

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

WATER QUALITY STANDARDS AND)
EFFLUENT LIMITATIONS FOR THE) R08-9 (D)
CHICAGO AREA WATERWAY SYSTEM) (Rulemaking - Water)
AND THE LOWER DES PLAINES RIVER:)
PROPOSED AMENDMENTS TO 35 ILL.)
ADM. CODE PARTS 301, 302, 303 and 304)

NOTICE OF FILING

TO: Mr. John T. Therriault	Ms. Marie E. Tipsord
Assistant Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	100 West Randolph Street
Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)	(VIA FIRST CLASS 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 **INGREDION INCORPORATED'S FIRST NOTICE COMMENTS**, a copy of which is herewith served upon you.

Respectfully submitted,

INGREDION INCORPORATED,

Dated: November 21, 2014

By: /s/ Matthew C. Read

Matthew C. Read

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CERTIFICATE OF SERVICE

I, Matthew C. Read, the undersigned, hereby certify that I have served the attached **INGREDION INCORPORATED'S FIRST NOTICE COMMENTS** upon:

Mr. John T. Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
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Suite 11-500
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via electronic mail on November 21, 2014; and upon:

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by depositing said documents in the United States Mail, postage prepaid, in Springfield,
Illinois on November 21, 2014.

/s/ Matthew C. Read
Matthew C. Read

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

WATER QUALITY STANDARDS AND)	
EFFLUENT LIMITATIONS FOR THE)	R08-9 (Subdocket D)
CHICAGO AREA WATERWAY SYSTEM)	(Rulemaking – Water)
AND THE LOWER DES PLAINES RIVER:)	
PROPOSED AMENDMENTS TO 35 ILL.)	
ADM. CODE PARTS 301, 302, 303 and 304)	

INGREDION INCORPORATED'S FIRST NOTICE COMMENTS

NOW COMES INGREDION INCORPORATED (“Ingredion”), by and through its attorneys, HODGE DWYER & DRIVER, and pursuant to the October 3, 2014 Hearing Officer Order, submits the following comments to the Illinois Pollution Control Board’s (“Board”) First Notice Proposed Rule in Subdocket D.

I. INTRODUCTION

On September 18, 2014, the Board issued First Notice of the Proposed Rule containing revised water quality standards (“WQS”) for the Chicago Area Waterways System (“CAWS”) and Lower Des Plaines River (“LDPR”).¹ Subdocket D was established to address WQS and criteria.² In Subdocket C, the Board promulgated aquatic life uses (“ALU”), which should drive WQS developed in Subdocket D. *See id.* In Subdocket C, the Board classified the Chicago Sanitary & Ship Canal (“Sanitary & Ship Canal”)³ as a Chicago Area Waterway System and Brandon Pool Aquatic Life Use

¹ First Notice Proposed Rule, *In the Matter of Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and the Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code Parts 301, 302, 303 and 304*, R08-9(D) (Ill.Pol.Control.Bd., Sep. 18, 2014) (hereafter referenced and cited as “First Notice”) (rulemaking hereinafter cited as “R08-9()”).

² Board Order, R08-9 (Ill.Pol.Control.Bd. Mar. 18, 2010).

³ As described in prior comments, Ingredion discharges to the Sanitary & Ship Canal.

B (“Use B”) waterway.⁴ The Board’s proposed thermal limits for Use B waters in its First Notice are inappropriate since they are based on a WQS for General Use waters – waters that are both (1) higher quality than Use B waters and (2) capable of attaining Clean Water Act (“CWA”) goals. Such a WQS is contrary to the Board’s findings in Subdocket C and includes much lower and, therefore, more stringent daily maximum thermal limits than those proposed by the Illinois Environmental Protection Agency (“Illinois EPA”). These limits are also much lower and differ substantively from the existing thermal limits for Use B waters. Finally, the Board’s proposed thermal limits for Use B waters do not recognize the unique conditions in the Sanitary & Ship Canal and are not supported by information in the record. Instead, the record supports a modification of the Board’s proposal, namely a daily maximum for Use B waters of at least 75°F for the months of December and March.

