

ILLINOIS POLLUTION CONTROL BOARD

November 1, 2018

| | | |
|------------------------|---|-------------------------|
| MARATHON PETROLEUM |) | |
| COMPANY LP, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | PCB 18-49 |
| |) | (Thermal Demonstration) |
| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Respondent. |) | |

ORDER OF THE BOARD (by U. Choe):

Marathon Petroleum Company LP (Marathon) filed a petition seeking alternative thermal effluent limitations (ATEL) for its Crawford County Refinery (Refinery) on December 15, 2017. Petition at 1. The petition was filed under Section 316(a) of the Clean Water Act (33 U.S.C. § 1326(a)), 35 Ill. Adm. Code 304.141(c), and 35 Ill. Adm. Code Part 106.Subpart K. *Id.* Marathon requests that the ATEL apply to Refinery's discharges in lieu of those imposed by 35 Ill. Adm. Code 302.211(d) and (e).

On September 10, 2018, the Illinois Environmental Protection Agency (Agency) filed its recommendation concerning Marathon's ATEL within the time granted by the Board. 35 Ill. Adm. Code 106.1145(a). On September 27, 2018, the Board received Marathon's response to the Agency's recommendation. On September 28, 2018, the Board received a Motion for Extension of Time (Motion) from the Illinois Department of Natural Resources (IDNR). Marathon filed a response to IDNR's Motion on October 12, 2018. The Board accepted Marathon's petition on October 4, 2018, but did not determine the sufficiency of Marathon's petition, and reserved ruling on the Motion. *See* October 4, 2018, Board Order. For the reasons discussed below, the Board grants IDNR's motion.

IDNR'S MOTION

IDNR's motion seeks a 90-day extension to file a response to the Agency's recommendation, and Marathon's response to IDNR's consultation letter. *See* Motion. IDNR seeks an extension of time due to an ongoing bioassay of the upper thermal tolerance limits of the Bigeye Chub, a freshwater fish species. *Id.* at 3. IDNR argues the Bigeye Chub is listed on Illinois' endangered species list, and an increased thermal limit could result in an unauthorized "take" of the Bigeye Chub under 17 Ill. Adm. Code Part 1080. *Id.* at 2. According to IDNR, the University of Illinois at Urbana-Champaign's (UIUC) Department of Natural Resources and Environmental Science will conduct the bioassay. *Id.* at 3, Mot. Attach. B. IDNR acknowledges that the UIUC's proposal period extends through August 1, 2019, but states that preliminary data will be available November 2018. *Id.* at 3-4. IDNR argues that the requested extension will

allow IDNR to review and include the relevant preliminary data in its response to the Agency's recommendation and Marathon's reply. *Id.* at 4.

MARATHON'S RESPONSE

Marathon is opposed to any further delay in this proceeding. Marathon states that the Board has all information necessary to proceed with a decision. *See Response*. Marathon argues, and asserts the Agency agrees, that the ATEL petition includes the necessary information for a Clean Water Act Section 316(a) demonstration even if data does not exist for one or more species of fish. *Id.* at 11. As such, Marathon asserts that it is inappropriate to delay this proceeding in order to hear IDNR's opinion based on non-peer reviewed, preliminary data on Bigeye chub. *Id.* at 11-12. Marathon further states that rather than relying on preliminary data from the UIUC study now, any relevant new peer-reviewed information produced by that study must be considered at the time of Marathon's NPDES permit renewal under Subpart K. *Id.* at 12.

DISCUSSION

The Board, finding good cause, and no material prejudice, grants IDNR's motion for an extension to file the report and response to matters in the record, on or before December 31, 2018. Regarding Marathon's concern that the preliminary data will not be peer-reviewed, this is something the Board will consider when assessing the evidentiary weight of the study. Once IDNR files response to the recommendation, the Board expects the Agency and Marathon to file their replies.

IT IS SO ORDERED.

Board Members B.K. Carter and C.K. Zalewski abstained.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 1, 2018, by a vote of 3-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive, flowing style.

Don A. Brown, Clerk
Illinois Pollution Control Board