

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD RECEIVED
CLERK'S OFFICE

MAR 15 2005

STATE OF ILLINOIS
Pollution Control Board

CITGO PETROLEUM CORPORATION and)
PDV MIDWEST REFINING, L.L.C.,)

Petitioners,)

PCB 05-85
(Variance-Water)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

NOTICE

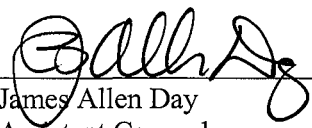
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite. 11-500
Chicago, Illinois 60601

Letissa Carver Reid
Sonnenschien Nath & Rosenthal
8000 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6404

Jeffrey C. Fort
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233 South Wacker Drive
Chicago, Illinois 60606-6404

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the POST-HEARING BRIEF of the Illinois Environmental Protection Agency, copies of which is herewith served upon you.

ENVIRONMENTAL PROTECTION AGENCY
OF THE STATE OF ILLINOIS

By: 
James Allen Day
Assistant Counsel
Division of Legal Counsel

DATED: March 14, 2005

Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
217-782-5544

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**POST-HEARING BRIEF OF THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY**

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA") by one of its attorneys, James Allen Day, and files its Post-Hearing Brief. The Illinois EPA recommends that the Illinois Pollution Control Board ("Board") **GRANT** the variance requested by CITGO Petroleum Corporation and PDV Midwest Refining, L.L.C. (Hereafter, referred to jointly as "Petitioner" or "CITGO"). The petition filed by the Petitioner satisfies the petition content requirements set forth in 35 Ill. Adm. Code 104.204. Pending its satisfactory response to certain technical questions posed by the Board's technical unit on March 3, 2005, the Petitioner has carried its burden under Section 35 of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/35 (2004)) that compliance with 35 Ill. Adm. Code 302.208(g) and 302.407 would impose an arbitrary or unreasonable hardship on CITGO.

I. BACKGROUND

On November 8, 2004, CITGO filed a Petition for Variance ("petition") relating to its operation of a petroleum refinery in Lemont, Illinois. Upon its initial review of the petition, the

Illinois EPA noted several deficiencies which would preclude a recommendation that the Board grant the petition for variance. Over the course of the following months, representatives of the Illinois EPA and CITGO met on several occasions to negotiate changes to the petition that would be necessary in order for the Illinois EPA to recommend that the Board grant the petition. The parties reached agreement on the additional information, documents and testimony with which CITGO could augment its petition in order to achieve Illinois EPA support for the petition. However, CITGO declined to formally amend its petition with the materials informally provided to the Illinois EPA during these negotiations. Therefore, on February 4, 2005, the Illinois EPA filed its Recommendation in this matter, urging the Board to deny the petition due to several specific deficiencies. On Thursday, March 24, 2005, the Board conducted a hearing in this matter. During the hearing, CITGO offered all the documents and testimony it had previously discussed informally with the Illinois EPA.

II. ARGUMENT

In its Recommendation, the Illinois EPA noted two key reasons why it could not support CITGO's petition. First, the Illinois EPA found that CITGO had not adequately supported its contention that a binding consent decree required the installation of air pollution control equipment that prompted the variance petition. With the introduction of the executed consent decree into the record of this matter, CITGO has now resolved this deficiency. Second, the Illinois EPA found the compliance plan set forth in CITGO's petition to be inadequate. On February 17, 2005, CITGO filed the pre-filed testimony of Claude Harmon and James E. Huff, along with fifteen numbered exhibits. CITGO's Exhibit 7 consists of a detailed compliance plan. This new compliance plan is the product of a series of meetings and negotiations between

CITGO representatives and Illinois EPA staff. The new compliance plan fully resolves the Illinois EPA's concerns regarding the inadequacy of the compliance plan set forth in the petition for variance.

III. CONCLUSION

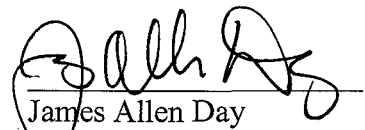
The burden of proof in a variance proceeding is on the Petitioner to demonstrate that compliance with the rule or regulation would impose an arbitrary or unreasonable hardship. See, 415 ILCS 5/35(a), 35 Ill. Adm. Code 104.238. The Illinois EPA recommends that the Board find that the Petitioner has met its statutory burden to demonstrate that compliance with the Board's regulations regarding water quality standards would impose an arbitrary or unreasonable hardship on the CITGO.

Wherefore, for the reasons stated above, the Illinois EPA recommends that the Board **GRANT** the variance requested by CITGO.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By:


James Allen Day
Assistant Counsel
Division of Legal Counsel

Dated: March 14, 2005
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

STATE OF ILLINOIS

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COUNTY OF SANGAMON

PROOF OF SERVICE

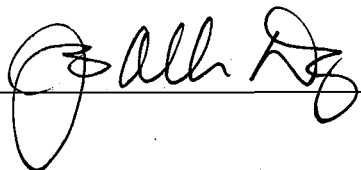
I, the undersigned, on oath state that I have served the attached **POST-HEARING BRIEF** upon the person to whom directed, by placing a copy in an envelope addressed to:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite. 11-500
Chicago, Illinois 60601

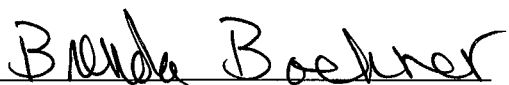
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8000 Sears Tower
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Chicago, Illinois 60606-6404

and mailing it from Springfield, Illinois on March 14, 2005, with sufficient postage affixed for first class mail.



SUBSCRIBED AND SWORN TO BEFORE ME
this fourteenth day of March, 2005



Notary Public

