). The proposed amendments apply to certain units at refineries including Marathon. Four other rulemaking proposals were also filed on August 7: one by the Illinois Environmental Regulatory Group, one by East Dubuque Nitrogen Fertilizers LLC (“EDNF”), one jointly by Dynegy Midwest Generation, LLC, Illinois Power Generating Company, and Kincaid Generation, LLC (collectively, “Dynegy”) and Midwest Generation LLC (“MWG”), and one by Rain CII Carbon LLC (“Rain Carbon”). R23-18(A), Board Order (August 17, 2023).

On August 17, 2023, the Board combined these proposals into a single proposal amending 35 Ill. Adm. Code 212, 215, 216, and 217 to establish alternative standards during periods of startup, shutdown, breakdown, and malfunction. R23-18(A), Board Order (August 17, 2023). The Board submitted the combined proposal for first-notice publication in the Illinois Register and scheduled public hearings. R23-18(A), Board Order (August 17, 2023); R23-18(A), Hearing Officer Order (August 17, 2023).

B. Marathon’s Petition for Adjusted Standard

On August 14, 2023, Marathon petitioned the Board for an adjusted standard under Section 28.1 of the Environmental Protection Act, 415 ILCS 5/28.1, during periods of startup of its fluid catalytic cracking unit regarding the carbon monoxide emissions standards in 35 Ill. Adm. Code 216.361 applicable to petroleum and petrochemical processes. Marathon Petition at p. 1, 9 (August 14, 2023). It also seeks an adjusted standard from 35 Ill. Adm. Code Part 201.¹ Specifically, Petitioner seeks an adjusted standard applicable to its petroleum refinery located in Robinson, Crawford County, Illinois. Marathon Petition at p. 16 (August 14, 2023). The Petition seeks an AEL that would apply during periods of startup of the fluid catalytic cracking unit in lieu of the carbon monoxide standards in Section 216.361. Marathon Petition at p. 2 (August 14, 2023). On August 14, 2023, ExxonMobil Oil Corporation, Dynegy, Rain Carbon, EDNF, and MWG also filed Petitions for Adjusted Standard with the Board that mirror rulemaking proposals in R23-18(A).

In its Petition, Marathon states, in part, “Because Marathon has filed this Petition within 20 days after the effective date of the regulation of general applicability at issue and that regulation implements in whole or part the requirements of the CAA, an automatic stay of those regulations is in effect throughout the pendency of this proceeding pursuant to Section 28.1(f) of the Act. 415 ILCS 5/28.1(f). Pursuant to Section 28.1(f), ‘[i]f the regulation adopted by the Board from which the individual adjusted standard is sought replaces a previously adopted Board regulation, the source shall be subject to the previously adopted Board regulation until final action is taken by the Board on the petition.’ 415 ILCS 5/ 28.1(f). Therefore, in effect, the SMB

¹ Marathon does not specify a provision in Part 201 that imposes a requirement from which it seeks relief but rather refers to Part 201 in general.

provisions in Part 201 would revert to the language that was in place before they were amended in PCB R 23-18 during the pendency of this proceeding.” Marathon Petition at p. 11 (August 14, 2023). Marathon also states that it “acknowledges that the relief requested in this Petition is also requested in API’s [rulemaking] Proposal, except API’s requested AEL proposes to apply to all four refineries that are regulated under Section 216.361. Marathon has filed this Adjusted Standard Petition in order to avail itself of the option to obtain regulatory relief specific to Marathon . . . and, in order for Marathon to avail itself of the stay pursuant to Section 28.1(f) of the Act, Marathon was required to file this Petition within 20 days of the effective date of the rule of general applicability (here, the amendments in PCB R 23-18 that became effective on July 25, 2023).” Marathon Petition, Footnote 3 at p. 5 (August 14, 2023).

Unless otherwise ordered by the Hearing Officer or the Board, the Illinois EPA is required to file its Recommendation within 45 days after the filing of Marathon’s Petition, i.e., September 28, 2023, or where a hearing has been scheduled, at least 30 days before hearing, whichever is earlier. 35 Ill. Adm. Code 104.416(a). Marathon waived a hearing in its Petition. Marathon Petition at p. 46 (August 14, 2023).

