

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.
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
(VIA ELECTRONIC MAIL)	(VIA ELECTRONIC MAIL)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the **STATUS REPORT, PETITIONER’S MOTION TO EXTEND STAY OF THE PROCEEDING**, and **NOTICE OF FIRM ADDRESS CHANGE**, copies of which are herewith served upon you.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,

Dated: December 29, 2016

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

Katherine D. Hodge
Joshua J. Houser
HeplerBroom, LLC
4340 Acer Grove Drive
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STATUS REPORT

NOW COMES the SANITARY DISTRICT OF DECATUR (“District”), by and through its attorneys, HEPLERBROOM, LLC, and provides this status report to the Hearing Officer and the Illinois Pollution Control Board (“Board”) regarding recent activities in this matter. The District provides as follows:

On February 21, 2014, the 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), 304.105. On April 7, 2014, the Illinois Environmental Protection Agency (“Illinois EPA”) filed its recommendation that the variance be denied. On April 21, 2014, the District filed a motion to stay the proceedings along with a waiver of the decision deadline. The Board granted the stay, but only until October 1, 2014, as the District provided a waiver of the decision deadline only until December 31, 2014.

The Board directed the District and Illinois EPA to file a status report with the Board indicating how the case should proceed and noted that, if a proper waiver is filed, an additional stay will be considered.

On October 1, 2014, the District filed a motion to extend the stay along with an open waiver of the decision deadline, noting that the District had filed a site-specific rulemaking docketed as *Proposed Site Specific Rule for Sanitary District of Decatur From 35 Ill. Adm. Code Section 302.208(E)*, R14-24 (“Site Specific Rulemaking”), and was continuing to engage in discussions with the United States Environmental Protection Agency (“USEPA”). The District stated that an additional stay until April 1, 2015, would allow for the parties to make meaningful progress in this proceeding. The Board granted the stay until April 1, 2015, and directed that the parties submit status reports on December 31, 2014, and April 1, 2015.

On April 1, 2015, the District filed a motion to extend the stay until June 30, 2015, to allow for the parties to make meaningful progress in this proceeding. The Board granted the stay until June 30, 2015, and directed that the parties submit a status report on June 30, 2015. On June 30, 2015, the District filed a motion to extend the stay until December 31, 2015, to allow for the parties to make meaningful progress in this proceeding. The Board granted the stay until December 31, 2015, and directed that the parties submit a status report on December 31, 2015. On December 30, 2015, the District filed a motion to extend the stay until June 30, 2016, to allow for the parties to make meaningful progress in this proceeding. The Board granted the stay until June 30, 2016, and directed that the parties submit a status report on June 30, 2016.

On June 29, 2016, the District filed a motion to extend the stay until December 31, 2016, to allow for the parties to make meaningful progress in this proceeding. On July 19, 2016, Illinois EPA filed a Motion for an Extension of Time to File the Agency’s Response to the Petitioner’s Motion to Extend Stay of the Proceeding. On July 26, 2016, Illinois EPA filed its Response to Petitioner’s Motion to Extend Stay of the Proceeding stating it had no objection to

the Petitioner's Motion to Extend Stay. The Board granted the stay until December 31, 2016, and directed that the parties submit a status report on January 3, 2017.

The District is continuing to engage in discussions with Illinois EPA and USEPA concerning technical studies at issue in this proceeding, as follows:

The District's consultants completed additional evaluation of related literature and toxicity studies, as requested by USEPA, and submitted to both USEPA and Illinois EPA a final draft report entitled, "A review of water quality factors that affect nickel bioavailability to aquatic organisms: Refinement of the Biotic Ligand Model for Nickel in acute and chronic exposures." USEPA and the District's consultants have since been reviewing the final draft report together in detail.

In addition, the District has continued its discussions with USEPA and Illinois EPA regarding approval of the District's proposed testing protocol. After conceptual agreement was reached on the toxicity testing protocol, the testing was completed by the Oregon State University ("OSU") testing laboratory in December 2015. OSU prepared a report entitled "Progress Report – Nickel WER Project," which was forwarded to both USEPA and Illinois EPA on April 12, 2016. During a call with Illinois EPA and USEPA on May 19, 2016, the District discussed OSU's testing and Progress Report, and USEPA provided its comments on the same. Subsequently, USEPA requested that the District perform an additional round of toxicity testing in order to address USEPA's comments.

OSU and the District's consultants then began working on an additional testing protocol to submit to USEPA for approval. On October 5, 2016, OSU submitted a proposed protocol to USEPA for review and approval, and the District provided Illinois EPA with the proposed protocol the following day on October 6, 2016. On November 1, 2016, USEPA provided OSU

with comments on the proposed protocol. On November 17, 2016, OSU provided the District with a revised testing protocol that addressed USEPA's comments. On December 15, 2016, the District instructed OSU to begin the additional round of USEPA-required toxicity testing using the approved testing protocol. OSU will be completing the additional testing as soon as possible and working with the District to report the testing results to USEPA and Illinois EPA for review and comment.

The District will commit to the filing of additional status report(s), as requested by the Hearing Officer.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,

Dated: December 29, 2016

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

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PETITIONER’S MOTION TO EXTEND STAY OF THE PROCEEDING

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 to Extend Stay of the Proceeding until June 30, 2017. 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. Admin. Code § 302.208(e)) and from Section 304.105 of the Board’s regulations (35 Ill. Admin. 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 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, PCB No. 09-125 (Ill.Pol.Control.Bd. July 30, 2009).

