

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

NOTICE OF FILING

To: John Therriault, Clerk
Marie Tipsord, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street - Suite 11-500
Chicago, IL 60601

SEE ATTACHED SERVICE LIST

Please take notice that on June 24, 2013, we filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the attached **Pre-Filed Questions of Scott Twait**, a copy of which is served upon you.

CITGO PETROLEUM CORPORATION, and
PDV MIDWEST, LLC, Petitioners

By: 

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PRE-FILED QUESTIONS OF SCOTT TWAIT

Citgo Petroleum Corporation and PDV Midwest Refining, LLC (hereafter “the Lemont Refinery”), submit these questions in response to the pre-filed testimony of Scott Twait, which was submitted by the Illinois Environmental Protection Agency (“Agency”) on May 24, 2013. These questions focus on the Water Quality Standards proposed by the Agency and their potential applicability to a portion of the Chicago Sanitary and Ship Canal (“Ship Canal”). Specifically, from the confluence of the Ship Canal with the Cal-Sag Canal downstream to the southern end of the Regulated Navigation Area as designated by the United States Coast Guard, at river mile 295.5. For purposes of these questions that segment of the Ship Canal will be defined as the “Lower Ship Canal through the Safety Zone”.

Mr. Twait, I represent the Lemont Refinery, owned by PDV Midwest Refining and operated by Citgo, Inc., and have several questions for you today.

1. Is it correct that you have previously testified in this rulemaking proceeding?
 - (a) If so, what were the dates of that prior testimony?
 - (b) What topics did you testify about?
2. Today you are testifying on behalf of the Agency?

3. Will your testimony here cover your pre-filed testimony? As well as the Agency's revised proposal for Water Quality Standards for the CAWS and Lower Des Plaines River?

4. Aren't there actually two different Use Attainability Analyses that were done, one for the CAWS and one for the Lower Des Plaines River?

5. Does the Agency expect to call other witnesses to provide testimony regarding this Docket concerning the proposed Water Quality Standards?

6. And you are aware, are you not, that in its First Notice Opinion and Order in Docket C the Board established three different "uses" for these water bodies?

7. Is it correct that even though the Board adopted three different "uses" for the water ways at issue in this proceeding, the Agency only proposed one set of Water Quality Standards?

(a) And, except for temperature and dissolved oxygen, the proposed standards are identical to each other, correct?

(b) Also, those proposed standards are different from the standards now in Subpart D, which are the water quality standards for Secondary Contact and Indigenous Species, correct?

8. Why has the Agency proposed to treat all of these water segments the same way while recognizing that there are very different uses of them?

9. Referring now to my client, are you generally familiar with the water discharges of the Lemont Refinery?

(a) Please describe your general knowledge?

10. You are aware, with respect to the Lemont Refinery, that:

- (a) Its water intake is upstream of its discharge?
- (b) Pursuant to an NPDES permit it discharges into the Lower Ship Canal?
- (c) The discharge is at a point immediately upstream of the Safety Zone?
- (d) The discharge is within the Regulated Safety Zone?

11. For the convenience of the witness, the Board and interested parties, Attachment 1 to these questions is a depiction of the Regulated Navigation Zone.¹ Note the Regulated Navigation Zone extends from RM 295.5 to 297.2 and has three sections. The middle section is the “Black Safety Zone” which is where the electric fish barrier is located. The Black Safety Zone extends from RM 296.1 to 297.2. The upstream point of the Black Safety Zone begins approximately 0.1 miles downstream from the principal outfall of treated water from the Lemont Refinery. The water intake for the Lemont Refinery is 200 feet upstream of the outfall. Mr. Twait, have I properly described the information depicted on the Attachment?

- (a) If not, how would you modify that description?

12. Mr. Twait, prior to submitting your pre-filed testimony, have you ever seen a map of the Regulated Navigation Zone, the Black Safety Zone and their relationship to the water intake and outfall for the Lemont Refinery?

- (a) Were you in attendance at the Board hearing in Docket C when this Exhibit was presented along with the testimony of Mr. Jim Huff?
- (b) Have you reviewed this document before testifying today?

