

ILLINOIS POLLUTION CONTROL BOARD
October 16, 1997

CITY OF LOCKPORT,)
)
Petitioner,)
)
v.) PCB 98-53
) (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 Lockport (petitioner) located in Will County requests that the Board grant a provisional variance from 35 Ill. Adm. Code 302.212 and 304.141(a), included in National Pollutant Discharge Elimination System Permit (NPDES) No. IL0029611. Such request for a provisional variance and the notification of recommendation was filed with the Board by the Illinois Environmental Protection Agency (Agency) on October 16, 1997. Pursuant to Section 35(b) of the Act, the Board must issue the variance within two days of this filing.

The Agency, by and through its Director, Mary A. Gade, seeks a provisional variance pursuant to Section 35(b) of the Act (415 ILCS 5/35(b) (1996)) to allow petitioner to continue to operate its wastewater treatment facility while repair work is conducted on petitioner's clarifier. The Agency recommends that the Board grant the requested provisional variance with specified conditions. The Agency 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. The Agency 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.

Specifically, the Agency recommends that the Board grant petitioner a 45-day provisional variance for its Will County facility from the ammonia nitrogen effluent discharge requirements, as set forth in 35 Ill. Adm. Code 302.212 and 304.141(a), included in NPDES Permit No. IL0029611. This variance period is recommended to commence on October 13, 1997, and to continue for 45 days, or until repairs on the wastewater treatment plant are completed, whichever occurs first.

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 302.212 and 304.141(a), included in NPDES No. IL0029611, subject to the following conditions:

1. The term of this provisional variance shall commence on October 13, 1997, and shall continue for 45 days, or until repairs on the wastewater treatment facility are completed, whichever occurs first.
2. During the variance period, petitioner shall meet monthly average effluent concentration limits of 30 milligrams per Liter (mg/L) and daily maximum concentration limits of 45 mg/L for ammonia nitrogen. Petitioner shall also continue to meet the additional effluent limits as addressed in its NPDES Permit No. IL0029611.
3. Petitioner shall operate its wastewater treatment facility during the term of this provisional variance in a manner that assures the best effluent practicable.
4. The petitioner shall notify Al Gonzalez at the Agency's Maywood regional office by telephone, at (708) 338-7900, when repairs and maintenance of the wastewater treatment facility have been completed. Petitioner shall confirm this notice in writing within five (5) days, addressed as follows:

Illinois Environmental Protection Agency
Bureau of Water, Compliance Assurance Section
Attn: Susan Davison
1021 N. Grand Avenue East
Springfield, IL 62702

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, 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 98-53, October 16, 1997.

Petitioner

Authorized Agent

Title

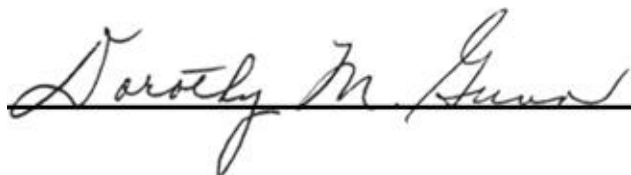
Date

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 16th day of October 1997, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board