

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: Mr. Don Brown
Clerk of the Board
Illinois Pollution Control Board
100 W. Randolph Street
Suite 11-500
Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)

Carol Webb, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
(VIA ELECTRONIC MAIL)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the **STATUS REPORT**, copies of which are herewith served upon you.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,

Dated: May 12, 2017

By: /s/ Katherine D. Hodge
Katherine D. Hodge

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CERTIFICATE OF SERVICE

I, the undersigned, on oath state the following:

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

Don Brown
Clerk of the Board
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
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That my email address is Katherine.Hodge@heplerbroom.com.

That the number of pages in the email transmission is 6.

That the email transmission took place before 5:00 p.m. on the date of May 12, 2017.

/s/ Katherine D. Hodge
Katherine D. Hodge

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STATUS REPORT

NOW COMES the SANITARY DISTRICT OF DECATUR (“District”), by and through its attorneys, HEPLERBROOM, LLC, and provides this status report to the Hearing Officer and the Illinois Pollution Control Board (“Board”) regarding recent activities in this matter. The District provides as follows:

I. BACKGROUND

On February 21, 2014, the District filed its Petition for Extension of Variance (“Variance Petition”) in this proceeding, PCB No. 14-111, requesting a one-year extension of its initial variance granted in PCB No. 09-125 from the Board’s general use water quality standards for nickel at 35 Ill. Admin. Code §§ 302.208(e) and 304.105, as it applies to establishing water quality based effluent limits, for the continued discharge of nickel from the District’s wastewater treatment plant located in Decatur, Macon County, Illinois, into the Sangamon River, pursuant to the terms and conditions outlined in the Variance Petition.

On April 17, 2014, the District met with the Illinois Environmental Protection Agency (“Illinois EPA”) to discuss the pending request for variance extension, as well as issues associated with the federal directive regarding “consistency with federal law” for water variances.

Since then, the District has filed, and the Board has granted, motions to stay this proceeding to allow the parties to continue making meaningful progress resolving these issues, particularly the District's ongoing work with Illinois EPA and the United States Environmental Protection Agency ("USEPA") in the District's related site-specific rulemaking ("SSR") proceeding, PCB No. 14-24. Specifically, on June 30, 2014, the District filed a petition for an SSR seeking to establish an alternative chronic water quality standard for nickel. *See* Petition for Site Specific Rule, PCB No. R14-24 (Ill.Pol.Control.Bd. June 30, 2014).

The District has been filing periodic status reports in both this proceeding and the related SSR proceeding. As indicated in those reports, the District has been continuously engaged with Illinois EPA and USEPA concerning the ongoing technical studies at issue in the SSR proceeding. *See* District's Status Reports filed in PCB Nos. 14-111 and R14-24 (providing additional information about the status of the SSR proceeding and how it affects this proceeding).

II. CONVERSION OF THE DISTRICT'S VARIANCE PETITION INTO A PETITION FOR A TIME-LIMITED WATER QUALITY STANDARD

On February 24, 2017, Public Act 99-937 was signed into law. This legislation created Section 38.5 of the Act, which provides the Board with authority to adopt time-limited water quality standards ("TLWQS"). Pursuant to Section 38.5(c) of the Act, the District's pending Variance Petition in this proceeding was converted, by operation of law, into a petition for a TLWQS under Section 38.5.

Pursuant to Section 38.5(e) of the Act, Illinois EPA filed its 21-day response in this proceeding on March 16, 2017. In its response, Illinois EPA identified the District as the only discharger or class of discharger affected by the nickel water quality standard, the affected water as the Sangamon River downstream of Lake Decatur, and the appropriate type of relief as an

individual TLWQS. Illinois EPA did not identify any deadline for the District to file an amended petition. *See* Illinois EPA's Response to the Variance Petition, PCB 14-111 (Ill.Pol.Control.Bd. Mar. 16, 2017).

Pursuant to Section 38.5(f) of the Act, the Board entered its 30-day order in this proceeding on April 12, 2017. In its order, the Board found that, based on Illinois EPA's response, the District is the only discharger that may be covered by the requested standard. Further, the Board's order established a deadline for the District to file an amended petition complying with Section 38.5 of the Act and 40 C.F.R. § 131.14. *See* Order of the Board, PCB 14-111 (Ill.Pol.Control.Bd. Apr. 12, 2017).

The District filed a Motion for Extension of Time to extend its deadline for filing a substantially compliant TLWQS petition until 90 days after the Board adopts rules implementing Section 38.5 of the Act. *See* Petitioner's Motion for Extension of Time, PCB 14-111 (Ill.Pol.Control.Bd. Apr. 24, 2017). The Board granted the District an extension, but only until July 11, 2017, and the Board retained the deadline of May 12, 2017, for the District to file its next status reports in both this proceeding and the related SSR proceeding. *See* Order of the Board, PCB 14-111 (Ill.Pol.Control.Bd. May 3, 2017).

III. CURRENT STATUS

The data and timing required for the District to file a substantially compliant petition for a TLWQS is dependent upon the District's completion of its technical studies in the related SSR proceeding. In that proceeding, the District is close to completing its analysis and reporting on the most recent round of toxicity testing requested by USEPA.

Specifically, in mid-2016, USEPA provided comments on the District's then-recently completed round of toxicity testing and subsequently requested that the District perform another

round of toxicity testing to address USEPA's comments. Pursuant to this request, the District's testing consultants at Oregon State University's ("OSU") testing laboratory worked with USEPA to develop a testing protocol that addressed USEPA's comments and completed the additional round of toxicity testing in December 2016. In April 2017, OSU provided the toxicity test results and chemistry data to the District's modelling consultant, Windward Environmental ("Windward"). Windward then completed the updated toxicity modelling using the most recent data and provided the modelling results back to OSU for use in preparing a draft toxicity test report based on the December 2016 data.

The District expects to receive and begin reviewing a draft report from OSU by the end of May 2017. Upon the District's review and approval of the draft toxicity report, the District will be distributing the report to USEPA and Illinois EPA for review and scheduling a conference call to discuss any comments. The District sincerely hopes that this most recent round of toxicity testing and reporting will be the final round, and that the District may then proceed with its filings with the Board.

The District will commit to the filing of additional status report(s) as requested by the Board or Hearing Officer.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,
By One of Its Attorneys,

Dated: May 12, 2017

/s/ Katherine D. Hodge

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