13. At the point of the upstream beginning of the Regulated Navigation Zone, isn't it true that the Lower Ship Canal is an “effluent dominated” stream?

¹ A copy of this document was attached to the Testimony of Jim Huff filed on February 2, 2011 as Attachment 1.

14. What portion of the flow in the Lower Ship Canal, during normal conditions, is from municipal wastewater treatment plants operated by the Metropolitan Water Reclamation District ("MWRDGC")?

15. Are you familiar with the concept of "population equivalents" in terms of water pollution control matters?

(a) If so, please describe what that means.

(b) Do you know how many "population equivalents" are being carried by the Lower Ship Canal at the point of the water intake for the Lemont Refinery?

16. In addition to treated wastewater, isn't this segment of the Lower Ship Canal also carrying pollutants from storm events?

(a) Combined Sewer Overflows?

(b) Storm water flows?

(c) And flows from run-off snow melt conditions?

17. How would you characterize the sediment quality in the Lower Ship Canal, both generally and specifically with respect to mercury contamination?

18. Does re-suspension of contaminated sediments occur? For example, by the action of barge traffic, high flow periods, and by the lowering of water levels in the Ship Canal?

(a) Would not this sediment re-suspension be entering the Lemont Refinery and others water intakes during these events?

19. Do you have any data on the levels of contaminants from the sources (identified in questions 16-18 above) in the Lower Ship Canal as it comes to the Regulated Navigation Area?

(a) As it comes to the intake for the Lemont Refinery?

20. Are you aware that the MWRDGC Lemont wastewater treatment plant discharges into the Lower Ship Canal at a point upstream of the Lemont Refinery?

21. Other than the Lemont Refinery and the MWRDGC Lemont wastewater treatment plant, are you aware of any other dischargers into the segment I have defined as the "Lower Ship Canal through the Regulated Safety Zone"?

(a) If so, please identify such discharger(s).

22. Isn't it true that the Lower Ship Canal has been identified by the Agency as a "Non-Recreation" use for purposes of recreational use designations?

(a) The Board accepted that "Non-Recreation" use designation, didn't it?

23. With respect to the use of the Lower Ship Canal:

(a) Isn't it true that in Docket C of this proceeding the Agency proposed that the Lower Ship Canal be designated as a "Use B" Aquatic Life use?

(b) The Board also made that Aquatic Life use designation in its First Notice ruling in Docket C, correct?

(c) Is it accurate that the Board proposed to define "Use B" as follows:

"These water are not presently capable of maintaining a balanced integrated, adaptive community of warm-water fish and macroinvertebrates due to irreversible modifications that result in limited physical habitat and stream hydrology. Such physical modifications are of long duration and may include artificially constructed channels consisting of vertical sheet-pile, concrete and rip-rap walls designed to support commercial navigation and the conveyance of stormwater and wastewater. These waters are capable of supporting primarily tolerant fish species, which may include, but are not limited to central mudminnow, golden shiner, bluntnose minnow, yellow bullhead and green sunfish..." Correct?

24. Do you agree or disagree with the Board's proposed definition in its First Notice decision of February 21, in Docket C of the Aquatic Life use designation for the Lower Ship Canal?

25. Under the existing regulations for the Lower Ship Canal, isn't that body of water referred to as a "Secondary Contact" water?

(a) What are the differences, if any, between Secondary Contact and "Use B Aquatic Uses"?

(b) What are the differences, if any, between "Non-Recreation and Secondary Contact"?

26. How are the uses listed for the Lower Ship Canal as a Secondary Contact water any different from the uses listed in Use B as proposed by the Board?

27. Please describe and contrast the different uses that exist under the Illinois Regulations between General Use waters, Use A waters and Use B waters.

28. Why are there different uses?

29. With respect to the following statement: "After designating uses, States must establish criteria sufficient to protect these uses."

(a) Did you consider it before or while you prepared your testimony?

(b) Do you agree with that statement?

