

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

INEOS JOLIET, LLC,)	
Petitioners,)	
v.)	
)	PCB 16-24
ILLINOIS ENVIRONMENTAL)	(Time-Limited Water Quality Standard)
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 the **TENTH STATUS REPORT**, a copy of which is herewith served upon you.

July 22, 2024

Respectfully submitted,

INEOS JOLIET, LLC

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

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

INEOS JOLIET, LLC,)	
Petitioner,)	
v.)	PCB 16-24
)	(Time-Limited Water Quality Standard)
ILLINOIS ENVIRONMENTAL)	
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TENTH STATUS REPORT

Petitioner, INEOS Joliet, LLC (“INEOS” or “Petitioner”), by its attorneys, HeplerBroom, LLC, submits its Tenth Status Report, as required by the Hearing Officer Order dated December 21, 2021, regarding the status of its pursuit of Alternative Thermal Effluent Limitation (“ATEL”) relief while this thermal Time-Limited Water Quality Standard (“TLWQS”) matter is stayed.

A. Procedural History

1. On July 21, 2015, Petitioner (then Flint Hills Resources Joliet, LLC) filed a Petition for Variance pursuant to Section 35 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 35(a). In the variance petition, Petitioner requested a variance from the deadline for complying with the temperature standards at 35 Ill. Adm. Code 302.408(b), (c), (d), (e), (f), and (i) for its Channahon Facility.

2. On February 24, 2017, the variance petition was automatically converted to a Petition for TLWQS by operation of 415 ILCS 5/38.5(c), 40 C.F.R. § 131.14.

3. On July 26, 2018, Petitioner filed an Amended Petition for TLWQS (“TLWQS Petition”). The TLWQS Petition sought coverage under a multiple discharger TLWQS from the temperature standards at 35 Ill. Adm. Code 302.408(b), (c), (d), (e), (f) and (i) for its Channahon facility. The TLWQS Petition was supplemented by certain information provided in Midwest Generation, LLC’s Amended Petition for TLWQS in PCB 16-19, which provided information that was commonly applicable to dischargers that may be covered by the temperature multi-discharger TLWQS.

4. On July 25, 2019, the Board consolidated this proceeding with the Midwest Generation thermal TLWQS proceeding at PCB 16-19 (“Consolidated TLWQS Proceeding”).

5. On November 27, 2019, Petitioner, Midwest Generation, and the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”) filed a joint motion to stay the Consolidated TLWQS Proceeding.

6. In the joint motion, the movants argued that Midwest Generation planned on seeking ATEL relief for its Joliet Stations. If granted, Midwest Generation’s TLWQS petition would be mooted by the effect of the ATELS. Additionally, the joint motion stated that INEOS was assessing whether it would continue to pursue this TLWQS proceeding or whether it was feasible to seek ATEL relief.

7. On December 5, 2019, the Board granted the motion to stay proceedings. The Board Order stated that: “The Board has reviewed the joint motion and agrees that it

would now be more efficient to use the parties' and the Board's resources to review [Midwest Generation]'s expected petition for alternative thermal effluent limitations than to proceed with IEPA's recommendation on and the Board's consideration of the TLWQS petitions."

8. The Board Order further stated that the stay would last until the Board "reaches a final decision on [Midwest Generations]'s petition for alternative limitations for the Joliet Stations."

9. On December 30, 2019, Midwest Generation filed ATEL petitions for each of the Joliet Stations, which were docketed at PCB 20-38 and PCB 20-39 (consolidated on February 6, 2020).

10. In support of the ATELS requested in the petitions, Midwest Generation filed a Thermal Demonstration report, which accounted for the fact that the Upper Dresden Island Pool ("UDIP") receives additional thermal loading from three downstream dischargers, including INEOS (then Flint Hills Resources, LLC). The report found that, so long as INEOS continues discharging heat at historical levels, no adverse ecological impact would be created by granting alternative thermal effluent relief to the Joliet Stations. INEOS requested, and Illinois EPA recommended, that the same relief requested by Midwest Generation be granted to downstream dischargers such as INEOS.

