BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
WATER QUALITY STANDARDS AND	)	
EFFLUENT LIMITATIONS FOR THE	)	
CHICAGO AREA WATERWAY SYSTEM	)	R08-9(D)
AND THE LOWER DES PLAINES RIVER:	)	(Rulemaking-Water)
Adm. Code Parts 301, 302, 303 and 304	)	

NOTICE OF FILING

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Please take notice that on April 30, 2014, we filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the attached Comments at Close of Merit Hearings on Proposed Water Quality Standards, a copy of which is served upon you.

CITGO PETROLEUM CORPORATION and
PDV MIDWEST REFINING, LLC

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PROPOSED AMENDMENTS TO 35 Ill.	)	
Adm. Code Parts 301, 302, 303 and 304	)	

CITGO PETROLEUM CORPORATION'S COMMENTS AT THE CLOSE OF MERIT HEARINGS ON PROPOSED WATER QUALITY STANDARDS

CITGO PETROLEUM CORPORATION and PDV MIDWEST, LLC, (collectively, the "Lemont Refinery" or "Refinery") submits this final comment in support of its proposed changes to the Illinois Environmental Protection Agency's ("IEPA") proposal. The Lemont Refinery is operated by CITGO Petroleum Corporation and owned by PDV Midwest, LLC. The Refinery is located at River Mile 297, just south of the City of Lemont on the Chicago Sanitary and Ship Canal ("CSSC"). By happenstance, the Refinery's intake and discharge pipes are immediately upstream of the Black Safety Zone (and the electric fish barrier) and within the Coast Guard Regulated Navigation Area.[1]

[1] The Board should be familiar with the Lemont Refinery's extensive efforts to comply with the Board's TDS standard in the CSSC. These compliance efforts were occasioned by the refinery installing a Wet Gas Scrubber in order to meet the terms of a Consent Decree that the Refinery had entered with U.S.EPA, the State of Illinois and other states, with respect to air emissions. Had there not already been an exceedance of TDS in the CSSC, which is due to upstream sources (occasioned by snow melt run-off), the increased sulfates from the Wet Gas Scrubber would not have required a variance for IEPA permit issuance. IEPA recommended the Refinery pursue variance relief which led to the issuance of three variances, PCB 05-85, PCB 08-33, and PCB 12-94. The sampling requirements of these variances resulted in a substantial amount of information and data on the phenomenon of snow melt run-off and the elevated TDS and chloride levels from snow melt from the upstream Chicago metropolitan area. Indeed, the aforementioned variance proceedings have greatly informed the testimony and information that the Lemont Refinery has provided in this proceeding and included in these Comments.

The Lemont Refinery has actively participated in these rulemaking proceedings since their inceptions.[2] At this time, the Board has adopted regulations for the recreational uses (Subdocket A) and aquatic life uses (Subdocket C) which directly affect the appropriate water quality standards to be adopted here. In Subdocket D the Lemont Refinery has provided the Illinois Pollution Control Board (the "Board") ample evidence, data and testimony to support its position and recommendations that, at least with respect to the Chicago Sanitary and Ship Canal downstream of the Calumet-Sag Channel Confluence (the "Lower Ship Canal"): 1) a winter time seasonal standard for chlorides should be adopted; 2) the use of Best Management Practices ("BMPs") should be allowed to allow dischargers to have a mixing zone in effluent dominated waters which exceed the water quality standards; and 3) the proposed standards for mercury and for certain derived criteria should be refined to meet the adopted non-recreational water use for the Lower Ship Canal.

These comments address the original proposal filed by IEPA, as well as the changes proposed by the IEPA's May 24, 2013 Motion to Amend. We respectfully submit that IEPA's proposals and its testimony in the record do not fulfill the Board's obligation under Section 27 of the Illinois Environmental Protection Act (the "Act"). 415 ILCS 5/27, 28 (2008); *see* Subdocket A 8/18/11 Board Opinion at 12 ("Pursuant to Section 27 of the Act,...when promulgating a rule, the Board must take into account several matters including existing water quality and the technical feasibility and economic reasonableness of reducing pollution."). IEPA has failed to present any information regarding technical feasibility and economic reasonableness with respect

[2] Witnesses testifying in this rulemaking on behalf of the Lemont Refinery included Jim Huff (*see* pre-filed testimony and related documents as Exhibits 285, 317, 437, 438, 439- 493, 494, and 495); Robin Garibay (*see* Exhibits 420, 421, 422, 423 and 424 and Public Comment 553); Roger Klocek (Exhibit 491 and Public Comment 1395); Larry Tyler (Exhibit 492 and Public Comment 1394) and Bruce Nelson (Exhibits 489 and 490). Exhibits 489 to 495 and Public Comments 1394 and 1395 were submitted in Docket D.

to its proposed changes. By contrast, the testimony and exhibits presented by the Lemont Refinery support each of the Refinery's proposed modifications to IEPA's proposal. With the adjustments recommended herein, the Lemont Refinery would recommend, for Aquatic Life Use ("ALU") B waters, that the existing TDS standard be eliminated and replaced with the proposed sulfate standard and the winter-time chloride standard; we do not object to the 500 mg/L chloride standard with respect to non-winter months.

IEPA's proposed standards are not regulations that have been adopted as a matter of federal law and therefore the Board is not required to "pass-through" these proposed standards as it would have to do with federal requirements. While IEPA has introduced federal guidance, that guidance has not been adopted as a federal rule. (*See* 7/29/13 Hrg. Tr. at 54-55.)[3] Moreover, the federal guidance is national and focused on the general goal of "fishable-swimmable streams" not on water bodies which qualify for one or more of the six criteria for a use less than "fishable/swimmable". The Board correctly found that the Ship Canal should be a "Use B Aquatic Use" because it met three of the factors justifying a different use. None of these federal water quality criteria focused on an urbanized stream such as the CAWS and the Lower Ship Canal, nor the documented differences from these water bodies as compared to the federal criteria for "fishable-swimmable" streams. (*Id.* at 54-57.)

IEPA realized that some of the proposed water quality standards would not be attained by current conditions in the UAA water bodies. But it still failed to submit testimony or address the technical feasibility and economic reasonableness of the proposed standards. Indeed, IEPA admitted that the proposed standards for dissolved oxygen, pH, chlorides and possibly mercury would not be met under current conditions. (*See* 9/23/13 Hrg. Tr. at 28-29.) Notably, Scott

[3] All references to transcripts and exhibits are to those in Docket D, except as expressly noted.

Twait, IEPA's only proffered witness for Docket D, acknowledged that the relevant information on chlorides and mercury came from the testimony of expert Jim Huff on behalf of the Lemont Refinery. (*Id.* at 29.)

The Lemont Refinery has presented the Board with the necessary information to fulfill its obligations under Section 27 of the Act. With respect to the proposed water quality standards, chlorides, mercury, and the language of Subpart F, are all issues of concern for the Lemont Refinery. Accordingly, the Refinery submits that it has presented ample information and evidence to the Board on these issues for the Board to accept the Refinery's suggestions regarding the proposed water quality standards as to these issue. However the Refinery takes no position on the other proposed water quality standards.

I. THE BOARD SHOULD ADOPT CHLORIDE WATER QUALITY STANDARDS THAT ACCURATELY REFLECT THE CONDITIONS IN THE CSSC

In setting water quality standards, the Clean Water Act and the implementing regulations require the uses of a water body be evaluated and considered. Then, and only then, are water quality standards to be set which are protective of those uses. The IEPA agrees with this approach. 7/29/2013 Hrg, Tr at 81-82. The water quality standards that are ultimately adopted for a water body should reflect the reality and designated uses of the water body. Here, the Lemont Refinery actively participated in the Board's previous hearings regarding the "Uses" of the Lower Ship Canal. Indeed, the Lemont Refinery agreed with and supported the "Non-recreational" use designation that the Board selected for the Lower Ship Canal because this use designation reflects the reality of this water body. (*See* Subdocket A 8/18/2011 Board Opinion at

13).[4] The video presented by the Lemont Refinery at the December 17, 2013 hearing in Subdocket D, clearly displayed the industrial habitat of the Lower Ship Canal, and the "not recreation friendly" Regulated Navigation Area and Black Safety Zone associated with the electric fish barrier (where fish would be expected to be non-existent and where people could be incapacitated and killed by the electric pulse if they fell into the water there). The Non-recreational use is certainly the appropriate use designation for the Lower Ship Canal and particularly the Regulated Navigation Area and Black Safety Zone. The Lower Ship Canal's industrial nature and aquatic habitat should not be disregarded in setting the appropriate water quality standards here.

The Lower Ship Canal, certainly at the point it passes the Lemont Refinery, is also an effluent dominated stream. According to IEPA, this means that in conditions without storm flows, up to 100% of the flow past the Lemont Refinery's water intake is from the wastewater discharges of the Metropolitan Water Reclamation District ("MWRDGC"). (7/29/2013 Hrg. Tr. at 75-76.) The Lemont Refinery withdraws approximately 6.4 million gallons of water from the Lower Ship Canal daily for use in its processes and cooling. (Exhibit 492 11/22/13 Prefiled Testimony of Larry Tyler at 3.) After proper treatment, the Lemont Refinery then discharges that wastewater back into the Lower Ship Canal. As such, the Lemont Refinery effluent is highly vulnerable to what discharges are made by the upstream contributors.

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[4] "The Non-recreation use designation is adopted for: 1) Chicago Sanitary and Ship Canal from its confluence with the Calumet-Sag Channel to its confluence with Des Plaines River; and 2) Lower Des Plaines River from its confluence with Chicago Sanitary and Ship Canal to the Brandon Road Lock and Dam." While we are aware of Public Comment #1338 filed by U.S.EPA on May 22, 2012, no further action has been proposed to be taken by the IEPA in Docket A, or in any other proceeding to change that definition. Moreover, as we will show below, as applied to the Regulated Navigation Area and the relevant issues for Subpart F, the resulting water quality standard should be the same.

While typically such vulnerability to upstream dischargers is during dry flow conditions, in the case of the CSSC, the biggest problems documented to date have been due to higher flow conditions and storm run-off in particular. Since 2006, the Lemont Refinery has taken scores of Total Dissolved Solids ("TDS") and chloride samples of its intake and it is evident that during snow melt conditions, the Lower Ship Canal regularly exceeds the existing 1,500 mg/L TDS standard and the proposed 500 mg/L chloride standard. (*See*, Exhibit 493; 11/22/13 Prefiled Testimony of Jim Huff at 2-3 and 5, and Attachment 2 thereto.) In his prefiled testimony Mr. Huff noted that based on eight years of data, the summer time chlorides are consistently well below 500 mg/L, whereas winter chloride levels are as high as 1,099 mg/L have been recorded at the Lemont Refinery's intake. (*Id.* at 5.)