30. With respect to the Lower Ship Canal and its uses, is there any other body of water that you are aware of which carries the wastewater load from millions of people and businesses that are part of one of the largest metropolitan areas in the country?

31. Is there any other canal or river or other body of water which has a Black Safety Zone? In Illinois? In the mid-west? In the United States? Please name each.

32. Are you aware of any other canal or river or other body of water which has a Regulated Navigation Zone? In Illinois? In the mid-west? In the United States? Please name each.

33. The Statement of Reasons filed by the Agency in 2007 had multiple attachments and exhibits, some of which included papers and information relating to various water quality standards. Does the Agency intend to supplement that list or add more documentation or testimony to support the proposed water quality standards?

34. Directing your attention to the proposed numerical water quality standards for a) chlorides; b) ammonia; and c) mercury:

(a) Does the record provide any information, reports, studies or testimony for the proposed water quality standard for chlorides?

(b) For the proposed water quality standard for ammonia, are there any additional reports, studies or testimony other than what appears in Attachment KK of the record?

(c) For the proposed water quality standard for mercury, are there any additional reports, studies or testimony other than what appears in Attachment Y of the record?

35. With respect to the reports, studies and/or testimony for ammonia [including Attachment KK]:

(a) Did any of those address necessary standards for aquatic life such as those in secondary contact waters in Illinois?

(b) Did any of those address necessary standards for aquatic life such as those identified by the Board in Docket C for "Use B" waters?

(c) How do any of those demonstrate that the existing water quality standard for ammonia is not protective of the aquatic uses as identified by the Board in Docket C?

36. With respect to the reports, studies and/or testimony relating to the proposed water quality standard for mercury:

- (a) Did any of those address necessary standards for aquatic life such as those in secondary contact waters in Illinois?
- (b) Did any of those address necessary standards for aquatic life such as those identified by the Board in Docket C for "Use B" waters?
- (c) How do any of those demonstrate that the existing water quality standard for mercury is not protective of the aquatic uses as identified by the Board in Docket C?
- (d) Do you agree that resuspension of sediment is a significant source of particulate mercury during periods when re-suspension occurs?
- (e) What is the basis for the Agency proposing total mercury for the Human Health Standard as opposed to dissolved mercury?
- (f) If re-suspension of sediment is causing total mercury concentrations to exceed 12 ng/L during periods when the flow is above the harmonic mean, does that mean no mixing zone for mercury will be allowed, and that an effluent limit of 12 ng/L mercury will be imposed on all dischargers?
- (g) Has the Agency considered the economic impact this total mercury HHS standard will have on existing dischargers?
- (h) Would not the economic burden be eliminated if the HHS standard were to apply to the dissolved form of mercury, so as to not make existing dischargers responsible historic sediment quality?
- (i) Would the economic burden be substantially reduced if the rules on "mixing zones" with respect to upgradient sources were changed or adjusted?
- (k) What would be the impact on biological resources if a mixing zone were allowed for point sources when the cause of exceedence of a water quality standard were due to non-point sources?

37. With respect to the proposed water quality standard for chlorides in the Lower

Ship Canal:

- (a) Why is the standard proposed for chlorides for Use B waters the same as what exists now for General Use waters?
- (b) To what extent is the proposed standard for chlorides needed?
- (c) Would not a different standard, based on the aquatic species present in the Use B waters be more appropriate?

- (d) Has the Agency evaluated what the necessary level for a Water Quality Standard is in the Lower Ship Canal? If so, what is it? If it has not, why?
- (e) Has the Agency determined if the Lower Ship Canal is already violating the proposed standard for the Lower Ship Canal, or into the upstream portions of the Ship Canal or the CAWS?
- (f) If so, has the Agency determined what the sources or causes of that condition are?
- (g) Does the Agency agree that the primary source of chlorides above 500 mg/L in the Lower Ship Canal is from highway de-icing practices within the City of Chicago?
- (h) If chlorides are above 500 mg/L, no mixing zone would be granted during these periods, is that correct?
- (i) Has the Agency considered the economic impact on the MWRDGC in having to meet a 500 mg/L chloride effluent limit during snow runoff periods?
- (j) Does the Agency intend to impose a 500 mg/L chloride effluent limit on the MWRDGC plants? If no, why not? If so, has the Agency evaluated the costs and feasibility of meeting the proposed chloride standard?
- (k) Does the Agency intend to regulate in any way the chloride levels in CSOs? In run-off from snow melt conditions?
- (l) Would the economic burden be substantially reduced if the rules on "mixing zones" with respect to upgradient sources were changed or adjusted?
- (m) What would be the impact on biological resources if a mixing zone were allowed for point sources when the cause of exceedence of a water quality standard were due to non-point sources?

