

ILLINOIS POLLUTION CONTROL BOARD
August 6, 2015

FLINT HILLS RESOURCES)
JOLIET, LLC,)
)
Petitioner,)
) PCB 16-24
v.) (Variance – Water)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by D. Glosser):

On July 21, 2015, Flint Hills Resources Joliet, LLC (Flint Hills) filed a petition for variance from the thermal water quality standards adopted by the Board 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). Specifically Flint Hills seeks a variance from the standards in Section 302.408 (35 Ill. Adm. Code 302.408). After providing background on variances and Flint Hills’s petition, today’s order accepts the petition for hearing, and addresses deadlines for the recommendation of the Illinois Environmental Protection Agency (Agency) and the final decision of the Board.

BACKGROUND

Under the Environmental Protection Act (Act) (415 ILCS 5/35-38 (2014)), the Board is responsible for granting variances 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 discharge from Flint Hills’s facility in Channahon, Will County, which discharges into the Lower Des Plaines River. Flint Hills seeks a three-year variance from July 1, 2018. Flint Hills argues that compliance with the standards applicable in 2018 would impose an arbitrary or unreasonable hardship. Pet. at 1.

PETITION

According to Flint Hills due to the potentially elevated temperatures caused by upstream dischargers, without a mixing zone, Flint Hills will not be able to comply with the standards that are applicable on July 1, 2018. Pet. at 2. If mixing is not allowed for Flint Hills, it will need to develop an alternative compliance approach. However, if Flint Hills can utilize a mixing zone after July 1, 2018, Flint Hills will not need an alternative compliance approach. *Id.* Because of this uncertainty, Flint Hills argues that the imposition of the standards on July 1, 2018 creates an arbitrary or unreasonable hardship. *Id.*

Flint Hills argues that a variance will allow it time to pursue an appropriate compliance plan, which may include installing controls. Pet. at 2. Flint Hills seeks a variance until July 1, 2021, from the temperature standards that apply on July 1, 2018.

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, Flint Hills 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 (1) if the petitioner requests a hearing, (2) if 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) if 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. Flint Hills requested a hearing in this case. Pet. at 37. The Board accepts Flint Hills'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 Flint Hills.

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)), which only Flint Hills may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Flint Hills 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 currently has a Board meeting 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 (iii) 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 Flint Hills to do so before hearing.

IT IS SO ORDERED.

I, John 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 Therriault, Clerk
Illinois Pollution Control Board