

ILLINOIS POLLUTION CONTROL BOARD  
August 18, 1988

CITY OF SPRINGFIELD, ILLINOIS,            )  
  )  
                  Petitioner,                )  
  )  
                  v.                            )                PCB 88-113  
  )  
ILLINOIS ENVIRONMENTAL                    )  
PROTECTION AGENCY,                        )  
  )  
                  Respondent.                )

ORDER OF THE BOARD (by B. Forcade):

On July 22, 1988, the City of Springfield, Illinois, filed a petition for variance from 35 Ill. Adm. Code 302.206. On August 10, 1988, the Board received an objection to variance from the City of Petersburg, Menard County, Illinois, also an objection from the Village of Riverton filed August 11, 1988, as well as a third and fourth objection, filed August 12, 1988, from the City of Athens and Talisman Riverboat Excursions. This matter is accepted for hearing.

The parties, at hearing, are particularly requested to address the following issues, in that the petition fails to provide:

1. A request for any effective relief that the Board can grant. Section 302.206 does not actually set forth a regulatory prohibition, it states a water quality standard. Activities which cause a violation of water quality standards are actually prohibited by Section 12 of the Environmental Protection Act and 35 Ill. Adm. Code 304.105;
2. A time period or duration for the variance at the end of which it will expire. Variances are only granted on a temporary basis until compliance is achieved. The petition appears to request a permanent variance, which is not allowed under Illinois law;
3. A plan for ultimate compliance. As stated in paragraph two above, a definite plan for compliance on a definite timetable is a prerequisite to variance

relief. If removal of the dam or dams is intended as the ultimate compliance plan, the petition should so state;

4. Any amended petition should, at a minimum contain the following:
  - A. a reasonably detailed map showing the location of the proposed dams, pump stations and wastewater discharge points. A copy of the relevant portions of a USGS 7.5 minute map would be acceptable;
  - B. a discussion of the location and quantity of return flows from Springfield to the Sangamon River;
  - C. the projected average and maximum water demands in mgd contained in the 1957, 1965, 1972, 1980, 1981 and 1986 water supply studies and the basic assumptions (population, area served and per capita use) upon which they were based;
  - D. the actual water demand in a form comparable to the projections in the studies in increments of no more than five years;
  - E. a discussion of the degree to which actual demand has met to the projected demand of the earlier studies;
  - F. a discussion of other aeration alternatives, such as pumping water from the pool and allowing it to cascade or fall back into the pool and mechanical agitators;
  - G. the effect of maintaining a minimum 41 cfs discharge over the temporary dams regardless of inflow;
  - H. a more specific description of voluntary and mandatory conservation measures and their expected impact. Discuss the effect of implementing at least some specific mandatory measures at or before the

time pumping from the Sangamon begins; and

- I. can the "water utility operational problems" mentioned on page two be addressed by improved treatment or extension of intake lines? If so, at what cost? If not, why not?

Finally, the Board notes that Section 12 of the Environmental Protection Act, and 35 Ill. Adm. Code 304.105 preclude certain activities that would cause water pollution or violate water quality standards. The Board questions whether damming of a river is the type of activity that would require variance relief and, if so, how that relief should be structured. The parties are required to provide briefs to the Board on this issue not later than September 30, 1988.

Hearing must be scheduled within 14 days of the date of this Order and completed within 60 days of the date of this Order. The hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list and all actual exhibits to the Board within 5 days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and in no event later than 70 days from the date of this Order.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. This schedule will only provide the Board a very short time period to deliberate and reach a decision before the due date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

Within 10 days of accepting this case, the Hearing Officer shall enter a Hearing Officer Scheduling Order governing completion of the record. That Order shall set a date certain for each aspect of the case including: briefing schedule, hearing date(s), completion of discovery (if necessary) and pre-hearing conference (if necessary). The Hearing Officer Scheduling Order may be modified by entry of a complete new scheduling order conforming with the time requirements below.

The hearing officer may extend this schedule only on a waiver of the decision deadline by the petitioner and only for the equivalent or fewer number of days that the decision deadline is waived. Such waivers must be provided in writing to the Clerk of the Board. Any waiver must be an "open waiver" or a waiver of

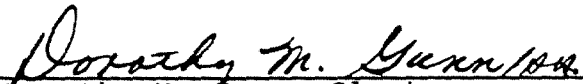
decision until a date certain. Any waiver shall extend the time deadline of Section 104.180 regarding filing the Agency recommendation by the equivalent number of days, but in any circumstance the recommendation must be filed at least 20 days before the hearing.

Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be cancelled unless the petitioner provides an open waiver or a waiver to a date at least 75 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice of hearing and receive transcripts from the hearing before the due date. Any order by the hearing officer granting cancellation of hearing shall include a complete new scheduling order with a new hearing date at least 40 days in the future and at least 30 days prior to the new due date and the Clerk of the Board shall be promptly informed of the new schedule.

Because this proceeding is the type for which the Illinois Environmental Protection Act sets a very short statutory deadline for decisionmaking, absent a waiver, the Board will grant extensions or modifications only in unusual circumstances. Any such motion must set forth an alternative schedule for notice, hearing, and final submissions, as well as the deadline for decision, including response time to such a motion. However, no such motion shall negate the obligation of the hearing officer to set a date pursuant to the sixth paragraph of this Order, and to adhere to that Order until modified.

IT IS SO ORDERED

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 18<sup>th</sup> day of August, 1988, by a vote of 6-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board