

1                                   BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4       MARATHON ASHLAND

5       PETROLEUM, L.L.C.

6               Petitioner,

7       vs.

                                  No. PCB 01-074

8       ILLINOIS ENVIRONMENTAL

9       PROTECTION AGENCY,

10              Respondent.

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14                   Proceedings held on January 9, 2001, at 9:07 a.m., at the  
15       Illinois Pollution Control Board, 600 South Second Street, Suite  
16       403, Springfield, Illinois, before Hearing Officer Steven  
17       Langhoff.

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21                               Reported by: Darlene M. Niemeyer, CSR, RPR  
22    CSR License No.: 084-003677

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24   KEEFE REPORTING COMPANY  
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A P P E A R A N C E S

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On behalf of the Illinois EPA.

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I N D E X

WITNESS	PAGE NUMBER
ROBERT WALLACE	
Direct Examination by Mr. Wright.....	7
Cross Examination by Ms. Moreno.....	14

E X H I B I T S

NUMBER	MARKED FOR I.D.	ENTERED
Petitioner's Exhibit 1	7	8
Petitioner's Exhibit 2	9	12
Petitioner's Exhibit 3	12	14

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1 P R O C E E D I N G S

2 (January 9, 2001; 9:07 a.m.)

3 HEARING OFFICER LANGHOFF: Good morning, everyone. My name  
4 is Steven Langhoff. I am the Hearing Officer with the Illinois  
5 Pollution Control Board who will be handling this matter. This  
6 matter is PCB 01-074, Marathon Ashland Petroleum, L.L.C. versus  
7 the Illinois Environmental Protection Agency. For the record,  
8 today's date is Tuesday, January 9th, 2001. We are beginning at  
9 9:07 a.m. I want to note for the record that there are no  
10 members of the public present. Members of the public are  
11 encouraged and allowed to provide public comment if they so  
12 choose.

13 At issue in this case is a petition for variance from 35  
14 Ill. Admin. Code Sections 302.102(b)(6), 303.232(b) and  
15 302.208(g). The location of the site is in Crawford County,  
16 Illinois. Just for the record, I am sure everyone knows this, I  
17 do not make the ultimate decision in this matter. The ultimate  
18 decision is made by the Illinois Pollution Control Board, which  
19 is comprised of seven members situated throughout the State of  
20 Illinois.

21 My job as the Hearing Officer requires that I conduct the  
22 hearing in a neutral and orderly manner so that we may have a  
23 clear and orderly record of the proceedings here today. It is  
24 also my duty to assess the credibility of any witnesses giving

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1 testimony today and I will do so on the record at the conclusion  
2 of the proceedings.

3 The Board's procedural rules and the Environmental  
4 Protection Act provide that members of the public shall be  
5 allowed to speak or submit written statements at hearing. Any  
6 person offering such testimony today shall be subject to  
7 cross-examination by both of the parties. Any such statements  
8 offered by members of the public must be relevant to the case at  
9 hand. I will call for any statements from members of the public  
10 at the conclusion of the proceedings.

11 This hearing was noticed pursuant to the Illinois  
12 Environmental Protection Act and the Board's rules and  
13 regulations and will be conducted pursuant to Section 101.610 of  
14 the Board's new procedural rules. As you know, the burden of  
15 proof lies with the petitioner in this matter, who must prove  
16 each of the facts alleged in the petition.

17 At this time, I would like to ask the parties to make their  
18 appearances on the record, beginning with the petitioner.

19 MR. WRIGHT: My name is Joseph S. Wright, W-R-I-G-H-T,  
20 Junior. I am with the firm of the McBride, Baker & Coles, 500  
21 West Madison Street, Chicago, Illinois.

22 HEARING OFFICER LANGHOFF: Thank you. For the Agency?

23 MS. MORENO: Lisa Moreno, Assistant Counsel in the Division  
24 of Legal Counsel in Springfield.

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1 HEARING OFFICER LANGHOFF: Thank you. Do we have any  
2 preliminary matters that need to be discussed on the record,  
3 particularly the stipulation?

