

ILLINOIS POLLUTION CONTROL BOARD
April 21, 1994

GLENBARD WASTEWATER AUTHORITY,)	
)	
Petitioner,)	
)	
v.)	PCB 93-260
)	(Variance)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

GREGORY L. DOSE OF ANCEL, GLINK, DIAMOND, COPE AND BUSH, P.C.
APPEARED ON BEHALF OF THE PETITIONER;

MARGARET HOWARD APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by E. Dunham):

This matter comes before the Board on a variance petition filed by Glenbard Wastewater Authority (GWA) on December 22, 1993. Glenbard filed an amendment to the petition on January 28, 1994. The petitioner seeks a variance from 35 Ill. Adm. Code 304.121 and 304.141 for its facility in Glen Ellyn, Illinois from April through October of 1994. An objection to the petition was received on January 31, 1994. GWA filed a response to the objection on February 7, 1994. The Illinois Environmental Protection Agency (Agency) filed its recommendation in favor of granting the petition on March 3, 1994. A hearing on the petition was held on March 28, 1994 in Glen Ellyn, Illinois before hearing officer Marvin Medintz. Members of the public attended the hearing. Neither party submitted briefs.

The Board's responsibility in this matter arises from the Environmental Protection Act (Act) (415 ILCS 5/1 et seq. (1992).) The Board is charged therein with the responsibility to "grant individual variances beyond the limitations prescribed in this Act, whenever it is found upon presentation of adequate proof, that compliance with any rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship". (415 ILCS 5/35(a) (1992).) More generally, the Board's responsibility in this matter is based on the system of checks and balances integral to Illinois environmental governance: the Board is charged with the rulemaking and principal adjudicatory functions, and the Agency is responsible for carrying out the principal administrative duties.

Based on the discussion below, the Board finds that GWA 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

GWA owns and operates the Glenbard Wastewater Treatment Facility located in Glen Ellyn, Illinois. GWA employs 33 people. (Tr. at 11.) The plant services the Village of Lombard combined sewer overflow and the Village of Glen Ellyn sanitary sewer system. GWA operates two treatment plants, one at Beemis Road and one at Hill Ave. (Tr. at 11.) The requested variance is for the plant on Beemis Road. (Tr. at 11.) The rated capacity of the Beemis Road plant is 16 MGD (million gallons per day). (Tr. at 12.) The plant currently handles about 12 MGD. (Tr. at 12.) The effluent is discharged to the East Branch of the DuPage River. (Tr. at 11.) GWA currently disinfects with chlorine to meet the fecal coliform levels of its NPDES permit. (Tr. at 15.)

On November 8, 1993, the Agency issued an NPDES permit to GWA.¹ (Ag. Rec. at 5.) The permit requires disinfection from May through October. (Pet. at 1.) Condition 7 of the permit reduces GWA's chlorine residual limit from a 0.75 mg/l daily maximum limit to a 0.05 mg/l daily maximum limit. (Ag. Rec. at 5.) This limit becomes effective 24 months from the effective date of the permit. (Ag. Rec. at 6.) To meet this limit GWA has elected to proceed with the design of an ultraviolet (UV) disinfection system. Plans and specifications for the UV light system were submitted to the Agency on December 22, 1993. (Ag. Rec. at 6.) The estimated cost of the addition of the UV system is \$1.9 million. (Tr. at 18.) The installation of the UV system will take approximately 10 to 12 months. (Tr. at 27.)

The UV disinfection system will be constructed in the existing chlorine contact basin. This basin is currently arranged as two tanks, each of which can be isolated from the other. Work can only be performed in half the tank at any given time because disinfection with chlorine will be occurring in the other half of the tank. Until the time that the UV lamps are installed and made operational, detention times in the tank will continue to decrease. Upon completion of all concrete channel work, the detention time will be about 1/3 of the original design values. The decreased detention time could result in difficulties meeting the fecal coliform limits of 35 Ill. Adm. Code 304.121 during the disinfection season. GWA also anticipates that the daily maximum limits of fecal coliform may

¹ GWA has appealed conditions of the permit with the Board in PCB 93-249. This permit appeal is currently pending before the Board. However, none of the appealed conditions are relevant to this variance proceeding.

be violated during high flow events that occur during rainfalls. (Pet. at 4.)

GWA is requesting a variance from the fecal coliform limits during the construction of the UV system for the months of April through October 1994. During the period of the variance GWA would continue to disinfect with chlorine to meet the disinfection limit. If the variance is not granted, GWA would be required to construct a bypass around the chlorine contact tank and all construction would have to be done during the winter months. The bypass and winter construction option is more costly. Cost for the bypass is estimated at an additional \$175,000 or 7% of the previous total project. (Pet. at 5.)

On January 31, 1994, a letter from Anne Bouchard of Glen Ellyn was filed with the Board. In the letter Ms. Bouchard expressed her concern of the effect of the requested variance on sources of drinking water in the area, especially her own well. GWA filed a response to the letter with the Board on February 7, 1994. In the response, GWA stated that the requested variance will not result in any increase in the risk of groundwater contamination from GWA's effluent. In support of this statement GWA observed that the stream water quality standards will not be violated as a result of the granting of the variance and Ms. Bouchard's well is located upstream and at a higher elevation than GWA's outfall. GWA also stated that even if the discharge were to somehow migrate up gradient, the clay soil in the area results in very slow movement of surface water through the soil to aquifers and the fecal coliform would be dead before it reached the aquifer. Additional testimony at hearing provided that none of the wells in the area were likely to be affected. (Tr. at 36.)

