

ILLINOIS POLLUTION CONTROL BOARD  
May 15, 1997

FOX WATERWAY AGENCY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 97-201
	)	(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) (1994)), the Fox Waterway Agency (petitioner) has requested that the Illinois Environmental Protection Agency (Agency) recommend that the Board grant a provisional variance to the petitioner. Such request for a provisional variance and the notification of recommendation were filed with the Board by the Agency on May 14, 1997. Pursuant to Section 35(b) of the Act, the Board must issue the variance within two (2) days of this filing.

The Agency, by and through its director, Mary A. Gade, seeks a provisional variance to allow petitioner to continue to operate its Ackerman Island Sediment Disposal Facility while conducting dredging operations near Ackerman Island (near the confluence of the Nippersink, Fox and Grass Lakes).

Specifically, the Agency recommends that we grant petitioner a 45-day provisional variance for its McHenry County facility from the total suspended solids, un-ionized ammonia, and phosphorus discharge requirements, as set forth in 35 Ill. Adm. Code 304.105, 304.106, 304.123(b), and 304.124 and imposed by Operating Permit No. 1993-EA-3060, for effluent discharged from Project One Ackerman Island, Fox Lake, Illinois. This variance period is recommended to commence during 1997 when dredging operations for Project One Ackerman Island begin, and shall continue for 45 days, or until the Board takes final action on PCB 97-151.

The Agency recommends that the Board grant the requested provisional variance with specified conditions and agrees that the repairs are necessary. The Agency 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. According to the Agency, no federal laws would be violated if the provisional variance is granted by the Board. 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) and 5/36(c) (1994)). 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 304.105, 304.106, 304.123(b), and 304.124 and imposed by Operating Permit No. 1993-EA-3060, on the following conditions:

1. The term of this provisional variance shall commence during 1997 when dredging operations for Project One Ackerman Island begin and shall continue for 45 days, or until the Board takes final action on PCB 97-151.
2. Petitioner shall operate its plant during the term of this provisional variance in a manner that assures the best effluent practicable, however, in no case shall petitioner exceed an 80 mg/l total suspended solids limit.
3. The petitioner shall notify Chris Kallis at the Agency's Maywood regional office by telephone, at 708/338-7900, when dredging operations begin. Petitioner shall confirm this notice in writing within five (5) days, addressed as follows:

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

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 97-201, May 15, 1997.

\_\_\_\_\_  
Petitioner

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

\_\_\_\_\_  
Title

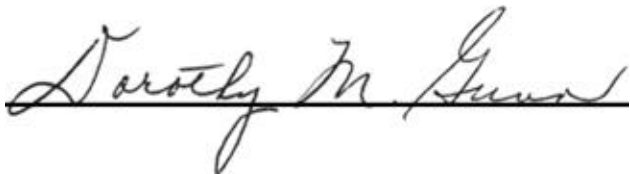
\_\_\_\_\_  
Date

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 15th day of May, 1997, by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board