

ILLINOIS POLLUTION CONTROL BOARD  
August 10, 1988

CITY OF HIGHLAND )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 88-67  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY )  
 )  
 Respondent. )

RICHARD E. ATEN, P.E., DIRECTOR OF PUBLIC WORKS, APPEARED ON BEHALF OF THE PETITIONER;

RICHARD C. WARRINGTON APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board on a Petition for Variance filed by the City of Highland (Highland) on April 11, 1988. The original Petition requested variance so that Highland could make some major repairs to its wastewater treatment plant (WWTP). Subsequent to the original filing, Highland amended its petition twice. Highland now requests variance so that it can repaint its two biological treatment units, referred to by Highland as the Cantex Units. In its May 16, 1988 amendment, Highland requests Variance from 35 Ill. Adm. Code 304.150, 304.106 and 304.120 (c). The Board notes that Title 35 contains no Section 304.150.

Section 304.120 (c) imposes the following effluent limitations on Highland: 10 milligrams per liter (mg/l) monthly average for biochemical oxygen demand (BOD<sub>5</sub>) and 12 mg/l monthly average for suspended solids (SS). Highland requests that it be subject to limits of 50 mg/l for monthly averages for both BOD<sub>5</sub> and SS during the variance period.

Section 304.106 prohibits offensive discharges.

Highland requests a variance from these provisions for three months.

Since Highland waived its right to a hearing and no member of the public filed a timely objection to the variance, no hearing was held in this matter.

On July 22, 1988, Illinois Environmental Protection Agency (Agency) filed a motion for leave to file its Recommendation instantaner. That motion is granted. In its Recommendation, the

Agency recommends that Highland be granted variance, subject to conditions, from Section 304.120(c) and 304.141 which prohibits violations of NPDES permit limits.

On July 20, 1988, Highland filed a letter which the Board construes as a motion for expedited decision. Highland requests such a decision so that it can take advantage of the recent dry weather. According to Highland, the dry weather will allow the painting of the Cantex Units to be conducted more quickly as well as provide conditions which will enhance treatment capabilities during the variance period.

Highland, a city of 7,250 persons, owns and operates its WWTP. The WWTP provides the following treatment: screening; grit removal; biological treatment consisting of dual Cantex Units, tertiary filtration by two sand filters, and chlorination. The WWTP has a designed average flow of 1.2 million gallons per day. The effluent is discharged to an unnamed creek which is tributary to Sugar Creek, which is in turn tributary to the Kaskaskia River. (Pet.p.2-3; Ag. Rec. p.2)

During the variance period, Highland will route all of its flow through one Cantex Unit so that the Cantex Unit not being utilized may be dried, cleaned, and painted. Pitting and cracks will also be repaired. (The 16th Amend., p.1). Highland claims that the treatment tanks currently show some paint deterioration and localized corrosion. Highland asserts that "further delay will clearly risk more costly repairs and possible breakdown." Highland states that there are no practical alternatives to repainting the Cantex Units. (Id. at 2)

The Agency state that given the length and interim limits of the requested variance, "there should be no significant impact on the stream, if Highland's requests were granted. However, the Agency does not recommend variance from Section 304.106 in order "to ensure the stream is not degraded." The Agency gives no further explanation for this position. (Ag. Rec., p.4)

In addition, the Agency states that a variance may be granted consistent with federal law:

The Clean Water Act at 301(i) does not prohibit a variance for necessary maintenance at a completed facility. There are no federal laws or regulations that would prohibit the grant of this variance.

(Ag. Rec., p.5)

Given circumstances of this case, the Board finds that to deny Highland a variance would constitute arbitrary or unreasonable hardship. Consequently, the Board will grant Highland a variance from Section 304.120(c) and 304.141 for a period of three months or until work on both cantex units is

completed, whichever occurs first. The Board will not grant variance from Section 304.106. Highland has not presented information which convinces the Board that such relief is necessary. In addition, the Agency is opposed to relief from that Section. In short, Highland has not carried its burden of proof on that issue.

With regard to Section 304.141, the Agency believes such relief is warranted. The Board concurs on this point.

The Board will impose conditions on the variance pursuant to the Agency's Recommendation.

#### ORDER

The Board hereby grants the City of Highland (Highland) variance from 35 Ill. Adm. Code 304.141 and 304.120 (c) subject to the following conditions:

1. The Variance shall commence upon the initiation of bypassing of the first Cantex Unit and continue for a period of 90 days or until the work on both Cantex Units is completed, whichever occurs first.
2. During the period of the variance, the effluent discharged shall not exceed 50 milligrams per liter (monthly average) for both biochemical oxygen demand and total suspended solids.
3. Highland shall sample and perform laboratory analysis as required in NPDES Permit No. IL0029173.
4. Highland shall notify Ms. Barb Conner of the Compliance Assurance Section via telephone at 217/782-9720 and Mr. Nick Mahlandt of the Collinsville Regional Office at 618/345-6220 when dewatering of the first Cantex Unit has begun, and when both units are returned to service. Written notification confirming the telephone notifications shall be submitted within 5 days thereof. Written notification shall be submitted to:
 

Illinois Environmental Protection Agency  
Division of Water Pollution Control  
Compliance Assurance Section  
2200 Churchill Road  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
Attn: Ms. Barb Connor
5. Highland, during the time of the variance, shall investigate and determine what repairs are needed to return the sand filters to use in the treatment process.
6. Within 45 days of the date of the Board's Order, the Highland shall execute a Certificate of Acceptance and send that

Certificate to the address in paragraph 4 of this Order. This Variance shall be void if Highland fails to execute and forward the Certificate within the 45 day period. The 45 day period shall be held in abeyance during any period that this matter is being appealed. The form of the Certificate of Acceptance shall be as follows:

Certificate of Acceptance

The City of Highland, having received the August 10, 1988 Order of the Illinois Pollution Control Board in PCB 88-67, hereby accepts that Order and agrees to be bound by all the terms and conditions thereof.

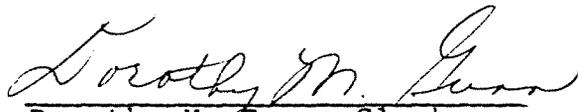
By: \_\_\_\_\_  
 Clarence T. Payne, Mayor  
 City of Highland

Dated: \_\_\_\_\_

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985 ch. 111 1/2 par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 10<sup>th</sup> day of August, 1988, by a vote of 5-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board