

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

JUL 05 2006

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
REVISIONS TO WATER QUALITY)
STANDARDS FOR TOTAL DISSOLVED)
SOLIDS IN THE LOWER DES PLAINES RIVER FOR)
EXXONMOBIL OIL CORPORATION:)
PROPOSED 35 Ill. Adm. Code 303.445)

R06 - 24

(Site Specific Rule - Water)

pc#1

NOTICE OF FILING

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

William Richardson, Chief Legal Counsel
Illinois Department of Natural Resources
One Natural Resource Way
Springfield, IL 62702

Matthew J. Dunn
Division Chief, Environmental Enforcement
Illinois Attorney General
100 W. Randolph Street, 12th Floor
Chicago, IL 60601

Jeffrey C. Fort
Letissa Carver Reid
Elizabeth A. Leifel
Sonnenschein, Nath and Rosenthal LLP
7800 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6404

Susan M. Franzetti
Franzetti Law Firm, P.C.
10 S. LaSalle Street, Suite 3600
Chicago, IL 60603

Dennis L. Duffield
Director of Public Works and Utilities
City of Joliet
Department of Public Works and Utilities
921 E. Washington Street
Joliet, Illinois 60603

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the attached **AGENCY POST-HEARING COMMENTS** on behalf of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ENVIRONMENTAL PROTECTION AGENCY
OF THE STATE OF ILLINOIS

By: Thomas M. Andryk
Thomas Andryk
Assistant Counsel
Division of Legal Counsel

DATED: July 5, 2006
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

JUL 05 2006

STATE OF ILLINOIS
Pollution Control Board

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

Agency Post-hearing Comments

The undersigned, as one of its attorneys, hereby provides the following Agency Post-hearing comments, stating on behalf of Respondent, Illinois Environmental Protection Agency, as follows:

I. Responses to Board Questions

During the June 14, 2006 hearing on ExxonMobil's Petition for a site-specific rulemaking, the Illinois Pollution Control Board asked the Agency for its comments on certain questions concerning the relief sought by ExxonMobil's petition. For clarity, Illinois reproduces the Board question as stated in the hearing transcript, with the Agency response provided immediately after the Board question(s):

Board Questions: Could you comment on the implications of the change in the standards on the CITGO variance? You're familiar with the CITGO variance, right? Because that includes a number of conditions based on a TDS standard of 1,000 mg/L. ..I think with the CITGO variance, there are a number of conditions in the variance that are tied to complying with the 1,000 mg/L standard at the I-55 bridge. ..And now we are going to change that standard. So we are just interested to hear from the Agency or you as to the implications from that change on the CITGO variance. ..Are we going to have to revise the CITGO variance at all? (hearing transcript at pp. 61-63)

Agency Response: See the hearing transcript at pages 62 through 65. CITGO and PDVMR received a Variance for TDS (PCB 05-85) until December 15, 2009 in order to study the needed storage capacity to insure that water quality standards are met in the receiving stream in the Secondary Contact Waters as well as the General Use waters downstream of their discharge.

If the IPCB grants the ExxonMobil site-specific rulemaking as currently proposed, a portion of the CITGO and PDVMR variance, specifically, the Des Plaines River downstream of the ExxonMobil discharge, will become unnecessary, as will some of the conditions of the CITGO and PDVMR variance. However, since CITGO will still need the variance for the portion of the

THIS FILING IS SUBMITTED ON RECYCLED PAPER

Des Plaines River upstream of the Des Plaines River segment involved in the ExxonMobil site-specific rulemaking, the conditions of the Board Order will need to be met until such time that CITGO petitions the Board to change the variance and eliminate the conditions that are no longer necessary. In conclusion, CITGO will still need the variance. However, conditions 3, 5, 6, 7, and 10 of that variance will no longer be pertinent.

