

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

To: John Therriault, Clerk
 Illinois Pollution Control Board
 James R. Thompson Center
 100 West Randolph Street - Suite 11-500
 Chicago, IL 60601

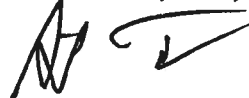
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Persons included on the attached
 SERVICE LIST

Please take notice that on May 20, 2010, we filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the attached Motion for Leave to Reply and Reply to the Final Comments of the Illinois Environmental Protection Agency in Subdocket R08-9(A), a copy of which is served upon you.

CITGO PETROLEUM CORPORATION, and
 PDV MIDWEST, LLC, Petitioners

By: 

 Ariel J. Teshler

Jeffrey C. Fort
 Ariel J. Teshler
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EFFLUENT LIMITATIONS FOR THE)
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Adm. Code Parts 301, 302, 303 and 304) Water)

MOTION FOR LEAVE TO REPLY TO THE FINAL COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY IN SUBDOCKET R08-9(A)

CITGO PETROLEUM CORPORATION, and PDV MIDWEST, LLC, (hereinafter, the “Lemont Refinery”) hereby move for leave to file instanter a reply to the April 15, 2010 “Post-Hearing Comments of the Illinois Environmental Protection Agency” and in support of the motion filed by Midwest Generation, L.L.C. on May 17, 2010. In support of this motion, the Lemont Refinery states:

1. On March 18, 2010, the Illinois Pollution Control Board divided the R08-9 rulemaking into four Subdockets. It explained the topics permitted under each Subdocket in the following way:

Subdocket A, will deal with the issues related to recreational use designations and Subdocket B will address issues relating to disinfection and whether or not disinfection may or may not be necessary to meet those use designations. Subdocket C, will be created to address the issues involving proposed aquatic life uses. Subdocket D, will be created to address the issues dealing with water quality standards and criteria which are necessary to meet the aquatic life use designations.

(Order of the Board, R08-9 (water), March 18, 2010, at 20.)

2. On April 15, 2010, the Illinois Environmental Protection Agency (hereinafter, the "Agency") filed its final comments to Subdocket A, which included proposed rule changes which belong under Subdocket C, not Subdocket A.

3. On May 17, 2010, Midwest Generation, L.L.C. filed a reply to those final comments in which it raised similar concerns regarding the Agency's misplaced proposed rule changes.

4. The Lemont Refinery seeks to file this reply to the Agency's April 15, 2010 final comments to ensure that rulings issued under Subdocket A do not conflict with the issues properly addressed in other Subdockets.

5. The Lemont Refinery's Reply is attached to this motion.

6. Wherefore, the Lemont Refinery respectfully moves for leave to file the attached reply to the Agency's April 15, 2010 final comments.

Dated: May 20, 2010

Respectfully submitted,

CITGO PETROLEUM CORPORATION, and
PDV MIDWEST, LLC, Petitioners

By: 

Ariel J. Teshler

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AND THE LOWER DES PLAINES RIVER:) (Rulemaking-
Adm. Code Parts 301, 302, 303 and 304) Water)

REPLY TO THE FINAL COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY IN SUBDOCKET R08-9(A)

CITGO PETROLEUM CORPORATION, and PDV MIDWEST, LLC, operate and own, respectively, a refinery in Lemont Illinois (The “Lemont Refinery”). On March 18, 2010, the Illinois Pollution Control Board (“Board”) issued an Order which, *inter alia*, severed the docket of this rulemaking and directed participants to file final comments on the recreation use designations for the Chicago Area Waterways and the Lower Des Plaines River by April 15, 2010. On April 15, 2010, the Illinois Environmental Protection Agency (hereinafter, the “Agency”) filed its final comments (hereinafter the “Agency’s Final Comments”), which included proposed rule changes on the subject of aquatic life. Because such aquatic life issues were ordered to be considered under the not-yet-open Subdocket C, the Lemont Refinery submits the following Reply regarding Agency’s proposed changes.

1. The current rulemaking was initiated by an Agency proposal. (Order of the Board, R08-9 (water), March 18, 2010, (hereinafter, “Order”) at 1-2.) However, the Board found “that the time has come to separate issues in this rulemaking.” (*Id.* at 18.) The Board created four Subdockets, defined as follows:

Subdocket A, will deal with the issues related to recreational use designations and Subdocket B will address issues relating to disinfection and whether or not disinfection may or may not be necessary to meet those use designations. Subdocket C, will be created to address the issues involving proposed aquatic life uses. Subdocket D, will be created to address the issues dealing with water quality standards and criteria which are necessary to meet the aquatic life use designations.

(*Id.* at 20.) The Board specifically noted that Subdocket C, which will address aquatic life uses (but not the standards and criteria for meeting them) will “not be held before the fall at the earliest.” (*Id.* at 19.)

2. Despite the Board’s division of Subdockets as set out above, the Agency’s Final Comments include proposed amendments that govern aquatic life use designations which instead belong under Subdocket C. (Agency’s Final Comments at 17.) Those proposed amendments would alter 35 Ill.Adm.Code 302.402 (Purpose) and 35 Ill.Adm.Code 303.204 (Secondary Contact and Indigenous Aquatic Life Use Waters), including changes to aquatic life use designations. (*Id.*)

3. The Board ordered the April 15, 2010 final comments on Subdocket A because “the issue of recreational use designations in subdocket A is ripe for decision.” (Order at 19.) However, the issue of aquatic life uses is not ripe for decision. Any proposal or ruling on those issues, whose testimony will “not be held before the fall at the earliest,” is premature. *Id.*


WHEREFORE, for the reasons set out above and those set out in Midwest Generation L.L.C.’s May 17, 2010 filing, the Lemont Refinery respectfully requests that the Board decline the Agency’s suggestion to include in Subdocket A amendments to aquatic life uses in 35 Ill.Adm.Code 302.402 (Purpose) and 35 Ill.Adm.Code 303.204 (Secondary Contact and Indigenous Aquatic Life Use Waters).

Dated: May 20, 2010

Respectfully submitted,

CITGO PETROLEUM CORPORATION, and
PDV MIDWEST, LLC, Petitioners

By:

A handwritten signature in black ink, appearing to read 'A. J. Teshler', is written over a horizontal line.

Ariel J. Teshler

Jeffrey C. Fort
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CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 20th day of May, 2010, I have served electronically the attached Motion for Leave to Reply and Reply to the Final Comments of the Illinois Environmental Protection Agency in Subdocket R08-9(A) and Notice of Filing upon the following person:

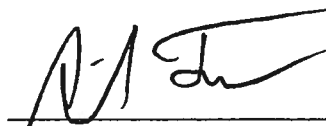
John Therriault, Clerk
Pollution Control Board
James R. Thompson Center
100 West Randolph Street - Suite 11-500
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and by U.S. Mail, first class postage prepaid, to the following persons:

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