4 MR. WRIGHT: Not other than as I mentioned in my initial  
5 statement, we have agreed to stipulate to the facts as alleged in  
6 the petition. I do intend to put Mr. Wallace on the stand and  
7 provide foundation for the two exhibits that will be offered.

8 HEARING OFFICER LANGHOFF: Okay. Thank you. Ms. Moreno,  
9 is that your understanding, also?

10 MS. MORENO: Yes, that is my understanding.

11 HEARING OFFICER LANGHOFF: Okay. Are there any outstanding  
12 or prehearing motions that the parties would like to present  
13 before we proceed?

14 MR. WRIGHT: Not on our part. Thank you.

15 HEARING OFFICER LANGHOFF: Thank you. Ms. Moreno?

16 MS. MORENO: Nothing on our part either.

17 HEARING OFFICER LANGHOFF: Okay. I would like to give the  
18 parties a chance to give a brief opening statement on behalf of  
19 their clients, starting with the petitioner.

20 MR. WRIGHT: I see no need to make such a statement.

21 HEARING OFFICER LANGHOFF: Thank you. Any statement from  
22 the Agency?

23 MS. MORENO: Just to reinforce the fact that the Agency

24 supports the variance request in this matter and parallel to this

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1 proceeding the Agency and the Petitioner are having discussions  
2 concerning the permits and other administrative aspects of  
3 changing the discharge point to the Wabash River. And that these  
4 discussions, I understand, are proceeding amicably.

5 HEARING OFFICER LANGHOFF: Thank you. Okay. Let's proceed  
6 with the case-in-chief.

7 Mr. Wright, will you call your first witness.

8 MR. WRIGHT: Robert Wallace, please.

9 HEARING OFFICER LANGHOFF: Mr. Wallace, I will just have  
10 you sit right up here by the court reporter so she can hear you  
11 clearly.

12 MR. WRIGHT: Would you mark this as Petitioner's Exhibit  
13 Number 1, please.

14 (Whereupon said document was duly marked for  
15 purposes of identification as Petitioner's Exhibit  
16 1 as of this date.)

17 R O B E R T W A L L A C E,  
18 having been duly sworn by the Notary Public, saith as follows:

19 DIRECT EXAMINATION

20 BY MR. WRIGHT:

21 Q. Mr. Wallace, you have earlier seen a copy of what has  
22 been marked as Petitioner's Exhibit Number 1, have you not?

23 A. Yes.

24 Q. Is that your curriculum vitae?

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1 A. Yes.

2 Q. Are the facts stated thereon true and correct?

3 A. Yes.

4 Q. In all respects including both your educational and  
5 employment history?

6 A. Yes.

7 HEARING OFFICER LANGHOFF: I am sorry. I would like to  
8 have the court reporter swear the witness in, please.

9 (Whereupon the witness was sworn by the Notary  
10 Public.)

11 Q. (By Mr. Wright) And now having been sworn, does this  
12 change your answer in any way, Mr. Wallace?

13 A. No.

14 Q. So that the facts as stated on Exhibit Number 1 are true  
15 and correct in all respects?

16 A. Yes.

17 MR. WRIGHT: I would move that Exhibit Number 1 be  
18 admitted, Mr. Hearing Officer.

19 HEARING OFFICER LANGHOFF: Any objection?

20 MS. MORENO: No objection.

21 HEARING OFFICER LANGHOFF: It is admitted.

22 (Whereupon said document was duly admitted into

23 evidence as Petitioner's Exhibit 1 as of this  
24 date.)

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1 MR. WRIGHT: Would you mark this as Petitioner's Exhibit  
2 Number 2, please.

3 (Whereupon said document was duly marked for  
4 purposes of identification as Petitioner's Exhibit  
5 2 as of this date.)

6 MR. WRIGHT: For the record, what has been marked as  
7 Petitioner's Exhibit Number 2 was Exhibit C to the original  
8 petition for a variance.

9 Q. (By Mr. Wright) I ask you to take a look, please, Mr.  
10 Wallace, at what has been marked as Exhibit Number 2, and ask you  
11 whether or not you prepared that document?

