

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

IN THE MATTER OF:	)	
	)	
CITGO PETROLEUM CORPORATION and	)	
PDV MIDWEST REFINING, L.L.C.,	)	
	)	PCB12-94
Petitioners,	)	(Variance - Water)
	)	
v.	)	
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

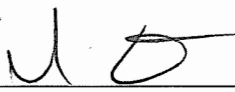
To:

John Therriault, Assistant Clerk  
Bradley P. Halloran, Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph, Suite 11-500  
Chicago, IL 60601

Sara G. Terranova  
Stephanie Diers  
Office of Chief Legal Counsel  
Illinois Environmental Protection Agency  
1021 N. Grand Avenue East, P.O. Box 19274  
Springfield, IL 62794-9274

Please take notice that on July 2, 2013, we filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the attached **Objection to Motion and Amended Motion to Vacate Board Order**, a copy of which is served upon you.

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

By:   
One of Its Attorneys

Jeffrey C. Fort  
Irina Dashevsky  
Dentons US LLP  
233 S. Wacker Drive, Suite 7800  
Chicago, IL 60606-6404

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

CITGO PETROLEUM CORPORATION and	)	
PDV MIDWEST REFINING, L.L.C.,	)	
	)	PCB12-94
Petitioners,	)	(Variance - Water)
	)	
v.	)	
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**OBJECTION TO MOTION AND AMENDED MOTION TO VACATE BOARD ORDER**

Now comes Citgo Petroleum Corporation and PDV Midwest Refining, L.L.C. (the “Lemont Refinery” or “Petitioner”) and requests that the Pollution Control Board (the “Board”) deny Respondent IEPA’s Motion and Amended Motion to Vacate Board Order (“Motion to Vacate”).

1. This proceeding follows a request for variance first made by the Lemont Refinery in 2005 for relief with respect to the addition of sulfates in its wastewater discharge. The Lemont Refinery’s requests for variance relief from the Total Dissolved Solids (“TDS”) standard for the Secondary Contact waters was occasioned by the requirement that the Lemont Refinery install Flue Gas Desulfurization (“FGD”) at the refinery pursuant to a consent decree among Citgo, IEPA, USEPA and other state agencies. The FGD equipment increased the sulfate loadings from the Lemont Refinery. IEPA determined at that time, that because of the presence of elevated dissolved solids during snow-melt conditions (due to chlorides from the de-icing practices which caused elevated TDS) entering the Ship Canal, that a variance was required to

allow IEPA to issue the necessary permits for the installation of that air pollution control equipment. That first variance, PCB 05-85, was issued by the Board following a recommendation of support by IEPA. The Board issued two additional variances, PCB 08-33 and PCB 12-94, again with IEPA recommending and supporting the variance as requested by the Lemont Refinery. Copies of the Board's opinions in each of these proceedings are attached as Exhibits 1, 2 and 3, respectively.

2. The IEPA's Motion to Vacate directly contradicts the recommendations it previously made in this matter and in the two prior variance proceedings. In each of these proceedings (PCB 05-85, PCB 08-33 and PCB 12-94), IEPA agreed with the Lemont Refinery that the variance relief could be granted and was "consistent with Federal Law." The variance at issue here is similar to the variances previously granted by the Board in the prior proceedings. In each of those proceedings, IEPA and the Lemont Refinery believed that the requested relief was proper.

3. It is obvious from a review of the USEPA documents that the USEPA disapproval occurred through no fault of the Lemont Refinery. Neither 05-85 or 08-33 were submitted by IEPA to USEPA for review, and IEPA never advised the Lemont Refinery that it intended to submit this variance for USEPA review.

4. In its cover letter to IEPA, USEPA states: "The variance effectively removed for a time limited period the indigenous aquatic use and removed the TDS criterion necessary to protect that use of that period of time." The Lemont Refinery believes this issue is easily addressed by inserting an interim TDS criterion which is protective of the designated uses of the Ship Canal and/or the Regulated Navigation Zone.

5. USEPA also states

“Specifically, Illinois did not provide appropriate technical and scientific data and analyses demonstrating that the indigenous aquatic life designated use was not attainable for any of the reasons specified at 40 CFR 131.10(g)...”

Thus, USEPA was focusing on what was in the record of this proceeding (PCB 12-94), and not on whether some kind of variance was appropriate. The supporting memorandum suggests several approaches which a state could take to change an adopted use and an adopted criterion, including establishing a new use and then adopting a revised criterion or the state could limit the applicability of an otherwise approved use removal to a single discharger and to a single pollutant, which could be “environmentally preferable” to a broader use and criterion change.