Chloride concentrations above IEPA's proposed 500 mg/L standard[5] occur nearly every winter. (*Id.* at 6; Attachment 2.) Some of the highest chloride levels have been recorded during this winter season (perhaps not surprising given the record cold and record number of snow-falls in the Cook County region this past winter). Attachment I to this Comment is a table summarizing the chloride levels from this past winter in the water intake for the Lemont Refinery. The effect of various severe winter storms are evident in the surges of elevated chloride levels. As such, the de-icing practices of an intense population center like Chicago and suburban Cook County (which is upstream of the Lemont Refinery and growing in population)

[5] It is the Lemont Refinery's understanding that IEPA is putting forth 500 mg/L as the proposed water quality standard for chlorides. However, testimony from IEPA's witness Scott Twait suggests a lack of clarity with respect to this number and, as fully explained below, this figure is entirely unsupported. (*See* 7/29/2013 Hrg. Tr. at 116 ("The Agency [IEPA] originally proposed the general use water quality standard of 500 milligrams per liter. USEPA indicated to us that that wasn't acceptable. We couldn't justify it, and we considered adopting the national criteria document with adjustments or the Iowa water quality standard with adjustments. However, before we filed with the Board, they indicated that neither of those were going to be completely approvable, and so we just stuck with general use.")

coupled with an effluent dominated stream like the Lower Ship Canal make achieving a 500 mg/L chloride standard not practicable or realistic. The Lemont Refinery therefore urges the Board to take these very real variables and statistics into account when setting water quality standards for the Lower Ship Canal and CSSC and to adopt the Refinery's revisions to IEPA's proposed 500 mg/L standard.

A. THE BOARD SHOULD ADOPT A BMP OFFSET APPROACH FOR DISCHARGERS THAT WITHDRAW SUBSTANTIAL VOLUMES OF WATER FROM AN EFFLUENT DOMINATED STREAM AND ALSO DISCHARGE BACK INTO THAT SAME STREAM

Under the Clean Water Act, when a water body exceeds the applicable WQS, the state must prepare a study called a TMDL "Total Maximum Daily Load." As explained by Mr. Huff, the TMDL process is very long and there is a substantial backlog in Illinois:

> "there are over 2,000 listed impairments in the 2014 303(d) list, with approximately 500 stream reaches. There are only 79 impairments on the 2014-2016 schedule for TMDL development. Only three TMDLs were finalized in the last two year cycle. None of those on the list for the next two years deal with the waters involved in this UAA process and only one planned TMDL (Drowning Fork) is directed at chloride impairment. While the Ship Canal and other CAWS waters are on the 303(d) list and a couple are listed for TDS impairment, all are listed as 'low priority.' I would therefore expect that if the Board adopts the chloride and mercury water quality standard as proposed by the Illinois EPA, a TMDL would not be completed for years." (Ex. 493. 11/22/13 Prefiled Huff Testimony at 3-4; *see also* 12/17/13 Hrg. Tr. at 128.)

Significantly, while a TMDL process is underway, IEPA imposes the WQS as permit effluent conditions. (Ex. 493, 11/22/13 Prefiled Huff Testimony at 4.) Accordingly, and based on the mixing zone rule, the Lemont Refinery expects that IEPA would begin to impose an effluent limit equal to the water quality standard, even where, as in the case of the Refinery, the

discharger is a very minor source of pollutants and upstream dischargers are causing the exceedance of the water quality standard.

Furthermore, as the Board is well aware, if a water quality standard is violated, dischargers cannot receive a mixing zone for their discharge without receiving a variance from the Board. The Lemont Refinery has demonstrated to the Board (and the IEPA has recommended) that an arbitrary and unreasonable hardship exists to meet the TDS and chloride water quality standards when upstream sources into the Ship Canal carry snow melt with significant chloride levels. We further commend to the Board to Mr. Huff's summary of the difficulties encountered by the Refinery regarding the United States Environmental Protection Agency's ("USEPA") review of the recent variance granted to the refinery by the Board.

> "USEPA formally objected to the Lemont Refinery's draft NPDES permit in March, 2013. USEPA has stated that all variances involving water quality standards must be approved by the USEPA and must comply with 40CFR131.10(g). The criteria in 40CFR131.10(g) are the same criteria which are being applied to the UAA proceedings. Given that the Agency [IEPA] already determined in this rulemaking that it thought the Ship Canal qualified for not just one, but for three of the factors under 131.10(g), the USEPA objection came as a surprise to the Lemont Refinery. There seems to be a new set of issues that must be kept in mind in adopting water quality standards. In this proceeding, Docket D, the Board is to set the water quality standards that reflect the uses… As I have learned from both the Lemont Refinery work I have done and for other dischargers, on a site specific basis, such as in a variance under Illinois law, it can be very difficult to satisfy those conditions of 40 CFR 131.10(g) under USEPA's interpretation.

(*Id.* at 2-3.) The experience of the Lemont Refinery demonstrates that imposing a water quality standard at the point of discharge into the Ship Canal during snow melt conditions creates an unjustified expense, with no environmental benefit. (*See*, the Opinions and Orders in PCB 05-85, PCB 08-33, and PCB 12-94, which are incorporated by reference herein.)

The Lemont Refinery therefore proposes a direct and simple solution to this burdensome permitting and variance process -- which is to allow dischargers to use, in the permitting process, a Best Management Practices (BMP) approach to offset their discharge to the extent it would cause or contribute to a water quality standard violation and, if they do so, to be eligible to have a mixing zone for that parameter. The Lemont Refinery submitted this approach in the context of an amendment to the mixing zone rule, but it could also be applied in other "compliance demonstration" contexts through the permitting process:

> Regulatory rationale: Effluent dominated and Use B waters are controlled by the Metropolitan Water Reclamation District's effluent and upstream point and non-point sources, including snowmelt run-off and sediment re-suspension.
>
> Propose to add a new subsection (j) to 302.102:
>
> "(j) Notwithstanding the provisions of 302.102(b)(9), a mixing zone shall be allowed if the following are demonstrated:
>
> (1) The exceedance of the water quality standard is in a water body which is a "Use B" water body; and
>
> (2) The discharger uses an intake from that water body for supply of at least 50% of its process water (including for cooling use) on an annual basis; and
>
> (3) The chemical for which the water quality standard is exceeded in the water intake referred to in (2) above, or the water body is listed as impaired for that chemical; and
>
> (4) Until a total maximum daily load ("TMDL") allocation is effective, the discharger employs Best Management Practices for the pollutant of concern during the times that the exceedance of the applicable water quality standard occurs; and
>
> (5) Either of the following is demonstrated by the Best Management Practices Plan:
>
> (i) the BMP plan has as its objective to reduce the amount of the discharge of the pollutant of concern by the amount by which the discharger would exceed the allowable discharge during the exceedances in the receiving stream; or

> (ii) Compliance is determined by comparing the predicted concentration at the edge of the mixing zone as within the precision of the test method for the subject pollutant."

(Public Comment #1394)

While the BMP approach is framed in the context of the mixing rule and as an exception to the mixing rule, the substantive elements could be used for a compliance plan. The essential feature of the BMP approach is that it alleviates the notion that water quality standards must always be imposed in an "end-of-pipe" context. The BMP approach allows a discharger (whether industrial or municipal), subject to NPDES permit or other storm water permitting requirements, to elect to follow the BMP rather than be stuck in a seemingly never ending variance process while waiting for a TMDL.

In particular, such an approach would address the issues faced by dischargers, such as those who have an intake on the Lower Ship Canal, an effluent dominated stream segment, when the intake levels are already above the applicable water quality standard. As explained by Mr. Huff, with respect to chlorides, "the goal of the BMP would be to reduce chlorides discharged from point sources by the equivalent of the chloride contribution over 500 mg/L, whenever the Ship Canal is over 500 mg/L. Such a program could remain in place until a TMDL study was completed and the adoption of numeric water quality standards. The net result would be that such a commitment would be essentially offsetting a discharger's contribution to water quality exceedances, and therefore would be eligible for a mixing zone for chlorides because it would no longer be causing or contributing to water quality exceedances." (Exhibit 493, 11/22/13 Prefiled Huff Testimony at 12-13.) Explaining the principles further, Mr. Huff noted that:

> "There are opportunities, through the same technologies available to highway departments, including anti-icing, pre-wetting, calibration, training, better weather data, and learning from each storm event to reduce its salt usage by over 119 tons per year as

> chlorides, or 196 tons as sodium chloride. The Lemont Refinery is proceeding with implementing these steps with the expectation it can more than offset the 119 tons per year of chlorides it contributes during the periods when the Ship Canal is above 500 mg/L. As with any new technologies and the concern over safety, it will take several winter seasons to achieve these goals and the BMPs will be adjusted as lessons are learned. The BMP plan, as currently contemplated, would measure chloride usage on a five-year running average so that variations in snow fall would be balanced out." (*Id.* at 13.)

During the December 17, 2013 hearing the Board asked how this proposal might be implemented and if it could be done through the existing NPDES regulations. (12/17/13 Hrg. Tr. at 185-86.) As stated by Mr. Huff, the Lemont Refinery believes that the regulations to implement a BMP approach already exists. Stormwater permitting requirements were included in the 1987 Clean Water Act amendments and appear in 40 CFR 122. As an authorized NPDES permitting agency, IEPA has the authority to issue these stormwater permits, known as "MS4 permits". (*See, e.g.*, Attachment II, General Permit No. ILR 40.) The Special Conditions, Part III, are squarely applicable. Paragraph III. A states, "Your discharges, alone or in combination with other sources, shall not cause or contribute to a violation of any applicable water quality standard outlined in 35 Ill Adm Code 302." Paragraph III. B goes on to provide that in such a case, "different limitations and/or requirements" may be imposed. Part IV includes "Storm Water Management Programs" which must have a storm water management program "designed to reduce the discharge of pollutants from your.... sewer system to the maximum extent practicable...to protect water quality and to satisfy the appropriate water quality requirements of the Illinois Pollution Control Board Rules and Regulations...." This is a clear framework that IEPA could use to implement the BMP approach included in the Lemont Refinery's proposed regulatory amendment. It is instructive that paragraphs III. A and B precede the paragraph by which TMDLs would be implemented. This indicates that the BMP approach can be interpreted

as an interim step to a TMDL. Moreover, IEPA also includes similar stormwater permitting requirements in industrial and municipal NPDES permits. We would presume that nearly all of the major sources of stormwater run-off into the CAWS are subject to this permitting regime and that the BMP approach could be implemented without new regulations beyond this docket. (The Board could broaden the applicability of the BMP requirement proposed by eliminating the requirement that the discharger use an intake from the impaired water body)

Importantly, the key to the BMP approach is that it would allow a discharger subject to a permit to have a mixing zone in return for a BMP-offset condition. By essentially offsetting the amount of an excess discharge, the direct discharger is not causing or contributing to a water quality violation and hence would not be subject to the "no mixing zone" rule of Section 302.102(b)(9). And the BMP requirement could be implemented on other sources who perhaps have not previously been concerned with the mixing zone rule, notwithstanding the requirement of paragraphs IIIA and B quoted above and in Attachment II.