II. THE BOARD’S SUBDOCKET C FINDINGS AND SECTION 303.235 ARE CONTRARY TO THE BOARD’S FIRST NOTICE PROPOSED RULE

At First Notice in Subdocket C, the Board considered the biologic, habitat, and water quality conditions and made a finding that the Sanitary & Ship Canal was not capable of attaining CWA goals for aquatic life.⁵ The Board agreed with Illinois EPA’s conclusion that use attainability analysis factors 3, 4, and 5 prevent the attainment of CWA goals. *Id.* The Board found that both IBI and MBI scores for the Sanitary & Ship Canal indicate poor to very poor quality. *Id.* The Board noted that while water quality has improved, “problems persist with DO and temperature.” *Id.* Accordingly, the Board

⁴ Adopted Rule, Final Order, R08-9(C) at 21 (Ill.Pol.Control.Bd. Feb. 6, 2014) (hereinafter “Subdocket C Final Order”); 35 Ill. Admin. Code § 303.235.

⁵ Proposed Rule, First Notice, R08-9(C) at 196 (Ill.Pol.Control.Bd. Feb. 21, 2013).

found that conditions in the Sanitary & Ship Canal “*limit the attainment of the General Use designation* for protection of aquatic life.” *Id.* (emphasis added).

Consistent with this finding, the Board promulgated the following rule:

- b) Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters
 - 1) Waters designated as Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters are capable of maintaining, and shall have quality sufficient to protect, aquatic life populations predominated by individuals of tolerant types that are adaptive to unique physical conditions and modifications of long duration, including artificially constructed channels consisting of vertical sheet-pile, concrete and rip-rap walls designed to support commercial navigation, flood control, and drainage functions in deep-draft, steep-walled shipping channels. Such aquatic life may include, but is not limited to, fish species such as common carp, golden shiner, bluntnose minnow, yellow bullhead and green sunfish.
 - 2) Waters designated as Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters *are not capable of attaining an aquatic life use consistent with the section 101(a)(2) of the Clean Water Act goal (33 USC 1251(a)(2)).*
 - 3) The following waters are designated as Chicago Area Waterway System and Brandon Pool Aquatic Life Use B Waters and must meet the water quality standards of 35 Ill. Adm. Code 302. Subpart D:
 - A) Chicago Sanitary and Ship Canal; and
 - B) Lower Des Plaines River from its confluence with Chicago Sanitary and Ship Canal to the Brandon Road Lock and Dam (Brandon Pool).

Subdocket C Final Order at 21-22 (emphasis added); 35 Ill. Admin. Code § 303.235(b).

Given the Board’s findings regarding the Sanitary & Ship Canal and Use B waters in Subdocket C, there is no technical support or justification to propose application of an existing General Use WQS to Use B waters in Subdocket D. General Use waters in

Illinois are waters that are not otherwise subdivided according to use. *See* Ill. Admin. Code § 303.201. Therefore, WQS for General Use waters recognize the full spectrum of ALU. But as described above, the Board explained why biologic, habitat, and water quality conditions prevented the Sanitary & Ship Canal from attaining CWA goals for aquatic life. And the Use B description in Section 303.235 further clarifies that Use B waters are unique and capable of maintaining aquatic life populations predominated by individuals of tolerant types that are adaptive to unique conditions, i.e. “artificially constructed channels consisting of vertical sheet-pile, concrete and rip-rap walls designed to support commercial navigation, flood control, and drainage functions in deep-draft, steep-walled shipping channels.” The Board specifically found that conditions in Use B waters limit the attainment of the General Use designation.

