

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

INGREDION INCORPORATED)	
Petitioner,)	
)	
v.)	PCB 19 – 32
)	(Time-Limited Water Quality Standard)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY)	
Respondent.)	

NOTICE OF FILING

TO: Don Brown	Brad Halloran
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500	100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)	(VIA ELECTRONIC MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a **SECOND JOINT MOTION TO STAY PROCEEDINGS**, a copy of which is herewith served upon you.

Respectfully submitted,

INGREDION INCORPORATED,
Petitioner,

Dated: March 31, 2021

By: /s/ Michael P. Murphy
 One of Its Attorneys

Michael P. Murphy
HEPLERBROOM, LLC
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CERTIFICATE OF SERVICE

I, the undersigned, on oath state the following:

That I have served the attached **SECOND JOINT MOTION TO STAY**

PROCEEDINGS via electronic mail upon:

Don Brown
Clerk of the Board
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
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Brad Halloran
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That my email address is Michael.Murphy@heplerbroom.com.

That the number of pages in the email transmission is 7 pages.

That the email transmission took place before 5:00 p.m. on the date of March 31, 2021.

/s/ Michael P. Murphy
Michael P. Murphy

Date: March 31, 2021

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SECOND JOINT MOTION TO STAY PROCEEDINGS

Respondent, Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by and through one of its attorneys, and Petitioner, Ingredion Incorporated (“Ingredion”), by and through its attorneys, HeplerBroom, LLC, jointly and respectfully request, pursuant to 35 ILL. ADM. CODE 101.500 and 101.514, that the Illinois Pollution Control Board (“Board”), by and through the Hearing Officer, stay the proceedings in this thermal time-limited water quality standard (“TLWQS”) matter. In support of this Second Joint Motion to Stay Proceedings, Illinois EPA and Ingredion state as follows:

1. On July 26, 2018, pursuant to Section 38.5 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/38.5, and 35 ILL. ADM. CODE Section 104.100 *et seq.*, Ingredion petitioned the Board for a single discharger TLWQS from the temperature standard adopted by the Board at 35 ILL. ADM. CODE Sections 302.408(b), (c), (d), (e), (f), and (h) (Use B temperature standards) for thermal discharges from Ingredion’s Argo Plant in Bedford Park, Illinois, into a portion of the Chicago Area Waterway System known as the Chicago Sanitary & Ship Canal.

2. On September 20, 2018, the Board issued an Order finding that Ingredion timely filed its Petition and that the temperature water quality standard is stayed as to Ingredion.

3. On July 25, 2019, the Board ruled that Ingredion's Petition substantially complied with the substantial or essential content requirements of 40 C.F.R. § 131.14, 415 ILCS 5/38.5, and 35 ILL. ADM. CODE 104.530.

4. The Board also ordered the Agency to submit a Recommendation regarding the Petition by September 9, 2019. *See* 35 ILL. ADM. CODE 104.545(b), 104.550(a).

5. On September 9, 2019, Ingredion and Illinois EPA filed a Joint Motion to Stay Proceedings. The joint motion included "a status report detailing the progress of the proceeding, contained "sufficient information detailing why a stay" was needed, and was "directed to the Board," as required by regulation. 35 ILL. ADM. CODE 101.514(a).

6. In the Joint Motion to Stay Proceedings, the Agency reported that it had been diligently reviewing information relating to its recommendation, but it needed additional time. Specifically, in light of the available data regarding Ingredion's thermal effluent, the Agency was unable to make an appropriate recommendation until it received temperature data from Ingredion encompassing two more winter seasons. The reduced number of temperature exceedances in 2018 and 2019 indicated perhaps other factors resulted in less need (or no need) for coverage under a TLWQS. Thus, the Agency needed to consider temperature data from the winter of 2019 and the winter of 2020 prior to being able to make an appropriate recommendation.

7. On September 19, 2019, the Board issued an Order granting the Joint Motion to Stay Proceedings and staying these proceedings until March 10, 2021. Ingredion was directed to file status reports including additional temperature data on or before March 10, 2020, September 10, 2020, and March 10, 2021. The Board further ordered that "[t]he stay of the temperature water quality standard remains in effect as to Ingredion during the stay."

