

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **RECEIVED**
CLERK'S OFFICE

FEB 07 2005

STATE OF ILLINOIS
Pollution Control Board

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

Petitioners,)

PCB 05-85
(Variance-Water)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

NOTICE

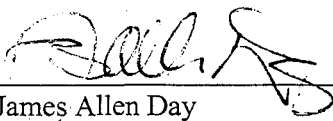
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite. 11-500
Chicago, Illinois 60601

Letissa Carver Reid
Sonnenschien Nath & Rosenthal
8000 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6404

Jeffrey C. Fort
Sonnenschien Nath & Rosenthal
8000 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6404

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

ENVIRONMENTAL PROTECTION AGENCY
OF THE STATE OF ILLINOIS

By: 
James Allen Day
Assistant Counsel
Division of Legal Counsel

DATED: February 4, 2005
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
217-782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

FEB 07 2005

STATE OF ILLINOIS
Pollution Control Board

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

Petitioners,)

PCB 05-85
(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, James Allen Day, and files its Recommendation pursuant to 35 Ill. Adm. Code 104.216. The Illinois EPA recommends that the Illinois Pollution Control Board ("Board") DENY the variance requested by CITGO Petroleum Corporation and PDV Midwest Refining, L.L.C. (Hereafter, referred to jointly as "Petitioner" or "CITGO"). The petition filed by the Petitioner fails to satisfy the petition content requirements set forth in 35 Ill. Adm. Code 104.204. The Petitioner has failed to support its burden under Section 35 of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/35 (2004)) that compliance with 35 Ill. Adm. Code 302.208(g) and 302.407 would impose an arbitrary or unreasonable hardship on CITGO. In support of its Recommendation the Illinois EPA states as follows:

I. INTRODUCTION

1. On November 8, 2004, CITGO filed a Petition for Variance ("petition") relating to its operation of a petroleum refinery in Lemont, Illinois. The Petitioner is required by 35 Ill. Adm. Code 104.204(a) to provide a statement describing the requirement from which a variance is

sought. CITGO requests a variance from 35 Ill. Adm. Code 302.208(g) and 302.407, regarding sulfates and total dissolved solids ("TDS").

2. On December 13, 2004, the parties participated in a telephonic status conference. The respondent orally moved to for an extension of time to file its recommendation in this matter. The Board granted the Illinois EPA until January 10, 2005 to file its recommendation in this matter. The Board ordered a hearing scheduled for February 24, 2005.

3. On January 27, 2005, the parties participated in a telephonic pre-hearing conference. The respondent orally moved to for an extension of time to file its recommendation in this matter. The Board granted the Illinois EPA until February 4, 2005 to file its recommendation in this matter.

II. NOTICE

4. The Illinois EPA must provide notice of any Petition for Variance within 14 days after filing pursuant to 35 Ill. Adm. Code 104.214. That 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. Pursuant to 35 Ill. Adm. Code 104.214, the Illinois EPA published notice of Petitioner's petition for variance in the Lemont Reporter/Metropolitan on November 26, 2004, and December 3, 2004 and mailed notices on November 17, 2004, and November 22, 2004, to Cook County State's Attorney Richard A. Devine, State Representative Eileen Lyons, State Senator Christine Radogno and President of the Cook County Board John H. Stroger, Jr.

6. After publication of notice of Petitioner's petition for variance, the Illinois EPA received one telephone inquiry regarding the procedures for filing a written comment, an objection to the petition or a request for hearing. However, the Illinois EPA received no 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). The required Certificate of Publication was not previously filed, but is included as part of this filing.

III. INVESTIGATION

8. Under Section 37 of the 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)(2000). A similar requirement is set forth in Section 104.216(b)(1) of the Board rules, 35 Ill. Adm. Code 104.216(b)(1).

9. The Illinois EPA conducted a thorough investigation of the information contained in Petitioner's original variance request and a further investigation of the new facts and support offered informally by the Petitioner in subsequent meetings with Illinois EPA staff. In preparing this Recommendation, the Illinois EPA consulted personnel within several sections of the Division of Water Pollution Control including: Permits, Compliance Assurance and Planning. This investigation led the Illinois EPA to the conclusion to recommend that the Board deny Petitioner's request.

IV. AIR MONITORING STATION

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

V. STATEMENT OF UNAGREED FACTS

11. Section 104.216(b)(3) of the Board rules, 35 Ill. Adm. Code 104.216(b)(3), requires the Illinois EPA to state the degree to which, if at all, it disagrees with the facts as alleged in the petition.

