

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
MIDWEST GENERATION, LLC)	
)	
Petitioner,)	
)	
v.)	PCB No. 20-38
)	PCB No. 20-39
)	(Thermal Demonstration)
ILLINOIS ENVIRONMENTAL)	(Consolidated)
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 an **ENTRY OF APPEARANCE OF MICHAL P. MURPHY and RESPONSE IN SUPPORT OF ILLINOIS EPA’S RECOMMENDATION** a copy of which is herewith served upon you.

Respectfully submitted,

Dated: May 20, 2020

By: /s/ Michael P. Murphy
Michael P. Murphy

Michael P. Murphy
HEPLERBROOM, LLC
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APPEARANCE

I, Michael P. Murphy, hereby file my appearance in this proceeding on behalf of INEOS JOLIET, LLC, an interested party.

Respectfully submitted,

Dated: May 20, 2020

By: /s/ Michael P. Murphy
Michael P. Murphy

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RESPONSE IN SUPPORT OF ILLINOIS EPA’S RECOMMENDATION

INEOS JOLIET, LLC, an interested party, states as follows for its Response in Support of Illinois EPA’s Recommendation:

Background

1. On December 30, 2019, Petitioner, Midwest Generation, LLC (“Midwest Generation”), filed its Petition to Approve Alternative Thermal Effluent Limitations for the Joliet 9 Generating Station (PCB 20-38) and its Petition to Approve Alternative Thermal Effluent Limitations for the Joliet 29 Generating Station (PCB 20-39).

2. The Petitions, along with the contemporaneously-filed Demonstration, establish that the thermal standards adopted in R08-09, Subdocket D, are more stringent than necessary to assure the protection and propagation of the balanced indigenous community of aquatic life inhabiting both the Upper Dresden Island Pool (“UDIP”) portion of the Lower Des Plaines River (“LDPR”), which ends at the I-55 Bridge, and the “Five-Mile Stretch” of the LDPR beyond the I-55 Bridge. *See* Petitions and Exhibit A to the Petitions, Joliet Generating Stations 9 and 29 §316(a) Demonstration (“Demonstration”).

3. INEOS Joliet, LLC (“INEOS Joliet”) operates its Joliet Facility on a 270-acre tract of

land in Channahon, Illinois, approximately 41 miles southwest of Chicago, and discharges heated effluent to the UDIP stretch of the LDPR as authorized by NPDES Permit No.

IL0001643. Flint Hills Resources Joliet, LLC's¹ Amended Petition for a Time-Limited Water Quality Standard for Temperature, PCB No. 16-24 (July 26, 2018), p. 3-6 and Exhibit 1.

4. INEOS Joliet's discharge into the LDPR is approximately 4.8 river miles downstream of Midwest Generation's Joliet Stations 9 and 29. Demonstration, Appendix D, p. D-47 (INEOS Joliet is about 4.8 miles downstream in relation to the two Joliet Stations; Stepan is about 5 miles downstream; ExxonMobil is about 7 miles downstream.)

5. The Petitions request relief based on the Demonstration which assessed the balanced indigenous community of aquatic life in the UDIP, the exact same portion of the LDPR into which INEOS Joliet discharges its heated effluent, as well as the Five-Mile Stretch downstream from INEOS Joliet's discharge and beyond the I-55 Bridge.

6. INEOS Joliet and Midwest Generation have pending consolidated proceedings seeking a time-limited water quality standard concerning temperature, but those proceedings are stayed until the Board reaches a final decision in these consolidated proceedings seeking alternative limitations for the Joliet Stations. PCB Nos. 16-19 and 16-24 (consolidated) (December 5, 2019 Order granting joint motion to stay).

7. On February 6, 2020, the Board entered an Order accepting Midwest Generation's Petitions and consolidating PCB 20-38 and PCB 20-39 on its own motion.

8. On April 29, 2020, the Illinois Environmental Protection Agency ("Illinois EPA") filed its Recommendation.

¹ Flint Hills Resources Joliet, LLC became INEOS Joliet, LLC on November 30, 2018. See PCB No. 16-24 (March 14, 2019 Order).

9. Section 106.1145(c) provides that “any interested person may file a response to the Agency recommendation within 21 days after the Agency files its recommendation.” 35 ILL. ADM. CODE § 106.1145(c).

