

ILLINOIS POLLUTION CONTROL BOARD
January 23, 1997

ILLINOIS POWER COMPANY)	
(Baldwin Power Station),)	
)	
Petitioner,)	
)	
v.)	PCB 97-123
)	(Provisional Variance - NPDES)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

Pursuant to Section 35(b) of the Environmental Protection Act (Act) (415 ILCS 5/35(b)), Illinois Power Company (IPC) has requested that the Illinois Environmental Protection Agency (Agency) recommend that the Board grant a provisional variance to allow IPC to continue to operate its generating station while maintenance is performed at its wastewater treatment facility. Such request for a provisional variance and the notification of recommendation was filed with the Board by the Agency on Wednesday, January 22 1997. Pursuant to Section 35(b) of the Act, the Board must issue the variance within two (2) days of this filing.

Pursuant to Section 35(b) of the Act (415 ILCS 5/35(b)), the Agency, by and through its Director, Mary A. Gade, seeks a provisional variance to allow petitioner to continue to operate its generating station while maintenance is performed on the internal dike of the secondary cell ash pond system.

Specifically, the Agency recommends that we grant petitioner a 45-day provisional variance for its facility located in St. Clair and Baldwin Counties from the total suspended solids effluent discharge requirements, as set forth in 35 Ill. Adm. Code 304.120 and 304.141(a) and NPDES permit No. IL0000043 for Outfall 001. This variance period shall begin on January 16, 1997 and continue until the repairs are complete, but not for longer than 45 days.

The Agency recommends that the Board grant the requested provisional variance with specified conditions. The Agency agrees that the repairs are necessary and anticipates that the requested provisional variance would have minimal environmental impact on the receiving stream. Accordingly, the Agency is unaware of any public water supplies that the requested provisional variance would adversely impact and maintains that a grant of a provisional variance would violate no federal laws. The Agency believes that a denial of the requested provisional variance would create an arbitrary or unreasonable hardship on the petitioner.

Provisional variances are by their very nature temporary. The responsibilities of the Agency and the Board in these short-term provisional variances are different from the responsibilities in standard variances. (See 415 ILCS 5/35(b) & 36(c).) In provisional variances it is the responsibility of the Agency to make the technical determinations and finding of arbitrary or unreasonable hardship. The Board's responsibility is to adopt a formal order, to assure the formal maintenance of the record, to assure the enforceability of the variance, and to provide notification of the action by a press release.

Having received the Agency recommendation that a denial of the requested relief would impose an arbitrary or unreasonable hardship, the Board hereby grants the petitioner a provisional variance from 35 Ill. Adm. Code 304.120 and 304.141(a) and NPDES permit No. IL0000043 for Outfall 001, on the following conditions:

1. The term of this provisional variance shall commence on January 16, 1997 and continue until the repairs are complete, but not for longer than 45 days.
2. During the period of this variance, the effluent total suspended solids discharge limit shall be 50 mg/l for a monthly average with no daily maximum concentration limit. Petitioner shall also continue to ensure compliance with the other parameters described in its NPDES permit during this variance period.
3. The petitioner shall notify Eric Merz of the Agency's Collinsville Regional Office (618/346-5120) when the work on the secondary cell is completed. Petitioner shall confirm this notice in writing within five (5) days, addressed as follows:

Illinois Environmental Protection Agency
 Attention: Mark T. Books
 Bureau of Water, Compliance Assurance Section
 2200 Churchill Road
 P.O. Box 19276
 Springfield, Illinois 62794-9276

4. The petitioner shall provide the best treatment practicable during the term of this provisional variance.

The petitioner shall execute a copy of a certificate of acceptance of this provisional variance and forward that copy to the Agency addressed as is the written notice required in the above condition; the petitioner shall forward that copy within ten (10) days of the date of this order of the Board, and the certificate of acceptance shall take the following form:

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 97-123, January 23, 1997.

Petitioner

Authorized Agent

Title

Date

IT IS SO ORDERED.

Board Member K.M. Hennessey abstained.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1994)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246 "Motions for Reconsideration.")

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the ____ day of _____, 1997, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board