

ILLINOIS POLLUTION CONTROL BOARD

August 7, 1997

CITY OF FULTON,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 98-25
	)	(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) (1996)), the City of Fulton (petitioner) located in Whiteside County has requested that the Board grant a provisional variance from 35 Ill. Adm. Code 304.120(c) and 304.141(a) and imposed by National Pollutant Discharge Elimination System Permit (NPDES) No. IL0028860. Such request for a provisional variance and the notification of recommendation were filed with the Board by the Illinois Environmental Protection Agency (Agency) on August 5, 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) (1996)), 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 repair work is conducted on petitioner's Packed Biological Reactor (PBR) units.

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 and 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.

Specifically, the Agency recommends that the Board grant the petitioner a 21-day provisional variance for its Whiteside County facility from the total suspended solids and biochemical oxygen demand effluent discharge requirements, as set forth in 35 Ill. Adm. Code 304.120(c) and 304.141(a) and imposed by NPDES No. IL0028860. This variance period is recommended to commence on July 21, 1997, and to continue until the work on the units is completed, but not longer than 21 days.

This recommendation is essentially that the Board extend a previously-granted provisional variance that expired July 21, 1997. The docket number of the provisional variance was PCB 97-219, granted on June 5, 1997.

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) (1996). 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(c) and 304.141(a) and imposed by NPDES No. IL0028860, subject to the following conditions:

1. The term of this provisional variance shall commence on July 21, 1997 until August 11, 1997.
2. Petitioner shall operate its wastewater treatment facility during the term of this provisional variance in a manner that assures the best effluent practicable. Additionally, petitioner shall meet the following effluent limits:

	<u>CBOD</u>	<u>Suspended Solids</u>
Monthly Average	45 mg/l	60 mg/l

Petitioner shall continue to meet the pH limits of its NPDES Permit No. IL0028860.

3. The petitioner shall notify Jack Adam at the Agency's Rockford regional office by telephone, at 815/987-7755, when the PBR units are returned to service. Petitioner shall confirm this notice in writing within five (5) days, addressed as follows:

Illinois Environmental Protection Agency
Bureau of Water, Compliance Assurance Section
Attention: Mark T. Books
1021 N. Grand Avenue East
Springfield, Illinois 62702

4. The petitioner shall perform the necessary repair work on the PBR units as expeditiously as possible to minimize the time period that the units are out of service.

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 98-25, August 7, 1997.

Petitioner

Authorized Agent

Title

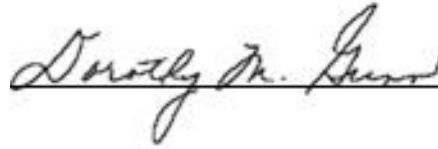
Date

IT IS SO ORDERED.

Board Member K.M. Hennessey abstained.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 145 Ill. 2d R. 335; 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 7th day of August 1997, by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board