The Board proposes to apply a WQS to low quality Use B waters that is equivalent to the existing General Use WQS. But the General Use WQS is applicable to higher quality waters throughout Illinois that are not limited in use. Therefore, this proposal does not recognize or accommodate the unique uses the Board identified for Use B waters in Subdocket C. The Board went to great pains to identify the unique uses for different categories of waterways. Thermal limits should be established with due consideration of the identified uses.

III. THE RECORD DOES NOT SUPPORT DRASTICALLY LOWERING ILLINOIS EPA'S PROPOSED DAILY MAXIMUM LIMITS FOR USE B WATERS

The Board notes that Mr. Twait's testimony explained that “IEPA's thermal standards for CAWS and LDPR are more stringent than the current General Use standards for months of April through November and approximately equivalent to the

General Use standard over the remaining months.” First Notice at 204 (citing Pre-Filed Testimony of Scott Twait). To the contrary, we observe that the daily maximum limits for winter months in the existing General Use WQS are far more stringent than Illinois EPA’s proposed daily maximum limits for Use B waters.

Specifically, the Board proposes a daily maximum limit for Use B waters of 60°F for the months of December, January, February, and March. First Notice at 234-235. The Illinois EPA proposed a daily maximum of 90.3°F for all months. First Notice at 25-26. This is a difference of more than thirty degrees in winter months. In addition, the Board’s proposal arbitrarily modifies the number of exceedance hours in the Illinois EPA’s proposal, reducing the Illinois EPA proposal by 50%.

Ingredion believes there may be some confusion due to the fact that period averages proposed by Illinois EPA were lower than the daily maximum limits proposed by the Board at First Notice. However, these two numbers cannot be compared since the means for establishing compliance with the two types of limits differs. Compliance with Illinois EPA’s proposed period average limits was designed to be achieved “during any period on an average basis.” First Notice at 25. On the other hand, the daily maximum standard proposed by the Board does not allow for such averaging.

Perhaps most notably, Illinois EPA proposed a *period average* of 59.9°F for December 1-31 and a daily maximum for that same period of 90.3°F. First Notice at 25-26. The Board now proposes a *daily maximum* of 60°F for December. This essentially turns the previously proposed period average for December (which could have been complied with by averaging) into a daily maximum which must be complied without any averaging. And the daily maximum is 30.3F° more stringent than the limit proposed by

Illinois EPA. This is particularly troubling since December marks the seasonal transition from the end of fall to the beginning of winter and, as such, may include unseasonably warm days. Ingredion has similar concerns about warm days in the month of March. Data gathered from the past four years at Ingredion's Argo facility shows numerous days in December and March where the ambient air temperature was over 60°F. On these days, the ambient air temperature works to warm the Sanitary & Ship Canal to temperatures that approach or are greater than the Board's proposed thermal standards (severely reducing the assimilative capacity of the receiving waters). The Board's proposal is also a drastic departure from the thermal standards currently applicable to Use B waters, which preclude the temperature from exceeding 93°F more than 5% of the time, or 100°F at any time. *See* 35 Ill. Admin. Code § 302.408.

According to Mr. Yoder, "daily maxima should ensure 100% short term survival of all representative species and also be consistent with the observed historic ambient temperature record."⁶ Alternatively, period averages should ensure 100% long term survival of all representative species. *Id.*

Illinois EPA proposed criteria for non-summer periods to maintain seasonal norms and cycles of increasing and decreasing temperatures.⁷ Thus, averaging temperatures over a period of time is an appropriate method of achieving this goal. These criteria were not designed to be daily maxima and, thus, should not be compared to General Use daily maximum limits. On the other hand, the summer daily maximum and summer period average thermal criteria were developed using a representative aquatic

⁶ Exhibit 13, Prefiled Testimony of Chris O. Yoder, R08-9 at 10 (Ill.Pol.Control.Bd. Dec. 21, 2007).

