

ILLINOIS POLLUTION CONTROL BOARD
July 13, 2000

CITY OF ROCK ISLAND,)
)
 Petitioner,)
)
 v.) PCB 98-164
) (Variance - Water)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ROY M. HARSCH, OF GARDNER, CARTON & DOUGLAS, APPEARED ON BEHALF OF PETITIONER; and

RICHARD C. WARRINGTON, JR., OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by E.Z. Kezelis):

This matter is before the Board on an April 20, 1999 amended petition for variance filed by the City of Rock Island (Rock Island). Rock Island seeks relief from current conditions that require it to operate its main treatment plant at a maximum design flow of 16 million gallons per day (MGD). Specifically, Rock Island seeks relief from 35 Ill. Adm. Code 306.305(d) and an exception approved thereunder by the Board on May 9, 1986 (In re The Joint Petition of the City of Rock Island and the Illinois Environmental Protection Agency for Exception to the Combined Sewer Overflow Regulations (May 9, 1986), PCB 85-214) (CSO Exception), to the extent that the rule, as modified by the CSO Exception, requires Rock Island to operate its main treatment plant at a maximum design flow of 16 million gallons per day.

A hearing was held before Board Hearing Officer John Knittle on March 22 and 23, 2000. The hearing was held in conjunction with a hearing in the related permit appeal pending in City of Rock Island v. Illinois Environmental Protection Agency, PCB 00-73. That permit appeal is also decided today in a separate opinion and order. City of Rock Island v. Illinois Environmental Protection Agency (July 13, 2000), PCB 00-73.

The Board's responsibility in this matter arises from the Illinois Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (1998)). The Board is responsible for granting "individual variances beyond the limitations prescribed in this Act, whenever it is found upon presentation of adequate proof, that compliance with any rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship." 415 ILCS 5/35(a) (1998). The Illinois Environmental Protection Agency (Agency) is required to appear in hearings on variance petitions. 415 ILCS 5/4(f) (1998). The Agency is also required to

investigate each variance petition and make a recommendation to the Board for the disposition of the petition. 415 ILCS 5/37(a) (1998).

The Agency filed its recommendation on the amended petition for variance on November 3, 1999.¹ The Agency recommended that the Board deny the requested variance because Rock Island had not met its burden of proving that compliance with 35 Ill. Adm. Code 305.306 and the Board's CSO Exception would pose an arbitrary or unreasonable hardship. Rock Island did not file a response to the Agency recommendation. Instead, it presented evidence at the hearing and submitted a posthearing brief.

For the reasons set forth below, the Board finds that Rock Island has presented adequate proof that immediate compliance with the regulation and Board CSO Exception at issue would result in the imposition of an arbitrary or unreasonable hardship. Accordingly, the variance will be granted, subject to the conditions set forth in the attached order.

BACKGROUND

Rock Island is a municipality located in northwestern Illinois on the Mississippi and Rock Rivers, 186 miles west of Chicago. Am. Pet. at 4. Rock Island owns and operates its own sewer system and treatment plants. *Id.* Rock Island is served by two sewage treatment plants, but only the main treatment plant (Plant) is the subject of this variance proceeding. *Id.*

The Plant has an 8 MGD design average flow capacity. Am. Pet. at 4. The Plant, as currently configured, consists of two parallel grit removal chambers, eight primary settling tanks, a complete mix activated sludge process, two secondary clarifiers, and chlorinating facilities. *Id.* While treated effluent is discharged into the Mississippi River, flows in excess of what can practically be treated are bypassed and discharged through an overflow outfall to the Mississippi River (Outfall 001A). *Id.*

The fundamental issue in this proceeding concerns the design maximum flow (DMF) of the Plant. Rock Island maintains, and the Agency agrees, that the actual maximum flow capacity is 12 MGD. Am. Pet. at 2; Tr. at 70. The Plant was, however, originally designated as having a 16 MGD DMF capacity. See *In re The Joint Petition of the City of Rock Island and the Illinois Environmental Protection Agency for Exception to the Combined Sewer Overflow Regulations* (May 9, 1986), PCB 85-214. It is from this original designation that Rock Island seeks a variance.

Rock Island currently holds a National Pollutant Discharge Elimination System (NPDES) Permit for this facility. The most recent permit was issued on September 14, 1999.

