

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

TO: Don Brown	Carol Webb
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500	1021 North Grand Avenue East
Chicago, Illinois 60601	Post Office Box 19274
(VIA ELECTRONIC MAIL)	Springfield, Illinois 62794-9274
	(VIA ELECTRONIC 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 the **PETITIONER'S MOTION FOR STAY OF PROCEEDING**, a copy of which is herewith served upon you.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR

Date: December 5, 2018

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

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CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, on oath state the following:

That I have served the attached **PETITIONER'S MOTION FOR STAY OF PROCEEDING**,

via electronic mail upon:

Don Brown
Clerk of the Board
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601
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That my email address is Katherine.Hodge@heplerbroom.com.

That the number of pages in the email transmission is 6.

That the email transmission took place before 5:00 p.m. on the date of December 5, 2018.

/s/ Katherine D. Hodge

Katherine D. Hodge

Date: December 5, 2018

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PETITIONER’S MOTION FOR STAY OF 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 for Stay of Proceeding. In support of its motion, Petitioner states as follows:

I. BACKGROUND

1. On February 21, 2014, the District filed its Petition for Extension of Variance (“Variance Petition”) in this proceeding, PCB No. 14-111, requesting a one-year extension of its initial variance granted in PCB No. 09-125 from the Board’s general use water quality standards for nickel at 35 Ill. Admin. Code §§ 302.208(e) and 304.105, as it applies to establishing water quality based effluent limits, for the continued discharge of nickel from the District’s wastewater treatment plant located in Decatur, Macon County, Illinois, into the Sangamon River, pursuant to the terms and conditions outlined in the Variance Petition.

2. Since then, the District has filed, and the Board has granted, motions to stay this proceeding to allow the parties to continue making meaningful progress resolving certain issues, including the District’s work with the Illinois Environmental Protection Agency (“Illinois EPA”)

and the United States Environmental Protection Agency (“USEPA”) in the District’s related site-specific rulemaking (“SSR”) proceeding, PCB No. 14-24.

3. On February 24, 2017, pursuant to Section 38.5(c) of the Act, the District’s pending Variance Petition in this proceeding was converted, by operation of law, into a petition for a time-limited water quality standard (“TLWQS”).

4. The Board established a deadline of May 12, 2017 for the District to file an amended petition complying with Section 38.5 of the Act and 40 C.F.R. § 131.14. *See* Board Order, PCB 14-111, at 1-2 (Ill.Pol.Control.Bd. Apr. 12, 2017).

5. However, due to the District’s ongoing work with Illinois EPA and USEPA concerning the technical studies at issue in the SSR proceeding, the District required additional time to prepare a substantially compliant TLWQS petition. The District filed motions for extension of time, as well as status reports detailing the current status of the amended TLWQS petition and related SSR proceeding.

6. On September 29, 2017, the District filed a Motion for Extension of Time to file a substantially compliant amended TLWQS petition with the Board. *See* Motion for Extension of Time, PCB 14-111 (Ill.Pol.Control.Bd. Sep. 29, 2017).

7. On October 5, 2017, the Board granted the District’s Motion for Extension of Time, extending the deadline to file a substantially compliant amended TLWQS petition to December 31, 2018. *See* Board Order, PCB 14-111, at 1-2 (Ill.Pol.Control.Bd. Oct. 5, 2017).

II. REQUEST FOR STAY

8. As you are aware, the Board adopted the District’s SSR on November 15, 2018. *See* Board Order, PCB R 14-24, at 1-2 (Ill.Pol.Control.Bd. Nov. 15, 2018). The adopted SSR was filed with the Secretary of State on November 19, 2018 and was published in the *Illinois*

Register on November 30, 2018. *See* 42 Ill. Reg. 20,934, 20,947 (Nov. 30, 2018). As such, the District's SSR is effective as a matter of state law as of November 19, 2018 per 5 ILCS 100/5-40(d).

9. However, the adopted SSR will need to be approved by USEPA to become effective as a matter of federal law per 40 C.F.R. Part 131.

10. Under 40 C.F.R. 131.20(c), within 30 days of the final State action to adopt and certify the rule, the State must submit the adopted rule to USEPA for approval. Under 40 C.F.R. 131.21(a), USEPA then has 60 days to approve the rule or 90 days to disapprove the rule.

11. Given these deadlines, USEPA will not be able to make its decision whether to approve or disapprove the adopted SSR prior to the December 31, 2018 deadline for the District to file a substantially compliant amended TLWQS petition.

12. The District needs to maintain the current TLWQS proceeding as an alternative form of relief until USEPA approves or disapproves the adopted SSR. While the District cannot predict with certainty USEPA's ultimate decision, or the timing thereof, the District notes that USEPA was consulted regularly during the SSR proceeding and its technical comments were incorporated into the final design of the SSR such that District has a high level of confidence that USEPA is likely to approve the adopted SSR.

13. Nevertheless, should USEPA disapprove the adopted SSR, the District will need additional time thereafter to prepare and file a substantially compliant amended petition for a TLWQS in order to secure relief that is federally approved.

14. The District therefore respectfully requests that this TLWQS proceeding be stayed until USEPA issues its decision to approve the adopted SSR. In the event that USEPA approves the adopted SSR, the District will promptly move to withdraw its TLWQS petition in this matter.

In the event that USEPA disapproves the adopted SSR, the District respectfully requests that this proceeding be stayed until 60 days after the District's receipt of USEPA's decision to disapprove the adopted SSR, which would allow the District time to file a substantially compliant amended TLWQS petition.

15. The Respondent, Illinois EPA, has no objection to the granting of this Motion.

III. CONCLUSION

WHEREFORE, Petitioner, SANITARY DISTRICT OF DECATUR, moves the Illinois Pollution Control Board to grant this Motion for Stay of Proceeding until such time as described above.

Respectfully submitted,

SANITARY DISTRICT OF DECATUR,
By One of Its Attorneys,

Dated: December 5, 2018

/s/ Katherine D. Hodge
Katherine D. Hodge

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