

ILLINOIS POLLUTION CONTROL BOARD
March 5, 1981

CITIZENS UTILITIES COMPANY)
OF ILLINOIS,)
)
Petitioner,)
)
v.) PCB 78-313
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

MR. DANIEL J. KUCERA, CHAPMAN & CUTLER, APPEARED ON BEHALF OF THE PETITIONER.

MR. THOMAS CHIOLA, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by D. Satchell):

This matter comes before the Board upon a petition for variance filed December 29, 1978 by Citizens Utilities Company of Illinois (Citizens Utilities), an Illinois corporation and a public utility within the meaning of Section 10 of the Illinois Public Utilities Act. The petition requests a variance from the effluent limitations for five day biochemical oxygen demand (BOD), suspended solids (TSS) and ammonia nitrogen as specified in NPDES permit IL0032727. The Board will construe this as a petition for a variance from Rules 402.1(b) and 404(c) of Chapter 3: Water Pollution. The requested variance is in connection with wastewater treatment plants operated by Citizens Utilities in the Village of Bolingbrook, Will County (Bolingbrook).

On January 17, 1979 Bolingbrook filed an objection to the variance petition. On February 1, 1979 Bolingbrook was granted leave to intervene and hearings were authorized. On February 15, 1979 the Illinois Environmental Protection Agency (Agency) filed a recommendation to deny the variance. Nine days of hearings were held, commencing on January 11, 1980.

On December 17, 1980 Citizens Utilities filed an amended petition for variance. On January 16, 1981 the Agency filed an amended recommendation to grant a variance with conditions. On January 23, 1981 Citizens Utilities filed a response regarding certain conditions which were recommended.

A public hearing was held on January 23, 1981 in Chicago, Cook County. At that hearing the parties noted the absence of

Bolingbrook's attorney. The parties indicated that Bolingbrook was in agreement with the grant of the variance as outlined in the amended pleadings (R. 12, 42).

On January 23, 1981 Citizens Utilities and the Agency filed a stipulation. This requested that the Board decide the case based upon the amended variance petition, amended recommendation and response. The Board will grant this request in part. Since the amended petition does not contain a sufficient description of the facilities, the Board will make reference to the original petition for the basic information.

Citizens Utilities provides water and sanitary sewer service to approximately 20,000 customers in the metropolitan Chicago area. Citizens Utilities operates two wastewater treatment plants in Bolingbrook. Its West Suburban Wastewater Treatment Plant No. 1 (WSB No. 1) is located at the intersection of Glengary Drive and Briarcliff Road in the Village of Bolingbrook. This WSB No. 1 is the subject of this variance petition.

Citizens Utilities also operates its West Suburban Wastewater Treatment Plant No. 2 (WSB No. 2) north of Boughton Road in the westerly portion of Bolingbrook. In addition, Bolingbrook owns a collection system and wastewater treatment plant serving that portion of Bolingbrook which is not within Citizens Utilities' service area. Bolingbrook's treatment plant is located off Route 53 and Royce Road.

Citizens Utilities' West Suburban Wastewater Treatment Plant No. 1 is an activated sludge plant of the contact stabilization type designed for a dry weather flow of 1.28 MGD (4.84 Ml/day). The WSB No. 1 includes bar screens, comminutor, two primary rectangular clarifiers with mechanisms for sludge removal and skimming, contact aeration with spiral roll aeration, reaeration, five rectangular secondary clarifiers, seven day polishing lagoon, chlorine contact tank, two aerobic sludge digesters, eight sludge drying beds and a blower building (Pet. 2).

In the three years preceding the variance petition Citizens Utilities expended approximately \$220,000 to make improvements on the WSB No. 1 (Pet. 6). These improvements included addition of air capacity for biological treatment, installation of six new ultrasonic flow meters and revision of main pump room piping to provide improved pumping sequence. In addition, Citizens Utilities made improvements to its collection system to reduce storm water inflow at a cost of over \$250,000 (Pet. 7). Citizens Utilities also added a second shift and rescheduled working hours to cover peak flow periods, initiated an operator training program and employed consulting professional engineers to assist in design and operation (Pet. 7).

Bolingbrook at the time of the filing of the variance petition had received approval of a grant to conduct an infiltration and inflow analysis of the entire village including that portion served by Citizens Utilities. Citizens Utilities will cooperate with Bolingbrook towards completion of this study.

WSB No. 1 discharges to Lily Cache Creek. Citizens Utilities describes this as "a dry weather Creek" (Pet. 3, 12). The dilution ratio is less than five to one.

The following Board regulations from Chapter 3 may be applicable to the WSB No. 1:

1. Rule 203(f) sets a standard of 1.5 mg/l for ammonia nitrogen in the waters of the receiving stream.

2. Rule 402 provides that no effluent shall alone or in combination with other sources cause a violation of water quality standards, including Rule 203(f).

3. Rule 402.1(b) provides an exception to Rule 402 which allows effluent discharges of ammonia nitrogen up to 4.0 mg/l during the months of November through March.

4. Rule 402.1(c) requires compliance with Rule 402.1(b) by March 31, 1979 "or such other dates as required by NPDES permit or as ordered by the Board under Title VII or Title IX of the Act."