¹ Rock Island's amended variance petition will be referred to as "Am. Pet. at ___." The Agency's recommendation will be referred to as "Ag. Rec. at ___." The hearing transcript will be referred to "Tr. at ___." Rock Island's posthearing briefs will be referred to as "Pet. Br. at ___" and "Reply Br. at ___." The Agency's posthearing brief will be referred to as "Ag. Br. at ___."

The May 9, 1986 Exception

In 1985, Rock Island and the Agency filed a joint petition for exception from the requirements of 35 Ill. Adm. Code 306.305(a) and (b). The purpose of their petition was to allow Rock Island to construct and operate combined sewer overflow transport and treatment facilities. The provisions of 35 Ill. Adm. Code 306.305 are as follows:

All combined sewer overflows and treatment plant bypasses shall be given sufficient treatment to prevent pollution, or the violation of applicable water quality standards unless an exception has been granted by the Board pursuant to Subpart D. Sufficient treatment shall consist of the following:

- a) All dry weather flows, and the first flush of storm flows as determined by the Agency, shall meet the applicable effluent standards; and
- b) Additional flows, as determined by the Agency but not less than ten times the average dry weather flow for the design year, shall receive a minimum of primary treatment and disinfection with adequate retention time; and
- c) Flows in excess of those described in subsection (b) shall be treated, in whole or in part, to the extent necessary to prevent accumulations of sludge deposits, floating debris and solids in accordance with 35 Ill. Adm. Code 302.203, and to prevent depression of oxygen levels; or
- d) Compliance with a treatment program authorized by the Board in an exception granted pursuant to Subpart D. 35 Ill. Adm. Code 306.305.

In an order dated May 9, 1986, the Board granted the requested exception and found that the actual existing combined sewer overflows from the Plant produced only a minimal impact upon the Mississippi River. CSO Exception, slip. op. at 8. Additionally, the Board noted that the modifications necessary to bring Rock Island into compliance with the express terms of the rule would cost roughly \$55 million, and that requiring such expenditures would constitute an undue economic burden. CSO Exception, slip. op. at 7-8. The Board conditioned the grant of exception on three conditions: (1) improving the screening system; (2) modifying

flow diversion by increasing weir elevations; and (3) modifying the interceptor chamber. *Id.* at 8; See also Exhibit 1 to Pet. These improvements were projected to cost Rock Island approximately \$101,000. Pet. Br. at 2. Rock Island states that each of these conditions have been fulfilled. Pet. at 6.

In granting the exception, the Board also adopted by reference three paragraphs from the joint petition that described the modifications Rock Island agreed to make in order to obtain Agency consent for the joint petition. One of the paragraphs adopted by reference provided, “the construction of head works improvements to allow operation of the treatment plant at the design maximum flow level of 16 million gallons a day.” CSO Exception, slip. op. at 4.

Rock Island maintains that the 16 MGD figure is an error that resulted from the then existing rule of thumb used by the Illinois Sanitary Water Board and, consequently the Agency, that multiplied the design average flow by two in order to calculate DMF. Pet. Br. at 3; Tr. at 71-2. When the Plant was originally designed and constructed, there was no procedure for calculating a specific and accurate DMF. Tr. at 68-9. These difficulties in calculating the DMF are compounded by the fact that there is no regulatory definition for “design maximum flow.” Therefore, because Rock Island’s design average flow was 8 MGD, the calculation employed at the time resulted in a designation of DMF of 16 MGD.

Rock Island maintains, and the Agency agrees, that it cannot presently treat flows in excess of 12 MGD. Am. Pet. at 5; Tr. at 80. Since the Plant was originally constructed, a combination of increasingly stringent effluent limitations has further limited the maximum practical flow that can be treated at the Plant. Tr. at 67-8. Attempting to treat flows in excess of 12 MGD results in a solids washout that can contribute to a loss of the biological treatment capabilities of the Plant. Tr. at 75. If this occurs, Rock Island cannot meet the effluent limitations contained in its National Pollutant Discharge Elimination System (NPDES) permit, the latest of which was issued by the Agency on September 14, 1999. *Id.* In order to avoid the solids washout, Rock Island currently employs a practice of discharging excess flows through the combined sewer overflow (CSO) outfall OO1A that discharges to the Mississippi River. Pet. at 4.

