

ILLINOIS POLLUTION CONTROL BOARD

March 2, 2006

IN THE MATTER OF:)
)
REVISIONS TO WATER QUALITY) R06-24
STANDARDS FOR TOTAL DISSOLVED) (Site-Specific Rulemaking - Water)
SOLIDS IN THE LOWER DES PLAINES)
RIVER EXXONMOBIL OIL)
CORPORATION: PROPOSED 35 ILL.)
ADM. CODE 303.445)

ORDER OF THE BOARD (by T.E. Johnson):

On February 7, 2006, ExxonMobil Oil Corporation (ExxonMobil) filed a proposal for rulemaking pursuant to Section 28 of Environmental Protection Act (Act) (415 ILCS 28 (2004)), to authorize discharges of Total Dissolved Solids (TDS) from its Joliet Refinery during the months of November through April. The discharge point of the Joliet Refinery is located at Interstate 55 and Arsenal Road, in Will County. ExxonMobil filed a joint motion with the Illinois Environmental Protection Agency (Agency) to expedite consideration and to waive the requirement for 200 signatures, as well as a motion to file less than ten copies of an exhibit concurrently with the proposal. To date, no response to either motion has been submitted to the Board.

By today's action the Board adopts the proposed amendments for the purpose of first notice under the Illinois Administrative Procedure Act (APA) (5 ILCS 100/1-1) without commenting on the merits of the proposal, and grants the motion for expedited consideration. The proposal will be published in the *Illinois Register* whereupon a 45-day public comment period will begin during which interested persons may file additional public comments with the Board.

BACKGROUND

ExxonMobil owns and operates the Joliet Refinery (refinery) located in Channahon Township on a 1,300-acre tract of land in unincorporated Will County. Pet. at 4. The site is adjacent to Interstate 55 at the Arsenal Road exit, approximately 50 miles southwest of Chicago. *Id.* The refinery employs more than 500 full-time employees. *Id.* Approximately 100 additional ExxonMobil employees who provide regional support services are also located at the refinery. *Id.*

The refinery was built by ExxonMobil and began operating in 1972. Pet. at 5. The refinery has a crude oil processing capability of approximately 240,000 barrels per day – nearly 10.1 million gallons per day. *Id.* The refinery produces approximately 9 million gallons per day of gasoline and diesel fuel. *Id.* The refinery draws from and discharges to the Des Plaines River, approximately 1,000 feet east of the Interstate 55 Bridge. *Id.* The refinery takes approximately 10.2 million gallons of water daily from the river, as well as two million gallons per day from

wells. *Id.* The refinery discharges approximately 12.3 million gallons to the river per day. *Id.* The wastewater effluent contains dissolved solids derived from compounds present in crude oil that are removed from the crude by various refinery operations. *Id.*

On October 11, 2005, ExxonMobil was a party to a consent decree involving the United States of America, as well as the states of Illinois, Louisiana, and Montana. Pet. at 5-6. Under that consent decree, ExxonMobil is committed to, among other things, making substantial investments in air emissions reductions at the Joliet Refinery. Pet. at 6. The consent decree calls for the use of a wet gas scrubber, in addition to added technology. *Id.* The wet gas scrubber will contribute additional sulfate and TDS to the wastewater treatment system. Pet. at 1, 6. ExxonMobil asserts that because of occasional observed TDS violations in the Des Plaines River and in light of 35 Ill. Adm. Code 302.102(b)(9), the Agency will not allow a mixing zone and could not, therefore, issue the wastewater construction permit needed by ExxonMobil. Pet. at 1. Accordingly, ExxonMobil is seeking a site-specific rule from the existing water quality standard for TDS. Pet. at 8.

PRELIMINARY MOTIONS

Two motions were filed with the petition. The Board will summarize each one separately before reaching a decision.

Joint Motion

In the joint motion, the parties re-assert that ExxonMobil has entered into a consent decree to install extensive controls to reduce air emissions, including those at the refinery. JMot. at 1. The parties contend that the Agency has reviewed the factual matters in the petition and is supportive of the relief being sought therein, and that the matter should be handled expeditiously. *Id.* The parties assert that, based on discussions with the United States Environmental Protection Agency (USEPA), the Agency submits that this matter must be decided as a site-specific rule change rather than an adjusted standard. JMot. at 1-2.

