

ILLINOIS POLLUTION CONTROL BOARD
October 1, 1992

DEPARTMENT OF THE AIR)	
FORCE, SCOTT AIR FORCE)	
BASE,)	
)	
Petitioner,)	
)	
v.)	PCB 92-63
)	(Variance)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on the Department of the Air Force, Scott Air Force Base's (Scott AFB) April 27, 1992 petition for variance. Scott AFB seeks a variance from the standards for five day biochemical oxygen demand (BOD₅), total suspended solids (TSS), fecal coliform, and ammonia nitrogen. Those standards are found at 35 Ill. Adm. Code 304.105 (as it relates to 35 Ill. Adm. Code 302.212), 304.120, 304.121, and 304.124. Scott AFB requests an eight-month variance, from January 1992 to October 1992, to allow it to repair its wastewater treatment plant. Scott AFB filed an amended petition on June 4, 1992. On June 5, 1992, the Illinois Environmental Protection Agency (Agency) filed its recommendation, recommending that the requested variance be granted with conditions. Scott AFB waived hearing, and none was held.

For the following reasons, the Board finds that Scott AFB has presented adequate proof that immediate compliance with the regulations involved would result in the imposition of an arbitrary or unreasonable hardship. Therefore, the variance is granted, subject to the conditions set forth in the order below.

BACKGROUND

Scott AFB, located in St. Clair County, Illinois, has a population of 6,749, and an additional 13,000 personnel who frequently use base facilities. Approximately 11,000 people work at the base. The nearest community affected by the Scott AFB wastewater treatment operation is Mascoutah, Illinois, with a population of 5,511. (Pet. at 3.) The base sewage treatment system is a trickling filter system comprised of three primary clarifiers, two trickling filters, three final clarifiers, and a tertiary sand filter. Under normal operation, the plant handles 1.3 MGD, with maximum and minimum capacity of 3.8 MGD and 1.0

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MGD. (Pet. at 3.) The plant has two outfalls which empty into tributaries of Silver Creek. (Pet. at 4; Agency Rec. at 3.)

The tertiary filter system became operational in 1971. On January 27, 1992, that filter system failed due to corrosive environmental conditions, including repeated freeze-thaw cycles and excessive hydrogen sulfide attack, over an extended period of time. Scott AFB states "[m]ost importantly the media had exceeded its useful life and tiles crumbled to the point of complete failure." (Pet. at 4.) While repairs to the system are taking place, Scott AFB will not be able to maintain NPDES permit standards when the load is greater than 1.0 MGD. (Pet. at 4.)

COMPLIANCE PLAN

Scott AFB is undertaking a rehabilitation project to repair the system. The project is anticipated to last eight months, until October 29, 1992, depending on weather. The projected cost of the program is \$97,000, and the 375th Airlift Wing has committed to funding the project. (Pet. at 5.) After repairs are completed, Scott AFB will continue to operate under its existing NPDES permit. (Agency Rec. at 3.)

HARDSHIP

Scott AFB made extensive, but unsuccessful, efforts to acquire mobile tertiary filters to provide full treatment assistance during the rehabilitation of the system. Scott AFB also reviewed an option for construction of a retention lagoon, but dismissed that option because the time required for such construction would "exceed acceptable constraints when compared to the estimated time necessary to repair the tertiary filter system..." (Pet. at 6.) Scott AFB points out that the repair project will modernize its wastewater treatment facilities and increase the water quality of the effluent. During reconstruction, the tertiary filter will be inoperative, so that it is impossible to maintain the water quality required by Scott AFB's NPDES permit. (Pet. at 7.)

The Agency agrees that to not grant the requested variance would impose an arbitrary or unreasonable hardship. (Agency Rec. at 4.) However, the Agency does object to the retroactive grant of the variance, noting that the variance petition does not indicate why Scott AFB did not apply for the variance at an earlier date. (Agency Rec. at 3-4.)

ENVIRONMENTAL IMPACT

Scott AFB states that to ensure the water quality of each water course running through the base, it samples and analyzes water from thirteen different sites. (Pet. at 5.) During 24 hour periods when loading on the plant exceeds 1.0 MGD, samples

from the wastewater treatment plant will be drawn three times a week. Final clarifiers will be recirculated 24 hours a day to reduce ammonia concentration, and the installation of a sulfur dioxide dechlorination system will eliminate potential risks of chlorine discharges. (Pet. at 6.) Scott AFB anticipates no adverse effects on Silver Creek for the duration of the variance, and knows of no downstream users drawing potable water off Silver Creek. (Pet. at 5, 6.)

The Agency concurs with Scott AFB's contention that the environmental impact on Silver Creek will be minimal for the duration of the variance. Additionally, the Agency believes that Scott AFB's monitoring plan will help ensure that there will be no adverse effects to human, plant, and animal life supported by the stream. (Agency Rec. at 4.)