Nevertheless, in adopting by reference the characterization of the Plant as having a 16 MGD DMF, the Board thereby conditioned Rock Island’s CSO Exception upon its operating the Plant at a 16 MGD DMF. Subsequent NPDES permits have also contained this characterization.

In response to a notice of violation letter issued by the Agency, in 1997 Rock Island hired the environmental consulting firm of Huff & Huff, Inc. to perform a study of the individual treatment plant units. Tr. at 102. A preliminary engineering report was prepared by Huff & Huff and submitted to Rock Island and the Agency in December 1997. Pet. Ex. 8. Huff & Huff examined each aspect of Rock Island’s treatment process and determined that the Plant lacked the capacity to treat flows in excess of 12 MGD and still comply with its NPDES permit requirements. Tr. at 103; Pet. Ex. 8. It was at this point, in late 1997, that it first

became clear to Rock Island that its Plant could not handle capacities in excess of 12 MGD without suffering adverse consequences such as solids wash outs. Tr. at 25.

Upon discovering this discrepancy in the calculation of the DMF, Rock Island entered into discussions with the Agency to explore the ways in which Rock Island could improve its operations. Tr. at 25-26. As a result, Rock Island agreed to undertake the improvements necessary to increase its capacity to the 16 MGD DMF. Tr. at 26. Rock Island advised the Agency of its plans to seek relief from the CSO Exception in a letter to Agency legal counsel in December 1997. Tr. at 28-29. Rock Island received no response at that time from the Agency. Tr. at 29. The variance petition that is the subject of this proceeding was then filed in June 1998. Rock Island first sought engineering proposals for the improvements in December 1997. Exhibit 5 to Pet. After receiving engineering proposal and interviewing candidates, Rock Island approved hiring of Triad Engineering Incorporated to design the Plant improvements on March 2, 1998. *Id.* The construction is currently four months ahead of schedule and is expected to be completed in June 2001. Tr. at 30.

Procedural Matters

As previously stated, a hearing was held on March 22 and 23, 2000, in Rock Island, Illinois. Rock Island presented testimony from three witnesses: Robert Hawes, James Huff, and Thomas McSwiggin, who was called as an adverse witness. Rock Island also offered eighteen exhibits into evidence. The Agency presented testimony from one witness, James Kammueler, and offered six exhibits into evidence. The parties submitted posthearing briefs.

STATUTORY AND REGULATORY FRAMEWORK

In determining whether to grant any variance, the Act requires the Board to determine whether a petitioner has presented adequate proof that immediate compliance with the Board regulations at issue would impose an arbitrary or unreasonable hardship. 415 ILCS 5/35(a) (1998). Furthermore, the petitioner has the burden to show that its claimed hardship outweighs the public interest in attaining compliance with regulations designed to protect the public. Willowbrook Motel v. PCB, 135 Ill. App. 3d 343, 481 N.E.2d 1032 (1st Dist. 1977). Only with such a showing can the claimed hardship rise to the level of arbitrary or unreasonable hardship.

A further feature of a variance is that it is, by its nature, a temporary reprieve from compliance with the Board's regulations and compliance is to be sought regardless of the hardship which the task of eventual compliance presents to an individual polluter. Monsanto Co. v. PCB, 67 Ill. 2d 276, 367 N.E.2d 684 (1977). Accordingly, except in certain special circumstances, a petitioner is required, as a condition of granting the variance, to commit to a plan which is reasonably calculated to achieve compliance within the term of the variance.

In a variance proceeding, a petitioner is also required to assess the environmental impact that will result from a granting of the variance. Finally, a petitioner must demonstrate that the

requested variance can be granted by the Board consistent with federal law. Each of these factors is discussed below.

DISCUSSION

Compliance Plan

Rock Island is proceeding with improvements to the Plant that will enable it to treat a DMF of up to 16 MGD. Am. Pet. at 8; Tr. at 26. These improvements include installing an additional final clarifier, improving aeration basins, reconstructing the digesters, and putting new roofs and new mixers in the digesters. Tr. at 35. Rock Island is currently four months ahead of schedule and expects to complete these improvements in June 2001 (Tr. at 30), at a cost of approximately \$3 million (Pet. Br. at 5).

