

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

In the Matter Of:	)	
	)	
MARATHON PETROLEUM	)	
COMPANY LP,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 18-49
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

TO: Don Brown	Carol Webb
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500	1021 North Grand Avenue East
Chicago, Illinois 60601	P.O. Box 19274
(VIA ELECTRONIC MAIL)	Springfield, Illinois 62794-9274
	(VIA ELECTRONIC MAIL)

**(SEE PERSONS ON ATTACHED SERVICE LIST)**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board **MARATHON PETROLEUM COMPANY LP'S RESPONSE TO THE RECOMMENDATION OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**, a copy of which is herewith served upon you.

Respectfully submitted,  
MARATHON PETROLEUM COMPANY LP,

Dated: September 27, 2018

By: /s/ Joshua J. Houser  
One of Its Attorneys

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**CERTIFICATE OF SERVICE**

I, Joshua J. Houser, the undersigned, on oath state the following:

That I have served the attached **MARATHON PETROLEUM COMPANY LP'S RESPONSE TO THE RECOMMENDATION OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY** via electronic mail upon:

Don Brown  
Clerk of the Board  
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That my email address is Joshua.Houser@heplerbroom.com.

That the number of pages in the email transmission is 11 pages.

That the email transmission took place before 5:00 p.m. on the date of September 27, 2018.

/s/ Joshua J. Houser  
Joshua J. Houser

Date: September 27, 2018

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	)	
Respondent.	)	

**MARATHON PETROLEUM COMPANY LP'S  
RESPONSE TO THE RECOMMENDATION OF THE  
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

MARATHON PETROLEUM COMPANY LP ("Marathon" or "MPC"), by and through its attorneys, HEPLERBROOM, LLC, hereby files its Response to the Recommendation of the Illinois Environmental Protection Agency ("Illinois EPA") to the Illinois Pollution Control Board ("Board") regarding Marathon's Petition to Approve Alternative Thermal Effluent Limitations.

**I. BACKGROUND**

On December 15, 2017, Marathon filed its Petition to Approve Alternative Thermal Effluent Limitations in this proceeding. On January 26, 2018, the Illinois Department of Natural Resources ("IDNR") sent Illinois EPA a letter indicating that IDNR was reopening its consultation process due to the occurrences of a state-listed species, Bigeye Chub (*Hybopsis amblops*), reported in Marathon's Bioassessment (Exhibit 7 to the Petition). See Letter from Keith M. Shank, IDNR, to Scott Twait, Illinois EPA (Jan. 26, 2018), attached to Marathon's Motion for Leave to File an Addendum to Exhibit 4 of the Petition to Approve Alternative Thermal Effluent Limitations, filed in this proceeding on February 27, 2018. In that letter, IDNR

requested that Illinois EPA delay acting on Marathon's Petition until both IDNR and Illinois EPA could discuss the implications of the Bigeye Chub occurrences. *See id.* To accommodate this request, on January 29, 2018, Illinois EPA filed (and the Board subsequently granted) its first motion for extension of time to file its Recommendation to the Board on Marathon's Petition. Marathon had no objection to this motion.

Over the next couple of weeks, IDNR, Illinois EPA, and Marathon held several telephone conferences to preliminarily discuss potential Bigeye Chub thermal tolerance data and the reopened consultation process. On February 2, 2018, Illinois EPA met with IDNR to discuss the Bigeye Chub occurrences and Marathon's Petition. *See* Recommendation of the Illinois Environmental Protection Agency, PCB 18-49, at 10 (Sept. 10, 2018). On February 14, 2018, IDNR, Illinois EPA, and Marathon met and discussed in detail the occurrences of Bigeye Chub, the limited amount of thermal tolerance data available on Bigeye Chub, Midwest Biodiversity Institute's ("MBI") (Marathon's consultant) analysis of the potential adverse effects to Bigeye Chub that might be posed by Marathon's requested alternative thermal effluent limitations, and the analysis' conclusion that the occurrence of Bigeye Chub in Robinson Creek has no effect on the conclusions of Marathon's 316(a) technical evaluation nor the alternative thermal effluent limitations that are being requested by Marathon.

