

ILLINOIS POLLUTION CONTROL BOARD

August 23, 2018

VILLAGE OF HOMEWOOD, HOMEWOOD)	
ILLINOIS, VILLAGE OF ORLAND PARK,)	
ORLAND PARK ILLINOIS, VILLAGE OF)	
MIDLOTHIAN, MIDLOTHIAN ILLINOIS,)	
VILLAGE OF TINLEY PARK, TINLEY PARK)	
ILLINOIS, EXXONMOBIL OIL)	
CORPORATION, VILLAGE OF WILMETTE,)	
WILMETTE ILLINOIS, CITY OF COUNTRY)	
CLUB HILLS, COUNTRY CLUB HILLS)	
ILLINOIS, NORAMCO-CHICAGO, INC.,)	
FLINT HILLS RESOURCES JOLIET LLC,)	
CITY OF EVANSTON, EVANSTON ILLINOIS,	)	PCB 16-14 (Homewood)
VILLAGE OF SKOKIE, SKOKIE ILLINOIS,	)	PCB 16-15 (Orland Park)
ILLINOIS DEPARTMENT OF	)	PCB 16-16 (Midlothian)
TRANSPORTATION, METROPOLITAN	)	PCB 16-17 (Tinley Park)
WATER RECLAMATION DISTRICT OF	)	PCB 16-18 (ExxonMobil)
GREATER CHICAGO, VILLAGE OF	)	PCB 16-20 (Wilmette)
RICHTON PARK, RICHTON PARK ILLINOIS,	)	PCB 16-21 (Country Club Hills)
VILLAGE OF LINCOLNWOOD,	)	PCB 16-22 (Noramco-Chicago)
LINCOLNWOOD ILLINOIS, CITY OF OAK	)	PCB 16-23 (Flint Hills Resources)
FOREST, OAK FOREST ILLINOIS, VILLAGE	)	PCB 16-25 (Evanston)
OF LYNWOOD, LYNWOOD ILLINOIS,	)	PCB 16-26 (Skokie)
CITGO HOLDINGS, INC., VILLAGE OF NEW	)	PCB 16-27 (IDOT)
LENOX, NEW LENOX ILLINOIS, CITY OF	)	PCB 16-29 (MWRDGC)
LOCKPORT, LOCKPORT ILLINOIS,	)	PCB 16-30 (Richton Park)
CATERPILLAR, INC., CITY OF CREST HILL,	)	PCB 16-31 (Lincolnwood)
CREST HILL ILLINOIS, CITY OF JOLIET,	)	PCB 16-33 (Oak Forest)
JOLIET ILLINOIS, MORTON SALT, INC.,	)	PCB 19-7 (Village of Lynwood)
CITY OF PALOS HEIGHTS, PALOS HEIGHTS	)	PCB 19-8 (Citgo Holdings)
ILLINOIS, VILLAGE OF ROMEOVILLE,	)	PCB 19-9 (New Lenox)
ROMEOVILLE ILLINOIS, IMTT ILLINOIS	)	PCB 19-10 (Lockport)
LLC, STEPAN CO., VILLAGE OF PARK	)	PCB 19-11 (Caterpillar)
FOREST, PARK FOREST ILLINOIS, OZINGA	)	PCB 19-12 (Crest Hill)
READY MIX CONCRETE, INC., OZINGA	)	PCB 19-13 (Joliet)
MATERIALS, INC., MIDWEST MARINE	)	PCB 19-14 (Morton Salt)
TERMINALS LLC, VILLAGE OF MOKENA,	)	PCB 19-15 (Palos Heights)
MOKENA ILLINOIS, VILLAGE OF OAK	)	PCB 19-16 (Romeoville)
LAWN, OAK LAWN ILLINOIS, VILLAGE OF	)	PCB 19-17 (IMTT Illinois)
DOTON, DOTON ILLINOIS, VILLAGE OF	)	PCB 19-18 (Stepan)
GLENWOOD, GLENWOOD ILLINOIS,	)	PCB 19-19 (Park Forest)
VILLAGE OF MORTON GROVE, MORTON	)	PCB 19-20 (Ozinga Ready Mix)
GROVE ILLINOIS, VILLAGE OF LANSING,	)	PCB 19-21 (Ozinga Materials)
LANSING ILLINOIS, VILLAGE OF	)	PCB 19-22 (Midwest Marine)