Despite approving and granting Rock Island's construction permit in June 1999, the Agency now objects to the compliance plan proposed by Rock Island. The main objections articulated by the Agency appear to be that none of the improvements proposed by Rock Island "guarantee that the facility will comply with the regulations of the Illinois PCB," and that the variance will be used as an "estopple [sic] against enforcement for non-compliance." Ag. Rec. at 9. At hearing, the only evidence the Agency offered in support of its position that violations may continue was testimony from James Kammuller that even the treatment of 16 MGD would not prevent the washout of sanitary items and their presence along the shoreline of the Mississippi River. Tr. at 127.

The Board is not persuaded by the Agency's objection. Thomas McSwiggin (McSwiggin), the manager of the water permit section of the Agency's bureau of water, was called as an adverse witness by Rock Island. McSwiggin testified that, subject to a field verification, Rock Island is already in compliance with the nine municipal CSO conditions in its NPDES permit. Tr. at 82. Furthermore, Rock Island agreed to undertake a two year shoreline inspection program to monitor and report the incidents of sanitary items being found along the shoreline of the receiving stream. Tr. At 26. McSwiggin testified that the study was just completed and the results are not yet known, so the Agency could not say with any certainty whether any additional work would be required of Rock Island in this regard or not. Tr. at 82-83. Finally, McSwiggin testified that if Rock Island is unsuccessful in its attempt to obtain a variance then the only compliance option is for Rock Island to upgrade the facility to meet the 16 MGD DMF, and that that is the compliance plan program that Rock Island has already committed to perform. Tr. at 84

Environmental Impact

Rock Island anticipates that no adverse impact upon the environment will occur if the requested variance is granted. Am. Pet. at 6. Rock Island maintains that the erroneous 16 MGD designation does not impact the validity of the Board's findings in the CSO Exception that the combined sewer overflows from outfall 001A produce only minimal impact on the receiving waters of the Mississippi River. *Id.* A 1985 Combined Sewer Overflow Study (1985

Study) provided the data on which the Board made its minimal impact findings. Pet. Ex. 17. The 1985 Study was based on actual overflow monitoring and actual sampling data. *Id.* Rock Island urges that these studies are equally valid today because they evaluated the Plant and its impact on the surrounding environment as it actually existed, and exists still today. Am. Pet. at 6. Finally, Rock Island presented testimony through McSwiggin that whether the Plant was characterized as a 16 MGD facility or a 12 MGD facility is essentially irrelevant as far as the actual monitoring and sample data are concerned. Tr. At 79-80.

The Agency questions Rock Island's reliance on the 1982 sampling and monitoring results. Ag. Rec. at 6. The Agency objects that Rock Island has not demonstrated the current environmental impact. *Id.* The Agency argues that the 1982 results are not accurate because they do not take into account the improvements made to the system since that time. *Id.* Despite the objection, the Agency acknowledges that Rock Island's implementation of its pretreatment program has probably reduced the amount and concentration of pollutants in the Mississippi River's sediment. *Id.*

In its posthearing brief, the Agency does raise a valid concern regarding potentially offensive conditions below the CSO outfall 001A. Ag. Br. at 4. The Agency refers to Rock Island's own exhibit 14 for a graphical representation of the sanitary debris collected from areas upstream and down of the CSO outfall 001A. Ag. Br. at 4; Pet. Ex. 14.

At hearing Rock Island introduced some more recent sampling results and environmental impact information in response to the Agency's concerns. James Huff (Huff), environmental consultant for Rock Island, and Vice President of Huff & Huff, Inc., testified that since the 1982 (or 1985) Study, Huff & Huff has also performed the following studies at the request of Rock Island: (1) mixing zone study in 1990; (2) mussel survey in 1994; and (3) sediment survey in 1999. Tr. at 98. Huff compared the 1982(5) test results with those from the 1999 sediment survey. Tr. at 99. Huff testified that the primary difference between the two samples was the absence in 1999 of oil in the sediment sample, and that visually the 1999 sample was clearer. Tr. at 99. Huff concluded that to the extent that there is any environmental impact currently, it is less than the impact considered by the Board when the CSO Exception was granted in 1986. Tr. at 100-101. Huff explained that there have been improvements to the Plant since 1986 that could account for the lessening of environmental impact. Tr. at 101. Specifically, he stated that modifications to the bar screen and the addition of two wet weather storage basins has resulted in fewer CSOs from the Plant. Tr. at 101.