II. REQUEST TO STAY THIS PROCEEDING

The Board should stay this proceeding while the Board considers API’s rulemaking proposal. As set forth above, API’s proposed amendments are substantively similar to Marathon’s requested adjusted standard. Marathon itself acknowledged that the same relief is at issue in both proceedings, and that it filed its Petition in part to preserve its arguments regarding a stay under Section 28.1(f) of the Act. Marathon Petition at p. 11 (August 14, 2023).

Simultaneously participating in both an expedited rulemaking and Marathon’s adjusted standard proceeding will force the Agency, Board, Marathon, and potentially other participants to expend significant resources in proceedings that seek similar relief. Conversely, issuing a stay here will conserve resources and allow participants to focus on API’s rulemaking proposal first, and this proceeding second (and only if still necessary).

The Illinois EPA is not opining as to whether Marathon is entitled to a stay under Section 28.1(f) of the Act but acknowledges Marathon’s stated position in this regard and clarifies that this request for stay is not intended to have any impact on the legal posture of such position. The Illinois EPA is simply seeking to “hold” this proceeding while the rulemaking moves forward, to be resumed at a later date if necessary.

III. ILLINOIS EPA’S REQUEST FOR EXTENSION OF TIME

In the alternative, if the Board does not grant a stay, the Illinois EPA requests an extension of time of ninety (90) days, up to and including December 27, 2023, to file the Agency Recommendation.

Marathon submitted a 127-page Petition. The Illinois EPA is currently reviewing it but anticipates that it will need additional time to both review and develop recommendations. The Illinois EPA must address and respond to the Petition with respect to each issue raised by the requirements of Section 104.406(a) through (j). 35 Ill. Adm. Code 104.416(b). As such, Section

104.406(i) requires that the Agency Recommendation indicate whether the Board may grant the proposed adjusted standard consistent with federal law. 35 Ill. Adm. Code 104.406(i). Doing so here will entail consultation with USEPA to ascertain whether the requested adjusted standard is federally approvable, i.e., meets Clean Air Act requirements. Such consultation is likely not possible within the given time frame for the Illinois EPA to respond to the Petition.

Along with Marathon's Petition, five other Petitions for Adjusted Standard were filed with the Board on the same day. Given the number of petitions received, the time it will take the Illinois EPA to review and consult with USEPA on each, and the Agency's limited resources, more time is necessary.

IV. CONCLUSION

For the above reasons, Illinois EPA respectfully requests that the Board grant this Motion for Stay of Proceedings for 90 days up to and including December 11, 2023 (or a later date if deemed more appropriate by the Board), or in the alternative, grant this Motion for Extension of Time to File Recommendation for 90 days, up to and including December 27, 2023.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Audrey Walling
Audrey Walling
Assistant Counsel
Division of Legal Counsel

DATED: September 11, 2023

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P.O. Box 19276
Springfield, IL 62794-9276
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CERTIFICATE OF SERVICE

I, Audrey L. Walling, Assistant Counsel, caused to be served on this 11th day of September 2023, a true and correct copy of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S MOTION TO STAY PROCEEDINGS, OR IN THE ALTERNATIVE MOTION FOR EXTENSION OF TIME TO FILE A RECOMMENDATION upon the persons listed on the Service List via electronic mail or electronic filing, as indicated.

Don Brown

Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, IL 60601
Don.brown@illinois.gov

Melissa S. Brown

Andrea Quade
HEPLERBROOM, LLC
4340 Acer Grove Drive
Springfield, IL 62711
Melissa.Brown@heplerbroom.com
Andrea.Quade@heplerbroom.com

That my e-mail address is Audrey.L.Walling@illinois.gov.

That the number of pages in this e-mail transmission is 6.

That the e-mail transmission took place before 5:00 p.m.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Audrey Walling
Assistant Counsel
Division of Legal Counsel

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P.O. Box 19276
Springfield, IL 62794-9276
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