

ILLINOIS POLLUTION CONTROL BOARD

August 10, 2000

IN THE MATTER OF:)
)
PETITION OF CITY OF ELGIN FOR AN ADJUSTED) AS 01-1
STANDARD FROM 35 ILL. ADM. CODE 304.125 AND) (Adjusted Standard - Water)
35 ILL. ADM. CODE 302.204)
)

ORDER OF THE BOARD (by N.J. Melas):

On July 7, 2000, the City of Elgin filed this petition for an adjusted standard pursuant to Section 28.1 of the Environmental Protection Act (Act). 415 ILCS 5/28.1 (1998). Petitioner requests that the Board grant an adjusted standard from 35 Ill. Adm. Code 304.125 and 302.204. 35 Ill. Adm. Code 304.125 applies to petitioner's effluent from the South McLean Lime Residuals Facility (facility), and 35 Ill. Adm. Code 302.204 applies to an unnamed tributary of the Fox River in Elgin, Kane County, Illinois which receives the effluent.

NOTICE AND HEARING

Section 28.1 of the Act and 35 Ill. Adm. Code 106.711 require publication of a notice of an adjusted standard proceeding in a newspaper of general circulation in the area affected by the petitioner's activity. The notice must be published within 14 days of the filing of the petition. As required by the Board's procedural rules, petitioner filed a certificate of publication with the Board on July 19, 2000, indicating that notice of the petition was published in *The Courier-News* on July 13, 2000.

On July 27, 2000, the Illinois Environmental Protection Agency (Agency) filed a motion for hearing. The Agency stated that there are no previous cases in which the Board has granted an adjusted standard from the water quality standard for pH in a situation similar to that proposed by petitioner.

The Board finds that the notice meets the requirements of Section 28.1 of the Act and 35 Ill. Adm. Code 106.711. The Board also finds that the Agency motion for hearing was timely filed within 21 days of the publication of notice pursuant to 35 Ill. Adm. Code 106.713.

PROOF AND INFORMATIONAL SUFFICIENCY

Although the notice and the motion for hearing are proper, the Board finds that the petition has not adequately addressed certain proof required by Section 28.1(c) of the Act and certain information sufficiency requirements required by the Board's rules at 35 Ill. Adm. Code 106.705. Specifically the petition fails to provide:

1. Most of the factors relating to the petitioner that are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner. 415 ILCS 5/28.1(c)(1) (1998). Petitioner should better explain sources of alkaline water. This includes comparing itself to other point sources with discharges greater than pH 9.0, other dischargers with water supplies greater than pH 9.0, other relevant industrial categories that are subject to United States Environmental Protection Agency regulation (see 40 C.F.R. § 400-471 (1998)), other dischargers who use alkali to precipitate contaminants, and other dischargers who have sought similar relief from the Board's rules, if any. Additionally, petitioner also needs to better compare the instant case to factors that the Board considered such as the complexity for the treatment of pH and the economics - including a cost/benefit analysis - for the treatment of pH. Petitioner also needs to discuss the relevant parts of the response to public comments. See Amendments to Chapter 3: Water Pollution (Effluent Standards) (September 24, 1981), R76-21, slip op. at 34-39.

2. Adequate proof that the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability. 415 ILCS 5/28.1(c)(3) (1998). Petitioner needs to better compare the instant case to the range of environmental and health impacts the Board considered in the rule of general applicability. See Amendments to Chapter 3: Water Pollution (Effluent Standards) (September 24, 1981), R76-21, slip op. at 35.
3. Adequate proof that the adjusted standard is consistent with certain federal laws. 415 ILCS 5/28.1(c)(4) (1998); 35 Ill. Adm. Code 106.705(i). Petitioner addresses water quality standards as they are defined by the Clean Water Act. However, petitioner only discusses water quality standards of the receiving stream. It does not discuss the applicability of federal guidelines for effluent or the guidelines in petitioner's National Pollutant Discharge Elimination System (NPDES) permit.
4. Reference to the standard from which an adjusted standard is sought. 35 Ill. Adm. Code 106.705(a). Petitioner should correct the typo on page one of the petition referring to the nonexistent 35 Ill. Adm. Code 302.124. Petitioner should also correct the reference to 35 Ill. Adm. Code 304.128 in the proposed adjusted standard language on page 10 of the petition.
5. Whether the regulation of general applicability was promulgated to implement the requirements of the state program concerning the NPDES. 35 Ill. Adm. Code 106.705(b). Petitioner listed only the Clean Water Act, which addresses both water quality and effluent standards. 35 Ill. Adm. Code 304.125 was also promulgated to implement requirements of the NPDES that address effluent standards.
6. Reference to the level of justification specified or not specified at 35 Ill. Adm. Code 302.204. See 35 Ill. Adm. Code 106.705(c). The petition also fails to mention that Section 28.1(c) of the Act delineates the proof required of a petitioner to qualify for an adjusted standard when the regulation of general applicability does not specify the level of justification.
7. A complete description of the efforts which would be necessary if the petitioner were to comply with the regulation of general applicability. 35 Ill. Adm. Code 106.705(e). Petitioner must provide corresponding costs, overall capital costs, and annualized capital and operating costs for each compliance alternative. In the petition, costs are only presented for one alternative. Other less appealing compliance alternatives were not budgeted, probably due to higher costs, although no other figures were provided. If petitioner determines that a compliance alternative is technologically unfeasible and does not warrant a cost analysis, petitioner must provide an adequate explanation of the technological barriers.
8. How the petitioner seeks to justify the proposed adjusted standard. 35 Ill. Adm. Code 106.705(h). Petitioner states that it is seeking an adjusted standard pursuant to Section 28.1 of the Act on page one of the petition. However, on page 12 petitioner lists the requirements for seeking an adjusted standard from Section 28.3 of the Act instead of the requirements at Section 28.1 of the Act. Section 28.3 of the Act only applies to discharges of waste solids to the Mississippi and Ohio Rivers. 415 ILCS 5/28.3 (1998).

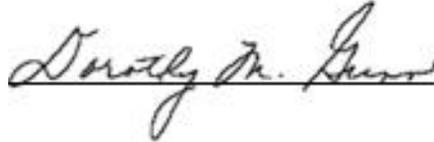
CONCLUSION

The Board therefore directs petitioner to address the information requirements of Section 28.1 of the Act and Section 106.705 of the Board's rules in an amended petition. The amended petition must be filed with the Board by September 25, 2000, or it will be dismissed.

If petitioner files the amended petition by September 25, 2000, the Board will accept this matter for hearing. The Agency shall file a response to the amended petition within 30 days after it is filed with the Board. See 35 Ill. Adm. Code 106.714(a).

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 10th day of August 2000 by a vote of 5-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board