

ILLINOIS POLLUTION CONTROL BOARD

June 8, 2017

VILLAGE OF HOMEWOOD,)	
HOMEWOOD ILLINOIS, VILLAGE OF)	
ORLAND PARK, ORLAND PARK)	
ILLINOIS, VILLAGE OF MIDLOTHIAN,)	
MIDLOTIAN ILLINOIS, VILLAGE OF)	
TINLEY PARK, TINLEY PARK ILLINOIS,	)	PCB 16-14 (Homewood)
EXXONMOBIL OIL CORPORATION,	)	PCB 16-15 (Orland Park)
VILLAGE OF WILMETTE, CITY OF	)	PCB 16-16 (Midlothian)
COUNTRY CLUB HILLS, COUNTRY	)	PCB 16-17 (Tinley Park)
CLUB HILLS ILLINOIS, NORAMCO-	)	PCB 16-18 (ExxonMobil)
CHICAGO, INC., FLINT HILLS	)	PCB 16-20 (Wilmette)
RESOURCES JOLIET, LLC, CITY OF	)	PCB 16-21 (Country Club Hills)
EVANSTON, VILLAGE OF SKOKIE,	)	PCB 16-22 (Noramco-Chicago)
ILLINOIS DEPARTMENT OF	)	PCB 16-23 (Flint Hills Resources)
TRANSPORTATION, METROPOLITAN	)	PCB 16-25 (Evanston)
WATER RECLAMATION DISTRICT OF	)	PCB 16-26 (Skokie)
GREATER CHICAGO, VILLAGE OF	)	PCB 16-27 (IDOT)
RICHTON PARK, VILLAGE OF	)	PCB 16-29 (MWRDGC)
LINCOLNWOOD, and CITY OF OAK	)	PCB 16-30 (Richton Park)
FOREST, OAK FOREST ILLINOIS,	)	PCB 16-31 (Lincolnwood)
	)	PCB 16-33 (Oak Forest)
Petitioners,	)	(Time-Limited Water Quality
	)	Standard)
v.	)	(Consolidated)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On February 24, 2017, each petition for a variance from the chloride water quality standard in these consolidated dockets became a petition for a time-limited water quality standard (TLWQS). 415 ILCS 5/38.5(a), (c). On April 12, 2017, the Board established the class of dischargers potentially covered by a watershed TLWQS for chloride. The Board also established a deadline for petitioners to file any amended or initial petitions—90 days after the Board adopts rules under Section 38.5(k) of the Environmental Protection Act (Act). 415 ILCS 5/38.5(f), (k); Village of Homewood v. Illinois EPA, PCB 16-14, PCB 16-15, PCB 16-16, PCB 16-17, 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.) (Apr. 12, 2017). On May 4, 2017, the Illinois Environmental Protection Agency (Illinois EPA) filed a

motion for clarification (Mot.), proposing to define “CAWS watershed” for these TLWQS petitions.

Today, the Board grants the Illinois EPA’s motion and clarifies the April 12, 2017 Board order by including the narrative definition for the “CAWS watershed”. Also, under Section 38.5(g) of the Act, the Board finds that the previously-filed petitions for variance generally do not comply with the elements of Section 131.14 of the Code of Federal Regulations. 415 ILCS 5/38.5(g); 40 C.F.R. § 131.14.

THE BOARD CLARIFIES “CAWS WATERSHED”

On March 16, 2017, Illinois EPA filed a response (IEPA Resp.) under Section 38.5(e) of the Act. 415 ILCS 5/38.5(e). That response identified categories of dischargers and included a map of the CAWS watershed affected by the chloride water quality standard (WQS). IEPA Resp. at 3. In the May 4, 2017 motion, Illinois EPA asserts that the Board “did not describe the area included as the ‘CAWS watershed’” or incorporate the map submitted by Illinois EPA. Mot. at 2.

Section 38.5(f) of the Act requires the Board to establish the “classes of dischargers that may be covered by the time-limited water quality standard.” 415 ILCS 38.5(f). In the April 12, 2017 order, the Board simply referred to categories of dischargers located within the “CAWS watershed” as the class potentially covered by the chloride TLWQS. Village of Homewood, slip op. at 2. The Board finds Illinois EPA’s clarification helpful in potentially narrowing that class of dischargers. Therefore, the Board grants Illinois EPA’s motion and clarifies that the class of dischargers potentially covered by the chloride TLWQS includes the categories of dischargers named in the Board’s April 12, 2017 order 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). Mot. at 2.

The watershed is further clarified by the map filed as a part of Illinois EPA’s March 16, 2017 response.

THE PENDING PETITIONS GENERALLY DO NOT COMPLY WITH 40 C.F.R. § 131.14

Section 38.5(g) requires the Board, as soon as practicable after its April 12, 2017 order, to evaluate whether each petition is in substantial compliance with 40 C.F.R. § 131.14, Section 38.5 of the Act, and rules adopted under Section 38.5. 415 ILCS 5/38.5(g). If the Board finds that a currently-pending petition does not substantially comply, it must enter an interim order identifying the petition’s deficiencies. 415 ILCS 5/38.5(h)(3).

The Board notes that the deadline for amended petitions proposed by Illinois EPA and established by the Board, in its April 12, 2017 order, was designed to allow for amended petitions to comply with the rules to be adopted by the Board under new Section 38.5(k). Section 38.5(k) requires that the Agency, by August 24, 2017, propose rules prescribing specific procedures and standards to be used by the Board when adopting TLWQS. The Board will not know the final standards to be used until it adopts the rules, which it must do within nine months after receiving Illinois EPA's proposal. However, in compliance with Section 38.5(g), the Board evaluates the pending petitions today under Section 131.14 and Section 38.5 of the Act. 40 C.F.R. § 131.14.

Section 131.14 of Title 40 of the Code of Federal Regulations allows States to adopt WQS variances. 40 C.F.R. § 131.14. The adoption of a WQS variance is subject to approval by the United States Environmental Protection Agency (USEPA). *Id.* at § 131.14(a)(2), (3). Many requirements under Section 131.14 speak to what a *State* must demonstrate to USEPA for approval of a WQS variance. *Id.* at § 131.14(b). Therefore, the Board evaluates the petitions based, in part, on whether they contain the correct information to make the necessary demonstration to USEPA under 40 C.F.R. § 131.14.


The petitions in this consolidated docket were filed in July 2015, well before new Section 38.5 of the Act became effective. The petitions, therefore, reflect the format for requesting a variance under Section 38 of the Act—the form of relief sought at the time—rather than 40 C.F.R. § 131.14. 415 ILCS 5/38 (2016). Regardless of format, some information submitted in the pending petitions is responsive to §131.14 and Section 38.5 of the Act, but deficiencies remain. The petitions generally do not contain information necessary to demonstrate compliance with Section 131.14(b). 40 C.F.R. § 131.14(b). For example, the petitions do not contain the “highest attainable interim use and interim criterion; or . . . the greatest pollutant reduction achievable” or a “highest attainable condition”. 40 C.F.R. § 131.14(b)(1)(ii)(B), (b)(1)(iii).

After evaluating the petitions, the Board finds that they are not in substantial compliance with 40 C.F.R. § 131.14. Petitioners must file amended petitions before the deadline established in the Board's April 12, 2017 order and discussed above. The amended petitions must comply with the rules to be adopted under Section 38.5(k). Any member of the class established by the April 12, 2017 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).

IT IS SO ORDERED.

Board Member C. Santos abstains.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 8, 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, circular initial "D".

Don A. Brown, Clerk
Illinois Pollution Control Board