10. INEOS Joliet is an interested person and submits this response to Illinois EPA’s Recommendation within 21 days.

Illinois EPA’s Recommendation

11. In its Recommendation, Illinois EPA provided “information the Agency believes is relevant to the Board’s consideration of the proposed alternative thermal effluent limitation,” stating as follows: “The Petitioner accounted for the thermal dischargers: ExxonMobil (IL0002861), INEOS (IL0001643), and Stepan Chemical Company (IL0002453) in the Demonstration Report. *With USEPA’s agreement, the Agency recommends that each of these thermal dischargers be allowed to take advantage of the AELs adopted by the Board.*” Recommendation, p. 10 (emphasis added).

12. With respect to USEPA’s agreement, Illinois EPA further stated as follows in its Recommendation:

The United States Environmental Protection Agency (USEPA) was informed that MWGen submitted the Petitions to the Board and was provided the link to the Board’s website. Throughout the proceeding, the Agency and USEPA engaged in various phone calls regarding the requested relief. *USEPA indicated no concern and provided it was appropriate to include downstream dischargers in the relief requested as long as the dischargers were considered in the Demonstration Report.*

Recommendation, p. 11 (emphasis added).

INEOS Joliet’s Request for Relief

13. As noted by Illinois EPA, downstream dischargers, including INEOS Joliet, were considered in Midwest Generation’s Demonstration. *See Demonstration, Summary Report,*

§ 3.7, Page 3-16; Appendix B, p. B-25—B-28; Appendix C, p. C-9—C-10; Appendix D, p. D46—D-48; Exhibit D-2a, p. 1-10.

14. Notably, the Midwest Generation Demonstration states that “[t]he only instances when the FHR (INEOS) discharge may not meet the UDIP numeric limit is if the upstream ambient water temperature is already over the applicable summer (93° F) or winter (63° F) maximum limit, resulting in a situation where FHR (INEOS) would not be allowed a mixing zone.” Demonstration, Exhibit D-2a, p. 2.

15. INEOS (then Flint Hills Resources) submitted pre-filed questions and comments in the rulemaking referenced in the Petitions, PCB No. R08-9, including comments and questions regarding potential effects on mixing zones of those “located downstream from large dischargers.” Prefiled Questions and Comments of Flint Hills Resources, PCB No. 08-09 (January 18, 2008), p. 2. INEOS Joliet is the downstream discharger located the shortest downstream distance from the Joliet Stations and, thus, is the downstream discharger in most need of relief.

16. As stated in Illinois EPA’s Recommendation, allowing INEOS Joliet the same relief as Midwest Generation is supported by USEPA. The Illinois “procedure for CWA Section 316(a) relief” is based on “federal procedures found at 40 C.F.R. §§ 125.70 through 125.73,” and Illinois EPA “integrated the federal rules with Board procedures.” *In the Matter of: Procedural Rules for Alternative Thermal Effluent Limitations Under Section 316(a) of the Clean Water Act: Proposed New 35 Ill. Adm. Code Part 106, Subpart K and Amended Section 304.141(c)*, Adopted Rule, Final Opinion and Order, PCB R13-20 (February 20, 2014), p. 4. The regulations require the consideration of other thermal sources. *Id.* at 16; 35 ILL. ADM. CODE § 106.1160(d). USEPA supports the granting of relief to downstream modeled dischargers such as INEOS Joliet,

and allowing such relief is thus consistent with both federal and Illinois regulations. *See also* 33 U.S.C. § 1326(a).

17. Midwest Generation's Demonstration also supports alternative thermal effluent limitations for INEOS Joliet. Midwest Generation demonstrated that the applicable thermal effluent limitations are more stringent than necessary to assure the protection and prorogation of the balanced indigenous community of aquatic life in the body of water into which both Midwest Generation and INEOS Joliet discharge heated effluent. Midwest Generation also demonstrated that the alternative thermal effluent limitations it has requested will assure the protection and propagation of the same balanced indigenous community.

18. Consistent with the Recommendation of Illinois EPA and the position of USEPA, INEOS Joliet respectfully requests that the Board, as part of its disposition in this proceeding, find that INEOS Joliet is entitled to the same alternative thermal effluent limitations as allowed to Midwest Generation, and order that Illinois EPA may include those alternative thermal effluent limitations in INEOS Joliet's NPDES permit.

Dated: May 20, 2020

Respectfully submitted,

INEOS JOLIET, LLC

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

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