

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

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

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the **ENTRY OF APPEARANCE OF KATHERINE D. HODGE, ENTRY OF APPEARANCE OF ETHAN S. PRESSLY, PETITION FOR EXTENSION OF VARIANCE, MOTION TO INCORPORATE and AFFIDAVIT OF TIMOTHY R. KLUGE**, copies of which are herewith served upon you.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,

Dated: February 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 ENTRY OF APPEARANCE OF KATHERINE D. HODGE, ENTRY OF APPEARANCE OF ETHAN S. PRESSLY, PETITION FOR EXTENSION OF VARIANCE, MOTION TO INCORPORATE and AFFIDAVIT OF TIMOTHY R. KLUGE, upon:

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

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

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

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

Office of Legal Services
Illinois 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 February 21, 2014.

/s/Katherine D. Hodge
Katherine D. Hodge

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)	(Variance – Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ENTRY OF APPEARANCE OF KATHERINE D. HODGE

NOW COMES Katherine D. Hodge, of the law firm HODGE DWYER & DRIVER, and hereby enters her appearance in this matter on behalf of Sanitary District of Decatur.

Respectfully submitted,

Dated: February 21, 2014

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

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

SDOD-001\Filings\EOA – KDH

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Respondent.)	

ENTRY OF APPEARANCE OF ETHAN S. PRESSLY

NOW COMES Ethan S. Pressly, of the law firm HODGE DWYER & DRIVER,
and hereby enters his appearance in this matter on behalf of Sanitary District of Decatur.

Respectfully submitted,

Dated: February 21, 2014

By: /s/Ethan S. Pressly
Ethan S. Pressly

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

SDOD-001\Filings\EOA – ESP

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PETITION FOR EXTENSION OF VARIANCE

NOW COMES the Sanitary District of Decatur (“District”), by and through its attorneys, HODGE DWYER & DRIVER, and, pursuant to Sections 35(a) and 36(b) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/35(a), 5/36(b) and Part 104 of Title 35 of the Illinois Administrative Code, 35 Ill. Admin. Code § 104.100 et seq., hereby petitions the Illinois Pollution Control Board (“Board”) for a variance extension authorizing the continued discharge of *nickel* from its wastewater treatment plant (“Main Plant”) into the Sangamon River pursuant to the terms and conditions outlined in this Petition for Extension of Variance (“Petition”).

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. On January 7, 2010, the Board granted the variance, subject to specified conditions, in an Opinion and Order in PCB 09-125. (“Initial Variance”). That Opinion

and Order is attached hereto as Exhibit A. The Initial Variance began on January 7, 2010, and ends on July 1, 2014.

The District is now requesting the Board to grant it a one-year variance extension to allow it more time to continue its investigation and implementation of adequate solutions regarding its *nickel* discharges. The District is not seeking a variance extension regarding *zinc* discharges, as those discharges are now in compliance as a result of efforts taken during the Initial Variance period.

As evidenced by achieving compliance with the *zinc* discharge limits, and by fully meeting all but one of the Board's conditions imposed by the Initial Variance, the District has made satisfactory progress toward compliance. The only Board condition that will not be met is achieving compliance with the District's National Pollutant Discharge Elimination System ("NPDES") permit effluent limit for *nickel* by July 1, 2014. The District has diligently worked, and continues to diligently work, with Archer Daniels Midland Company ("ADM"), one of the District's largest industrial users and the most significant industrial source of *nickel* loading. ADM has been actively seeking treatment technologies for *nickel* removal, has implemented two significant *nickel* reduction treatment processes at its facility, and has scheduled a third reduction treatment process for startup in the first quarter of 2014. The District has also been actively collaborating with the Illinois Environmental Protection Agency ("Agency") and the United States Environmental Protection Agency ("USEPA") on the development and pursuit of a site-specific water quality standard for *nickel* based on Biotic Ligand Model ("BLM") Adjustment to the *nickel* criterion. Based on these efforts, the District has

made satisfactory progress toward compliance such that a variance extension is appropriate.

The District requests that this variance extension be sequential with the terms of the Initial Variance and, accordingly, has filed this Petition more than 120 days prior to termination of the Initial Variance as required by 35 Ill. Admin. Code § 104.210I.

