

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

IN THE MATTER OF:

CITGO PETROLEUM CORPORATION,)
)
) Petitioner,)
)
) vs.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
) Respondent.)

No. PCB 07-10

NOTICE OF FILING

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
100 West Randolph – Suite 11-500
Chicago, IL 60601

Douglas Scott, Director
Illinois Environmental Protection Agency
1021 N. Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

PLEASE TAKE NOTICE that on August 17, 2006, we filed with the Illinois Pollution Control Board the attached **Motion To Stay Effectiveness Of Certain Conditions In Re-Issued NPDES Permit**, a copy of which is herewith served upon you.

CITGO PETROLEUM CORPORATION

By: 

One of Its Attorneys

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BEFORE THE POLLUTION CONTROL BOARD
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IN THE MATTER OF:

CITGO PETROLEUM CORPORATION,)

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Petitioner,)

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No. PCB 07-10

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ILLINOIS ENVIRONMENTAL)

PROTECTION AGENCY,)

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MOTION TO STAY EFFECTIVENESS OF CERTAIN CONDITIONS
IN RE-ISSUED NPDES PERMIT

Citgo Petroleum Corporation (“Citgo”) operates a refinery located at 135th Street and New Avenue in Lemont, Illinois (the “Refinery”). Citgo, by its attorneys Jeffrey C. Fort, Elizabeth A. Leifel, and Sonnenschein Nath & Rosenthal LLP, hereby petitions the Illinois Pollution Control Board (the “Board”) to stay the effectiveness of certain conditions of NPDES Permit No. IL0001589 (the “Permit”), pursuant to 415 ILCS 5/40.2, and in accordance with 35 Ill. Admin. Code § 105.304(b). In support of its motion, Citgo states as follows:

1. On July 28, 2006, the Illinois Environmental Protection Agency (the “Agency”) reissued NPDES Permit No. IL0001589 for the Refinery. On August 14, 2006, Citgo filed a Petition for Hearing to Review NPDES Permit Reissuance (the “Petition”) in order to preserve its right to appeal in this matter. In its Petition, Citgo challenged portions of Condition No. 1, and Special Condition No. 17, Special Condition No. 18, Special Condition No. 19, and Standard Condition No. 14(a)(4).

2. Citgo hereby requests that the Board stay the effectiveness of Special Conditions 17, 18, and 19. Citgo is not requesting a stay as to the other conditions in the Permit. Some of the provisions of the Permit are necessary in order for Citgo to implement the actions required

pursuant to a consent decree between Citgo, U.S. EPA, and the States of Illinois, Louisiana, New Jersey, and Georgia. Special Condition Nos. 17, 18, and 19, however, are new to the Permit and are not necessary for Citgo to implement the requirements under the consent decree.

3. A stay of these conditions is warranted according to the standards articulated by the Board in granting a discretionary stay: (1) a certain ascertainable right needs protection; (2) irreparable injury will occur without the injunction; (3) no adequate remedy at law exists, and (4) there is a probability of success on the merits. *See Nielsen & Bainbridge, L.L.C. v. IEPA*, Docket No. 03-98 (Ill. Pollution Control Bd. Feb. 6, 2003); *see also Saint-Gobain Containers, Inc. v. IEPA*, Docket No. 04-47 (Ill. Pollution Control Bd. Nov. 6, 2003); *Noveon, Inc. v. IEPA*, Docket No. 04-102 (Ill. Pollution Control Bd. Jan. 22, 2004). It is not necessary for the Board to determine that all four factors exist in order to grant a discretionary stay. *See Bridgestone/Firestone Off Road Tire Company v. IEPA*, Docket No. 02-31 (Ill. Pollution Control Bd. Nov. 1, 2001).

4. A stay of effectiveness of certain conditions of the Permit is necessary to protect Citgo's right to appeal and to prevent the imposition of new permit conditions before Citgo is able to exercise its right to appeal and be heard by the Board.

5. Citgo has no adequate remedy at law other than to appeal its Permit to the Board.

6. A stay of certain conditions of this Permit would not result in any harm to the Agency, the public or the environment. Citgo would operate the Refinery in compliance with the uncontested conditions of the Permit while the Petition is pending.

7. Citgo is likely to succeed on the merits of the Petition. As detailed in the Petition, the Permit contains conditions that do not represent "applicable requirements" under Illinois law.

Specifically, Citgo has appealed Special Conditions 17, 18, and 19,¹ and the basis for each challenge is set forth below.

