

ILLINOIS POLLUTION CONTROL BOARD  
January 19, 2012

CITGO PETROLEUM CORPORATION and )  
PDV MIDWEST REFINING, L.L.C., )  
 )  
Petitioners, )  
 )  
v. ) PCB 12-94  
 ) (Variance - Water)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by T.E. Johnson):

On December 20, 2011, CITGO Petroleum Corporation (CITGO) and PDV Midwest Refining, L.L.C. (PDVMR) (collectively, petitioners) filed a petition to extend a 2008 extension of a variance from water quality standards (35 Ill. Adm. Code 302.208(g) and 302.407) for total dissolved solids (TDS). After providing background, today’s order accepts petitioners’ petition and grants the January 3, 2012 motion of the Illinois Environmental Protection Agency (Agency) for additional time to publish notice of the petition. The order also identifies various deadlines for this proceeding.

**BACKGROUND**

Under the Environmental Protection Act (Act) (415 ILCS 5/35-38 (2010)), the Board is responsible for granting variances when a petitioner demonstrates that compliance would impose an “arbitrary or unreasonable hardship” on petitioner. *See* 415 ILCS 5/35(a) (2010); *see also* 415 ILCS 5/37(a) (2010) (burden of proof is on petitioner). A “variance is a temporary exemption from any specified rule, regulation, requirement or order of the Board.” *See* 35 Ill. Adm. Code 104.200(a)(1). The Board may issue a variance, with or without conditions, for up to five years, but may extend a variance if petitioner shows that it has made satisfactory progress toward compliance. *See* 415 ILCS 5/36(a), (b) (2010). The Act requires the Agency to “make a recommendation to the Board as to the disposition of the petition.” 415 ILCS 5/37(a) (2010).

The instant petition concerns petitioners’ oil refinery in Lemont, Will County, which CITGO operates and PDVMR owns. The 2008 variance extension was issued by the Board in CITGO Petroleum Corp. and PDV Midwest Refining, L.L.C. v. IEPA, PCB 08-33 (May 15, 2008), continuing to allow petitioners greater amounts of TDS in their wastewater discharge to the Chicago Sanitary and Ship Canal, which leads to the Des Plaines River. The original variance, extended in PCB 08-33, was issued by the Board in CITGO Petroleum Corp. and PDV Midwest Refining, L.L.C. v. IEPA, PCB 05-85 (Apr. 21, 2005).

## **PETITION**

Petitioners now seek “an extension of dates to undertake certain actions as contained in an existing variance [PCB 08-33] authorizing discharges of [TDS].” Petition at 1. Undertaking those measures as required by the current variance order, according to the petition, would constitute an arbitrary and unreasonable hardship. *Id.* at 18-19. Petitioners waive hearing. *Id.* at 19. The petition is supported by the affidavit of Brigitte Postel, CITGO’s Environmental Engineer, Water Coordinator at the Lemont refinery. *Id.*, Exhibit H.

The Board accepts petitioners’ petition for variance extension but makes no determination on the informational sufficiency or merits of the petition. *See* 35 Ill. Adm. Code 104.204, 104.208, 104.210. Though petitioners have waived hearing, there are circumstances under which the Board will nevertheless order a hearing on the petition. *See* 35 Ill. Adm. Code 104.234. To ensure proper case management, the Board will assign a hearing officer to this proceeding. The Board, through orders of its own or its hearing officer, may direct petitioners to provide additional information concerning their petition.

The Agency’s recommendation on the petition must be filed by February 17, 2012, which is the 45th day after the date on which the petition was filed. *See* 35 Ill. Adm. Code 104.216(b). The Board’s statutory deadline for deciding this case is April 18, 2012, which is the 120th day after the date on which the petition was filed. *See* 415 ILCS 5/38(a) (2010); 35 Ill. Adm. Code 104.232. The Board meeting immediately before the decision deadline is currently scheduled for April 5, 2012.

## **MOTION**

Section 37(a) of the Act (415 ILCS 5/37(a) (2010)) provides that the Agency “shall publish a single notice of such [variance] petition in a newspaper of general circulation in such county” where the facility is located. Section 104.214(a) of the Board’s procedural rules requires the Agency to publish the notice “[w]ithin 14 days after the petition is filed.” 35 Ill. Adm. Code 104.214(a). In its motion for extension of time to publish notice, the Agency explains that it was unable to comply with the 14-day publication rule because the Agency received the petition on December 23, 2011, and the holidays delayed the assignment of an attorney to this case until January 3, 2012. Motion at 3-4. The Agency requests a 30-day extension of time to publish the notice. *Id.* at 4. Petitioners filed a response on January 11, 2012, stating that they do not oppose the motion.

The Board grants the Agency’s motion for a 30-day extension of the 14-day period for publishing notice of the petition. As the petition was filed on December 20, 2011, the Agency’s new deadline for publishing notice of the petition is February 2, 2012. In addition, the Agency must file a certification of publication within 21 days after publication of the notice. *See* 35 Ill. Adm. Code 104.214(f). Also within 21 days after the notice is published, the Agency or any other person may file an objection to the grant of the requested variance extension. *See* 35 Ill. Adm. Code 104.224, 104.234.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 19, 2012, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

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John Therriault, Assistant Clerk  
Illinois Pollution Control Board