5. Rule 402.1(d) provides a termination date for Rule 402.1 in July, 1982.

6. Rule 404(b) sets effluent standards of 20 mg/l for BOD and 25 mg/l for TSS (this will later be referred to as 20/25).

7. Rule 404(c) provides that no effluent whose dilution ratio is less than five to one shall exceed 10 mg/l for BOD and 12 mg/l for TSS (10/12).

On November 5, 1975 the Agency issued Citizens Utilities NPDES permit IL0032727 for the WSB No. 1 (Pet. 5). This permit contained conditions, based on Rule 404(c), requiring a 10/12 effluent limitation. In addition there was a condition that effluent ammonia nitrogen not cause violation of Rule 203 water quality standards in the receiving stream.

Effluent data from the WSB No. 1 for twelve months preceding November 1978 is presented in the petition (Pet. 7).

Monthly averages (mg/l)

	<u>Minimum</u>	<u>Average</u>	<u>Maximum</u>
BOD	7	12.4	19
TSS	5	14.4	24
Effluent Ammonia	4.1	8.6	13.8
Stream Ammonia	1.5	4.9	10.1

The Board previously granted Citizens Utilities a variance for WSB No. 1 providing a 20/25 limitation and up to 15 mg/l for ammonia nitrogen (20/25/15) (PCB 78-123, 31 PCB 111, July 20, 1978). Citizens Utilities was to submit a schedule for final compliance to the Agency no later than October 1, 1978. However, an extension to November 18, 1978 was granted in a subsequent variance (PCB 78-265, 31 PCB 711, October 19, 1978; 32 PCB 283, December 14, 1978). Citizens Utilities ultimately filed its compliance program with the Agency (Pet. Ex. B).

Citizens Utilities' study determined that the cost effective long term solution for wastewater treatment is regionalization with one central plant. The Northeastern Illinois Regional Planning Commission in its 208 study recommended that WSB Plant No. 2 be the regional plant. Regional planning is underway. However, immediate closing of WSB No. 1 and routing of sewage to WSB No. 2 would interfere with regionalization. Citizens Utilities seeks to operate WSB No. 1 on an interim basis pending regionalization (Pet. 10).

Citizens Utilities estimated that achieving compliance in the short term with the 10/12 limitations would require capital costs of \$3,090,000 and an additional annual cost to each customer of over \$250, a 326% increase over the current rates (Pet. 10). This figure was disputed at the earlier hearings.

Citizens Utilities also presented evidence that due to the intermittent nature of Lily Cache Creek no significant or endangered species of aquatic life exist. It had no secondary use and could not be used for recreational purposes. If the WSB No. 1 discharge were removed the Creek would not sustain any fish life and improvement in effluent quality would not enhance aquatic life (Pet. 13). These conclusions were also disputed at the earlier hearings.

In the amended petition Citizens Utilities now requests effluent limitations of 20/25/15. The variance is requested to and including July 1, 1985. Citizens Utilities intends to file on or about January 1, 1981 a petition for regulatory change for WSB No. 1 to provide a site specific regulation incorporating the 20/25/15

condition. Citizens Utilities intends to prosecute its regulatory proceeding on a timely and expeditious basis. Citizens Utilities will do such design, engineering, procurement, contracting and construction as may be necessary to bring the plant into compliance with whatever effluent limitations are effective and applicable on July 2, 1985. Citizens Utilities will commence work no later than July 1, 1983.

Citizens Utilities has offered to provide assurance of completion of work before July 2, 1985. However, it asks that prosecution of its regulatory change be conditioned upon expeditious participation by all other participants. The compliance date is also subject to the Agency's expeditious review of permit applications and delays arising from acts of God and causes not within control of Citizens Utilities.

Citizens Utilities also agrees to continue efforts with the manufacturer to keep its flow meters operating, to provide flow data, to continue to file NPDES and other reports on a timely basis and to operate the WSB No. 1 in such manner as to minimize transfer of influent to the pond consistent with continued compliance with the variance effluent limitations.

The Agency has recommended a grant of the variance with the 20/25/15 limitation. The Agency has recommended detailed conditions which are similar to those offered by Citizens Utilities with some differences. The Agency has requested a performance bond in an amount not to exceed the cost of construction.

The parties are in agreement that the variance should be conditioned upon diligent pursuit of the regulatory change. Citizens Utilities wishes the 1983 date to be extended in the event the regulatory proceeding is still pending or under appeal. The 1985 date, however, is to be subject only to postponement if there is not expeditious review of permit applications or if there are delays arising from causes not within the control of the petitioner. The Agency wants both of these dates to be unconditional.

The Board declines to condition the variance on diligent pursuit of the regulatory change. Such a condition could be difficult to police. If the variance is conditioned on a firm compliance date then petitioner will have an incentive to avoid delay.

Citizens Utilities should be advised that two and one half years is a tight schedule considering the many procedural obstacles Board rulemaking must now confront. Furthermore, it is unlikely that the reclassification of stream segments in R79-6 will reach the area in question before 1983.

