

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION LLC,)	
)	
)	
Petitioner,)	
)	
v.)	PCB 16-19
)	(Variance – Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Mr. Don Brown	Bradley P. Halloran, Esq.
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500	James R. Thompson Center, Ste. 11-500
Chicago, Illinois 60601	100 W. Randolph Street
(VIA ELECTRONIC MAIL)	Chicago, Illinois 60601
	(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 **EXXONMOBIL OIL CORPORATION'S COMMENTS ON RESPONDENT'S RESPONSE TO THE VARIANCE PETITION**, a copy of which is herewith served upon you.

Respectfully submitted,

EXXONMOBIL OIL CORPORATION,
By One of Its Attorneys,

Dated: March 31, 2017

By: /s/ Katherine D. Hodge
 One of Its Attorneys

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CERTIFICATE OF SERVICE

I, the undersigned, on oath state the following:

That I have served the attached EXXONMOBIL OIL CORPORATION'S COMMENTS ON RESPONDENT'S RESPONSE TO THE VARIANCE PETITION via electronic mail upon:

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That my email address is Katherine.Hodge@heplerbroom.com.

That the number of pages in the email transmission is 8.

That the email transmission took place before 5:00 p.m. on the date of March 31, 2017.

/s/ Katherine D. Hodge

Katherine D. Hodge

Date: March 31, 2017

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**EXXONMOBIL OIL CORPORATION’S COMMENTS ON
RESPONDENT’S RESPONSE TO THE VARIANCE PETITION**

NOW COMES EXXONMOBIL OIL CORPORATION (“ExxonMobil”), by and through its attorneys, HEPLERBROOM, LLC, and hereby submits its comments on the Illinois Environmental Protection Agency’s (“Illinois EPA”) Response to the Variance Petition (“Response”) filed with the Illinois Pollution Control Board (“Board”) in this proceeding on March 16, 2017, as follows:

I. PUBLIC ACT 99-937 AND ILLINOIS EPA’S RESPONSE

On February 24, 2017, Public Act 99-937 was signed into law. This legislation created Section 38.5 of the Illinois Environmental Protection Act (“Act”), which provides the Board with authority to adopt time-limited water quality standards (“TLWQS”). Pursuant to Section 38.5(e) of the Act, Illinois EPA filed its Response in this proceeding on March 16, 2017. Among other dischargers, Illinois EPA’s Response addresses ExxonMobil. Specifically, with respect to ExxonMobil, Illinois EPA’s Response states as follows:

Based on the Agency’s understanding and the review of initial data, the requested time-limited water quality standards relief by Midwest Gen and Flint Hills will affect Stepan Chemical and **possibly, but not likely, Exxon Mobil**, both of which are located further downstream from the Midwest Gen and Flint Hills discharges.

Until additional and sufficient data is collected and evaluated, the Agency suggests including Exxon Mobil.

If the discussions between the petitioners, USEPA, and the Agency determine that and [sic] multi-discharge variance or waterbody segment are appropriate, the stay would affect Midwest Gen (Will County, Joliet 9, and Joliet 29), Flint Hills, **as well as potentially** Stepan, and **Exxon Mobil**.

The class of discharger is for dischargers of heated effluent.

Response, at 3 (emphasis added). Due to Illinois EPA characterizing ExxonMobil as a “possibly, but not likely” affected discharger and suggesting that the Board include ExxonMobil “[u]ntil additional and sufficient data is collected and evaluated,” ExxonMobil is directly implicated in Illinois EPA’s Response and is compelled to file these comments for the Board’s consideration while preparing its 30-day Order pursuant to Section 38.5(f) of the Act.

II. EXXONMOBIL’S THERMAL IMPACTS ARE SMALL COMPARED TO THOSE OF UPSTREAM DISCHARGERS

Consistent with ExxonMobil’s extensive comments and testimony filed in the related Board proceeding PCB No. R08-9(D),¹ ExxonMobil’s Joliet Refinery (“Refinery”) discharges heated effluent into the Upper Dresden Island Pool (“UDIP”) stretch of the Lower Des Plaines River (“LDPR”). The Refinery’s once-through cooling system and process effluent discharges a maximum of 104 million British Thermal Units per hour (“MBTU/hr”).² Larger upstream thermal discharges have a much more

¹ See, e.g., Pre-Filed Testimony of Lial F. Tischler on Behalf of ExxonMobil Oil Corporation, PCB No. R08-9(D), at 29 (Ill.Pol.Control.Bd. Nov. 22, 2013); Transcript of Hearing Held December 17, 2013, PCB No. R08-9(D), at 6-108 (Ill.Pol.Control.Bd. Dec. 17, 2013); Responses to Requests for Information Made to ExxonMobil Witness Lial Tischler at the December 17, 2013 Hearing, PCB No. R08-9(D) (Ill.Pol.Control.Bd. Feb. 11, 2014); ExxonMobil’s Pre-First Notice Comments, PCB No. R08-9(D) (Ill.Pol.Control.Bd. Apr. 30, 2014), ExxonMobil’s First Notice Comments, PCB No. R08-9(D) (Ill.Pol.Control.Bd. Nov. 21, 2014); ExxonMobil’s Response to First Notice Comments, PCB No. R08-9(D) (Ill.Pol.Control.Bd. Dec. 12, 2014); ExxonMobil’s Additional Temperature Comments, PCB No. R08-9(D) (Ill.Pol.Control.Bd. June 1, 2015).

