

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SANITARY DISTRICT OF DECATUR,)	
)	
Petitioner,)	
)	
v.)	PCB 14-111
)	(Time-Limited Water Quality Standard)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Don Brown	Carol Webb
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500	1021 North Grand Avenue East
Chicago, Illinois 60601	Post Office Box 19274
(VIA ELECTRONIC MAIL)	Springfield, Illinois 62794-9274
	(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 **STATUS REPORT**, a copy of which is herewith served upon you.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR

Date: April 25, 2019

By: /s/ Melissa S. Brown
 One of Its Attorneys

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SANITARY DISTRICT OF DECATUR,)
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 Petitioner,)
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 v.) PCB 14-111
) (Time-Limited Water Quality Standard)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

STATUS REPORT

NOW COMES Petitioner, SANITARY DISTRICT OF DECATUR (“District” or “Petitioner”), by and through its attorneys, HEPLERBROOM, LLC, and pursuant to the Illinois Pollution Control Board’s (“Board”) Order dated December 20, 2018, hereby provides an update to the Board regarding the United States Environmental Protection Agency’s (“USEPA”) approval of the District’s site specific water quality standard.

1. On September 29, 2017, the District filed in this proceeding a Motion for Extension of Time to file a substantially compliant amended time-limited water quality standard (“TLWQS”) petition with the Board. *See* Motion for Extension of Time, PCB 14-111 (Ill.Pol.Control.Bd. Sep. 29, 2017).

2. On October 5, 2017, the Board granted the District’s Motion for Extension of Time, extending the deadline to file a substantially compliant amended TLWQS petition to December 31, 2018. *See* Board Order, PCB 14-111, at 1-2 (Ill.Pol.Control.Bd. Oct. 5, 2017).

3. The Board adopted the District’s proposed site-specific rule (“SSR”) in the related site-specific rulemaking proceeding, PCB R 14-24, on November 15, 2018. *See* Board Order, PCB R 14-24, at 1-2 (Ill.Pol.Control.Bd. Nov. 15, 2018). The adopted SSR was filed with the Secretary of State on November 19, 2018 and was published in the *Illinois Register* on

November 30, 2018. *See* 42 Ill. Reg. 20,934, 20,947 (Nov. 30, 2018). As such, the District's SSR is effective as a matter of state law as of November 19, 2018 per 5 ILCS 100/5-40(d).

4. On December 5, 2018, the District filed with the Board a Motion to Stay the TLWQS Proceeding until USEPA's final decision on the adopted SSR, which the Board granted on December 20, 2018. Board Order, PCB 14-111 (Ill.Pol.Control.Bd. Dec. 20, 2018). In its Order, the Board directed the District to promptly notify it of USEPA's decision. *See id.*

5. Pursuant to 40 C.F.R. 131.20(c) and 131.6(e), Illinois EPA prepared a submission packet to USEPA for its review and approval of the SSR, as well as a Request for Certification to the Illinois Attorney General's Office ("Illinois AGO"), requesting that the Illinois AGO certify that the SSR was duly adopted pursuant to State law.

6. The submission packet to USEPA and the Request for Certification to the Illinois AGO were mailed on December 14, 2018.

7. The completed Illinois AGO Certification was e-mailed and mailed to USEPA on January 24, 2019 and was received by the USEPA lead reviewer on February 21, 2019.

8. On April 8, 2019, USEPA approved the District's site specific water quality standard. *See* Letter from Joan M. Tanaka, Acting Director, Water Division, USEPA Region 5, to Sanjay Sofat, Chief, Bureau of Water, Illinois EPA (Apr. 8, 2019) ("Approval Letter"), attached hereto as Attachment 1.

9. As noted in the Approval Letter, while USEPA has determined that there are no impacts of concern, USEPA's consultation with the United States Fish and Wildlife Service ("FWS"), as required by Section 7 of the Endangered Species Act, has been initiated but has not yet concluded. *See id.* at 1.

