

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SANITARY DISTRICT OF	)	
DECATUR,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 14-111
	)	(Variance – Water)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

TO: Mr. John T. Therriault	Carol Webb, Esq.
Assistant Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 W. Randolph Street	1021 North Grand Avenue East
Suite 11-500	Post Office Box 19274
Chicago, Illinois 60601	Springfield, Illinois 62794-9274
<b>(VIA ELECTRONIC MAIL)</b>	<b>(VIA FIRST CLASS MAIL)</b>

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the **PETITIONER’S MOTION TO STAY THE PROCEEDING** and **WAIVER OF THE DECISION DEADLINE** copies of which are herewith served upon you.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,

Dated: April 21, 2014

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

Katherine D. Hodge  
Ethan S. Pressly  
HODGE DWYER & DRIVER  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
(217) 523-4900

**CERTIFICATE OF SERVICE**

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached PETITIONER'S MOTION TO STAY THE PROCEEDING and WAIVER OF THE DECISION DEADLINE, upon:

Mr. John T. Therriault  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

via electronic mail on April 21, 2014; and upon:

Sara Terranova, Esq.  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, Illinois 62794-9276

Carol Webb, Esq.  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Post Office Box 19274  
Springfield, Illinois 62794-9274

Division Chief of Environmental Enforcement  
Office of the Attorney General  
69 West Washington Street  
Chicago, Illinois 60602

Office of Legal Services  
IL Department of Natural Resources  
One Natural Resources Way  
Springfield, IL 62702-1271

depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois, on April 21, 2014.

/s/Katherine D. Hodge  
Katherine D. Hodge

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**PETITIONER’S MOTION TO STAY THE PROCEEDING**

NOW COMES Petitioner, SANITARY DISTRICT OF DECATUR (“District”), by and through its attorneys, HODGE DWYER & DRIVER, and pursuant to 35 Ill. Admin. Code §§ 101.514, hereby requests that the Illinois Pollution Control Board (“Board”) grant this Motion to Stay the Proceeding until December 31, 2014. In support of its motion, Petitioner states as follows:

1. On June 15, 2009, the District first sought a variance from the Board’s general use water quality standards for nickel and zinc at Section 302.208(e) of the Board’s regulations (35 Ill. Adm. Code § 302.208(e)) and from Section § 304.105 of the Board’s regulations (35 Ill. Adm. Code 304.105) as it applies to establishing water quality based effluent limits.

2. On July 30, 2009, the Illinois Environmental Protection Agency (“Illinois EPA or Agency”) filed its Recommendation recommending that the Board grant the variance. Under the heading of Consistency With Federal Law, the Agency stated as follows:

25. There are no applicable federal laws or regulations that preclude the granting of this variance. The State of Illinois

has been delegated by the Administrator of the United States Environmental Protection Agency to administer the National Pollutant Discharge Elimination System for discharges into navigable waters within its jurisdiction under Section 402(b) of the Clean Water Act. 33 U.S.C. 1342(b) (2008).

Agency Recommendation at 9 (Ill.Pol.Control.Bd. July 30, 2009) PCB No. 09-125.

3. On January 7, 2010, the Board granted the variance, subject to specified conditions, in an Opinion and Order in PCB 09-125. (“Initial Variance”). The Initial Variance began on January 7, 2010, and ends on July 1, 2014.

4. On February 21, 2014, the District filed its Petition for Extension of Variance (“Petition”) requesting a one-year extension of its Initial Variance for the continued discharge of nickel from its wastewater treatment plant located in Decatur, Macon County, Illinois, into the Sangamon River, pursuant to the terms and conditions outlined in the Petition.

5. On March 6, 2014, the Board accepted the Petition.

6. On April 7, 2014, the Agency filed its Recommendation, stating in pertinent part, as follow:

Given that the District needs to perform additional Biotic Ligand Model (“BLM”) work and ADM has yet to implement new pretreatment technology to reduce nickel, the District is clearly in need of additional time by which to achieve compliance with the applicable nickel water quality standard. The Agency believes that additional time of one year would be sufficient to complete the appropriate BLM research required to validate the resulting site-specific nickel standard and file a petition with the Board. This additional time would also allow the District to conduct the confirmatory Water Effects Ratio (“WER”) testing, should it choose to do so. The request to seek this additional time through a variance however must comply with state as well as federal requirements. As discussed in detail under the Consistency With Federal Law heading, the District has failed to comply with the mandatory federal requirements. The District maintains that there is no valid current applicable federal law or regulation that precludes the Board’s granting the District's variance extension

request. However, under US EPA's regulations and interpretations, the District can only remove a designated use specified in section 101(a)(2) of the CWA, or a subcategory thereof, if, among other things, the District demonstrates that it is not feasible to attain the designated use for one of the reasons specified at 40 CFR 131.10(g).