B. THE BOARD SHOULD ADOPT AN ALTERNATIVE CHLORIDE STANDARD FOR WINTER MONTHS

As discussed above, chloride concentrations above IEPA's proposed 500 mg/L standard occur nearly every winter due to the de-icing practices in and around Chicago and suburban Cook County, the dense population center upstream of the Lemont Refinery. As such, achieving the proposed 500 mg/L chloride standard during winter months is simply not practicable or realistic. To address this issue, the Lemont Refinery proposes that the Board adopt a winter chloride standard.

As noted above, pursuant to the Clean Water Act, first the uses of a water body are evaluated and considered and then water quality standards that are protective of those uses are

set. The Board has followed this process in these proceedings and the IEPA does not dispute this approach. Accordingly, the Board's decisions with respect to ALU B waters forms the basis for considering the appropriate water quality standards for the aquatic life that are present in the Lower Ship Canal. (*See* Subdocket C 2/6/14 Board Opinion at 1 ("The Board adopts as ALU B waters the Chicago Sanitary and Ship Canal and Brandon Pool.").) The Board concluded that "CAWS and Brandon Pool ALU B waters are capable of protecting aquatic life populations predominated by individuals of tolerant types such as common carp, golden shiner, bluntnose minnow, yellow bullhead, and green sunfish…The Board adopts as ALU B waters the Chicago Sanitary and Ship Canal and Brandon Pool." (*Id.* at 16.)

The Lemont Refinery participated in Subdocket C and made several substantive suggestions and provided testimony focusing on the aquatic life in the Lower Ship Canal. The Refinery's experts at Huff and Huff also examined the actual fish sampling collected in the CSSC over many years, collected benthic organisms from the vicinity of the Lemont Refinery in the Lower Ship Canal (excluding the Regulated Navigation Area and Black Safety Zone per Coast Guard Regulations) and plankton in the same locations. As a result, a very precise assessment of the aquatic life in the vicinity of the Lemont Refinery was collected.

Following the Board's definitions of ALU B and using USEPA's approved procedure, based on the specific data from the CSSC Huff and Huff calculated a chloride level, for both acute and chronic conditions, that would be protective of the designated species during winter months. Those levels are as follows:

- As calculated values: 624 mg/L for chronic value and 991 mg/L for acute value;
- For regulatory purposes: 620 mg/L for chronic value and 990 mg/L for acute value.

These levels reflect the available toxicity information, with appropriate adjustments for those species that are present and those that are absent. (*See*, Exhibit 491, Prefiled Testimony of Roger Klocek at 7-10.) Twenty-three (23) of the twenty-nine (29) species on the Iowa list were included and those excluded would not be expected to be present in the CSSC. (*Id.*) In particular, "*Ceriodaphnia* was not retained because it is not present during the winter season and has only been observed once during the month of July in the CSSC in 1978." (*Id.* at 9.) "*Sphaerium* was not retained because it is not present in the CSSC. However, *Musculium* a closely related genus of fingernail claim was added to the dataset because it is present in the CSSC and has been recorded from the Lockport sample site several times during the last nine years." (*Id.*) Further details on this topic were provided to the Board and participants in a public comment filed by the Lemont Refiner on January 22, 2014. (*See* Public Comment #1395.)

This evidence demonstrates that, during the winter months, levels below 990 mg/L chlorides would not be acutely toxic and levels below 624 mg/L chlorides would not exhibit chronic toxicity to the species in the Lower Ship Canal, and particularly in the vicinity of the Regulated Navigation Barrier or the Black Safety Zone.[6] Accordingly, the Lemont Refinery urges the Board adopt chloride limits of 990 mg/L acute and 624 mg/L chronic as a seasonal (from December 1 through March 31) chloride water quality standards for Use B Waters.

C. THE PROPOSED 500 mg/L STANDARD FOR USE B WATERS IS UNSUPPORTED BY THE RECORD

The IEPA's proposed 500 mg/L standard for chlorides is unsupported. Indeed, this proposed number lacks any foundation in exhibits or testimony other than what is found in the IEPA's original statement of reasons. IEPA has failed to provide any substantive response to the

[6] Several other states have adopted a chloride standard above 500 mg/L. (*See* Exhibit 488, 11/22/13 Prefiled Testimony of Lial F. Tischler at Exhibit D.)

contrary evidence that is discussed above and that appears in the record. Also notably absent from IEPA's proposal is any discussion focused on the general presence of chlorides in Illinois' waters. This lack of connection between proposed standard and the situation in Illinois is not only problematic but is also difficult to understand given the abundance of information on this topic that has been produced by the Illinois State Water Survey ("ISWS").

In 2012, the ISWS published a report entitled *The Sources, Distribution, and Trends of chloride in the Waters of Illinois.* (Exhibit 493 11/22/13 Prefiled Huff Testimony Attachment 3 (selected pages).) The highlights are instructive:

Source Chlorides, Treated Wastewater	Tons/yr
MWRDGC	**192,000**
Remainder of State	**138,000**
Road Salt	**518,000**
Water Conditioning Salt	**148,000**
Fertilizer (KCl)	**410,000**
Lake Michigan Withdrawals	**37,000**
Groundwater withdrawals Aggregate	**31,000**

a/ Report presents data in metric tons of chlorides, converted to short tons

(*Id.* at 7.) *See also* Ex. 494. The report found that highway de-icing salts are the largest single source of chlorides being introduced in the environment in Illinois and particularly in the CAWS. This road salt, not surprisingly, is in the Chicago area and upstream of the Lemont Refinery. Literally, hundreds of thousands of tons of chlorides per year are discharged into the CSSC upstream of the Lemont Refinery.

IEPA admittedly proposed the 500 mg/L standard because the same standard was already in place for general use waters. (*See* 7/29/13 Hr. Tr. at 116.) IEPA also admitted that it considered but did not propose the chloride standard recently adopted by the State of Iowa. (*Id.*) Interestingly, USEPA at one point approved of the Iowa chloride standard and other states have

expressed interest in it. However, USEPA now is apparently having second thoughts because it told IEPA that it could not approve the Iowa standard if it were adopted by Illinois. (*Id.*) This agency interplay, however, should not and cannot serve as the basis for simply defaulting to the existing general use standard without any appropriate analysis. The lack of rationale and justification for the IEPA's proposed standard is simply unacceptable. While IEPA has looked to USEPA for guidance, USEPA can not be the basis for the proposed standard when the reality is that USEPA has not adopted any chloride water quality standard at all. (*Id.* at 54-55.) Ultimately, as explained by Mr. Twait, at this point USEPA only offers a "criteria" to states. (*Id.*)

Moreover, it appears that the chloride criteria is in a state of flux. (*Id.* p 54.) Also troublesome is the fact that USEPA has not dealt with a urban, channelized stream such as the CSSC, particularly the Lower Ship Canal, where three of its UAA factors for justifying an exception to the "fishable-swimmable" goal of the Clean Water Act are squarely met as was demonstrated by the record in Subdocket C. (*See* Subdocket C 3/5/12 Final Comments of Citgo at 14-22.) Significantly, Mr. Twait also testified that the USEPA "criteria" did not take into account habitat. (7/29/13 Hrg. Tr. at 65.)

Furthermore, there is no evidence that, with respect to the proposed chloride standard, IEPA made any effort to remove non-representative species before assessing the appropriate toxicity value. While IEPA claimed that the "safe" value might become unrealistically low if too many species were removed, it did not produce any evidence of any such calculations. Indeed, IEPA could not and did not produce a single memorandum in which it made any such analysis. (*Id.* at 57-58.) And as demonstrated by the analysis and proposal produced by Mr. Klocek, which was discussed above, the notion of an unrealistically low "safe" value is supported by his

analysis for winter chloride standards in Use B waters. (Exhibit 491, Prefiled Testimony of Roger Klocek at 7-10.) IEPA did not challenge Mr. Klocek's study, calculations, or the species that he relied upon.

IEPA has not justified its proposed 500mg/L chloride standard and perhaps its request for yet another docket is a telling sign that IEPA would agree that it has not justified this standard. Nevertheless, the Lemont Refinery's proposed winter-time chloride standard is clearly supported by data and the record and should be adopted.

D. THE BMP APPROACH AND THE ALTERNATIVE CHLORIDE STANDARD FOR WINTER MONTHS ARE TECHNICALLY FEASIBLE AND ECONOMICALLY REASONABLE

As discussed above, pursuant to Section 27 of the Act the Board is required to consider the technical feasibility and economic reasonableness of the proposed water quality standards. And as demonstrated herein, IEPA has not met this burden and has generally failed to address these issues. IEPA has limited its testimony to the USEPA criteria documents for protection of aquatic species and presented testimony without regard to the particular uses for a stream segment. (*See* 7/29/13 Hr. Tr. at 116-120.) IEPA also did not present any evidence with respect to the technical feasibility and economic reasonableness of the proposed standard when upstream sources of chlorides cause a discharger to lose the ability to have a mixing zone.

The Lemont Refinery will be adversely impacted by IEPA's proposed chloride and mercury water quality standards. Notably, the Lemont Refinery is a minute contributor to the chloride loadings in the CSSC. The Refinery contributes less than 0.2% of the chloride loadings in the CSSC during snow melt events. (Exhibit 493, 11/22/13 Prefiled Huff Testimony at 8.) Yet the cost to remove chlorides from the discharge during these events is extremely large and wholly disproportionate to any benefits. Indeed, the costs to the Refinery are tremendous and

this accounts for only a fraction of the economic impact that the proposed water quality standards will have.