10. As such, the District will move to voluntarily dismiss this proceeding once the FWS consultation process has been completed.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,
By One of Its Attorneys,

Dated: April 25, 2019

/s/ Melissa S. Brown

Melissa S. Brown

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Electronic Filing: Received, Clerk's Office 4/25/2019

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

ATTACHMENT 1

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 08 2019

REPLY TO THE ATTENTION OF:

WQ-16J

Mr. Sanjay Sofat, Chief
Bureau of Water
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Dear Mr. Sofat:

Thank you for your letter of December 14, 2018, submitting Illinois' site-specific water quality standard for nickel adopted at 35 Ill. Adm. Code Part 303.410 for the segment of the Sangamon River from the point at which Outfall 001 of the Sanitary District of Decatur (SDD) discharges to the River to the confluence of the Sangamon River with the South Fork of the Sangamon River. This rule package was complete with the receipt of the Illinois Attorney General's certification letter, dated January 24, 2019 and received by the U.S. Environmental Protection Agency on February 21, 2019.

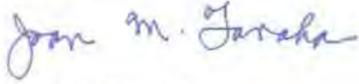
Consistent with Section 303(c) of the Clean Water Act and federal regulations at 40 CFR 131.21, EPA is required to review and approve all new or revised State water quality standards. As described in the enclosed review document, EPA reviewed the information submitted in support of the new or revised standards and hereby approves the rule revisions pursuant to Section 303(c) of the Clean Water Act and federal regulations at 40 CFR 131.21.

As required under Section 7 of the ESA and federal regulations at 50 CFR Part 402, EPA evaluated whether approval of these standards would affect federally-listed threatened or endangered species or designated critical habitat. EPA determined that the action may affect, but is not likely to adversely affect, one or more listed aquatic, aquatic-dependent or wetland species. Further, EPA determined that the action will not destroy or adversely modify designated critical habitat.

To date, EPA has initiated, but not completed, consultation with U.S. Fish and Wildlife Service on the new or revised standards. EPA has determined that this approval action does not violate Section 7(d) of the ESA, which prohibits irreversible or irretrievable commitments of resources that have the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives. EPA concluded, as described in the record, that there are not impacts of concern during the interim period until consultation is completed.

If your staff has any questions regarding this approval, please contact Aaron Johnson of my staff at (312) 886-6845 or johnson.aaronk@epa.gov.

Sincerely,

A handwritten signature in blue ink that reads "Joan M. Tanaka". The signature is written in a cursive style.

Joan M. Tanaka
Acting Director, Water Division

Enclosure

cc: Brian Koch, Illinois EPA (electronic)
Sara Terranova, Illinois EPA (electronic)

**EPA's Review of Revisions to Illinois' Water Quality Standards:
Site-Specific Nickel Criterion for a Portion of the Sangamon River
Under Section 303(c) of the Clean Water Act
WQSTS # IL 2018-1322**

Date: **APR 08 2019**

I. Executive Summary

On February 21, 2019, the U.S. Environmental Protection Agency received from the Illinois Environmental Protection Agency (Illinois EPA) submission of a site-specific water quality standard (WQS) for nickel adopted by Illinois at 35 Ill. Adm. Code Part 303.410. For a portion of the Sangamon River from the point at which Outfall 001 of the Sanitary District of Decatur (SDD) discharges to the River to the confluence of the Sangamon River with the South Fork of the Sangamon River, the adopted WQS replaces Illinois' General Use nickel criterion at 35 Ill. Adm. Code Part 302.208(e) with a site-specific criterion calculated to account for the effects of dissolved organic carbon (DOC) on nickel bioavailability.

As discussed in Section II of this document, EPA has determined that these rules are consistent with the relevant requirements of the Clean Water Act (CWA) and federal regulations at 40 CFR 131 and therefore approves the adopted WQS. Consistent with the requirements of the Endangered Species Act (ESA), EPA evaluated the potential impacts of its approval of the adopted rule on federally-protected species and designated critical habitat and determined that consultation with the U.S. Fish and Wildlife Service (FWS) is necessary. As discussed in Section III of this document, EPA developed a biological evaluation (BE) that evaluates potential effects of its approval. Last, consistent with the "EPA Policy on Consultation and Coordination with Indian Tribes," EPA evaluated whether approval of the adopted rule may affect the interests of federally-recognized tribes. EPA concluded that approval will not impact tribal interests and that, therefore, tribal consultation is unnecessary.

