

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAR 10 2008

STATE OF ILLINOIS
Pollution Control Board

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

Petitioners,)

PCB 08-33
(Variance-Water)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

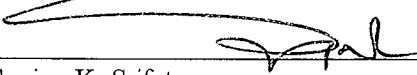
NOTICE

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

Jeffrey C. Fort
Ariel J. Teshler
Sonnenschien Nath & Rosenthal LLP
7800 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 **RECOMMENDATION** of the Illinois Environmental Protection Agency, copies of which is herewith served upon you.

ENVIRONMENTAL PROTECTION AGENCY
OF THE STATE OF ILLINOIS

By: 
Sanjay K. Sofat
Assistant Counsel
Division of Legal Counsel

DATED: March 6, 2008
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
217-782-5544

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THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RECOMMENDATION

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA") by one of its attorneys, Sanjay K. Sofat, and files its Recommendation pursuant to 35 Ill. Adm. Code 104.216. The Illinois EPA recommends that the Illinois Pollution Control Board ("Board") **GRANT** CITGO Petroleum Corporation and PDV Midwest Refining, L.L.C. (Hereinafter, referred to jointly as "Petitioner" or "CITGO") request for an extension of variance subject to the terms and conditions of the compliance plan provided in Section VII of this recommendation. In support of its recommendation, the Illinois EPA states as follows:

I. INTRODUCTION

1. On November 14, 2007, CITGO filed a Petition for Extension of Variance ("petition") relating to its operation of a petroleum refinery in Lemont, Illinois. The Petitioner is seeking an extension of the variance granted by the Board in *CITGO Petroleum Corporation and PDV Midwest Refining, L.L.C. v. IEPA*, PCB 05-85 (April 25, 2005). Specifically, CITGO requests a

variance from 35 Ill. Adm. Code 302.208(g) and 302.407, regarding total dissolved solids (“TDS”) water quality standards.

2. In its December 20, 2007 order, the Board found that CITGO’s petition did not meet the requirements of Section 104.204 of the Board’s procedural rules. *See* PCB 08-33, December 20, 2007 order at 3-4. The Board also directed the Petitioner to file its amended petition by January 22, 2008.

3. On December 26, 2007, the Illinois EPA filed a motion for extension of time to publish notice in a local newspaper. On January 10, 2008, the Board granted the Illinois EPA’s request, and directed the Agency to publish the variance notice by February 11, 2008.

4. On January 22, 2008, the Petitioner timely filed an amended petition. The Petitioner also filed a motion requesting the Board to incorporate the PCB 05-85 record into the record of the PCB 08-33 proceedings.

5. On February 21, 2008, the Board found that CITGO’s petition met the content requirements of 35 Ill. Adm. Code 104.204 and 104.210. *See* PCB 08-33, February 21, 2008 order at 1.

II. NOTICE

6. The Illinois EPA must provide notice of any petition for variance within 14 days after filing, pursuant to Section 104.214 of the Board’s procedural rules. *See* 35 Ill. Adm. Code 104.214. This 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.

7. On December 26, 2007, the Illinois EPA filed a motion for extension of time to publish notice. The Board granted the Agency's motion and directed the Agency to publish the notice of the variance by February 11, 2008. Consistent with 35 Ill. Adm. Code 104.214 and the Board's January 10, 2008 order, the Illinois EPA published notice of Petitioner's petition for variance in the Lemont Reporter/Metropolitan on December 28, 2008, and February 1, 2008. Also consistent with Section 104.214(b), the Illinois EPA mailed notices of variance petition on December 21, 2007.

8. The Illinois EPA did not receive any written comments, objections or requests for hearing.

9. 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). In the January 10, 2008 order, the Board directed the Agency to file a certification of publication within 21 days after publication of the notice. *See* PCB 08-33, January 10, 2008 order at 1. On February 29, 2008, the Agency filed a certification of publication with the Board.

III. INVESTIGATION

10. 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)(2006). A similar requirement is set forth in Section 104.216(b)(1) of the Board rules. 35 Ill. Adm. Code 104.216(b)(1).