First, it is assumed that if the Board adopts the proposed chloride standard, IEPA would then issue an NPDES permit that imposed a 500 mg/L chloride water quality limit only when the CSSC is above 500 mg/L chlorides. In such a scenario the Lemont Refinery would then have three options. First, to install reverse osmosis on the high chloride wastewater streams with a multi-effect evaporator on the reverse osmosis reject stream. The second option is to hold the two streams that contribute chlorides, which are the crude unit desalter and the zeolite regeneration stream. The capital cost for pretreatment followed by reverse osmosis and evaporation of the reject stream from the reverse osmosis units for these two streams is estimated at $42 million. "Despite such significant capital expenditure, neither of these options would resolve to issue 100% because chlorides from other incidental sources would still affect the Refinery's effluent, making compliance with the 500 mg/L effluent limit unachievable." *Id.*

The third alternative option would be to literally store the entire effluent until there is sufficient assimilative capacity in the CSSC to discharge. However, the Refinery knows from its monitoring practices that three weeks retention would be required in this case. Holding 5.79 million gallons per day for 21 days would require a holding capacity for 122 million gallons of water. There is simply no room for such a retention basin at the Refinery. The closest conceivable area would be south of the Refinery, necessitating the construction of pump station and force main, plus the permitting of a new outfall. Assuming a 20 ft. depth, the pond would occupy approximately 19 acres, plus road and fence. The construction costs for such a basin are estimated at $21 million, plus substantial land acquisition costs, not to mention ongoing operating costs. Additionally, given the need for rock excavation, land purchase, and the process

associated with securing appropriate easements, this project would take a minimum of five years to complete. Most importantly, this $21 million expenditure would not remove any chlorides from the CSSC; rather it would only retard any contribution from the Lemont Refinery during periods when the chlorides are above 500 mg/L.

The Board then should adopt the aforementioned BMP approach and alternative chloride standard for winter months. This could either be a final result or it could be structured as an interim measure, assuming the Board adopts a chloride standard which cannot be met which would, in time, lead to a TMDL study. There is no reason to prolong the number of years that the Lemont Refinery has been seeking variances from the Board: we have proposed an appropriate and protective seasonal water quality standard as well as an interim set of measures to reduce further the snow melt loading of chlorides.

II. THE PROPOSED MERCURY STANDARD SHOULD BE MODIFIED FROM THE LANGUAGE PROPOSED.

IEPA's proposal with respect to the mercury standards for the CSSC, an ALU B water, again fails to provide any justification or supporting evidence with respect to technical feasibility or economic reasonableness. Nor is there any evidence in the record as to how the Human Health Standard of 12 nanograms per liter protects aquatic life, or even human health with respect to dischargers into the CAWS, including the CSSC.

A. ATMOSPHERIC DEPOSITION OF MERCURY IS THE SOURCE OF NEARLY ALL OF THE MERCURY LOADING TO ILLINOIS' WATERS

Lial Tischler, an expert on behalf of Exxon Mobil, testified at the December 17, 2013 hearing that impairment of surface waters by point source dischargers is almost non-existent. (12/17/13 Hr. Tr. at 105.) The Savannah River mercury TMDL found that 99 percent of the river loading was due to atmospheric deposition of mercury. (Exhibit 488, 11/22/13 Prefiled

Testimony of Lial Tischler at 23.) With few exceptions, states and USEPA have consistently documented that impairment of water quality by mercury is caused by atmospheric deposition and not by point sources. (*Id.*) A 2001 publication by USEPA demonstrated that only control of the atmospheric deposition of mercury would reduce fish tissue concentrations of mercury to acceptable levels in the vast majority of U.S. watersheds. (*Id.*) IEPA's own water bureau chief, Marcia Willhite, testified to a similar conclusion before the Board in R06-25. *See Testimony of Marcia Willhite, In the matter of: Proposed New 35 Ill.Adm.Code 225 Control of Emissions from Large Combustion sources (Mercury),* R06-25 at 3 (April 27, 2006). "It was determined that the total of all wastewater dischargers to receiving streams and rivers in Illinois provide an average annual loading of 45 pounds of mercury per year. This, in comparison, was only 0.64% of the total annual emissions (2002) of mercury (7022 pounds per year) from coal-fired power plants in Illinois." *Id.* Thus, even if point source dischargers all achieved the applicable mercury water quality criteria at the "end of pipe" on a water body that is impaired by mercury, they would still have no measureable effect on the extent of the impairment.

B. ELEVATED LEVELS OF MERCURY SAMPLED IN THE CSSC ARE DUE TO RESUSPENSION OF SEDIMENTS FROM HIGHER FLOW CONDITIONS

Based on the sampling conducted upstream of the Refinery's discharge in 2008 and 2011, while the dissolved mercury levels were low, the total mercury averaged 9.59 ng/L. (Exhibit 493, 11/22/13 Prefiled Huff Testimony at 4 and Attachment 1 thereto.) In four of the twenty sample dates (20% of the time) the flow was above the harmonic mean and the total mercury exceeded 12 ng/L. (*Id.*) Additionally, four of the six samples collected during periods of flows above the harmonic mean exceeded the 12 ng/L proposed standard. (*Id.*) "In other words, 67% of the time of high flows, there was an exceedance of the proposed standard. The exceedances are likely

caused by re-suspension of sediment during higher flow periods." (*Id.*) Based on the proposed rule 302.407 (c) and (e), these events would be a violation of the proposed mercury water quality standard. The Lemont Refinery perceives this to mean that even though a discharger, like the Refinery, would have nothing to do with stream flows above the harmonic mean nor with the re-suspension of contaminated sediments, because the water quality upstream of the Lemont Refinery exceeds the proposed water quality standard, the Refinery would not be allowed a mixing zone for mercury. In sum, for the ALU B waters, the imposition of the 12 ng/L standard during period when the flow is above the harmonic mean makes no sense technically because to achieve this standard during higher flow periods requires dredging of the CSSC. (*Id.* at 14.)

C. THE COSTS FOR POINT SOURCE CONTROL OF MERCURY ARE SUBSTANTIAL AND WOULD PRODUCE NO MEANINGFUL BENEFIT

As Mr. Huff has testified:

> "Most of the mercury in the Lemont Refinery's effluent is present in particulate form. This is consistent with what other refineries have reported. The mercury particulates tend to be extremely fine in particle size. Phillips 66 pilot tested a granular media filtration system, and estimated that such a system could be installed for an estimated cost of $18.5 million, excluding management of the backwash stream that would contain elevated mercury. Management of this backwash stream is a significant engineering issue and cost. Argonne and Purdue University have been working on mercury technologies on behalf of the BP Whiting Refinery. These researchers have found mercury accumulating within the sand filters while adding a chemical agent to improve mercury removal. This accumulation is a concern because it is not known at this time whether the mercury will ultimately pass through the filter (at very high concentrations) when conditions change in the incoming water. Argonne/Purdue estimated a cost for a full-scale ultrafiltration system at between $39 and $147 million dollars for a 40 million gallon per day system. Similar to the Phillips 66 pilot work, these researchers have not worked out the treatment process for the reject stream from the ultrafiltration system or the backwash from the filters. (Exhibit 493, 11/22/13 Prefiled Huff Testimony at 10.)

Thus, for the Lemont Refinery to meet a 12 ng/L limit mercury limit when the influent already averages 9.59 ng/L would necessitate treating the Design Average Flow (5.79 mgd), and bypassing higher flows and such cost range from $13 to $47 million dollars. (*Id.*) This expenditure would effectively reduce the net mercury contribution from the Lemont Refinery from 0.075 pounds per year to no **net** contribution. (*Id.* at 11.) As demonstrated above, this is an infinitesimal share of the mercury in Illinois' waters.

Moreover, IEPA has not presented any information about the amount of mercury coming from point sources or compared to airborne sources into the CAWS. However, a key source of mercury in the CSSC is the re-suspension of sediments during high flow conditions. (*Id.* at 5.) These deposits of mercury occurred long ago and are not something that a current discharger, such as the Lemont Refinery, can control; nor is this anything that the Refinery could have contributed to as demonstrated by the sampling that was conducted upstream of the Refinery's intake. (*Id.*)

It is important to note that the proposed standard for mercury assumes fish consumption by humans and would already be violated due to the existing sediment contamination. However, IEPA has failed to make a causal connection between this standard and the reality of the environment in the Lower Ship Canal. IEPA has the TMDL process by which the sources of mercury would be inventoried and a waste load allocation derived. This might also provide the costs and funding sources to address pre-existing conditions such as mercury in sediments in the CAWS.

The Board should take into account that fishing is not a known, or, for the most part, even possible, activity in the Lower Ship Canal. This is particularly the case in the vicinity of the Regulated Navigation Area, as demonstrated by the Refinery's video and testimony of Bruce

Nelson shown in Subdocket D. (*See* Exhibits 489 and 490,11/22/13 Prefiled Testimony of Bruce Nelson and accompanying video.) In sum, fishing is simply not a realistic activity in this area, nor would it be a fruitful one for that matter based on the present configuration and aquatic life. Therefore, any concern centered around fishing activity is based on pure speculation and unsupported by any information in this record. The Board has already decided that the Lower Ship Canal, and the Des Plaines River down to the Brandon Road Lock and Dam is a "Non-recreation" water body. The Board defined such waters as a "water body where the physical conditions or hydrologic modifications preclude primary contact, incidental contact and non-contact recreation." *See* 301.324 (b). Therefore, we urge the Board not to include the Human Health Standard for mercury with respect to ALU B waters, or at least those ALU B waters that have a use designation of "Non-recreation".[7]

D. THE BOARD SHOULD CONSIDER MODIFYING THE LANGUAGE PROPOSED BY THE AGENCY

In the alternative, if the Board does adopt the Human Health Standard for mercury, the Lemont Refinery urges the following revisions to the language of IEPA's proposed subsection 302.407 (c):

> "The human health standard (HHS) for the chemical constituents listed in subsection (f) shall not be exceeded when the ~~stream flow is at or above the harmonic mean flow pursuant to section 302.658 nor shall an~~ annual average of the stream flow, based on at least eight samples, collected in a manner representative of the sampling period, exceed the HHS except as provided in subsection (d).

The principal problem with the language as proposed by IEPA is that it unduly weights high flow conditions, which, in the case of the CSSC is likely affected by storm conditions and resuspension of sediments. The Refinery's proposed revision cures this issue.

[7] As noted in the following section, the same conclusion is evident when one considers the facts of the Regulated Navigation Area or the alternative classification of Secondary Contact.