II. EPA review of Illinois EPA submittal

WQS requirements of CWA sections 101(a)(2) and 303(c)(2) are implemented through federal regulations contained in 40 CFR 131. Consistent with federal regulations at 40 CFR 131.21, new or revised WQS do not become effective for CWA purposes until they are approved by EPA. The criteria by which EPA evaluates State-adopted WQS are identified in 40 CFR 131.5(a)(1) through 40 CFR 131.5(a)(8). 40 CFR 131.6 outlines the minimum requirements of a WQS submission. EPA reviews each of these criteria below.

A. 40 CFR 131.5(a)(1), (3)-(5), (7) and (8) are not relevant in considering whether to approve Illinois' site-specific WQS for a portion of the Sangamon River

For the reasons listed below, the above regulatory requirements are not relevant to EPA's review of Illinois' adoption of the site-specific WQS for the Sangamon River.

- 40 CFR 131.5(a)(1) is not relevant because Illinois' adoption of the site-specific WQS does not affect Illinois' existing designated uses.
- 40 CFR 131.5(a)(3) is not relevant because Illinois' adoption of the site-specific WQS does not modify Illinois' existing antidegradation policy or antidegradation implementation methods.
- 40 CFR 131.5(a)(4) is not relevant because Illinois' rulemaking does not grant a WQS variance for any waterbody.
- 40 CFR 131.5(a)(5) is not relevant because Illinois' adoption of the site-specific WQS does not modify Illinois' existing rules regarding the use of schedules of compliance.
- 40 CFR 131.5(a)(7) is not relevant because the uses designated by Illinois for the Sangamon River includes the uses specified in Section 101(a)(2) of the CWA.
- 40 CFR 131.5(a)(8) is not relevant because the Sangamon River is not within the Great Lakes Basin.

B. Whether the State has adopted criteria that protect the designated use based on sound scientific rationale consistent with §131.11 (40 CFR 131.5(a)(2))

Federal regulations at 40 CFR 131.11(a)(1) require states to “adopt those water quality criteria that protect the designated use,” and specify that “criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use.”

Per 40 CFR 131.11(b): “In establishing criteria, States should [e]stablish numerical values based on 304(a) Guidance; 304(a) Guidance modified to reflect site-specific conditions; or [o]ther scientifically defensible methods.”

In adopting the site-specific chronic nickel criterion for the protection of the General Use in the Sangamon River, IPCB and Illinois EPA reviewed information on nickel toxicity and the effect of DOC on nickel bioavailability. Based on that information, IPCB and Illinois EPA determined that nickel is not adversely affecting the attainment of the designated use. Illinois EPA subsequently chose to adopt the following WQS revision at 35 Ill. Adm. Code 303.410:

Section 303.410 Chronic Nickel Water Quality Standard for Segment of the Sangamon River

The general use chronic water quality standard for dissolved nickel contained in Section 302.208(e) shall not apply to the segment of the Sangamon River that receives discharges from the Sanitary District of Decatur's Main Sewage Treatment Plant, from that facility's Outfall 001 located at 39° 49' 56" North Latitude, 89° 0' 7" West Longitude, to the point of the confluence of the Sangamon River with the South Fork of the Sangamon River near Riverton. Instead, waters in this segment of the Sangamon River must meet a chronic water quality standard for dissolved nickel as follows:

$$\text{Chronic Dissolved Nickel Standard } (\mu\text{g/L}) = \exp[A+B\ln(H)] \times 0.997^* \times \text{WER}$$

Where:

$$A = -2.286,$$

$$B = 0.8460,$$

$\ln(H)$ = natural logarithm of Hardness, and

$$\text{WER (Water Effect Ratio)} = 2.50.$$

* = conversion factor multiplier for dissolved metals

Consistent with Section 304(a) of the CWA, EPA publishes national recommended water quality criteria that accurately reflect the latest scientific knowledge. As discussed in Chapter 3 of EPA's WQS Handbook, EPA's 304(a) criteria recommendations, if not exceeded, generally ensure adequate water quality for protection of a designated use (p. 2) and "[i]f a state or authorized tribe relies on 304(a) criteria recommendations (or other up-to-date EPA guidance documents), they may reference and rely on the data in those documents and may not need to create duplicative or new material for inclusion in their records" (p. 3).