11. On July 8, 2021, the Board granted ATEL relief for Midwest Generation's Joliet Stations but did not extend that relief to the downstream dischargers, including INEOS, as requested by INEOS and suggested by the Illinois EPA.

12. On August 3, 2021, Petitioner, Midwest Generation, and the Illinois EPA filed a second joint motion to stay the Consolidated TLWQS Proceeding. The movants requested a stay of the Consolidated TLWQS Proceeding to allow time for the approved ATELS to be incorporated into Midwest Generation's respective NPDES permits.

13. The Hearing Officer granted the joint motion on August 17, 2021, and the Consolidated TLWQS Proceeding was stayed until January 1, 2022.

14. On December 7, 2021, INEOS filed a Third Motion to Stay Proceedings requesting a stay of this matter until a final decision is rendered by the Illinois Pollution Control Board in INEOS Joliet, LLC's upcoming Alternative Thermal Effluent Limitation proceeding, and with the stay of the temperature water quality standard as to INEOS remaining in effect during the stay of these proceedings.

15. On December 21, 2021, a Hearing Officer Order was entered granting the Third Motion to Stay Proceeding. A stay was granted "until the Board reaches a decision on INEOS' ATEL petition or until the Board orders otherwise." In addition, INEOS was "directed to submit a status report every 90 days or until further notice from the date of this order."

B. History of Request for Alternative Thermal Effluent Limitations

16. On December 2, 2021, Petitioner transmitted early screening information required by 35 Ill. Adm. Code 106.1115(a) to Illinois EPA. Submittal of early screening information is one of the requirements in the Board's thermal demonstration regulations at 35 Ill. Adm. Code Part 106, Subpart K.

17. As described in the early screening information, INEOS is requesting an ATEL in the form of a mixing zone allowance, in order to assure continuing compliance with the applicable UDIP standards effective in the Lower Des Plaines River ("LDPR").

18. As required by Subpart K, Petitioner had a meeting with Illinois EPA on December 10, 2021 to discuss the early screening information. 35 Ill. Adm. Code 106.1115(b). The parties noted that INEOS is requesting coverage under the ATELs already approved by the Board for Midwest Generation, LLC ("MG") in PCB 20-38 and PCB 20-39. Thus, all the relevant information has already been thoroughly reviewed and found to be fully supportive of the ATEL sought by INEOS. Consequently, it was agreed that INEOS would not need to conduct any new or additional field studies to support the request for application of the MG ATELs to the INEOS thermal discharge. It was further agreed that INEOS should incorporate by reference the information presented in support of the MG ATEL for the INEOS § 316(a) Demonstration but will provide site-specific thermal information.

19. On January 28, 2022, INEOS submitted its Detailed Study Plan for a § 316(a) Demonstration to Support Application of Alternative Thermal Effluent Limits for the INEOS Joliet LLC Facility (“Detailed Plan of Study”), in accordance with, and containing all information required by, 35 Ill. Adm. Code 106.1120.

20. In a letter dated March 13, 2022, Illinois EPA approved the Detailed Plan of Study as submitted.

21. Per 35 Ill. Adm. Code 106.1120(g), after receiving Illinois EPA’s response to the Detailed Plan of Study, the petitioner must complete the plan prior to filing the petition for alternative thermal effluent limitation with the Board.

22. As explained above, INEOS is essentially applying for coverage under the approved MG ATEs and, therefore, there will be no additional studies performed.

23. On August 16, 2022, INEOS submitted a draft Demonstration document to Illinois EPA for review and comment.

24. On October 25, 2022, INEOS and Illinois EPA had a meeting and discussed Illinois EPA’s comments and questions regarding the draft Demonstration document.

25. On March 8, 2023, after assessment and investigation of previous comments from Illinois EPA, INEOS submitted an updated draft Demonstration document to Illinois EPA which sought an end-of-pipe limit for demonstrating thermal compliance.