CONSISTENCY WITH FEDERAL LAW

Both the Agency and Scott AFB state that a grant of the requested relief is consistent with federal law. (Pet. at 7; Agency Rec. at 5.)

CONCLUSION

Based upon the record, the Board finds that immediate compliance with the standards for BOD₅, TSS, fecal coliform, and ammonia nitrogen would impose an arbitrary or unreasonable hardship on Scott AFB. The failure of the tertiary filter system was apparently an event beyond Scott AFB's control, and Scott AFB has committed to repairing and improving the system. During that eight month repair period, it will be impossible for Scott AFB to comply with its permit limitations when the flow exceeds 1.0 MGD.

Scott AFB has requested an eight month variance, from January 1992 to October 1992. As the Agency points out, this Board has granted a limited number of retroactive variances. (See, e.g., DMI v Illinois Environmental Protection Agency (December 19, 1991), PCB 90-227.) The Agency opposes a retroactive variance in this case, stating that the variance petition does not explain why Scott AFB could not have applied for the variance at an earlier date. After considering the circumstances of this case, the Board will grant a variance beginning on April 27, 1992. That is the date that the variance petition was originally filed with the Board. Although the Board ordinarily will only grant variances beginning 120 days after the date of filing, the failure of the tertiary filter system in January 1992 does present unusual circumstances, such that variance could not have been applied for before the repairs were required. However, as the Agency points out, Scott AFB does not explain the three month delay in filing the petition after the system failed. Thus, the variance granted today will begin on

April 27, 1992, and expire on October 27, 1992.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

The Department of the Air Force, Scott Air Force Base (Scott AFB), is hereby granted a variance from 35 Ill. Adm. Code 304.105 (as it relates to 35 Ill. Adm. Code 302.212), 304.120, 304.121, and 304.124, as those sections relate to BOD₅, TSS, fecal coliform, and ammonia nitrogen. The variance is subject to the following conditions:

1. The variance begins on April 27, 1992, and shall expire on October 27, 1992, or upon completion of the repair of the tertiary filter system, whichever occurs first.
2. Scott AFB shall meet the following effluent limits during the term of the variance:
 - a. When daily and/or monthly average flows are greater than 1.0 MGD:
 1. BOD₅ concentration limits of 20 mg/l monthly average and 30 mg/l daily maximum.
 2. BOD₅ quantity limits of 215 lbs/day monthly average and 600 lbs/day daily maximum.
 3. TSS concentration limits of 20 mg/l monthly average and 36 mg/l daily maximum.
 4. TSS quantity limits of 350 lbs/day monthly average and 650 lbs/day daily maximum.
 5. Fecal coliform limits of 20,000 per 100 ml daily maximum.
 6. Ammonia nitrogen limits of 4.0 mg/l monthly average.
 - b. When daily and/or monthly average flows are less than or equal to 1.0 MGD, Scott AFB shall meet the limits in its NPDES permit.
3. During the variance, Scott AFB shall operate its wastewater treatment facility so as to produce the best effluent practicable. Additionally, Scott AFB shall perform the necessary repair work on the plant as expeditiously as possible.

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- 4. Scott AFB shall report to the Agency's Collinsville regional office by telephone as to when repair work is beginning and is completed. A written confirmation of the notification shall be sent to the following address within five (5) days:

Illinois Environmental Protection Agency
 Division of Water Pollution Control
 Compliance Assurance Section
 2200 Churchill Road, P.O. Box 19276
 Springfield, IL 62794-9276

Attn: Barb Conner

- 5. Scott AFB shall apply for and receive any applicable permits from the Agency prior to beginning construction.
- 6. Within forty-five days of the date of this order, Scott AFB shall execute and forward to:

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

a certificate of acceptance and agreement to be bound to all terms and conditions of the granted variance. The 45-day period shall be held in abeyance during any period that this matter is appealed. Failure to execute and forward the certificate within 45-days renders this variance void. The form of certificate is as follows.

CERTIFICATION

I (We), _____,
 hereby accept and agree to be bound by all terms and conditions
 of the Pollution Control Board's October 1, 1992 order in PCB 92-
 63.

 Petitioner

 Authorized Agent

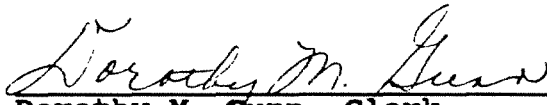
 Title

Date

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (Ill.Rev.Stat. 1991, ch. 111 $\frac{1}{2}$, par. 1041) provides for the appeal of final Board orders. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill.Adm.Code 101.246 "Motions for Reconsideration" and Castenada v. Illinois Human Rights Commission (1989), 132 Ill.2d 304, 547 N.E.2d 437.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 1st day of October, 1992, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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