

ILLINOIS POLLUTION CONTROL BOARD
May 7, 1998

CITY OF KEWANEE,)	
)	
Petitioner,)	
)	
v.)	PCB 98-152
)	(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 its National Pollutant Discharge Elimination System Permit (NPDES) No. IL0029343 and 35 Ill. Adm. Code 305.102(b) and 304.141. The request for a provisional variance and the notification of recommendation were filed with the Board by the Illinois Environmental Protection Agency (Agency) on May 6, 1998. Pursuant to Section 35(b) of the Act, the Board must issue the variance within two 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 replace the transfer piping between the excess flow lagoon and the chlorine contact lagoon. The Agency recommends that the Board grant the requested provisional variance with specified conditions. The Agency agrees that the modification is 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.

This recommendation is essentially that the Board extend a previously-granted 45-day provisional variance that expired May 2, 1998. The docket number of the previous provisional variance was PCB 98-126, granted on April 2, 1998. 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 its NPDES Permit No. IL0029343 and 35 Ill. Adm. Code 305.102(b) and 304.141. This variance period is recommended to commence on May 3, 1998, and is to continue for 45 days, or until the transfer piping replacement is completed, 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 petitioner a provisional variance from Special Condition No. 12 of its NPDES Permit No. IL0029343 and 35 Ill. Adm. Code 305.102(b) and 304.141, subject to the following conditions:

1. The term of this provisional variance shall commence on May 3, 1998, and is to continue for 45 days, or until the transfer piping replacement work is complete, whichever occurs first.
2. During the variance period, petitioner shall take three grab samples and analyze for Biological Oxygen Demand, Total Suspended Solids, and Ammonia Nitrogen at Outfall 003 to achieve a 24-hour composite sample for each discharge event.
3. Petitioner shall also continue to meet all other conditions and limits in its NPDES Permit No. IL0029343.
4. Petitioner shall notify Todd Huson at the Agency's Peoria regional office by telephone, at 309/693-5463, when excess flow discharge events through Outfall 003 occur. Petitioner shall confirm this notice in writing within five (5) days, addressed as follows:

Illinois Environmental Protection Agency
Bureau of Water, Compliance Assurance Section
Attn: Erin Rednour
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

4. 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 transfer pipe as expeditiously as possible to minimize the time period that excess flow must be diverted to, and discharged from, Outfall 003.

Petitioner shall execute a copy of a certificate of acceptance of this provisional variance and forward that copy to the Agency addressed as is 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 98-152, May 7, 1998.

Petitioner

Authorized Agent

Title

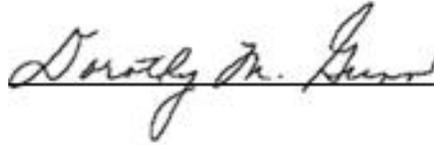
Date

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 172 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 7th day of May 1998 by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board