Finally, simultaneous with the filing of this Petition, and as required by 35 Ill. Admin. Code § 104.210(d)(3), the District also filed a Motion to Incorporate the entire PCB 09-125 record, including the initial petition, all orders, agency recommendations, pre-filed testimony, hearing transcripts, exhibits, briefs, and any records themselves incorporated therein into this variance extension proceeding.

I. LEGAL FRAMEWORK

The Board's rules authorize variance extensions as follows:

Section 104.210 Petition for Extension of Variance

- a) A variance extension pursuant to Section 36(b) of the Act *may be extended from year to year by affirmative action of the Board, but only if satisfactory progress has been shown by the petitioner [415 ILCS 5/36(b)].*
- b) A petition to extend a variance granted by the Board is a new petition for variance before the Board, and must be filed in accordance with this Subpart and 35 Ill. Adm. Code 101.Subpart C, including payment of the filing fee pursuant to Section 104.202(b) of this Part and 35 Ill. Adm. Code 101.302(e)(2).
- c) If the petitioner desires to have the term of the variance extension be sequential with the term of the prior variance, the petition to extend the variance must be filed with the Board no later than 120 days prior to the termination of the variance, unless the petitioner can demonstrate that the petition for variance extension was filed as soon as

practicable after the petitioner learned that it could not meet the compliance time frame under the existing variance.

- d) In addition to the requirements of this Subpart, the petition for extension of variance must contain:
- 1) A detailed statement showing that *satisfactory progress* toward compliance has been or will have been achieved during the term of the prior variance [415 ILCS 5/36(b)];
 - 2) A statement that the conditions of the prior variance have been fully met, or, if any condition or conditions have not been fully met, a detailed explanation of the reason or reasons that the condition or conditions have not been fully met; and
 - 3) A motion to incorporate any material from the record of the prior variance proceeding in accordance with 35 Ill. Adm. Code 101.306.

35 Ill. Admin. Code § 104.210.

II. BACKGROUND

The District, located in Macon County, is engaged in the treatment of wastewater for the City of Decatur, the Villages of Forsyth, Mt. Zion, Oreana, and Argenta, and for industrial and commercial users in the Decatur, Illinois, metropolitan area. The District employs approximately 55 full-time employees, and was formed in 1917. The original Main Plant, located at 501 Dipper Lane, Decatur, Illinois, was completed in 1924. Major expansions and plant upgrades were made in 1928, 1957, 1964 and 1976, and the current plant was completed in 1990. The District serves approximately 90,000 residential users, 26 significant industrial users (“SIUs”), and more than 1,000 other industrial and commercial users.

An average flow of approximately 35 million gallons per day (“MGD”) is processed at the Main Plant and then discharged into the Sangamon River. The Main Plant has a design average flow of 41.0 MGD and a design maximum flow of 125.0 MGD. Treatment at the Main Plant consists of screening, grit removal, primary clarification, two-stage activated sludge, secondary clarification, disinfection, dechlorination, discharge to surface water, anaerobic digestion, flotation thickening, and land application of sludge on area farmland. The District has an approved pretreatment program with 17 noncategorical SIUs and 9 categorical SIUs.

A large portion of flow to the District’s Main Plant is contributed by two industrial users, ADM and Tate & Lyle Ingredients Americas, Inc. These industries both process grain (corn and soybeans) and produce a variety of products. On an annual average basis, these two industries discharge approximately 11 MGD and 5 MGD, respectively, and constitute an average of approximately 45 percent of the District’s flow. This percentage increases to as much as 70 percent of the District’s flow during extended dry weather periods.

The Main Plant’s main discharge is via Outfall 001 to the Sangamon River at 39° 49’ 56” North Latitude, 89° 0’ 7” West Longitude. At the discharge point, the Sangamon River is designated as a General Use Water under Section 303.201 of the Board’s rules. As discussed above, the general use water quality standards for nickel is set forth in Section 302.208(e).

