

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 **PETITIONER’S MOTION FOR EXTENSION OF TIME**, copies of which are herewith served upon you.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,

Dated: April 24, 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 PETITIONER'S MOTION FOR EXTENSION OF TIME via electronic mail upon:

Don Brown
Clerk of the Board
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That my email address is Katherine.Hodge@heplerbroom.com.

That the number of pages in the email transmission is 7.

That the email transmission took place before 5:00 p.m. on the date of April 24, 2017.

 /s/ Katherine D. Hodge
Katherine D. Hodge

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PETITIONER'S MOTION FOR EXTENSION OF TIME

NOW COMES Petitioner, SANITARY DISTRICT OF DECATUR (“District” or “Petitioner”), by and through its attorneys, HEPLERBROOM, LLC, and pursuant to 35 Ill. Admin. Code § 101.514, hereby requests that the Illinois Pollution Control Board (“Board”) grant this Motion for Extension of Time to file an amended petition complying with Section 38.5 of the Illinois Environmental Protection Act (“Act”) and 40 C.F.R. § 131.14 until 90 days after the Board adopts rules under Section 38.5(k) of the Act. In support of its motion, Petitioner states as follows:

I. BACKGROUND

1. 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.

2. 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.

3. 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).

4. 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

5. 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.

6. 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).

7. 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 by May 12, 2017, which allows the District only 30 days from the date of the Board's order to file a substantially compliant petition. *See* Order of the Board, PCB 14-111 (Ill.Pol.Control.Bd. Apr. 12, 2017).

III. THE DISTRICT NEEDS MORE THAN 30 DAYS TO SUBMIT AN AMENDED PETITION FOR A TLWQS

8. In its 30-day order, the Board determined that the District's pending petition for a TLWQS (as converted by matter of law) is not in substantial compliance with 40 C.F.R. § 131.14, that the District must file an amended petition for a TLWQS, and that the District has only 30 days, i.e., until May 12, 2017, to file its amended, substantially compliant petition.

9. However, 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. The

District respectfully requests more time to be able to first complete its work with USEPA and Illinois EPA in the SSR proceeding before proceeding with the related, amended petition for a TLWQS.

10. Furthermore, Illinois EPA is still in the process of developing its draft rules implementing Section 38.5 of the Act. Just last week, on April 20, 2017, Illinois EPA held a stakeholder meeting to review and discuss its draft rules with various stakeholders. The District participated in the meeting, and along with other stakeholders, provided comments and concerns that Illinois EPA will be considering as it further develops the draft rules. Written comments on Illinois EPA's draft rules are due by May 8, 2017.

11. Pursuant to Section 38.5(k), Illinois EPA must propose its rules implementing Section 38.5 to the Board within 6 months from the effective date of the TLWQS legislation. The Board must then promulgate final rules within 9 months thereafter. *Id.*

12. The District respectfully requests that the rules implementing the TLWQS legislation be fully developed before the District is required to submit its amended petition. Notably, for every other discharger with pending variance petitions before the Board that were converted as a matter of law into petitions for TLWQS, the Board determined that the deadline for submitting amended petitions would be 90 days after the Board adopts rules under Section 38.5(k) of the Act. The District respectfully requests that it be allowed the same amount of time to prepare and submit its amended petition for a TLWQS.

13. The Respondent, Illinois EPA, has no objection to the granting of this Motion.

IV. CONCLUSION

14. The additional time requested to file an amended petition complying with 40 C.F.R. § 131.14, Section 38.5 of the Act, and the rules adopted pursuant to Section 38.5 will

