

ILLINOIS POLLUTION CONTROL BOARD
March 21, 2002

CITY OF CENTRALIA,)
)
 Petitioner,)
)
 v.) PCB 02-88
) (Variance – Public Water Supply)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

This matter is before the Board pursuant to a petition for variance (petition) filed by the City of Centralia (Centralia) on December 31, 2001. Centralia is seeking a variance for its water treatment plant located at 2219 Old 51 Road, in Centralia, Marion County. The requested variance is from provisions of the Board’s primary drinking water standards: 35 Ill. Adm. Code 611.743, 611.744, and 611.745.¹ These provisions relate to providing filtration treatment, and installing and recording data from turbidity monitors on each filter in the plant. The variance is requested from January 1, 2002 until July 1, 2003, within which time Centralia will complete plant upgrades and installing the turbidity monitors and recording system.

Pursuant to Section 35(a) of the Environmental Protection Act (Act), the Board is charged with the responsibility of granting variances from Board regulations whenever immediate compliance with Board regulations would impose an arbitrary or unreasonable hardship on the petitioner. 415 ILCS 5/35(a) (2000). The Illinois Environmental Protection Agency (Agency) is required to appear in hearings on variance petitions. 415 ILCS 5/4(f) (2000). The Agency is also charged with the responsibility of investigating each variance petition and making a recommendation to the Board as to the disposition of the petition. 415 ILCS 5/37(a) (2000).

Centralia initially requested a hearing, but filed a notice of withdrawal of the hearing request on March 1, 2002. On March 7, 2002, the Board granted the request. On February 19, 2002, the Agency filed its recommendation in response to the petition. The Agency recommends that the Board grant the petition subject to certain conditions. Rec. at 1.²

In a variance proceeding, the burden is on the petitioner to present proof that immediate compliance with Board regulations would cause an arbitrary or unreasonable hardship, which

¹ These standards were adopted by the Board in SDWA Update, USEPA Regulations (July 1, 1998 through December 31, 1998), R99-12 (July 22, 1999). They became effective on August 11, 1999, with a compliance date of January 1, 2002.

² The Agency’s recommendations will be cited as “Rec. at ___”; the petition will be cited as “Pet. at ___.”

outweighs public interest in compliance with the regulations. Willowbrook Motel v. IPCB, 135 Ill. App. 3d 343, 349, 350, 481 N.E.2d 1032, 1036, 1037 (1st Dist. 1977). Pursuant to Section 35(a) of the Act, the Board finds that Centralia has presented adequate proof that immediate compliance with the Board regulations for which relief is being requested would impose such a hardship. For the reasons stated below, the Board grants Centralia's variance request, subject to certain conditions.

FACILITY DESCRIPTION

Centralia provides potable water service to an estimated 37,000 consumers. Pet. at 3-4. The plant is 77 years old and has eight filters. Pet. at 4. The plant has eight full-time employees. Pet. at 4.

The plant is a surface water filtration plant. Pet. at 5. The plant includes a rapid mix, flocculation basin, settling basins with tube settlers, seven dual media gravity filters utilizing granular activated carbon over sand and support gravel, a clear well, and high service pumps. Pet. at 5. The plant has eight filters 1-8. Pet. at 5-6. Filters 7 and 8 have the recording nephelometers, but filters 1-6 do not.

APPLICABLE REGULATIONS AND REQUESTED RELIEF

Three Board water quality regulations are at issue: 35 Ill. Adm. Code 611.743, which describes specific filtration requirements, 35 Ill. Adm. Code 611.744, which requires public water systems to install turbidity monitors on each filter in the system, and 35 Ill. Adm. Code 611.745, which imposes reporting and recordkeeping requirements from the turbidity monitors. The compliance date for Section 611.743 was December 31, 2001. The compliance date for Sections 611.744 and 611.745 was January 1, 2002. Centralia requests that it be granted variance with respect to all three regulations.

The regulations state in pertinent part:

Section 611.743 Filtration

A PWS subject to the requirements of this Subpart that does not meet all of the standards in this Subpart and Subpart B of this Part for avoiding filtration shall provide treatment consisting of both disinfection, as specified in Section 611.242, and filtration treatment which complies with the requirements of subsection (a) or (b) of this Section or Section 611.250 (b) or (c) by December 31, 2001.

- a) Conventional filtration treatment or direct filtration.
 - 1) For systems using conventional filtration or direct filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month, measured as specified in Sections 611.531 and 611.533.

* * *

Section 611.744 Filtration Sampling Requirements

- a) Monitoring requirements for systems using filtration treatment. In addition to monitoring required by Sections 611.531 and 611.533, a PWS subject to the requirements of this Subpart that provides conventional filtration treatment or direct filtration shall conduct continuous monitoring of turbidity for each individual filter using an approved method in Section 611.531(a) and shall calibrate turbidimeters using the procedure specified by the manufacturer. Systems shall record the results of individual filter monitoring every 15 minutes.
- b) If there is a failure in the continuous turbidity monitoring equipment, the system shall conduct grab sampling every four hours in lieu of continuous monitoring, until the turbidimeter is back online. A system shall repair the equipment within a maximum of five working days after failure.

