

ILLINOIS POLLUTION CONTROL BOARD
October 18, 2001

CITY OF CHICAGO DEPARTMENT)	
OF WATER,)	
)	
Petitioner,)	
)	
v.)	PCB 02-16
)	(Variance – Public Water Supply)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

This matter is before the Board pursuant to a petition for variance (petition) filed by the City of Chicago Department of Water (Department), on August 3, 2001. Pursuant to Section 35(a) of the Environmental Protection Act (Act), the Board is charged with the responsibility of granting variances from Board regulations whenever immediate compliance with Board regulations would impose an arbitrary or unreasonable hardship on the petitioner. 415 ILCS 5/35(a) (2000). The Illinois Environmental Protection Agency (Agency) is required to appear in hearings on variance petitions. 415 ILCS 5/4(f) (2000). The Agency is also charged with the responsibility of investigating each variance petition and making a recommendation to the Board as to the disposition of the petition. 415 ILCS 5/37(a) (2000).

The Department is seeking a variance for two of its water purification plants: Jardine Water Purification Plant (JWPP) and South Water Purification Plant (SWPP), both located in Chicago, Cook County. The requested variance is from two provisions of the Board's primary drinking water standards: 35 Ill. Adm. Code 611.744 and 611.745.¹ These provisions relate to installing and collecting data from turbidity monitors on each filter in the two plants. The variance is requested for one year, within which time the Department will complete installing the turbidity monitors.

The Department did not request a hearing, but reserved the right to request a hearing after receiving the Agency's recommendation. On September 17, 2001, the Agency filed its recommendation in response to the petition. The Agency recommends that the Board grant the

¹ These standards were adopted by the Board in SDWA Update, USEPA Regulations (July 1, 1998 through December 31, 1998), R99-12 (July 22, 1999). They become effective on January 1, 2002.

petition subject to certain conditions. Rec. at 1.² The Department did not request a hearing subsequent to the Agency's recommendation.

In a variance proceeding, the burden is on the petitioner to present proof that immediate compliance with Board regulations would cause an arbitrary or unreasonable hardship, which outweighs public interest in compliance with the regulations. Willowbrook Motel v. Illinois Pollution Control Board, 135 Ill. App. 3d 343, 349, 350, 481 N.E.2d 1032, 1036, 1037 (1st Dist. 1977). Pursuant to Section 35(a) of the Act, the Board finds that the City has presented adequate proof that immediate compliance with the Board regulations for which relief is being requested would impose such a hardship. For the reasons stated below, the Board grants the Department's variance request.

FACILITY DESCRIPTION

The Department provides drinking water to over five million people. Pet. at 7. It has two water purification plants, JWPP and SWPP, which are the subject of this variance. JWPP is located at 1000 E. Ontario Street in Chicago. SWPP is located at 3300 E. Cheltenham Place in Chicago. JWPP employs 500 people, and SWPP employs 125 people.

The present petition for variance concerns the installation of over 300 turbidity monitors on the individual filters at both treatment plants. Pet. at 9. Additionally, the Department will install a computer system to collect and process the data collected by the monitors. Pet. at 9. The treatment process at both plants includes screening, disinfection, coagulation, settling, filtration, disinfection adjustment, fluoridation, and polyphosphate. Pet. at 9.

APPLICABLE REGULATIONS AND REQUESTED RELIEF

Two Board water quality regulations are at issue: 35 Ill. Adm. Code 611.744, which requires public water systems to install turbidity monitors on each filter in the system, and 35 Ill. Adm. Code 611.745, which imposes reporting and recordkeeping requirements from the turbidity monitors. The effective date of these regulations is January 1, 2002. The Department requests that it be granted variance with respect to both regulations.

The regulations state in pertinent part:

Section 611.744 Filtration Sampling Requirements

- a) Monitoring requirements for systems using filtration treatment. In addition to monitoring required by Sections 611.531 and 611.533, a PWS subject to the requirements of this Subpart that provides conventional filtration treatment or direct filtration shall conduct continuous monitoring of turbidity for each individual filter using

² The Agency's recommendations will be cited as "Rec. at ___"; the petition will be cited as "Pet. at ___."

an approved method in Section 611.531(a) and shall calibrate turbidimeters using the procedure specified by the manufacturer. Systems shall record the results of individual filter monitoring every 15 minutes.

- b) If there is a failure in the continuous turbidity monitoring equipment, the system shall conduct grab sampling every four hours in lieu of continuous monitoring, until the turbidimeter is back online. A system shall repair the equipment within a maximum of five working days after failure.

Section 611.745 Reporting and Recordkeeping Requirements

In addition to the reporting and recordkeeping requirements in Sections 611.261 and 611.262, a public water system subject to the requirements of this Subpart that provides conventional filtration treatment or direct filtration must report monthly to the Agency the information [relating to turbidity measurements and individual filter monitoring specified in subsection (a), (b), and (c) of this section]. . . .

