

ILLINOIS POLLUTION CONTROL BOARD  
September 15, 1994

CITY OF WATERLOO, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 94-251  
 ) (Provisional Variance)  
 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)), City of Waterloo has requested that the Illinois Environmental Protection Agency (Agency) recommend that the Board grant a provisional variance to allow City of Waterloo to obtain water main construction permits from the Agency during a period of Restricted Status. Such request for a provisional variance and the Notification of Recommendation was filed with the Board by the Agency on Wednesday, September 14, 1994. 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 Environmental Protection Act (Act) (415 ILCS 5/35(b)), the Illinois Environmental Protection Agency (Agency), by and through its Director, Mary A. Gade, seeks a provisional variance for City of Waterloo in order to allow it to construct water main extensions.

Specifically, the Agency recommends that we grant City of Waterloo a (forty-five) 45-day provisional variance for its Monroe County facility from Standards of Issuance and Restricted Status requirements as set forth in 35 Ill. Adm. Code 602.105(b) and 602.106(a), but only as the rules relate to the water capacity drawn on the Waterloo treatment plant. The Agency request that this provisional variance shall commence on the date of the Board Order granting it and continue for a period not longer than 45 days.

The Agency recommends that the Board grant the requested provisional variance with specified conditions. The Agency agrees that the repairs are necessary. The Agency 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. The Agency maintains that a grant of a provisional variance would violate no federal laws. The Agency finds 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)). 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 finding 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 602.105(b) and 602.106(a), on the following conditions:

1. The term of this provisional variance shall commence on September 15, 1994 and continue for a period not longer than 45 days.;
2. Until full compliance is reached, the Agency will issue construct-only permits for the extension of water mains to petitioner's facility.
3. Until full compliance is reached, the petitioner shall take all reasonable measures with existing equipment to minimize the water usage during excessively hot weather and high usage times.

Petitioner shall execute a copy of a Certificate of Acceptance of this provisional variance and forward that copy within ten (10) days of the date of this order of the Board to the Agency:

Stephen C. Ewart  
Illinois Environmental Protection Agency  
Division of Legal Counsel  
2200 Churchill Road  
P.O. Box 19276  
Springfield, Illinois 62794-9276

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 94-251, September 15, 1994.

\_\_\_\_\_  
Petitioner

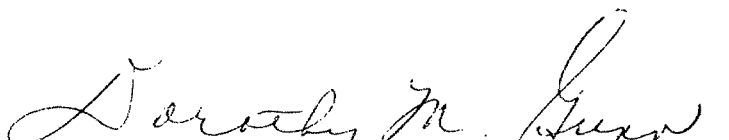
\_\_\_\_\_  
Authorized Agent

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control  
Board, do hereby certify that the above order was adopted on the  
15<sup>th</sup> day of September, 1994, by a vote of  
6-0.

  
\_\_\_\_\_  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board