III. THE BOARD SHOULD NOT ADOPT THE HUMAN HEALTH CRITERIA REGULATIONS AS PROPOSED AND MAKE CERTAIN CLARIFICATIONS TO AVOID CONFUSION WITH RESPECT TO THE APPLICATION OF SUBPART F

There are two categories of clarifications which the Board should make with respect to the IEPA's approach to Subpart F. First, as applied to the Lower Ship Canal and the Lower Des Plaines River from the Lockport Lock and Dam to the Brandon Road Lock and Dam, the references to human health criteria in 302.642 through 302.658 are confusing and contrary to the "Use" designations just established by the Board in Docket A. Second, if the Board chooses to add to the list of toxic substances as proposed by the IEPA, the Lemont Refinery urges the Board make clear that the species to be assessed should be the resident species. Otherwise, the meaning of ALU B will be lost in applying the "derived from criteria" under Subpart F.

As the Board stated, "[p]ursuant to Section 27 of the Act,...when promulgating a rule, the Board must take into account several matters including existing water quality and the technical feasibility and economic reasonableness of reducing pollution." (Subdocket A 8/18/11 Board Opinion at 12.) IEPA has not presented any information on these factors with respect to the application of Subpart F. With respect to the CSSC and other ALU B waters, these water bodies clearly have differentiating conditions, with extensive man-made influences and effluent dominated streams, which are not typical of any other waters in the State of Illinois. IEPA simplistically attempts delete the phrase "General Use" in Subpart F and thus bring in all of Subpart F into application for ALU B waters. The Lemont Refinery disagrees with this approach for all of the reasons set forth herein, as well as the record in Subdocket D, and urge the Board not to adopts IEPA's proposed language.

The lack of foundation for IEPA's proposal is even more stark when the fact that significant portions of Subpart F are focused on human health issues is taken into consideration.

The Human Health Criterion under 302.642 is intended to protect humans "from adverse effects resulting from incidental exposure to, or ingestion of, surface water… and from ingestion of aquatic organisms taken from surface water…" This same language is in 302.651 with respect to the Human Nonthreshold Criterion. Other sections in this sequence from Subpart F (from 302.642 through 302.657) are all focused on the effects on human health of exposure or ingestion of the surface water. But as explained above, the Lower Ship Canal and the Lower Des Plaines River down to the Brandon Road Lock and Dam, are designated as "Non-recreation" waters. "Non-recreation" waters are defined as a "water body where the physical conditions or hydrologic modifications preclude primary contact, incidental contact and non-contact recreation." *See* 301.324 (b). Thus, any "Non-recreation" water, such as the Lower Ship Canal, is by definition not the kind of water body for which the human health criteria and regulatory terms would apply and Subpart F should not apply to such "Non-recreational" water bodies.[8] Therefore, the Subpart F human health criteria should not apply to these Non-Recreational Waters.

The "non-recreational" status of the Regulated Navigation Area should be obvious. Boating and incidental contact activities are strictly regulated, in order to keep people safe from the injury or death should they fall into or be swept into the Black Safety Zone. The IEPA admitted that it did not know of any fishing that would occur in the Regulated Navigation Zone upstream of the barrier. 7/29/2013 Hrg Tr. at 81. None would occur in the Black Safety Zone. *Id.* And the evidence here is clear that along the Regulated Navigation Zone, there is no means for public access into the Lower Ship Canal. See Exhibits 489 and 490. Therefore, even if the

[8] Indeed, the same could be said for "Non-Contact Recreation" waters: "water use in which human contact with the water is unlikely, such as pass through commercial or recreational navigation, and where physical conditions ore hydrologic modifications make direct human contact unlikely or dangerous." 301.324(a)

IEPA or the Board decides to change the Recreational Use designation of the Lower Ship Canal, the result is the same with respect the Regulated Navigation Zone.[9]

With respect to the application of Subpart F to aquatic life, Mr. Twait's testimony that in applying Subpart F, the IEPA would consider the resident fish species, served as a helpful clarification. (*See* 9/23/13 Hrg. Tr. at 26-27.)

> "yes, the Agency would look at typically what is in the water first. That's where we get our site specific nature of those rules....we would try to use resident or indigenous species. If a resident or indigenous species wasn't available, then we would look for a species that is similar, same genus, same family and same tolerance we could."

For ALU B those would, by definition, be tolerant species. At a minimum, if IEPA's language in Subpart F is adopted as to aquatic life, a reference to the IEPA's testimony with respect to the intent of proposed amendment to sections 302.410 and 302.601 should be included. Thus, if the Board concludes that the Section 27 requirements have been satisfied with respect to Subpart F, the Lemont Refinery urges the Board to either not strike through the reference to "General Use" in 302.601 or to add the phrase "except for Non-Recreational Waters" in place of the strike-through for "General Use".

Conclusion

The Lemont Refinery urges the Board to adopt the revisions to the proposed water quality standards for Use B waters as stated above.

[9] Until the Agency makes some effort to modify the Docket A definitions as applicable to the Lower Ship Canal, we submit that the Board is bound to follow its existing regulations.

Dated: April 30, 2014

Respectfully submitted

CITGO PETROLEUM CORPORATION and
PDV MIDWEST REFINING, LLC

By: _____

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82130683

CERTIFICATE OF SERVICE

I, the undersigned, certify that on April 30, 2014, I served electronically the attached Comments at Close of Merit Hearings on Proposed Water Quality Standards, upon the following:

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

and by U.S. Mail, first class postage prepaid, to the following persons:

Marie Tipsord, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Stefanie N. Diers, Assistant Counsel
Illinois Environnemental Protection Agency
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

The participants listed on the attached
SERVICE LIST

Jeffrey Fort

ATTACHMENT I

Attachment I: CITGO Lemont 2013-2014 Winter Chlorides

LEMONT REFINERY CHLORIDE SAMPLING

INTAKE

Date	Total Chlorides mg/L
12/3/2013	168
12/5/2013	165
12/10/2013	176
12/12/2013	166
12/17/2013	238
12/19/2013	233
12/24/2013	455
12/26/2013	428
12/31/2013	410
1/2/2014	390
1/7/2014	**593**
1/9/2014	**670**
1/14/2014	**720**
1/16/2014	**600**
1/21/2014	**520**
1/23/2014	**610**
1/28/2014	465
2/4/2014	400
2/6/2014	372
2/11/2014	420
2/13/2014	360
2/18/2014	288
2/20/2014	242
2/25/2014	**635**
2/27/2014	**525**
3/4/2014	402
3/6/2014	425
3/11/2014	487
3/13/2014	**530**
3/18/2014	**502**
3/20/2014	408
3/25/2014	428
3/27/2014	452
Average	**421**
Maximum	**720**

ATTACHMENT II

ATTACHMENT II

General NPDES Permit No. ILR40

Illinois Environmental Protection Agency
Division of Water Pollution Control
1021 North Grand East
P.O. Box 19276
Springfield, Illinois 62794-9276

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

General NPDES Permit
For
Discharges from Small Municipal Separate Storm Sewer Systems

Expiration Date: March 31, 2014

Issue Date: February 20, 2009

Effective Date: April 1, 2009

In compliance with the provisions of the Illinois Environmental Protection Act, the Illinois Pollution Control Board Rules and Regulations (35 Ill. Adm. Code, Subtitle C, Chapter 1) and the Clean Water Act, the following discharges may be authorized by this permit in accordance with the conditions herein:

Discharges of only storm water from small municipal separate storm sewer systems, as defined and limited herein. Storm water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Receiving waters: Discharges may be authorized to any surface water of the State.

To receive authorization to discharge under this general permit, a facility operator must submit an application as described in the permit conditions to the Illinois Environmental Protection Agency. Authorization, if granted, will be by letter and include a copy of this permit.

Alan Keller, P.E.
Manager, Permit Section
Division of Water Pollution Control

ILR40.wpd

CONTENTS OF THIS GENERAL PERMIT

PART I. COVERAGE UNDER THIS PERMIT

A. Permit Area

This permit covers all areas of the State of Illinois.

B. Eligibility

1. This permit authorizes discharges of storm water from small municipal separate storm sewer systems (MS4s) as defined in 40 CFR 122.26(b)(16) as designated for permit authorization pursuant to 40 CFR 122.32.

2. This permit authorizes the following non-storm water discharges provided they have been determined not to be substantial contributors of pollutants to a particular small MS4 applying for coverage under this permit:

   - water line and fire hydrant flushing,
   - landscape irrigation water,
   - rising ground waters,
   - ground water infiltration,
   - pumped ground water,
   - discharges from potable water sources, (excluding wastewater discharges from water supply treatment plants)
   - foundation drains,
   - air conditioning condensate,
   - irrigation water, (except for wastewater irrigation),
   - springs,
   - water from crawl space pumps,
   - footing drains,
   - storm sewer cleaning water,
   - water from individual residential car washing,
   - routine external building washdown which does not use detergents,
   - flows from riparian habitats and wetlands,
   - dechlorinated pH neutral swimming pool discharges,
   - residual street wash water,
   - discharges or flows from fire fighting activities
   - dechlorinated water reservoir discharges, and
   - pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed).

3. Any municipality covered by this general permit is also granted automatic coverage under Permit No. ILR10 for the discharge of storm water associated with construction site activities for municipal construction projects disturbing one acre or more. The permittee is granted automatic coverage 30 days after Agency receipt of a Notice of Intent to Discharge Storm Water from Construction Site Activities from the permittee. The Agency will provide public notification of the construction site activity and assign a unique permit number for each project during this period. The permittee shall comply with all the requirements of Permit ILR10 for all such construction projects.

C. Limitations on Coverage

The following discharges are not authorized by this permit:

1. Storm water discharges that are mixed with non-storm water or storm water associated with industrial activity unless such discharges are:

   a. in compliance with a separate NPDES permit, or

   b. identified by and in compliance with Part I.B.2 of this permit.

2. Storm water discharges that the Agency determines are not appropriately covered by this general permit. This determination may include discharges identified in Part I.B.2.

3. Storm water discharges to any receiving water specified under 35 Ill. Adm. Code 302.105(d)(6).

D. Obtaining Authorization

In order for storm water discharges from small municipal separate storm sewer systems to be authorized to discharge under this general permit, a discharger must:

1. Submit a Notice of Intent (NOI) in accordance with the requirements of Part II using an NOI form provided by the Agency (or a photocopy thereof) or the appropriate U.S. EPA NOI form.

2. Submit a new NOI in accordance with Part II within 30 days of a change in the operator or the addition of a new operator.

3. Unless notified by the Agency to the contrary, submit an NOI in accordance with the requirements of this permit to be authorized to discharge storm water from small municipal separate storm sewer systems under the terms and conditions of this permit 30 days after the date that the NOI is received. The Agency may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information.

PART II. NOTICE OF INTENT REQUIREMENTS

A. Deadlines for Notification

1. If you were automatically designated under 40 CFR 122.32(a)(1) to obtain permit coverage, then you were required to submit an NOI or apply for an individual permit by March 10, 2003.