FRANKFORT, FRANKFORT ILLINOIS,	)	PCB 19-23 (Mokena)
VILLAGE OF WINNETKA, WINNETKA	)	PCB 19-24 (Oak Lawn)
ILLINOIS, VILLAGE OF LA GRANGE, LA	)	PCB 19-25 (Doton)
GRANGE ILLINOIS, INGREDION, INC.,	)	PCB 19-26 (Glenwood)
VILLAGE OF CHANNAHON, CHANNAHON	)	PCB 19-27 (Morton Grove)
ILLINOIS, COOK COUNTY DEPARTMENT	)	PCB 19-28 (Lansing)
OF TRANSPORTATION AND HIGHWAYS,	)	PCB 19-29 (Frankfort)
VILLAGE OF NILES, NILES ILLINOIS,	)	PCB 19-30 (Winnetka)
SKYWAY CONCESSION COMPANY LLC,	)	PCB 19-31 (La Grange)
VILLAGE OF ELWOOD, ELWOOD ILLINOIS,	)	PCB 19-32 (Ingredion)
CITY OF CHICAGO, CHICAGO ILLINOIS,	)	PCB 19-33 (Channahon)
VILLAGE OF CRESTWOOD, CRESTWOOD	)	PCB 19-34 (CCDTH)
ILLINOIS and VILLAGE OF RIVERSIDE,	)	PCB 19-35 (Niles)
RIVERSIDE ILLINOIS	)	PCB 19-36 (Skyway)
	)	PCB 19-37 (Elwood)
Petitioners,	)	PCB 19-38 (Chicago)
	)	PCB 19-40 (Crestwood)
v.	)	PCB 19-48 (Riverside)
)	
ILLINOIS ENVIRONMENTAL PROTECTION	)	(Time-Limited Water Quality
AGENCY,	)	Standard)
	)	(Consolidated)
Respondent.)	

ORDER OF THE BOARD (by C.K. Zalewski):

From July 23 through August 13, 2018, the Board received 35 new petitions for a chloride time-limited water quality standard (TLWQS). Specifically, petitioners identified in the caption above seek to be covered by a chloride TLWQS for the Chicago Area Waterway System (CAWS) and Lower Des Plaines River (LDPR) watershed. Included with their petitions, the Village of Park Forest (PCB 19-19), Citgo Holdings, Inc. (PCB 19-8), Ozinga Ready Mix Concrete, Inc. (PCB 19-20), Ozinga Materials, Inc. (PCB 19-21), and Midwest Marine Terminals LLC (PCB19-22) each filed a motion to consolidate its case with Village of Homewood et al. v. IEPA, PCB 16-14, PCB 16-15, PCB 16-16, PCB 16-17, PCB 16-18, PCB 16-20, PCB 16-21, PCB 16-22, PCB 16-23, PCB 16-25, PCB 16-26, PCB 16-27, PCB 16-29, PCB 16-30, PCB 16-31, PCB 16-33 (consol.) (Homewood). In this order, the Board consolidates for hearing with Homewood all the new chloride TLWQS petitions—both the cases where consolidation was requested and where it was not—because, in each case, the same pollutant in the same watershed is at issue and each petitioner is a member of the Board-established class. Consolidation will therefore be convenient and expedient, without materially prejudicing any party.

In addition, the Board set a petition-filing deadline of July 26, 2018, for persons seeking a stay of the chloride water quality standard. All the petitioners timely filed except for the Villages of Crestwood (PCB 19-40) and Riverside (PCB 19-48), which filed on August 1 and August 13, 2018, respectively. The chloride water quality standard is stayed as to the 33 petitioners that timely filed. Because the Villages of Crestwood and Riverside failed to request

an extension of the deadline or show good cause for its delay, the chloride water quality standard is not stayed as to the Villages of Crestwood and Riverside.

In this order, the Board first addresses the motions to consolidate and then the availability of the stay.