Board Questions: Could you clarify whether the proposed change in water quality standard for TDS would be generally applicable to identify threats of the Des Plaines River and not limited as it relates only to TDS discharges [sic] from the ExxonMobil Joliet refinery if the Board adopts the change in water quality standards? ..So, in effect, any discharger of the River, it will be subject to the proposed water quality standard? ..So if there's any other discharger existing or someone new comes in, they have to show, you know, just like Exxon has submitted its report here, that they would comply with 1,000 mg/L downstream at [sic] the confluence of the Kankakee and the Des Plaines River? ...all through this there's the intimation that the Agency may soon propose the elimination of TDS water quality standards altogether. And I was wondering, from your perspective, whether or not you would want to include some language in this rule that would take that potentiality, or that potential elimination, into effect. (hearing transcript at pp. 59-60, 65)

Agency Response: See the hearing transcript at pages 59 through 60 and 66 through 70. The Agency anticipates a rulemaking proposal to modify the General Use Standard for TDS. In its rulemaking proposal, the Agency will attempt to identify and update any affected site-specific criteria modifications contained in Subpart C of 35 Ill. Adm. Code Section 303. Before that time, any proposed future discharger will have to meet the applicable numeric standard at their given location. However, once a given water quality standard has been justified as sufficiently protective, it does not matter what the source of the TDS is.

Board Question: IDNR made a finding of no threatened and endangered species or natural areas affected by the proposed water quality standard. Could you please identify whether IDNR made any written finding on species in natural areas? (hearing transcript at p. 58)

Agency Response: Attached is the IDNR consultation regarding threatened and endangered species that IDNR terminated on December 19, 2005. According to IDNR, endangered and threatened species are not present in the vicinity of the action (see the enclosed IDNR form, executed by IDNR on December 19, 2005). Illinois EPA notes that the Petitioner has demonstrated that TDS is not toxic to aquatic life likely to occur in streams similar to the Des Plaines River that receives the ExxonMobil effluent. Toxicity test results on TDS indicate that even the most sensitive species tested show no adverse effect at the levels likely to be found in the receiving waters involved in the requested relief.

II. Additional Agency Comments

In Petitioners exhibit #6, James Huff performed calculations to determine that 1,686 mg/L was the necessary relief based on both ExxonMobil and CITGO discharging to the receiving stream. In addition, exhibit #6C demonstrates that the General Use water quality standard of 1,000 mg/L would be met downstream of the confluence of the Des Plaines River and the Kankakee River, which forms the Illinois River. The Agency has reviewed these calculations and performed its own calculations and agrees with these conclusions. However, it should be noted that during the worst case scenario, when the receiving stream that CITGO discharges to (Chicago Sanitary and Ship Canal) exceeds the secondary contact water quality standard, CITGO cannot rely upon dilution and mixing, they must meet the standard at the point of discharge or cease discharge until such time as dilution is available. Therefore, CITGO will not be discharging effluent with a concentration above 1,500 mg/L during the worst-case condition. In such circumstances, CITGO will have to store the FCCU wet gas scrubber bleed until such time that the receiving stream meets the secondary contact standard.

USEPA has the obligation to either approve or disapprove of any proposed water quality standards change. The Agency has been in contact with USEPA and USEPA has provided a letter dated April 24, 2006 stating that "USEPA has reviewed the information provided by Illinois EPA describing the technical basis for the proposed site-specific standard and determined that a site-specific standard derived consistent with the calculations provided in the email (enclosed) would be consistent with the requirements of Section 303(c) of the CWA and Federal regulations at 40 CFR 131.11 if it were to be adopted by the IPCB and submitted to USEPA consistent with Federal regulations at 40 CFR 131.6." Our discussion with USEPA found that they believe that a site-specific standards change is the appropriate relief in order to receive Federal approval.

This site-specific rulemaking will not result in aquatic toxicity, there are no economically or technically feasible alternatives, and is approvable by USEPA. The Agency recommends that the IPCB support the Petitioner's request for a site-specific rulemaking for relief from the water quality standards for TDS at 35 IAC 302.208(g) and 302.407 as written in the petition.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: Thomas M. Andryk
Thomas Andryk
Assistant Counsel
Division of Legal Counsel

DATED: July 5, 2006

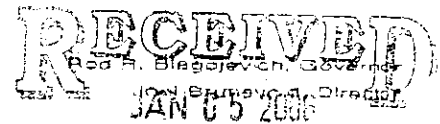
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
(217)782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER



Illinois Department of Natural Resources

One Natural Resources Way • Springfield, Illinois 62702-1271
http://dnr.state.il.us



CONSULTATION AGENCY ACTION REPORT

(Illinois Administrative Code Title 17 Part 1075)

Division of Resource Review and Coordination

Todd Rettig, Division Manager

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY
BOW/WPC/PERMIT SECTION

Date Submitted: 11/16/05
If this is a resubmittal, include previous
IDNR response if available.