2. If you have coverage under the previous general permit for storm water discharges from small MS4s, you must renew your permit coverage under this part. You must submit a NOI within 90 days of the effective date of this reissued general permit for storm water discharges from small MS4s to renew your NPDES permit coverage.

3. If you are designated by IEPA under Section 122.32 (a)(2) during the term of this general permit, then you are required to submit an NOI within 180 days of such notice.

4. You are not prohibited from submitting an NOI after established deadlines for NOI submittals. If a late NOI is submitted, your authorization is only for discharges that occur after permit coverage is granted. IEPA reserves the right to take appropriate enforcement actions against MS4s that have not submitted a timely NOI.

B. Contents of Notice of Intent

Dischargers seeking coverage under this permit shall submit either the Illinois MS4 NOI form or the U.S. EPA MS4 NOI form. The Notice(s) of Intent shall be signed in accordance with Standard Condition 11 of this permit and shall include the following information:

1. The street address, county, and the latitude and longitude of the municipal office for which the notification is submitted;

2. The name, address, and telephone number of the operator(s) filing the NOI for permit coverage;

3. The name of the receiving water(s), their impairments from any approved 303(d) list and any appropriate TMDL or alternate water quality study; and

4. The following shall be provided as an attachment to the NOI:

   a. a description of the best management practices (BMPs) to be implemented and the measurable goals for each of the storm water minimum control measures in paragraph IV. B. of this permit designed to reduce the discharge of pollutants to the maximum extent practicable;

b. the month and year in which you implemented any BMPs of the six minimum control measures, and the month and year in which you will start and fully implement any new minimum control measures or indicate the frequency of the action;

c. for existing permittees, provide adequate information or justification on any BMPs from previous NOIs that could not be implemented; and

d. identification of a local qualifying program, or any partners of the program if any.

5. For existing permittees, certification that states the permittee has implemented necessary BMPs of the six minimum control measures.

C. All required information for the NOI shall be submitted electronically to the following email and office addresses:
epa.ms4noipermit@illinois.gov

Illinois Environmental Protection Agency
Division of Water Pollution Control
Permit Section
Post Office Box 19276
Springfield, Illinois 62794-9276

D. Shared Responsibilities

You may partner with other MS4s to develop and implement your storm water management program. You may also jointly submit an NOI with one or more MS4s. Each MS4 must fill out the NOI form. The description of your storm water management program must clearly describe which permittees are responsible for implementing each of the control measures. Each permittee is responsible for implementation of Best Management Practices for the Storm Water Management Program within its jurisdiction.

PART III. SPECIAL CONDITIONS

A. Your discharges, alone or in combination with other sources, shall not cause or contribute to a violation of any applicable water quality standard outlined in 35 Ill. Adm. Code 302.

B. If there is evidence indicating that the storm water discharges authorized by this permit cause, or have the reasonable potential to cause or contribute to a violation of water quality standards, you may be required to obtain an individual permit or an alternative general permit or the permit may be modified to include different limitations and/or requirements.

C. If a total maximum daily load (TMDL) allocation or watershed management plan is approved for any water body into which you discharge, you must review your storm water management program to determine whether the TMDL or watershed management plan includes requirements for control of storm water discharges. If you are not meeting the TMDL allocations, you must modify your storm water management program to implement the TMDL or watershed management plan within eighteen months of notification by the Agency of the TMDL or watershed management plan approval. Where a TMDL or watershed management plan is approved, you must:

1. Determine whether the approved TMDL is for a pollutant likely to be found in storm water discharges from your MS4.

2. Determine whether the TMDL includes a pollutant waste load allocation (WLA) or other performance requirements specifically for storm water discharge from your MS4.

3. Determine whether the TMDL addresses a flow regime likely to occur during periods of storm water discharge.

4. After the determinations above have been made and if it is found that your MS4 must implement specific WLA provisions of the TMDL, assess whether the WLAs are being met through implementation of existing storm water control measures or if additional control measures are necessary.

5. Document all control measures currently being implemented or planned to be implemented to comply with TMDL waste load allocation(s). Also include a schedule of implementation for all planned controls. Document the calculations or other evidence that shows that the WLA will be met.

6. Describe and implement a monitoring program to determine whether the storm water controls are adequate to meet the WLA.

7. If the evaluation shows that additional or modified controls are necessary, describe the type and schedule for the control additions/revisions.

8. Continue Paragraphs 4 above through 7 until two continuous monitoring cycles show that the WLAs are being met or that WQ standards are being met.

D. If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and effect. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earlier of:

1. Reissuance or replacement of this permit, at which time you must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or

2. Your submittal of a Notice of Termination; or

3. Issuance of an individual permit for your discharges; or

4. A formal permit decision by the Agency not to reissue this general permit at which time you must seek coverage under an alternative general permit or an individual permit.

5. The permittee shall submit a revised or updated NOI to the Agency no later than 180 days prior to the expiration date of this permit in order for permit coverage to be administratively continued.

E. The Agency may require any person authorized to discharge by this permit to apply for and obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Agency to take action under this paragraph. The Agency may require any owner or operator authorized to discharge under this permit to apply for an individual NPDES permit only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. The Agency may grant additional time to submit the application upon request of the applicant. If an owner or operator fails to submit in a timely manner an individual NPDES permit application required by the Agency under this paragraph, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified for application submittal.

F. Any owner or operator authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. The owner or operator shall submit an individual application with reasons supporting the request, in accordance with the requirements of 40 CFR 122.26, to the Agency. The request will be granted by issuing an individual permit or an alternative general permit if the reasons cited by the owner or operator are adequate to support the request.

G. When an individual NPDES permit is issued to an owner or operator otherwise subject to this permit, or the owner or operator is approved for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the issue date of the individual permit or the date of approval for coverage under the alternative general permit, whichever the case may be.

H. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied coverage under an alternative NPDES general permit the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Agency.

PART IV. STORM WATER MANAGEMENT PROGRAMS

A. Requirements

The permittee must develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from your small municipal separate storm sewer system to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Illinois Pollution Control Board Rules and Regulations (35 Ill. Adm. Code, Subtitle C, Chapter 1) and the Clean Water Act. Your storm water management program must include the minimum control measures described in section B of this Part. For new permittees, the permittee must develop and implement a program by the date specified in your coverage letter. The U.S. Environmental Protection Agency's National Menu of Storm Water Best Management Practices (http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm) and the most recent version of the Illinois Urban Manual should be consulted regarding the selection of appropriate BMPs.

B. Minimum Control Measures

The 6 minimum control measures to be included in your storm water management program are:

1. Public education and outreach on storm water impacts

The permittee must:

a. implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff; the permittee should incorporate into its education materials information about green infrastructure strategies such as green roofs, rain gardens, rain barrels, bioswales, permeable piping, dry wells and permeable pavement, that mimic natural processes and direct storm water to areas where it can be infiltrated, evapotranspirated or reused, discuss the benefits and costs of such strategies and provide guidance to the public on how to implement them; and

b. define appropriate BMPs for this minimum control measure and measurable goals for each BMP. These measurable goals must ensure the reduction of all of the pollutants of concern in your storm water discharges to the maximum extent practicable.

2. Public Involvement/Participation

The permittee must:

a. at a minimum, comply with State and local public notice requirements when implementing a public involvement/ participation program; and

b. define appropriate BMPs for this minimum control measure and measurable goals for each BMP, which must ensure the reduction of all of the pollutants of concern in your storm water discharges to the maximum extent practicable.

3. Illicit discharge detection and elimination

The permittee must:

a. develop, implement and enforce a program to detect and eliminate illicit discharges into your small MS4;

b. develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters that receive discharges from those outfalls;

c. to the extent allowable under state or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into your storm sewer system and implement appropriate enforcement procedures and actions, including enforceable requirements for the prompt reporting to the MS4 of all releases, spills and other unpermitted discharges to the separate storm sewer system, and a program to respond to such reports in a timely manner.

d. develop, implement, and adequately fund a plan to detect and address non-storm water discharges, including illegal dumping, to your system;

e. inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste and the requirement and mechanism for reporting such discharges;

f. address the categories of non-storm water discharges listed in Section I.B.2 only if you identify them as significant contributor of pollutants to your small MS4 (discharges or flows from the fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the United States); and

g. define appropriate BMPs for this minimum control measure and measurable goals for each BMP. These measurable goals must ensure the reduction of all of the pollutants of concern in your storm water discharges to the maximum extent practicable.

h. conduct periodic (annual is recommended) inspections of the storm sewer outfalls for detection of non-storm water discharges and illegal dumping.

4. Construction site storm water runoff control

The permittee must:

a. develop, implement, and enforce a program to reduce pollutants in any storm water runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Control of storm water discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more or has been designated by the permitting authority.

Your program must include the development and implementation of, at a minimum:

i. an ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under state or local law;

ii. requirements for construction site operators to implement appropriate erosion and sediment control best management practices, including green infrastructure storm water management techniques where appropriate and practicable;

iii. requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

iv. require all regulated construction sites to have a storm water pollution prevention plan that meets the requirements of Part IV of NPDES permit No. ILR10 including management practices, controls, and other provisions at least as protective as the requirements contained in the Illinois Urban Manual, 2002, or as amended including green infrastructure techniques where appropriate and practicable;

v. procedures for site plan review which incorporate consideration of potential water quality impacts and review of individual pre-construction site plans to ensure consistency with local sediment and erosion control requirements;

vi. procedures for receipt and consideration of information submitted by the public; and

vii. procedures for site inspections and enforcement of control measures.

b. define appropriate BMPs for this minimum control measure and measurable goals for each BMP. These measurable goals must ensure the reduction of all of the pollutants of concern in your storm water discharges to the maximum extent practicable.