38. Mr. Twait, turning to the proposed temperature water quality standard, didn't the Agency use the temperature during non-summer months in the effluent from the Stickney water treatment plant of the MWRDGC to set the proposed temperature standards in the Ship Canal?

- (a) Has the Agency considered using the levels of chloride in the effluent from the Stickney plant to establish the proposed water quality standard for the Lower Ship Canal?
- (b) Has the Agency considered using the levels of chloride in the CSO discharges in setting the chloride water quality standard for the Lower Ship Canal?

(c) Has the Agency considered using the level of mercury in the effluent from the Stickney plant to establish the proposed water quality standard for the Ship Canal?

(d) Would the Agency be willing to consider the same approach for mercury and chlorides that it has used for temperature with respect to the proposed water quality standards in the Lower Ship Canal?

39. Why is a standard for human health criterion proposed to be added to the aquatic toxicity rule (302.410) for discharges to Non-Recreation Waters?

40. How is the proposed amendment to 302.410 necessary to protect the uses of the Lower Ship Canal?

41. Are you aware that evidence in this record already shows that the proposed standards for mercury and chlorides are being exceeded, at least some of the time?

42. Isn't it true that the Lower Ship Canal immediately above the Safety Zone -- at the point of the Water Intake for the Lemont Refinery --- is an "effluent dominated" stream?

43. What portion of this "effluent dominated" flow at the Lemont Refinery intake is from each of the following:

(a) Current wastewater dischargers?

(b) From Combined Sewer Overflows?

(c) From re-suspension of sediments?

(d) From non-point source run-off such as snow-melt conditions?

44. In light of these factors concerning the Lower Ship Canal and the significant contributions of non-point sources to the pollutants in the Lower Ship Canal, why is the Agency not proposing a change to the "no mixing zone" rule?

45. Has the Agency considered a change to the “no mixing zone” rule as applied to the Lower Ship Canal?

46. In reviewing your pre-filed testimony, I see that you outlined what was in the proposed Water Quality Standards. I did not see any testimony justifying these proposals based on technical feasibility or economic reasonableness. Is that correct, that your testimony did not attempt to provide information on technical feasibility or economic reasonableness for the proposed changes?

47. Are you aware that the Lower Ship Canal, as it flows by the Lemont Refinery intake, exceeds the proposed chloride standard during certain times of the year? During times of snow-melt conditions?

48. Are you aware that the Lower Ship Canal, as it flows by the Lemont Refinery intake, exceeds the proposed mercury standard during certain times of the year?

(a) During times of higher run-off?

(b) Could those higher levels also be associated with disturbance of sediments by run-off, or by sudden changes in water levels?

(c) By barge traffic?

49. Under what circumstances is it technically feasible for a discharger to have “no mixing zone” due to upstream sources?

50. Does the Agency have any information on technical feasibility or economic reasonableness for mercury control when upstream sources cause the Lower Ship Canal, at the Lemont Refinery intake, to exceed the proposed standards?

51. Does the Agency have any information on technical feasibility or economic reasonableness for chloride control when upstream sources cause the Lower Ship Canal, at the Lemont Refinery intake, to exceed the proposed standards?

52. Why is the Agency proposing the Board adopt a new standard for ammonia nitrogen in the Lower Ship Canal?

53. Is the Agency aware dischargers have invested millions of dollars in order to meet the existing ammonia nitrogen standards?