⁷ Exhibit 2, Pre-Filed Testimony of Scott Twait, R08-9 at 13 (Ill.Pol.Control.Bd. Dec. 21, 2007).

species list. *Id.* at 11. The daily maximum of the summer months was added as a limit throughout the year to ensure that no acute lethal temperatures are present. *Id.* at 14. This is because the daily maximum is “designed to protect acute (or lethal) impacts, while the chronic (or sub-lethal) impacts are protected through the period average.” *Id.*

The Board’s proposal does not recognize the distinction between the types of limits. Further, there is no evidence in the record that shows that a 60°F daily maximum temperature is necessary to protect acute impacts in Use B waters.

IV. THE RECORD SUPPORTS AN ALTERNATIVE PROPOSAL

Since daily maxima are designed to protect against short term acute impacts, Ingredion proposes to adjust the Board’s proposed daily maximum limits for the months of December and March upwards to allow for the occasional warm day or week. Accordingly, Ingredion urges the Board to adopt a Use B daily maximum limit for the months of December and March of at least 75°F. This limit would allow for a transition to the Board’s proposed winter daily maximum limit but still be protective of short term acute impacts.

As an alternative, Ingredion proposes that the Board grant relief to dischargers when the receiving stream is impacted by unseasonably warm days in the winter. In Illinois EPA’s initial proposal, brief periods of high temperature were accommodated since compliance with the period average was determined by averaging over the period. But as described above, averaging is not available when determining compliance with the daily maximum. Therefore, relief is needed for unseasonably warm weather in winter months. Specifically, Ingredion requests that the Board grant dischargers relief from thermal standards for 72 hours following any time when the ambient air temperature at

the National Weather Service Station at Midway Airport rises to 55°F or higher. During such relief periods, Ingridion proposes that the summer daily maximum of 90°F apply to protect against short term acute impacts.

Ingridion appreciates the Board's recognition of participants' concerns regarding immediate compliance with proposed thermal standards. *See* First Notice at 216.

However, the Board's proposal to delay the effective date of the thermal standards by eighteen months does not provide dischargers enough time to attain compliance. In many cases, dischargers may need to devote significant time and resources to engineer and construct equipment such as cooling towers and mechanical cooling devices. Therefore, Ingridion requests that the Board delay the effectiveness of the Board's thermal limits by five years to allow facilities to implement the necessary changes.

Finally, Ingridion notes that the Board's Proposed Section 302.408(b) references tables in subsections (b), (c), and (d). First Notice at 234. However, tables only appear in subsections (c), (d), and (e). Therefore, Ingridion requests that the Board revises Proposed Section 302.408(b) to reference the appropriate subsections.

V. **INGREDION REQUESTS THAT THE BOARD CLARIFY THE MEANING OF THE EXCURSION HOUR PROVISION**

The Board's proposed thermal standard states that "[w]ater temperature shall not exceed the maximum limits...during more than one percent of the hours in the 12-month period ending with any month." Proposed 35 Ill. Admin. Code 302.408(b). This suggests that if the standard is exceeded and the exceedances occur entirely in one month, then the discharger is in violation of the standard for the following eleven months moving forward, regardless of whether any exceedance of the daily maximum is measured in

subsequent months. Such a prospective violation is purely a result of the 12-month rolling total period for calculating excursion hours in excess of 1%. Ingredion does not believe that the Board intends for hourly exceedances to be recounted multiple times towards separate violations of the 1% allowance, but rather suggests that such exceedances be counted as a singular violation and asks the Board to affirm this reading of the proposed standard.

VI. CONCLUSION

The thermal limits for Use B waters in the Board's First Notice Proposed Rule are contrary to the Board's Subdocket C findings and Section 303.235. The record does not support, and the Board should not adopt, the thermal limits proposed at First Notice for Use B waters. Instead, Ingredion urges the Board to adopt an alternative daily maximum limit of at least 75°F for Use B waters for the months of December and March.

Respectfully submitted,

INGREDION INCORPORATED,

Dated: November 21, 2014

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