

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** and **PETITIONER’S MOTION TO EXTEND STAY OF THE PROCEEDING** and **ENTRY OF APPEARANCE OF JOSHUA J. HOUSER AND NOTICE OF SUBSTITUTION**, copies of which are herewith served upon you.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,

Dated: June 29, 2016

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

Katherine D. Hodge
Joshua J. Houser
HEPLERBROOM, LLC
3150 Roland Avenue
Springfield, Illinois 62703
(217) 523-4900

CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached STATUS REPORT and PETITIONER'S MOTION TO EXTEND STAY OF THE PROCEEDING and ENTRY OF APPEARANCE OF JOSHUA J. HOUSER AND NOTICE OF SUBSTITUTION, 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 June 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 June 29, 2016.

/s/ Katherine D. Hodge
Katherine D. Hodge

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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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. *See* Board Order, PCB 14-111 (Ill.Pol.Control.Bd. April 16, 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. *See* Board Order, PCB 14-111 (Ill.Pol.Control.Bd. July 24, 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. Board Order, PCB 14-111 (Ill.Pol.Control.Bd. Jan. 21, 2016).

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 have completed additional evaluation of related literature and toxicity studies, as requested by USEPA, and submitted a draft written report to USEPA. USEPA provided additional comments on the draft report, and those were addressed in subsequent telephone conferences. Most recently, on April 12, 2016, the District forwarded to both USEPA and Illinois EPA a final draft of the 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 exposure." On June 6, 2016, the parties held a conference call to review and discuss USEPA's comments on the final draft report, and USEPA and the District's consultant planned to continue reviewing the final draft report together in detail.

In addition, the District is continuing to engage in discussions with Illinois EPA and USEPA regarding approval of the District's proposed testing protocol. Initial testing began in March 2015, and a plan for further testing was discussed on several occasions. After conceptual agreement was reached on the toxicity testing protocol, the Oregon State University ("OSU") testing laboratory completed testing 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. Most recently, during a call with Illinois EPA and USEPA on May 19, 2016, the District discussed OSU's testing completed in December 2015, OSU's Progress Report, and USEPA's comments on same. OSU and the District's consultant are now working on addressing USEPA's comments.

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

[signature on following page]

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,

Dated: June 29, 2016

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

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Joshua J. Houser
HEPLERBROOM, LLC
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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 December 31, 2016. 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 May 2, 2016. *See* Status Report, PCB No. R14-24 (Ill.Pol.Control.Bd. May 2, 2016); *see also* District's Status Report filed contemporaneously herewith 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. 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 this Variance Proceeding, requesting an extension of the stay from June 30, 2016, to December 31, 2016.

16. On this same date, Petitioner filed its Status Report in the above-captioned matter.

17. The additional time requested, until December 31, 2016, 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 December 31, 2016.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,

Dated: June 29, 2016

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

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**ENTRY OF APPEARANCE OF
JOSHUA J. HOUSER AND NOTICE OF SUBSTITUTION**

NOW COMES Joshua J. Houser, of the law firm of HeplerBroom, LLC, and hereby enters his appearance on behalf of Sanitary District of Decatur in substitution for Ethan S. Pressly who resigned from Hodge Dwyer & Driver prior to its merger with HeplerBroom, LLC on January 1, 2016. Katherine D. Hodge with HeplerBroom, LLC will also remain counsel of record for Sanitary District of Decatur.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,

Dated: June 29, 2016

By: /s/ Joshua J. Houser
Joshua J. Houser

Katherine D. Hodge
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