12 A. Yes.

13 Q. Would you please state for the record what process you  
14 went through to prepare that?

15 A. Well, basically I reviewed earlier studies of the  
16 receiving water body that Marathon discharges into as well as  
17 earlier studies of the wastewater system at the refinery.

18 Q. Before you go any further, could I ask you what you set  
19 out to do in preparation of this document?

20 A. Well, the purpose of the document was to evaluate the  
21 impact of a temporary variance to the water quality standards for  
22 TDS in the -- I mean, TDS and sulfate in the stream, to allow

23 periodic discharge of brine from a new scrubber that was  
24 installed to meet air quality requirements.

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1 I guess the long-term solution is a new pipeline to the  
2 Wabash, which is currently in permitting. But the scrubber had  
3 to be on line earlier than the permit -- the new line could be  
4 put in place. So basically the idea was to try to find a way to  
5 reduce the impact of the brine produced by the scrubber.

6 Q. All right, now, will you tell me what steps you went  
7 through to prepare the document, please?

8 A. Well, I reviewed earlier studies. They go back to about  
9 1974. Quite a bit has been done on the stream, so in terms of  
10 the stream chemistry and the stream biology quite a bit is known.  
11 Also, the refinery has done many studies not only of the stream  
12 but also of their wastewater system. So there is a fairly large  
13 body of data available to, you know, base an assessment of what  
14 the impact of the new stream would be.

15 Q. Did you utilize any modeling programs?

16 A. I did do a small bit of modeling to look at what the  
17 impact of various kinds of discharges would be on the stream and  
18 on the storage of the effluent.

19 Q. And the studies that you referred to are noted in the  
20 body of the report?

21 A. Yes, they are listed as references.

22 Q. And the modeling methodology, is that described within  
23 the report?

24 A. Yes, it is.

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1 Q. What did you conclude?

2 A. Well, I found that in many months of the year there was  
3 enough base flow in the stream that additional -- that amounts of  
4 the scrubber brine could be discharged without exceeding the  
5 existing TDS limit. However, in order to do this, the standards  
6 for sulfate would need to be increased to 1,000 milligrams per  
7 liter.

8 Q. And did you come to a formula which you believe would  
9 both protect the stream quality and allow the discharge of the  
10 brine?

11 A. Yes. What we found was that the discharge could be --  
12 that the amount of brine that could be discharged could be  
13 predicted by knowing the flow and the concentration of the  
14 various streams, not only upstream but downstream from the  
15 refinery, from the flow of that creek and also the refinery's  
16 flow and its concentrations.

17 Q. And those flows and concentrations are reflected in the  
18 formula, for instance, shown at page 14 and 13 and also reflected  
19 in the petition for a variance?

20 A. Yes.

21 MR. WRIGHT: Unless there are any questions for Mr. Wallace

22 on this regard, I would move for the admission of the document.

23 HEARING OFFICER LANGHOFF: Any objections?

24 MS. MORENO: No.

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1 HEARING OFFICER LANGHOFF: It is admitted.

2 (Whereupon said document was duly admitted into  
3 evidence as Petitioner's Exhibit 2 as of this  
4 date.)

5 MR. WRIGHT: Thank you. Could you mark this as  
6 Petitioner's Exhibit Number 3, please.

7 (Whereupon said document was duly marked for  
8 purposes of identification as Petitioner's Exhibit  
9 3 as of this date.)

10 Q. (By Mr. Wright) Mr. Wallace, I show you what has been  
11 marked as Petitioner's Exhibit Number 3, which is a document  
12 entitled, Surface Water Use by Livestock: Sugar Creek and Unnamed  
13 Tributary of Crawford County, Illinois, and ask you whether or  
14 not you prepared this document?

15 A. I did.

16 Q. And for what purpose?

17 A. We were trying to address a concern by the State on  
18 changing the sulfate standard. The current sulfate standard of  
19 500 milligrams per liter is a number that is supposed to be  
20 protective of livestock watering, among other things. And so in

21 order to know whether increasing it from 500 to 1,000, as we have  
22 asked, would cause any undue harm, we did this survey to find out  
23 what livestock was being managed on adjacent property to the  
24 creek and what, if any, water use that livestock was using the

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1 creek for.