5. Post-construction storm water management in new development and redevelopment

The permittee must:

a. develop, implement, and enforce a program to address and minimize storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale or that have been designated to protect water quality, that discharge into your small MS4 within the MS4 jurisdictional control. Your program must ensure that appropriate controls are in place that would protect water quality and reduce the discharge of pollutants to the maximum extent practicable. In addition, each permittee should adopt strategies that incorporate storm water infiltration, reuse and evapotranspiration of storm water into the project to the maximum extent practicable;

b. develop and implement strategies which include a combination of structural and/or non-structural BMPs appropriate for all projects within your community for all new development and redevelopment that will reduce the discharge of pollutants, the volume and velocity of storm water flow to the maximum extent practicable. When selecting BMPs to comply with requirements contained in this Part, the permittee should adopt one or more of the following general strategies, in order of preference. Proposal of a strategy should include a rationale for not selecting an approach from among those with a higher preference. When approving a plan for development, redevelopment, highway construction, maintenance, replacement or repair on existing developed sites or other land disturbing activity covered under this Part, the permittee should require the person responsible for that activity to adopt one or more of these strategies, in order of preference, or provide a rationale for selecting a more preferred strategy.

i. preservation of the natural features of development sites, including natural storage and infiltration characteristics;

ii. preservation of existing natural streams, channels, and drainage ways,

iii. minimization of new impervious surfaces;

iv. conveyance of storm water in open vegetated channels;

v. construction of structures that provide both quantity and quality control, with structures serving multiple sites being preferable to those serving individual sites; and

vi. construction of structures that provide only quantity control, with structures serving multiple sites being preferable to those serving individual sites.

c. develop and implement a program to minimize the volume of storm water runoff and pollutants from public highways, streets, roads, parking lots and sidewalks (public surfaces) through the use of BMPs that alone or in combination result in physical, chemical or biological pollutant load reduction, increased infiltration, evapotranspiration and reuse of storm water. The program shall include, but not be limited to the following elements:

i. appropriate training for all MS4 employees who manage or are directly involved in (or who retain others who manage or are directly involved in) the routine maintenance, repair or replacement of public surfaces in current green infrastructure or low impact design techniques applicable to such projects.

ii. appropriate training for all contractors retained to manage or carry out routine maintenance, repair or replacement of public surfaces in current green infrastructure or low impact design techniques applicable to such projects. Contractors may provide training to their employees for projects which include green infrastructure or low impact design techniques.

d. develop and implement a program to minimize the volume of storm water runoff and pollutants from existing privately owned developed property that contributes storm water to the MS4 within the MS4 jurisdictional control. Such program may contain the following elements:

I. source identification – establishment of an inventory of storm water and pollutants discharged to the MS4

II. implementation of appropriate BMPs to accomplish the following:

A. education on green infrastructure BMPs
B. identify a relevant set of BMPs for all departments
C. evaluation of existing flood control techniques to determine the feasibility of pollution control retrofits
D. implementation of additional controls for special events expected to generate significant pollution (fairs, parades, performances)
E. implementation of appropriate maintenance programs, including maintenance agreements, for structural pollution control devices or systems
F. management of pesticides and fertilizers
G. street cleaning in targeted areas

e. use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects, public surfaces and existing developed property as set forth above to the extent allowable under state or local law; and

f. require all regulated construction sites to have post-construction management plans that meets or exceeds the requirements of Section IV (D)(2)(b) of NPDES permit No. ILR10 including management practices, controls, and other provisions at least as protective as the requirements contained in the Illinois Urban Manual, 2002;

g. ensure adequate long-term operation and maintenance of BMPs; and

h. define appropriate BMPs for this minimum control measure and measurable goals for each BMP. These measurable goals must ensure the reduction of all of the pollutants of concern in your storm water discharges to the maximum extent practicable.

6. Pollution prevention/good housekeeping for municipal operations

The permittee must:

a. develop and implement an operation and maintenance program that includes a training component and is designed to prevent and reduce the discharge of pollutants to the maximum extent practicable;

b. using training materials that are available from EPA, the state of Illinois, or other organizations, your program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, operation of storage yards, snow disposal, new construction and land disturbances, and storm water system maintenance procedures for proper disposal of street cleaning debris and catch basin material, address ways that flood management projects impact water quality, non-point source pollution control, green infrastructure controls, and aquatic habitat; and

c. define appropriate BMPs for this minimum control measure and measurable goals for each BMP. These measurable

goals must ensure the reduction of all of the pollutants of concern in your storm water discharges to the maximum extent practicable.

C. Qualifying State, County, or Local Program

If an existing qualifying local program requires you to implement one or more of the minimum control measures of B. above, you may follow that qualifying program's requirements rather than the requirements of B. above. A qualifying local program is a local, county or state municipal storm water management program that imposes, at a minimum, the relevant requirements of Section B. Any qualifying local programs that you intend to follow shall be specified in your storm water management plan.

D. Sharing Responsibility

1. Implementation of one or more of the minimum measures may be shared with another entity, or the entity may fully take over the measure. You may rely on another entity only if:

   a. the other entity, in fact, implements the control measure;

   b. the particular control measure, or component of that measure is at least as stringent as the corresponding permit requirement;

   c. the other entity agrees to implement the control measure on your behalf. Written acceptance of this obligation is expected. This obligation must be maintained as part of the description of your storm water management program. If the other entity agrees to report on the minimum measure, you must supply the other entity with the reporting requirements contained in Section V (C) of this permit. If the other entity fails to implement the control measure on your behalf, then you remain liable for any discharges due to that failure to implement.

E. Reviewing and Updating Storm Water Management Programs

1. Storm Water Management Program Review: You must do an annual review of your Storm Water Management Program in conjunction with preparation of the annual report required under Part V.(C).

2. Storm Water Management Program Update: You may change your Storm Water Management Program during the life of the permit in accordance with the following procedures:

   a. changes adding (but not subtracting or replacing) components, controls, or requirements to the Storm Water Management Program may be made at any time upon written notification to the Agency; and

   b. changes replacing an ineffective or unfeasible BMP specifically identified in the Storm Water Management Program with an alternate BMP may be requested at any time. Unless denied by the Agency, changes proposed in accordance with the criteria below shall be deemed approved and may be implemented 60 days from submittal of the request. If request is denied, the Agency will send you a written response giving a reason for the decision. Your modification requests must include the following:

      i. an analysis of why the BMP is ineffective or infeasible (including cost prohibitive);

      ii. expectations on the effectiveness of the replacement BMP; and

      iii. an analysis of why the replacement BMP is expected to achieve the goals of the BMP to be replaced.

   c. changes replacing or modifying any ordinances relative to the storm water management program;

   d. change requests or notifications must be made in writing and signed in accordance with Standard Condition II of Attachment H.

3. Storm Water Management Program Updates Required by the Agency. The Agency may require changes to the Storm Water Management Program as needed to:

   a. address impacts on receiving water quality caused, or contributed to, by discharges from the municipal separate storm sewer system;

   b. include more stringent requirements necessary to comply with new federal statutory or regulatory requirements; or

   c. include such other conditions deemed necessary by the Agency to comply with the goals and requirements of the Clean Water Act.

d. changes requested by the Agency must be made in writing, set forth the time schedule for you to develop the changes, and offer you the opportunity to propose alternative program changes to meet the objective of the requested modification. All changes required by the Permitting Authority will be made in accordance with 40 CFR 124.5, 40 CFR 122.62, or as appropriate 40 CFR 122.63.

PART V. MONITORING, RECORDKEEPING AND REPORTING

A. Monitoring

The permittee must evaluate program compliance, the appropriateness of your identified best management practices, and progress towards achieving your identified measurable goals, which must include reducing the discharge of pollutants to the maximum extent practicable (MEP). Monitoring shall include at least annual monitoring of receiving waters upstream and downstream of the MS4 discharges, use of indicators to gauge the effects of storm water discharges on the physical/habitat-related aspects of the receiving waters, and/or monitoring of the effectiveness of BMPs.

B. Recordkeeping

The permittee must keep records required by this permit for the duration of this permit. All records shall be kept onsite or locally available and shall be made accessible to the Agency for review at the time of an on-site inspection. Except as otherwise provided in this permit , you must submit your records to the Agency only when specifically asked to do so. You must post your notice of intent (NOI), your storm water management plan and your annual reports on your website. You must make your records, including your notice of intent (NOI) and your storm water management plan, available to the public at reasonable times during regular business hours within 10 working days of its approval by the permitting authority. (You may assess a reasonable charge for copying. You may require a member of the public to provide advance notice, not to exceed seven working days.) Storm sewer maps may be withheld for security reasons.

C. Reporting

The permittee must submit annual reports to the Agency by the first day of June for each year that this permit is in effect. If the permittee maintains a website, a copy of the annual report shall be posted on the website by the first day of June of each year. Each report shall cover the period from March of the previous year through March of the current year. Your report must include:

1. The status of compliance with permit conditions, an assessment of the appropriateness of your identified best management practices and progress towards achieving the statutory goal of reducing the discharge of pollutants to the MEP, and your identified measurable goals for each of the minimum control measures;

2. Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

3. A summary of the storm water activities you plan to undertake during the next reporting cycle (including an implementation schedule);

4. A change in any identified best management practices or measurable goals that apply to the program elements; and

5. Notice that you are relying on another government entity to satisfy some of your permit obligations (if applicable).

6. The annual reports shall be submitted to the following email and office addresses: epa.ms4annualinsp@illinois.gov .

Illinois Environmental Protection Agency
Division of Water Pollution Control
Compliance Assurance Section
Municipal Annual Inspection Report
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

PART VI. DEFINITIONS AND ACRONYMS (SEE ALSO SPECIAL CONDITIONS)

All definitions contained in Section 502 of the Clean Water Act, 40 CFR 122, and 35 Ill. Adm. Code 309 shall apply to this permit and are incorporated herein by reference. For convenience, simplified explanations of some regulatory/statutory definitions have been provided, but in the event of a conflict, the definition found in the statute or regulation takes precedence.

Best Management Practices (BMPs) means structural or nonstructural controls, schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

BMP is an acronym for "Best Management Practices."

CFR is an acronym for "Code of Federal Regulations."

Control Measure as used in this permit, refers to any Best Management Practice or other method used to prevent or reduce storm water runoff or the discharge of pollutants to waters of the State.

CWA or The Act means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483 and Pub. L. 97-117, 33 U.S.C. 1251 et. seq.

Discharge, when used without a qualifier, refers to discharge of a pollutant as defined at 40 CFR 122.2.

Green Infrastructure means wet weather management approaches and technologies that utilize, enhance or mimic the natural hydrologic cycle processes of infiltration, evapotranspiration and reuse. Green infrastructure approaches currently in use include green roofs, trees and tree boxes, rain gardens, vegetated swales, pocket wetlands, infiltration planters, porous and permeable pavements, porous piping systems, dry wells, vegetated median strips, reforestation/revegetation, rain barrels and cisterns and protection and enhancement of riparian buffers and floodplains.

Illicit Connection means any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

Illicit Discharge is defined at 40 CFR 122.26(b)(2) and refers to any discharge to a municipal separate storm sewer that is not composed entirely of storm water, except discharges authorized under an NPDES permit (other than the NPDES permit for discharges from the MS4) and discharges resulting from fire fighting activities.

