

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

WATER QUALITY STANDARDS AND
EFFLUENT LIMITATIONS FOR THE
CHICAGO AREA WATERWAY SYSTEM
AND THE LOWER DES PLAINES RIVER:
Adm. Code Parts 301, 302, 303 and 304

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R08-9(C-D)
(Rulemaking-
Water)

NOTICE OF FILING

To: John Therriault, Clerk
Illinois Pollution Control Board
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100 West Randolph Street - Suite 11-500
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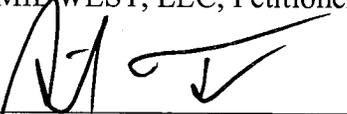
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Persons included on the attached
SERVICE LIST

Please take notice that on June 14, 2011, we filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the attached Motion to For an Expedited Subdocket Addressing Use C, a copy of which is served upon you.

CITGO PETROLEUM CORPORATION, and
PDV MIDWEST, LLC, Petitioners

By:



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MOTION FOR AN EXPEDITED SUBDOCKET ADDRESSING USE C

CITGO PETROLEUM CORPORATION, and PDV MIDWEST, LLC, operate and own, respectively, a refinery in Lemont Illinois (“Lemont Refinery”). On June 1, 2011, the Illinois Pollution Control Board (“Board”) issued an Order requesting motions on the issue of proceeding through the aquatic life uses and standards subdockets in the above-captioned rulemaking. In accordance with the aforementioned, the Lemont Refinery submits the following Motion respectfully requesting that the Board open an expedited aquatic life standards subdocket to address the simplified issue of aquatic life at the Regulated Navigation Area surrounding the electric fish barrier.

1. River Miles 295.5 to 297.2 along the Chicago Sanitary and Ship Canal (“Ship Canal”) are designated by the U.S. Coast Guard as a Regulated Navigation Area (“RNA”). Those waters contain a strong electric field created by the electric fish barrier designed to prevent the passage of invasive species such as Asian Carp.

2. The electric fish barrier and the resulting RNA has been expanded since it was first put into place. Initial demonstration Barrier I, energized in 2002, created an electric field in the RNA of 1 volt/in². (75 Fed. Reg. 75146.) Barrier IIA, which is currently online, generates a

larger electric field of up to 4 volts/in². (*Id.*) An additional barrier, Barrier IIB, will also be capable of generating 4 volts/in². (*Id.*)

3. James E. Huff, P.E., testified before the Board on May 6, 2009 regarding the uniqueness of the Ship Canal, including the specific unique characteristics in the RNA surrounding the electric fish barrier. (*See* Exh. 285, Pre-Filed Testimony of James E. Huff, P.E.) Mr. Huff testified again before the Board on March 9, 2011, explaining that:

“the electric barrier system and rotenone applications on the Lower Ship Canal are particularly unique hazards to aquatic life. Both these hazards, lying within the same reaches of the Lower Ship Canal as the Lemont Refinery, are designed create *non-support* conditions for aquatic life so as to prevent invasive species from entering and leaving the Great Lakes. ... These barriers were authorized by Congress, with the full recognition on the part of federal and state biologists that any positive fish migration in the Lower Ship Canal was being sacrificed to protect the Great Lakes as well as the Mississippi River Basin from aquatic invasive species.”

(Exh. 437, February 2, 2011 Pre-Filed Testimony of James E. Huff, P.E., at 5-6.)

4. Mr. Huff testified that the electric barrier makes “a separate use category ... appropriate” and that “The uniqueness ... is so apparent that a separate use category is needed.” (*Id.* at 6, 10.) He called for:

the addition of a Use C category which would be comprised of the Regulated Navigation Area surrounding the United States Coast Guard’s electric barrier system, which stretches from River Mile 295.5 to 297.2, which recognizes the truly unique use of this waterway. A Use C designation would properly take into account the exceptional characteristics of these waters.

(*Id.* at 3-4; *citing* maps and proposed regulatory language at Exhibits A and B to his February 2, 2011 testimony.)

5. In his oral testimony, the Illinois Environmental Protection Agency (the "Agency") asked Mr. Huff "are fish expected in the regulated navigation zone?" Mr. Huff responded that they not only are not expected in the RNA, but that they will actively "avoid that area as well from the current." (Transcript of March 9, 2011 hearing beginning at 9:00 am, p.14, lines 9-13.) Although the Agency's follow-up questions then addressed how far beyond the RNA fish might be repelled, there is no doubt or contravention in the record that the RNA itself is, by design, a fish-free zone. (*Id.*, lines 19-21.) As Mr. Huff later explained, "[t]he electric barrier will result in essentially creating a zone without fish and fish passage will not occur. ... This regulated navigation zone makes this stretch totally unique from all other portions of the Chicago area waterway system." (*Id.*, p. 16, lines 17-19, 24, and p. 17, lines 1-2.)

