

# ILLINOIS POLLUTION CONTROL BOARD

December 20, 2018

VILLAGE OF HOMEWOOD, HOMEWOOD	)	
ILLINOIS, VILLAGE OF ORLAND PARK,	)	
ORLAND PARK ILLINOIS, VILLAGE OF	)	
MIDLOTHIAN, MIDLOTHIAN ILLINOIS,	)	
VILLAGE OF TINLEY PARK, TINLEY PARK	)	
ILLINOIS, EXXONMOBIL OIL	)	
CORPORATION, VILLAGE OF WILMETTE,	)	
WILMETTE ILLINOIS, CITY OF COUNTRY	)	
CLUB HILLS, COUNTRY CLUB HILLS	)	
ILLINOIS, NORAMCO-CHICAGO, INC.,	)	
FLINT HILLS RESOURCES JOLIET LLC,	)	
CITY OF EVANSTON, EVANSTON ILLINOIS,	)	
VILLAGE OF SKOKIE, SKOKIE ILLINOIS,	)	PCB 16-14 (Homewood)
ILLINOIS DEPARTMENT OF	)	PCB 16-15 (Orland Park)
TRANSPORTATION, METROPOLITAN	)	PCB 16-16 (Midlothian)
WATER RECLAMATION DISTRICT OF	)	PCB 16-17 (Tinley Park)
GREATER CHICAGO, VILLAGE OF	)	PCB 16-18 (ExxonMobil)
RICHTON PARK, RICHTON PARK ILLINOIS,	)	PCB 16-20 (Wilmette)
VILLAGE OF LINCOLNWOOD,	)	PCB 16-21 (Country Club Hills)
LINCOLNWOOD ILLINOIS, CITY OF OAK	)	PCB 16-22 (Noramco-Chicago)
FOREST, OAK FOREST ILLINOIS, VILLAGE	)	PCB 16-23 (Flint Hills Resources)
OF LYNWOOD, LYNWOOD ILLINOIS,	)	PCB 16-25 (Evanston)
CITGO HOLDINGS, INC., VILLAGE OF NEW	)	PCB 16-26 (Skokie)
LENOX, NEW LENOX ILLINOIS, CITY OF	)	PCB 16-27 (IDOT)
LOCKPORT, LOCKPORT ILLINOIS,	)	PCB 16-29 (MWRDGC)
CATERPILLAR, INC., CITY OF CREST HILL,	)	PCB 16-30 (Richton Park)
CREST HILL ILLINOIS, CITY OF JOLIET,	)	PCB 16-31 (Lincolnwood)
JOLIET ILLINOIS, MORTON SALT, INC.,	)	PCB 16-33 (Oak Forest)
CITY OF PALOS HEIGHTS, PALOS HEIGHTS	)	PCB 19-7 (Village of Lynwood)
ILLINOIS, VILLAGE OF ROMEOVILLE,	)	PCB 19-8 (Citgo Holdings)
ROMEOVILLE ILLINOIS, IMTT ILLINOIS	)	PCB 19-9 (New Lenox)
LLC, STEPAN CO., VILLAGE OF PARK	)	PCB 19-10 (Lockport)
FOREST, PARK FOREST ILLINOIS, OZINGA	)	PCB 19-11 (Caterpillar)
READY MIX CONCRETE, INC., OZINGA	)	PCB 19-12 (Crest Hill)
MATERIALS, INC., MIDWEST MARINE	)	PCB 19-13 (Joliet)
TERMINALS LLC, VILLAGE OF MOKENA,	)	PCB 19-14 (Morton Salt)
MOKENA ILLINOIS, VILLAGE OF OAK	)	PCB 19-15 (Palos Heights)
LAWN, OAK LAWN ILLINOIS, VILLAGE OF	)	PCB 19-16 (Romeoville)
DOTON, DOTON ILLINOIS, VILLAGE OF	)	PCB 19-17 (IMTT Illinois)
GLENWOOD, GLENWOOD ILLINOIS,	)	PCB 19-18 (Stepan)
VILLAGE OF MORTON GROVE, MORTON	)	PCB 19-19 (Park Forest)
GROVE ILLINOIS, VILLAGE OF LANSING,	)	PCB 19-20 (Ozinga Ready Mix)
LANSING ILLINOIS, VILLAGE OF	)	PCB 19-21 (Ozinga Materials)