DISCUSSION

Consolidation

The Board's rules at Part 104, Subpart E provide the procedures for seeking a TLWQS. 35 Ill. Adm. Code 104.500 – 104.590. These procedural rules “encourage[] persons addressing the same pollutants in the same water body, waterbody segment or watershed to join in filing a joint petition whenever possible” to make the necessary TLQWS demonstration. 35 Ill. Adm. Code 104.520, Board Note 1. If “multiple petitions addressing the same pollutant in the same water body, waterbody segment, or watershed are filed separately the Board may consolidate the petitions under 35 Ill. Adm. Code 101.406.” *Id.*

Section 101.406 of the Board's procedural rules specifies the circumstances in which the Board may consolidate cases:

The Board, upon the motion of any party or upon its own motion, may consolidate two or more proceedings for the purpose of hearing or decision or both. The Board will consolidate the proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party. The Board will not consolidate proceedings where the burdens of proof vary. 35 Ill. Adm. Code. 101.406.

Here, five petitioners—the Village of Park Forest, Citgo Holdings, Ozinga Ready Mix, Ozinga Materials, and Midwest Marine—request consolidation with Homewood, another chloride TLQWS proceeding for the CAWS and LDPR watershed. Petitioners in Homewood filed a joint petition as a class on July 24, 2018. *See* MWRD Pet. (Jul. 24, 2018); *see also* 35 Ill. Adm. Code 104.520(b)(1)(B). In addition, each member of the Homewood class supplemented the joint petition with its own filing of a standardized form entitled “Individual Submittal *in Support of* Petition for Chloride [TLWQS] for the Defined [CAWS]/[LDPR] Watershed”. *See, e.g.*, ExxonMobil Form at 1 (Jul. 26, 2018) (emphasis added). Each of these forms identifies petitioner as a member of the chloride TLWQS class established in Homewood and declares that it supplements the joint petition. *See, e.g., id.* at 1, 2, ¶¶ 7 and 8.

All the new chloride TLWQS petitioners seek a TLWQS under the joint petition filed in Homewood. The new petitions filed from July 23 through August 1, 2018, consist of the same standardized form as the one filed by petitioners in Homewood. Each form identifies the new petitioner as a member of the Homewood chloride TLWQS class seeking the same relief from the same chloride water quality standard (35 Ill. Adm. Code 302.407(g)(2) and (g)(3)). *See, e.g., Citgo Holdings, Inc. v. IEPA*, PCB 19-8, Pet. (July 24, 2018); Village of Park Forest v. IEPA,

PCB 19-19, Pet. (July 26, 2018); Midwest Marine Terminals LLC v. IEPA, PCB19-22, Pet. (July 26, 2018); Village of Lynwood v. IEPA, PCB 19-7, Pet. (July 23, 2018); Stepan Co. v. IEPA, PCB 19-18, Pet. (July 25, 2018); City of Chicago v. IEPA, PCB 19-38, Pet. (July 26, 2018).

The Board finds that the pollutant and watershed addressed by the new TLWQS petitions are the same as those addressed by the class established in Homewood. Under these circumstances, consolidation is in the interest of convenience and expediency and would not materially prejudice any party. *See* 35 Ill. Adm. Code 104.520, Board Note 1; *see also* 35 Ill. Adm. Code 101.406. The Board grants the five motions and consolidates for hearing the following cases with Homewood: Citgo Holdings, Inc. v. IEPA, PCB 19-8; Village of Park Forest v. IEPA, PCB 19-19; Ozinga Ready Mix Concrete, Inc. v. IEPA, PCB 19-20; Ozinga Materials, Inc. v. IEPA, PCB 19-21; and Midwest Marine Terminals LLC v. IEPA, PCB19-22. And, for the same reasons and on the Board's own motion, the new chloride TLWQS petitions that did not request consolidation are consolidated for hearing with Homewood. *See* 35 Ill. Adm. Code 101.406. Future filings must reflect the caption of this order.

In consolidating these cases, the Board is not determining whether the joint petition or any individual petition is in substantial compliance with 35 Ill. Adm. Code 104.530. The Board will determine that as soon as practicable. *See* 35 Ill. Adm. Code 104.545(a).