6. During the testimony that the Board set aside for consideration of the electric fish barrier, Robin L. Garibay, REM, testified on behalf of the Lemont Refinery. In describing the impact of the electric barrier and the uniqueness of the RNA, Ms. Garibay said, "[w]hen I say it's a unique waterway it is the only one in the nation that is both a regulated navigation area as well as a safety zone. It's pretty unique." (Transcript of November 8, 2010 hearing beginning at 9:00 am, p.96.) The safety zone, also known as a "Black Zone," abuts the Lemont Refinery such that the Refinery had to move its boat dock to a new location lest it be prevented from using its boats.

7. Ms. Garibay presented the recommendation of ENVIRON International Corporation that the Board recognize a "designated use for the Lower Reach of the Ship Canal, specifically through operation of electrical barriers to deter migration of Asian carp to the Great Lakes, and use of piscicides to allow maintenance of the barriers." (Exh. 420, p. 14.) She further explained that "[t]his designated use should be recognized in the Illinois regulations for

water quality standards. In a systemwide approach to the Great Lakes, this designated use in the CAWS is in full support of the intent of the Clean Water Act goals.” (*Id.* at p. 17)

8. Given the narrow and discrete issues presented by the electric fish barrier, the water quality standards applicable within the RNA can be set more easily than those concerning the greater Chicago Area Waterway System and the Lower Des Plaines River. In addition, we have been seeking to have the Board modify the water quality standards for TDS prior to 2005. (*See* PCB05-85.) The Board also recognized the Lemont Refinery’s need for TDS relief from the Total Dissolved Solids (TDS) rules in its *Triennial Review of Sulfate and Total Dissolved Solids Water Quality Standards* (R07-9). Both Mr. Huff and Brigitte Postel, Environmental Engineer and Water Coordinator at the Lemont Refinery gave testimony in that rulemaking. (*See* R07-9, Exh. 1, Filed April 9, 2007.) In its final comments to that 2007 rulemaking, the Lemont Refinery included the Agency’s draft proposal to revise the water quality standards for secondary contact waters which are still pending in this rulemaking and noted the “likely delay” in the UAA rulemaking and the harm such delay will cause to the Lemont Refinery. (R07-9, PC #6 at 2, filed June 7, 2007.) The Lemont Refinery’s requests for relief were renewed again in 2008. (*See* PCB08-33.) In that last rulemaking, the Board took notice of the current rulemaking and the expectation that TDS requirements would be removed in their entirety (R08-09 at 14.) The Board has not yet promulgated water quality standards in the R08-09 proceeding.

9. Given the number of years that have transpired since the start of this rulemaking without the adoption of new water standards, the Lemont Refinery suggests that an expedited approach to this issue within a separate subdocket will conserve scarce regulatory resources and achieve a tangible result more efficiently than an alternative approach which would require the

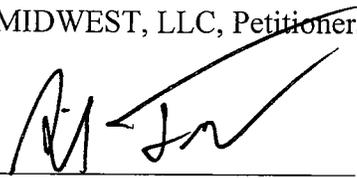
filing of new variance petitions under an uncertain CAWS/LDPR regulatory framework and the continued inclusion of the RNA issue within Subdockets C and D.

WHEREFORE, the Lemont Refinery respectfully requests that the Board designate the RNA and the Black Zone, defined as the area of the Chicago Sanitary and Ship Canal from River Mile 295.5 to River Mile 297.2, as Use C for the purposes of aquatic life and proceed to a new expedited subdocket to determine the appropriate aquatic life standards applicable to such a Use C. The map designating Use C and the specific Use C language were proposed by Mr. Huff respectively as Exhibits A and B to his February 2, 2011 testimony, and they are similarly attached hereto as Exhibits A and B to this Motion. Such a definition would supplement the proposed Section 303.238.

