

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 **THIRD JOINT MOTION TO STAY PROCEEDINGS**, a copy of which is herewith served upon you.

Respectfully submitted,

INGREDION INCORPORATED,
Petitioner,

Dated: November 30, 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 **THIRD 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
Chicago, Illinois 60601
Don.Brown@illinois.gov

Brad Halloran
Hearing Officer
Illinois Pollution Control Board
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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 November 30, 2021.

/s/ Michael P. Murphy

Michael P. Murphy

Date: November 30, 2021

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| Respondent. |) | |

THIRD 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 Third 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. Ingreion 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. On March 31, 2021, Ingreion, together with Illinois EPA, filed a Second Joint Motion to Stay Proceedings (“Second Motion”). The Second Motion explained that the parties believe that with additional data and analysis, “the issue of Ingreion’s thermal discharge can be addressed through appropriate permit language in the pending NPDES permit renewal,” and that “if the temperature limits are adequately addressed in the reissued NPDES permit, then relief by way of a TLWQS may be unnecessary.” Second Motion, ¶ 13. Moreover, the Second Motion stated that “[u]nder these circumstances, the Agency cannot make an appropriate recommendation regarding the TLWQS until it is prepared to issue Ingreion’s NPDES permit renewal and can assess whether the TLWQS is necessary in light of both the additional data and the new permit language.” *Id.* Ingreion and the Agency therefore jointly requested the Board to stay these proceedings for nine months, until December 1, 2021, so that additional analysis could be conducted. *Id.* ¶ 14.

10. In a Hearing Officer Order dated April 8, 2021, the Second Motion was granted, these proceedings were stayed until December 1, 2021, and it was held that the “stay of the temperature water quality standard remains in effect as to Ingreion during the stay.” The Hearing Officer Order also directed Ingreion to file status reports on or before July 15, 2021, and December 1, 2021.

11. Ingreion timely filed Status Reports on July 15, 2021 and November 29, 2021.

12. At the time of the filing of the Second Motion, it was expected that Ingreion’s NPDES permit would be reissued within the nine months. The NPDES permit renewal has taken

longer than expected and, as of the date of filing this motion, a draft permit has not yet been provided to Ingedion for review.

13. The Agency continues to consider thermal data collected by Ingedion during the stays, as well as cooling water intake studies performed by Ingedion pursuant to 40 C.F.R. 125.90(b) and Section 316(b) of the Clean Water Act. In addition, the Agency has under consideration specific permit language regarding thermal limits proposed by Ingedion that would allow it to use the mass-balance calculational approach for determining compliance with the applicable thermal water quality standards, as opposed to a CORMIX-based model that has been used in the past. The Agency cannot make an appropriate recommendation regarding the TLWQS until it is in a position to issue Ingedion's NPDES permit renewal and can assess whether the TLWQS is necessary in light of both the additional thermal data and the new permit language.

14. In light of the above, the Agency and Ingedion jointly request the Hearing Officer to stay these proceedings for a period of one year, until December 1, 2022. The stay of the temperature water quality standard as to Ingedion 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, Petitioner can provide a written status update on or before June 1, 2022, and Petitioner will file a status report at the close of the stay pursuant to 35 ILL. ADM. CODE 101.514(b).

WHEREFORE, Petitioner, Ingedion, and Respondent, Illinois EPA, jointly and respectfully request that the Hearing Officer enter an Order granting their Third Joint Motion to Stay Proceedings, and staying these proceedings until December 1, 2022, with the Petitioner to

provide a written status report on or before June 1, 2022, and with the stay of the temperature water quality standard as to Ingredient remaining in effect during the stay of these proceedings.

Respectfully and jointly submitted,

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

Dated: November 30, 2021
1021 North Grand Avenue East
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Springfield, Illinois 62794

By: /s/ Sara G. Terranova
Sara G. Terranova
Assistant Counsel
Division of Legal Counsel

Dated: November 30, 2021
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INGREDION INCORPORATED,
Petitioner

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