Table 1: Comparison of Illinois' adopted site-specific chronic criterion for nickel with EPA's 304(a) criteria recommendation for nickel.

Hardness (mg/L)	Chronic Criterion for Nickel ($\mu\text{g/L}$)	
	EPA's 304(a) Recommendation*	Sangamon River Site-Specific Criterion
100	52	12
200	93	22
300	132	32
359	153	37
400	168	40

$$*\text{Chronic criterion } (\mu\text{g/L}) = \exp[0.0584+0.8460*\ln(\text{Hardness})]*0.997$$

As shown in Table 1 above, Illinois's site-specific chronic nickel criterion for a portion of the Sangamon River is more stringent than EPA's current 304(a) guidance value. Considering the scientific and technical information supporting EPA's chronic 304(a) recommendation, EPA has determined that the site-specific change to Illinois's chronic nickel criterion is consistent with the CWA Section 303(c) and 40 CFR 131.11.

C. Whether the State has followed applicable legal procedures for revising or adopting standards (40 CFR 131.5(a)(6))

In a letter dated January 24, 2019 and submitted to EPA as supporting documentation for the site-specific WQS revision, Matthew J. Dunn, an Illinois Attorney General's Office Attorney, certified that the revised WQS "was duly adopted and is enforceable in accordance with Illinois state law."

In adopting the rules, the State also provided opportunities for public input consistent with federal requirements at 40 CFR 131.20(b) and 40 CFR 25. On November 30, 2017, SDD filed a proposal for a site-specific rule, which included draft rule language. On February 28, 2018, the IPCB accepted the proposal for hearing and scheduled a hearing on the proposed site-specific criterion, which was held on May 16, 2018 at the Decatur Civic Center in Decatur, Illinois. The IPCB provided public notice of the scheduled hearing through a Notice of Hearing on the IPCB's website and a public notice published in the Decatur Herald & Review on March 2, 2018. One person provided comments at the hearing and Illinois EPA provided post-hearing written comments on May 23, 2018. The IPCB subsequently issued a first notice opinion and order on July 26, 2018, requesting additional public comment by September 24, 2018. Illinois subsequently published the first notice in the Illinois Register on August 10, 2018. The IPCB received two comments during this period from Illinois EPA and SDD. The IPCB publicized the May 16, 2018 public hearing more than 45 days prior to the date of the hearing, recorded the hearing and met other requirements for public hearings specified at 40 CFR 25.5.

The IPCB considered and responded to the public comments before adopting the site-specific criterion. The IPCB proposed non-substantive amendments to the proposed rules in response to some of the comments. EPA reviewed the comments and IPCB's responses in deciding whether to approve Illinois' site-specific chronic criterion for nickel.

D. Whether the State submission meets the requirements included in §131.6 of this part and, for Great Lakes States or Great Lakes Tribes (as defined in 40 CFR 132.2) to conform to section 118 of the Act, the requirements of 40 CFR 132. (40 CFR 131.5(a)(8))

Because the Sangamon River is not located in the Great Lakes Basin, the requirements of 40 CFR 132 are not applicable to EPA's review of these rules.

40 CFR 131.6 identifies the minimum requirements of a WQS submission. As described below, Illinois' submittal meets all the relevant requirements of 40 CFR 131.6.

1. 40 CFR 131.6(a), (d) and (f) are not relevant in considering whether to approve Illinois' site-specific WQS for a portion of the Sangamon River

For the reasons listed below, 40 CFR 131.6(a), (d) and (f) are not relevant to EPA's review of Illinois' adoption of the site-specific WQS for the Sangamon River.

- 40 CFR 131.6(a) is not relevant because Illinois' adoption of the site-specific WQS does not affect Illinois' existing designated uses.
- 40 CFR 131.6(d) is not relevant because Illinois' adoption of the site-specific WQS does not modify Illinois' existing antidegradation policy.
- 40 CFR 131.6(f) is not relevant because the uses designated by Illinois for the Sangamon River includes the uses specified in Section 101(a)(2) of the CWA and the site-specific WQS does not modify any of Illinois' existing general policies applicable to State standards which may affect their application and implementation.