12. Petitioner states that it has entered into a Consent Decree with the United States Environmental Protection Agency and the states of Illinois, Louisiana, New Jersey and Georgia to resolve certain alleged air quality violations. CITGO states that reduction of air emissions at its Lemont facility as required by the Consent Decree will contribute additional sulfates and TDS to its wastewater discharges. Petition for Variance, pages 1 and 2.

13. The Petitioner did not attach a copy of the Consent Decree to its petition. A copy later provided to the Illinois EPA indicates that the Consent Decree has not yet been accepted by the court with jurisdiction over the air pollution case. Thus, there is no support on the record at this time for the Petitioner's contention that it is required by the Consent Decree to implement changes that would lead to increased discharges of TDS and sulfates.

14. The petition does not state the effective date of 35 Ill. Adm. Code 302.208(g) or 302.407 as required by Section 104.204(a). For the Board's information, these rules have been in effect in their current form since at least May 24, 1996.

15. The petition states that the Illinois EPA's analysis in the Wauconda NPDES permit review is consistent with CITGO's situation presented in this matter. Petition for Variance, page 8. The Illinois EPA disagrees. Wauconda's NPDES permit required compliance with water quality standards at the end of the discharge pipe, whereas CITGO's "end of pipe" discharge would not meet water quality standards. This is a key factor in assessing whether there is sufficient evidence to establish a relationship between the discharge and downstream violations of water quality standards. CITGO's petition, as filed, does not include any studies or other information bearing on the relationship (or lack thereof) between the discharge and downstream water quality standard violations.

VI. ESTIMATED COST OF COMPLIANCE

16. Section 104.216(b)(5) of the Board rules, 35 Ill. Adm. Code 104.216(b)(3), requires the Illinois EPA to estimate the cost that compliance would impose on the petitioner and on others.

17. CITGO has failed to provide a clear picture of the costs of complying with the Act and the Board's regulations. CITGO provide estimates of \$7,000,000 in capital costs and \$1,000,000 annually in operating costs associated with its compliance plan. Petition for Variance, page 11. CITGO offers no calculations, supporting data or assumptions underlying these figures.

18. CITGO states in its petition that the sole feasible alternative to the increased discharges is a costly evaporation approach. CITGO therefore concludes that requiring control of the increased wastewater discharge would impose an arbitrary and unreasonable hardship on CITGO. Petition for Variance, pages 11 – 12. Since CITGO has not yet established that it is required to install the air pollution control equipment that it expects will cause increased

discharges of TDS and sulfates (see paragraph 13, above), the Illinois EPA must conclude that maintaining present discharge levels is a practical compliance alternative.

VII. ENVIRONMENTAL IMPACT

19. CITGO's petition includes a compliance plan which would allow increased discharges of TDS and sulfates from July 2006 through February 2009, even in the presence of TDS water quality standard exceedences in the receiving waters. The petition does not include information regarding the relationship between the discharges and downstream water quality standard violations. Thus, the variance may allow CITGO to cause or contribute to water quality standard violations. CITGO fails to describe the compliance alternative in sufficient detail to allow the Illinois EPA to conclude that the technology would be effective. (see Section VIII., below) The Illinois EPA concludes that the insufficient compliance plan creates a potential for environmental impact.

VIII. COMPLIANCE PLAN

20. Pursuant to 104.204(f), the Petitioner is required to present a detailed compliance plan in its Petition for Variance. Petitioner did not provide such a compliance plan. The compliance plan provided in CITGO's petition is flawed in several respects. First, it states that CITGO would "commence design" of an alternative fully one year after the increased discharges begin. The compliance plan includes no scheduled items between "commence design" and "achieve final compliance", despite the fact that the Petitioner describes the system as "massive" and of unprecedented scale. Petition for Variance, pages 11 -12. In addition to the lack of detail relating to timing of steps in the compliance schedule, the petition is also lacking in detail on the

technology involved in the proposal (a rudimentary “conceptual” process diagram is the only technical document offered to support the plan). Thus, the Illinois EPA must conclude that the petition as filed lacks requisite detail.

IX. CONSISTENCY WITH FEDERAL LAW

20. 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 regulations, 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). In a series of meetings and communications since the filing of the petition for variance, CITGO has informally provided additional information and described to the satisfaction of the Illinois EPA an alternative compliance plan. However, CITGO has not yet formally introduced this additional information into the record of this matter. The Illinois EPA finds that if the Petitioner corrects the petition’s deficiencies by adding this new information to the record (either by amending its petition or by introducing the evidence at hearing), granting the requested variance would not be inconsistent with the Clean Water Act or any other federal standard.

X. PERMITS

21. 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).