3. On January 7, 2010, the Board granted the variance, subject to specified conditions. *See* Opinion and Order, PCB No. 09-125 (“Initial Variance”). The Initial Variance began on January 7, 2010, and was scheduled to end on July 1, 2014.

4. On February 21, 2014, the District filed its Petition for Extension of Variance (“Petition”) in this proceeding, PCB No. 14-111, requesting a one-year extension of its Initial Variance granted in PCB No. 09-125 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 follows:

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, PCB No. 14-111 (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. On April 21, 2014, the District filed a Motion to Stay the Proceeding and a Waiver of the Decision Deadline until December 31, 2014.

9. On May 1, 2014, the Board granted the motion to stay until October 1, 2014, as the District provided a waiver of the decision deadline only until December 31, 2014. The Board stated in its Opinion and Order that "if a proper waiver is filed, an additional stay will be considered." Opinion and Order, at 1, PCB 14-111 (Ill.Pol.Control.Bd. May 1, 2014).

10. Moreover, on June 30, 2014, the District filed a petition for a site-specific rulemaking 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). The District is continuing to engage in discussions with the United States Environmental Protection Agency ("USEPA") and Illinois EPA concerning the technical studies at issue in the rulemaking proceeding, and the District has been filing periodic status reports in that proceeding as well, most recently on August 1, 2016. *See* Status Report, PCB No. R14-24 (Ill.Pol.Control.Bd. Aug. 1, 2016); *see also* District's Status Report filed contemporaneously with this Motion to Extend Stay in this variance proceeding, PCB No. 14-111 (providing additional information about the status of the rulemaking proceeding and its effects on this variance proceeding).

11. On October 1, 2014, in this variance proceeding, the District filed a motion to extend the stay along with an open waiver of the decision deadline. The District stated that an additional stay until April 1, 2015, would allow for the parties to make meaningful progress in this proceeding. The Board granted the stay until April 1, 2015, and directed that the parties submit status reports on December 31, 2014, and April 1, 2015. *See Board Order, PCB No. 14-111 (Ill.Pol.Control.Bd. Oct. 16, 2014).*

12. On April 1, 2015, the District filed a motion to extend the stay until June 30, 2015, to allow for the parties to make meaningful progress in this proceeding. The Board granted the stay until June 30, 2015, and directed that the parties submit a status report on June 30, 2015. *See Board Order, PCB No. 14-111 (Ill.Pol.Control.Bd. April 16, 2015).*

13. On June 30, 2015, the District filed a motion to extend the stay until December 31, 2015, to allow for the parties to make meaningful progress in this proceeding. The Board granted the stay until December 31, 2015, and directed that the parties submit a status report on December 31, 2015. *See Board Order, PCB No. 14-111 (Ill.Pol.Control.Bd. July 24, 2015).*

14. On December 30, 2015, the District filed a motion to extend the stay until June 30, 2016, to allow for the parties to make meaningful progress in this proceeding. The Board granted the stay until June 30, 2016, and directed that the parties submit a status report on June 30, 2016. *See Board Order, PCB No. 14-111 (Ill.Pol.Control.Bd. Jan. 21, 2016).*

15. On June 29, 2016, the District filed a motion to extend the stay until December 31, 2016, to allow for the parties to make meaningful progress in this proceeding. The Board granted the stay until December 31, 2016, and directed that the parties submit a status report on January 3, 2017. *See Board Order, PCB No. 14-111 (Ill.Pol.Control.Bd. Aug. 11, 2016).*

16. For the reasons stated above, particularly the District's ongoing work with USEPA and Illinois EPA in the related site-specific rulemaking proceeding PCB No. 14-24, the District hereby files its Motion to Extend Stay of the Proceeding, requesting an extension of the stay from December 31, 2016, to June 30, 2017.

17. Contemporaneously with this Motion, Petitioner is filing its Status Report in this proceeding.

18. The additional time requested, until June 30, 2017, should allow the parties to make additional progress in this matter. Also, the District will submit a Status Report to the Board as requested by the Hearing Officer. Finally, the District requests that all pending deadlines for any responses be stayed, as necessary, to accommodate this Motion to Extend Stay of the Proceeding.

WHEREFORE, Petitioner, SANITARY DISTRICT OF DECATUR, moves the Illinois Pollution Control Board grant this Motion to Extend Stay of the Proceeding until June 30, 2017.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,

Dated: December 29, 2016

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

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Joshua J. Houser
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NOTICE OF FIRM ADDRESS CHANGE

NOW COME Katherine D. Hodge and Joshua J. Houser, of HEPLERBROOM, LLC, and hereby notify the Illinois Pollution Control Board that our office mailing address and phone number have changed, effective as of December 13, 2016, as follows: 4340 Acer Grove Drive, Springfield, Illinois 62711, (217) 528-3674.

Respectfully submitted,

HEPLERBROOM, LLC,

Dated: December 29, 2016

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

Katherine D. Hodge
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CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached STATUS REPORT, PETITIONER'S MOTION TO EXTEND STAY OF THE PROCEEDING, and NOTICE OF FIRM ADDRESS CHANGE, upon:

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

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

via electronic mail on December 29, 2016; and upon:

Sara Terranova, Esq.
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

Office of General Counsel
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702-1271

Office of the Attorney General
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois, on December 29, 2016.

/s/ Katherine D. Hodge
Katherine D. Hodge