Section 611.745 Reporting and Recordkeeping Requirements

In addition to the reporting and recordkeeping requirements in Sections 611.261 and 611.262, a public water system subject to the requirements of this Subpart that provides conventional filtration treatment or direct filtration must report monthly to the Agency the information [relating to turbidity measurements and individual filter monitoring specified in subsection (a), (b), and (c) of this section]. . . .

COMPLIANCE PLAN

Centralia states that it will install recording nephelometers on the remaining six of its eight filters (filters 1-6). Pet. at 9. Centralia will also reconstruct the underdrains and filter bottoms on filters 1-6, including the replacement of the existing filter media with 12 inches of filter sand topped with 24 inches of granular activated carbon. Pet. at 9. Centralia will complete the protective coating restoration and installation of tube settlers in the existing square clarifiers to improve efficiency. Pet. at 9. Centralia intends to replace the deteriorated influent, effluent, and backwash supply valves on filters 1-6. Pet. at 9.

Centralia prepared a schedule for implementing the phases of the control program. Pet. at 9. Beginning on February 15, 2002, Centralia submitted plans and specifications to the Agency for a construction permit. Pet. at 9. Centralia plans to begin construction on September 3, 2002. Pet. at 10. By July 1, 2003, Centralia plans to attain compliance with the regulation and start full operations with new improvements. Pet. at 10. Centralia estimates it will cost \$899,600 to complete the project. Pet. at 11.

HARDSHIP

Section 35(a) of the Act requires the Board to determine whether the petitioner has presented adequate proof that it would suffer an arbitrary or unreasonable hardship if required to comply with the Board's regulation at issue. 415 ILCS 5/35(a) (2000). Centralia contends the Agency first notified Centralia of the new rule on April 12, 2001. Pet. at 8. Centralia argues this late notification put them in the "awkward position" of having less than eight months to make the required modifications. Pet. at 8.

Centralia contends that it only had eight months to prepare the required documents and get funding for the project. Pet. at 9. Centralia argues that the circumstances would impose an arbitrary or unreasonable hardship to comply by January 1, 2002. Pet. at 9.

The Agency believes that denying the variance would result in an arbitrary or unreasonable hardship because the hardship caused by a denial outweighs any injury to the public or the environment from a grant of a variance. Rec. at 10. The Agency explains that Centralia has to renovate filters 1 through 6 in its surface water treatment plant. Rec. at 10. Centralia must also add tube settlers to the two existing square clarifiers to meet the 0.3 NTU requirement. Rec. at 10. Additionally, Centralia must install new continuous turbidity monitors on the six renovated filters. Rec. at 10.

ENVIRONMENTAL CONSIDERATIONS

Centralia argues that the overall risk to the health of the plant's consumers seems "tolerable and consistent" with the rule's intent. Pet. at 12-13. Centralia claims that the plant's filters currently can meet the new 0.3 NTU requirement 91.93% of the time. Pet. at 11. Additionally, Centralia claims that the plant can currently continue to produce finished water with a turbidity level of 0.5 NTU or less 95% of the time, which 35 Ill. Adm. Code 611.250(a)(1) currently requires. Pet. at 11.

Centralia contends that the plant has been producing potable water for its customers for 77 years without any known or documented outbreak of waterborne disease. Additionally, during the variance period, Centralia will comply with all the Primary Drinking Water Standards. Pet. at 13. Further, Centralia will continue to comply with the 0.5 NTU/95th percentile combined filter water turbidity requirement presently in place and continue the monitoring of filters every three hours. Pet. at 13.

The Agency agrees that granting the variance would not impose a significant injury to the public or the environment. Rec. at 9. Under Section 611.743(a)(1) Centralia must produce finished water with a turbidity level less than or equal to 0.3 NTU in at least 95% of the monthly measurements. 35 Ill. Adm. Code 611.743(a)(1). The previously applicable standard of Section 611.250(a)(1) required Centralia to produce finished water with a turbidity level less than or equal to 0.5 NTU in at least 95% of the monthly measurements. 35 Ill. Adm. Code 611.250(a)(1). According to the Agency, Centralia is in compliance with Section 611.250(a)(1). Rec. at 9. Based on 2001 sampling results, however, Centralia would only meet Section 611.743(a)(1)'s 0.3 NTU standard 63.44% of the time. Rec. at 8.

Centralia also will monitor the clarification and filtration processes to try and comply with the new turbidity standards. Pet. at 13. Centralia will implement actions if *Cryptosporidium* were detected in the treated water. Pet. at 13. The Agency notes that if *Cryptosporidium* were detected in Centralia's treated water, Centralia would issue a system-wide "boil order" to its customers; determine the cause of the process failure; and take remedial action to correct the process failure. Rec. at 9.