MEP is an acronym for "Maximum Extent Practicable," the technology-based discharge standard for Municipal Separate Storm Sewer Systems to reduce pollutants in storm water discharges that was established by CWA Section 402(p). A discussion of MEP as it applies to small MS4s is found at 40 CFR 122.34.

MS4 is an acronym for "Municipal Separate Storm Sewer System" and is used to refer to a Large, Medium, or Small Municipal Separate Storm Sewer System (e.g. "the Dallas MS4"). The term is used to refer to either the system operated by a single entity or a group of systems within an area that are operated by multiple entities (e.g., the Houston MS4 includes MS4s operated by the city of Houston, the Texas Department of Transportation, the Harris County Flood Control District, Harris County, and others).

Municipal Separate Storm Sewer is defined at 40 CFR 122.26(b)(8) and means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the United States; (ii) Designed or used for collecting or conveying storm water; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

NOI is an acronym for "Notice of Intent" to be covered by this permit and is the mechanism used to "register" for coverage under a general permit.

NPDES is an acronym for "National Pollutant Discharge Elimination System."

Outfall is defined at 40 CFR 122.26(b)(9) and means a point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

Owner or Operator is defined at 40 CFR 122.2 and means the owner or operator of any "facility or activity" subject to regulation under the NPDES program.

Permitting Authority means the Illinois EPA.

Point Source is defined at 40 CFR 122.2 and means any discernable, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Qualifying Local Program is defined at 40 CFR 122.34(c) and means a local, state, or Tribal municipal storm water management program that imposes, at a minimum, the relevant requirements of paragraph (b) of Section 122.34.

Small Municipal Separate Storm Sewer System is defined at 40 CFR 122.26(b)(16) and refers to all separate storm sewers that are owned or operated by the United States, a State [sic], city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State [sic] law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the United States, but is not defined as "large" or "medium" municipal separate storm sewer system. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

Storm Water is defined at 40 CFR 122.26(b)(13) and means storm water runoff, snowmelt runoff, and surface runoff and drainage.

Storm Water Management Program (SWMP) refers to a comprehensive program to manage the quality of storm water discharged from the municipal separate storm sewer system.

SWMP is an acronym for "Storm Water Management Program."

TMDL is an acronym for "Total Maximum Daily Load."

Waters (also referred to as waters of the state or receiving water) is defined at Section 301.440 of Title 35: Subtitle C: Chapter I of the Illinois Pollution Control Board Regulations and means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon the State of Illinois, except that sewers and treatment works are not included except as specially mentioned; provided, that nothing herein contained shall authorize the use of natural or otherwise protected waters as sewers or treatment works except that in-stream aeration under Agency permit is allowable.

"You" and "Your" as used in this permit is intended to refer to the permittee, the operator, or the discharger as the context indicates and that party's responsibilities (e.g., the city, the country, the flood control district, the U.S. Air Force, etc.).

Attachment H
Standard Conditions
Definitions

Act means the Illinois Environmental Protection Act, 415 ILCS 5 as Amended.

Agency means the Illinois Environmental Protection Agency.

Board means the Illinois Pollution Control Board.

Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) means Pub. L. 92-500, as amended. 33 U.S.C. 1251 et seq.

NPDES (National Pollutant Discharge Elimination System) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318 and 405 of the Clean Water Act.

USEPA means the United States Environmental Protection Agency.

Daily Discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurements, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

Maximum Daily Discharge Limitation (daily maximum) means the highest allowable daily discharge.

Average Monthly Discharge Limitation (30 day average) means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

Average Weekly Discharge Limitation (7 day average) means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Aliquot means a sample of specified volume used to make up a total composite sample.

Grab Sample means an individual sample of at least 100 milliliters collected at a randomly-selected time over a period not exceeding 15 minutes.

24 Hour Composite Sample means a combination of at least 8 sample aliquots of at least 100 milliliters, collected at periodic intervals during the operating hours of a facility over a 24-hour period.

8 Hour Composite Sample means a combination of at least 3 sample aliquots of at least 100 milliliters, collected at periodic intervals during the operating hours of a facility over an 8-hour period.

Flow Proportional Composite Sample means a combination of sample aliquots of at least 100 milliliters collected at periodic intervals such that either the time interval between each aliquot or the volume of each aliquot is proportional to either the stream flow at the time of sampling or the total stream flow since the collection of the previous aliquot.

(1) **Duty to comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, permit termination, revocation and reissuance, modification, or for denial of a permit renewal application. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

(2) **Duty to reapply.** If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. If the permittee submits a proper application as required by the Agency no later than 180 days prior to the expiration date, this permit shall continue in full force and effect until the final Agency decision on the application has been made.

(3) **Need to halt or reduce activity not a defense.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(4) **Duty to mitigate.** The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(5) **Proper operation and maintenance.** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up, or auxiliary facilities, or similar systems only when necessary to achieve compliance with the conditions of the permit.

(6) **Permit actions.** This permit may be modified, revoked and reissued, or terminated for cause by the Agency pursuant to 40 CFR 122.62. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) **Property rights.** This permit does not convey any property rights of any sort, or any exclusive privilege.

(8) **Duty to provide information.** The permittee shall furnish to the Agency within a reasonable time, any information which the Agency may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with the permit. The permittee shall also furnish to the Agency, upon request, copies of records required to be kept by this permit.

(9) **Inspection and entry.** The permittee shall allow an authorized representative of the Agency, upon the presentation of credentials and other documents as may be required by law, to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(d) Sample or monitor at reasonable times, for the purpose of assuring permit compliance, or as otherwise authorized by the Act, any substances or parameters at any location.

(10) **Monitoring and records.**

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records, and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of this permit, measurement, report or application. This period may be extended by request of the Agency at any time.

(c) Records of monitoring information shall include:

(1) The date, exact place, and time of sampling or measurements;

(2) The individual(s) who performed the sampling or measurements;

(3) The date(s) analyses were performed;

(4) The individual(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

(d) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit. Where no test procedure under 40 CFR Part 136 has been approved, the permittee must submit to the Agency a test method for approval. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals to ensure accuracy of measurements.

(11) **Signatory requirement.** All applications, reports or information submitted to the Agency shall be signed and certified.

(a) **Application.** All permit applications shall be signed as follows:

(1) **For a corporation:** by a principal executive officer of at least the level of vice president or a person or position having overall responsibility for environmental matters for the corporation;

(2) **For a partnership or sole proprietorship:** by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

(b) **Reports.** All reports required by permits, or other information requested by the Agency shall be signed by a person described in paragraph (a) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a); and

(c) **Changes of Authorization.** If an authorization under (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of (b) must be submitted to the Agency prior to or together with any reports, information, or applications to be signed by an authorized representative.

(12) **Reporting requirements.**

(a) **Planned changes.** The permittee shall give notice to the Agency as soon as possible of any planned physical alterations or additions to the permitted facility.

(b) **Anticipated noncompliance.** The permittee shall give advance notice to the Agency of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) **Compliance schedules.** Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(d) **Monitoring reports.** Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR).

(2) If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

(3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Agency in the permit.

(e) **Twenty-four hour reporting.** The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times; and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The following shall be included as information which must be reported within 24 hours:

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(2) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Agency in the permit to be reported within 24 hours.

The Agency may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(f) **Other noncompliance.** The permittee shall report all instances of noncompliance not reported under paragraphs (12)(c), (d), or (e), at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (12)(e).

(g) **Other information.** Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application, or in any report to the Agency, it shall promptly submit such facts or information.

(13) **Transfer of permits.** A permit may be automatically transferred to a new permittee if:

(a) The current permittee notifies the Agency at least 30 days in advance of the proposed transfer date;

(b) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage and liability between the current and new permittees; and

(c) The Agency does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement.

(2) The authorization specifies either an individual or a position responsible for the overall operation of the facility, from which the discharge originates, such as a plant manager, superintendent or person of equivalent responsibility; and

(3) The written authorization is submitted to the Agency.

(14) All manufacturing, commercial, mining, and silvicultural dischargers must notify the Agency as soon as they know or have reason to believe:

(a) That any activity has occurred or will occur which would result in the discharge of any toxic pollutant identified under Section 307 of the Clean Water Act which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

(1) One hundred micrograms per liter (100 ug/l);

(2) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6 dinitrophenol; and one milligram per liter (1 mg/l) for antimony.

(3) Five (5) times the maximum concentration value reported for that pollutant in the NPDES permit application; or

(4) The level established by the Agency in this permit.

(b) That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the NPDES permit application.

(15) All Publicly Owned Treatment Works (POTWs) must provide adequate notice to the Agency of the following:

(a) Any new introduction of pollutants into that POTW from an indirect discharge which would be subject to Sections 301 or 306 of the Clean Water Act if it were directly discharging those pollutants; and

(b) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

(c) For purposes of this paragraph, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(16) If the permit is issued to a publicly owned or publicly regulated treatment works, the permittee shall require any industrial user of such treatment works to comply with federal requirements concerning:

(a) User charges pursuant to Section 204(b) of the Clean Water Act, and applicable regulations appearing in 40 CFR 35;

(b) Toxic pollutant effluent standards and pretreatment standards pursuant to Section 307 of the Clean Water Act; and

(c) Inspection, monitoring and entry pursuant to Section 308 of the Clean Water Act.

(17) If an applicable standard or limitation is promulgated under Section 301(b)(2)(C) and (D), 304(b)(2), or 307(a)(2) and that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked, and reissued to conform to that effluent standard or limitation.

(18) Any authorization to construct issued to the permittee pursuant to 35 Ill. Adm. Code 309.154 is hereby incorporated by reference as a condition of this permit.

(19) The permittee shall not make any false statement, representation or certification in any application, record, report, plan or other document submitted to the Agency or the USEPA, or required to be maintained under this permit.

(20) The Clean Water Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed $10,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing Sections 301, 302, 306, 307, or 308 of the Clean Water Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or both.

(21) The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under permit shall, upon conviction, be punished by a fine of not more than $10,000 per

violation, or by imprisonment for not more than 6 months per violation, or by both.

(22) The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit shall, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

(23) Collected screening, slumes, sludges, and other solids shall be disposed of in such a manner as to prevent entry of those wastes (or runoff from the wastes) into waters of the State. The proper authorization for such disposal shall be obtained from the Agency and is incorporated as part hereof by reference.

(24) In case of conflict between these standard conditions and any other condition(s) included in this permit, the other condition(s) shall govern.

(25) The permittee shall comply with, in addition to the requirements of the permit, all applicable provisions of 35 Ill. Adm. Code, Subtitle C, Subtitle D, Subtitle E, and all applicable orders of the Board.

(26) The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit is held invalid, the remaining provisions of this permit shall continue in full force and effect.

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