

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**CITGO PETROLEUM CORPORATION and
PDV MIDWEST REFINING, L.L.C.,**

Petitioners,

v.

**ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,**

Respondent.

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**PCB 12-094
(Variance- Water)**

NOTICE

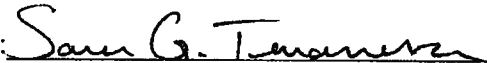
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PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the **RECOMMENDATION** of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: 

Sara G. Terranova
Assistant Counsel
Division of Legal Counsel

Dated: February 17, 2012
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
217/782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITGO PETROLEUM CORPORATION and)	
PDV MIDWEST REFINING, L.L.C.,)	
)	
Petitioners,)	
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v.)	PCB 12-094
)	(Variance- Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

**RECOMMENDATION OF THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY**

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”) by one of its attorneys, Sara G. Terranova, and files its Recommendation pursuant to 35 Ill. Adm. Code 104.216. The Illinois EPA recommends that the Illinois Pollution Control Board (“Board”) **GRANT** CITGO Petroleum Corporation and PDV Midwest Refining, L.L.C (“CITGO” or “Petitioner”) request for an extension of variance subject to the terms and conditions of the compliance plan provided in Section VII of this Recommendation. In support of its Recommendation the Illinois EPA states as follows:

I. INTRODUCTION

1. On December 20, 2011, CITGO filed a petition (“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”) relating to its operation of a petroleum refinery in Lemont, Illinois. *See* PCB 08-33, order issued May 15, 2008.
2. On January 3, 2012, the Illinois EPA filed a motion for extension of time to publish notice in a local newspaper. On January 19, 2012, the Board granted the Illinois EPA’s request, and

directed the Agency to publish the variance notice by February 2, 2012.

3. On January 19, 2012, the Board found that CITGO's petition met the content requirements of 35 Ill. Adm. Code 104.204, 104.208 and 104.210. *See* PCB 12-94, January 19, 2012 order at 2.

II. NOTICE

4. The Illinois EPA must provide notice of any petition for variance within 14 days after filing, pursuant to Section 104.214 of the Board's procedural rules. *See* 35 Ill. Adm. Code 104.214. This section provides that "the Agency must publish a single notice of such petition in a newspaper of general circulation in the county where the facility or pollution source is located." *See also* 415 ILCS 5/37(a). Section 104.214(b) also requires the Illinois EPA to serve written notice of the petition on the County State's Attorney, the Chairman of the County Board, each member of the General Assembly from the legislative district and any person in the county who has in writing requested notice of variance petitions.
5. On January 3, 2012, the Illinois EPA filed a motion for extension of time to publish notice. The Board granted the Agency's motion and directed the Agency to publish the notice of the variance by February 2, 2011. Consistent with 35 Ill. Adm. Code 104.214 and the Board's January 19, 2012 order, the Illinois EPA published notice of Petitioner's petition for variance in the South Dupage Reporter/Progress on January 11, 2012. Also, consistent with Section 104.214 (b), the Illinois EPA mailed notices of variance petition on January 5, 2012 and January 17, 2012.
6. The Illinois EPA did not receive any written comments, objections or requests for hearing.
7. Pursuant to the Board's procedural rules, "[w]ithin 21 days after the publication of notice, the Agency must file with the Board a certification of publication that states the date on which the notice was published and must attach a copy of the published notice." 35 Ill Adm. Code

104.214(f). In the January 19, 2012 order, the Board directed the Agency to file a certification of publication within 21 days after publication of notice. *See* PCB 12-94, January 19, 2012 order at 2. On January 25, 2012, the Agency filed a certification of publication with the Board.

III. INVESTIGATION

8. Pursuant to Section 37 of the Illinois Environmental Protection Act ("Act"), the Illinois EPA is required to "promptly investigate such petition and consider the views of persons who might be adversely affected by the grant of the variance." 415 ILCS 5/37(a) (2010). A similar requirement is set forth in Section 104.216(b)(1) of the Board Regulations. 35 Ill. Adm. Code 104.216(b)(1).
9. As a result of this investigation the Illinois EPA recommends that the Board should grant Petitioner's requested relief, subject to the modification and condition of the compliance plan provided in Section VII of this Recommendation.

IV. AIR MONITORING STATION

10. Section 104.216(b)(2) of the Board rules requires the Illinois EPA to state the location of the nearest air monitoring station, where applicable. This requirement is not applicable in this case. *See* 35 Ill. Adm. Code 104.216(b)(2).