22. CITGO's Lemont refinery operates under NPDES permit number IL0001589. The renewal of this permit is currently under consideration by the Illinois EPA. CITGO timely filed the renewal application for this permit, so the permit continues in full force and effect during the Illinois EPA's consideration of the renewal request. applied has been reviewed and has been out on 15-day notice. The renewal is still under review. On August 9, 2004, the Illinois EPA received from CITGO an application for modification of NPDES permit IL0001589. This application is currently under consideration by the Illinois EPA. On December 27, 2004, the Illinois EPA received from CITGO an application for a construction permit relating to the installation of new wastewater treatment equipment. The Illinois EPA is currently reviewing this application as well.

X. RECOMMENDATION


23. The Agency is required under Section 37 of the Act and Section 104.216(b)(11) of the Board rules to make a recommendation to the Board as to the disposition of the petition. 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 find that the Petitioner has not met its statutory burden to demonstrate that compliance with the Board's regulations regarding water quality standards for TDS and sulfates would impose an arbitrary or unreasonable hardship on the CITGO.

Wherefore, for the reasons stated above, the Illinois EPA recommends that the Board **DENY** the variance requested by CITGO.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By:


James Allen Day
Assistant Counsel
Division of Legal Counsel

Dated: February 4, 2005
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

RECEIVED
CLERK'S OFFICE


FEB 07 2005

STATE OF ILLINOIS
Pollution Control Board

STATE OF ILLINOIS)
)
)
COUNTY OF SANGAMON)
)
)

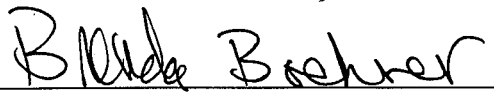
CERTIFICATION OF PUBLICATION

I, the undersigned, on oath state that I caused the attached notices to be published in the Lemont Reporter/Metropolitan on Friday, November 26, 2004, and Friday December 3, 2004.



James Allen Day
Illinois Environmental Protection Agency

SUBSCRIBED AND SWORN TO BEFORE ME
this fourth day of February, 2005


Notary Public



Sports



Lemont
600-480

WEEKEND - \$25 TO WALK \$30 W/CART
Twilight - 2pm \$15 to walk \$20 w/cart
Seniors Mon - Fri \$15 walk \$20 w/cart

BOOK YOUR HOLIDAY PARTY NOW!

36 Beautiful Holes Located Close to Home In Lemont

13070 McCarthy Rd., Lemont
630-257-5466
reservations recommended

POLLUTION VARIANCE

CITGO Petroleum Corporation and PDV Midwest Refining, L.L.C. located in Lemont, Illinois (Cook County) has filed with the Illinois Pollution Control Board a petition for variance under Title IX of the Environmental Protection Act. The Petitioner requests a variance from 35 Ill. Adm. Code 302.208(g) and 302.407, which set water quality standards for total dissolved solids ("TDS"). The Petitioner states that it seeks the variance to assure future compliance with its National Pollutant Discharge Elimination System ("NPDES") permit and to allow the Illinois EPA to issue a wastewater construction permit to the CITGO/PDV Lemont refinery for equipment that will result in increased discharges of TDS and sulfates to the Chicago Sanitary and Ship Canal, in which there are occasional water quality standard violations for TDS.

The Illinois Environmental Protection Agency solicits the views of persons who may be adversely affected by the variance. Address any comments or inquiries to: James Allen Day, Associate Counsel, Division of Legal Counsel, Illinois Environmental Protection Agency, 1021 North Grand Avenue East, Post Office Box 19276, Springfield, Illinois 62794-9276, telephone: 217782-5544.

If a written objection to the variance is received by the Pollution Control Board, James R. Thompson Center, 100 West Randolph Street, Suite 11-500, Chicago, Illinois 60601, no later than twenty-one (21) days from the publication of this Notice, the Board must conduct a hearing on the petition.

Raiders win 2 during weekend

The Lemont/Bolingbrook Raiders hockey team had a strong weekend with victories over Lake Park and Lyons Township, running the Raiders' record to 5-1-2 in ISHL play (5-1-3 overall).

Against Lake Park, forward, Ben Bienia led the attack with two goals on assists

from Luke Romanini and Eric Silmon. Dan Difatta added a goal on a pass from defenseman Greg Nusko, and forward Joe Ferraro muscled in a score with a helper from forward Woody Deck.