2. Methods used and analyses conducted to support WQS revisions (40 CFR 131.6(b))

The State submitted the following documents in support of these rules:

- Illinois Attorney General's certification letter, dated January 24, 2019 and received February 21, 2019;
- Transmittal Letter from Sanjay K. Sofat, Illinois EPA, to Scott Ireland, dated December 14, 2018 and received December 20, 2018. The letter noted that the State's entire administrative record in support of the revision was available for review in the electronic docket maintained on the IPCB's website;
- Illinois Register notice of adopted amendment to 35 Ill. Adm. Code 303, published November 30, 2018;
- Transcript of public hearing held May 16, 2018;
- IPCB Adopted Rule Final Order Opinion and Order, issued November 15, 2018;
- IPCB Second Notice Opinion and Order, issued October 4, 2018; and
- IPCB First Notice Opinion and Order, issued July 26, 2018.

3. Water quality criteria sufficient to protect the designated uses (40 CFR 131.6(c))

The adopted rules establish a site-specific chronic criterion for nickel applicable to the portion of the Sangamon River from the point at which Outfall 001 of the SDD discharges to the River to the confluence of the Sangamon River with the South Fork of the Sangamon River. As discussed in Section II.B above, the site-specific criterion is consistent with 40 CFR 131.11.

4. Certification by the State Attorney General or other appropriate legal authority within the State that the WQS were duly adopted pursuant to State law (40 CFR 131.6(e))

Illinois' Attorney General's office certified the rules in a letter from Matthew J. Dunn to Linda Holst, dated January 24, 2019.

E. Conclusion

For the reasons described above, EPA concludes that Illinois's site-specific chronic criterion for nickel applicable to a portion of the Sangamon River is consistent with the requirements of the CWA and 40 CFR 131.

III. Endangered Species Act (ESA) Requirements

Consistent with Section 7 of the ESA and federal regulations at 50 CFR Part 402, EPA is required to consult with the Services on any action taken by EPA that may affect federally-listed threatened or endangered species or their designated critical habitat.

On April 2, 2019, EPA consulted the U.S. Fish and Wildlife Service (FWS) Illinois county-level endangered/threatened species lists at <https://www.fws.gov/midwest/endangered/lists/illinois-cty.html>. EPA then used the FWS Information for Planning and Conservation (IPaC) tool (available at <https://ecos.fws.gov/ipac/>) to

identify which of the species within affected counties might be present within the action area. EPA identified the Indiana bat, northern long-eared bat, and eastern prairie fringed orchid as potentially present and found no critical habitat in the area.

EPA determined that its approval of Illinois' site-specific chronic criterion for nickel would have **no effect** on the eastern prairie fringed orchid, since EPA's action will not impact the prairie habitat required by the eastern prairie fringed orchid. EPA determined that its action **may affect, but is not likely to adversely affect**, the Indiana bat and northern long-eared bat. EPA drafted a biological evaluation and transmitted it to FWS.

Section 7(a)(2) requires that federal agencies, in consultation with the Services, ensure that federal actions are not likely to jeopardize the existence of federally-listed species or result in the adverse modification of designated critical habitat of such species. Upon initiation of consultation, Section 7(d) of the ESA prohibits irreversible or irretrievable commitments of resources that have the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives which would not violate Section 7(a)(2) of the ESA.

EPA's approval decision does not foreclose either the formulation by the Services, or the implementation by EPA, of any alternatives that might be determined, in the consultation, to be needed to comply with Section 7(a)(2). EPA retains the full range of options available under Section 303(c) for ensuring WQS are environmentally protective. EPA can, for example, work with Illinois EPA to ensure that the Agency revises its WQS as needed to ensure listed species are protected or initiate rulemaking to promulgate federal WQS to supersede Illinois's WQS.

IV. Tribal Consultation Requirements

On May 4, 2011, EPA issued the "EPA Policy on Consultation and Coordination with Indian Tribes" to address Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." The EPA Tribal Consultation Policy states that "EPA's policy is to consult on a government-to-government basis with federally recognized tribes when EPA actions and decisions may affect tribal interests." EPA reviewed the location of tribal lands and concluded that no tribal lands were located within the action area. Since tribal interests will not be affected by the revised WQS, EPA determined that consultation is unnecessary.