FRANKFORT, FRANKFORT ILLINOIS,	)	PCB 19-22 (Midwest Marine)
VILLAGE OF WINNETKA, WINNETKA	)	PCB 19-23 (Mokena)
ILLINOIS, VILLAGE OF LA GRANGE, LA	)	PCB 19-24 (Oak Lawn)
GRANGE ILLINOIS, VILLAGE OF	)	PCB 19-25 (Dolton)
CHANNAHON, CHANNAHON ILLINOIS,	)	PCB 19-26 (Glenwood)
COOK COUNTY DEPARTMENT OF	)	PCB 19-27 (Morton Grove)
TRANSPORTATION AND HIGHWAYS,	)	PCB 19-28 (Lansing)
VILLAGE OF NILES, NILES ILLINOIS,	)	PCB 19-29 (Frankfort)
SKYWAY CONCESSION COMPANY LLC,	)	PCB 19-30 (Winnetka)
VILLAGE OF ELWOOD, ELWOOD ILLINOIS,	)	PCB 19-31 (La Grange)
CITY OF CHICAGO, CHICAGO ILLINOIS,	)	PCB 19-33 (Channahon)
VILLAGE OF CRESTWOOD, CRESTWOOD	)	PCB 19-34 (CCDTH)
ILLINOIS and VILLAGE OF RIVERSIDE,	)	PCB 19-35 (Niles)
RIVERSIDE ILLINOIS	)	PCB 19-36 (Skyway)
	)	PCB 19-37 (Elwood)
Petitioners,	)	PCB 19-38 (Chicago)
	)	PCB 19-40 (Crestwood)
v.	)	PCB 19-48 (Riverside)
	)	
ILLINOIS ENVIRONMENTAL PROTECTION	)	(Time-Limited Water Quality
AGENCY,	)	Standard)
	)	(Consolidated)
Respondent.	)	

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

From July 23 through August 13, 2018, 49 petitioners filed petitions for a chloride time-limited water quality standard (TLWQS) under Part 104.Subpart E of the Board’s procedural rules. 35 Ill. Adm. Code 104.Subpart E. Specifically, petitioners identified in the caption above seek to be covered by a chloride TLWQS for portions of the Lower Des Plaines River (LDPR) watershed and portions of the Chicago Area Waterway System (CAWS) watershed. In today’s order, the Board finds that these petitions contain the required components for a TLWQS petition and are therefore in “substantial compliance” as defined by the Board’s rules. In addition, the Board directs the Illinois Environmental Protection Agency (IEPA) to file its recommendation by February 5, 2019.

In this order, the Board first provides background information on TLWQS. The Board then discusses its orders that established both the class of dischargers potentially covered by a chloride TLWQS and the deadline for members of that class to file amended or initial petitions. Next, the Board assesses whether the resulting petitions are 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 AND THE JOINT AMENDED PETITION**

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)).

Here, the Board established the class of dischargers potentially covered by a chloride TLWQS in Village of Homewood v. IEPA, PCB 16-14 (cons.) as:

[publicly owned treatment works], communities with [combined sewer overflow] outfalls, industrial sources, [municipal separate storm sewage systems], [Illinois Department of Transportation], Illinois Tollway, and salt storage facilities [(Homewood, PCB 16-14 (cons.), slip op. at 2 (Apr. 12, 2017)) that are 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) . . . further clarified by the map filed as part of [IEPA’s] March 16, 2017 response [(Homewood, PCB 16-14 (cons.), slip op. at 2 (June 8, 2017))].

Because their initial petitions, filed originally as variance petitions but converted by operation of law to TLWQS petitions (*see* 415 ILCS 5/38.5(b)(2)), were not in substantial compliance with the regulations of the United States Environmental Protection Agency (USEPA) at 40 CFR §131.14, the Board directed the 16 petitioners in Homewood to file amended petitions within 90 days after adoption of TLWQS rules to preserve the stay of the chloride water quality standard. Homewood, PCB 16-14 (cons.), slip op. at 2-3 (June 8, 2017). By the same deadline, any other member of the discharger class seeking a stay of the chloride water quality standard was required to file its initial petition. *Id.* at 3.

The Board adopted its TLWQS rules on April 26, 2018. *See* Regulatory Relief Mechanisms: Proposed New Ill. Adm. Code Part 104, Subpart E, R18-18, slip op. (Apr. 26, 2018). Within 90 days after that, on July 24, 2018, the Metropolitan Water Reclamation District of Greater Chicago (MWRDGC) filed the “Joint Submittal” (J. Sub.). To supplement the Joint Submittal, class members, including MWRDGC, filed “Individual Submittals” containing their respective site-specific information. These Individual Submittals were filed either by the 90-day deadline or later with the Board’s permission. *See* Homewood, PCB 16-14 (consol.), slip op. at 2 (Sept. 20, 2018) (extending deadline for Village of Crestwood); Homewood, PCB 16-14 (consol.), slip op. at 2 (Oct. 4, 2018) (extending deadline for Village of Riverside). Each petitioner seeking TLWQS coverage for multiple facilities filed an Individual Submittal for each of those facilities.