Stay

A water quality standard may be stayed under three circumstances. *See* 415 ILCS 5/38.5(h)(1) (enacted by P.A. 99-937, eff. Feb. 24, 2017); *see also* 35 Ill. Adm. Code 104.525(a). Among the three is when a person files a TLWQS petition for the first time as a member of a class of dischargers already established by the Board, and does so by the Board's filing deadline. *See* 35 Ill. Adm. Code 104.525(a)(3).

In Homewood, the Board established the class of dischargers potentially covered by a chloride TLWQS as:

[publicly owned treatment works], communities with [combined sewer overflow] outfalls, industrial sources, [municipal separate storm sewage systems], IDOT, Illinois Tollway, and salt storage facilities [(Homewood, slip op. at 2 (Apr. 12, 2017)) that are within] the Des Plaines River watershed from the Kankakee River to the Will County Line (except for the DuPage River watershed) and the CAWS watershed (except the North Branch Chicago River watershed upstream of the North Shore Channel and those portions of the watershed located in Indiana) [(Homewood, slip op. at 2 (June 8, 2017))].

Petitioners in Homewood were instructed to file amended petitions within 90 days after Board adoption of TLWQS procedural rules. Homewood, slip op. at 2 (June 8, 2017). The Board adopted the rules on April 26, 2018. *See* Regulatory Relief Mechanisms: Proposed New 35 Ill. Adm. Code Part 104, Subpart E, R18-18 (Apr. 26, 2018). Therefore, the filing deadline to qualify for a stay of the chloride water quality standard was July 26, 2018.

The following 33 petitioners filed their petitions by July 26, 2018: the Villages of Lynwood (PCB 19-7), New Lenox (PCB 19-9), Romeoville (PCB 19-16), Park Forest (PCB 19-19), Mokena (PCB 19-23), Oak Lawn (PCB 19-24), Dolton (PCB 19-25), Glenwood (PCB 19-26), Morton Grove (PCB 19-27), Lansing (PCB 19-28), Frankfort (PCB 19-29), Winnetka (PCB 19-30), La Grange (PCB 19-31) Channahon (PCB 19-33), Elwood (PCB 19-37), and Niles (PCB 19-35); the Cities of Lockport (PCB 19-10), Crest Hill (PCB 19-12), Joliet (PCB 19-13), Palos Heights (PCB 19-15), and Chicago (PCB 19-38); the government agency Cook County Department of Transportation and Highways (CCDTH) (PCB 19-34); and the companies Citgo Holdings (PCB 19-8), Caterpillar, Inc. (PCB 19-11), Morton Salt, Inc. (PCB 19-14), IMTT Illinois LLC (PCB 19-17), Stepan Co. (PCB 19-18), Ozinga Ready Mix (PCB 19-20), Ozinga Materials (PCB 19-21), Midwest Marine (PCB 19-22), Ingredion, Inc. (PCB 19-32), and Skyway Concession Company LLC (PCB 19-36). The chloride water quality standard is stayed as to these petitioners.

The Villages of Crestwood (PCB 19-40) and Riverside (PCB 19-48) filed their petition on August 1 and August 13, 2018, respectively. The Board may grant an extension of the deadline upon a showing of good cause by petitioner. *See* 35 Ill. Adm. Code 104.540, Board Note. The Villages of Crestwood and Riverside, however, have not requested an extension or offered a showing of good cause for its delay. Without this, the chloride water quality standard is not stayed for the Villages of Crestwood or Riverside. *See* 35 Ill. Adm. Code 104.525(c). The Villages of Crestwood and Riverside may nevertheless proceed with its petition for the chloride TLWQS. *Id.* Nothing in this order precludes either the Village of Crestwood or Riverside from filing a motion that requests a deadline extension and attempts to show good cause for failing to file by July 26, 2018.

CONCLUSION

The Board consolidates for hearing with Homewood all the new chloride TLWQS petitions filed from July 23 through August 1, 2018. The Board also finds that the chloride water quality standard is stayed as to all petitioners in this order's caption except for the Villages of Crestwood and Riverside.

IT IS SO ORDERED.

Board Member C.M. Santos abstained.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 23, 2018, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board