The Sunday game against Lyons Township was a different affair altogether, with the outcome not assured until Dan Difatta's open net score with one minute left. The Raiders tied the score at 1-all with a goal by forward Mike Rupp on assists from Adam Jablonowski and Difatta. They took the lead on a score by Silmon, again assisted by Jablonowski. LT pulled back to tie it 2-2 early in the third period, but forward Ben Bienia scored the eventual game-winner on a long wrist shot, assisted by defenseman Adam Lisowski.

The Raiders' defensive efforts also paid off this weekend, with defenseman Derek Fife and Jerry Ourada helping goalie Ryan Lustyk post his first shut out of the campaign on Saturday, as well as assuring the victory on Sunday. Lemont-Bolingbrook's forwards were also active in the defensive effort, with big hits being dealt by forwards Ryan Sheehan and Trace Kennedy, as well as good neutral zone defense by forward Corey Anco.

The Raiders' next league game is Sunday, Dec. 5, against Lincoln-Way East at 7 p.m. at Center Ice of Glen Ellyn.

For up to date info, stats, and pictures of the Raiders, go to www.eteamz.com/Ibrhockey.

Tokens Make great Christmas gifts

3 for \$10

(On sale now through Jan. 2nd 2005)

XTREME KLEEN

TOUCHLESS CARWASH

1297 McCarthy RD

Lemont

(Corner of McCarthy & Walker)

Pollution Variance Notice

On November 8, 2004, CITGO Petroleum Corporation and PDV Midwest Refining, L.L.C. located at 135th St and New Avenue in Lemont, Illinois (Cook County) filed with the Illinois Pollution Control Board ("Board") a petition for variance under Title IX of the Environmental Protection Act ("Act"). Variances may be granted pursuant to Section 35 of the Act (415 ILCS 5/35) and 35 Ill. Adm. Code 104.

The Petitioner requests a variance from 35 Ill. Adm. Code 302.208(g) and 302.407, which set water quality standards for total dissolved solids ("TDS"). The Petitioner states that it seeks the variance to assure future compliance with its National Pollutant Discharge Elimination System ("NPDES") permit and to allow the Illinois Environmental Protection Agency ("Illinois EPA") to issue a wastewater construction permit to the CITGO/PDV Lemont refinery for equipment that will result in increased discharges of TDS and sulfates to the Chicago Sanitary and Ship Canal, in which there are occasional water quality standard violations for TDS.

Any person may request a hearing by filing with the Board a written objection to the grant of the variance, together with a written request for hearing, within twenty-one (21) days after the publication of this Notice.

A copy of the variance petition is available from the Clerk of the Board, Illinois Pollution Control Board, James R. Thompson Center, 100 West Randolph Street, Suite 11-500, Chicago, Illinois 60601, (312) 814-6931.

The Illinois EPA is preparing a recommendation regarding the variance petition. The Illinois EPA is to file its recommendation within forty-five (45) days after the filing of the petition. The Illinois EPA solicits the views of persons who may be adversely affected by the variance. Address any comments or inquiries to: James Allen Day, Associate Counsel, Division of Legal Counsel, Illinois Environmental Protection Agency, 1021 North Grand Avenue East, Post Office Box 19276, Springfield, Illinois 62794-9276, telephone: 217/782-5544.

A hearing may be held after the filing of the Illinois EPA recommendation. The record of this proceeding will remain open for written comments for forty-five (45) days after filing of the Illinois EPA recommendation. Comments must be mailed to the Board at the above address for the Clerk of the Board.

The record in this variance proceeding is available at the Board office for inspection, except those portions that are protected from disclosure under 35 Ill. Adm. Code 130. Procedures are available whereby disclosure may be sought by the public.

STATE OF ILLINOIS
COUNTY OF SANGAMON

)
)
)
)
)

PROOF OF SERVICE

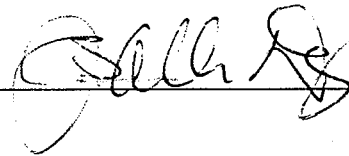
I, the undersigned, on oath state that I have served the attached **RECOMMENDATION** and **CERTIFICATION OF PUBLICATION** upon the person to whom directed, by placing a copy in an envelope addressed to:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite. 11-500
Chicago, Illinois 60601

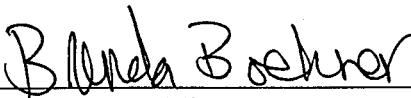
Letissa Carver Reid
Sonnenschien Nath & Rosenthal
8000 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6404

Jeffrey C. Fort
Sonnenschien Nath & Rosenthal
8000 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6404

and mailing it from Springfield, Illinois on February 4, 2005, with sufficient postage affixed for first class mail.



SUBSCRIBED AND SWORN TO BEFORE ME
this fourth day of February, 2005



Notary Public