In all, 33 new petitioners joined the original 16 Homewood petitioners. The Board consolidated the new petitioners with the Homewood proceeding on August 23, 2018. Homewood, PCB 16-14 (cons.), slip op. at 3-4 (Aug. 23, 2018); *see also* Homewood, PCB 16-14 (consol.), slip op. at 2-3 (Sept. 20, 2018) (severing Ingredion, Inc.’s petition from consolidated docket). The Board refers to the Joint Submittal and the Individual Submittals collectively as the “Joint Petition” and to the 49 petitioners as “Joint Petitioners.”

With the class of dischargers established and the Joint Petition timely filed for purposes of the stay, the Board must review the Joint Petition for substantial compliance. 415 ILCS 5/38.5(g); 35 Ill. Adm. Code 104.545(a).

### **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 Joint Petition requests a TLWQS from the Board’s chloride water quality standard at 35 Ill. Adm. Code 302.407(g)(3). *See* 35 Ill. Adm. Code 104.530(a)(1), (2), (5). The Joint Petition consists of the Joint Submittal, which includes 56 Appendices (J. Sub., App. 1 – 56), as well as 64 facility-specific Individual Submittals to supplement the Joint Submittal, with 11 of the individual petitioners including additional attachments or exhibits as well. *See* 35 Ill. Adm. Code 104.530(a)(3), (9), (16); 35 Ill. Adm. Code 104.530(d).

The Joint Petition posits that attainment of the designated use and chloride water quality standard are not feasible because of two factors: (1) human caused conditions or sources of pollution that cannot be remedied or would leave more environmental damage to correct than to leave in place; and (2) controls more stringent than those required by Section 301(b) and 306 of

the Clean Water Act would result in substantial and widespread negative economic and social impact on the public. J. Sub. at Chapters 2 & 3; *see* 35 Ill. Adm. Code 104.530(a)(7), 104.560(a)(3), (6). The Joint Petition asserts that “reliance on salt for de-icing of roadways and thoroughfares is the human-caused condition which prevents attainment and cannot be remedied.” J. Sub. at 2.1; *see* 35 Ill. Adm. Code 104.530(a)(10). Joint Petitioners claim that remedies that would place controls on discharges or stop the use of salt would result in widespread economic and social impact due to substantial costs for control technologies and public safety risks. J. Sub. at 3.1-3.2. Joint Petitioners stress that “there is no feasible alternative that, within the confines of providing adequate public safety, allows for compliance with the chloride standards in the Watershed” on a consistent basis. J. Sub. at 2.4.

The proposed chloride TLWQS would cover portions of the CAWS and LDPR watersheds, depicted by the map in Appendix 4 of the Joint Petition and described in the Board’s June 8, 2017 order. *See* 35 Ill. Adm. Code 104.530(a)(4). The Joint Petition identifies the highest attainable condition as an interim criterion of a range of values between 269 and 280 milligrams per liter (mg/L) or, alternatively, a single value of 275 mg/L chloride. J. Sub. at 8.2; *see* 35 Ill. Adm. Code 104.530(a)(12), (13). Joint Petitioners request a TLWQS term of 15 years. J. Sub. at 10.1; *see* 35 Ill. Adm. Code 104.530(a)(14). A re-evaluation would be submitted every 5 years. J. Sub. 10.1; *see* 35 Ill. Adm. Code 104.530(a)(15). Joint Petitioners propose attainment of the highest attainable condition by using mandatory BMPs listed by type of discharger. J. Sub. at Chapter 2; *see* 35 Ill. Adm. Code 104.530(a)(11), (13), 104.530(b)(1). Joint Petitioners propose that compliance be determined based on a one-time assessment at the end of the first 5-year period, calculated as the average of chloride measurements during the winter months over the 5-year period at two downstream locations representative of the CAWS and LDPR watersheds. J. Sub. at 10.1-10.2; *see* 35 Ill. Adm. Code 104.530(a)(15), (17).

The Board finds that the Joint 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), (d).

### **CONCLUSION**

Because the Board finds that the Joint Petition is in substantial compliance, IEPA must file its recommendation by February 5, 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 Joint Petition to USEPA. *See* 35 Ill. Adm. Code 104.550(d). Joint Petitioners 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 Joint Petitioners and the Agency through a Board or hearing officer order prior to the public hearing.

IT IS SO ORDERED.

Board member C. Santos abstained.

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 December 20, 2018, by a vote of 4-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive, flowing style.

Don A. Brown, Clerk  
Illinois Pollution Control Board