

ILLINOIS POLLUTION CONTROL BOARD
January 24, 1985

CITY OF KEITHSBURG,)
)
 Petitioner,)
)
 v.) PCB 84-57
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter comes to the Board on a request by the City of Keithsburg ("Keithsburg") for a variance from the BOD₅, total suspended solids ("TSS") and fecal coliform limitations of 35 Ill. Adm. Code 304.120(a) and 304.121. Although no specific termination date for the variance is requested, Keithsburg anticipates regulatory compliance through construction of a secondary treatment facility by January 1, 1988. Keithsburg's original variance petition was filed May 2, 1984, and, in response to Board Orders, amended petitions were filed July 3, 1984 and September 4, 1984. On October 15, 1984, the Illinois Environmental Protection Agency ("Agency") filed a recommendation that variance be granted with certain conditions until July 1, 1988. Hearing was held November 28, 1984, and a narrative summary of that hearing was filed December 13, 1985. By Order of December 20, 1984, the Board rejected the narrative transcript as not in compliance with 35 Ill. Adm. Code 104.202. On January 14, 1985, Keithsburg and the Agency filed a stipulation that if a rehearing were held the witnesses would testify in accordance with the December 13, filing. Keithsburg then waived its hearing request.

Keithsburg, located in Mercer County adjacent to the Mississippi River, has a population of 937. Keithsburg's existing sewage treatment plant offers primary treatment only and discharges to the Mississippi River. The record indicates that Keithsburg's primary treatment facility is well operated and maintained. The treatment facility consists of sewers, a lift station and a Lakeside Spiragester, which is a modification of an Imhoff tank. In 1982 Keithsburg was nominated for a Group D plant award (Rec. p. 2). A summary of the last twelve available Discharge Monitoring Reports ("DMRs") supports the Agency's conclusion.

Month	Flow (MGD)	Influent (mg/l)		Effluent (mg/l)	
		BOD	TSS	BOD	TSS
3/84	0.109	127	118	69	61
2/84	0.109	125	112	81	61
1/84	0.096	122	102	78	60
12/83					
11/83					
10/83	0.096	155	134	84	72
9/83	0.109	127	93	77	64
8/83	0.131	119	91	68	70
7/83	0.123	127	103	67	60
6/83	0.166	119	96	57	50
5/83	0.252	109	88	63	53
4/83	0.135	119	84	47	51
Average	0.133	125	102	69	60

Those months where no values are reported indicate that DMR's were not in the Agency's file. No DMR's more recent than March, 1984 were present in the Agency's files (Rec. p. 3).

Under previously granted NPDES permits and Enforcement Compliance Schedule Letters from United States Environmental Protection Agency, Keithsburg was authorized to discharge a maximum of 130 mg/l BOD₅, 140 mg/l TSS and had no limitation on fecal coliform. Those discharge authorizations expired February 28, 1982, however, the terms remained in effect because Keithsburg filed a renewal application on December 1, 1981, seeking the same discharge limitations. On April 5, 1984, the Agency reissued a permit, effective May 5, 1984, containing final effluent limitations of 30 mg/l BOD₅, 30 mg/l TSS and 400 fecal coliform per 100 ml. Under 35 Ill. Adm. Code 304.130, Keithsburg would have been eligible for the same effluent limitations previously in effect if it had submitted application for a construction grant prior to December 31, 1975. Keithsburg did not submit such a grant application (Stip. Transcript p. 10).

Keithsburg needs to obtain funding in order to proceed with its secondary treatment project and ultimate compliance. Keithsburg grant status is not favorable at this time. Keithsburg applied for and received a Step 1 grant in early 1976. Keithsburg's grant project remains on the grant priority list but is listed as number 980, essentially inactive (Rec. p. 4). Keithsburg has, in its second amended petition, stated that it will attempt to obtain funding through either an FmHA loan or the construction grants program, but failing these will construct a secondary treatment facility at its own expense by January 1, 1988 (Am. Pet. ¶7). While both the Agency and the Board have some concerns regarding Keithsburg's financial capabilities, Petitioner has indicated that adequate funding will be available in the future.

Keithsburg asserts that to deny variance at this time and thus require the city to immediately finance the construction of a secondary treatment facility or face possible enforcement

penalties would constitute an arbitrary and unreasonable hardship. Petitioner presented evidence at the "hearing," which was subsequently stipulated to, that it had to finance reconstruction of a sewer line segment that had recently collapsed, as well as continue loan payments for their primary facility (Stip. Transcript p. 3-4). The Agency agrees that requiring immediate compliance would constitute an arbitrary and unreasonable hardship (Rec. p. 4). The Board finds, that in light of the fact that Keithsburg does plan to come into compliance within a reasonable time, that denying variance would constitute an arbitrary and unreasonable hardship.

The environmental impact from the current primary discharge appears to be minimal. Based on Agency inspection in 1981, there is no visual impact on the Mississippi River. No sludge bank or bottom deposits were observed. The dilution ratio at the point of discharge is calculated to be about 5,100:1 (Rec. p. 5). This segment of the river has experienced few water quality problems and dissolved oxygen levels sampled at Keokuk, Iowa, have been high. Because of the sparse population in this area, swift currents, and barge traffic there are no public beaches in Keithsburg or any downstream municipalities for at least 25 to 30 miles (Stip. Transcript p. 7). Recreational use other than boating is not expected in the general area (Rec. p. 6).

The Board will grant variance until July 1, 1988, subject to conditions. During the variance period, interim limits for BOD₅ will be 85 mg/l and TSS limits will be 75 mg/l. These levels are tighter than those proposed by the Agency, but are better tailored to the facility's demonstrated capabilities. These interim limitations will help to minimize any adverse environmental impact. No limits will be set for fecal coliform.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

The City of Keithsburg is hereby granted a variance from 35 Ill. Adm. Code 304.120(a) and 35 Ill. Adm. Code 304.121 until July 1, 1988, subject to the following conditions:

1. During the period of variance, discharges shall not exceed 85 mg/l of BOD₅ and 75 mg/l of TSS as a monthly average, based on the sampling frequency contained in NPDES Permit NO. IL0021393.
2. City of Keithsburg shall provide secondary treatment of its wastewater in accordance with the following compliance schedule:

<u>Item</u>	<u>Completion Date</u>
Submit plans and specifications for secondary treatment facility to DWPC/ Permit Section	March 1, 1986
Commence construction of secondary treatment facility	On or before September 1, 1986
Complete construction of secondary treatment facility.	July 1, 1988

3. Within 45 days of the date of this Order, City of Keithsburg shall execute a Certification of Acceptance and Agreement to be bound to all terms and conditions of this variance. Said Certification shall be submitted to the Illinois Environmental Protection Agency, DWPC/ Compliance Assurance Section at 2200 Churchill Road, Springfield, Illinois 62706. The 45 day period shall be held in abeyance during any period that this matter is being appealed. The form of said Certification is as follows:

CERTIFICATION

I, (We) _____, hereby accept and agree to be bound by all terms and conditions of the Order of the Pollution Control Board in PCB 84-57, January 24, 1985.

Petitioner

Authorized Agent

Title

Date

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 24th day of January, 1985 by a vote of 5-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board