On February 27, 2018, as discussed by the parties during the February 14<sup>th</sup> meeting, Marathon filed with the Board an Addendum to the Technical Support Documentation for Marathon's Petition (Exhibit 4 to the Petition) ("Addendum"). The Addendum supplements the record in this proceeding by providing additional review and analysis of the potential for adverse effects to Bigeye Chub that might be posed by Marathon's requested alternative thermal effluent limitations, and providing the rationale for concluding that the occurrence of Bigeye Chub in

Robinson Creek has no effect on the conclusions of Marathon's 316(a) technical evaluation or on the alternative thermal effluent limitations requested in Marathon's pending Petition, i.e., that Marathon's requested alternative thermal effluent limitations will assure the protection and propagation of a balanced, indigenous community of shellfish, fish (including Bigeye Chub), and wildlife in and on Robinson Creek.

To allow time to review Marathon's Addendum, on February 28, 2018, Illinois EPA filed (and the Board subsequently granted) its second motion for extension of time to file its Recommendation to the Board on Marathon's Petition. Marathon had no objection to this motion. On March 29, 2018, IDNR issued a letter to Illinois EPA providing IDNR's response to Marathon's Petition and Addendum, including offering recommendations regarding the Bigeye Chub, and again closing IDNR's consultation. *See* Letter to Scott Twait, Illinois EPA, from Keith M. Shank, IDNR, RE: Alternative Thermal Effluent Limitations, Section 316(a) of the Clean Water Act and 35 Ill. Adm. Code 304.141(c), Marathon Petroleum Company LP Refinery Endangered Species Consultation Program, EcoCAT Review #1808455 (Mar. 29, 2018), attached as Attachment A to Illinois EPA's Motion to Extend Time to File the Illinois Environmental Protection Agency's Recommendation filed in this proceeding on April 12, 2018 (IDNR's letter hereafter the "March 29<sup>th</sup> Letter").

Despite Marathon's several requests to meet with IDNR and Illinois EPA after IDNR reviewed Marathon's Addendum so that the parties could further discuss IDNR's positions on the Addendum and answer any additional questions they may have, IDNR instead issued the March 29<sup>th</sup> Letter without allowing an opportunity to meet again. Marathon's understanding is that IDNR also did not coordinate with Illinois EPA prior to issuing the March 29<sup>th</sup> Letter.

On April 6, 2018, Marathon and Illinois EPA discussed IDNR's recommendations and plans to meet again with IDNR in the near future. To allow for the parties' continued discussions, on April 12, 2018, Illinois EPA filed (and the Board subsequently granted) its third motion for extension of time to file its Recommendation to the Board on Marathon's Petition. Marathon had no objection to this motion. On May 23, 2018, Marathon and Illinois EPA again discussed IDNR's recommendations. On June 6, 2018, Illinois EPA and IDNR met to discuss IDNR's recommendations, and the meeting concluded with an agreement that further discussion among all parties was necessary. *See* Illinois EPA's Motion for Extension of Time, PCB 18-49, at 2 ¶ 4 (June 12, 2018). To allow for the parties' continued discussions, on June 12, 2018, Illinois EPA filed (and the Board subsequently granted) its fourth motion for extension of time to file its Recommendation to the Board on Marathon's Petition. Marathon had no objection to this motion.