11. In preparing this Recommendation, the Illinois EPA consulted personnel of the following sections within the Division of Water Pollution Control including: Permits, Compliance Assurance and Planning. This investigation led the Illinois EPA to recommend that the Board should grant Petitioner's requested relief, subject to the terms and conditions of the compliance plan provided in Section VII of this recommendation.

IV. AIR MONITORING STATION

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

V. ESTIMATED COST OF COMPLIANCE

13. Section 104.216(b)(5) of the Board rules requires the Illinois EPA to estimate the cost that compliance would impose on the petitioner and on others. *See* 35 Ill. Adm. Code 104.216(b)(3). Also, section 35(a) of the Illinois Environmental Protection Act ("Act") requires the Board to determine if the petitioner has presented adequate proof that it would suffer an arbitrary or unreasonable hardship if required to immediately comply with the Board regulation at issue. *See* 415 ILCS 5/35(a) (2006).

14. In *Citgo Petroleum Corporation and PDV Midwest Refining, LL.C., v, Illinois EPA*, PCB 05-85, April 21, 2005 ("PCB 05-85"), the Board found that petitioners "would suffer an arbitrary or unreasonable hardship if required to comply immediately with the Board regulations at issue." *See* PCB 05-85 at 14. In this proceeding, all the underlying facts are identical to the ones that were considered by the Board in PCB 05-85. The Board's finding that if CITGO is required to

comply with the Board's regulation, it would suffer an arbitrary or unreasonable hardship, is thus applicable to this case.

VI. ENVIRONMENTAL IMPACT

15. In PCB 05-85, the Board concluded that "petitioners have established that the hardship they would experience outweighs any injury to the public or the environment from granting the relief." *See* PCB 05-85 at 14. As all the underlying facts in this proceeding are identical to the ones that were considered by the Board in PCB 05-85, the Board's finding regarding the environmental impact is still applicable in this case.

VII. COMPLIANCE PLAN

16. Pursuant to 104.204(f), the Petitioner is required to present a detailed compliance plan in its Petition for Variance. Petitioner's petition provides such a compliance plan. *See* Petition for Variance at 2. Since the filing of the petition, the Agency and CITGO have been in discussions regarding the nature of the relief. Based on these discussions, the Agency proposes the following modifications to the CITGO's compliance plan:

The Board grants CITGO and PDVMR a variance from the TDS water quality standards of 35

Ill. Adm. Code 302.208(g) and 302.407, subject to the following conditions:

1. The duration of the variance relief from the identified TDS water quality standards is for five years from the date of the Board order. This variance modifies and extends the variance relief granted in PCB 05-85, entered April 21, 2005.
2. This variance applies only to Petitioner's Lemont Refinery at 135th Street and New Avenue in Lemont, Will County, regarding TDS concentrations in the effluent of Outfall 001 due to operation of the wet gas scrubber under the Consent Order Decree entered

January 25, 2003, in the United States District Court for the Southern District of Texas, Case No. H-04-3833.

3. Until the U.S. EPA approves the elimination of the General Use water standard for TDS, Petitioner will monitor and collect samples from the Des Plaines River near I-55 Bridge three times per week, during the winter months (December 1 to March 30), and analyze for TDS. Petitioner must submit the TDS sample results monthly to the Agency.
4. Until the U.S. EPA approves the elimination of the TDS water quality standard for the Chicago Sanitary & Ship Canal, Petitioner will monitor its water intake from the Chicago Sanitary & Ship Canal two times per week, during the winter months (December 1 to March 30) for TDS. Petitioner must submit the TDS sample results monthly to the Agency.
5. Until the U.S. EPA approves the elimination of the TDS water quality standard for the Chicago Sanitary & Ship Canal, Petitioner must monitor TDS in the effluent from Outfall 001 two times per week, during winter months (December 1 to March 30). Petitioner must submit the TDS effluent sample results monthly to the Agency.
6. Until the U.S. EPA approves the elimination of the TDS water quality standard for the Chicago Sanitary & Ship Canal, Petitioner will diligently attempt to identify any relationship between the TDS levels in the effluent from Outfall 001, and the water quality samples required to be collected pursuant to paragraphs 3, 4, and 5 of this Order. To the extent there is a correlation between effluent TDS concentration and any exceedance of an applicable water quality standard for TDS, Petitioner shall determine the time period that the water from the FCCU wet gas scrubber bleed may require additional management or treatment, including but not limited to holding, treatment, or alternative disposal.
7. Unless the U.S. EPA has approved the elimination of the TDS water quality standard for the Chicago Sanitary & Ship Canal, by 45 months from the date of the Board order, Petitioner must prepare a TDS water quality management plan to address any contribution from the FCCU wet gas scrubber bleed as determined by the analyses performed pursuant to paragraph 6. Elements to be considered in developing this plan shall include a system to retain, treat, or dispose of the FCCU wet gas scrubber bleed or any other approach to eliminate wet gas scrubber bleed from Outfall 001 during periods when applicable TDS water quality standards are exceeded. Options to be considered may include holding tanks, deep well disposal, crystallization, and any other technology or management strategy identified.
8. Unless the U.S. EPA has approved the elimination of the TDS water quality standard for the Chicago Sanitary & Ship Canal, by 46 months from the date of the Board order, Petitioner must design the TDS water quality management plan for the conditions identified in paragraph 7.

