

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: February 22, 2019

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

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CERTIFICATE OF SERVICE

I, Melissa S. Brown, 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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Don.Brown@illinois.gov

Carol Webb
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That my email address is Melissa.Brown@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 February 22, 2019.

/s/ Melissa S. Brown

Melissa S. Brown

Date: February 22, 2019

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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 submits this Status Report.

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. 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 certain issues, including the District’s work with the Illinois Environmental Protection Agency (“Illinois EPA”)

and the United States Environmental Protection Agency (“USEPA”) in the District’s related site-specific rulemaking (“SSR”) proceeding, PCB No. 14-24.

3. On February 24, 2017, 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 time-limited water quality standard (“TLWQS”).

4. The Board established a deadline of May 12, 2017 for the District to file an amended petition complying with Section 38.5 of the Act and 40 C.F.R. § 131.14. *See* Board Order, PCB 14-111, at 1-2 (Ill.Pol.Control.Bd. Apr. 12, 2017).

5. However, due to the District’s ongoing work with Illinois EPA and USEPA concerning the technical studies at issue in the SSR proceeding, the District required additional time to prepare a substantially compliant TLWQS petition. The District filed motions for extension of time, as well as status reports detailing the current status of the amended TLWQS petition and related SSR proceeding.

6. On September 29, 2017, the District filed a Motion for Extension of Time to file a substantially compliant amended TLWQS petition with the Board. *See* Motion for Extension of Time, PCB 14-111 (Ill.Pol.Control.Bd. Sep. 29, 2017).

7. 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).

8. The Board adopted the District’s SSR 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).

9. However, the adopted SSR needs to be approved by USEPA to become effective as a matter of federal law per 40 C.F.R. Part 131.

10. Under 40 C.F.R. 131.20(c), within 30 days of the final State action to adopt and certify the rule, the State must submit the adopted rule to USEPA for approval. Under 40 C.F.R. 131.21(a), USEPA then has 60 days to approve the rule or 90 days to disapprove the rule.

11. Given these deadlines, on December 5, 2018, the District requested a stay of this proceeding until such time that USEPA either approves or disapproves the adopted SSR. *See* Petitioner's Motion for Stay of Proceeding, PCB 14-111, at 3-4 (Ill.Pol.Control.Bd. Dec. 5, 2018).

12. The Board granted the District's request for stay on December 20, 2018, staying this proceeding until USEPA's final decision on the SSR. *See* Board Order, PCB 14-111, at 1 (Ill.Pol.Control.Bd. Dec. 20, 2018).

13. In the Board's Order, the Board directed the District to file a status report by February 25, 2019. *See id.* The status of USEPA's review and approval or disapproval of the SSR is discussed below.

II. CURRENT STATUS

14. As noted above, the Board adopted the District's SSR on November 15, 2018. *See* Board Order, PCB R 14-24, at 1-2 (Ill.Pol.Control.Bd. Nov. 15, 2018).

15. The adopted SSR became effective as a matter of state law on November 19, 2018 per 5 ILCS 100/5-40(d).

16. Pursuant to 40 C.F.R. 131.20(c), Illinois EPA prepared a submission packet to USEPA for its review and approval of the SSR.

17. Pursuant to 40 C.F.R. 131.6(e), Illinois EPA also prepared 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.

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

19. As the Board is aware, the U.S. government was partially shutdown from December 22, 2018 to January 25, 2019.

20. The completed Illinois AGO Certification was e-mailed and mailed to USEPA on January 24, 2019.

21. It is our understanding that it is USEPA's position that the 60/90 day timeframe for USEPA to review and either approve or disapprove the SSR does not begin until the USEPA lead reviewer has received the physical copy of the AGO Certification.

22. The USEPA lead reviewer received the Illinois AGO certification on February 21, 2019.

23. Therefore, USEPA has 60 days from February 21, 2019 to notify the State that the SSR was approved, or 90 days from February 21, 2019 to notify the State that the SSR was disapproved, per 40 C.F.R. 131.21(a).

24. Given the date that USEPA received the AGO Certification, USEPA will have until April 22, 2019 to approve the SSR or until May 22, 2019 to disapprove the SSR.

25. As directed by the Board in its December 20, 2018 Order, the District will

promptly notify the Board of USEPA's decision.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,
By One of Its Attorneys,

Dated: February 22, 2019

/s/ Melissa S. Brown

Melissa S. Brown

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