² Pre-Filed Testimony of Lial F. Tischler on Behalf of ExxonMobil Oil Corporation, PCB No. R08-9(D), at 29 (Ill.Pol.Control.Bd. Nov. 22, 2013).

profound impact on temperatures in UDIP waters. To illustrate, two Midwest Generation LLC (“MWG”) power stations historically added approximately 7,000 MBTU/hr of heat load to the river when the supplemental cooling towers at the Joliet 29 Station are not being used.³ In 2016, MWG converted its Joliet Station 9 and 29 generating units from coal-fired base-load operations to gas-fired peaking units and took one of two coal-fired units at its Will County Station offline.⁴ However, thermal data collection post-MWG’s conversion is ongoing, and until this data collection is completed and evaluated, ExxonMobil’s status and path forward regarding the TLWQS relief requested in this matter is uncertain.

III. EXXONMOBIL’S STATUS AND PATH FORWARD ARE CONTINGENT UPON ANY THERMAL RELIEF GRANTED TO UPSTREAM DISCHARGERS AND THE ILLINOIS EPA’S PENDING DECISION ON THE APPLICABLE TYPE OF THERMAL TLWQS

ExxonMobil understands that MWG is collecting the necessary data to support a petition seeking alternative thermal standards pursuant to Section 316(a) of the Clean Water Act and 35 Ill. Admin. Code Part 106, Subpart K (“Section 316(a) Variance”) to obtain the Board’s approval of a Section 316(a) Variance for MWG’s Will County Station, Joliet 9 Station, and Joliet 29 Station (collectively “MWG Stations”). *See, e.g.*, Midwest Generation, LLC’s Petition for Variance, at 1-2, PCB No. 16-19 (Ill.Pol.Control.Bd. July 21, 2015) (hereafter “MWG Variance Petition”). The exact area that would be included in MWG’s Section 316(a) Variance is

³ Midwest Generation’s Post Hearing Comments, PCB No. R08-9(D), at 1 (Ill.Pol.Control.Bd. Apr. 30, 2014).

⁴ *See, e.g.*, NRG News Release, *NRG Completes Four Coal to Gas Projects and Continues Fleet Optimization Strategy* (Dec. 19, 2016), available at <http://investors.nrg.com/phoenix.zhtml?c=121544&p=iroNewsArticle&ID=2230517>; NRG Fact Sheet, *Joliet*, available at http://maps.nrg.com/media/attachments/PLA.2016_Joliet_Station_v1.pdf; Joliet Herald News, *NRG Announces Completion of Joliet Project* (Dec. 20, 2016), available at <http://www.theherald-news.com/2016/12/20/nrg-announces-completion-of-joliet-project/aw10gq7/>.

currently unknown, but due to geographical proximity, the included area could potentially include ExxonMobil's receiving waters.

Indeed, Illinois EPA indicates in its Response that additional data must be collected and evaluated before Illinois EPA can know with certainty whether ExxonMobil will be included in the TLWQS relief requested in this matter. MWG's ongoing data collection and modeling in support of a petition for a Section 316(a) Variance undoubtedly will contribute to the additional data required for Illinois EPA to make its final determination as to whether ExxonMobil will be included in the TLWQS relief. Thus, ExxonMobil cannot know how to proceed until MWG completes its Section 316(a) Variance data collection and thermal modeling and until a final determination is made as to whether ExxonMobil is an affected discharger for purposes of the requested TLWQS relief.

ExxonMobil understands that MWG's Section 316(a) Variance proceeding will be a separate proceeding from this thermal TLWQS proceeding, and that MWG is currently implementing its detailed study plans for a Section 316(a) Demonstration. *See* MWG Variance Petition, at 26-28. MWG's conclusions of those evaluations will impact Illinois EPA's classification of ExxonMobil as affected or not affected by the thermal relief to upstream dischargers. However, MWG has indicated that its stream studies, thermal modeling, and reporting will likely not be completed until at least September 2019, and that Illinois EPA's review of MWG's submittals will likely last at least three months thereafter. *See id.* at 27. If MWG's thermal studies and Illinois EPA's decision on ExxonMobil's affected/unaffected status are not timely, it might necessitate an extension of the timing specified in #7 of Illinois EPA's Response for the class of dischargers to file a substantially compliant petition with the Board, i.e., "no later than 90 days after the adoption of the rules [Illinois EPA] will be proposing

pursuant to 415 ILCS 5/38.5(k).” Response, at 4. Specifically, new Section 38.5(k) of the Act requires that Illinois EPA propose rules to the Board no later than 6 months after the effective date of Public Act 99-937, and requires that the Board adopt rules no later than 9 months thereafter. Thus, it is quite possible, if not likely, that the timing specified in #7 of Illinois EPA’s Response will expire well before MWG’s thermal studies and Illinois EPA’s decision on ExxonMobil’s affected/unaffected status are completed.

Further, ExxonMobil understands that Illinois EPA is consulting with the United States Environmental Protection Agency (“USEPA”) as to which type of TLWQS relief is appropriate here. Again, until ExxonMobil knows the determination on the type of TLWQS relief, ExxonMobil is unable to prepare a substantially compliant petition for the TLWQS because the type of thermal variance (i.e., watershed/waterbody vs. multi-discharger) impacts the content of a petitioner’s submittal. *See* 40 C.F.R. § 131.14. If a timely determination is not made as to the appropriate type of TLWQS relief, it might necessitate an extension of the timing specified in #7 of Illinois EPA’s Response, especially as the timing specified in #7 is not tied to the timing of the decision as to the appropriate type of relief here.

WHEREFORE, EXXONMOBIL OIL CORPORATION prays that the Illinois Pollution Control Board accept and consider these comments when reviewing Illinois EPA’s Response and preparing the Board’s Order pursuant to 415 ILCS 5/38.5(f).

[signature on following page]

Respectfully submitted,

EXXONMOBIL OIL CORPORATION,
By One of Its Attorneys,

Dated: March 31, 2017

By: /s/ Katherine D. Hodge
Katherine D. Hodge

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