

ILLINOIS POLLUTION CONTROL BOARD
March 6, 2014

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

OPINION AND ORDER OF THE BOARD (by D. Glosser):

On February 21, 2014, the Sanitary District of Decatur (District) filed a petition to extend a 2010 variance from water quality standards that establish water quality based effluent limits for nickel. *See* 35 Ill. Adm. Code 302.208(e) and 304.105. After providing background, today’s order accepts the District’s petition and grants the District’s motion to incorporate the entire record regarding the 2010 variance. The order also identifies various deadlines for this proceeding.

BACKGROUND

Under the Environmental Protection Act (Act) (415 ILCS 5/35-38 (2012)), the Board is responsible for granting variances when a petitioner demonstrates that compliance would impose an “arbitrary or unreasonable hardship” on petitioner. *See* 415 ILCS 5/35(a) (2012); *see also* 415 ILCS 5/37(a) (2012) (burden of proof is on petitioner). A “variance is a temporary exemption from any specified rule, regulation, requirement or order of the Board.” *See* 35 Ill. Adm. Code 104.200(a)(1). The Board may issue a variance, with or without conditions, for up to five years, but may extend a variance if petitioner shows that it has made satisfactory progress toward compliance. *See* 415 ILCS 5/36(a), (b) (2012). The Act requires the Agency to “make a recommendation to the Board as to the disposition of the petition.” 415 ILCS 5/37(a) (2012).

This petition concerns the District’s wastewater treatment plant located in Decatur, Macon County. The initial 2010 variance was issued by the Board in Sanitary District of Decatur v. IEPA, PCB 09-125 (Jan. 7, 2010). The variance authorized continued discharges of nickel and zinc from the District’s wastewater treatment plant (Main Plant) into the Sangamon River.

PETITION

The District now seeks “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 contained in its petition for extension of variance (Pet.). Pet. at 1

(emphasis in original). The District is seeking a one-year extension of the variance, for a period from July 1, 2014 to July 1, 2015. *Id.* at 2. The District seeks the extension in order to allow more time for investigation and implementation of solutions regarding its nickel discharges. *Id.* at 2. The District states that the only Board condition from the initial variance that will not be met by the initial compliance date is achieving compliance with the District's National Pollutant Discharge Elimination System (NPDES) permit effluent limit for nickel. *Id.* The District argues that it needs more time in order to come into compliance. *Id.* The District makes it clear that the petition for extension of variance is only for its nickel discharges, not its zinc discharges since "those discharges are now in compliance as a result of efforts taken during the Initial Variance period." *Id.* In addition, the District waives hearing. *Id.* at 17.

The Board accepts the District's petition for variance extension but makes no determination on the informational sufficiency or merits of the petition. *See* 35 Ill. Adm. Code 104.204, 104.208, 104.210. Though the District waived hearing, there are circumstances under which the Board will nevertheless order a hearing on the petition. *See* 35 Ill. Adm. Code 104.234. To ensure proper case management, the Board will assign a hearing officer to this proceeding. The Board, through orders of its own or its hearing officer, may direct the District to provide additional information concerning the petition.

The Agency's recommendation on the petition must be filed by April 7, 2014, which is the 45th day after the date on which the petition was filed. *See* 35 Ill. Adm. Code 104.216(b). The Board's statutory deadline for deciding this case is June 23, 2014, which is the first business day following the 120th day after the date on which the petition was filed. *See* 415 ILCS 5/38(a) (2012); 35 Ill. Adm. Code 104.232. The Board meeting immediately before the decision deadline is currently scheduled for June 19, 2014.

MOTION

Section 104.210 of the Board's rules (35 Ill. Adm. Code 104.210) requires that a petition for extension of variance must contain "[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. Adm. Code 104.210(d)(3). Simultaneous with the filing of the petition for extension of variance, the District filed a motion to incorporate (Mot.) the entire PCB 09-125 record regarding the initial variance. Mot. at 1. Additionally, the District seeks waiver of the requirement to submit four copies of the material to be incorporated. *See* 35 Ill. Adm. Code 101.306(a). The District argues that submitting four copies of each of these records "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 . . ." Mot. at 2. The Board grants the District's motion and will allow the District to file a single copy of the record from PCB 09-125.

IT IS SO ORDERED.

I, John Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 6, 2014, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John Therriault, Clerk
Illinois Pollution Control Board