

ILLINOIS POLLUTION CONTROL BOARD
April 12, 2017

MIDWEST GENERATION, LLC,)
)
 Petitioner,)
)
 v.) PCB 16-19
) (Time-Limited Water Quality Standard)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by K. Papadimitriou):

Public Act 99-937 took effect on February 24, 2017, creating new Section 38.5 of the Environmental Protection Act (Act), which authorizes the Board to adopt “time-limited water quality standards.” 415 ILCS 5/38.5(a). On that date, any pending petition for a variance from a water quality standard, including Midwest Generation’s petition for a variance from the temperature water quality standards, was converted, by operation of law, into a petition for a time-limited water quality standard. 415 ILCS 5/38.5(a), (c). Accordingly, the variance provisions in Section 38 of the Act, including the Board’s 120-day deadline for taking final action, no longer apply. 415 ILCS 5/38 (2014).

In this order, the Board reviews the Illinois Environmental Protection Agency’s (Agency) filing under new Section 38.5; establishes the dischargers and class of dischargers that may be covered by the requested time-limited water quality standard; and sets a petition-filing deadline.

Section 38.5(e) of the Act requires the Agency to file a response to Midwest Generation’s petition within 21 days after the effective date of the Act, which the Agency did on March 16, 2017. 415 ILCS 5/38.5(e). The Agency identified the Chicago Sanitary and Ship Canal, Upper Dresden Island Pool as affected by the temperature water quality standards from which relief is sought and suggested that petitioners provide a map identifying the outfalls and impacted segments. Agency Res. at 3. The Agency identified heated effluent dischargers as the class of dischargers affected, as well as Midwest Generation and Flint Hills Resources Joliet, LLC.¹ as affected dischargers. *Id.* The Agency also suggests including Stepan Company and “possibly, but not likely” ExxonMobil Oil Corporation, subject to additional Agency data collection and

¹ Flint Hills has a petition pending in Flint Hills Resources, Joliet, LLC v. IEPA, PCB 16-24, which is the subject of a separate order today.

evaluation. *Id.*² The Agency suggests that the relief could be an individual, waterbody segment, or multi-discharger time-limited water quality standard. *Id.* at 4.

Section 38.5(h) stays the effectiveness of water quality standards for some petitioners. 415 ILCS 5/38.5(h). The Agency suggested a deadline of “90 days after the adoption of the rules the Agency will be proposing pursuant to 415 ILCS 5/38.5(k)” for any petitions to be filed for purposes of preserving or obtaining the stay of the temperature water quality standards. Agency Res. at 4; 415 ILCS 5/38.5(h).

Section 38.5(f) requires the Board, within 30 days after receiving the Agency’s response, to enter an order establishing the discharger or class of dischargers that may be covered by the requested time-limited water quality standard along with a deadline for amended or initial petitions. 415 ILCS 5/38.5(f). Based on the Agency’s response, within this order the Board establishes:

- a) heated effluent dischargers into Chicago Sanitary and Ship Canal, and Upper Dresden Island Pool, including Flint Hills, Midwest Generation (Will County Station, Joliet 9 Station, and Joliet 29 Station), and Stepan Chemical as the class of dischargers that may be covered by a time-limited water quality standard for temperature under Section 38.5(f) of the Act; Exxon Mobil as a potentially-affected discharger, subject to the Agency’s further evaluation; and
- b) a deadline of 90 days after the Board adopts rules under Section 38.5(k) of the Act for petitioners to file any amended or initial petitions under Section 38.5(h). 415 ILCS 5/38.5(f), (h), (k).³

Section 38.5(g) requires the Board, as soon as practicable after today’s order, to evaluate each petition to determine whether it is in substantial compliance with 40 C.F.R. § 131.14, Section 38.5 of the Act, and rules adopted under Section 38.5 (not yet in place). If the Board finds that a currently-pending petition does not substantially comply, it will enter an interim order identifying the petition’s deficiencies. 415 ILCS 5/38.5(h)(3). Petitioners must file an amended petition curing any deficiencies identified by the Board before the deadline above. *Id.* Any member of the class established by this order seeking a stay of the chloride water quality standard who does not have a petition pending with the Board must file an initial petition by the same deadline. 415 ILCS 5/38.5(h)(1)(C). Under Section 38.5(f), this is a final order. 415 ILCS 5/38.5(f).

IT IS SO ORDERED.

² ExxonMobil Oil Corporation filed comments in this docket on March 31, 2017 (ExxonMobile Comm.), in response to Agency’s March 16th response, stating that its status and path forward regarding time-limited water quality standards relief is uncertain until additional data is collected and evaluated. *See* ExxonMobile Comm. at 3.

³ The Act requires the Agency to propose the rules pursuant to 415 ILCS 5/38.5(k) not later than August 24, 2017. 415 ILCS 5/38.5(f). The Board must adopt such rules not later than nine months thereafter. *Id.*

Section 38.5(j) of the Environmental Protection Act states that any person who is adversely affected or threatened by this final order may appeal directly to the Illinois Appellate Court within 35 days after the Board serves the order. P.A. 99-937, eff. Feb. 24, 2017 (added 415 ILCS 5/38.5). For purposes of this judicial review, a person is considered to have been served with the Board's final order on the date on which the Board first publishes the order on its website. 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. In addition, the Board's procedural rules state that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902.

I, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 12, 2017, 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, Assistant Clerk
Illinois Pollution Control Board