

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter Of:)	
)	
MARATHON PETROLEUM)	
COMPANY LP,)	
)	
Petitioner,)	
)	
v.)	PCB No. 18-49
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Don Brown	Carol Webb
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500	1021 North Grand Avenue East
Chicago, Illinois 60601	P.O. Box 19274
(VIA ELECTRONIC MAIL)	Springfield, Illinois 62794-9274
	(VIA ELECTRONIC MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board **MOTION FOR LEAVE TO FILE A REPLY TO ILLINOIS DEPARTMENT OF NATURAL RESOURCE'S RESPONSE TO AGENCY'S RECOMMENDATION**, a copy of which is herewith served upon you.

Respectfully submitted,
MARATHON PETROLEUM COMPANY LP,

Dated: January 8, 2019

By: /s/ Melissa S. Brown
One of Its Attorneys

Katherine D. Hodge
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CERTIFICATE OF SERVICE

I, Melissa S. Brown, the undersigned, on oath state the following:

That I have served the attached **MOTION FOR LEAVE TO FILE A REPLY TO ILLINOIS DEPARTMENT OF NATURAL RESOURCE'S RESPONSE TO AGENCY'S RECOMMENDATION** via electronic mail upon:

Don Brown
Clerk of the Board
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601
Don.Brown@illinois.gov

Carol Webb
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That my email address is Melissa.Brown@heplerbroom.com.

That the number of pages in the email transmission is 7 pages.

That the email transmission took place before 5:00 p.m. on the date of January 8, 2019.

/s/ Melissa S. Brown
Melissa S. Brown

Date: January 8, 2019

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**MOTION FOR LEAVE TO FILE A REPLY TO ILLINOIS DEPARTMENT OF
NATURAL RESOURCE'S RESPONSE TO AGENCY'S RECOMMENDATION**

MARATHON PETROLEUM COMPANY LP ("Marathon"), by and through its attorneys, HEPLERBROOM, LLC, and pursuant to 35 Ill. Adm. Code § 101.500, hereby files this Motion for Leave to File a Reply to Illinois Department of Natural Resource's Response¹ to Agency's Recommendation ("Motion"). In support of this Motion, Marathon states as follows:

1. On December 15, 2017, Marathon filed its Petition to Approve Alternative Thermal Effluent Limitations ("Petition") in this proceeding.
2. Pursuant to 35 Ill. Adm. Code Section 106.1145(a), the Illinois Environmental Protection Agency's ("Illinois EPA") 45-day deadline to file its Recommendation to the Illinois Pollution Control Board ("Board") regarding the Petition was by January 29, 2018.

¹ As discussed below, Marathon is requesting leave to file a Reply to the Illinois Department of Natural Resource's filing dated December 28, 2018 entitled "Reply to the Illinois [EPA's] Recommendation." Per the Board's Order on November 1, 2018, IDNR was granted a 90-day extension to file a *response* to Illinois EPA's Recommendation. See Board Order, PCB No. 18-49, at 2 (Nov. 1, 2018). The Board also noted that, "[o]nce IDNR files *response* to the recommendation, the Board expects the Agency and Marathon to file their *replies*." *Id.* (emphasis added). Therefore, Marathon refers to IDNR's December 28, 2018 filing as a *Response* herein and requests leave to file a Reply to such Response.

3. As discussed in detail in Marathon's Response to the Recommendation of the Illinois EPA filed on September 27, 2018, Illinois EPA requested, and the Board granted, four extensions of time to file Illinois EPA's Recommendation on Marathon's Petition. *See* Marathon Petroleum Company LP's Response to the Recommendation of the Illinois Environmental Protection Agency, PCB No. 18-49, at 1-4 (Sept. 27, 2018) ("Response to Illinois EPA's Recommendation"). The primary reason for these extensions was to allow for continued discussions and meetings in response to the Illinois Department of Natural Resources ("IDNR"), a participant in this proceeding, reopening its consultation process due to the occurrences of a state-listed species, Bigeye Chub (*Hybopsis amblops*), reported in Marathon's Bioassessment (Exhibit 7 to the Petition). *See id.*

4. From January through September 2018, Marathon, Illinois EPA, and IDNR held multiple conference calls and meetings regarding the Bigeye Chub and Marathon's requested alternative thermal effluent limitations. *See id.*

5. On September 10, 2018, Illinois EPA filed its Recommendation to the Board regarding Marathon's Petition, in which Illinois EPA recommends that the Board grant Marathon's Petition. *See* Recommendation of the Illinois Environmental Protection Agency, PCB No. 18-49, at 4 (Sept. 10, 2018) ("Recommendation").