In its reply brief, Rock Island reiterates its argument that the mere presence of debris in the receiving water does not indicate more than a minimal environmental impact. Pet. Rep. Br. at 8. Rock Island also notes that no correlation between the discovery of debris and a CSO event has been shown. *Id.* Furthermore, Rock Island recounts Agency testimony from James Kammuehler and Thomas McSwiggin, indicating that some floatable debris is commonly discharged from any CSO and that this debris may still be present after 16 MGD DMF is achieved. *Id.*

Additionally, Rock Island introduced evidence at hearing regarding the presence of a marina one half to one mile downstream from the Plant. Tr. At 48. The marina is home to approximately 500 boats and most of the boaters regularly discharge their sewage into the Mississippi. Tr. at 48. Hawes testified that some of the debris present along the shoreline and in the receiving stream may be the result of area boaters discharging their septic systems directly into the Mississippi River, as opposed to utilizing the free pump-out station provided at the marina by Rock Island. *Id.*

The Board finds that the impact to the environment as a result of this variance will be minimal. Nevertheless, the Board will impose specific conditions to the granting of this variance in order to minimize any potential impact to the environment and to address the legitimate concerns raised by the Agency regarding the presence of sanitary debris in the receiving stream.

Consistency With Federal Law

Another of the factors to be evaluated by the Board is whether granting the relief requested is consistent with federal law. Rock Island maintains that the Board may grant the relief requested consistent with federal law. Am. Pet. at 8. According to Rock Island, the Clean Water Act, 33 U.S.C. Sections 1251 to 1387, would not be violated if the requested relief is granted. Am. Pet. at 8. Rock Island acknowledges that it will need to seek a modification of its NPDES permit if the variance request is granted. *Id.*

The Agency points out that Rock Island is currently the subject of an administrative order (V-W-98-AO-10), issued by the United States Environmental Protection Agency. Ag. Rec. at 16-17. The administrative order pertains to alleged failures of the Rock Island Plant to comply with its NPDES permit. See Exhibit A to Ag. Rec. The Agency suggests that a Board order granting a variance could somehow be incompatible with the “federal enforcement process.” Ag. Rec. at 17.

That this variance may somehow impact the “federal enforcement process” is not tantamount to violating a federal law. Furthermore, as previously stated, the grant of a variance will provide Rock Island with only a limited reprieve from compliance with only the specific regulations involved in this proceeding. It will not absolve Rock Island from any alleged prior violations that may be the subject of a “federal enforcement process.” The Agency does not elaborate upon its expressed concerns beyond that quoted above. Furthermore, the Agency does not address this issue at all in its posthearing brief. Accordingly, absent an elaboration of this concern by the Agency, the Board must conclude that Rock Island has demonstrated that the requested variance would not be inconsistent with federal law.

Arbitrary or Unreasonable Hardship

Rock Island argues that it would be a significant hardship for it to comply with 35 Ill. Adm. Code 305.306 and the CSO Exception. Am. Pet. at 7. Without the variance, Rock Island maintains that it would be in violation of the CSO Exception and Section 305.306, and

thus would be required to construct and operate certain combined sewer overflow transport and treatment facilities, which in 1985 were estimated to cost \$54.9 million in capital costs and \$6.9 million in annual operating expenses. *Id.* Considering an annual inflation rate of 4%, the costs of these improvements today are estimated by Rock Island to be almost \$100 million in capital costs and \$12-\$13 million in annual operating expenses. Tr. at 36-37.