Dated: June 14, 2011

Respectfully submitted,

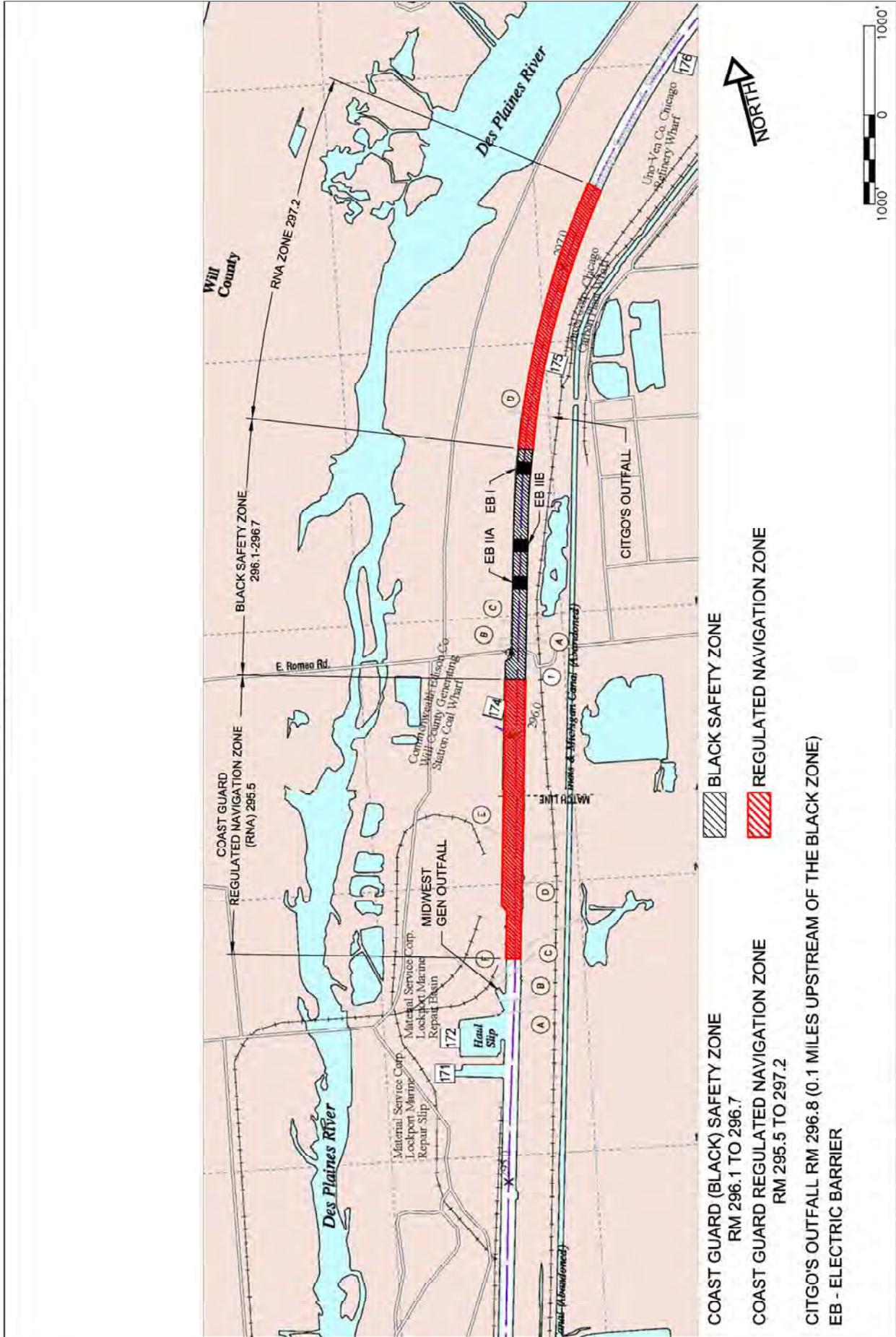
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Exhibit A



Testimony of Jim Huff, February 2, 2011, Illinois Pollution Control Board R08-09 (Subdocket C).

Exhibit B

Proposed Use C

STANDARD:

303.238 Chicago Area Waterway System Aquatic Life Use C Waters

Waters designated as Chicago Area Waterway System Aquatic Life Use C Waters are not capable of maintaining aquatic-life populations. They have unique physical conditions, flow patterns, and operational controls designed to maintain navigational use, flood control, and drainage functions in deep-draft, steep-walled shipping channels. These waters are also used for controls, such as electric fish barriers and other methods, with respect to preventing invasive species from migrating from the Illinois River system towards Lake Michigan. Finally, these waters are used to take up waters with high chloride levels as a result of de-icing actions. The following waters are designated as Chicago Area Waterway System Aquatic Life Use C waters and must meet the water quality standards of 35 Ill. Adm. Code 302, Subpart D:

- a) The Chicago Sanitary and Ship Canal from River Mile 295.5 to river mile 297.2.

EXPLANATION:

CAWS Aquatic Life Use C waters are utilized in maintaining controls to prevent invasive species, such as Asian carp species, from entering the Great Lakes. In addition, they are artificially constructed or channelized, straight, deep-draft, steep-walled shipping channels with little or no fixed aquatic or overhanging riparian vegetation or other refugia for aquatic life from shipping traffic and predation. They are generally 15 feet or more deep and square or rectangular in cross section. The channel walls are kept in place by sheet piling, concrete, timbers or various combinations of each. Use C waterways are subject to recurring, moderate to severe anthropogenic impacts such as the application of fish poison, the use of electric fish barriers, sediment scouring, wake disturbances of shoreline areas, and rapid changes in water levels and flow velocities; the impacts are attributable primarily to control of invasive species, navigational uses, de-icing and stormwater run-off, and flood control functions.

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 14th day of June, 2011, I have served electronically the attached Motion to For an Expedited Subdocket Addressing Use C and Notice of Filing upon the following person:

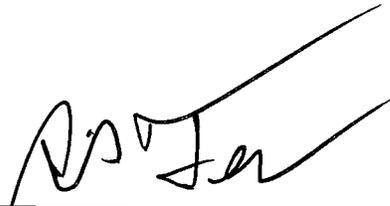
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