54. What information does the Agency have to show that the existing standard has not provided aquatic protection to the identified species that were determined can be present within this water body?

55. Are the periods for Early Life Stages appropriate for these species?

56. With respect to the Agency proposal to apply Subpart F to Use B and the Lower Ship Canal through the proposed amendment to section 302.410(c):

(a) With respect to the proposed amendment to the rule entitled "Substances Toxic to Aquatic Life" and as that proposed standard might apply to the Lower Ship Canal, which is proposed to be a "Use B" water and has been designated as a "Non-Recreation" segment, what is the basis for deleting the existing test of "one-half of the 96 hour median tolerance limit...for native fish or essential fish food organisms in 302.410? Why is this existing rule not adequate to protect the species in the aquatic habitat for Use B and the Lower Ship Canal?

(b) With respect to the proposed addition to 302.410 (a)(1), what is the basis for applying the Acute Aquatic Toxicity Criterion as proposed? Are not the species to be considered in developing that criterion intolerant species? Those intolerant species are not the species which are not those listed by the Board in its proposed definition for Use B? Why is this amendment necessary to protect the species and the aquatic habitat of the Lower Ship Canal?

(c) With respect to the proposed addition to 302.410(a)(2), what is the basis for applying the Chronic Aquatic Toxicity Criterion as proposed? Aren't the species to be considered in developing that criterion intolerant species? Aren't those

species other than those listed by the Board in its proposed definition for Use B and the Lower Ship Canal? Why is this amendment necessary to protect the species and the aquatic habitat of the Lower Ship Canal?

(d) With respect to the proposed addition to 302.410(b), what is the basis for applying the Wild and Domestic Animal Protection Criterion as proposed? Are the species to be considered in developing that criterion not those which are found to be in the area of the Lower Ship Canal? Aren't those species other than those listed by the Board in its proposed definition for Use B and the Lower Ship Canal? Why is this amendment necessary to protect the species and the aquatic habitat of the Lower Ship Canal?

(e) With respect to the proposed addition of 302.410(c), what is the basis for applying the Human Threshold criterion? Or for applying a Human Non-threshold criterion? How is the addition of these criterion necessary to protect the aquatic habitat of the Lower Ship Canal?

(f) In calculating the Human Threshold Criterion and the Human Nonthreshold Criterion, will intolerant species be used? Will the actual aquatic species on which Use B is set be used?

(g) Doesn't Subpart F use only intolerant species? If so, would not the resulting calculation be one based on species that are very different from the species listed by the Board in its opinion for Docket C and the uses of the Lower Ship Canal?

(h) What is the justification for adding these criterion to the Aquatic Toxicity rule for Use B waters? What is the technical feasibility of the proposed change? The economic reasonableness of the proposed change?

(i) Would Subpart F be applied to the wastewater treatment plants of the MWRDGC?

57. Why are these water quality standards being proposed for the Regulated

Navigation Area?

(a) Does the Agency wish to improve the aquatic habitat in the Regulated Navigation Zone?

(b) Is such a measure prudent in light of the electric fish barrier, being now used to prohibit the migration of invasive species?

(c) Does the Agency oppose the use of invasive species barriers in the Lower Ship Canal?

58. Has the Agency considered the impact of the proposed water quality standards on the Lemont Refinery, to impose General Use standards on the Lower Ship Canal at the Regulated Navigation Zone?

59. With respect to the Lower Ship Canal, and Use B waters, would the Agency be willing to consider the following:

- (a) Leaving in place the existing water quality standards for mercury and ammonia nitrogen for the Secondary Contact waters?
- (b) Retaining the existing rule 302.410 without the additions proposed by the Agency;
- (c) Establishing a new provision for the mixing zone rules with respect to the Lower Ship Canal for chlorides and mercury, as pollutants created by sediments and snow melt run-off conditions from upstream point and non-point sources?

