

ILLINOIS POLLUTION CONTROL BOARD  
August 6, 2015

EXXONMOBIL OIL CORPORATION, )  
)  
Petitioner, )  
)  
v. ) PCB 16-18  
) (Variance - Water)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

On July 21, 2015, ExxonMobil Oil Corporation (ExxonMobil) filed a petition for variance from the Board’s chloride standards recently adopted in Water Quality Standards And Effluent Limitations For The Chicago Area Waterway System And Lower Des Plaines River Proposed Amendments To 35 Ill. Adm. Code 301, 302, 303, and 304, R08-9(D) (June 18, 2015) (“CAWS”). Specifically, ExxonMobil seeks a variance from the standard in Section 302.407(g)(3) of the Board’s water pollution regulations. 35 Ill. Adm. Code 302.407(g)(3). After providing background on variances and briefly outlining ExxonMobil’s petition, today’s order accepts the petition for hearing, and addresses deadlines for the recommendation of the Illinois Environmental Protection Agency (Agency) and for the final decision of the Board.

**PETITION**

Under the Environmental Protection Act (Act) (415 ILCS 5/35-38 (2014)), the Board has the authority to grant a variance when a petitioner demonstrates that compliance would impose an “arbitrary or unreasonable hardship” on petitioner. *See* 415 ILCS 5/35(a) (2014); *see also* 415 ILCS 5/37(a) (2014) (burden of proof is on petitioner). A “variance is a temporary exemption from any specified rule, regulation, requirement or order of the Board.” *See* 35 Ill. Adm. Code 104.200(a)(1). However, “[i]f any person files a petition for variance from a rule or regulation within 20 days after the effective date of such rule or regulation, the operation of such rule or regulation shall be stayed as to such person pending the disposition of the petition.” 415 ILCS 5/38(b) (2014). The Board may issue a variance, with or without conditions, for up to five years, but may extend a variance if petitioner shows that it has made satisfactory progress toward compliance. *See* 415 ILCS 5/36(a), (b) (2014). The Act requires the Agency to “make a recommendation to the Board as to the disposition of the petition.” 415 ILCS 5/37(a) (2014).

ExxonMobil is requesting a variance from the recently enacted CAWS rule that was adopted by the Board on June 18, 2015. ExxonMobil’s petition concerns the discharge from ExxonMobil’s Joliet Refinery into the Upper Dresden Island Pool (UDIP) of the Lower Des Plaines River (LDPR). Pet. at 4. ExxonMobil is requesting relief from the aquatic life chloride

water quality standard. Pet. at 5. ExxonMobil argues that “certain factors prevent the LDPR from fully attaining its designated use.” Pet. at 1.

ExxonMobil states that it needs time to determine if a compliance strategy is necessary, and if so, select and implement that strategy. Pet at 3. ExxonMobil argues that “immediate compliance with the [CAWS] Chloride Standard imposes an arbitrary and unreasonable hardship on ExxonMobil” and “certain factors prevent the LDPR from fully attaining its designated use.” Pet. at 1. ExxonMobil states that “the overwhelming majority of the chloride present in the LDPR comes from discharges outside the control of ExxonMobil. Therefore, even if ExxonMobil eliminated its discharge, the waterway could still exceed the Chloride Standard in the winter when deicing occurs.” Pet. at 1-2.

ExxonMobil argues that its contribution to the chloride level in the LDPR is insignificant. Pet. at 5-6, 9. Rather, it states, “[t]he two leading contributors of chloride to the [LDPR] system, road salt and MWRDGC [Metropolitan Water Reclamation District of Greater Chicago] effluent, are discharged upstream of ExxonMobil, and ExxonMobil has no ability to reduce chloride levels in those discharges.” Pet. at 9. Further, ExxonMobil states that “[b]ecause the Refinery effluent is a small fraction of the river flow, the water quality impacts of the effluent on the LDPR are small, and for many effluent constituents, undetectable.” Pet. at 11.

With regard to its existing chloride discharge, ExxonMobil states that “crude desalting, boiler and wet gas scrubber water treatment, and blowdown from cooling towers” all contribute to the chloride in its effluent. Pet. at 12. “Water containing chloride from the LDPR is withdrawn,” states ExxonMobil, “and discharged back to the LDPR as cooling tower blowdown. *Id.* ExxonMobil argues that between 33% and 60% of the chloride discharged from the refinery originated from the LDPR. The average chloride concentration in composite samples taken at the refinery in March and August of 2010 was 903 mg/L. Pet. at 11. More recent sampling completed in May and June 2015 resulted in chloride concentrations of 414 mg/L and 554 mg/L, respectively. Pet. at 12.

ExxonMobil states that “end-of-pipe desalination of the wastewater” is the only option for the refinery to meet the Board’s chloride standards issued in CAWS. Pet. at 14. According to the petition, reverse osmosis is the preferred technology to achieve compliance, and the costs of reverse osmosis are “clearly unreasonable” when balanced with the benefit to the LDPR. Pet. at 14-15. Because the 500 mg/L, year-round chloride standard issued in CAWS does not apply until July 1, 2018, ExxonMobil argues that the variance should begin on that date and last for five years until July 1, 2023. Pet. at 15-17.

### **AGENCY RECOMMENDATION**

Unless otherwise ordered by the hearing officer or the Board, the Agency is required to file its recommendation on the variance with the Board within 45 days after the filing of the petition, or at least 30 days prior to a scheduled hearing, whichever is earlier. *See* 35 Ill. Adm. Code 104.216(b). The Agency recommendation is currently due September 4, 2015, the 45th day after the petition was filed. Within 14 days after service of the Agency’s recommendation, ExxonMobil may file a response to the Agency recommendation or an amended petition. *See* 35 Ill. Adm. Code 104.220.

### **HEARING AND DECISION DEADLINE**

Generally, the Board will hold a hearing on a variance petition if: (1) the petitioner requests a hearing; (2) the Agency or any other person files a written objection to the variance within 21 days after the newspaper notice publication, together with a written request for hearing; or (3) the Board, in its discretion, concludes that a hearing would be advisable. *See* 415 ILCS 5/37(a) (2014); *see also* 35 Ill. Adm. Code 104.224, 104.234. ExxonMobil requested a hearing in this case. Pet. at 20. The Board accepts ExxonMobil's petition for hearing without ruling upon the sufficiency of the petition. Before hearing, the Board or its hearing officer may issue one or more orders seeking additional information from ExxonMobil.

The assigned hearing officer is responsible for guiding the parties toward prompt resolution of this matter through whatever status calls and hearing officer orders he determines are necessary and appropriate. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/38(a) (2014)), which only ExxonMobil may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, ExxonMobil may deem the requested variance granted for a period not to exceed one year. *See* 415 ILCS 5/38(a) (2014). Currently, the decision deadline is November 19, 2015. The Board has a regular, open meeting scheduled for November 19, 2015.

Section 37(a) of the Act requires petitioner to provide notice of the petition to:

any person in the county in which the installation or property for which variance is sought is located who has filed with the Board a written request for notice of variance petitions, the State's attorney of such county, the Chairman of the County Board of such county, and to each member of the General Assembly from the legislative district in which that installation or property is located, and shall publish a single notice of such petition in a newspaper of general circulation in such county. 415 ILCS 5/37(a) (2014).

The Board has not received proof that notice was provided pursuant to the Act and directs ExxonMobil to do so before hearing.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 6, 2015, by a vote of 5-0.



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John T. Therriault, Clerk  
Illinois Pollution Control Board