III. THE INITIAL VARIANCE

On June 15, 2009, in the case of Sanitary District of Decatur v. Illinois EPA, PCB No. 09-125, the District petitioned the Board for a variance that would authorize continued discharges of nickel and zinc from the District's Main Plant into the Sangamon River. Specifically, the District sought a variance from the general use water quality standards for nickel and zinc at 35 Ill. Admin. Code § 302.208(e) and the rule establishing the methodology for developing water quality based effluent limits as it applies to nickel and zinc (35 Ill. Admin. Code § 304.105). On January 7, 2010, the Board granted the Initial Variance, subject to numerous conditions set forth in Exhibit A, to provide the District with time to further investigate and evaluate potential compliance options for its nickel and zinc discharges. The Initial Variance ends on July 1, 2014.

Among the conditions contained in the Initial Variance, the Board mandated that the District submit interim status reports according to a specified schedule. Specifically, paragraph 1(k) of the Order requires:

- k. The District must comply with the following schedule for achieving compliance with NPDES permit effluent limits for nickel and zinc:

July 1, 2010	-	Submit an interim report to the Agency describing progress on each of the elements of the compliance plan above.
January 1, 2011	-	Submit interim report, as above.
July 1, 2011	-	Submit interim report, as above.
January 1, 2012	-	Submit interim report, as above.

- July 1, 2012 - Submit a final compliance plan to the Agency containing nickel and zinc controls, treatment technologies, proposed permit modifications, or proposed site-specific water quality standards that will achieve compliance with the District's NPDES permit effluent limits for nickel and zinc.
- January 1, 2013 - Submit interim report, as above.
- July 1, 2013 - Submit interim report, as above.
- January 1, 2014 - Submit interim report, as above.
- July 1, 2014 - Achieve compliance with the District's NPDES permit effluent limits for nickel and zinc.

See Exhibit A, para. 1(k).

The District fully and timely complied with all interim report submittal requirements set forth above. Copies of the interim reports are attached as Exhibits B-I. Each interim report provides a then-current status update on the District's compliance with the conditions imposed in paragraph 1(a)-(I) of the Board's Order. (Exhibit A, pp. 29-33). As discussed more below, the District complied with all of the Initial Variance conditions except for being able to achieve compliance with the District's NPDES permit effluent limits for *nickel* by July 1, 2014. Additional work needs to be done regarding *nickel* and additional time beyond July 1, 2014 is required.

IV. STATEMENT SHOWING SATISFACTORY PROGRESS

During the Initial Variance period, the District made satisfactory progress toward compliance. The District's December 2013 Interim Report (Exhibit I) provides the most

current and comprehensive information regarding progress towards compliance. It states, in relevant part:

Plant Influent and Effluent Sampling

Ongoing influent sampling for nickel and zinc continues at a frequency of twice monthly, and effluent sampling is done five days per week according to NPDES monitoring requirements.

* * *

The charts show a substantial spike in influent nickel and zinc occurring in October and November, 2013. Effluent nickel also spiked during this time period although effluent zinc concentrations remained at or below the permit limit. The influent concentration increase is attributed to a process change at ADM's pretreatment facility that was implemented to reduce long-term discharges of nickel. The change involved the segregation of a soy solubles waste stream from the wastewater pretreatment system and redirection of that waste into a new evaporation process and ultimately to an animal feed product. The soy solubles waste stream was a significant source of nickel discharges and was eliminated as part of ADM's effort to reduce their total nickel discharge. The process change, however, also substantially reduced the organic loading on the pretreatment system which in turn led to a pH change in the treatment facility. The pH decrease resulted in resolubilization of metals from sludge in the system and the higher discharge concentrations. Both nickel and zinc were trending toward reduced levels by mid-December.

The District's treatment facility maintained excellent removal of zinc and the final zinc permit limit was achieved. However, nickel is received primarily in the soluble form and is not removed as well as zinc in the District's facility, as zinc is received primarily in the insoluble form.

* * *

Stream Flow-Based Compliance Options

The District continues investigation of flow-based permit limits, to take advantage of upstream flow for mixing when it is available. A USGS flow gauging station is located about two miles upstream

of the District's discharge point, and provides near-real time flow information. A proposal for flow-based limits will be a part of relief requested from the Pollution Control Board.

Water Quality Standard Investigations

The District is in the final stages of preparing a petition for a site-specific nickel standard, which we expect to file with the Pollution Control Board in the very near future. During the summer and fall of 2013, numerous discussions were held with Illinois EPA and U.S. EPA to try to resolve questions regarding the District's draft proposal. We have completed a draft plan for Water Effect Ratio testing as has been discussed to provide additional confirmation for the Biotic Ligand Model, and expect to perform the testing very early in 2014.