8. Ingedion timely filed Status Reports containing the temperature data on March 10, 2020, September 10, 2020, and on March 10, 2021, at the close of the stay. *See* 35 Ill. Adm. Code 101.514(b) (“if the motion to stay is granted, at the close of the stay, the parties must file a status report.”)

9. This Second Joint Motion to Stay Proceedings is directed to the Hearing Officer pursuant to Section 101.514(b), which states that “[a]dditional requests for stay of the proceedings must be directed to the hearing officer.” 35 ILL. ADM. CODE 101.514(b).

10. The additional winter temperature data gathered during the stay preliminarily suggests, as previously observed, that perhaps other factors have resulted in less need (or no need) for coverage under a TLWQS. At this time, however, the data is being considered by the Agency along with the renewal of Ingedion’s NPDES Permit.

11. As discussed in Ingedion’s Petition for Time-Limited Water Quality Standard, on April 2, 2018, Ingedion submitted its application for the renewal of the Argo Plant’s NPDES Permit (Permit No. IL0041009). The application was attached to the Petition as Exhibit 3. The NPDES permit renewal remains pending. The renewal required studies regarding cooling water intake structure operations pursuant to 40 C.F.R. 125.90(b) and Section 316(b) of the Clean Water Act. *See* Exhibit 3 to the Petition, p. 5, Special Condition 13. The cooling water intake studies lasted 12 months, and the results are still being considered by the Agency in relation to the permit renewal.

12. The issue of thermal limits is also under consideration with respect to renewal of the NPDES Permit. In its renewal application, Ingedion attached a “Thermal Addendum” addressing the issue of thermal compliance modeling. While the Thermal Addendum is attached to the permit application as Attachment 2, for reference, it is also attached to this motion and marked as Exhibit D. In the Thermal Addendum, Ingedion indicated that while it has utilized a CORMIX-based model in

the past, it “is requesting to use the mass-balance calculational approach discussed below for determining on-going compliance with the applicable thermal water quality standards for the CSSC.” Exhibit D, p. 25. Ingridion proposed specific permit language regarding thermal limits. *Id.* at 26-27. Ingridion also discussed, as raised in this proceeding, the issue of “Influence of Upstream Discharger on Ingridion’s Future Compliance with the Use B Thermal Water Quality Standards.” *Id.* at 28.

13. At this time, Illinois EPA and Ingridion believe that, with additional consideration of the temperature data gathered during the stay, and additional analysis of potential language for the NPDES permit with respect to thermal limits, the issue of Ingridion’s thermal discharge can be addressed through appropriate permit language in the pending NPDES permit renewal. Further, Illinois EPA and Ingridion believe that if the temperature limits are adequately addressed in the reissued NPDES permit, then relief by way of a TLWQS may be unnecessary. Under these circumstances, the Agency cannot make an appropriate recommendation regarding the TLWQS until it is prepared to issue Ingridion’s NPDES permit renewal and can assess whether the TLWQS is necessary in light of both the additional data and the new permit language. It is expected that Ingridion’s NPDES permit will be reissued within the next nine months.

14. In light of the above, the Agency and Ingridion jointly request the Hearing Officer to stay these proceedings for a period of nine months, until December 1, 2021, so that the above-described analysis can be conducted. The stay of the temperature water quality standard as to Ingridion should remain in effect during the stay of these proceedings.

15. If the Hearing Officer grants the request for a stay of the proceedings, the parties can provide status updates during status hearings with the Hearing Officer, are willing to provide a written status update on July 15, 2021 (halfway through the requested stay), and will file a status report at the close of the stay pursuant to 35 ILL. ADM. CODE 101.514(b).

WHEREFORE, Petitioner, Ingredion, and Respondent, Illinois EPA, jointly and respectfully request that the Hearing Officer enter an Order granting their Second Joint Motion to Stay Proceedings, and staying these proceedings until December 1, 2021, with the parties to provide status reports on or before July 15, 2021 and on or before December 1, 2021, and with the stay of the temperature water quality standard as to Ingredion remaining in effect during the stay of these proceedings.

Respectfully and jointly submitted,

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

Dated: March 31, 2021
1021 North Grand Avenue East
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By: /s/ Sara G. Terranova
Sara G. Terranova
Assistant Counsel
Division of Legal Counsel

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INGREDION INCORPORATED,
Petitioner

By: /s/ Michael P. Murphy
One of its attorneys