

ILLINOIS POLLUTION CONTROL BOARD

August 6, 2015

VILLAGE OF WILMETTE,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 16-20
	)	(Variance - Water)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

On July 21, 2015, the Village of Wilmette (Wilmette) filed a petition for a 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, Wilmette seeks a variance from the standards in Sections 302.407(g)(2) and 302.407(g)(3) of the Board’s water pollution regulations. 35 Ill. Adm. Code 302.407(g)(2), (g)(3). After providing background on variances and briefly outlining Wilmette’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).

This petition concerns storm water discharges from Wilmette’s municipal storm water sewer system into the Chicago Area Waterways System (CAWS). Pet. at 1. Wilmette states that its discharges are subject to the aquatic life chloride water quality standard adopted by the Board in CAWS through its general National Pollutant Discharge Elimination System (NPDES) permit.

Pet. at 5. Wilmette incorporated the petitions for variance submitted by other similarly situated entities into its petition. Pet. at 1.

In its petition, Wilmette states that the “chlorides standards, which are in 35 IAC 302.407(g)(2) and (g)(3), are not currently met on a consistent basis and cannot be met on a consistent basis during the term [5 years] of the requested variance.” Pet. at 5. Wilmette argues that “there may be only two ways that chloride levels in effluents can be reduced: applying end-of-pipe controls or reducing chloride inputs.” Pet. at 7. Wilmette describes end-of-pipe controls as involving considerable equipment and high costs. Wilmette argues that the term of the variance would allow it to investigate ways to reduce chloride inputs and achieve compliance with the chloride standards. Pet. at 7-8. Wilmette states that “there is no method available to bring about compliance with the new chlorides standards that would not create an arbitrary and unreasonable hardship.” Pet. at 10.

### **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, Wilmette 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. Wilmette requested a hearing in this case. Pet. at 16. The Board accepts Wilmette’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 Wilmette.

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 Wilmette may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Wilmette 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 18, 2015. The Board meeting before that date is scheduled for November 5, 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 Wilmette 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.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

---

John T. Therriault, Clerk  
Illinois Pollution Control Board