Also, we anticipate that future permits will contain zinc limits based on the revised chronic water quality standard adopted by the Illinois Pollution Control Board in R11-18. Utilizing the corrected number to determine our permit limit should provide further assurance of compliance.

Industrial Source Sampling and Investigations

Sampling for metals at Archer Daniels Midland Company continues at a twice monthly frequency, and other industries discharging metals are sampled quarterly. . . .

The District's operating permit issued to ADM was modified on November 18, 2009 and again on June 17, 2010 to reflect the new limits and provide a compliance schedule for meeting the limits. Final local limits will be determined following Board action on the District's site-specific WQS request.

Both ADM and Tate & Lyle formerly utilized zinc as part of their cooling tower treatment programs, and both have greatly reduced zinc in their towers. At this time, both industries are meeting the zinc pretreatment limit. ADM is continuing to investigate the possible impact of the zinc limit on their planned wasting of solids from their pretreatment system to the District's collection system.

The Discharge from ADM is by far the most significant industrial source of nickel. ADM has been very active in seeking treatment technology for nickel removal, involving plant management and

research department personnel in addition to environmental compliance and legal staff. District staff continue regular contacts with ADM personnel.

ADM has implemented two significant nickel reduction treatment processes at its facility and a third is scheduled for startup in early 2014. The two completed projects include an ion exchange system implemented during April 2013 in the Sorbitol area to reduce nickel catalyst loading, and the soy solubles waste stream evaporation project noted above which began operation in October 2013. A precipitation and filtration treatment system for ADM's Polyol manufacturing process is scheduled to begin operation within the next few months.

See Exhibit I.

Zinc

That the District's treatment facility has achieved compliance with its NPDES effluent limit for zinc is, in and of itself, evidence of satisfactory progress. Both ADM and Tate & Lyle significantly reduced their use of zinc in their cooling tower treatment programs, and the District has maintained consistent reduction of zinc otherwise present in its influent. As a result, the District is not seeking a variance extension relating to zinc.

Nickel

With regard to nickel, the District and ADM have made significant progress, but more time is needed to achieve compliance. During the Initial Variance period, ADM implemented two significant nickel reduction treatment processes at its facility, as described above, and a third is scheduled for startup in the first quarter of 2014. Because ADM is the largest industrial source of nickel, these process changes have reduced, and will further reduce, nickel concentrations in the District's influent. Following an increase in the fall of 2013, which was attributed to a process change at ADM's pretreatment

facility that was implemented to reduce long-term discharges of nickel, nickel concentrations in January 2014 have returned to slightly lower values than early 2013. See Exhibit I at 3.

However, reducing nickel concentration reductions in the District's influent will not, by itself, allow the District to achieve compliance with its current NPDES discharge limit for nickel. The District has therefore diligently pursued an alternative to the generally applicable water quality standard, and the Board contemplated this possibility in the Initial Variance where, in paragraph 1(e), the Board mandated:

- e. The District must investigate the possible development of stream flow-based compliance options; continue to investigate updated toxicity information and possible alternatives for applying a nickel water quality standard; and continue to investigate the possible development of a site-specific water quality standard.

See Exhibit A, para. 1(e).

The District has investigated the development of a site-specific water quality standard and has been collaborating with the Agency on its development. The District and the Agency have also been in discussions with the USEPA, and the District is currently working to resolve issues and questions raised in the most recent discussions. USEPA has requested the collection of additional data and, in particular, we have completed a draft study plan for Water Effect Ratio testing, as has been discussed, to provide additional confirmation for the BLM. The District is awaiting comments from USEPA and is prepared to make final logistical arrangements for collecting and shipping samples to the testing laboratory upon acceptance of the study plan. Additionally, the District has prepared a draft petition for a site-specific nickel standard, which was shared

with both the Agency and USEPA more than a year ago, and plans to finalize and file the petition following resolution of outstanding Agency and USEPA questions that have arisen since the petition was drafted.

Based on the foregoing, the District has demonstrated satisfactory progress toward compliance.

