

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
WATER QUALITY STANDARDS AND)
EFFLUENT LIMITATIONS FOR THE) R08-9
CHICAGO AREA WATERWAY SYSTEM) (Rulemaking – Water)
AND THE LOWER DES PLAINES RIVER:)
PROPOSED AMENDMENTS TO 35 ILL.)
Adm. Code Parts 301, 302, 303 and 304)

NOTICE OF FILING

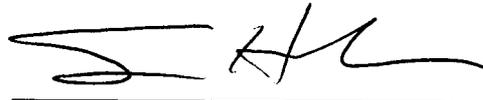
TO: See Attached Service List

PLEASE TAKE NOTICE that on the 22nd day of January, 2010, I filed with the Office of the Clerk of the Illinois Pollution Control Board the attached Response in Opposition to the Motion for a Hearing on the Impact of Asian Carp Litigation Before the United States Supreme Court by the People of the State of Illinois, a copy of which is hereby served upon you.

Respectfully submitted,

LISA MADIGAN,
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State of Illinois

By:



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CHICAGO AREA WATERWAY SYSTEM) (Rulemaking – Water)
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PROPOSED AMENDMENTS TO 35 III.)
Adm. Code Parts 301, 302, 303 and 304)

**RESPONSE IN OPPOSITION TO THE MOTION FOR A HEARING ON THE IMPACT
OF ASIAN CARP LITIGATION BEFORE THE UNITED STATES SUPREME COURT
BY THE PEOPLE OF THE STATE OF ILLINOIS**

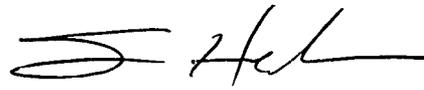
The People of the State of Illinois (“the People”), by and through Illinois Attorney General Lisa Madigan, oppose the motion (“Motion”) filed by Citgo Petroleum Corporation and PDV Midwest, LLC (“Movants”) on January 7, 2010 requesting that the Board “investigate” ongoing litigation before the United States Supreme Court, involving multiple States—including Illinois—and the federal government, and the extent to which that litigation “might” affect uses of the Chicago Sanitary and Ship Canal. (Motion, p. 1). The Motion should be denied.

At this juncture, no participant in this rulemaking proceeding can predict the ultimate outcome of the Asian carp litigation. As noted in the Motion, the litigation has been both fast-moving and vigorously contested by all parties. Indeed, on January 19, 2010, less than two weeks after the filing of the Motion, the United States Supreme Court denied the motion for preliminary injunction that Movants speculated would “fundamentally change” Illinois’ waterways. (Motion, p. 3). No information that could be gathered through a hearing by the Board would help to predict the eventual outcome of this litigation.

At best, then, Movants' proposed hearing on the possible ramifications of the Asian carp litigation would be premature. At worst, the proposed hearing could interfere with pending litigation before the United States Supreme Court—litigation in which the State of Illinois is a named party. The prospect of a State agency holding a hearing to consider the impacts that would occur if the United States Supreme Court rules against the State of Illinois would be highly irregular and quite inappropriate. The Board should deny the Motion.

LISA MADIGAN,
Attorney General of the
State of Illinois

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DATE: January 22, 2010

CERTIFICATE OF SERVICE

I, ANDREW ARMSTRONG, do certify that I filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the foregoing Notice of Filing and Response in Opposition to the Motion for a Hearing on the Impact of Asian Carp Litigation Before the United States Supreme Court by the People of the State of Illinois and caused them to be served this 22nd day of January, 2010 upon the persons listed on the attached Service List by depositing true and correct copies of same in an envelope, first class postage prepaid, with the United States Postal Service at 69 West Washington Street, Chicago, Illinois, unless otherwise noted on the Service List.


ANDREW ARMSTRONG

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