V. ESTIMATED COST OF COMPLIANCE

11. Section 104.216(b)(5) of the Board rules requires the Illinois EPA to estimate the cost that compliance would impose on the Petitioner and others. *See* 35 Ill. Adm. Code 104.216(b)(5). Also, Section 35(a) of the Act requires the Board to determine if the Petitioner has presented adequate proof that it would suffer an arbitrary or unreasonable hardship if required to

immediately comply with the Board regulation at issue. *See* 415 ILCS 5/35(a)(2010).

12. CITGO has investigated methods to avoid releasing the Fluid Catalytic Converter Unit (FCCU) wastewater to the existing wastewater treatment system, including deep well disposal and removal technologies. Petition for Variance, page 16. Petitioners maintain the only technology potentially available is evaporation, which they describe as an energy intensive approach that would result in increased carbon dioxide emissions to the atmosphere. Petition for Variance, page 16. Additionally, Petitioners claim in 2011 dollars, the capital cost for applying falling film evaporator with mechanical vapor recompression to this wastewater stream is approximately \$8,400,000. Operating costs, including depreciation, are estimated at \$1,200,000 per year, with 40 percent of this amount representing energy costs. Petition for Variance, page 17 and CITGO Lemont Refinery Update Cost for Falling Film Evaporator spreadsheet. CITGO is unaware of a situation where such a massive evaporation system has been constructed or operated and concludes that requiring it here for the wet gas scrubber discharge would impose on them an arbitrary and unreasonable hardship:

CITGO is not the cause of any current water quality standard exceedance; upstream conditions in the Ship Canal from snow melt conditions exceed the existing TDS standard, and the Agency has asked the Board to remove that standard as well. Further, CITGO is investing substantial monies in the Refinery to substantially reduce air emissions and substantially reduce the overall environmental release from the Refinery, and the waste water discharge involved is relatively modest. Petition for Variance, page 17.

13. In *Citgo Petroleum Corporation and PDV Midwest Refining, L.L.C., v Illinois EPA*, PCB 08-33, May 15, 2008 (“PCB 08-33”) and PCB 05-85, April 21, 2005 (“PCB 05-85”) the Board found that Petitioners “would suffer an arbitrary or unreasonable hardship if required to comply immediately with the Board regulations at issue.” *See* PCB 08-33 at 23 and PCB 05-85 at 14. The underlying facts in this proceeding are identical to those considered by the Board in

PCB 08-33 and PCB 05-85. The Board's finding, that if CITGO is required to comply with the Board's regulations it would suffer an arbitrary or unreasonable hardship, is thus applicable to this case.

VI. ENVIRONMENTAL IMPACT

14. When deciding to grant or deny a variance petition, the Board is required to balance the petitioner's hardship in complying with Board regulations against the impact that the requested variance will have on the environment. See Monsanto Co. v. PCB, 67 Ill. 2d 276, 292, 367 N.E.2d 684, 691 (1977). Petitioner must establish that the hardship it would face from denial of its variance request would outweigh any injury to the public or the environment from granting the relief, and "[o]nly if the hardship outweighs the injury does the evidence rise to the level of an arbitrary or unreasonable hardship." Marathon Oil Co. v. EPA, 242 Ill. App. 3d 200, 206, 610 N.E. 2d 789, 793 (5th Dist. 1993).
15. Petitioners state the discharge from the Refinery "has only a modest theoretical impact on the Ship Canal." Petition for Variance, page 11. Petitioners provide that at stream low flow conditions, and loading from CITGO's outfall 001, which includes the Wet Gas Scrubber contribution, the sulfate and TDS levels in the waterways after complete mixing based on actual discharge concentrations and flow would increase as follows:

	Incremental Increase	
	Des Plaines River at I-55 Bridge	Canal
Sulfate, mg/L	18	21
TDS, mg/L	25	29

Petition for Variance, page 12.

16. Petitioners further provide that their investment of over \$140 million at the Refinery pursuant to the 2003 Consent Decree is projected to reduce SO2 emissions by 15,300 tons/year, NOx

emissions by 1,100 ton/ year, and PM emissions by 92 tons/year. Petition for Variance, page 15.

17. In PCB 08-33 and PCB 05-85, the Board concluded that “petitioners have established that the hardship they would experience outweighs any injury to the public or the environment from granting the relief.” *See* PCB 08-33 at 22 and PCB 05-85. As all the underlying facts in this proceeding are identical to the ones that were considered by the Board in PCB 08-33 and PCB 05-85, the Board’s finding regarding the environmental impact is still applicable in this case.