The parties urge the Board to consider this matter expeditiously, proceed with first notice, and schedule a hearing in this matter following first notice. JMot. at 2. The parties also ask that the Board waive the requirement for 200 signatures on the petition. *Id.*

Motion to File Less than Ten Copies of an Exhibit

ExxonMobil asserts that Exhibit 1 to the petition, the consent decree, is a very lengthy document, numbering over 150 pages of text in addition to the supporting attachments and exhibits. Mot. at 1. ExxonMobil argues that submitting ten copies of Exhibit 1 would be wasteful of the parties' and the Board's efforts and resources, and notes that the consent decree is available online at <http://www.epa.gov/compliance/resources/decrees/civil/caa/exxonmobil-cd.pdf>. To date, no response, to this motion has been received by the Board.

DISCUSSION

Requests for expedited review are governed by Section 101.512 of the Board's rules, and must contain, *inter alia*, a complete statement of the facts and reasons for the request. See 35 Ill. Adm. Code 101.512. In acting on a motion for expedited review, the Board must consider all statutory requirements and whether or not material prejudice will result from the motion being granted or denied. 35 Ill. Adm. Code 101.512(b).

The Board grants the motion for expedited review. Material prejudice would result were the motion denied. The proposed rulemaking will be sent to first notice without a decision being reached on the merits of the proposal. In addition, the Board directs the hearing officer to expeditiously schedule a hearing in this matter. Details concerning the date, time and place of the hearing will be provided in a notice of hearing when finalized. The Board also grants the request to waive the signature requirement applicable to site-specific rulemakings.

As previously stated, no response to the motion to file a reduced number of copies has been filed. The Board has verified that Exhibit 1 to the petition is available online at the site provided by ExxonMobil. In light of the ready availability of the document, the Board grants the motion and waives the requirement that ExxonMobil submit an original and nine copies of Exhibit 1 to the petition.

The Board finds that the petition meets the content requirements of 35 Ill. Adm. Code 102.208 and 102.210 and is accepted for hearing. However, a review of the proposal reveals that ExxonMobil did not address the applicability of, or provide the information requested in, the "published study or report" requirement of Section 102.210(c). 35 Ill. Adm. Code 102.210(c). See also 35 Ill. Adm. Code 102.210(g). The Board requests that the Agency address Section 102.210(c), or its inapplicability, in writing, prior to any hearing scheduled in this proceeding at such time as directed by the hearing officer. In addition, the Board also directs ExxonMobil to address the effect of the proposed site-specific rule on the variance granted by the Board on April 21, 2005 in Citgo Petroleum Corporation and PDV Midwest Refining, LLC v. IEPA, PCB 05-85 (Apr. 21, 2005). This issue should also be addressed in writing prior to any hearing scheduled in this proceeding. The assigned hearing officer is directed to proceed expeditiously under the rulemaking provisions of the Act (415 ILCS 5/27, 28 (2004)) and the Board's procedural rules. 35 Ill. Adm. Code 102.

CONCLUSION

The Board today adopts the following first-notice order under the APA (5 ILCS 100/5-5 *et seq.* (2004)) without commenting on the merits of the proposal. The proposal will be published in the *Illinois Register* whereupon a 45-day comment period will begin. The Board asks that parties interested in commenting on this proposal address any written comments to John C. Knittle, the hearing officer assigned to this matter.

Copies of this opinion, the proposed rules, and any hearing officer order may be viewed and downloaded from the Board's Web site at <http://www.ipcb.state.il.us/>. Copies may also be requested in writing from the Clerk of the Illinois Pollution Control Board, James R. Thompson Center, 100 West Randolph, Suite 11-500, Chicago, Illinois 60601 or via telephone at

312.814.3461.

ORDER

The Board directs the Clerk to cause publication of the following rule in the *Illinois Register* for first notice under the Administrative Procedure Act (5 ILCS 100/5-5 *et seq.* (2004)):

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE C: WATER POLLUTION
 CHAPTER I: POLLUTION CONTROL BOARD

PART 303

WATER USE DESIGNATIONS AND SITE SPECIFIC WATER QUALITY STANDARDS

SUBPART A: GENERAL PROVISIONS

Section	
303.100	Scope and Applicability
303.101	Multiple Designations
303.102	Rulemaking Required

SUBPART B: NONSPECIFIC WATER USE DESIGNATIONS

Section	
303.200	Scope and Applicability
303.201	General Use Waters
303.202	Public and Food Processing Water Supplies
303.203	Underground Waters
303.204	Secondary Contact and Indigenous Aquatic Life Waters
303.205	Outstanding Resource Waters
303.206	List of Outstanding Resource Waters