V. STATEMENT REGARDING PRIOR VARIANCE CONDITIONS

The District has fully met all of the conditions contained in the Board's Order in PCB 09-125, except for the final requirement in paragraph 1(k) as it pertains to nickel. The District will not be able to achieve compliance with its current NPDES permit effluent limit for nickel by July 1, 2014. The reasons that this condition will not be fully met are set forth above in the text of the District's December 2013 Interim Report and in Exhibits B-I.

VI. COMPLIANCE PLAN AND SUGGESTED CONDITIONS

The District is proposing the following plan to achieve compliance with the nickel permit limit by the end of the variance extension term, and suggests that this variance be granted subject to the following conditions:

- a. The variance applies only to the District's Main Plant, located at 501 Dipper Lane in Decatur, Macon County, and only with respect to the District's discharge to the Sangamon River from the Main Plant's Outfall 001.
- b. The variance begins on July 1, 2014 and ends on July 1, 2015.
- c. The District must continue plant influent and effluent monitoring for nickel, along with monitoring upstream and downstream of the discharge in the Sangamon River. Monitoring for nickel must be performed at least twice monthly. Downstream monitoring must include at least the four

locations in the Sangamon River referenced in the District's June 15, 2009 petition.

- d. The District must continue to investigate the possible development of stream flow-based compliance options; continue to investigate updated toxicity information and possible alternatives for applying a nickel water quality standard; and continue to investigate the development of a site-specific water quality standard.
- e. The District must continue refinement of pretreatment local limits for nickel necessary to meet its NPDES permit effluent limit, and must continue work with ADM on options for achieving compliance with local limits. The District must remain in frequent contact with ADM personnel regarding ADM's ongoing work identifying nickel sources and control options and must continue to meet with ADM personnel as needed.
- f. The District must comply with the following schedule for achieving compliance with NPDES permit effluent limits for nickel:
 - July 1, 2014 - Submit an interim report to the Agency describing progress on each of the elements of the compliance plan above.
 - January 1, 2015 - Submit interim report, as above.
 - July 1, 2015 - Achieve compliance with the District's NPDES permit effluent limits for nickel.

VII. CONSISTENCY WITH FEDERAL LAW

Under Title IX of the Act, 415 ILCS 5/35-38, the Board is responsible for granting variances when a petitioner demonstrates that immediate compliance with the Board regulation(s) would impose an "arbitrary or unreasonable hardship" on the petitioner. 415 ILCS 5/35(a). The Board may grant a variance, however, only to the extent consistent with applicable federal law. See 415 ILCS 5/35(a).

Section 104.208(b) of the Board's rules states the following with regard to consistency with federal law for all petitions for variances from the Board's water pollution regulations:

- (b) All petitions for variances from Title III of the Act, from 35 Ill. Adm. Code Subtitle C, Ch. I "Water Pollution", or from water pollution related requirements of any other Title of the Act or Chapter of the Board's regulations, must indicate whether the Board may grant the relief consistent with the Clean Water Act (CWA) (33 USC 1251 et seq.), USEPA effluent guidelines and standards, any other federal regulations, or any area-wide waste treatment management plan approved by the Administrator of USEPA pursuant to Section 208 of the CWA (33 USC 1288).

35 Ill. Admin. Code § 104.208(b).

The Board has previously granted variances from State water quality standards in a number of cases, pursuant to its authority and discretion, consistent with federal law, to take such action. See e.g., Opinion and Order, PCB No. 05-85, Citgo Petroleum Corporation and PDV Midwest Refining, L.L.C. v. Illinois EPA, slip op. (April 21, 2005) (which granted a variance from the Board's general use and secondary contact water quality standards for total dissolved solids, 35 Ill. Admin. Code §§ 302.208(g) and 302.407); Opinion and Order, PCB No. 08-33, Citgo Petroleum Corporation and PDV Midwest Refining, L.L.C. v. Illinois EPA, slip op. (May 15, 2008) (which extended the variance issued in PCB 05-85); and Opinion and Order, PCB No. 06-137, City of Springfield, Illinois v. Illinois EPA, slip op. (September 7, 2006) (which granted a variance from the Board's general use water quality standard for dissolved oxygen, 35 Ill. Admin. Code § 302.206).