VII. COMPLIANCE PLAN

18. Pursuant to Section 104.204(f), the Petitioner is required to present a detailed compliance plan in its Petition for Variance. *See* 35 Ill. Adm. Code 104.204(f). Petitioner’s petition provides such a compliance plan, *See* Petition for Variance at 4. The Agency proposes the following modification and condition to the CITGO compliance plan:
- a. In the suggested variance language, the Petitioner is seeking relief from 302.208(g). This relief is not necessary as the TDS water quality standard applicable to General Use waters was removed by the Board in 2008.
 - b. CITGO should provide chloride data for their effluent to ensure that any future chloride water standard can be met.

VIII. CONSISTENCY WITH FEDERAL LAW

19. The Board’s procedural rules provide that:

All petitioners for variances from Title III of the Act, from 35 Ill. Adm. Code. Subtitle C, Ch. I “Water Pollution”, or from water pollution related requirements of any other title of the Act or Chapter of the Board’s regulation, must indicate whether the Board may grant the relief consistent with the Clean Water Act (CWA) (33 USC 1251 et seq.), USEPA effluent guidelines and standards, any other federal regulations, or any area wide waste treatment

management plan approved by the Administrator of USEPA pursuant to Section 208 of the CWA (33 USC 1288).

35 Ill. Adm. Code 104.208(b). Petitioner meets the requirements of 35 Ill. Adm. Code 104.208(b), as the Board in PCB 08-33 and 05-85 concluded that the requested variance was not inconsistent with the federal law. *See* PCB 08-33 at 23 and 05-85 at 14.

IX. PERMITS

20. Section 104.216(b)(8) of the Board rules requires the Illinois EPA to discuss in its recommendation the status of any permits or pending permit applications that are associated with or affected by the requested variance. 35 Ill. Adm. Code 104.216(b)(8).
21. CITGO's Lemont refinery operates under NPDES permit number IL0001589. On August 9, 2004, the Illinois EPA received from CITGO an application for modification of this permit. On July 28, 2006, the Agency renewed the NPDES permit. On August 14, 2006, CITGO appealed the permit by filing a petition before the Board, pursuant to Section 40.2 of the Act. The Agency issued the modified permit on June 22, 2007. On July 12, 2007, the Board granted the CITGO's motion for voluntary dismissal of the appeal. The permit expired on July 31, 2011. On December 17, 2010, the Illinois EPA received from CITGO an application for permit renewal. The Agency is currently reviewing the permit application.

X. RECOMMENDATION

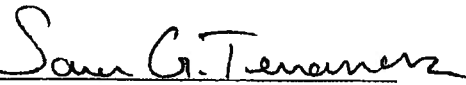
18. Under Section 37 of the Act and Section 104.216(b)(11) of the Board rules, the Agency is required to make a recommendation to the Board as to the disposition of the petition. *See* 415 ILCS 5/37(a); 35 Ill. Adm. Code 104.216(b)(11). The burden of proof in a variance proceeding is on the Petitioner to demonstrate that compliance with the rule or regulation would impose an arbitrary or

unreasonable hardship. See 415 ILCS 5/35(a); 35 Ill. Adm. Code 104.238. The Illinois EPA recommends that the Board grant the Petitioner's request for a variance from the TDS water quality standard of 1,500 mg/L as specified in 35 Ill. Adm. Code 302.407 for five years from the date of the Board's order, subject to the modification and condition outlined in Section VII of this Recommendation.

Wherefore, for the reasons stated above, the Illinois EPA recommends that the Board **GRANT** the variance requested by CITGO, subject to the modification and condition outlined in Section VII of this Recommendation.

Respectfully submitted,

Dated: February 10, 2012
1021 North Grand Avenue East
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217-782-5544

By 
Sara G. Terranova
Assistant Counsel
Illinois EPA

STATE OF ILLINOIS)
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COUNTY OF SANGAMON)
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PROOF OF SERVICE

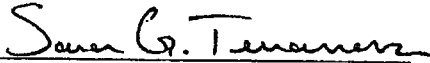
I, the undersigned, state that I have served the attached Agency **Recommendation** upon the persons to whom it is directed, by placing a copy in an envelope addressed to:

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago IL 60601

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John Therriault, Assistant Clerk
Illinois Pollution Control Board
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100 West Randolph Street
Chicago, IL 60601

and mailing it from Springfield, Illinois on February 17, 2012, with sufficient postage affixed as indicated above:


Sara G. Terranova