2 Q. What method did you use to find this out?

3 A. Well, I started with the tax records to find out which  
4 properties were there and also who owned them and whether or not  
5 they were engaged in agricultural activities in general by their  
6 tax status. I then visited each of the properties to personally  
7 observe whether or not there were any livestock, you know,  
8 currently on the day -- the two days I was there.

9 I also discussed each of the properties with the Soil  
10 Conservation Service Office in Robinson and with the Illinois  
11 Agricultural Extension Office in Robinson. And I had an occasion  
12 to talk to several of the farmers and with the local large animal  
13 veterinarian. And so, you know, their information really is what  
14 I have summarized here in this report in terms of what livestock  
15 there are and what kind of use of the stream they use.

16 Q. What were the results of your investigation?

17 A. We didn't find any livestock water use of the creek  
18 currently. Most of the former livestock producers have either  
19 gone out of business or are no longer in business because of the  
20 market conditions. We did find three pieces of property with --

21 one with goats, one with horses, and one with cattle. But those  
22 individuals were not using the stream as a source of water, as  
23 they had either municipal or private groundwater supply.

24 MR. WRIGHT: Mr. Hearing Officer, I would move the

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1 admission of Petitioner's Exhibit Number 3.

2 HEARING OFFICER LANGHOFF: Thank you. Any objections?

3 MS. MORENO: No objection.

4 HEARING OFFICER LANGHOFF: It is admitted.

5 (Whereupon said document was duly admitted into  
6 evidence as Petitioner's Exhibit 3 as of this  
7 date.)

8 MR. WRIGHT: I have no further questions for Mr. Wallace.

9 HEARING OFFICER LANGHOFF: Okay. Thank you. Ms. Moreno?

10 MS. MORENO: Just one single question for clarification for  
11 the Board.

12 CROSS EXAMINATION

13 BY MS. MORENO:

14 Q. In your testimony, you referred to the scrubber brine.  
15 I take it that is the same -- that is what is referred to in the  
16 petition as the wastewater stream from the wet scrubber?

17 A. Yes, ma'am.

18 MS. MORENO: Thank you.

19 HEARING OFFICER LANGHOFF: Anything further?

20 MS. MORENO: No.

21 MR. WRIGHT: As I say, I have two more Marathon people here  
22 if there are questions by the Agency.

23 HEARING OFFICER LANGHOFF: Okay. Thank you.

24 MR. WRIGHT: Other than that, I would rest.

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1 HEARING OFFICER LANGHOFF: Okay. Thank you, Mr. Wallace.

2 (The witness left the stand.)

3 MS. MORENO: The Agency has no questions and no witnesses  
4 at this time.

5 HEARING OFFICER LANGHOFF: Okay. Well, will there be any  
6 closing arguments?

7 MR. WRIGHT: I don't think it is necessary, Mr. Hearing  
8 Officer. And because of the -- well, I will make a statement for  
9 the record, and if you wish to have Mr. Wallace state under oath  
10 or anyone else to state under oath, the scrubber is in operation  
11 as of November 5th, so Marathon is currently hauling the brine to  
12 dispose of it. And for that reason we would be very appreciative  
13 of the Board's looking into this in the very near future, as  
14 opposed to the distant future.

15 HEARING OFFICER LANGHOFF: All right. Thank you.

16 MR. WRIGHT: I would waive the writing of a brief, as I  
17 think the facts are pretty clear and uncontested.

18 HEARING OFFICER LANGHOFF: Does the Agency have any desire  
19 to --

20 MS. MORENO: No.  
21 HEARING OFFICER LANGHOFF: -- submit a brief?  
22 MS. MORENO: No. Could we go off the record just a minute?  
23 HEARING OFFICER LANGHOFF: Yes, let's go off the record for  
24 just a minute, please.

