

ILLINOIS POLLUTION CONTROL BOARD
April 12, 2017

SANITARY DISTRICT OF DECATUR,)
)
 Petitioner,)
)
 v.) PCB 14-111
) (Time-Limited Water Quality Standard)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J.A. Burke):

Public Act 99-937 took effect on February 24, 2017, creating new Section 38.5 of the Environmental Protection Act (415 ILCS 5/38.5). On that date, the Sanitary District of Decatur's petition for a variance from a water quality standard became, under the new law, a petition for a time-limited water quality standard. 415 ILCS 5/38.5(c).

Section 38.5(e) requires the Illinois Environmental Protection Agency to file a response to the District's petition within 21 days after the new law's effective date, which the Agency did on March 16, 2017. 415 ILCS 5/38.5(e). The Agency states that the District is the only discharger or class of dischargers affected by the nickel water quality standard—the standard from which the District seeks relief. Resp. at 3. The Agency does not identify deadlines for classes of dischargers to file petitions. The Agency identifies the affected water is the Sangamon River downstream of Lake Decatur, and the appropriate type of relief as an individual time-limited water quality standard. *Id.*

Section 38.5(f) requires the Board, within 30 days after receiving the Agency's response, to enter an order establishing the discharger or class of dischargers that may be covered by the requested time-limited water quality standard. 415 ILCS 5/38.5(f). Based on the Agency's response, the Board finds that the District is the only one that may be covered by the requested standard.

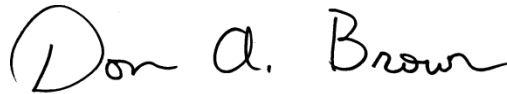
The Board must also establish a deadline for the District to file an amended petition if it is necessary to maintain a stay under Section 38.5(h)(3). 415 ILCS 38.5(f)(2). New Section 38.5 requires the District to justify its requested standard by meeting the requirements of 40 C.F.R. § 131.14 promulgated by the United States Environmental Protection Agency in 2015. 415 ILCS 5/38.5(g). Here, the District filed its petition in 2014 and the petition incorporated even earlier materials compiled in 2009. Taken together, the District's filings in this docket and PCB 09-125 do not comply with the subsequent 40 C.F.R. § 131.14. For example, the materials do not present the items listed in 40 C.F.R. § 131.14(b)(1)(ii)-(vi) or (b)(2)(i)-(iii). The Board orders the District to file an amended petition complying with Section 38.5 and 40 C.F.R. § 131.14 by May 12, 2017. Section 38.5(f) prescribes that this order is a final Board order.

The Board previously determined that it would postpone action in this matter, as well as the District's alternate request for a site-specific rule in R14-24. The Board ordered the District to file a status report by June 30, 2017. Due to the enactment of Section 38.5, the Board orders the District to file this status report by May 12, 2017.

IT IS SO ORDERED.

Section 38.5(j) of the Environmental Protection Act states that any person who is adversely affected or threatened by this final order may appeal directly to the Illinois Appellate Court within 35 days after the Board serves the order. P.A. 99-937, eff. Feb. 24, 2017 (added 415 ILCS 5/38.5). For purposes of this judicial review, a person is considered to have been served with the Board's final order on the date on which the Board first publishes the order on its website. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. In addition, the Board's procedural rules state that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902.

I, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 12, 2017, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive, flowing style.

Don A. Brown, Assistant Clerk
Illinois Pollution Control Board