

ILLINOIS POLLUTION CONTROL BOARD  
November 6, 1997

CITY OF KEWANEE,	)	
	)	
Petitioner,	)	
	)	PCB 98-65
v.	)	(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 City of Kewanee (petitioner), located in Henry County, Illinois, has requested that the Board grant a provisional variance from Special Condition No. 12 of National Pollutant Discharge Elimination System Permit (NPDES) No. IL0029343 and 35 Ill. Adm. Code 305.102, 309.146(a)(4), and 304.141(b). Such request for a provisional variance and the notification of recommendation were filed with the Board by the Illinois Environmental Protection Agency (Agency) on November 4, 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 (415 ILCS 5/35(b) (1996)), the Agency, by and through its Director, Mary A. Gade, seeks a provisional variance to allow petitioner to continue to operate its wastewater treatment facility while work is completed to install a transfer pipe between an existing 24 million gallon (MG) lagoon and the newly installed 16 MG equalization lagoon. The Agency recommends that the Board grant the requested provisional variance with specified conditions. The Agency agrees that the modification is necessary and anticipates that the requested provisional variance would have minimal environmental impact on the receiving stream. The Agency is unaware of any public water supplies that the requested provisional variance would adversely impact and maintains that a grant of a provisional variance would violate no federal laws. Accordingly, the Agency believes that a denial of the requested provisional variance would create an arbitrary or unreasonable hardship on the petitioner.

Specifically, the Agency recommends that the Board grant petitioner a 45-day provisional variance for its Henry County facility from the sampling and excess effluent discharge requirements, as set forth in Special Condition No. 12 of NPDES Permit No. IL0029343 and in 35 Ill. Adm. Code 305.102, 309.146(a)(4), and 304.141(b). This variance period is recommended to commence during the first excess flow discharge event through Outfall 003 and to continue for 45 days, or until construction of the 16 MG excess flow equalization lagoon piping and structure is complete, whichever occurs first.

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 Special Condition No. 12 of NPDES Permit No. IL0029343 and 35 Ill. Adm. Code 305.102, 309.146(a)(4), and 304.141(b), subject to the following conditions:

1. The term of this provisional variance shall commence during the first excess flow discharge event through Outfall 003 and to continue for 45 days, or until construction of the 16 MG excess flow equalization lagoon piping and structure is complete, whichever occurs first.
2. During the variance period, effluent sampling at Outfall 003 shall consist of a 24 hour composite sample to be taken and analyzed for Biological Oxygen Demand, Total Suspended Solids, and Ammonia Nitrogen and grab samples of Fecal Coliforms and pH for each discharge event.
3. Petitioner shall also continue to meet all other conditions and limits in NPDES Permit No. IL0029343.
4. The petitioner shall notify Todd Huson at the Agency's Peoria regional office by telephone, at 309/693-5463, when the first excess flow discharge event through Outfall 003 occurs. 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: Erin Rednour  
1021 N. Grand Avenue East  
Springfield, IL 62702

5. Petitioner shall operate its wastewater treatment facility during the term of this provisional variance in a manner that assures the best effluent practicable. Additionally, Petitioner shall perform the necessary work on the berm as expeditiously as possible to minimize the time period that excess flow must be diverted to, and discharged from, Outfall 003.

The petitioner shall execute a copy of a certificate of acceptance of this provisional variance and forward that copy addressed to the Agency as in numbered paragraph 4 above.

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 98-65, November 6, 1997.

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
Authorized Agent

\_\_\_\_\_  
Title

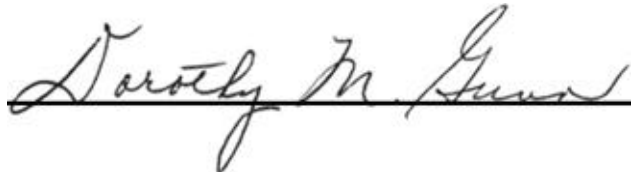
\_\_\_\_\_  
Date

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 6th day of November 1997, by a vote of 6-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board