

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WILL SCARLETT PROPERTIES LLC,)

Petitioner,)

v.)

**ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)**

Respondent,)

**PCB No. 14-25
(NPDES Permit Appeal)**

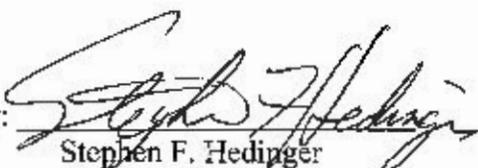
NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on November 22, 2013, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 West Randolph St., Suite 11-500, Chicago, IL 60601, the Petitioner's Petition for Review of NPDES Permit Conditions and Motion for Order Acknowledging Stay, and Petitioner's Time Certain Waiver of Decision Deadline, copies of which are attached hereto and herewith served upon you.

Date: November 22, 2013

Respectfully submitted,

WILL SCARLETT PROPERTIES LLC
Petitioner

By: 
Stephen F. Hedinger

Sorling Northrup
Stephen F. Hedinger, of Counsel
1 North Old State Capitol Plaza, Suite 200
P.O. Box 5131
Springfield, IL 62705
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E-mail: sfhedinger@sorlinglaw.com

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)	(NPDES Permit Appeal)
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**PETITION FOR REVIEW OF NPDES PERMIT CONDITIONS
AND MOTION FOR ORDER ACKNOWLEDGING STAY**

NOW COMES the Petitioner, WILL SCARLET PROPERTIES LLC, through its attorneys, Sorling Northrup, Stephen F. Hedinger of counsel, and pursuant to 415 ILCS 5/40 and 35 Ill. Adm. Code Parts 101 and 105, submits its Petition for Review of NPDES Permit Conditions, seeking review of certain conditions imposed in NPDES Permit No. IL0064068 by the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (the "Agency") on August 19, 2013. Petitioner also asks for this Board's acknowledgement of the automatic stay of the challenged conditions during the pendency of this appeal. In support of this Petition, Petitioner states as follows:

1. The Agency issued on August 19, 2013, a Renewed NPDES Permit, NPDES Permit No. IL0064068 (hereinafter the "Renewed NPDES Permit"), for point source discharges from Petitioner's closed mining facility located near Stonefort, Illinois, in Saline and Williamson Counties. A true and correct copy of NPDES Permit No. IL0064068 is attached hereto as Exhibit 1.

2. Subsequently Petitioner and the Agency entered into discussions concerning potential modifications of certain conditions included in the Renewed NPDES Permit. As a

result of those discussions, on or about September 20, 2013, the parties submitted their Joint Petition for Extension of Time to File Permit Appeal to this Board, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/40(a)(1), and this Board's procedural regulations at 35 Ill. Adm. Code 105.206(c) and 105.208(a) and (c).

3. By Order of this Board entered on October 17, 2013, this Board acknowledged receipt of the timely joint notice to extend the 35-day period within which to appeal from the Renewed NPDES Permit, and extended the period for submitting such appeal until November 25, 2013. A true and correct copy of this Board's Order is attached hereto as Exhibit 2.

4. Although Petitioner and the Agency have discussed, and continue to discuss, the potential for a mutually satisfactory resolution of Petitioner's objections to certain conditions imposed in the Renewed NPDES Permit, at the time of this Petition, final resolution has not yet occurred, and therefore it is necessary for Petitioner to submit this Petition challenging the identified conditions.

5. Petitioner accordingly identifies the following conditions of the Renewed NPDES Permit to which it objects, and the following bases for those objections:

A. The closed mine facilities covered by the Renewed NPDES Permit have not had any active mining, processing or refuse disposal since May 13, 1976. Accordingly, the Agency erred by imposing manganese limits in contradiction to 35 Ill. Adm. Code 406.106(b)(2), which states: "The manganese standard is not applicable to mine discharges which [*sic*] are associated with areas where no active mining, processing or refuse disposal has taken place since May 13, 1976." In accordance with that regulation, the previous NPDES permit imposed no limits with respect to manganese.

B. Assuming, *arguendo*, that the Agency did not err in imposing manganese limits in the Renewed NPDES Permit when no such limits were included in the previous NPDES Permit, the Agency still erred by not providing Petitioner with sufficient time to identify and implement a means to bring the discharge from the Renewed NPDES Permit into compliance. The Renewed NPDES Permit should have included a schedule of compliance that identified a timeframe and specific milestones that Petitioner should follow to bring the discharges into compliance with the new permit limit for manganese. The permit limit for manganese should be "monitor only" during this schedule of compliance.

C. The Agency erred in developing and assigning permit limits for sulfates that were substantially lower than the sulfate limits in the previous version of the NPDES Permit.

D. The Agency also erred by not providing Petitioner with sufficient time to identify and implement a means to bring the discharge from the Renewed NPDES Permit into compliance with the reduced permit limits for sulfates. Although Petitioner did comply with the sulfate limits in the previous NPDES Permit, it cannot do so with the reduced permit limits without taking additional steps. The Renewed NPDES Permit should have included a schedule of compliance that identified a timeframe and specific milestones that Petitioner should follow to bring the discharges into compliance with the reduced permit limit for sulfates. The permit limit for sulfates should be the limits in the previous version of the NPDES Permit during this schedule of compliance.