To assist Marathon with responding to IDNR's recommendations in the March 29<sup>th</sup> Letter, both MBI and EA Engineering, Science, and Technology, Inc., PBC ("EA") reviewed the March 29<sup>th</sup> Letter and prepared reports providing in-depth, technical analyses and responses to certain of IDNR's recommendations. On August 15, 2018, Marathon filed its Response to IDNR's March 29<sup>th</sup> Letter, including MBI's and EA's reports as attachments, that responded to all of IDNR's recommendations and requested that Illinois EPA base its Recommendation, and the Board base its final determination, on the information provided in Marathon's Petition, including the Addendum, and the Response to IDNR's March 29<sup>th</sup> Letter, including MBI's and EA's reports. Marathon further requested that Illinois EPA and the Board respectfully decline to follow IDNR's recommendations in its March 29<sup>th</sup> Letter and that the Board grant Marathon's Petition. Nevertheless, Marathon had scheduled a meeting with IDNR and Illinois EPA for

September 12, 2018, to further discuss these issues. Notably, despite the scheduled meeting, on September 10, 2018, Illinois EPA filed its Recommendation in this proceeding rather than another motion for extension of time to allow for the further discussions during the scheduled meeting on September 12, 2018.

## **II. ILLINOIS EPA'S RECOMMENDATION**

Pursuant to 35 Ill. Adm. Code Section 106.1145, Illinois EPA filed its Recommendation to the Board on Marathon's Petition. In its Recommendation, Illinois EPA "agrees the Petitioner has demonstrated that the proposed alternative thermal limits would not adversely affect the balanced, indigenous population of fish, shellfish, and wildlife currently inhabiting the receiving water." Recommendation, at 4. Illinois EPA acknowledges that "[t]he impaired status of Robinson Creek precludes a Type I thermal demonstration (no prior appreciable harm)" and "[t]herefore, Marathon performed a predictive analysis for the 316(a) demonstration." *Id.* Illinois EPA recognizes Marathon's use of the Fish Temperature Modeling System ("FTMS") (Yoder 2008) to determine protective "true summer" (June 16 – September 15) maximum and average temperatures for a list of Representative Important Species ("RIS") and comparing the results to the measured and modeled summer temperature regime." *See id.* at 4-5. Illinois EPA further determines that Marathon's "analyses and observations in the 316(a) Demonstration support the conclusion that the proposed limits are sufficiently protective of the RIS and the full assemblages by extension. As such, this satisfies the demonstration that the requested alternative thermal effluent limitation under Section 316(a) is justified." *Id.* at 5-6 (internal citation omitted).

Illinois EPA states that Marathon's Petition has met the content requirements for requesting alternative thermal effluent limitations provided in 35 Ill. Adm. Code Section

106.1130. *Id.* at 8. Also, Illinois EPA concludes that no additional information is needed to supplement Marathon's request for alternative thermal effluent limitations. *Id.* at 9. All of Illinois EPA's determinations and conclusions discussed above were reached after reviewing information regarding the Bigeye Chub set forth in Marathon's Petition (including the Addendum), IDNR's March 29<sup>th</sup> Letter, and Marathon's Response to IDNR's March 29<sup>th</sup> Letter (including MBI's and EA's reports). *Id.* at 9-10.

Finally, Illinois EPA recommends that the Board grant Marathon's Petition for alternative thermal effluent limitations, while suggesting that the language "in the vicinity of the IL Route 1 bridge" be changed to "at the IL Route 1 bridge" each time it is used in Marathon's requested relief. *Id.* at 4. Marathon is agreeable to changing the language "in the vicinity of the IL Route 1 bridge" to "at the IL Route 1 bridge" each time it is used in Marathon's requested relief except for one specific instance. Specifically, due to potential difficulties relating to construction of the instream temperature monitor "at" the bridge, Marathon is willing to change its proposed language to "at or upstream of the IL Route 1 bridge" where it is used in Marathon's requested relief as follows:

Also, Marathon proposes that the instream sampling location for monitoring the alternative thermal effluent limitations, i.e. the point of compliance, be located at a point instream ~~in the vicinity~~ at or upstream of the IL Route 1 bridge.

*See* Marathon's Petition, at 22. Marathon has conferred with Illinois EPA regarding this proposed change, and Illinois EPA has agreed with the proposed change.