6. On September 12, 2018, Marathon, Illinois EPA, and IDNR met and discussed the University of Illinois' draft bioassay proposal entitled "Thermal Tolerance Limits of Bigeye Chub"; Marathon's comments on same; Marathon's compliance with all applicable state and federal rules, guidance², protocols, and analyses for making Clean Water Act Section 316(a)

² Including the United States Environmental Protection Agency's ("USEPA") Interagency 316(a) Technical Guidance Manual and Guide for Thermal Effects Sections of Nuclear Facilities Environmental Impact Statements (DRAFT) (May 1, 1977).

demonstrations in the absence of data for one or more particular species; and the Board's regulations in 35 Ill. Adm. Code Part 106, Subpart K specifically providing for a situation such as the one at issue here where additional data or other information becomes available after the Board grants a petition for alternative thermal effluent limitations, i.e., the new data is considered during the discharger's NPDES permit renewal process. *See* 35 Ill. Adm. Code §§ 106.1170(c), 106.1180.

7. Despite these discussions, on September 28, 2018, IDNR filed its Motion for Extension to file a response to Illinois EPA's Recommendation to the Board to grant Marathon's Petition and to Marathon's Response to IDNR's Consultation Letter.

8. Marathon filed a Response in Opposition to IDNR's Motion for Extension on October 12, 2018.

9. On November 1, 2018, the Board granted IDNR's Motion for Extension, allowing IDNR until December 31, 2018 to file a response to Illinois EPA's Recommendation and to Marathon's Response to IDNR's Consultation Letter. In the Order, the Board noted that, after IDNR files its response, "the Board expects the Agency and Marathon to file their replies." *See* Board Order, PCB No. 18-49, at 2 (Nov. 1, 2018).

10. On December 28, 2018, IDNR filed its Response to the Agency's Recommendation, entitled "The Illinois Department of Natural Resources' Reply to the Illinois Environmental Protection Agency Recommendation."

11. Marathon hereby requests leave from the Board to file its Reply to IDNR's Response to the Agency's Recommendation.

12. Pursuant to 35 Ill. Adm. Code Section 101.500, this Motion has been filed within 14 days after service of IDNR's Response to the Agency's Recommendation, which was filed and served on December 28, 2018.

13. Additionally, after an initial review of IDNR's Response to the Agency's Recommendation, and in particular the technical report attached to IDNR's Response, Marathon's technical consultants have recommended and intend to re-perform the predictive demonstration discussed in Marathon's Petition so as to include the Big Eye Chub as a Representative Important Species and to incorporate the data referenced in the Report. Due to the availability of key personnel at Marathon and Marathon's technical consultants, as well as taking into account the time needed to re-perform the predictive demonstration and analyze and synthesize the results, Marathon requests that it be granted until February 15, 2019 to file its Reply to IDNR's Response to the Agency's Recommendation.

14. The Respondent, Illinois EPA, has no objection to the granting of this Motion.

WHEREFORE, for the above and foregoing reasons, MARATHON PETROLEUM COMPANY LP requests that the Illinois Pollution Control Board enter an Order granting this Motion for Leave to File a Reply to Illinois Department of Natural Resource's Response to Agency's Recommendation, allowing MARATHON PETROLEUM COMPANY LP until February 15, 2019 to file such Reply, and granting such other and further relief in MARATHON

PETROLEUM COMPANY LP'S favor as the Illinois Pollution Control Board deems just and proper.

Respectfully submitted,

MARATHON PETROLEUM COMPANY LP,

By: /s/ Melissa S. Brown
One of Its Attorneys

Dated: January 8, 2019

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