Dated: June 24, 2013

Respectfully submitted,

CITGO PETROLEUM CORPORATION, and
PDV MIDWEST, LLC

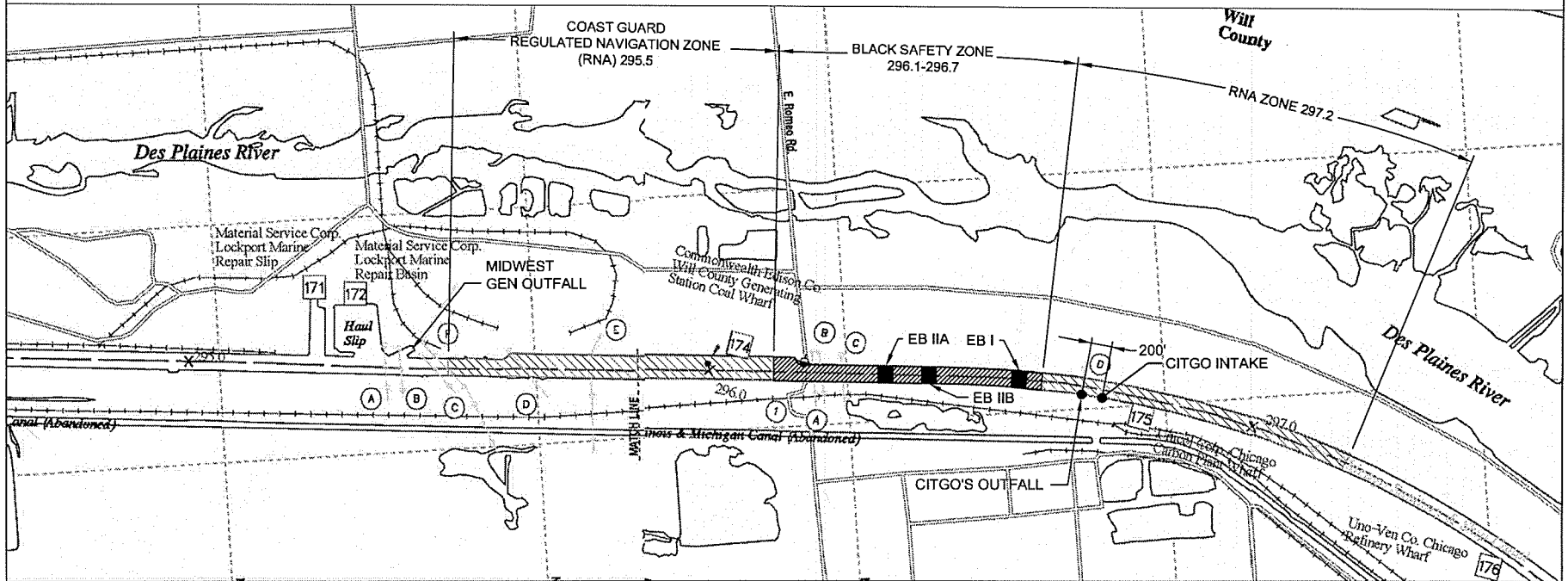
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ATTACHMENT 1

CADFILE: UAA



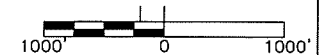
COAST GUARD (BLACK) SAFETY ZONE
RM 296.1 TO 296.7

COAST GUARD REGULATED NAVIGATION ZONE
RM 295.5 TO 297.2

CITGO'S OUTFALL RM 296.8 (0.1 MILES UPSTREAM OF THE BLACK ZONE)
EB - ELECTRIC BARRIER

 BLACK SAFETY ZONE

 REGULATED NAVIGATION ZONE



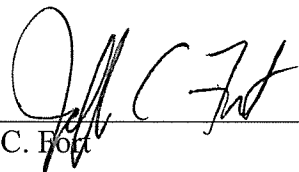
CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 24th day of June 2013. I have served electronically and first class mail the attached **Pre-Filed Questions of Scott Twait** and Notice of Filing upon the following person:

John Therriault, Clerk
Marie Tipsord, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
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and by U.S. Mail, first class postage prepaid, to the following persons:

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R08-09 (D)

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