Rock Island maintains that since learning of the deficiency in the DMF, it has diligently pursued improvements and the consent of the Agency. Pet. Rep. Br. at 6. Additionally, Rock Island argues that the imposition of the permit condition requiring treatment of 16 MGD before utilizing the CSO is an arbitrary condition. *Id.* Rock Island points to testimony from the Agency's McSwiggin that no other municipality in Illinois is required to treat its DMF. *Id.* Rock Island argues that the Agency's requirement that it do so is clearly arbitrary. *Id.*

The Agency disputes the statement by Rock Island that its violation of the CSO Exception would somehow invalidate the order and compel Rock Island to expend large amounts of money to construct and operate CSO transport and treatment facilities. Ag. Rec. at 12. Furthermore, the Agency insists that the proper way to deal with the violation of the CSO Exception or Section 305.306 is through enforcement and the imposition of penalties. *Id.* The Agency suggests that by granting the requested variance, the Board would be giving Rock Island indemnity from enforcement. *Id.*

Additionally, the Agency argues that any hardship felt by Rock Island is self-imposed. Ag. Br. at 3. The Agency argues that Rock Island should have been aware of the problem with the DMF earlier and any hardship as a result of the delay in compliance is a self-inflicted hardship. Ag. Br. at 4. Finally, the Agency also disputes the cost of the compliance plan proposed by Rock Island. Ag. Rec. at 14. The Agency suggests that Rock Island has put forth several different cost estimates for the compliance plan without explanation. *Id.*

The cost of the compliance plan, however, is not what the Board looks to when making a determination on hardship. The compliance costs are costs Rock Island will expend in order to bring the facility into compliance with the 16 MGD designation. The Agency's arguments in this regard are misplaced. The Board believes the Agency's concerns regarding the variance somehow giving Rock Island "indemnity from enforcement" are misplaced. The Board notes that possession of a variance is not protection against violation of any regulation other than the specific rule addressed in the variance. Furthermore, the grant of a variance does not insulate a petitioner from any alleged violations that predated the effective date of the variance. Rock Island does not seek a retroactive variance, and thus any prior alleged violations of 35 Ill. Adm. Code 305.306 or the Board's CSO Exception, are not addressed in this variance proceeding.

The Board finds that Rock Island has demonstrated that immediate compliance with 35 Ill. Adm. Code 305.306 and the Board's CSO Exception will impose an arbitrary and unreasonable hardship upon Rock Island. As currently configured, the Rock Island facility is not capable of treating 16 MGD. Rock Island is, however, currently upgrading its facility so that by approximately June 2001, it will be capable of treating a DMF of 16 MGD. The Agency has already approved the construction plans for this upgrade and work is underway.

The Board finds that the compliance plan proposed and underway at the Plant is sufficient to bring the facility into compliance during the term of this variance.

Conditions

In response to concerns raised by the Agency regarding the potential impact of the overflows on the shorelines and public health in the areas surrounding the CSO outfalls, the Board will condition this grant of variance on Rock Island's continuing to maintain a shoreline inspection program designed to mitigate the impact of any overflows on the receiving stream. From the record before us, it is clear that Rock Island has, in conjunction with an Agency agreement, been conducting a shoreline inspection program for the past two years. Tr. at 26, 45-6. That inspection program was scheduled to be completed in Spring 2000. Tr. at 46. As a condition to the grant of this variance, the Board will require Rock Island to resume the shoreline inspection program.

Such program shall be developed and implemented by Rock Island, but must, at a minimum, include the following: (1) within twelve hours following the subsidence of any overflow event, inspections in the area near the CSO outfall and shoreline up to 1000 feet downstream of the CSO outfall for offensive or hazardous debris; (2) if the inspection results indicate any hazardous conditions, Rock Island shall take appropriate measures such as closing the area to public access or posting warning signs until the conditions are corrected; (3) Rock Island shall implement appropriate corrective measures to address any offensive or hazardous conditions in a timely manner; and (4) Rock Island shall record the time and date of each inspection and any cleanup effort and maintain such records during the term of the variance and make them available to the Agency upon request. This shoreline inspection program shall continue through the entire term of this variance.

The second condition imposed herein pertains to Rock Island's capacity to handle future population growth in the area. During the hearing in this matter, Rock Island presented testimony that the population served by the Plant has, in fact, declined in past years. Tr. at 102, 108. This decline is due, at least in part, to the closing of three of the largest water users in the area. Tr. at 108. Despite the recent declining demand in Rock Island's service area, the Board believes it would be prudent for Rock Island to evaluate its ability to accommodate future residential, commercial, and industrial demands. The Board notes that the Preliminary Engineering Report prepared by Huff & Huff, Inc. does not make any projections for future growth, demand, or change in wastewater characteristics.