However, the District is aware that, on March 15, 2013, the USEPA took issue with the extension of a variance issued to Citgo Petroleum Corp. in PCB No. 12-94, and, subsequently, the Agency filed a motion to vacate the Board's previously issued variance order. Order of the Board, PCB Nos. 12-94 and 14-4, Citgo Petroleum Corp. and PDV

Midwest Refining, LLC, v. Illinois EPA, slip op. at 2 (July 25, 2013). The Board noted in its interim opinion, “[t]he Agency has not previously requested the Board to vacate a variance order as improperly issued, and cites no authority for the proposition.” *Id.* at 4. Although this issue has not been resolved, the parties are continuing to work towards a resolution in the matter. Hearing Officer Order, PCB Nos. 12-94 and 14-4, Citgo Petroleum Corp. and PDV Midwest Refining, LLC, v. Illinois EPA (Nov. 26, 2013).

The primary issue raised by USEPA’s March 15, 2013 letter was that the “[USEPA] cannot approve the [Board’s] decision granting the variance as a change to water quality standards solely because the state believes that such standards ‘would impose an arbitrary or unreasonable hardship.’” Public Comment of USEPA, PCB No. 12-94, Citgo Petroleum Corp. and PDV Midwest Refining, LLC, v. Illinois EPA, at 5 (Mar. 15, 2013). Further, the USEPA classified the variance as a “time-limited use removal” that could only be justified through the evaluation of the factors found in the permanent use removal regulations, pursuant to 40 C.F.R. § 131.10(g). *Id.* To date, the USEPA policy of requiring state-issued variances to be justified consistent with the permanent use removal regulations for water quality standards, pursuant to 40 C.F.R. § 131.10(g), has not been promulgated by the USEPA.

Interestingly, the USEPA has more recently proposed regulations intended to clarify how the USEPA may approve of state-issued water quality standard variances. Water Quality Standards Regulatory Clarifications, 78 Fed. Reg. 54518 (Sept. 4, 2013). In discussing the USEPA’s current policy regarding variances, the USEPA recognized that “the nationally applicable regulation [40 C.F.R. § 131.13] does not explicitly address

questions such as when a variance can be granted, how a variance must be justified, what is required during the term of a variance, or for how long a variance can be granted.” 78 Fed. Reg. at 54531. In discussing the proposed rulemaking, USEPA adds that “[a]s a result, the [USEPA] has heard from states, tribes, and stakeholders that there is confusion, inconsistency, and mixed interpretations about how, when, and where variances may be used appropriately. . . .” Id.

In light of the USEPA’s more recently proposed rulemaking – coming six (6) months after EPA’s March 15, 2013, letter in the Citgo proceedings referenced above – wherein USEPA itself recognizes the lack of explicit federal regulation on the topic of appropriate review and approval of state-issued variances and the confusion and inconsistency resulting therefrom, the District requests that the Board stay the course in issuing variances pursuant to its authority under Sections 35-38 of the Act. It is axiomatic that the Board has only the authority granted to it by its enabling statute.

Anielle Lipe, et al., v. Village of Richton Park, PCB No. 12-44, 2011 Ill. ENV. LEXIS 499, *17 (Ill.Pol.Control.Bd. Nov. 17, 2011), citing Granite City Steel Div. of Nat’l Steel Co. v. PCB, 155 Ill. 2d 149, 171, 613 N.E.2d 719, 729 (Ill. 1993). As a result, the Board can grant variances only upon a finding of “arbitrary or unreasonable hardship” as opposed to various other standards alleged to be applicable by USEPA in its earlier March 15, 2013 letter. See Illinois Power Holdings, LLC, et al., v. Illinois EPA, PCB No. 14-10, 2013 Ill. ENV. LEXIS 346, *189-190 (Ill.Pol.Control.Bd. Nov. 21, 2013) (Board found Section 35(a) of the Act, 415 ILCS 5/35(a), limits the Board’s scope to

grant variances only in instances where an arbitrary or unreasonable hardship has been shown).

The District recognizes that there are complex legal and policy issues raised by USEPA's proposed rulemaking. However, until that rulemaking runs its full course and results in a final effective regulation, 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 and, as a result, the Board's granting of this variance extension is consistent with applicable provisions of federal law.