At hearing, GWA presented testimony from Duane Leaf, the facility manager and Thomas Vik, a consulting engineer to GWA.

AGENCY RECOMMENDATION

The Agency recommends granting the variance with certain conditions. The Agency contends that GWA has demonstrated that continued compliance with the existing requirements during construction would impose an arbitrary and unreasonable hardship. (Ag. Rec. at 1.) The Agency states that the proposed compliance plan represents a reasonably efficient strategy to comply with more stringent residual chlorine effluent limitations imposed by GWA's permit. (Ag. Rec. at 8.) The Agency maintains that any increased risk to the environment during the period of the variance is mitigated by the compliance plan and would not justify the increased expenditure of resources. (Ag. Rec. at 9.) GWA has no objection to the conditions recommended by the Agency. (Tr. at 19.)

DISCUSSION

In determining whether any variance is to be granted, the Act requires the Board to determine whether a petitioner has presented adequate proof that immediate compliance with the Board regulations at issue would impose an arbitrary or unreasonable hardship. (415 ILCS 5/35(a) (1992).) Furthermore, the burden is upon the petitioner to show that its claimed hardship outweighs the public interest in attaining compliance with regulations designed to protect the public. (Willowbrook Motel v. IPCB (1985), 135 Ill. App.3d 343, 481 N.E.2d 1032.) Only with such a showing can the claimed hardship rise to the level of arbitrary or unreasonable hardship.

A further feature of a variance is that it is, by its nature, a temporary reprieve from compliance with the Board's regulations. Compliance is to be sought regardless of the hardship which the task of eventual compliance presents an individual polluter. (Monsanto Co. v. IPCB (1977), 67 Ill.2d 276, 367 N.E.2d 684.) Accordingly, except in certain special circumstances, a variance petitioner is required, as a condition to grant of variance, to commit to a plan which is reasonably calculated to achieve compliance within the term of the variance.

The East Branch of the DuPage River is a general use water of the state that is subject to the Board's water quality regulations. Effluent discharged to all general use waters shall not exceed 40 fecal coliform per 100 ml. (35 Ill. Adm. code 304.121.) Section 304.141 prohibits the discharge of any pollutant in violation of a state water quality standard. (35 Ill. Adm. Code 304.141.)

The Board finds that compliance with the fecal coliform standard during the construction of the UV system would result in an arbitrary or unreasonable hardship to GWA due to the additional cost and time required to construct a bypass around the chlorination tank. GWA will continue chlorination during the period of the variance and therefore the impact on the environment will be minimal. Further, GWA will obtain compliance with both the fecal coliform and residual chlorine standards through the addition of the UV system.

ORDER

The Glenbard Wastewater Authority is hereby granted a variance from 35 Ill. Adm. Code 304.121, Bacteria and 35 Ill. Adm. Code 304.141, NPDES Effluent Standards for its Glenbard Wastewater Treatment Facility located in Glen Ellyn, Illinois subject to the following conditions:

- (A) The variance shall begin on May 1, 1994 or upon commencement of construction of the chlorine contact basin, whichever occurs earlier, and terminate on November 1, 1994.
- (B) Glenbard shall continue to meet a total chlorine residual limit of 0.75 mg/l as a monthly average.
- (C) Glenbard shall meet an interim disinfection limit for fecal coliform of 400 MPN per 100 ml as a thirty (30) day geometric mean during the variance period.
- (D) Glenbard shall perform the modifications to the chlorine contact tank as expeditiously as possible and shall continue to operate the wastewater treatment facility so as to produce the best effluent practicable during the variance period.
- (E) Glenbard shall notify Adolfo Gonzalez at the Agency's Maywood Regional Office via telephone (708) 338-7900 when the work begins on the chlorine contact tank and when the work is completed on the unit. Written confirmation of each notification shall be sent within 5 days to the following address:

Illinois Environmental Protection Agency
 DWPC Compliance Assurance Section
 2200 Churchill Road, P.O. Box 19276
 Springfield, Illinois 62794-9276
 Attn: Dan Ray

- (F) Within forty-five days of the date of this order, petitioner shall execute and forward to:

Illinois Environmental Protection Agency
 Division of Legal Counsel
 2200 Churchill Road, P.O. Box 19276
 Springfield, Illinois 62794-9276
 Attn: Richard C. Warrington

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 and of no force and effect as a shield against enforcement of rules from which this variance is granted. The form of the Certificate is as follows.

I (We), _____,
hereby accept and agree to be bound by all terms and conditions
of the order of the Pollution Control Board in PCB 93-260, April
21, 1994.

Petitioner

Authorized Agent

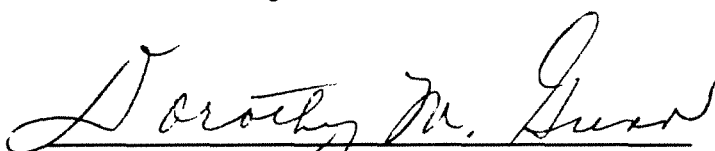
Title

Date

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, (415 ILCS 5/41 (1992)), provides for appeal of final orders of the Board within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 21st day of April, 1994, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board