

ILLINOIS POLLUTION CONTROL BOARD
June 2, 1983

CITY OF SHELBYVILLE,)
)
 Petitioner,)
)
 v.) PCB 83-70
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J.D. Dumelle):

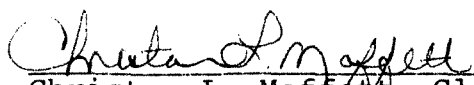
On May 31, 1983 the City of Shelbyville (City) filed a petition for variance from 35 Ill. Adm. Code 302.205 (old Rule 203(c) of Chapter 3: Water Pollution) as it applies to the City's phosphorus discharge. Additionally, the City requests an abatement order to be issued against it to allow it to sell bonds to finance the local share of the construction project needed to upgrade its wastewater treatment facilities to meet current standards.

The variance petition is deficient in numerous respects under 35 Ill. Adm. Code 104.121, 104.122 and 104.124. Unless an amended petition is filed curing those defects within 45 days of the date of this Order, the petition will be subject to dismissal pursuant to 35 Ill. Adm. Code 104.125. The Board notes, in particular, that while hearing is purportedly waived, no affidavit attesting to the truth of the facts alleged accompanies that waiver.

Further, while the Board has in the past issued abatement orders pursuant to Section 46 of the Illinois Environmental Protection Act, such orders have usually been issued pursuant to an enforcement action rather than simply in conjunction with a variance petition. Some legal questions arise as to the propriety of such an order being issued in conjunction with a variance petition upon which the courts have never had an opportunity to rule. If the City wishes to pursue its present strategy, its amended petition should present sufficient facts to justify this extraordinary relief (see Galesburg Sanitary District v. IEPA, PCB 77-192, 30 PCB 171, May 25, 1978.)

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 2ND day of June, 1983 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board