

ILLINOIS POLLUTION CONTROL BOARD
December 5, 2002

CITY OF BENTON,)
)
 Petitioner,)
)
 v.) PCB 03-78
) (Provisional Variance - Water)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by C.A. Manning):

On December 3, 2002, the Illinois Environmental Protection Agency (Agency) recommended that the Board grant a 45-day provisional variance to the City of Benton (City) beginning on November 28, 2002. This would be the City's second 45-day provisional variance. See City of Benton v. IEPA, PCB 03-57 (Oct. 17, 2002) (granting provisional variance from October 14, 2002 through November 27, 2002 for wastewater treatment plant repairs).

This provisional variance from the monthly average chlorine residual, total suspended solids (TSS), and carbonaceous biochemical oxygen demand (CBOD) effluent limits in its National Pollutant Discharge Elimination System (NPDES) permit, and 35 Ill. Adm. Code 304.120(b) and 304.141(a), would allow the City to establish a biological growth in its newly repaired trickling filter at its wastewater treatment plant in Benton, Franklin County. The City asserts that this could not be accomplished during the first provisional variance period, due to factory delays in shipping new growth media and slower growth due to arrival of colder weather. The Agency states that failure to grant the provisional variance extension would impose an arbitrary or unreasonable hardship on the City.

Section 35(b) of the Environmental Protection Act (415 ILCS 5/35(b) (2000)) provides:

The Board shall grant provisional variances, only upon notification from the Agency that compliance on a short term basis with any rule or regulation, requirement or order of the Board, or with any permit requirement would impose an arbitrary or unreasonable hardship. Such provisional variances shall be issued within 2 working days of notification from the Agency. 415 ILCS 5/35(b) (2000); *see also* 35 Ill. Adm. Code 104.302.

A provisional variance lasts for no more than 45 days, but the Board can extend the time period up to an additional 45 days on the Agency's recommendation. Provisional variances granted to one person cannot exceed a total of 90 days during any calendar year. 415 ILCS 5/36(c) (2000); 35 Ill. Adm. Code 104.308.

The Board grants the City's extension of its provisional variance from 35 Ill. Adm. Code 304.120(b) and 304.141(a), subject to the following conditions:

1. This provisional variance shall begin on November 28, 2002, and continue for 45 days from that date or until monitoring results confirm that full biological growth is achieved on the new filter media, whichever occurs earlier.
2. During the variance period, the City shall meet the monthly average effluent concentration limits of 0.75 for chlorine residual, 40 mg/l for CBOD and 50 mg/l for TSS. The City shall continue to monitor and maintain compliance with all other parameters and conditions specified in NPDES permit number IL0022365.
3. The City shall complete the construction work on its trickling filter as expeditiously as possible. During the provisional variance period, the City shall operate the facility in such a manner so as to produce the best effluent practicable.
4. The City shall notify Barb Conner of the Agency by telephone at 217/782-9720 when monitoring indicates that full biological growth is achieved on the new filter media. Written confirmation shall be sent within five days to the following address:

Illinois Environmental Protection Agency
 Bureau of Water, Compliance Assurance Section
 Attention: Barb Conner
 1021 North Grand Avenue East
 P.O. Box 19276
 Springfield, Illinois 62794-9276

IT IS SO ORDERED.

If the City chooses to accept this provisional variance, it must execute a Certificate of Acceptance of all terms and conditions of this provisional variance and, within 10 days after the date of the above order, forward the executed certificate to the Agency at the above address. The form of the certificate is as follows:

CERTIFICATE OF ACCEPTANCE

The City of Benton accepts and agrees to be bound by all terms and conditions of the Pollution Control Board's December 5, 2002 order in PCB 03-78.

Petitioner

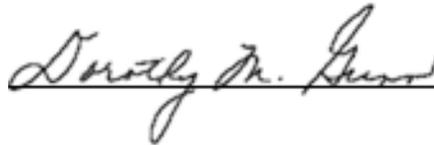
Authorized Agent

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 December 5, 2002, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board