COMPLIANCE PLAN

The Department states that it had implemented a project plan to install the turbidity monitors on each filter at both plants before the regulations' effective date of January 1, 2002. Pet. at 10-11. The Department explains, however, that a problem occurred during the bidding award process, which makes compliance by the effective date impossible. Pet. at 11 and 16. The problem began when the bid documents, as was typical, included a provision that a bidding contractor guarantees the bid price for 60 days after the bid deadline. Pet. at 11. The 60 days was intended to allow for the Department to award the bid, finalize funding, and obtain approval from various city offices. Pet. at 11. The Department states that the award process could not be completed within the 60 days, because of an unexpected delay in finalizing the funding allocation by the Department and the City of Chicago's Comptroller Office. Pet. at 12. Because of the delay, the 60 days lapsed, and the contractor whose bid was accepted would not extend the award period. Pet. 12. The bidding process had to be reopened, delaying the project plan. Pet. at 12.

The Department represents that it immediately notified the Agency of the bidding problem. Pet. at 12. The Department also has begun the re-bidding process and has developed a new project schedule that shows compliance with the regulations by January 1, 2003. Pet. at 12, 13.

HARDSHIP

Section 35(a) of the Act requires the Board to determine whether the petitioner has presented adequate proof that it would suffer an arbitrary or unreasonable hardship if required to

comply with the Board's regulation at issue. 415 ILCS 5/35(a) (2000). The Department contends that an arbitrary or unreasonable hardship will occur if no variance relief is granted because it cannot comply with the regulations' effective date, nor can it interrupt water service to five million people. Pet. at 4, 16.

The Department includes with its petition a compressed construction schedule (Pet. at 15), that shows that the earliest the Department can comply with the regulations is April 9, 2002, and that would cost an additional two million dollars and could negatively impact project quality. Pet at 6.

The Agency agrees with the Department that denial of the variance request would constitute an arbitrary or unreasonable hardship. Rec. at 8. It agrees that it is impossible for the Department to comply with the regulations or interrupt water service. Rec. at 9.

ENVIRONMENTAL CONSIDERATIONS

The Department argues that a variance would have no environmental impact because the plants do not generate emissions, releases or discharges. Pet. at 16. Additionally, there would be no increased risk to public health because the Department is in compliance with the turbidity standards that will be applicable to its water in 35 Ill. Adm. Code 611.743. Pet. at 16.

The Agency agrees that granting the variance should not impose a significant injury to the public or the environment. Rec. at 7. The Agency also states that it has received no letters opposing the grant of the variance, after publishing notice in a Cook County newspaper and notifying state and county officials. Rec. at 5. The Agency agrees that the Department will meet the turbidity standard of the 35 Ill. Adm. Code 611.743 throughout the term of the variance. Rec. at 8.

CONSISTENCY WITH FEDERAL LAWS

The Department and the Agency agree that the variance may be granted consistent with Section 1412(b)(10) of the Safe Drinking Water Act (42 U.S.C. Sec. 300 300g-1(b)(10)). Pet. at 21; Rec. at 10. Section 1412(b)(1). That section provides, in pertinent part:

A State . . . may allow up to 2 additional years [beyond the effective date of the regulation] to comply with a . . . treatment technique if the . . . State . . . determines that additional time is necessary for capital improvements. 42 U.S.C. Sec. 300g-1(b)(10).

The Agency views the monitoring and reporting provisions as necessary components of a treatment technique, and the turbidity monitors installation and data collection system are capital improvements. Rec. at 10. Additionally, the Department notes that it is requesting only an additional year to comply with the regulations. Pet. at 21.

CONCLUSION

The Board finds that, if the instant variance petition is not granted, the Department will incur an arbitrary or unreasonable hardship. For this reason, the Board will grant the requested variance, subject to the conditions recommended by the Agency.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

The Board hereby grants petitioner, City of Chicago Department of Water, variance from 35 Ill. Adm. Code 611.744 and 611.745 for its two water purification plants, Jardine Water Purification Plant and South Water Purification Plant, Cook County, Illinois, subject to the following conditions:

1. This variance will expire on January 1, 2003.
2. Petitioner will take all reasonable measures with existing equipment to minimize the turbidity level in its finished drinking water.
3. Beginning 90 days after grant of variance from today, Petitioner will provide written progress reports to the Agency's Department of Public Water Supplies, Field Office Services every three months discussing the steps taken to complete the installation of the filters and the computerized data collection system.

IT IS SO ORDERED.

If petitioner chooses to accept this variance, within 45 days after the date of this opinion and order, petitioner shall execute and forward to:

Vera Herst
 Division of Legal Counsel
 Illinois Environmental Protection Agency
 1021 North Grand Avenue
 P.O. Box 19276
 Mail Code #21
 Springfield, Illinois 62794-9276

a certificate of acceptance and agreement to be bound by all the terms and conditions of the granted variance. The 45-day period shall be held in abeyance during any period that this matter is appealed. Failure to execute and forward the certificate within 45 days renders this variance void. The form of the certificate is as follows:

CERTIFICATE OF ACCEPTANCE

The City of Chicago Department of Water accepts and agrees to be bound by all terms and conditions of the Pollution Control Board's October 18, 2001 order in PCB 02-16.

Petitioner

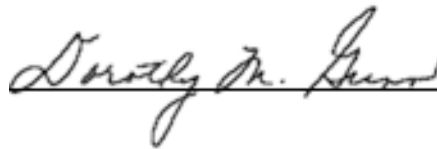
Authorized Agent

Title

Date

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2000); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on October 18, 2001, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board