VIII. WAIVER OF REQUEST FOR HEARING

Pursuant to 35 Ill. Admin. Code § 104.204(n), the District waives its right to a hearing on this Petition.

IX. AFFIDAVITS IN SUPPORT

In support of this Petition, the District is filing the Affidavit of Timothy R. Kluge.

X. CONCLUSION

This Petition satisfies the requirements of Section 104.210 of the Board rules, in that it: (1) provides a detailed statement showing that satisfactory progress toward compliance has been or will have been achieved during the term of the prior variance; (2) provides a statement that the conditions of the prior variance have been fully met, or, if any condition or conditions have not been fully met, a detailed explanation of the reason or reasons that the condition or conditions have not been fully met; and (3) provides a motion to incorporate any material from the record of the prior variance proceeding in accordance with 35 Ill. Admin. Code § 101.306.

WHEREFORE, Petitioner, the Sanitary District of Decatur, respectfully requests that the Board grant a variance extension from the water quality standards for nickel, as set forth in Section 302.208(e), and from the effluent limits that could otherwise be imposed through Section 304.105. In addition, the Sanitary District of Decatur respectfully requests the Board to order the Agency, pursuant to Section 309.184, to modify the Sanitary District of Decatur's NPDES permit consistent with the variance requested in this Petition.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,
Petitioner,

Date: February 21, 2014

By: /s/ Katherine D. Hodge
One of Its Attorneys

Katherine D. Hodge
Ethan S. Pressly
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MOTION TO INCORPORATE

On February 21, 2014, the Sanitary District of Decatur (“District”) filed a Petition for Extension of Variance (“Petition”) with the Illinois Pollution Control Board (“Board”). In support of that Petition, and in accordance with 35 Ill. Adm. Code §§ 104.210(d)(3) and 101.306(a), the District files this Motion to incorporate the records of the previous variance proceeding, which relate to the Petition in this matter. The District respectfully requests that the Board incorporate into the record in this proceeding any material from the record of the prior variance proceeding in Sanitary District of Decatur v. Illinois Environmental Protection Agency (Variance - Water), PCB 09-125. The District requests that the entire record, including the initial petition, all orders, agency recommendations, pre-filed testimony, hearing transcripts, exhibits, briefs, and any records themselves incorporated therein be incorporated into this variance proceeding.

Pursuant to Section 101.306(a), the person seeking incorporation must file with the Board four copies of the material to be incorporated. However, the records of the variance proceeding issue (PCB 09-125) are quite voluminous and replete with lengthy supporting attachments. Submitting four copies of these records as part of the Petition

would be wasteful of the parties' and the Board's efforts and resources, particularly because, in large part, these records are available online on the Board's website at <http://www.ipcb.state.il.us/COOL/externalcases.aspx>.

WHEREFORE, Petitioners respectfully request that this Motion to Incorporate be granted and that the Board waive the requirement to submit four copies of the records at issue and allow Petitioners to file only one copy of each record.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,
Petitioner,

Date: February 21, 2014

By: /s/ Katherine D. Hodge
One of Its Attorneys

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

AFFIDAVIT OF TIMOTHY R. KLUGE

I, Timothy R. Kluge, being first duly sworn on oath, depose and state as follows:

1. I am currently employed as the Technical Director for the Sanitary District of Decatur ("District") in Decatur, Illinois, a position which I have held since July 2007. Prior to July 2007, I was employed by the Illinois Environmental Protection Agency for approximately 31 ½ years, where I held various positions, including Field Operations Section Manager, Industrial Permit Unit Manager and field engineer, all within the Division of Water Pollution Control. I received a Bachelor of Science in Chemical Engineering from the University of Illinois, Champaign-Urbana and a Masters of Science in Thermal and Environmental Engineering from Southern Illinois University at Carbondale.

2. I participated in the preparation of the Petition for Extension of Variance dated Feb. 21, 2014, to the extent it discusses the District.

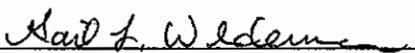
3. I have read the Petition for Extension of Variance dated Feb. 21, 2014, and based upon my personal knowledge and belief, the facts stated therein with regard to the District are true and correct.

FURTHER AFFIANT SAYETH NOT.



 Timothy R. Kluge

Subscribed and sworn to before me
 this 21st day of February, 2014.



 Notary Public

