

ILLINOIS POLLUTION CONTROL BOARD

July 10, 1997

FOX WATERWAY AGENCY,)	
)	
Petitioner,)	
)	
v.)	PCB 98-13
)	(Provisional Variance - Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C.A. Manning):

Pursuant to Section 35(b) of the Environmental Protection Act (Act) (415 ILCS 5/35(b) (1996)), the Fox Waterway Agency (petitioner) has requested that the Board grant a provisional variance from 35 Ill. Adm. Code 304.105, 304.106, 304.123(b), and 304.124 as they apply to the total suspended solids, un-ionized ammonia, and phosphorus limits from its Ackerman Island Sediment Disposal Facility (facility) (near the confluence of the Nippersink, Fox, and Grass Lakes) in Fox Lake, McHenry County, Illinois. Such request for a provisional variance and the notification of recommendation were filed with the Board by the Illinois Environmental Protection Agency (Agency) on July 8, 1997. Pursuant to Section 35(b) of the Act, the Board must issue the variance within two (2) days of this filing.

Pursuant to Section 35(b) of the Act, the Agency, by and through its Director, Mary A. Gade, seeks a provisional variance to allow petitioner to continue to operate its facility while conducting dredging operations near Ackerman Island. Specifically, the Agency recommends that we grant petitioner a 21-day provisional variance for its McHenry County facility from 35 Ill. Adm. Code 304.105, 304.106, 304.123(b), and 304.124 and imposed by Agency Operating Permit No. 1993-EA-3060. This variance period shall commence on July 3, 1997, and continue until July 24, 1997.

This recommendation is essentially that the Board extend a previously-granted provisional variance that expired July 3, 1997. The docket number of the provisional variance was PCB 97-201, granted on May 15, 1997.

The Agency recommends that the Board grant the requested provisional variance with specified conditions. The Agency agrees that the dredging operations are necessary. The Agency anticipates that the requested provisional variance would have minimal environmental impact on the receiving stream and is unaware of any public water supplies that the requested provisional variance would adversely impact. The Agency maintains that a grant of a provisional variance would violate no federal laws. The Agency believes that a denial of the

requested provisional variance would create an arbitrary or unreasonable hardship on the petitioner.

Provisional variances are by their very nature temporary. The responsibilities of the Agency and the Board in these short-term provisional variances are different from the responsibilities in standard variances. See 415 ILCS 5/35(b), 36(c) (1996). In provisional variances it is the responsibility of the Agency to make the technical determinations and finding of arbitrary or unreasonable hardship. The Board's responsibility is to adopt a formal order, to assure the formal maintenance of the record, to assure the enforceability of the variance, and to provide notification of the action by a press release.

Having received the Agency recommendation that a denial of the requested relief would impose an arbitrary or unreasonable hardship, the Board hereby grants the petitioner a provisional variance from 35 Ill. Adm. Code 304.105, 304.106, 304.123(b), and 304.124 and imposed by Agency Operating Permit No. 1993-EA-3060, on the following conditions:

1. The term of this provisional variance shall commence on July 3, 1997 and continue until July 24, 1997.
2. Petitioner shall operate its plant during the term of this provisional variance in a manner that assures the best effluent practicable, however, in no case shall petitioner exceed an 80 mg/l total suspended solids limit.
3. Petitioner shall notify Chris Kallis at the Agency's Maywood regional office by telephone, 708/338-7900, when dredging operations begin. Petitioner shall confirm this notice in writing within five (5) days, addressed as follows:

Illinois Environmental Protection Agency
Bureau of Water, Compliance Assurance Section
Attention Mr. Mark T. Books
2200 Churchill Road
P.O. Box 19276
Springfield, Illinois 62794-9276

Petitioner shall execute a copy of a certificate of acceptance of this provisional variance and forward that copy to the Agency addressed as in the written notice required in the above condition; petitioner shall forward that copy within ten (10) days of the date of this order of the Board, and the certificate of acceptance shall take the following form:

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 98-13, July 10, 1997.

Petitioner

Authorized Agent

Title

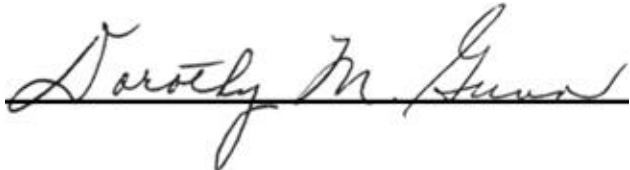
Date

IT IS SO ORDERED.

Board Member K.M. Hennessey abstained.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 145 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 10th day of July 1997, by a vote of 5-0.

A handwritten signature in dark ink, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board