SPECIAL CONDITION NO. 17

8. Special Condition No. 17 requires effluent at the Refinery's discharge point to be less than 90°F during the months of April through November, never to exceed 93°F. This condition, as written, is invalid because it is not based on an "applicable requirement." *See Appalachian Power Co. v. Envtl. Prot. Agency*, 208 F.3d 1015 (D.C. Cir. 2000) (holding that state permitting authorities may not use permits to require conditions more stringent than applicable state or federal standards). The temperature standard contained in Special Condition No. 17 applies only to discharges into General Use waters. The Chicago Sanitary & Ship Canal is a Secondary Contact water. Thus, the temperature standard contained in the Permit is not an applicable requirement, and the Agency has exceeded its authority by including it.

9. The temperature standard contained in the Permit is not required pursuant to a Board Order granting the Refinery a variance with respect to its discharges of total dissolved solids ("TDS"). The Agency has apparently taken Citgo's commitment, made as part of the variance proceeding, as a commitment to meet the temperature standards contained in the Permit at the point of discharge to the Canal. *See Citgo Petroleum Corp. v. Ill. Envtl. Protection Agency*, PCB 05-85 (Variance – Water), Board Order (April 21, 2005) ("Purge water from the wet gas scrubber will then be treated to remove suspended solids and ammonia, and cooled to 90°F. . ."). In reality, as the Board's order makes clear, Citgo's commitment related only to wastewater added by a wet gas scrubber, which will be installed at the Refinery to control air emissions. Clearly the agreed temperature standard applies only to an internal discharge and

¹ Citgo has also challenged a portion of Condition No. 1 and Standard Condition No. 14(a)(4). These conditions are not new to the reissued Permit, and Citgo is not requesting a stay of these conditions.

does not, as the Agency has required, apply to the Refinery's discharge point. Thus, because the Agency has exceeded its authority by including Special Condition No. 17 in the Permit when it has no basis under federal or state law to do so, Citgo is likely to succeed in its appeal of that condition.

SPECIAL CONDITION NO. 18

10. Special Condition No. 18 provides that the Permit may be modified to include "final limitations or monitoring requirements" that may result from the study Citgo will undertake pursuant to the variance granted by the Board in PCB 05-85. Special Condition No. 18 is unnecessary and should be removed from the Permit. The TDS water quality standards may be significantly changed in the near future. It is Citgo's understanding that the Agency is proposing that the Board eliminate altogether the water quality standards for TDS for General Use waters. The Agency is supporting a site-specific rule change for a General Use water downstream of the Canal and southwest of the I-55 Bridge. *See, e.g., 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, PCB R06-024.* The application of a similar adjustment to Secondary Contact waters is a logical next step. Because Special Condition No. 18 is unnecessary as drafted, and the TDS standard may be removed in the near future, the condition should be stayed pending a decision on the appeal.

SPECIAL CONDITION NO. 19

11. Special Condition No. 19 contains effluent limitations and associated monitoring requirements for Total Residual Chlorine. Specifically, Special Condition No. 19 requires the Refinery to continuously monitor its discharge to ensure that Total Residual Chlorine levels do not exceed 0.05 mg/L. The Agency has purported to justify this condition as a Best Available Technology ("BAT") standard, but there is no BAT standard under applicable federal law.

While the U.S. EPA has promulgated BAT standards for petroleum refineries, 40 C.F.R. Part 419, there is no standard for Total Residual Chlorine. There is no authority allowing the Agency to prescribe BAT standards where U.S. EPA has declined to do so.

12. The effluent limitation of 0.05 mg/L prescribed in Special Condition No. 19 represents an exceedance of the Agency's authority. The effluent limit is based on a water quality standard for Total Residual Chlorine that applies only to General Use waters. As noted above, the Refinery does not discharge to a General Use water; it discharges to the Chicago Sanitary & Ship Canal, which is a Secondary Contact water. Thus, because the Agency has exceeded its authority by including Special Condition No. 19 in the Permit, Citgo is likely to succeed on the merits of its appeal of this condition.

WHEREFORE, for all of the foregoing reasons, Citgo respectfully requests that the Board grant a stay of effectiveness of Special Condition Nos. 17, 18, and 19 of its NPDES permit until the Board's final action in this matter.

Respectfully submitted,

CITGO PETROLEUM CORPORATION

By: 
One of its Attorneys

Dated: August 17, 2006

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certify that I have served upon the individuals named on the attached Notice of Filing true and correct copies of the **Motion To Stay Effectiveness Of NPDES Permit**, via electronic filing and by First Class Mail, postage prepaid on August 17, 2006.

A handwritten signature in cursive script, reading "Elizabeth Seibel", written over a horizontal line.