Petitioner will be obliged to commence construction by July 1, 1983. Rule 902 of Chapter 3 requires permit applications 180

days before the permit is needed. This variance is not intended as a variance from the requirement to obtain appropriate construction permits or authorizations. Accordingly, Citizens Utilities will be obliged to submit prior to January 2, 1983, permit applications for such construction as it intends to undertake.

The 1985 final compliance date will be conditioned on delays arising from acts of God and causes not under control of Citizens Utilities. To condition this date upon expeditious review of permit applications by the Agency would give Citizens Utilities the opportunity to obtain delay merely by filing incomplete applications. Citizens Utilities may file a petition for variance from this Order to extend this date if other circumstances arise.

Although the grant of this variance contemplates a site specific regulation, the Board does not in any way intend to infer that it has agreed to adopt any regulation which Citizens Utilities may propose. This will be treated as any other site specific regulation. In the event the Board rejects the regulatory proposal, Citizens Utilities will be expected to comply with the generally applicable standards by the 1985 date.

The Board notes that compliance with the regulations involved in this proceeding was required many years ago. If Citizens Utilities had commenced upgrading before these deadlines had passed, the Board would be more receptive to claims of hardship. The hardship now alleged is self-imposed to the extent that it is occasioned by delays, including the dilatory prosecution of this case. However, since the Citizens Utilities has agreed to a compliance plan with definite dates, the Board will grant the variance. The Board finds that it would impose an arbitrary and unreasonable hardship to deny Citizens Utilities a variance under these circumstances.

The original petition requested a variance from the NPDES permit conditions rather than the Board regulations. Since the permit conditions are not a "rule or regulation, requirement or Order of the Board," Section 35 of the Act does not authorize variances from them. Accordingly, the Board will grant the variance from the regulations which appear to require the permit conditions. The Agency will be ordered to modify the permit conditions pursuant to Rule 914 and Section 39(b) of the Act.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

Petitioner Citizens Utilities Company of Illinois is granted a variance from Rules 404(c), 402.1(b) and 402 as it applies to the ammonia nitrogen standard of Rule 203(f) of Chapter 3, subject to the following conditions:

1. This variance will expire on July 2, 1985.

2. This variance applies to effluent discharges from Petitioner's West Suburban Wastewater Treatment Plant No. 1 (WSB Plant No. 1) located at the intersection of Glengary Drive and Briarcliff Road in the Village of Bolingbrook.

3. Petitioner shall meet the following interim effluent limitations for five day biochemical oxygen demand (BOD), total suspended solids (TSS) and ammonia nitrogen measured as N.

	<u>Monthly Average</u>	<u>Flow-weighted Daily Composite</u>
BOD ₅	20 mg/l	40 mg/l
TSS	25 mg/l	50 mg/l
Ammonia Nitrogen	15 mg/l	30 mg/l

4. On or before January 2, 1983 Petitioner shall submit to the Illinois Environmental Protection Agency a permit application including plans and specifications for upgrading WSB Plant No. 1 to meet Chapter 3 limitations.

5. On or before July 1, 1983 Petitioner shall commence such design, engineering, procurement of major equipment items, contract letting and construction as may be necessary for WSB Plant No. 1 to be in compliance with then applicable effluent limitations before July 2, 1985.

6. On or before July 2, 1985 Petitioner shall be in compliance with applicable effluent limitations for five day biochemical oxygen demand, total suspended solids and ammonia nitrogen. Compliance with this condition before July 2, 1985 shall be excused by delays arising from acts of God or causes not within control of the Petitioner.

7. Within ninety days of the date of this Order, Petitioner shall execute and forward to the Illinois Environmental Protection Agency a performance bond in a form acceptable to the Agency conditioned upon compliance with paragraph 6 above.

8. Petitioner shall operate WSB Plant No. 1 in such a manner as to minimize the total quantities of BOD₅ and TSS discharged, consistent with applicable NPDES permit and variance effluent limitations.

9. Petitioner shall on a continuous basis monitor the flow which is diverted from plant No. 1 to the polishing pond and the flow diverted to WSB Plant No. 2. Petitioner shall keep in operating condition flow meters necessary to perform this monitoring. Records of these flows shall be maintained for the period of this variance. Flow results shall be submitted to the Agency on a monthly basis at the same time as and together with the discharge monitoring reports required by its NPDES permit.

10. The Agency, pursuant to Rule 914 of Chapter 3: Water Pollution, shall modify NPDES permit IL0032727 consistent with the conditions set forth in this Order.

11. Within forty-five days of the date of this Order, Petitioner shall execute and forward to the Illinois Environmental Protection Agency, Variance Section, 2200 Churchill Road, Springfield, Illinois 62706, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This forty-five day period shall be held in abeyance for any period this matter is being appealed. The form of the Certificate shall be as follows:

CERTIFICATION


I, (We), _____, having read and fully understanding the Order in PCB 78-313, hereby accept that Order and agree to be bound by all of its terms and conditions.

SIGNED _____
TITLE _____
DATE _____

IT IS SO ORDERED.

Mr. Jacob D. Dumelle concurs.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify that the above Opinion and Order were adopted on the 5th day of March, 1981 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board