

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
MIDWEST GENERATION, LLC)	
)	
Petitioner,)	
)	
v.)	PCB No. 20-38
)	PCB No. 20-39
)	(Thermal Demonstration)
ILLINOIS ENVIRONMENTAL)	(Consolidated)
PROTECTION AGENCY,)	
)	
Respondent,)	

NOTICE OF FILING

TO: Don Brown	Brad Halloran
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500	100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)	(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 an **RESPONSE IN SUPPORT OF ILLINOIS EPA'S RECOMMENDATION** a copy of which is herewith served upon you.

Respectfully submitted,

Dated: May 20, 2020

By: /s/ Michael P. Murphy
Michael P. Murphy

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CERTIFICATE OF SERVICE

I, the undersigned, on oath state the following:

That I have served the attached **RESPONSE IN SUPPORT OF ILLINOIS EPA'S**

RECOMMENDATION via electronic mail upon:

Don Brown
Clerk of the Board
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
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That my email address is Michael.Murphy@heplerbroom.com

That the number of pages in the email transmission is 7 pages.

That the email transmission took place before 5:00 p.m. on the date of May 20, 2020.

/s/ Michael P. Murphy
One of Its Attorneys

Date: May 20, 2020

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RESPONSE IN SUPPORT OF ILLINOIS EPA’S RECOMMENDATION

EXXONMOBIL OIL CORPORATION, an interested party, states as follows for its

Response in Support of Illinois EPA’s Recommendation:

Background

1. On December 30, 2019, Petitioner, Midwest Generation, LLC (“Midwest Generation”), filed its Petition to Approve Alternative Thermal Effluent Limitations for the Joliet 9 Generating Station (PCB 20-38) and its Petition to Approve Alternative Thermal Effluent Limitations for the Joliet 29 Generating Station (PCB 20-39).

2. The Petitions, along with the contemporaneously-filed Demonstration Report, establish that the thermal standards adopted in R08-09, Subdocket D, are more stringent than necessary to assure the protection and propagation of the balanced indigenous community of aquatic life inhabiting both the Upper Dresden Island Pool (“UDIP”) portion of the Lower Des Plaines River (“LDPR”), which ends at the I-55 Bridge, and the “Five-Mile Stretch” of the LDPR beyond the I-55 Bridge. *See* Petitions and Exhibit A to the Petitions, Joliet Generating Stations 9 and 29 §316(a) Demonstration Report (“Demonstration Report”).

3. ExxonMobil Oil Corporation (“ExxonMobil”) operates its Joliet Refinery adjacent to

Interstate 55 at the Arsenal Road Exit, takes in river water for its operations, and discharges heated effluent to the UDIP stretch of the LDPR as authorized by NPDES Permit No.

IL0002861. Pre-Filed Testimony of Lial F. Tischler on Behalf of ExxonMobil Oil Corporation, PCB No. R08-9(D) (Nov. 22, 2013) (hereinafter “Tischler Testimony”), p. 3, 26, 28, 33 and Ex. B, Figure 1.¹

4. ExxonMobil’s discharge into the LDPR is approximately 1,600 feet upstream of the I-55 Bridge, and approximately 7 miles downstream from Midwest Generation’s Joliet Stations 9 and 29. ExxonMobil’s intake is on the LDPR an additional 1,200 feet upstream of its discharge. *Id.*

5. The Petitions request relief based on the Demonstration Report, which assessed the balanced indigenous community of aquatic life in the Upper Dresden Island Pool—the exact same portion of the LDPR from which ExxonMobil withdraws water and into which ExxonMobil discharges its heated effluent—as well as the Five-Mile Stretch downstream from ExxonMobil’s discharge and beyond the I-55 Bridge.

6. On February 6, 2020, the Board entered an Order accepting Midwest Generation’s Petitions and consolidating PCB 20-38 and PCB 20-39 on its own motion.

7. On April 29, 2020, the Illinois Environmental Protection Agency (“Illinois EPA”) filed its Recommendation.

8. 35 ILL. ADM. CODE § 106.1145(c) provides that “any interested person may file a response to the Agency recommendation within 21 days after the Agency files its recommendation.”

¹ While two stormwater outfalls at the Joliet Refinery discharge to Jackson Creek near its mouth into the LDPR, Outfalls 001, 002, and 003 combine into a 48-inch diameter pipe that discharges into the LDPR. Tischler Testimony at 28; ExxonMobil Oil Corporation’s Comments on Midwest Generation, LLC’s Amended Petition for Time-Limited Water Quality Variance, PCB No. 16-19 (Ill. Pol. Control. Bd. July 26, 2018), p. 1-2.

9. ExxonMobil is an interested person and submits this response to Illinois EPA's Recommendation within 21 days of Illinois EPA's filing of its Recommendation.

