

ILLINOIS POLLUTION CONTROL BOARD  
July 25, 2019

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

ORDER OF THE BOARD (by K. Papadimitriu):

On July 26, 2018, Ingredion Incorporated (Ingredion) filed a petition for a single discharger a time-limited water quality standard (TLWQS) under Section 38.5 of the Act (415 ILCS 5/38.5(a), (c)). Specifically, Ingredion seeks a TLWQS from the temperature standards for its thermal discharges into portions of the Chicago Sanitary and Ship Canal (CSSC).

In this order, the Board first provides background information on TLWQS. The Board then determines the class of dischargers. The Board next assesses whether the petition is in substantial compliance. The Board concludes by describing the next steps in this proceeding.

**BACKGROUND**

The Environmental Protection Act (Act) and Board rules allow a petitioner, or several petitioners as a class, to request a TLWQS from a water quality standard that would otherwise apply to the petitioner or petitioners. *See* 415 ILCS 5/38.5 (enacted by P.A. 99-937, eff. Feb. 24, 2017); 35 Ill. Adm. Code 104.Subpart E. A TLWQS is “a time-limited designated use and criterion for a specific pollutant or water quality parameter that reflects the highest attainable condition during the term of that relief.” 35 Ill. Adm. Code 104.515.

The procedures that govern a TLWQS proceeding are found in Part 104, Subpart E of the Board’s procedural rules. 35 Ill. Adm. Code 104.Subpart E. Section 104.530 specifies the content requirements of a TLWQS petition. 35 Ill. Adm. Code 104.530. Subsection (a) of Section 104.530 lists 17 requirements that must be in every petition for a TLWQS. 35 Ill. Adm. Code 104.530(a)(1)-(17). There are two additional requirements if the petition is for a TLWQS covering a watershed, water body, or waterbody segment. First, the petition must identify and document any cost-effective and reasonable “best management practices” (BMPs) for nonpoint source controls related to the pollutant of the TLWQS. 35 Ill. Adm. Code 104.530(b)(1). Second, each discharger applying as a member of the TLWQS class must provide its specific information individually with the petition. 35 Ill. Adm. Code 104.530(d).

**CLASS OF DISCHARGERS**

When a petition for a TLWQS is filed, the Board must establish the “classes of dischargers that may be covered by the time-limited water quality standard” (415 ILCS 38.5(f), *see* 35 Ill. Adm. Code 104.540), and then review the petition for substantial compliance (35 Ill. Adm. Code 104.545(a)).

Ingredion is petitioning as a single discharger, but notes that it is a member of a discharger class that includes certain facilities located upstream and downstream from Ingredion’s Argo Plant. The discharger class includes, the MWRD Stickney Treatment Plant, Midwest Generation, LLC, INEOS (Flint Hills Resources), Stepan Company, and possibly also ExxonMobil Oil Corporation. Pet. at 11. Ingredion’s Argo Plant is located on the Lockport Pool of the CSSC in Bedford Park.

The Board finds that Ingredion is filing as a single discharger for a TLWQS from temperature standards under 35 Ill. Adm. Code 302.408.

### **SUBSTANTIAL COMPLIANCE ASSESSMENT**

A petition is in substantial compliance when it meets “the substantial or essential content requirements of 40 CFR 131.14, Section 38.5 of the Act [415 ILCS 5/38.5], and Section 104.530 of this Part [35 Ill. Adm. Code 104.530].” 35 Ill. Adm. Code 104.515. The Board’s substantial compliance review assesses a petition “on a case-by-case basis by determining whether the petition is responsive to the content requirements of Section 104.530.” Regulatory Relief Mechanisms: Proposed New 35 Ill. Adm. Code Part 104.Subpart E, R 18-18, slip op. at 6 (Feb. 8, 2018). The substantial compliance assessment therefore serves as “a screening mechanism,” “determining only whether the petition contains the required components of a TLWQS petition.” *Id.*

The petition seeks a TLWQS from the Board’s temperature water quality standards in 35 Ill. Adm. Code 302.408. The petition offers that the designated use and temperature water quality standard cannot be met because human caused conditions or sources of pollution prevent the attainment of the designated use and cannot be remedied or would cause more environmental damage to correct than to leave in place. 35 Ill. Adm. Code 104.560(a)(3). Ingredion states that its compliance status is only threatened during times of thermal influence by the Metropolitan Water Reclamation District’s Stickney Plant operations, which constitute human-caused conditions or sources of thermal pollution that cannot be remedied by Ingredion. Pet at 18. Other factors such as prolonged unseasonal low flow conditions in the Chicago Area Waterways System may add to the impact of the upstream source on Argo Plant’s ability to comply with the thermal standards. *Id.*

The petition covers the CSSC, and the flow is completely regulated by a series of locks and dams. Pet. at 15. The Stickney Plant has the potential to negatively impact compliance by Ingredion, and Ingredion provides thermal discharge data from the Stickney Plant in support of its position. Pet. at 16, Exh. 3 at 44-47. Ingredion installed a new cooling tower in mid1990s to address increased heat load from new equipment. The cooling tower helped Ingredion to continue to remain in compliance with the Secondary Contact thermal limits. Pet. at 19. The

Argo Plant also uses limited volumes of municipal and well water for supplemental non-contact cooling needs, but the amount cannot be increased to off-set the existing primary cooling water flow from the CSSC. *Id.*

Ingredion proposes that the highest attainable condition be the temperature standards in 35 Ill. Adm. Code Section 302.408(b) that were applicable starting July 1, 2015. Ingredion notes that the Argo Plant has remained in compliance with the temperature standards in 35 Ill. Adm. Code Section 302.408(b) that have now been proposed as the highest attainable condition. Pet. at 21. Ingredion requests a TLWQS for up to five years. Pet. at 21.

The Board finds that the petition contains the required components for a TLWQS petition, and is therefore in substantial compliance. *See* 35 Ill. Adm. Code 104.545(a), 104.530(a), (b)(1).

### **CONCLUSION**

Because the Board finds that the petition is in substantial compliance, IEPA must file its recommendation by September 9, 2019, which is the first business day following the 45th day after this order. *See* 35 Ill. Adm. Code 104.545(b), 104.550(a). Concurrent with that filing, IEPA must transmit copies of its recommendation and the amended petition to USEPA. *See* 35 Ill. Adm. Code 104.550(d). Ingredion or any person may file questions or responses to the IEPA's recommendation by the 14th day after the IEPA files its recommendation. *See* 35 Ill. Adm. Code 104.550(c). Thereafter, the Board will hold a public hearing that will be set by the hearing officer with at least 45 days' written notice. *See* 35 Ill. Adm. Code 104.555. The Board may submit questions to the petitioners and the IEPA through a Board or hearing officer order prior to the public hearing.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2016); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final order may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 104.545(e), 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 25, 2019, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, looped initial "D".

Don A. Brown, Clerk  
Illinois Pollution Control Board