

ILLINOIS POLLUTION CONTROL BOARD

August 6, 2015

FLINT HILLS RESOURCES)	
JOLIET, LLC,)	
)	
Petitioner,)	
)	
v.)	PCB 16-23
)	(Variance - Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

On July 21, 2015, Flint Hills Resources Joliet, LLC (FHR) filed a petition for a variance from the Board's chloride standards recently adopted in Water Quality Standards And Effluent Limitations For The Chicago Area Waterway System And Lower Des Plaines River Proposed Amendments To 35 Ill. Adm. Code 301, 302, 303, and 304, R08-9(D) (June 18, 2015) ("CAWS"). Specifically, FHR seeks a variance from the standards in Section 302.407(g)(3) of the Board's water pollution regulations. 35 Ill. Adm. Code 302.407(g)(3). After providing background on variances and briefly outlining FHR's petition, today's order accepts the petition, and addresses deadlines for the recommendation of the Illinois Environmental Protection Agency (Agency) and for the final decision of the Board.

PETITION

Under the Environmental Protection Act (Act) (415 ILCS 5/35-38 (2014)), the Board is responsible for granting variances when a petitioner demonstrates "that compliance with any rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship" on petitioner. 415 ILCS 5/35(a) (2014); *see also* 415 ILCS 5/37(a) (2014) (burden of proof is on petitioner). A "variance is a temporary exemption from any specified rule, regulation, requirement or order of the Board." 35 Ill. Adm. Code 104.200(a)(1). The Board may issue a variance, with or without conditions, for up to five years, but may extend a variance if petitioner shows that it has made satisfactory progress toward compliance. *See* 415 ILCS 5/36(a), (b) (2014). The Act requires the Agency to "make a recommendation to the Board as to the disposition of the petition." 415 ILCS 5/37(a) (2014).

FHR is requesting a variance for its Channahon Facility (Facility) located in Will County. The petition concerns FHR's chloride discharge into the Chicago Area Waterways System (CAWS), specifically its discharge into the Lower Des Plaines River (LDPR). FHR states that the variance is "necessary because immediate compliance with the Chloride Standard imposes an arbitrary and unreasonable hardship on FHR." Pet. at 1. Specifically, FHR argues that "the overwhelming majority of the chloride present in the LDPR comes from discharges

outside the control of FHR.” Pet. at 1-2. FHR asserts that “two leading contributors of chloride to the system are located upstream of FHR, and FHR has no ability to reduce chloride levels in those discharges.” Pet. at 13. FHR requests a variance from the chloride standards ending on July 1, 2021 in order to “allow FHR time to identify whether a long-term alternative compliance approach is necessary then to pursue the appropriate compliance plan.” Pet. at 2.

FHR has waived its right to a hearing in this matter. Pet. at 17. The Board accepts FHR’s petition for variance but makes no determination on the informational sufficiency or merits of the petition. *See* 35 Ill. Adm. Code 104.204, 104.208, 104.210. Though FHR waived hearing, there are circumstances under which the Board will nevertheless order a hearing on the petition. *See* 35 Ill. Adm. Code 104.234.

To ensure proper case management, the Board will assign a hearing officer to this proceeding. The assigned hearing officer is responsible for guiding the parties toward prompt resolution of this matter through whatever status calls and hearing officer orders he determines are necessary and appropriate. The Board, through orders of its own or its hearing officer, may direct FHR to provide additional information concerning the petition. If the Board fails to take final action by the decision deadline, currently November 18, 2015, FHR may deem the requested variance granted for a period not to exceed one year. *See* 415 ILCS 5/38(a) (2014). Only FHR may extend the decision deadline by waiver.

Section 37(a) of the Act requires petitioner to provide notice of the petition to:

any person in the county in which the installation or property for which variance is sought is located who has filed with the Board a written request for notice of variance petitions, the State's attorney of such county, the Chairman of the County Board of such county, and to each member of the General Assembly from the legislative district in which that installation or property is located, and shall publish a single notice of such petition in a newspaper of general circulation in such county. 415 ILCS 5/37(a) (2014).

The Board has not received proof that notice was provided pursuant to the Act and directs FHR to do so pursuant to Section 37(a) of the Act.

AGENCY RECOMMENDATION

Unless otherwise ordered by the hearing officer or the Board, the Agency is required to file its recommendation on the variance with the Board within 45 days after the filing of the petition, or at least 30 days prior to a scheduled hearing, whichever is earlier. *See* 35 Ill. Adm. Code 104.216(b). The Agency recommendation is currently due September 4, 2015, the 45th day after the petition was filed. Within 14 days after service of the Agency’s recommendation, FHR may file a response to the Agency recommendation or an amended petition. *See* 35 Ill. Adm. Code 104.220.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 6, 2015, by a vote of 5-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board