SUBPART C: SPECIFIC USE DESIGNATIONS AND SITE
 SPECIFIC WATER QUALITY STANDARDS

Section	
303.300	Scope and Applicability
303.301	Organization
303.311	Ohio River Temperature
303.312	Waters Receiving Fluorspar Mine Drainage
303.321	Wabash River Temperature
303.322	Unnamed Tributary of the Vermilion River
303.323	Sugar Creek and Its Unnamed Tributary
303.326	Unnamed Tributary of Salt Creek, Salt Creek, and Little Wabash River
303.331	Mississippi River North Temperature
303.341	Mississippi River North Central Temperature
303.351	Mississippi River South Central Temperature

303.352	Unnamed Tributary of Wood River Creek
303.353	Schoenberger Creek; Unnamed Tributary of Cahokia Canal
303.361	Mississippi River South Temperature
303.400	Bankline Disposal Along the Illinois Waterway/River
303.430	Unnamed Tributary to Dutch Creek
303.431	Long Point Slough and Its Unnamed Tributary
303.441	Secondary Contact Waters
303.442	Waters Not Designated for Public Water Supply
303.443	Lake Michigan Basin
303.444	Salt Creek, Higgins Creek, West Branch of the DuPage River, Des Plaines River
<u>303.445</u>	<u>Total Dissolved Solids Water Quality Standard for the Lower Des Plaines River</u>

SUBPART D: THERMAL DISCHARGES

Section	
303.500	Scope and Applicability
303.502	Lake Sangchris Thermal Discharges

APPENDIX A	References to Previous Rules
APPENDIX B	Sources of Codified Sections

AUTHORITY: Implementing Section 13 and authorized by Sections 11(b) and 27 of the Environmental Protection Act [415 ILCS 5/13, 11(b); and 27].

SOURCE: Filed with the Secretary of State January 1, 1978; amended at 2 Ill. Reg. 27, p. 221, effective July 5, 1978; amended at 3 Ill. Reg. 20, p. 95, effective May 17, 1979; amended at 5 Ill. Reg. 11592, effective October 19, 1981; codified at 6 Ill. Reg. 7818; amended at 6 Ill. Reg. 11161 effective, September 7, 1982; amended at 7 Ill. Reg. 8111, effective June 23, 1983; amended in R87-27 at 12 Ill. Reg. 9917, effective May 27, 1988; amended in R87-2 at 13 Ill. Reg. 15649, effective September 22, 1989; amended in R87-36 at 14 Ill. Reg. 9460, effective May 31, 1990; amended in R86-14 at 14 Ill. Reg. 20724, effective December 18, 1990; amended in R89-14(C) at 16 Ill. Reg. 14684, effective September 10, 1992; amended in R92-17 at 18 Ill. Reg. 2981, effective February 14, 1994; amended in R91-23 at 18 Ill. Reg. 13457, effective August 19, 1994; amended in R93-13 at 19 Ill. Reg. 1310, effective January 30, 1995; amended in R95-14 at 20 Ill. Reg. 3534, effective February 8, 1996; amended in R97-25 at 22 Ill. Reg. 1403, effective December 24, 1997; amended in R01-13 at 26 Ill. Reg. 3517, effective February 22, 2002; amended in R03-11, at 28 Ill. Reg. 3071, effective February 4, 2004; amended in R06-24 at 30 Ill. Reg. _____, effective _____.

SUBPART C: SPECIFIC USE DESIGNATIONS AND SITE SPECIFIC WATER QUALITY STANDARDS

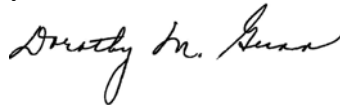
<u>Section 303.445</u>	<u>Total Dissolved Solids Water Quality Standard for the Lower Des Plaines River</u>
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- a) Beginning November 1 and continuing through April 30 of each year, the total dissolved solids (TDS) water quality standard for Secondary Contact and Indigenous Aquatic life Use waters in 35 Ill. Adm. Code 302.407 does not apply to the portion of the Des Plaines River from the ExxonMobil refinery wastewater treatment plant discharge point located at I-55 and Arsenal Road (said point being located in Will County, T34N, R9E, S15, Latitude: 41°, 25" North, Longitude: 88°, 11', 20" West) and continuing to the Interstate 55 bridge. TDS levels in such waters must instead meet a water quality standard for TDS (STORET Number 70300) of 1,686 mg/L.
- b) Beginning November 1 and continuing through April 30 of each year, the TDS water quality standard for General Use Waters in 35 Ill. Adm. Code 302.208 does not apply to the Des Plaines River from the Interstate 55 bridge to the confluence of the Des Plaines River with the Kankakee River. TDS levels in such waters must instead meet a water quality standard for TDS (STORET Number 70300) of 1,686 mg/L.

(Source: Added at 30 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 2, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board