9. Unless the U.S. EPA has approved the elimination of the TDS water quality standard for the Chicago Sanitary & Ship Canal, by 48 months from the date of the Board order, Petitioner must submit to the Agency a wastewater construction permit application for any elements of the TDS water quality management plan for which permits or amended permits are required.
10. Unless the U.S. EPA has approved the elimination of the TDS water quality standard for the Chicago Sanitary & Ship Canal, by 54 months from the date of the Board order, Petitioner must begin construction as needed for an FCCU wet gas scrubber bleed control system and/or implement the TDS water quality management plan.
11. Unless the U.S. EPA has approved the elimination of the TDS water quality standard for the Chicago Sanitary & Ship Canal, by 60 months from the date of the Board order, Petitioner must operate any equipment required to be constructed by the TDS water quality management plan as needed so as to not cause or contribute to any exceedences of applicable water quality standards due to the operation of the wet gas scrubber identified in paragraph 2 of this Order.

VIII. CONSISTENCY WITH FEDERAL LAW

17. 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 USC1251 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). Petitioner meets the requirements of 35 Ill. Adm. Code 104.208(b), as the Board in PCB 05-85, concluded that "the requested variance is not inconsistent with the federal law." *See* PCB 05-85 at 14.

IX. PERMITS

18. 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).

19. CITGO's Lemont refinery operates under NPDES permit number IL0001589. On August 9, 2004, the Illinois EPA received from CITGO an application for modification of this permit. On July 28, 2006, the Agency issued the NPDES permit. On August 14, 2006, CITGO appealed the permit by filing a petition before the Board, pursuant to Section 40.2 of the Act. The Agency issued the modified permit on June 22, 2007. On July 12, 2007, the Board granted the CITGO's motion for voluntary dismissal of the appeal.

X. RECOMMENDATION


20. Under Section 37 of the Act and Section 104.216(b)(11) of the Board rules, the Agency is required to make a recommendation to the Board as to the disposition of the petition. *See* 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 grant the Petitioner's request for a variance from the TDS water quality standards for five years from the date of the Board's order, subject to the conditions outlined in Section VII of this recommendation.

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

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By:



Sanjay K. Sofat
Assistant Counsel
Division of Legal Counsel

Dated: March 6, 2008
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

STATE OF ILLINOIS

COUNTY OF SANGAMON

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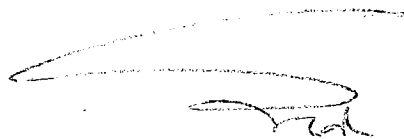
PROOF OF SERVICE

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

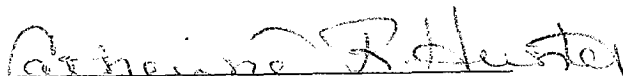
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Chicago, Illinois 60601

Jeffrey C. Fort
Ariel J. Teshar
Sonnenschien Nath & Rosenthal LLP
7800 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6404

and mailing it from Springfield, Illinois on March 6, 2008, with sufficient postage affixed for first class mail.



SUBSCRIBED AND SWORN TO BEFORE ME
this sixth day of February, 2008


Notary Public

