

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SANITARY DISTRICT OF)
DECATUR,)
)
Petitioner,)
)
v.) PCB 09-125
) (Variance – Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

NOTICE OF FILING

TO: Mr. John T. Therriault Carol Webb, Esq.
Assistant 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 FIRST CLASS MAIL)**

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board PETITIONER'S RESPONSE TO ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S COMMENT ON PETITIONER'S RESPONSES TO THE ILLINOIS POLLUTION CONTROL BOARD'S QUESTIONS, a copy of which is herewith served upon you.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,
Petitioner,

Dated: January 4, 2010

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

Katherine D. Hodge
Lauren C. Lurkins
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
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THIS FILING SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SANITARY DISTRICT OF)	
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v.)	PCB 09-125
)	(Variance – Water)
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**PETITIONER’S RESPONSE TO ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY’S
COMMENT ON PETITIONER’S RESPONSES TO THE
ILLINOIS POLLUTION CONTROL BOARD’S QUESTIONS**

NOW COMES Petitioner, Sanitary District of Decatur (“Petitioner”), by and through its attorneys, HODGE DWYER & DRIVER, and hereby provides the following response to the Illinois Environmental Protection Agency’s (“Illinois EPA”) Comment on Petitioner’s Responses to the Illinois Pollution Control Board’s (“Board”) Questions, which was filed by the Illinois EPA on December 24, 2009 (hereinafter “Comment”):

I. THE ILLINOIS EPA’S COMMENT IN RESPONSE TO PETITIONER’S RESPONSES TO BOARD QUESTIONS 1(A) AND 1(B)

In its Comment, the Illinois EPA stated the following, in part, regarding Petitioner’s responses to Board questions 1(A) and 1(B):

The Illinois EPA estimates that the stream segment beginning at Petitioner’s Outfall 001 and ending at U.S. Geological Survey stream gauging station 05576500 at Riverton is in excess of 30 miles. If the Board assumes that the Sangamon River has an average width of 100 feet within this stream segment, the applicable stream segment has an estimated surface area of approximately 428 acres.

Illinois EPA does not have information on the method Petitioner used to calculate Petitioner's suggested end point for the requested variance. It is the Illinois EPA's position that the suggested in-stream segment of the requested variance, beginning at Petitioner's Outfall 001 and ending at U.S. Geological Survey stream gauging station 05576500 at Riverton, is larger than necessary. Extending the in-stream segment of the requested variance for a distance larger than necessary causes unnecessary degradation of the designated uses of the Sangamon River. Therefore, the Illinois EPA requests, consistent with the Board's regulations in Part 302 of the Illinois Administrative Code, that the requested variance be confined to as small an area in the Sangamon River as is practicable under the terms of the requested variance.

II. PETITIONER'S CLARIFICATION OF ITS RESPONSES TO BOARD QUESTIONS 1(A) AND 1(B)

Based upon the Illinois EPA's Comment, Petitioner wishes to clarify its Responses to the Illinois Pollution Control Board's Questions ("Response"), which Petitioner filed with the Board on December 21, 2009, and in particular, its responses to Board questions 1(A) and 1(B).

In this proceeding, Petitioner is seeking a variance from the numerical water quality standards for nickel and zinc (and from 35 Ill. Admin. Code § 304.105 as it applies to establishing water quality based effluent limits). Petitioner is seeking the variance for protection from a violation of a water quality standard caused by its discharge, regardless of where in the Sangamon River such a violation may occur. The Illinois EPA's Comment suggests that the proposed segment is "larger than necessary." Petitioner is not seeking a determination of allowed mixing, which regulations require to be as small as is practicable, so there is no guidance in the Board regulations for determining whether the suggested segment is or is not larger than necessary.

In addition, Petitioner did not "calculate" the suggested end point for the requested variance. Instead, Petitioner attempted to respond to the Board's question

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regarding “the in-stream ending point for the proposed variance.” While Petitioner understands the Board’s consideration of an end point for the variance, Petitioner submits that a geographic limit will be somewhat arbitrary in this case since dry weather sampling data beyond Petitioner’s Wyckles Road sample point is very limited. As set forth in its Response, Petitioner’s discharge does not result in exceedances of the water quality standards except during very low flow conditions in the Sangamon River. And, there is no significant additional flow available in the Sangamon River during times of low flow until the confluence with the South Fork, approximately two miles south of Riverton. Petitioner believes it is not necessary for the Board to establish an end point for the requested variance. However, should the Board determine that an end point for the requested variance is necessary, based on the information set forth in its Response, Petitioner respectfully suggests that the U.S. Geological Survey stream gauging station 05576500 at Riverton (39° 50’ 35” North Latitude, 89° 32’ 50” West Longitude) serve as the end point for the requested variance, and that the Board note it would be necessary in the case of very low flow conditions only. Furthermore, Petitioner welcomes any suggestions by the Board regarding an alternative end point for the requested variance.

Additionally, the Illinois EPA Comment expresses a concern that “[e]xtending the in-stream segment of the requested variance for a distance larger than necessary causes unnecessary degradation of the designated uses of the Sangamon River.” As noted in the Petition for Variance (“Petition”), “human health and the existing aquatic life will not be adversely impacted through the granting of this variance since the amount of nickel and zinc to be discharged would not increase beyond historical levels.” Petition at 50.

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Petitioner is seeking only to maintain the status quo with respect to nickel and zinc levels in the Sangamon River.

III. CONCLUSION

WHEREFORE, Petitioner, SANITARY DISTRICT OF DECATUR, submits, for the Illinois Pollution Control Board's consideration, the above response to the Illinois Environmental Protection Agency's Comment on Petitioner's Responses to the Illinois Pollution Control Board's Questions.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,
Petitioner,

Dated: January 4, 2010

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

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Lauren C. Lurkins
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
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SDOD:001/Filings/Response to Agency Comment

CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached PETITIONER'S RESPONSE TO ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S COMMENT ON PETITIONER'S RESPONSES TO THE ILLINOIS POLLUTION CONTROL BOARD'S QUESTIONS upon:

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

via electronic mail on January 4, 2010; and upon:

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

Chad M. Kruse, Esq.
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois, on January 4, 2010.

/s/Katherine D. Hodge
Katherine D. Hodge