

ILLINOIS POLLUTION CONTROL BOARD
March 20, 1997

DEKALB SANITARY DISTRICT,)
)
 Petitioner,)
)
 v.) PCB 97-78
) (Variance - Water, NPDES)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Yi):

On October 30, 1996 the DeKalb Sanitary District (District) filed a request for variance from the Board's regulations at 35 Ill. Adm. Code 304.141 and 304.120(c), as they apply to the District's effluent discharges of carbonaceous biochemical oxygen demand (CBOD₅) and total suspended solids (TSS).¹ The District requests the variance for a period of four months to complete construction of its tertiary facility.

On December 2, 1996 the Illinois Environmental Protection Agency (Agency) filed its recommendation, recommending that the variance be granted with certain conditions.² The District did not file a response to the Agency's recommendation. The District waived hearing in its petition, and no hearing was held.

On January 23, 1997, the Board granted variance relief. In doing so the Board stated the following:

Based on the record, the Board finds that the District has established that immediate compliance with 35 Ill. Adm. Code 304.120(c) and 304.141(a) constitutes an arbitrary or unreasonable hardship. The Board also finds that the temporary relief provided by this variance does not pose a risk to environmental health. The District has demonstrated the impact to the environment will be minimal during the variance period. The District's requested interim effluent limitations are only slightly higher than the applicable limitations to allow for wet weather flows if any are experienced. Additionally, we agree that the granting of variance will be consistent with federal law.

The District requested that the variance term start upon the initiation of the bypassing of the tertiary filter system and continue for four months. The Board

¹ The petition filed by the District will be referenced to as "Pet. at " and petitioners' exhibits will be referenced to as "Exh. at ."

² The Agency's recommendation will be referred to as "Rec. at ."

cannot determine from the record if the tertiary filter has been bypassed or when it will be bypassed. Since the District argues that the environmental impact will be minimal during the winter months and that rehabilitation is scheduled for November, December, January, and February the Board will start the variance term as of the date of this order and end the variance term on March 31, 1997 to ensure the environmental impact is minimal.

On February 24, 1997 the District filed a motion for reconsideration.³ The District requests the Board to reconsider the granted variance period which started as of the date of the opinion and order and ended on March 31, 1997. (Mot. at 1-2.) The District asserts that four months of variance relief is required in order to complete the planned construction without being in violation. (Mot. at 2.) The District states that it did not take the tertiary filter system out of service until February 1, 1997 because it did want to be in violation. (Mot. at 1.) The District requests that the Board grant variance relief until May 31, 1997. (Mot. at 2.)

On March 5, 1997, the Agency filed a response to the motion. The Agency states that it has no objection to DeKalb's motion based on its understanding of this matter. The Agency also states that "while the winter months of December and January are historically lower flow months due to the fact that Northern Illinois University is out of session much of the time during these months, it appears that DSD will still be able to meet the discharge limits for five-day carbonaceous biochemical oxygen demand ("CBOD₅") and total suspended solids ("TSS") as provided in the variance while the work continues beyond the 'winter' months." (Resp. at 2.) The Agency notes that DeKalb "has been well in compliance with these parameters for some time, and the WWTP has certain features, such as its excess flow treatment capabilities, to assist DSD in maintaining the limits for CBOD₅ and TSS as granted in the variance beyond the 'winter' months." (Resp. at 2.)

The Board grants DeKalb's the motion for reconsideration and extends the variance for an additional two months until May 31, 1997. For the reasons stated in our January 23, 1997 opinion the Board finds that the District has established that immediate compliance with 35 Ill. Adm. Code 304.120(c) and 304.141(a) constitutes an arbitrary or unreasonable hardship. Furthermore, the Board finds that the extension of the variance for an additional two months will not increase the impact to the environment during the variance period if the District adheres to the conditions of grant contained in the order. The Board will vacate its order of January 23, 1997 and replace it with the order adopted today.

ORDER

³ The District's motion for reconsideration will be referred to as "Mot. at " and the Agency's response to the motion will be referred to as "Resp. at ".

The Board hereby grants the DeKalb Sanitary District a variance from 35 Ill. Adm. Code 304.141(a) and 304.120(c) so that it may complete the rehabilitation of its facility. The variance is subject to the following conditions:

1. The variance shall commence on January 23, 1997 and continue until May 31, 1997;
2. During the period of the variance, the effluent discharged shall meet the following limits, expressed in milligrams per liter:

	<u>CBOD₅</u>	<u>TSS</u>
Monthly Average	15	30
Daily Maximum	30	50;

3. All other terms and conditions of DeKalb Sanitary District's NPDES permit will remain in effect during the variance period;
4. The DeKalb Sanitary District shall notify Eugene Forster, Illinois Environmental Protection Agency, Field Operations Section, Rockford Regional Office, at (815) 987-7755 when work on the tertiary filters begins, or began, and again when the filters are returned to service. Written confirmation of each notice shall be sent within five (5) working days to the following address:

Illinois Environmental Protection Agency
Bureau of Water
Compliance Assurance Section
2200 Churchill Road
Post Office Box 19276
Springfield, Illinois 62794-9276
Attn: Mark T. Books

5. During this variance, the DeKalb Sanitary District shall operate its wastewater treatment facility so as to produce the best effluent practicable. Additionally, the DeKalb Sanitary District shall perform the necessary work on the tertiary filters as expeditiously as possible to minimize the time period the filter is out of service;

IT IS SO ORDERED.

Board Member K. M. Hennessey abstained.

If the petitioner chooses to accept this variance subject to the above order, within forty-five days of the grant of the variance, the petitioner must execute and forward the attached certificate of acceptance and agreement to:

Charles W. Gunnarson, Assistant Counsel
Illinois Environmental Protection Agency
Division of Legal Counsel
2200 Churchill Road
Post Office Box 19276
Springfield, Illinois 62794-9276

Once executed and received, that certificate of acceptance and agreement shall bind the petitioner to all 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 certificate is as follows:

CERTIFICATION

I (we), _____, hereby accept and agree to be bound by all terms and conditions of the order of the Pollution Control Board in PCB 97-78, March 20, 1997.

Petitioner _____
Authorized Agent _____
Title _____
Date _____

Section 41 of the Environmental Protection Act (415 ILCS 5/41) provides for the appeal of final Board orders within 35 days of the date of service of this order. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the _____ day of _____, 1997 by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board