### **III. THE RECORD NOW CONTAINS ALL INFORMATION REQUIRED FOR THE BOARD TO PROCEED WITH ITS DECISION ON MARATHON'S PETITION**

On September 12, 2018, the parties met and further discussed IDNR's recommendations in the March 29<sup>th</sup> Letter, Marathon's Response filed August 15, 2018, as well as IDNR's recent revelation that it was contracting with the University of Illinois to conduct bioassays of the



Bigeye Chub. IDNR stated that the purpose of the proposed study is to further define the thermal tolerance limits of Bigeye Chub. IDNR stated that the study would begin in Fall 2018, with preliminary data potentially available in November/December 2018, and manuscript preparation, dissemination, and peer-review processes being completed in Summer 2019. At the time of the September 12<sup>th</sup> meeting, the study proposal was still in draft form and being revised by IDNR and the University of Illinois.

Although Marathon is not opposed to IDNR's proposed study, Marathon asserts that, with Illinois EPA's filing of its Recommendation, the Board now has all information in this proceeding's record required to proceed with its decision on Marathon's Petition. Marathon clearly does not dispute the occurrences of Bigeye Chub in Robinson Creek or the minimal data available on the thermal tolerance of Bigeye Chub. Marathon itself reported these Bigeye Chub occurrences in the Petition's Bioassessment. Marathon's Addendum and Response to IDNR's March 29<sup>th</sup> Letter provide extensive technical analyses on the potential for adverse effects to Bigeye Chub that might be posed by Marathon's requested alternative thermal effluent limitations and conclude that the occurrence of Bigeye Chub in Robinson Creek has no effect on the conclusions of Marathon's 316(a) technical evaluation or on the alternative thermal effluent limitations requested in Marathon's pending Petition, i.e., that Marathon's requested alternative thermal effluent limitations will assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on Robinson Creek. As discussed above, Illinois EPA has concluded that no additional information is needed to support the Petition.

As demonstrated in Marathon's Petition, Technical Support Documentation, Addendum, and Response to IDNR's March 29<sup>th</sup> Letter, Marathon has followed all applicable state and

federal rules, guidance<sup>1</sup>, protocols, and analyses for making Clean Water Act Section 316(a) demonstrations in the absence of data for one or more particular species. In addition, the Board's Subpart K regulations specifically provide for a situation such as this where additional data or other information may become available after the Board's granting of alternative thermal effluent limitations, i.e., the new data is considered during the discharger's NPDES permit renewal process. *See* 35 Ill. Adm. Code §§ 106.1170(c), 106.1180.

Thus, if the Board grants Marathon's Petition, and IDNR and the University of Illinois subsequently complete the proposed Bigeye Chub study and that study produces data relevant to Marathon's 316(a) demonstration, and Marathon requests that its alternative thermal effluent limitations be continued in its renewed NPDES permit, then Marathon will be required to consider and incorporate, as appropriate, the new Bigeye Chub data as part of its NPDES renewal process. Specifically, Marathon must demonstrate, and Illinois EPA must review and approve, that the nature of Marathon's thermal discharge and its alternative thermal effluent limitations have not caused appreciable harm to a balanced, indigenous population of shellfish, fish, and wildlife in and on Robinson Creek. *See* 35 Ill. Adm. Code § 106.1180. Any new, relevant Bigeye Chub thermal tolerance data would be included in such a demonstration.

#### **IV. CONCLUSION**

For the foregoing reasons, Marathon asserts that the Board now has all required information in the record to proceed with its decision on Marathon's Petition. Illinois EPA's Recommendation recommends that the Board grant Marathon's Petition. Therefore, Marathon respectfully requests that the Board proceed with its review of Marathon's Petition and that,

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<sup>1</sup> Including USEPA's Interagency 316(a) Technical Guidance Manual and Guide for Thermal Effects Sections of Nuclear Facilities Environmental Impact Statements (DRAFT) (May 1, 1977).

consistent with Illinois EPA's Recommendation, the Board grant Marathon's Petition for Alternative Thermal Effluent Limitations.

Respectfully submitted,

MARATHON PETROLEUM COMPANY LP,

By: /s/ Joshua J. Houser  
One of Its Attorneys

Dated: September 27, 2018

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