

ILLINOIS POLLUTION CONTROL BOARD
October 17, 1996

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| FOX POINT HOMEOWNER'S ASSOCIATION, |) | |
| |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | PCB 97-73 |
| |) | (Provisional Variance - Water) |
| 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)), Fox Point Homeowner's Association (petitioner) has requested that the Illinois Environmental Protection Agency (Agency) recommend that the Board grant a provisional variance from Section 35(b) of the Act (415 ILCS 5/35(b)), to the petitioner. Such request for a provisional variance and the notification of recommendation was filed with the Board by the Agency on October 15, 1996. Pursuant to Section 35(b) of the Act, the Board must issue the variance within two (2) days of this filing. The Agency, by and through its Director, Mary A. Gade, seeks a provisional variance to allow petitioner to continue its dredging operation at Lake Louise.

Specifically, the Agency recommends that we grant petitioner a 45-day provisional variance for its Will County facility from the total suspended solids effluent requirement, as set forth in 35 Ill. Adm. Code 304.124(a) and State Water Control Permit No. 1995-EA-5341. This variance period shall begin on the date in October 1996 when the petitioner resumes discharging from the settling pond, and continue until the dredging project is completed, but not longer than 45 days.

The Agency recommends that the Board grant the requested provisional variance with specified conditions and agrees that the repairs are necessary. The Agency anticipates that the requested provisional variance would have minimal environmental impact on the receiving stream and is unaware of any public water supplies that the requested provisional variance would adversely impact. According to the Agency, no federal laws would be violated if the provisional variance is granted by the Board. The Agency believes 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 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 304.124(a) and State Water Control Permit No. 1995-EA-5341 as they relate to total suspended solids, on the following conditions:

1. The term of this provisional variance shall commence on a date in October 1996 when the petitioner resumes discharging from the settling pond, and continue until the dredging project is completed, but not longer than 45 days;
2. During the term of this provisional variance, petitioner shall meet a daily effluent concentration limits of 150 milligrams for total suspended solids. Petitioner shall stop dredging operations if sample results exceed the 150 milligrams daily maximum for total suspended solids effluent concentration limit;
3. Petitioner shall notify Mark T. Books by telephone at 217/782-9720, or facsimile at 217/782-9891, with the total suspended solids monitoring results on a daily basis, when discharging from the settling pond. In addition, petitioner shall each day provide the Agency with an assessment of any impact of the discharge to the lake. If the discharge causes substantial impact on the lake, the Agency, at its discretion, may require that the dredging operations be suspended until the situation resulting in the impact is resolved;
4. The petitioner shall notify Karen Katamay of the Agency's Maywood Regional office by telephone, at 708/338-7900, when dredging operations begin and again when the dredging operations are completed. Petitioner shall confirm this notice in writing within five (5) days, addressed as follows:

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

5. The petitioner shall operate its confined disposal facility in such a manner so as to produce the best decant water practicable. This shall involve the excavation

of a pumping pit for the decant pump intake, and suspending the intake as close to the water surface as possible; and

- 6. Placement of peat and sediment materials excavated from the settling pond cannot cause odor or water quality problems.

The petitioner shall execute a copy of a certificate of acceptance of this provisional variance and forward that copy to the Agency addressed as is the written notice required in the above condition; the petitioner shall forward that copy within ten (10) days of the date of this order of the Board, 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 97-73, October 17, 1996.

Petitioner

Authorized Agent

Title

Date

IT IS SO ORDERED.

Board Member K.M. Hennessey abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the ____ day of _____, 1996, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board