The Agency concludes that granting the variance would pose no significant injury to the public or the environment. Rec. at 9.

CONSISTENCY WITH FEDERAL LAWS

Centralia and the Agency agree that the variance may be granted consistent with Section 1412(b)(10) of the Safe Drinking Water Act (42 U.S.C. Sec. 300g-1(b)(10)). Pet. at 15. Rec. at 11. That section provides, in pertinent part:

A State . . . may allow up to 2 additional years [beyond the effective date of the regulation] to comply with a . . . treatment technique if the . . . State . . . determines that additional time is necessary for capital improvements. 42 U.S.C. Sec. 300g-1(b)(10).

RETROACTIVE VARIANCES

Centralia requests a variance beginning January 1, 2002, which would be a retroactive variance. The Board has previously considered requests for retroactive variances. The Board will not apply retroactive starting dates for variances where the petitioner has filed late and the delay was the petitioner's fault. Marathon Oil Co. v. IEPA, PCB 95-150 (May 16, 1996). Another reason for not applying a retroactive starting date is if the petitioner's hardship is self-imposed as a result of the petitioner's inactivity or faulty decision-making. Marathon Oil Co. v. IEPA, PCB 95-150 (May 16, 1996). The Board may grant a retroactive variance if the petitioner has diligently sought relief and has made a good faith effort toward achieving compliance with Board regulations. Marathon Oil Co. v. IEPA, PCB 95-150 (May 16, 1996); Deere & Co. v. IEPA, PCB 88-22 (Sept. 8, 1988). The Board has also provided retroactive variances where there was a procedural delay that was not the petitioner's fault or was the result of confusion over federal regulations. Marathon Oil Co. v. IEPA, PCB 95-150 (May 16, 1996); Allied Signal v. IEPA, PCB 88-172 (Nov. 2, 1989).

Centralia did not file the instant petition until December 31, 2001. Centralia does not provide any reason for filing the petition the day of the first compliance date of December 31, 2001. The Board will not grant a retroactive but will instead grant the variance effective as of the date of this order.

CONCLUSION

The Board finds that, if the instant variance petition is not granted, the City of Centralia will incur an arbitrary or unreasonable hardship. For this reason, the Board will grant the requested variance, subject to the conditions recommended by the Agency.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

The Board hereby grants petitioner, City of Centralia, variance from 35 Ill. Adm. Code 611.743(a)(1), 611.744 and 611.745 for its water treatment plant located at 2219 Old 51 Road, in Centralia, Marion County from March 21, 2002, to July 1, 2003, subject to the following conditions:

1. City of Centralia will take all reasonable measures with existing equipment to minimize the level of turbidity in its finished drinking water, until full compliance is reached.
2. City of Centralia will produce finished water meeting the new 0.3 NTU requirement contained in 35 Ill. Adm. Code 611.743(a)(1) in at least 50% of the measurements taken each month as specified in 35 Ill. Adm. Code 611.531 and 35 Ill. Adm. Code 611.533.
3. City of Centralia will continue to comply with 35 Ill. Adm. Code 611.250(a)(1), which requires the turbidity level of representative samples to be less than or equal to 0.5 NTU in at least 95% of the measurements taken each month.
4. City of Centralia will comply with the monitoring and recordkeeping requirements in 35 Ill. Adm. Code 611.744 and 611.745(b) as they apply to filters 7 and 8.
5. City of Centralia will comply with the monitoring and recordkeeping requirements in 35 Ill. Adm. Code 611.745(c)(1).
6. City of Centralia will provide written progress reports to the Agency's Division of Public Water Supplies, Field Operations Section every three months concerning steps taken to renovate filters 1 through 6 at its surface water treatment plant, and to install continuous turbidity monitors on these six filters. The first of these reports is due June 19, 2002.

IT IS SO ORDERED.

If petitioner chooses to accept this variance, within 45 days after the date of this opinion and order, petitioner shall execute and forward to:

Vera Herst
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue
P.O. Box 19276
Mail Code #21
Springfield, Illinois 62794-9276

a certificate of acceptance and agreement to be bound by all the terms and conditions of the granted variance. The 45-day period shall be held in abeyance during any period that this matter is appealed. Failure to execute and forward the certificate within 45 days renders this variance void. The form of the certificate is as follows:

CERTIFICATE OF ACCEPTANCE

The City of Centralia accepts and agrees to be bound by all terms and conditions of the Pollution Control Board's March 21, 2002 order in PCB 02-88.

Petitioner

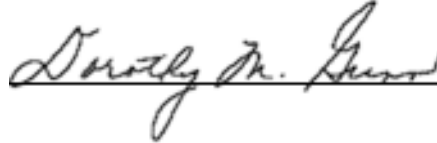
Authorized Agent

Title

Date

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2000); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. 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. The Board's procedural rules provide 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, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 21, 2002, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board