

ILLINOIS POLLUTION CONTROL BOARD  
April 3, 1997

CITY OF KEWANEE,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 97-171
	)	(Provisional Variance - Water)
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)), the City of Kewanee (petitioner) has requested that the Illinois Environmental Protection Agency (Agency) recommend that the Board grant a provisional variance from Section 35(b) of the Act (415 ILCS 5/35(b)), to the petitioner. Such request for a provisional variance and the notification of recommendation were filed with the Board by the Agency on Tuesday, April 1, 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 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 wastewater treatment facility while repairs are made to a ruptured berm in the excess holding lagoon.

Specifically, the Agency recommends that we grant petitioner a 45-day provisional variance for its Henry County facility from the sampling requirements, as set forth in 35 Ill. Adm. Code 305.102(b) and 309.146(a)(4) and the NPDES effluent discharge requirements, as set forth in 304.141(b). This variance period shall commence during the first excess flow discharge event through Outfall 003 due to the rupture of the berm and continue until the construction of the 16 MG excess flow equalization lagoon is complete, but not 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. The Agency is unaware of any public water supplies that the requested provisional variance would adversely impact and maintains that granting 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 305.102(b), 309.146(a)(4) and 304.141(b), on the following conditions:

1. The term of this provisional variance shall commence during the first excess flow discharge event through Outfall 003 due to the rupture of the berm and continue until the construction of the 16 MG excess flow equalization lagoon is complete, but not longer than 45 days, whichever occurs first.
2. During the variance period, sampling at Outfall 003 shall consist of a 24-hour composite sample to be taken for each discharge event.
3. During the term of this provisional variance, petitioner shall meet all other conditions and limits in its National Pollutant Discharge Elimination System Permit No. IL0029343.
4. The petitioner shall notify Todd Huson at the Agency's Peoria Regional Office by telephone, when the first excess flow discharge event through Outfall 003 occurs. Petitioner shall confirm this notice in writing within five (5) days, addressed as follows:

Illinois Environmental Protection Agency  
 ATTN: Erin Rednour  
 Bureau of Water, Compliance Assurance Section  
 2200 Churchill Road  
 P.O. Box 19276  
 Springfield, Illinois 62794-9276

5. The petitioner shall operate its plant during the term of this provisional variance in a manner that assures the best effluent practicable. Additionally, petitioner shall perform the necessary repair work on the berm as expeditiously as possible to minimize the time period that the excess flow must be diverted to, and discharged from, Outfall 003.

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 97-171, April 3, 1997.

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
Authorized Agent

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

IT IS SO ORDERED.

Board Member Kathleen 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