Illinois EPA's Recommendation

10. In its Recommendation, Illinois EPA provided "information the Agency believes is relevant to the Board's consideration of the proposed alternative thermal effluent limitation," stating as follows: "The Petitioner accounted for the thermal dischargers: ExxonMobil (IL0002861), INEOS (IL0001643), and Stepan Chemical Company (IL0002453) in the Demonstration Report. *With USEPA's agreement, the Agency recommends that each of these thermal dischargers be allowed to take advantage of the AELs adopted by the Board.*" Recommendation, p. 10 (emphasis added).

11. With respect to USEPA's agreement, Illinois EPA further stated as follows in its Recommendation:

The United States Environmental Protection Agency (USEPA) was informed that MWGen submitted the Petitions to the Board and was provided the link to the Board's website. Throughout the proceeding, the Agency and USEPA engaged in various phone calls regarding the requested relief. *USEPA indicated no concern and provided it was appropriate to include downstream dischargers in the relief requested as long as the dischargers were considered in the Demonstration Report.*

Recommendation, p. 11 (emphasis added).

ExxonMobil's Request for Relief

12. As noted by Illinois EPA, downstream dischargers, including ExxonMobil, were considered in Midwest Generation's Demonstration. *See* Demonstration Report, Summary Report, § 3.7, Page 3-16; Appendix B, p. B-25—B-28; Appendix C, p. C-9—C-10; Appendix D, p. D46—D-48; Exhibit D-2a, p. 1-10.

13. Notably, the Midwest Generation Demonstration states that "the only instances

when ExxonMobil's thermal discharge may not meet the UDIP numeric limit is if the upstream ambient water temperature is already over the applicable summer (93° F) or winter (60F/63° F) maximum limit, resulting in a situation where ExxonMobil would not be allowed a mixing zone.” Demonstration, Exhibit D-2a, p. 9.

14. ExxonMobil’s position that its thermal discharge is affected by Midwest Generation’s thermal discharges has been consistent, including throughout the CAWS Rulemaking referenced in the Petitions. ExxonMobil provided extensive comments and testimony regarding thermal discharges into the LDPR in the rulemaking referenced in the Petitions, PCB No. R08-9(D). *See, e.g.*, Pre-Filed Testimony of Lial F. Tischler on Behalf of ExxonMobil Oil Corporation, PCB No. R08-9(D) (Nov. 22, 2013), p. 29-30; Transcript of Hearing Held December 17, 2013, PCB No. R08-9(D) (Dec. 17, 2013), p. 12-13, 31-32; ExxonMobil’s Pre-First Notice Comments, PCB No. R08-9(D) (Apr. 30, 2014), p. 18-27; ExxonMobil’s First Notice Comments, PCB No. R08-9(D) (Nov. 21, 2014), p. 10-13; ExxonMobil’s Response to First Notice Comments, PCB No. R08-9(D) (Dec. 12, 2014), p. 6-8; ExxonMobil’s Additional Temperature Comments, PCB No. R08-9(D) (June 1, 2015).

15. As stated in Illinois EPA’s Recommendation, allowing ExxonMobil the same relief as Midwest Generation is supported by USEPA. The Illinois “procedure for CWA Section 316(a) relief” is based on “federal procedures found at 40 C.F.R. §§ 125.70 through 125.73,” and Illinois EPA “integrated the federal rules with Board procedures.” *In the Matter of: Procedural Rules for Alternative Thermal Effluent Limitations Under Section 316(a) of the Clean Water Act: Proposed New 35 Ill. Adm. Code Part 106, Subpart K and Amended Section 304.141(c)*, Adopted Rule, Final Opinion and Order, PCB R13-20 (February 20, 2014), p. 4. The regulations require the consideration of other thermal sources. *Id.* at 16; 35 ILL. ADM. CODE § 106.1160(d).

USEPA supports the granting of relief to downstream modeled dischargers such as ExxonMobil, and allowing such relief is thus consistent with both federal and Illinois regulations. *See also* 33 U.S.C. § 1326(a).

16. Midwest Generation's Demonstration Report also supports alternative thermal effluent limitations for ExxonMobil by adequately demonstrating that the applicable thermal effluent limitations are more stringent than necessary to assure the protection and prorogation of the balanced indigenous community of aquatic life in the body of water into which both Midwest Generation and ExxonMobil discharge heated effluent. Midwest Generation also demonstrated that the alternative thermal effluent limitations it has requested will assure the protection and propagation of the same balanced indigenous community.

17. Consistent with the Recommendation of Illinois EPA and the position of USEPA, ExxonMobil respectfully requests that the Board, as part of its disposition in this proceeding, find that ExxonMobil is entitled to the same alternative thermal effluent limitations as allowed to Midwest Generation, and order that Illinois EPA may include those alternative thermal effluent limitations in ExxonMobil's NPDES permit.

Dated: May 20, 2020

Respectfully submitted,

EXXONMOBIL OIL CORPORATION

By: /s/ Michael P. Murphy
One of its attorneys

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