

ILLINOIS POLLUTION CONTROL BOARD

August 6, 2015

NORAMCO-CHICAGO, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 16-22
)	(Variance - Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

On July 21, 2015, Noramco-Chicago, Inc. (Noramco) filed a petition for a variance from the Board’s chloride standards recently adopted in Water Quality Standards And Effluent Limitations For The Chicago Area Waterway System And Lower Des Plaines River Proposed Amendments To 35 Ill. Adm. Code 301, 302, 303, and 304, R08-9(D) (June 18, 2015) (“CAWS”). Specifically, Noramco seeks a variance from the standards in Sections 302.407(g)(2), 302.407(g)(3), and 303.449 of the Board’s water pollution regulations. 35 Ill. Adm. Code 302.407(g)(2), (g)(3), 303.449. After providing background on variances and briefly outlining Noramco’s petition, today’s order accepts the petition for hearing, and addresses deadlines for the recommendation of the Illinois Environmental Protection Agency (Agency) and for the final decision of the Board.

PETITION

Under the Environmental Protection Act (Act) (415 ILCS 5/35-38 (2014)), the Board has the authority to grant a variance when a petitioner demonstrates that compliance would impose an “arbitrary or unreasonable hardship” on petitioner. *See* 415 ILCS 5/35(a) (2014); *see also* 415 ILCS 5/37(a) (2014) (burden of proof is on petitioner). A “variance is a temporary exemption from any specified rule, regulation, requirement or order of the Board.” *See* 35 Ill. Adm. Code 104.200(a)(1). However, “[i]f any person files a petition for variance from a rule or regulation within 20 days after the effective date of such rule or regulation, the operation of such rule or regulation shall be stayed as to such person pending the disposition of the petition.” 415 ILCS 5/38(b) (2014). The Board may issue a variance, with or without conditions, for up to five years, but may extend a variance if petitioner shows that it has made satisfactory progress toward compliance. *See* 415 ILCS 5/36(a), (b) (2014). The Act requires the Agency to “make a recommendation to the Board as to the disposition of the petition.” 415 ILCS 5/37(a) (2014).

This petition concerns the stormwater discharge from Noramco’s Lemont facility into the Chicago Ship and Sanitary Canal (CSSC). Pet. at 2. Noramco describes the Lemont facility as “a warehouse and storage facility for materials that are shipped to the Chicago area by barge. Noramco unloads and stores road salt at the Lemont Facility.” Pet. at 4. Noramco’s discharge

includes three stormwater outfalls that are not yet covered under a National Pollutant Discharge Elimination System (NPDES) permit. *Id.* Noramco is subject to the aquatic life chloride water quality standard for the CSSC adopted by the Board in CAWS. Pet. at 3.

In its petition, Noramco states “[u]nlike the winter water quality standard for the rest of the CAWS, the Board has not expressly delayed the application of the chlorides standard for the CSSC for three years.” Pet. at 2. While Noramco does not currently have a NPDES permit, Noramco argues that “because of the proximity of the CSSC, the quantity of salt stored at the Lemont Facility, and the fact that a mixing zone is prohibited for at least certain discharges, there is the potential for discharges that violate the chlorides standards for the CSSC.” Pet. at 6. Further, Noramco states that the chloride standards, “impose an arbitrary and unreasonable hardship on Noramco because there is no waiting period before the chlorides water quality standards for the CSSC go into effect, and full and immediate compliance will be difficult, if not impossible.” Pet. at 9.

Noramco provides three alternatives by which it could reduce chloride in its stormwater discharge: reverse osmosis treatment; best management practices for stormwater runoff; and obtaining a mixing zone. Pet. at 7. Noramco describes reverse osmosis as expensive, impractical, and difficult to implement before the chloride standards are effective. *Id.* Noramco indicates that additional best management practices are expensive and “unlikely to eliminate completely discharges that exceed the water quality standards for the CSSC.” Pet. at 8. And finally, Noramco states that additional time is necessary for it to investigate the option of obtaining a mixing zone. *Id.*

Noramco states that the “environmental impact of any potential releases from the Lemont Facility is likely to be minimal,” because “[s]tormwater discharges that contain elevated chlorides should be infrequent because salt generally remains covered and contained on the pad, spills are cleaned up promptly, and discharges only have the potential to occur when there is a storm event.” Pet. at 11.

AGENCY RECOMMENDATION

Unless otherwise ordered by the hearing officer or the Board, the Agency is required to file its recommendation on the variance with the Board within 45 days after the filing of the petition, or at least 30 days prior to a scheduled hearing, whichever is earlier. *See* 35 Ill. Adm. Code 104.216(b). The Agency recommendation is currently due September 4, 2015, the 45th day after the petition was filed. Within 14 days after service of the Agency’s recommendation, Noramco may file a response to the Agency recommendation or an amended petition. *See* 35 Ill. Adm. Code 104.220.

HEARING AND DECISION DEADLINE

Generally, the Board will hold a hearing on a variance petition if: (1) the petitioner requests a hearing; (2) the Agency or any other person files a written objection to the variance within 21 days after the newspaper notice publication, together with a written request for hearing; or (3) the Board, in its discretion, concludes that a hearing would be advisable. *See* 415 ILCS 5/37(a) (2014); *see also* 35 Ill. Adm. Code 104.224, 104.234. Noramco requested a

hearing in this case. Pet. at 15. The Board accepts Noramco's petition for hearing without ruling upon the sufficiency of the petition. Before hearing, the Board or its hearing officer may issue one or more orders seeking additional information from Noramco.

The assigned hearing officer is responsible for guiding the parties toward prompt resolution of this matter through whatever status calls and hearing officer orders he determines are necessary and appropriate. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/38(a) (2014)), which only Noramco may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Noramco may deem the requested variance granted for a period not to exceed one year. *See* 415 ILCS 5/38(a) (2014). Currently, the decision deadline is November 18, 2015. The Board meeting immediately before this deadline is scheduled for November 5, 2015.

Section 37(a) of the Act requires petitioner to provide notice of the petition to:

any person in the county in which the installation or property for which variance is sought is located who has filed with the Board a written request for notice of variance petitions, the State's attorney of such county, the Chairman of the County Board of such county, and to each member of the General Assembly from the legislative district in which that installation or property is located, and shall publish a single notice of such petition in a newspaper of general circulation in such county. 415 ILCS 5/37(a) (2014).

The Board has not received proof that notice was provided pursuant to the Act and directs Noramco to do so before hearing.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 6, 2015, by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board