Rock Island shall assess the treatment plant design using life-cycle management to provide for the Plant's operational longevity. Rock Island shall study future trends in residential and commercial population growth or decline; growth or decline in water demand and discharge; increases in stormwater runoff and combined sewer flows; changes in wastewater characteristics; modifications to sewer system infrastructure; replacement or upgrade of plant components; and frequency of facility and sewer maintenance. Additionally, the assessment shall also include a projected cost estimate and budget plan for the next ten years.

Rock Island shall submit its assessment within 60 days of the effective date of this opinion and order to the Agency for review. Based on the assessment and Agency comments, Rock Island shall make provisions for any necessary changes to ensure that the Plant will successfully meet Rock Island's future needs and protect the downstream environment.

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

ORDER

City of Rock Island (Rock Island) is hereby granted a variance from 35 Ill. Adm. Code 305.306 and the CSO Exception order (*In re The Joint Petition of the City of Rock Island and the Illinois Environmental Protection Agency for Exception to the Combined Sewer Overflow Regulations* (May 9, 1986), PCB 85-214), insofar as they require Rock Island to operate its main treatment plant at a maximum design flow of 16 million gallons per day (MGD), subject to the following conditions:

1. This variance expires on December 31, 2001, or upon Rock Island completing the ongoing construction project that will enable Rock Island to treat up to 16 MGD, whichever occurs first.
2. Rock Island must treat a maximum practical flow for the term of the variance.
3. For the term of this Variance, Rock Island shall resume its Shoreline Inspection Program to mitigate adverse impacts from combined sewer overflows (CSO) to the shoreline and receiving stream. The Shoreline Inspection Program shall include:
 - a. Within twelve hours following the subsidence of any overflow event, Rock Island shall inspect the area near the CSO outfall and shoreline up to 1000 feet downstream of the CSO outfall for offensive or hazardous debris.
 - b. If the inspection results indicate any hazardous conditions, Rock Island shall take appropriate measures such as closing the area to public access or posting warning signs until the conditions are corrected.
 - c. Rock Island shall implement appropriate corrective measures to address any offensive or hazardous conditions in a timely manner.
 - d. Rock Island shall record the time and date of each inspection and any cleanup effort. Such records shall be maintained during the term of the variance and made available to the Illinois Environmental Protection Agency (Agency) upon request.

4. Rock Island shall assess the treatment plant design using life-cycle management to provide for the Plant's operational longevity, as follows:
 - a. The assessment shall be based on the future trends in residential and commercial population, growth or decline in water demand and discharge, increases in stormwater runoff and combined sewer flows, changes in wastewater characteristics, modifications to sewer system infrastructure, replacement or upgrade of plant components, and frequency of facility and sewer maintenance.
 - b. The assessment shall also include a projected cost estimate and budget plan for the next ten years.
 - c. Rock Island shall submit its assessment within 60 days of the effective date of this Order to the Agency for review. Based on the assessment and Agency comments, Rock Island shall make provisions for any necessary changes to ensure that the Plant will successfully meet Rock Island's future needs and protect the downstream environment.

If Rock Island chooses to accept this variance, within 45 days of the grant of the variance, Rock Island must execute and forward the attached certificate of acceptance and agreement to:

Ken Rogers, Manager
Compliance Assurance Section
Illinois Environmental Protection Agency
Division of Water Pollution Control
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Once executed and received, that certificate of acceptance and agreement shall bind Rock Island to all 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:

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 98-164, dated July 13, 2000.

Petitioner

Authorized Agent

Title

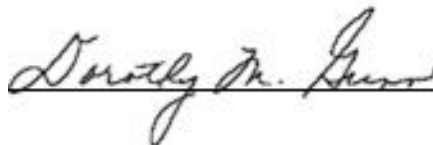
Date

IT IS SO ORDERED.

Chairman C.A. Manning abstained

Section 41 of the Environmental Protection Act, (415 ILCS 5/41 (1998)), provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of the date of service of this order. Illinois Supreme Court Rule 35 establishes such filing requirements. See 172 Ill. 2d R 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above opinion and order was adopted on the 13th day of July 2000 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board