6. In addition to the above request for relief from the challenged conditions to the Renewed NPDES Permit, Petitioner also requests this Board's discretionary stay of the

manganese and sulfate permit limits in the Renewed NPDES Permit. Pursuant to the provisions of the Illinois Administrative Procedure Act, and the Court and Board cases interpreting that statute, Petitioner is automatically entitled to a stay of all provisions of the Renewed NPDES Permit pending this review proceeding. See 5 ILCS 100/10-65; Borg-Warner Corp. v. Mauzy, 100 Ill. App. 3d 863, 427 N.E.2d 415 (3d Dist. 1981); AmerenEnergy Resources Generating Co., Edwards Power Station v. Illinois Environmental Protection Agency, PCB 06-67 (Feb. 16, 2006). However, Petitioner requests only this Board's discretionary stay of the challenged manganese and sulfate limits set forth in the Renewed NPDES Permit. See AkzoNobel Surface Chemistry LLC v. Illinois Environmental Protection Agency, PCB 13-49 (Apr. 18, 2013).

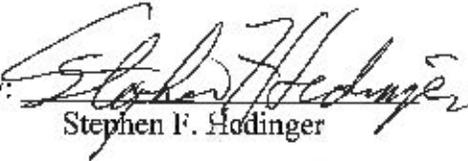
7. Petitioner requests in this proceeding, among other things, implementation of a compliance timeline for the manganese and sulfate limits stated in the Renewed NPDES Permit. In the absence of a stay of those limits pending this review proceeding, Petitioner will be irreparably harmed by being obligated to immediately comply with the limits for which it is seeking a compliance schedule.

WHEREFORE Petitioner, WILL SCARLET PROPERTIES LLC, requests that this Board strike from the Renewed NPDES Permit the conditions identified above which have been challenged by Petitioner, and that this Board order that Petitioner must remain in compliance with the manganese and sulfate requirements of the earlier NPDES permit, and not of the Renewed NPDES Permit, during the pendency of this proceeding, and that this Board award in favor of Petitioner all such other and further relief as this Board deems warranted and appropriate.

Date: November 22, 2013

Respectfully submitted,

WILL SCARLET PROPERTIES LLC
Petitioner

By: 
Stephen F. Hedinger

Sorling Northrup
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TIME CERTAIN WAIVER OF DECISION DEADLINE

NOW COMES the Petitioner, WILL SCARLET PROPERTIES LLC, through its attorneys, Sorling Northrup, Stephen F. Hedinger of counsel, and pursuant to 35 Ill. Adm. Code 101.308(c)(2), hereby waives to a time certain the deadline within which this Board is to render a decision on Petitioner's request for review of certain conditions imposed in the Renewed NPDES Permit granted by the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (the "Agency"), in this matter, said waiver to be for a period of approximately an additional 6 months more than the statutory 120 days, to and until September 22, 2014.

In support of this waiver, Petitioner states as follows:

1. On November 22, 2013, Petitioner filed with this Board its Petition for Review of NPDES Permit Conditions and Motion for Order Acknowledging Stay, which seeks this Board's review of certain conditions imposed by the Agency in renewing Petitioner's NPDES permit for its closed mine facility located near Stonefort, Illinois, in Saline and Williamson Counties.

2. Pursuant to Section 40(a)(3) of the Illinois Environmental Protection Act, 415 ILCS 5/40(a)(3), and 35 Ill. Adm. Code 101.308(a), this Board must render a decision on Petitioner's permit appeal within 120 days following the filing of the petition, which is March 22, 2014.

3. However, pursuant to this Board's procedural rules at 35 Ill. Adm. Code 308(c), a permit applicant involved in a permit appeal proceeding may extend this Board's decision deadline for either a time certain or through an open waiver.

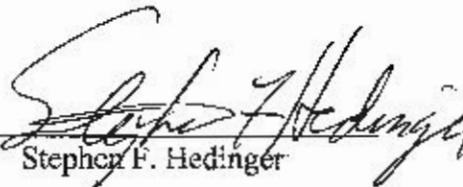
4. Petitioner at this time submits its time certain waiver of decision deadline, agreeing to and authorizing an extension of the decision deadline by approximately 6 months beyond the currently deadline, to and until September 22, 2014.

WHEREFORE Petitioner, WILL SCARLET PROPERTIES LLC, voluntarily agrees to and waives the deadline for decision in this matter to the time certain of September 22, 2014.

Date: November 22, 2013

Respectfully submitted,

WILL SCARLET PROPERTIES LLC
Petitioner

By: 
Stephen F. Hedinger

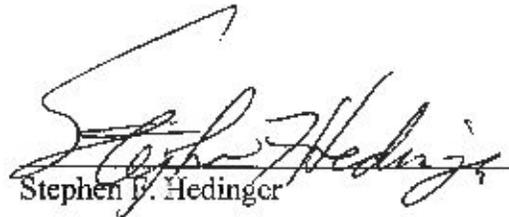
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**NOTICE OF FILING AND
CERTIFICATE OF SERVICE**

I, the undersigned, an attorney, certify that I have served a copy of the foregoing documents upon:

Stefanie Diers
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

by depositing same in the U.S. Mail, first class, postage prepaid, on this 22nd day of November, 2013.



Stephen F. Hedinger

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