Based on the totality of the factors stated above, the Illinois EPA recommends that the Board DENY the Petitioner's request for an extension of variance from water quality standards for nickel at Section 302.208(e) of the Board's regulations (35 Ill. Adm. Code 302.208(e)) and from Section 304.105 of the Board's regulations (35 Ill. Adm. Code 304.105) as it applies to establishing water quality based effluent limits.

Agency Recommendation at 15-16 (Ill.Pol.Control.Bd. Apr. 7, 2014).

7. On April 17, 2014, the District met with Illinois EPA to discuss the pending request for variance extension, as well as issues associated with the recent federal directive regarding "consistency with federal law" for water variances.

8. The District hereby files this Motion to Stay the Proceeding consistent with the discussions at the April 17, 2014 meeting, and in accordance with Illinois EPA's acknowledgement that "the District is clearly in need of additional time by which to achieve compliance with the applicable nickel water quality standard."

9. The additional time sought by this Motion to Stay the Proceeding will allow the District to continue its investigation and development of a site-specific water quality standard proposal. Specifically, the District is in need of additional time to respond to questions from the United States Environmental Protection Agency ("USEPA") related to the District's proposed use of the Biotic Ligand Model ("BLM") to support a site-specific standard petition, as set forth below.

10. Prior to and throughout the term of the current variance, the District has worked closely with Illinois EPA, and through the Illinois EPA's assistance, with the USEPA Region 5, toward the preparation of a proposal for a site-specific standard.

During the summer and fall of 2013, the District participated in a number of telephone conference calls with personnel from Illinois EPA, USEPA Region 5, USEPA's Duluth Research Laboratory, and USEPA Headquarters. Several of the USEPA personnel involved in these calls had not previously been involved in conversations with the District. During this period, USEPA raised a number of additional questions regarding the technical basis of the BLM and information on a number of nickel toxicity studies reported in the scientific literature. These questions were summarized in a memorandum that was provided to the District on August 26, 2013. The questions were further discussed and clarified in subsequent conversations, most recently on December 5, 2013. The District's consultant has obtained the additional data that USEPA requested be reviewed and evaluated, and is preparing responses to USEPA's questions.

11. Also during these telephone conversations, USEPA suggested the option of performing aquatic toxicity testing to develop a proposed Water Effect Ratio ("WER") to either supplement or substitute for a proposed standard based on the BLM. After consultation with USEPA, the District prepared and submitted a proposed WER testing plan to Illinois EPA and USEPA Region 5 on January 30, 2014, and received review comments from USEPA Region 5 on March 7. The District's consultant is also preparing responses to the testing plan review comments.

12. While the District is working diligently to provide responses, it is unlikely that the responses and any follow-up discussions or requests for information (from Illinois EPA or USEPA) will be completed prior to expiration of the current variance on July 1, 2014. While the District does not concede that resolution of these questions is needed for the Board's review in this variance extension proceeding, such resolution of

these questions will be necessary to support the site-specific water quality standard proposal to be filed with the Board for consideration (as well as for any subsequent review and approval by USEPA should the Board grant the site-specific water quality standard).

13. On this same date, Petitioner filed a Waiver of the Decision Deadline until December 31, 2014.

14. The additional time requested, until December 31, 2014, should allow the parties to make meaningful progress in this matter. Also, the District will submit a Status Report to the Board on or before October 1, 2014. Finally, the District requests that all pending deadlines for any responses be stayed, as necessary, to accommodate this Motion to Stay the Proceeding and the Waiver of the Decision Deadline.

15. The Illinois EPA has no objection to this Motion to Stay the Proceeding.

WHEREFORE, Petitioner, SANITARY DISTRICT OF DECATUR, moves the Illinois Pollution Control Board grant this Motion to Stay the Proceeding until December 31, 2014.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,

Dated: April 21, 2014

By: /s/Katherine D. Hodge  
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**WAIVER OF DECISION DEADLINE**

The Sanitary District of Decatur (“District”) hereby waives the decision deadline in the above-captioned matter up to, and including, December 31, 2014. In so doing, the District reiterates its prior request that the variance extension be sequential with the terms of the Initial Variance and notes that it filed the Petition for Extension of Variance more than 120 days prior to termination of the Initial Variance as required by 35 Ill. Admin. Code § 104.210.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,

Dated: April 21, 2014

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