FOR DEPARTMENT USE ONLY
PROJECT CODE: 020489 DUE DATE: 12/17/05

Applicant: IEPA/BOW
Contact Person: Scott Twait
Applicant Address: 1021 N. Grand Ave., East
Springfield, IL 62702

Phone: 558-2012
Fax: 785-1225
Email: Scott.Twait@epa.state.il.us

LOCATION OF PROPOSED ACTION A MAP SHOWING LOCATION OF PROPOSED ACTION IS REQUIRED

Project Name: Exxon Mobil Adjusted SFD County: Will
Project Address (if available): _____
City, State, Zip: Joliet IL
Township/Range/Section (e.g. T45N, R9E, S2): T34N, R9E, S15
Brief Description of Proposed Action: See Attached sheet

Projected Start Date and End Date of Proposed Action: _____
Will state funds or technical assistance support this action? [Yes] No] If Yes, the Interagency Wetland Policy Act may apply.
Contact funding agency or this Division for details.

Local/State Agency with Project Jurisdiction: IEPA/BOW
Contact: See above info.
Address: _____

Phone: _____
Fax: _____

FOR DEPARTMENT USE ONLY

Are endangered/threatened species or Natural Areas present in the vicinity of the action?
Could the proposed action adversely affect the endangered/threatened species or Natural Area?
Is consultation terminated?
Comments: _____

[Yes] No]
[Yes] No]
[Yes] No]

Evaluated by:

Michael R. Branch
Division of Resource Review & Coordination (217)785-5500

12-19-05
Date

STATE OF ILLINOIS

COUNTY OF SANGAMON

)
)
) SS
)
)

RECEIVED
CLERK'S OFFICE

JUL 05 2006

STATE OF ILLINOIS
Pollution Control Board

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached **AGENCY POST-HEARING COMMENTS** upon the person to whom it is directed, by placing a copy in an envelope, with proper first class postage pre-paid, addressed to the following:

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

William Richardson, Chief Legal Counsel
Illinois Department of Natural Resources
One Natural Resource Way
Springfield, IL 62702

Matthew J. Dunn
Division Chief, Environmental Enforcement
Illinois Attorney General
100 W. Randolph Street, 12th Floor
Chicago, IL 60601

Jeffrey C. Fort
Letissa Carver Reid
Elizabeth A. Leifel
Sonnenschein, Nath and Rosenthal LLP
7800 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6404

Dennis L. Duffield
Director of Public Works and Utilities
City of Joliet
Department of Public Works and Utilities
921 E. Washington Street
Joliet, Illinois 60603

Susan M. Franzetti
Franzetti Law Firm, P.C.
10 S. LaSalle Street, Suite 3600
Chicago, IL 60603

and mailing it from Springfield, Illinois on July 5, 2006 with sufficient postage affixed as indicated above, and, in addition, via facsimile to the Pollution Control Board (only) at facsimile number 312-814-3669.

SUBSCRIBED AND SWORN TO BEFORE ME

this _____ day of _____, 2006

Notary Public

THIS FILING IS SUBMITTED ON RECYCLED PAPER

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
DIVISION OF LEGAL COUNSEL
1021 NORTH GRAND AVENUE EAST, POST OFFICE BOX 19276
SPRINGFIELD, ILLINOIS 62794-9276
TELEPHONE (217) 782-5544 FACSIMILE (217) 782-9807

RECEIVED
CLERK'S OFFICE

JUL 05 2006

STATE OF ILLINOIS
Pollution Control Board

DATE: 7/5/06

FACSIMILE TRANSMITTAL SHEET

PLEASE DELIVER THE FOLLOWING PAGES TO:

PARTY'S NAME: Dorothy Gunn

FIRM/COMPANY NAME: PCB

FACSIMILE NO: 312-814-3669

TELEPHONE NO: _____

FROM: Thomas Andrey K

RE: _____

TOTAL NUMBER OF PAGES (INCLUDING THIS PAGE): _____

HARD COPY WILL X WILL NOT _____ FOLLOW

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL (217) 782-5544

COMMENTS: _____

IMPORTANT - THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED; AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THE MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT READING, DISSEMINATING, DISTRIBUTING, OR COPYING THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S POSTAL SERVICE.