6. Moreover, there is nothing in the variance order or in the PCB 12-94 request that is inherently contrary to Federal law. USEPA states that the variance did not include an analysis of the uses of the Ship Canal and did not include an alternative criterion for TDS. That seems an odd statement given that hearings were being held in Docket C at the time this variance (PCB12-94) was being considered. IEPA apparently did not submit any of the documentation from the UAA to USEPA, which include the applicability of Factors 3, 4 and 5 to the Ship Canal, or to the Regulated Navigation Zone and Black Safety Zone. Thus, Petitioner believes that the USEPA was taking a narrow view of the water quality conditions relating to the variance. From Petitioner’s perspective, there is ample readily available information to satisfy the USEPA’s concerns. Thus, the record on which the Board acts needs to be compiled to meet the issues identified by USEPA.

7. In retrospect, Petitioner acknowledges that granting a variance from the 1,500 mg/l TDS standard could be viewed, theoretically, as leaving the aquatic habitat of the Ship Canal without protection to dissolved solids or sulfates, the two pollutants associated with the

wet gas scrubber project. Therefore, to address any possible concerns by USEPA, Petitioner will propose to add a condition with respect to interim water quality standard for TDS and sulfates to be in effect for the term of the variance.

8. The Board should also deny IEPA's Motion because the relief sought pursuant to 35 Ill. Adm. Code 101.904(b)(3) is inappropriate. The Board clearly had authority to issue the decision on the Lemont Refinery's variance petition and IEPA provides no support to the contrary. Accordingly, 101.904(b)(3) cannot be stretched so far as to hold that the Board's decision here is a "void order," which is reserved for orders such as those based on jurisdictional defects. *See e.g. Miller v. Pollution Control Bd.*, 267 Ill. App. 3d 160, (4th Dist. 1994) (holding that Pollution Control Board's improper bifurcation of administrative citation proceedings did not render void order assessing costs upon landowner because board had express authority to assess hearing costs); *see also Newkirk v. Bigard*, 109 Ill. 2d 28, 39 (1985) (confirming that a party cannot collaterally attack an agency order unless the order is void on its face as being unauthorized by statute.") The requirement that the Board consider Federal law is not jurisdictional and in this requirement, any mistake about Federal law occurred because of IEPA's actions, both during this proceeding (in terms of the Recommendation) and after the Order in this proceeding was entered.

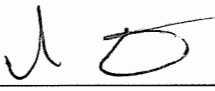
9. Moreover, the Motion to Vacate is grossly overbroad since it would eliminate not just the variance from the current TDS standard in the Ship Canal, but also the extensive monitoring, reporting and planning which are required by the variance conditions. Petitioner is surprised that the IEPA would want to lose this information and the potential development of Best Management Practices as a tool to deal with elevated TDS (and chloride) levels. Yet that is the nature of IEPA's Motion -- to throw out the entire set of variance conditions.

10. The appropriate approach is to proceed with a revised variance petition in order to fill the perceived gap cited by USEPA. The Lemont Refinery is preparing such a petition, and intends to request use of the same TDS water quality standard as the Board granted to Exxon Mobil in R06-24, or 1,686 mg/L. That water quality standard was for general use waters and was approved by USEPA. However, the Lemont Refinery discharges into the Chicago Sanitary and Ship Canal which is a "secondary contact water" and is proposed it to be classified as a "Use B" water. Petitioner is confident that the 1,686 mg/L water quality standard for TDS is very protective of the "tolerant" aquatic species that are in the Ship Canal and the designated water uses there.

11. As part of the Lemont Refinery's forthcoming petition to amend the variance order in this proceeding, Petitioner does not expect to ask for an extension of the schedule for the existing conditions ordered in this proceeding. Rather Petitioner simply expects to add an interim water quality condition of 1,686 mg/l for TDS, based upon the TDS water quality standard adopted by the Board in the petition filed by Exxon Mobil in R06-24. The Lemont Refinery will also propose a sulfate standard be added along with the 1,686 mg/L standard for TDS since the increased discharge of sulfates from the FGD unit is the activity that occasioned this series of variances.

WHEREFORE, the Lemont Refinery requests that the Board deny the Agency Motion to Vacate the Order in this matter.

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

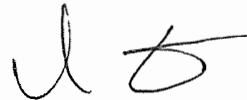
By:   
\_\_\_\_\_  
One of Its Attorneys

Dated: July 2, 2013

Jeffrey C. Fort  
Irina Dashevsky  
Dentons US LLP  
233 S. Wacker Drive  
Suite 7800  
Chicago, IL 60606-6404

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that I have served upon the individuals named on the attached Notice of Filing true and correct copies of the enclosed **Objection to Motion and Amended Motion to Vacate Order**, by First Class Mail, postage prepaid, on July 2, 2013.

A handwritten signature in black ink, consisting of a stylized 'J' followed by a 'B' with a horizontal line extending to the right.