26. On March 8, 2023, a Status Report was filed jointly by Midwest Generation and INEOS. This Status Report included INEOS' Fifth Status Report, which indicated it had determined to seek an end-of-pipe limit and was awaiting any additional comments from the Agency regarding the updated draft Demonstration document.

27. On May 11, 2023, Illinois EPA stated that it did not have any further comment or concerns regarding the updated draft Demonstration document.

28. On June 30, 2023, INEOS filed its Petition to Approve Alternative Thermal Effluent Limitations with the Board, which was docketed as PCB No. 23-135

29. On July 12, 2023, within 14 days after the filing of the Petition, INEOS caused a public notice of the Petition to be published in *The Herald News*, a newspaper of general circulation in the county (Will County) where the INEOS facility is located.

30. On July 26, 2023, INEOS filed Proof of Notice of Petition with the Board and included a copy of the Certificate of the Publisher of *The Herald News*.

31. On August 14, 2023, the Agency filed with the Board a Motion for Extension of Time to File a Recommendation as to the Petition, requesting an additional 45 days (or until September 28, 2023) to file its recommendation. INEOS did not object to the Agency's Motion.

32. On August 17, 2023, the Board granted the Agency's unopposed Motion for Extension of Time to File a Recommendation. Further, the Board found that INEOS provided timely and sufficient notice. Additionally, the Board accepted the INEOS

Petition but did not rule on the merits or determine whether the Board will hold a hearing on the Petition.

33. On September 27, 2023, the Recommendation of the Illinois Environmental Protection Agency ("Recommendation") was filed in PCB 23-135.

34. The Recommendation stated that the "Petition has met the requirements of Part 106, Subpart K." Recommendation, ¶ 4. Illinois EPA recommended "that the Board GRANT the AELs for discharges from the Facility." Recommendation, ¶ 1.

35. As the Recommendation was favorable to INEOS, no Response to the Recommendation was filed.

36. During telephonic status conferences held on January 25, 2024 and March 21, 2024, counsel for the Illinois Department of Natural Resources ("Department") explained that the Department's Consultation for Endangered Species Protection and Natural Areas Preservation, Attachment A to the Recommendation, was dated April 15, 2022, and expires two years after that date.

37. On March 27, 2024, INEOS submitted an application through the Ecological Compliance Assessment Tool ("EcoCAT") requesting an updated Consultation for Endangered Species Protection and Natural Areas Preservation from the Department.

C. Status Report

38. On May 9, 2024, the Department provided an updated Consultation for Endangered Species Protection and Natural Areas Preservation letter. The Department

found that “inclusion of the INEOS discharge under the approved Midwest Generation, LLC Alternative Thermal Effluent Limits is unlikely to result in any adverse environmental impact on the balanced indigenous community of the Upper Dresden Island Pool of the Lower Des Plaines River.”

39. On May 23, 2024, the Agency filed a Supplement to its September 27, 2023 Recommendation, discussing and attaching the new Department consultation letter and noting that the consultation letter is valid until May 9, 2026.

40. Currently, the parties await the Board’s decision as to whether to request additional information, schedule a hearing, or issue a ruling.

41. INEOS will submit its Eleventh Status Report on or before October 21, 2024.

WHEREFORE, Petitioner, INEOS Joliet, LLC, respectfully submits its Tenth Status Report.

Respectfully submitted,

INEOS JOLIET, LLC

Dated: July 22, 2024

By: /s/ Michael P. Murphy

One of its attorneys

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CERTIFICATE OF SERVICE

I, the undersigned, on oath state the following:

That I have served the attached the **TENTH STATUS REPORT** via electronic mail upon:

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That my email address is: Michael.Murphy@heplerbroom.com

That the number of pages in the email transmission is 11 pages.

That the email transmission took place before 5:00 p.m. on the date of July 22, 2024.

/s/ Michael P. Murphy

One of Its Attorneys

Date: July 22, 2024