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1 (Discussion off the record.)  
2 HEARING OFFICER LANGHOFF: All right. Back on the record.  
3 MR. WRIGHT: We have just chatted and it would appear that  
4 there would be a possibility of some slight change in the  
5 Agency's recommendation, so that I would ask that we leave the  
6 record open for seven days from today.  
7 HEARING OFFICER LANGHOFF: Okay.  
8 MS. MORENO: Yes. What this is about, essentially, is that  
9 there are going to be discussions this afternoon between the  
10 Agency and Marathon on the permit, and we would like to leave the  
11 record open in case in the discussions concerning the permit  
12 there we see the need to add something to the variance  
13 recommendation, so that we don't end up with a permitting problem  
14 at the end.  
15 MR. WRIGHT: Yes, that is a problem where there is a  
16 variance in place, but the need to modify the permit to allow the  
17 discharge.  
18 MS. MORENO: Yes.

19 HEARING OFFICER LANGHOFF: Okay. The record will be open  
20 until Tuesday, January 16th.

21 MR. WRIGHT: Thank you, Mr. Hearing Officer.

22 HEARING OFFICER LANGHOFF: I was informed by the court  
23 reporter that the transcript should be available by this Friday,  
24 that is Friday the 12th.

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1 MS. MORENO: Okay.

2 HEARING OFFICER LANGHOFF: I will also establish a short  
3 public comment period of seven days from today, so that will be  
4 the 16th also.

5 MS. MORENO: Excellent. Thank you.

6 HEARING OFFICER LANGHOFF: The transcript, when we get it,  
7 will be put on the Board's web site within a few days of the  
8 Board's receiving it. I would like to note our web site address  
9 in case you don't have it. It is [www.ipcb.state.il.us](http://www.ipcb.state.il.us). The  
10 Board is pretty good about getting the transcripts up there as  
11 soon as we can.

12 MR. WRIGHT: Could you give me that web site again?

13 HEARING OFFICER LANGHOFF: Sure. It is  
14 [www.ipcb.state.il.us](http://www.ipcb.state.il.us).

15 MR. WRIGHT: Thank you.

16 HEARING OFFICER LANGHOFF: Is there anything further from  
17 either party before we conclude?

18 MR. WRIGHT: No, sir.

19 MS. MORENO: No.

20 HEARING OFFICER LANGHOFF: Thank you. At this time I do  
21 want to note for the record, again, that there are no members of  
22 the public present today that would like to make a statement on  
23 the record.

24 I am required to make a statement as to the credibility of

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1 the witnesses testifying during this hearing. The statement is  
2 to be based on my legal judgment and experience, and accordingly  
3 I state that I find Mr. Wallace's testimony to be credible.  
4 Credibility should not be an issue for the Board to consider in  
5 rendering a decision in this case.

6 At this time, I will conclude this proceeding, although the  
7 record will be open for one week. It is Tuesday, January 9th,  
8 2001, at approximately 9:28 a.m. We stand adjourned. Thank you.

9 (The hearing exhibits were retained by  
10 Hearing Officer Langhoff.)

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1 STATE OF ILLINOIS )  
 ) SS  
2 COUNTY OF MONTGOMERY)

3 C E R T I F I C A T E  
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5 I, DARLENE M. NIEMEYER, a Notary Public in and for the  
6 County of Montgomery, State of Illinois, DO HEREBY CERTIFY that  
7 the foregoing 18 pages comprise a true, complete and correct  
8 transcript of the proceedings held on the 9th of January A.D.,  
9 2001, at the Illinois Pollution Control Board, 600 South Second  
10 Street, Suite 403, Springfield, Illinois, in the case of Marathon  
11 Ashland Petroleum, L.L.C. v. Illinois Environmental Protection  
12 Agency, in proceedings held before Hearing Officer Steven  
13 Langhoff, and recorded in machine shorthand by me.

14 IN WITNESS WHEREOF I have hereunto set my hand and affixed  
15 my Notarial Seal this 9th day of January A.D., 2001.  
16  
17

18

Notary Public and

19

Certified Shorthand Reporter and

Registered Professional Reporter

20

CSR License No. 084-003677

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My Commission Expires: 03-02-2003

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